

1 [Resolution To Acquire Real Property Interests By Eminent Domain—Water System  
2 Improvement Program-Funded Bay Division Pipeline Reliability Upgrade - Tunnel.]  
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4 **Resolution authorizing acquisition of subsurface tunnel easements in real property in**  
5 **Alameda County and San Mateo County, consisting of portions of Alameda County**  
6 **Assessor's Parcels 537-0551-028, 537-0551-020 and 537-0551-021-01 in the City of**  
7 **Newark, Alameda County Assessor's Parcel 537-0852-008 in the City of Fremont, San**  
8 **Mateo County Assessor's Parcels 063-590-060 and 096-230-110 in the City of Menlo**  
9 **Park, and in real property owned by San Mateo County Transit District in the City of**  
10 **Menlo Park, located east of University Avenue between Assessor's Parcels 093-600-010**  
11 **and 063-590-060, by eminent domain, for the public purpose of constructing the Public**  
12 **Utilities Commission Water System Improvement Program-Funded Project CUW36801,**  
13 **Bay Division Pipeline Reliability Upgrade - Tunnel; adopting environmental findings**  
14 **under the California Environmental Quality Act ("CEQA"), CEQA Guidelines, and**  
15 **Administrative Code Chapter 31, and adopting findings of consistency with the General**  
16 **Plan and under City Planning Code Section 101.1.**  
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18 WHEREAS, The San Francisco Public Utilities Commission ("SFPUC") plans to  
19 construct Project CUW36801 Bay Division Pipeline Reliability Upgrade Project—Bay Tunnel  
20 ("Bay Tunnel" or the "Project"), under the Water System Improvement Program ("WSIP") for  
21 improvements to the regional water supply system, a public use, and in connection therewith  
22 will require interests in certain real property described herein; and,

23 WHEREAS, The objectives of the Project, together with other Bay Division Pipeline  
24 ("BDPL") Reliability Upgrade projects, are to provide a seismically reliable conduit between  
25 Mission Boulevard in Fremont and the Pulgas Tunnel in San Mateo County, to size and

1 configure the BDPL transmission system for transmission of water across the Bay for  
2 distribution to residents of San Mateo County and the City and County of San Francisco,  
3 ("CCSF") to replenish local reservoirs, and to contribute toward meeting estimated average  
4 annual demand under conditions of both planned and unplanned facility outages; and,

5 WHEREAS, California Government Code §37730 authorizes CCSF to acquire real  
6 property by eminent domain for purposes of obtaining water, water rights, reservoir sites,  
7 rights of way for pipes, aqueducts, flumes, or other conduits, and all other property and  
8 appliances suitable and proper to supply water for the use of CCSF and its inhabitants; and,

9 WHEREAS, California Government Code § 1240.125 authorizes a local public entity to  
10 acquire property by eminent domain outside its territorial limits for water, gas or electric supply  
11 purposes, or for drainage or sewer purposes; and,

12 WHEREAS, California Government Code §25350.5 and §37350.5 authorize the Board  
13 of Supervisors to acquire by eminent domain any property necessary to carry out any of the  
14 powers or functions of CCSF; and,

15 WHEREAS, CCSF requires subsurface tunnel easements in certain real property in  
16 Alameda County and San Mateo County, consisting of portions of Alameda County  
17 Assessor's Parcels 537-0551-028, 537-0551-020 and 537-0551-021-01 in the City of Newark,  
18 Alameda County Assessor's Parcel 537-0852-008 in the City of Fremont, San Mateo County  
19 Assessor's Parcels 063-590-060 and 096-230-110 in the City of Menlo Park, and in real  
20 property owned by San Mateo County Transit District in the City of Menlo Park, located east  
21 of University Avenue between Assessor's Parcels 093-600-010 and 063-590-060 (the  
22 "Subject Properties"), which subsurface easements are more particularly described in  
23 Exhibit A (the "Subsurface Easements"), a copy of which is on file with the Clerk of the Board  
24 of Supervisors in File No. 090-979 and incorporated herein by this reference, for the  
25 construction and improvement of the Project; and,

1 WHEREAS, On July 9, 2009, the Planning Commission reviewed and considered the  
2 Final Environmental Impact Report ("Final EIR") for the BDPL Reliability Upgrade Projects in  
3 Planning Department File No. 2005.0146E, consisting of the Draft EIR and the Comments and  
4 Responses document, and found that the contents of said report and the procedures through  
5 which the Final EIR was prepared, publicized, and reviewed complied with the provisions of  
6 the California Environmental Quality Act ("CEQA"), the CEQA Guidelines and Chapter 31 of  
7 the San Francisco Administrative Code and found further that the Final EIR reflects the  
8 independent judgment and analysis of the City and County of San Francisco, and is adequate,  
9 accurate, and objective, and that the Comments and Responses document contains no  
10 significant revisions to the Draft EIR, and certified the completion of said Final EIR in  
11 compliance with CEQA and the CEQA Guidelines in its Motion No. 17918; and,

12 WHEREAS, On July 14, 2009, the SFPUC, by Resolution No. 09-120, approved the  
13 Project, adopted CEQA Findings, including a Statement of Overriding Considerations, and a  
14 Mitigation Monitoring and Reporting Program ("MMRP") as required by CEQA; and,

15 WHEREAS, On July 14, 2009, the SFPUC, by Resolution No. 09-120, authorized the  
16 SFPUC General Manager to commence the process, in compliance with Government Code  
17 Section 7260 et seq., the San Francisco Charter and all applicable laws, for possible  
18 acquisition of the Subsurface Easements; and,

19 WHEREAS, This Board adopted Resolution No. 0371-09, in Board file no. 090979, on  
20 September 22, 2009, adopting the CEQA Findings, including the Statement of Overriding  
21 Considerations, and the MMRP for the Project, signed by the Mayor on September 29, 2009;  
22 and,

23 WHEREAS, The SFPUC staff obtained appraisals in compliance with California  
24 Government Code Section 7267 et seq. and all related statutory procedures for possible  
25 acquisition of the Subsurface Easements, and on July 24, 2009 and July 28, 2009, submitted

1 offers to each of the owners of the Subject Properties to purchase the Subsurface Easements  
2 as required by California Government Code Section 7267.2, and continues to negotiate the  
3 possible acquisition of those interests with those owners; and,

4 WHEREAS, In Planning case 2009.0558R, the Department of City Planning found the  
5 acquisition of the Subsurface Easements to be in conformity with the General Plan and  
6 consistent with the Eight Priority Policies of City Planning Code Section 101.1 to the extent  
7 applicable; and,

8 WHEREAS, On October 27, 2009, the SFPUC adopted Resolution No. 09-0176 in  
9 which the SFPUC found that (a) the public interest and necessity require the proposed Project  
10 in order to meet the adopted WSIP levels of service of seismic and delivery reliability, (b) the  
11 proposed Project, which includes the construction of a 5-mile tunnel under San Francisco Bay  
12 and surrounding salt marsh, is planned and located in the manner that will be most compatible  
13 with the greatest ~~pubic~~ public good and the least private injury, based on significant evidence  
14 of economic, legal, environmental, social, technological and other considerations indicating  
15 that the proposed project is superior to other alternatives to the Project or the Project location,  
16 the fact that CCSF would acquire only subsurface easements, not the entire fee, and that the  
17 proposed tunnel itself would be located at a depth below the surface of the ground of the  
18 Subject Properties not less than approximately 60 feet, and (c) the Subsurface Easements are  
19 necessary for the Project, because although the shafts would be located on property owned  
20 by CCSF in Menlo Park and Newark, the tunnel portions between the two shafts would be  
21 primarily located outside the properties currently owned by CCSF; and,

22 WHEREAS, The acquisition and use of the Subsurface Easements for construction of  
23 the subsurface Bay Tunnel is compatible with the existing uses of the Subject Properties for  
24 railroad, salt pond and open space purposes; and,

1 WHEREAS, On October 27, 2009, by Resolution No. 09-0176, the SFPUC authorized  
2 the SFPUC General Manager (a) to request that the Board of Supervisors hold a hearing to  
3 consider adoption of a Resolution of Necessity to acquire the Subsurface Easements, and  
4 (b) if the Board adopts said Resolution of Necessity, to take such actions that are consistent  
5 with the Charter and all applicable law, to proceed to acquire the Subsurface Easements; and  
6 (c) in any event, to continue to discuss the acquisition with the owners of the Subject  
7 Properties; and,

8 WHEREAS, This Board finds and determines that notice of its intention to adopt this  
9 Resolution of Necessity was duly given as required by law, and on the date and at the time  
10 and place fixed for hearing, this Board did hear and consider all of the evidence presented;  
11 now, therefore, be it

12 RESOLVED, By at least a two-thirds vote of this Board under Code of Civil Procedure  
13 Sections 1240.030 and 1245.230, that this Board finds and determines each of the following:

- 14 1. The public interest and necessity require the proposed Project;
- 15 2. The proposed Project is planned or located in the manner that will be most  
16 compatible with the greatest public good and the least private injury;
- 17 3. The Subsurface Easements in the Subject Properties sought to be acquired are  
18 necessary for the Project;
- 19 4. The offer required by Government Code Section 7267.2 has been made to the  
20 owner of record of each of the Subject Properties; and, be it

21 FURTHER RESOLVED, That to the extent that any portion of the Subsurface  
22 Easements in the Subject Properties sought to be acquired is presently appropriated to a  
23 public use, the purpose for which the acquisition and use of the Subsurface Easements is  
24 sought, namely, for construction and operation of the Bay Tunnel, is a more necessary public  
25 use under Section 1240.610 of the California Code of Civil Procedure; and, be it

1           FURTHER RESOLVED, That to the extent that any portion of the Subject Properties is  
2   presently appropriated to a public use, the purpose for which the acquisition and use of the  
3   Subsurface Easements is sought, namely, for construction and operation of the new Bay  
4   Tunnel, is a compatible public use under Section 1240.510 of the California Code of Civil  
5   Procedure; and, be it

6           FURTHER RESOLVED, That the City Attorney is hereby authorized and directed to  
7   commence proceedings in eminent domain against each owner of the Subject Properties and  
8   any and all interests therein or claims thereto for the condemnation thereof for the public use  
9   of CCSF; together with the authorization and direction to file any actions or comply with any  
10   legal procedures to obtain an order for immediate possession for all or a portion of the  
11   Subsurface Easements as depicted in Exhibit A, in conformity with existing or amended law;  
12   and, be it

13          FURTHER RESOLVED, That the Board of Supervisors has reviewed and considered  
14   the Final EIR and record as a whole, finds the action taken herein is within the scope of the  
15   Project and activities evaluated in the Final EIR, and that the Final EIR is adequate for its use  
16   as the decision-making body for the action taken herein; and, be it

17          FURTHER RESOLVED, That the Board of Supervisors, in exercising its independent  
18   judgment, adopts and incorporates by reference all prior CEQA Findings adopted by the San  
19   Francisco Public Utilities Commission and this Board of Supervisors for the Project including,  
20   without limitation, the CEQA Findings, including the Statement of Overriding Considerations,  
21   set forth in the San Francisco Public Utilities Commission Resolution No. 09-0120 and this  
22   Board's findings in Resolution No. 371-09 with respect to the approval of this Resolution in  
23   conformance with CEQA; and, be it

24          FURTHER RESOLVED, That the Board of Supervisors finds that since the Final EIR  
25   was finalized, there have been no substantial Project changes and no substantial changes in

1 Project circumstances that would require major revisions to the Final EIR due to the  
2 involvement of new significant environmental effects or an increase in the severity of  
3 previously identified significant impacts, and there is no new information of substantial  
4 importance that would change the conclusions set forth in the Final EIR; and, be it

5 FURTHER RESOLVED, That the Board of Supervisors finds that the Project mitigation  
6 measures set forth in the Final EIR and the MMRP and adopted by the San Francisco Public  
7 Utilities Commission and this Board will be implemented as reflected in and in accordance  
8 with the MMRP; and, be it

9 FURTHER RESOLVED, That the Board of Supervisors hereby adopts as its own and  
10 incorporates by reference herein, as though fully set forth, the findings of the Planning  
11 Department that the acquisition of the Property is in conformity with the General Plan and  
12 consistent with the Eight Priority Policies of City Planning Code Section 101.1; and, be it

13 FURTHER RESOLVED, That the Board of Supervisors adopts as its own and  
14 incorporates by reference herein, as though fully set forth, each of the findings made by the  
15 SFPUC in adopting Resolution No. 09-0176 on October 27, 2009; and, be it,  
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17 FURTHER RESOLVED, That the cost of acquiring the Subsurface Easements shall be  
18 paid from Project funds appropriated in Appropriation Ordinance No. 0311-08, adopted by this  
19 Board on December 16, ~~2009~~2008, and signed by the Mayor on December 19, 2008.  
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**RECOMMENDED:**

PUBLIC UTILITIES COMMISSION

\_\_\_\_\_  
Edward M. Harrington

General Manager

Pursuant to PUC  
Resolution No. 09-0176\_\_\_\_\_

APPROVED AS TO FORM:  
DENNIS J. HERRERA, City Attorney

By: \_\_\_\_\_  
Deputy City Attorney