AGENDA ITEM

Proposed Exchange of Easements with the City and County of San Francisco at Ravenswood Open Space Preserve in the Cities of East Palo Alto and Menlo Park, including Amendment of the existing Comprehensive Use and Management Plan to reflect the conveyance of a Tunnel Easement to the City and County of San Francisco, Adoption of a Preliminary Use and Management Plan for the Open Space Easement to be conveyed to the District, Consideration of the EIR certified by the San Francisco Public Utilities Commission, Adoption of a Statement of Overriding Considerations, and Determination that Acceptance of the Open Space Easement is Categorically Exempt in accordance with the California Environmental Quality Act (San Mateo County Assessor Parcel Numbers 063-590-060, 096-230-150, 093-590-030, 093-590-050, and 093-590-060)

GENERAL MANAGER’S RECOMMENDATIONS

1. As a Responsible Agency under the California Environmental Quality Act (CEQA), independently consider the Environmental Impact Report (EIR) certified by the San Francisco Public Utilities Commission (SFPUC); adopt applicable portions of the Mitigation Monitoring and Reporting Program of the Final EIR; adopt a Statement of Overriding Considerations as to one potential environmental impact; and, as Lead Agency under CEQA, determine that the acceptance of the Open Space Easement is categorically exempt from CEQA, all as more fully set forth in this staff report.

2. Adopt the attached Resolution approving the Agreement to exchange interests in real property with the City and County of San Francisco (“City”) and authorize the President of the Board of Directors to execute the Agreement and the attached documents exchanging easement interests between the City and the District.

3. Adopt the Preliminary Use and Management Plan for the Open Space Easement being acquired and, as to the Tunnel Easement, amend the existing Comprehensive Use and Management Plan for the Ravenswood Open Space Preserve as set forth in this staff report.

SUMMARY

An exchange of easements is proposed whereby the District would grant to the City a subsurface tunnel easement underneath Ravenswood Open Space Preserve for a new transbay water pipeline, and in exchange the City would grant to the District an open space easement across a
portion of adjacent City lands in order to preserve an unobstructed corridor for a future proposed public trail easement to close a critical gap in the San Francisco Bay Trail.

DISCUSSION

Project Parameters
On behalf of the City, the San Francisco Public Utilities Commission (SFPUC) is seeking to acquire a subsurface tunnel easement underneath the District’s Ravenswood Open Space Preserve to secure the right of way for a new transbay water pipeline to be constructed as part of a major reliability upgrade project for the Hetch Hetchy regional water distribution system. The new transbay pipeline will be tunneled beneath San Francisco Bay from Fremont to Menlo Park, a distance of approximately five miles. The proposed alignment of the subsurface pipeline crosses the northeastern corner of Ravenswood Open Space Preserve (see site map attached as Exhibit A to this report). The desired tunnel easement would be approximately 1,925 feet in length and run beneath the surface of the Preserve at a depth between 42 and 119 feet below grade. The pipe itself will be ten feet in diameter, and would emerge to the surface on City lands immediately north of the Preserve near the SFPUC valve station that distributes water flowing through two existing surface pipelines that cross the bay. A tunnel boring machine will be used to construct the new transbay pipeline, and no surface rights are required by the SFPUC either to construct or maintain the pipeline.

Public Resources Code and Regional Planning
Ravenswood Open Space Preserve has been dedicated by the District for open space purposes under Public Resources Code §5540. The District’s enabling legislation sets forth specific requirements for conveying an interest in dedicated open space lands. PRC §5540.5 allows the District, by unanimous vote of the Board of Directors, to convey any real property or interest in real property dedicated for open space purposes in exchange for other real property or interest in real property of equal or greater value and necessary for open space purposes. The District has proposed that the City grant a public trail easement across City lands adjacent to Ravenswood Open Space Preserve in order to close a gap in the San Francisco Bay Trail between the preserve and University Avenue. The proposed trail easement would secure the right-of-way necessary to connect an existing section of the Bay Trail at Ravenswood Open Space Preserve to University Avenue and the bicycle lanes along the shoulders of this street. These bicycle lanes connect to a designated section of the Bay Trail along Highway 84. A future sidewalk along the east side of University Avenue between Purdue Avenue and Highway 84 is envisioned by the Bay Trail Project that would complete the pedestrian connection. Bay Trail advocates have long sought to create this multi-use trail link between Ravenswood Open Space Preserve and Highway 84, most recently during a 2004-05 Bay Trail feasibility study undertaken by the City of Menlo Park to evaluate the opportunities and constraints to creating this link. The City of East Palo Alto, the SFPUC, the District, and other stakeholder agencies and groups participated on the task force formed for this planning effort.

Open Space Easement and Trail Easement
The City is receptive to the concept of a public trail easement that would help make this link in the Bay Trail possible. However, before the City is able to grant a trail easement to the District, further study is needed to determine a trail alignment and design that will not conflict with SFPUC’s use and management of the City’s lands or conflict with surrounding land uses, that will avoid or minimize environmental impacts, and that will offer an enjoyable user experience consistent with the goals of the San Francisco Bay Trail Project. Additionally, the City of East
Palo Alto is currently evaluating the potential for a future multi-modal loop road to the north of University Village that would connect the Ravenswood Business District with University Avenue and include a pedestrian and bicycle trail. The alignment of this potential new loop road follows a portion of the same route being considered for the public trail easement, and will also need to be considered in identifying an appropriate Bay Trail alignment and design.

In order to hold to its project timeline, the SFPUC must secure all necessary rights-of-way for the new pipeline within the next few months. As it will not be possible to complete the trail study and negotiate a trail easement acceptable to both the SFPUC and the District within the pipeline project timeline, the SFPUC has proposed granting an open space easement to the District that will preserve an unobstructed corridor across City lands within which a future trail easement can be located. The proposed 50 foot wide open space easement would run generally along the route of the proposed public trail easement as shown on the attached map (Exhibit A) and identified in the 2004-05 Bay Trail feasibility study. As contemplated in the exchange agreement, once a trail alignment and design acceptable to both parties has been identified, the District would quitclaim the open space easement back to the City, and in return the City would grant the public trail easement to the District.

**Resolution of Necessity**

Because of the scale and complexity of the Hetch Hetchy water system upgrade project, timely possession of the necessary rights-of-way along the proposed route of the new pipeline is critical to ensuring the project schedule does not slip. Consequently, the San Francisco Board of Supervisors adopted a Resolution of Necessity on November 24, 2009 to preserve the City’s right to initiate condemnation proceedings against the District in the event the City and District are unable to complete the proposed exchange of easements in timely fashion. An Agreement to Toll the six month statute of limitations on bringing an action based on the Resolution of Necessity expires on July 15, 2010.

**USE AND MANAGEMENT**

**Planning Considerations**

The Comprehensive Use and Management Plan for Ravenswood Open Space Preserve, adopted on April 5, 1990 (see R-90-53), requires amendment to reflect the District’s conveyance of a subsurface tunnel easement to the City for construction of the new transbay pipeline. The exchange of easements also requires adoption of a Preliminary Use and Management Plan for the open space easement as an addition to the Preserve. The open space easement does not convey rights of access or use by the general public nor does it convey any right or obligation to the District to patrol the easement area for public safety purposes. The easement permits the District to enter and monitor the easement area for compliance with the terms of the open space easement and for purposes of studying the feasibility of a future public trail easement.

Adoption of the Preliminary Use and Management Plan for the open space easement and adoption of the amendment of the Comprehensive Use and Management Plan for Ravenswood Open Space Preserve will both take effect at the close of escrow. Both plans will remain effective until further amended.
Preliminary Use and Management Plan (Next Steps)
The Preliminary Use and Management Plan for the open space easement represents a status quo approach to management. The easement area will continue to be owned, operated and managed by the City. The Preliminary Use and Management Plan includes the following elements:

Public Access: No public access is conveyed by this easement.

Signs and Site Security: No District signs will be installed.

Document Baseline Conditions: Perform an initial inspection of the open space easement to photo document the existing conditions within the easement area at the time the easement is conveyed to the District.

Easement Monitoring: Regular inspection of the open space easement area to be carried out by the District to ensure compliance.

Site Safety Inspection: Preliminary site safety inspection has been conducted and there are no known safety hazards within the open space easement area.

Name: Designate the open space easement as an addition to Ravenswood Open Space Preserve.

Dedication: Indicate the Board’s intention to withhold dedication of the open space easement for public open space purposes pending replacement of the open space easement with a public trail easement.

Subsequent Planning: Conduct a feasibility study to identify a suitable trail alignment and design for the purposes of acquiring a public trail easement to secure the right-of-way for a future Bay Trail connection.

CEQA COMPLIANCE

Project Description
The project consists of the conveyance of a subsurface tunnel easement approximately 1,925 feet in length from the District to the City in exchange for the conveyance of a 50 foot wide open space easement approximately one-half mile in length from the City to the District. The proposed tunnel easement is further described in the SFPUC’s Environmental Impact Report for the Bay Division Pipeline Reliability Upgrade Project, certified by the SFPUC on July 14, 2009. The project also includes the District’s concurrent adoption of a Preliminary Use and Management Plan for the open space easement, which specifies that the easement conditions will be monitored and enforced by the District in order to maintain the easement area in its current unobstructed, open space condition, and the District’s adoption of an amendment to the Comprehensive Use and Management Plan for the Preserve to reflect the granting of the Tunnel Easement.

The site of the proposed open space easement is located within the Ravenswood Valve Lot owned by the City and managed by the SFPUC, situated south of the Highway 84 approach to the Dumbarton Bridge and east of University Avenue in the cities of East Palo Alto and Menlo
Park (see Exhibit A attached to this staff report). The open space easement will run along the southern edge of the City’s valve lot between the East Palo Alto residential community of University Village immediately to the south and the Dumbarton Rail right-of-way immediately to the north. A narrow, paved private service road maintained by the SFPUC travels through the western segment of the proposed open space easement, providing access from University Avenue to the valve station operated by SFPUC as part of its Hetch Hetchy regional water distribution system. The service road will be used for construction of the transbay water pipeline project. The vegetation in this area generally consists of low-growing non-native grassland species. The eastern segment of the open space easement crosses coastal saltwater marsh extending from Ravenswood Open Space Preserve along the perimeter of the City’s lands.

CEQA Determination – Bay Tunnel Project
The environmental impacts of the SFPUC transbay water pipeline project, including a subsurface tunnel across Ravenswood Open Space Preserve (“Bay Tunnel Project”) were evaluated in the SFPUC’s Environmental Impact Report for the Bay Division Pipeline Reliability Upgrade Project. On July 14, 2009, the SFPUC, as the Lead Agency, approved the Bay Tunnel Project, and, in so doing, adopted findings under CEQA, Public Resources Code section 21000 et seq., including a Statement of Overriding Considerations for the Project’s four significant and unavoidable impacts (Aesthetics, Cultural Resources, Noise and Vibration, and Transportation and Traffic), and in addition adopted a Mitigation Monitoring and Reporting Program.

The District is a “Responsible Agency” under CEQA for the Bay Tunnel Project. A Responsible Agency means an agency, other than the Lead Agency, which has approval authority for a project. CEQA requires that the District, as a Responsible Agency, also adopt CEQA findings. Accordingly, the District, as to those parts of the Bay Tunnel Project that it is considering, independently concludes that the direct and indirect environmental effects of the Bay Tunnel Project were adequately addressed by the Final EIR. Based on substantial evidence, the District finds that:

(1) Changes or alterations have been required in, or incorporated into, the Bay Tunnel Project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR; and that

(2) Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the District. Such changes have been adopted by such other agency or can and should be adopted by such other agency.

As a Responsible Agency under CEQA, the District also adopts, as to those parts of the Bay Tunnel Project applicable to its approval of the grant of tunnel easement, the Mitigation Monitoring and Reporting Program of the Final EIR, specifically Impact REC-2b (Advance Notification), which will permit the District to timely inform Preserve visitors of the potential for temporary deterioration of the quality of the recreational experience arising from project construction noise.

CEQA also requires both a Lead Agency and a Responsible Agency to balance the environmental and other benefits of a project with unavoidable potential environmental impacts when approving a project. If an agency determines that the environmental or other benefits of a project outweigh a potential adverse environmental impact, the agency may adopt a Statement of Overriding Considerations confirming this determination. Accordingly, the District further
finds, in conformity with the EIR and Statement of Overriding Considerations adopted by the SFPUC, that the Bay Tunnel Project would be excavated through Holocene period sediments, which may contain as yet undiscovered archaeological resources. Use of a tunnel-boring machine would prevent the possibility of monitoring and could adversely affect as yet undiscovered archaeological resources that may be present within the tunnel easement area. As a result, this potential impact on archaeological resources could be significant and unavoidable at both a project and cumulative level. The District concludes, on balance, that substantial evidence in the record supports the public objectives served by the Bay Tunnel Project and that such evidence overrides the potential for impacts to as yet unknown and undiscovered archaeological resources potentially lying within District lands.

The District’s goal in undertaking its programs and projects is to, among other things, be alert and sensitive to the interests of stakeholders and all its constituents interested in District projects. Although the proposed tunnel easement under a portion of Ravenswood Open Space Preserve will be but a very small subsurface segment of the SFPUC’s large-scale pipeline upgrade project, and although no archaeological resources are known to exist at the surface or at depth at the project site, CEQA requires the District to adopt the CEQA findings set out in this report in order to meet its statutory obligations as a Responsible Agency.

**CEQA Determination – Open Space Easement**

The District concludes that acceptance of the open space easement will not have a significant effect on the environment. It is categorically exempt from CEQA under Article 19, Section 15317 of the CEQA Guidelines as follows:

Section 15317 exempts the acceptance of easements or fee interests in order to maintain the open space character of the area. The District will acquire an open space easement interest that serves to restrict the SFPUC from constructing any permanent structures that would be incompatible with preserving the easement area in its unobstructed, open space condition. The District’s Preliminary Use and Management Plan for the open space easement specifies that the District will periodically inspect the easement to ensure the SFPUC’s compliance in maintaining the easement area in its current open space condition.

The City’s Planning Department has also separately determined on May 13, 2010, that the grant of the open space easement to the District is categorically exempt from CEQA under Article 19, Section 15317 of the CEQA Guidelines.

**TERMS AND CONDITIONS**

Under the terms of the exchange agreement, the District will grant to the City a permanent, exclusive subsurface tunnel easement underneath Ravenswood Open Space Preserve along an alignment generally depicted in Exhibit A to this report, and comprising a horizontal plane approximately 2.14 acres in size. The subsurface tunnel easement will be at a depth between 42 and 119 feet below grade as it travels underneath the Preserve. No surface rights or rights to surface entry are granted in the tunnel easement.

In exchange, the City will grant to the District a permanent, non-exclusive open space easement 50 feet in width along an alignment generally depicted in Exhibit A to this report. The open space easement is approximately one-half mile in length and 2.88 acres in size. The open space easement will restrict the SFPUC from constructing any permanent structures that would be
incompatible with preserving the easement area in its current open space condition. The SFPUC is otherwise permitted to continue present uses of its property within the open space easement, in particular, the right to maintain, improve, expand or relocate the existing service road leading from University Avenue to SFPUC’s valve station.

The exchange agreement includes a provision whereby both parties agree to cooperate on identifying a suitable alignment for a 20 foot wide public trail easement across City lands connecting Ravenswood Open Space Preserve to University Avenue. Upon any future grant of a public trail easement from the City to the District, the District would quitclaim and convey the open space easement back to the City.

Escrow costs to complete the exchange will be shared equally, and each party will obtain title insurance at its own election and cost.

BUDGET CONSIDERATIONS

No purchase costs will be incurred by the District in acquiring the open space easement, which is of equal or greater value to the tunnel easement to be conveyed to the City. The only costs to be incurred by the District will be for survey work, escrow services and title insurance, estimated to be no more than $4,000.

PUBLIC NOTICE

Property owners and residents of land located adjacent to or surrounding the proposed open space easement and tunnel easement have been mailed the agenda for the Board meeting at which the proposed exchange of easements will be considered. The agenda has also been mailed to adjoining neighbors within the University Village community of East Palo Alto due to the proximity of the community to the proposed open space easement. The agenda and this report have been made available on the District’s website. Accordingly, all public notice required by the Brown Act has been provided. In addition, the agenda and this report have been mailed to the San Francisco Bay Trail Project and supporting public agency stakeholders including the cities of East Palo Alto and Menlo Park, the San Mateo County Parks Department, and the U.S. Fish and Wildlife Service San Francisco Bay National Wildlife Refuge Complex.

NEXT STEPS

Upon approval by the Board of Directors, the attached Exchange Agreement and Board Resolution will be transmitted to the City for consideration and approval as necessary by its Public Utilities Commission, Mayor’s Office, and Board of Supervisors. In order to move forward in identifying a suitable route for a public trail easement to replace the open space easement, staff will proceed with soliciting proposals from qualified consultants to assist in evaluating trail alignment alternatives and completing the necessary environmental review. Staff will return to the Board in the near future for approval to award a contract to the consultant selected to assist staff on this project. The process to evaluate trail alignment alternatives and identify a preferred route for the trail easement will include consultation with interested public officials and agencies and opportunity for public input and involvement.

Attachments:
1. Resolution
2. Exhibit A – Site Map

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RESOLUTION NO. 10-26

RESOLUTION OF THE BOARD OF DIRECTORS OF MIDPENINSULA REGIONAL OPEN SPACE DISTRICT AUTHORIZING OFFICER TO EXECUTE AGREEMENT TO EXCHANGE INTERESTS IN REAL PROPERTY, AUTHORIZING OFFICER OR GENERAL MANAGER TO EXECUTE GRANT OF TUNNEL EASEMENT, AUTHORIZING OFFICER OR GENERAL MANAGER TO EXECUTE CERTIFICATE OF ACCEPTANCE OF GRANT OF OPEN SPACE EASEMENT AND AGREEMENT TO DISTRICT, AND AUTHORIZING GENERAL MANAGER TO EXECUTE ANY AND ALL OTHER DOCUMENTS NECESSARY OR APPROPRIATE TO CLOSING OF THIS TRANSACTION (RAVENSWOOD OPEN SPACE PRESERVE – LANDS OF THE CITY AND COUNTY OF SAN FRANCISCO)

The Board of Directors of Midpeninsula Regional Open Space District does resolve as follows:

1. The Board of Directors of Midpeninsula Regional Open Space District does hereby accept the offer contained in that certain Agreement to Exchange Interests in Real Property between the City and County of San Francisco, a municipal corporation (“City”) and Midpeninsula Regional Open Space District, a copy of which is attached hereto and by reference made a part hereof, and authorizes the President or other appropriate officer to execute this Agreement on behalf of the District.

2. The President of the Board of Directors, General Manager or other appropriate officer is authorized to execute the Grant of Tunnel Easement granting the real property interest being conveyed therein by the District.

3. The President of the Board of Directors, General Manager or other appropriate officer is authorized to execute the Certificate of Acceptance for the Grant of Open Space Easement and Agreement on behalf of the District.

4. The General Manager of the District or his designee shall cause to be given appropriate notice of acceptance to City. The General Manager and General Counsel are further authorized to approve any technical revisions to the attached Agreement and other transactional documents which do not involve any material change to any term of the Agreement or other transactional documents, which are necessary or appropriate to the closing or implementation of this transaction.

5. The General Manager of the District or his designee is authorized to expend up to $5,000 to cover the cost of title insurance, escrow fees, and other miscellaneous costs related to this transaction.

6. The Board of Directors finds and determines that, pursuant to Section 5540.5 of the Public Resources Code of the State of California, the granting and acceptance of these easements is consistent with Public Resources Code 5540.5, that the interest in real property being acquired by the District is of equal or greater value than the interest in real property being transferred to the City, and is necessary to be acquired for open space purposes.