

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
ACTION AGENDA SUMMARY

DEPT: Public Works

BOARD AGENDA # *C-1

Urgent Routine

AGENDA DATE March 18, 2014

CEO Concurs with Recommendation YES NO
(Information Attached)

4/5 Vote Required YES NO

SUBJECT:

Approval of the Fogarty Road Over Cashman Creek Bridge Transfer and Use Agreement Between Stanislaus County and the City and County of San Francisco

STAFF RECOMMENDATIONS:

1. Approve the Bridge Transfer and Use Agreement between Stanislaus County (County) and the City and County of San Francisco (City).
2. Authorize the Chairman of the Board to sign the Bridge Transfer and Use Agreement between the County and City.

FISCAL IMPACT:

The purchase price of the bridge is one dollar. The City is willing to sell the bridge for a nominal price as the City will be able to use the bridge occasionally for maintenance of the pipeline. The expense of removing and disposing of a bridge that could continue to serve the City and the traveling public is not justified at this time. The main users of the bridge are the ranchers in that area, not the City, which is why the County will assume ownership of the bridge. The bridge is not anticipated to require significant maintenance in the future and any future maintenance will be provided through the Road Operations budget unit.

BOARD ACTION AS FOLLOWS:

No. 2014-117

On motion of Supervisor Withrow, Seconded by Supervisor O'Brien,
and approved by the following vote,

Ayes: Supervisors: O'Brien, Chiesa, Withrow, Monteith, and Chairman De Martini

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

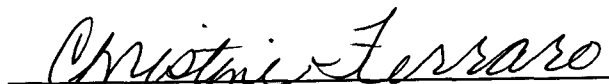
1) X Approved as recommended

2) _____ Denied

3) _____ Approved as amended

4) _____ Other:

MOTION:



ATTEST: CHRISTINE FERRARO TALLMAN, Clerk

File No.

Approval of the Fogarty Road Over Cashman Creek Bridge Transfer and Use Agreement Between Stanislaus County and the City and County of San Francisco

DISCUSSION:

The City acting by and through its Public Utilities Commission owns and operates a regional water system that serves San Francisco and twenty-six wholesale water customers in the Bay Area. The City's water system includes San Joaquin Pipelines 1, 2, and 3, which are located in the City's right of way that is situated in part within the limits of the County.

The City has been engaged in a Water System Improvement Program (WSIP) with the goals of increasing the system's ability to withstand major seismic events and prolonged droughts and to reliably meet future water demands. As part of WSIP, the City has engaged in the San Joaquin Pipeline System Project, which includes among other improvements, installation of a new pipeline and the repair and replacement of portions of the existing San Joaquin pipelines in the City's right of way.

In connection with the project, and pursuant to the Memorandum of Agreement) dated September 21, 2010, the City has placed a pre-fabricated steel bridge on Fogarty Road where the road crosses Cashman Creek (the location of Bridge is depicted on the attached **Exhibit A**).

The purpose of the bridge was to expedite construction of the WSIP by allowing winter time construction. As the City has now completed their WSIP, the City no longer needs the bridge. The County desires to purchase, operate and maintain the bridge and the City is willing to sell.

Prior to installation of the bridge, this portion of Fogarty Road crossed Cashman Creek, an ephemeral stream, at a low water crossing. The bridge will allow all weather and all season crossings of Cashman Creek providing increased safety for the motoring public.

POLICY ISSUES:

The recommended actions are consistent with the Board's priorities of providing A Safe Community, and A Well Planned Infrastructure System by providing a safe crossing over Cashman Creek through the action of approving this Bridge Transfer and Use Agreement between City and County.

STAFFING IMPACT:

There is no staffing impact associated with this item.

CONTACT PERSON:

Matt Machado, Public Works Director. Telephone (209) 525-4130.

DL:djd

H:\David Leamon\BOS\Cashman Creek BOS Item 2-25-14_dl.pdf

BRIDGE USE AGREEMENT

THIS BRIDGE USE AGREEMENT (this "**Agreement**") dated for reference purposes only as of March 18, 2014, is by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("**City**"), and the COUNTY OF STANISLAUS, a political subdivision of the State of California ("**County**").

RECITALS

A. City, acting by and through its Public Utilities Commission ("**SFPUC**") owns and operates a regional water system that serves San Francisco and twenty-six (26) wholesale water customers, in the Bay Area. City's water system includes San Joaquin Pipeline 1, 2, 3, and 4, which are located in City's right of way that is situated in part within the limits of County.

B. As part of City's Water System Improvement Program ("**WSIP**"), City engaged in the San Joaquin Pipeline System Project (the "**Project**"), which included, among other improvements, installation of a new pipeline, the repair and replacement of portions of the existing San Joaquin Pipelines in City's right of way, for the purpose of improving the seismic reliability, water delivery, and drought-management goals outlined in WSIP.

C. In connection with Project, and pursuant to the Memorandum of Agreement, dated as of September 21, 2010 (the "**MOA**"), City constructed a temporary bridge located on the County-owned Fogarty Road at a location approximately 160 feet east of Sierra Railroad where Fogarty Road crosses Cashman Creek in the County of Stanislaus (the "**Bridge**") (the location of the Bridge is depicted on the attached **Exhibit A**).

D. Pursuant to the terms and conditions set forth in this Agreement, City wishes to continue to use the Bridge to allow access to its pipelines and related improvements, and County desires to purchase the Bridge and thereafter operate, maintain, and repair the Bridge as a public work.

AGREEMENT

ACCORDINGLY, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and County hereby agree as follows:

1. CITY USE OF THE BRIDGE

From and after the Closing (defined below in Section 4), and for as long as the Bridge is available for use by County's agents, employees, contractors, or the general public, City may use the Bridge to access its pipelines and related appurtenances in the vicinity of the Bridge.

2. MAINTENANCE OF BRIDGE AFTER CONVEYANCE

From and after the Closing, County shall be solely responsible for the maintenance, operation, repair, and upkeep of the Bridge.

3. SALE AND PURCHASE

3.1 Property Included in Sale

Subject to the terms, covenants, and conditions set forth herein, City agrees to sell to County, and County agrees to purchase from City, City's interest in the Bridge.

4. PURCHASE PRICE

The purchase price for the Property is One Dollar (\$1.00) (the "**Purchase Price**"). County shall pay the Purchase Price to City at the consummation of the purchase and sale contemplated hereunder (the "**Closing**").

5. CONVEYANCE

Within five (5) days of the mutual execution and delivery of this Agreement, City shall convey to County all of City's interest in and to the Bridge by a Bill of Sale the form of the attached **Exhibit B** (the "**Bill of Sale**"). There are no existing contracts or leases relating to the Property.

6. "AS-IS" PURCHASE; RELEASE OF CITY

6.1 County's Independent Investigation

County represents and warrants to City that County has performed a diligent and thorough inspection and investigation of each and every aspect of the physical condition of the Bridge, either independently or through agents of County's choosing, including, without limitation,

(a) the quality, nature, adequacy, and physical condition of the Bridge and the structural elements, foundation, and all other physical and functional aspects of the Bridge;

(b) the presence or absence of any Hazardous Materials in, on, under, or about the Bridge and any other real property in the vicinity of the Bridge (as used in this Agreement, "**Hazardous Material**" shall mean any material that, because of its quantity, concentration, or physical or chemical characteristics, is now or hereafter deemed by any federal, state, or local governmental authority to pose a present or potential hazard to human health or safety or to the environment); and

(c) the suitability of the Bridge for County's intended uses, the economics and development potential, if any, of the Bridge, and all other matters of material significance affecting the Bridge.

6.2 Hazardous Substance Disclosure

In certain circumstances, California law requires sellers to disclose to buyers the presence or potential presence of certain Hazardous Materials. Accordingly, County is hereby advised that the use or occupation of the Bridge may lead to exposure to Hazardous Materials such as, but not limited to, gasoline, diesel and other vehicle fluids, vehicle exhaust, office maintenance fluids, tobacco smoke, methane and building materials containing chemicals, such as formaldehyde. By execution of this Agreement, County acknowledges that the notices and warnings set forth above satisfy the requirements of California Health and Safety Code Section 25359.7 and related statutes.

6.3 "As-Is" Purchase

COUNTY SPECIFICALLY ACKNOWLEDGES AND AGREES THAT CITY IS SELLING AND COUNTY IS PURCHASING CITY'S INTEREST IN THE BRIDGE ON AN "AS-IS WITH ALL FAULTS" BASIS. COUNTY IS RELYING SOLELY ON ITS INDEPENDENT INVESTIGATION AND NOT ON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, FROM CITY OR ITS AGENTS AS TO ANY MATTERS CONCERNING THE BRIDGE, ITS SUITABILITY

FOR COUNTY'S INTENDED USES OR THE CONDITION OF THE BRIDGE. CITY DOES NOT GUARANTEE THE LEGAL, PHYSICAL, ENVIRONMENTAL OR OTHER CONDITIONS OF THE BRIDGE, NOR DOES IT ASSUME ANY RESPONSIBILITY FOR THE COMPLIANCE OF THE BRIDGE OR ITS USE WITH ANY STATUTE, ORDINANCE, OR REGULATION. IT IS COUNTY'S SOLE RESPONSIBILITY TO DETERMINE ALL BUILDING, PLANNING, ZONING, AND OTHER REGULATIONS RELATING TO THE BRIDGE AND THE USES TO WHICH IT MAY BE PUT.

6.4 Release of City

As part of its agreement to purchase the Bridge in its "As-Is With All Faults" condition, County, on behalf of itself and its successors and assigns, waives any right to recover from, and forever releases and discharges, City, its officers, employees, agents, contractors, and representatives, and their respective heirs, successors, legal representatives, and assigns, from any and all demands, claims, legal, or administrative proceedings, losses, liabilities, damages, penalties, fines, liens, judgments, costs, or expenses whatsoever (including, without limitation, attorneys' fees and costs), whether direct or indirect, known or unknown, foreseen or unforeseen, that may arise on account of or in any way be connected with (i) County's and its agents, employees, contractors, and invitees and the general public's past, present, and future use of the Bridge, (ii) the physical or environmental condition of the Bridge, including, without limitation, any Hazardous Material in, on, under, above, or about the Bridge, and (iii) any federal, state, local, or administrative law, rule, regulation, order, or requirement applicable thereto, including, without limitation, all environmental laws and regulations, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA", also commonly known as the "Superfund" law), as amended by Superfund Amendments and Reauthorization Act of 1986 ("SARA") (42 U.S.C. Sections 9601-9657), the Resource Conservation and Recovery Act of 1976, as amended by the Solid Waste and Disposal Act of 1984 (collectively, "RCRA") (42 U.S.C. Sections 6901-6987), the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977 (collectively the "Clean Water Act") (33 U.S.C. Section 1251 et seq.), the Toxic Substances Control Act ("TSCA") (15 U.S.C. Sections 2601-2629), Hazardous Materials Transportation Act (49 U.S.C. Section 1801 et seq.), the Carpenter-Presley-Tanner Hazardous Substance Account Law (commonly known as the "California Superfund" law) (California Health and Safety Code Sections 25300-25395), Hazardous Waste Control Act (California Health and Safety Code Section 25100 et seq.), Hazardous Materials Release Response Plans and Inventory Law (commonly known as the "Business Plan Law") (California Health and Safety Code Section 25500 et seq.), Porter-Cologne Water Quality Control Act (California Water Code Section 13000 et seq.), Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as "Proposition 65") (California Health and Safety Code Section 25249.5 et seq.).

In connection with the foregoing release, County expressly waives the benefits of Section 1542 of the California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN TO HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

BY PLACING THE INITIALS OF AN AUTHORIZED COUNTY REPRESENTATIVE BELOW, COUNTY SPECIFICALLY ACKNOWLEDGES AND CONFIRMS THE VALIDITY OF THE RELEASES MADE ABOVE AND THE FACT THAT COUNTY WAS REPRESENTED BY COUNSEL WHO EXPLAINED, AT THE TIME THIS AGREEMENT WAS MADE, THE CONSEQUENCES OF THE ABOVE RELEASES.

INITIALS: COUNTY: mlm

7. RISK OF LOSS

In the event that all or any portion of the Bridge is condemned, or destroyed or damaged by fire or other casualty prior to the conveyance contemplated by this Agreement, either party may immediately cancel the sale contemplated by this Agreement and terminate this Agreement by written notice to the other party.

8. EXPENSES

8.1 Expenses

County shall pay any transfer taxes or personal property taxes applicable to the sale.

8.2 Brokers

The parties represent and warrant to each other that no broker or finder was instrumental in arranging or bringing about this transaction and that there are no claims or rights for brokerage commissions or finder's fees in connection with the transactions contemplated by this Agreement. If any person brings a claim for a commission or finder's fee based on any contact, dealings, or communication with County or City, then the party through whom such person makes a claim shall defend the other party from such claim, and shall indemnify the indemnified party from, and hold the indemnified party against, any and all costs, damages, claims, liabilities, or expenses (including, without limitation, reasonable attorneys' fees and disbursements) that the indemnified party incurs in defending against the claim. The provisions of this Section shall survive the conveyance contemplated hereby, or, if the purchase and sale is not consummated for any reason, any termination of this Agreement.

9. GENERAL PROVISIONS

9.1 Notices

Any notices required or permitted to be given under this Agreement shall be in writing and shall be delivered (a) in person, (b) by certified mail, postage prepaid, return receipt requested, or (c) by U.S. Express Mail or commercial overnight courier that guarantees next day delivery and provides a receipt, and such notices shall be addressed as follows:

CITY:

Rosanna Russell,
Real Estate Director
San Francisco Public Utilities Commission
525 Golden Gate Avenue, 10th Floor
San Francisco, CA 94102

and

Margaret Hannaford
Hetch Hetchy Division Manager
San Francisco Public Utilities Commission
P.O. Box 160-Moccasin, CA 95347
Fax: (209) 989-2104

COUNTY:

County of Stanislaus
Attn: Matt Machado, Director
1716 Morgan Road
Modesto, CA 95358
Fax:(209) 525-4188

with a copy to:

David Leamon, PE
Stanislaus County Public Works
1010 10th Street, Suite 4204
Modesto, CA 95354

with a copy to:

Richard Handel, Deputy City Attorney
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102
Re: Cashman Creek Bridge

or such other address as either party may from time to time specify in writing to the other party. A properly addressed notice transmitted by one of the foregoing methods shall be deemed received upon confirmed delivery, attempted delivery, or rejected delivery. Any fax numbers are provided for convenience of communication only; neither party may give official or binding notice by fax. The effective time of a notice shall not be affected by the receipt, prior to receipt of the original, of a faxed copy of a notice.

9.2 Successors and Assigns

This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors, heirs, legal representatives, administrators and assigns. County's rights and obligations hereunder shall not be assignable without the prior written consent of City; provided, however, even if City approves any such proposed assignment, in no event shall County be released of any of its obligations hereunder.

9.3 Amendments

This Agreement may be amended or modified only by a written instrument signed by the County and City.

9.4 Governing Law

This Agreement shall be governed by, subject to, and construed in accordance with the laws of the State of California and City's Charter and Administrative Code.

9.5 Merger of Prior Agreements

This Agreement, together with the exhibits hereto, contain any and all representations, warranties, and covenants made by County and City and constitutes the entire understanding between the parties hereto with respect to the transfer of the Bridge from City to County. Any prior correspondence, memoranda, or agreements are replaced in total by this Agreement together with the exhibits hereto.

9.6 Attorneys' Fees

If either party hereto fails to perform any of its respective obligations under this Agreement or if any dispute arises between the parties hereto concerning the meaning or interpretation of any provision of this Agreement, then the defaulting party or the party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party on account of such default or in enforcing or establishing its rights hereunder, including, without limitation, court costs and reasonable attorneys' fees and disbursements. For purposes of this Agreement, the reasonable fees of attorneys of the Office of the City Attorney of the City and County of San Francisco shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the City Attorney's services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the City Attorney's Office.

9.7 Conflicts of Interest

Through its execution of this Agreement, County acknowledges that it is familiar with the provisions of Section 15.103 or City's Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitute a violation of said provisions and agrees that if it becomes aware of any such fact during the term of this Agreement, County shall immediately notify the City.

9.8 Notification of Limitations on Contributions

Through its execution of this Agreement, County acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the selling or leasing of any land or building to or from the City whenever such transaction would require approval by a City elective officer or the board on which that City elective officer serves, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or a board on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. County acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. County further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of County's board of directors, chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in County; any subcontractor listed in the contract; and any committee that is sponsored or controlled by County. Additionally, County acknowledges that County must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. County further agrees to provide to City the name of the each person, entity or committee described above.

9.9 Sunshine Ordinance

County understands and agrees that under the City's Sunshine Ordinance (San Francisco Administrative Code, Chapter 67) and the State Public Records Law (Gov. Code Section 6250 et seq.), this Agreement and any and all records, information, and materials submitted to the City hereunder public records subject to public disclosure. County hereby acknowledges that the City may disclose any records, information and materials submitted to the City in connection with this Agreement.

9.10 Tropical Hardwood and Virgin Redwood Ban

The City and County of San Francisco urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product except as expressly permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code.

9.11 Counterparts

This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

9.12 Cooperative Drafting.

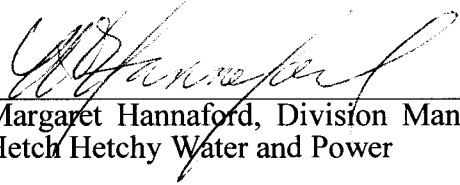
This Agreement has been drafted through a cooperative effort of both parties, and both parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No party shall be considered the drafter of this Agreement, and no presumption or rule that an ambiguity shall be construed against the party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

[Signatures on following page]

The parties have duly executed this Agreement as of the respective dates written below.

CITY:

CITY AND COUNTY OF
SAN FRANCISCO, a municipal corporation

By: 
Margaret Hannaford, Division Manager,
Hetch Hetchy Water and Power

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: 
Richard Handel, Deputy City Attorney

COUNTY:

COUNTY OF STANISLAUS, a political
subdivision of the State of California

By: 
Jim DeMartini, Chairperson,
Stanislaus County Board of Supervisors

APPROVED AS TO FORM:

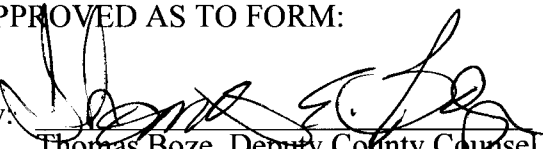
By: 
Thomas Boze, Deputy County Counsel

EXHIBIT A

DEPICTION OF TEMPORARY BRIDGE LOCATION

EXHIBIT B

FORM OF BILL OF SALE

BILL OF SALE

THE CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (“**Seller**”), for good and valuable consideration, receipt of which is hereby acknowledged, hereby sells, transfers, assigns, conveys, and delivers to THE COUNTY OF STANISLAUS, a political subdivision of the State of California (“**Buyer**”), all of Seller’s right, title, and interest in and to the freestanding temporary bridge located on the County-owned Fogarty Road, at a location approximately 160 feet east of Sierra Railroad where Fogarty Road crosses Cashman Creek in the County of Stanislaus (the "**Personal Property**").

Seller represents and warrants that it has title to the Personal Property, free from the rightful claims of others. THE FOREGOING WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. The Personal Property is being sold in “AS-IS, WHERE-IS” condition, and Buyer accepts the same subject to all the defects, whether now or later known. Buyer will have no right to the use of any trademarks of other proprietary marks of Seller which are included on or as part of the Personal Property.

This Bill of Sale will inure to the benefit of the successors and assigns of Buyer and be binding upon the successors and assigns of Seller.

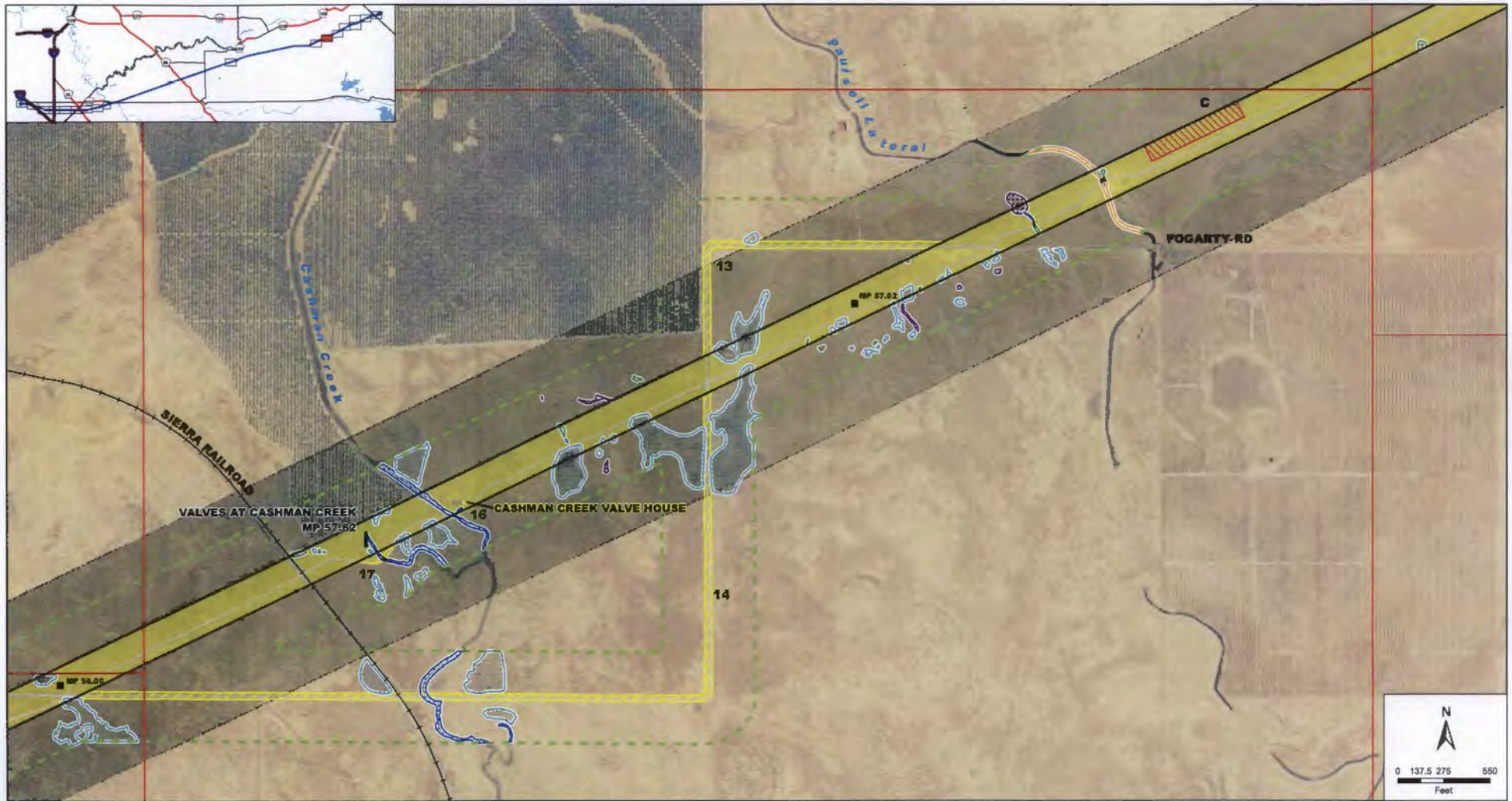
Effective as of _____, 2013

THE CITY AND COUNTY OF
SAN FRANCISCO, a municipal corporation

By: _____

Name: _____

Title: _____



Date: 10/31/2008 Time: 8:11:52 AM

U:\JV_GIS\AT&S\GIS\projects\4.5-1.mxd

<p>MP 59.00 Milepost/Project Component</p> <p>MP 57.52 S.JPL No. 3 Valvebox/Manhole</p> <p>SJPL Right of Way</p> <p>Grid Sheet</p>	<p>1 Access Roads</p> <p>A Needling Improvements TCE</p> <p>Other Access Roads</p> <p>Branchiopod Habitat Study Area</p> <p>Culvert</p>	<p>Upland Habitat</p> <ul style="list-style-type: none"> California annual grassland blue oak woodland ruderal grassland agriculture landscaped developed land 	<p>Wetland Habitats</p> <ul style="list-style-type: none"> seasonal seep seasonal wetland seasonal swale vernal pool riparian forest/scrub 	<p>Non-Wetland Waters</p> <ul style="list-style-type: none"> seasonal pond seasonal stream canal/ditch perennial pond
--	---	---	--	--

Note: Darker band along ROW represents more recent aerial photography.

Source: Pipeline ROW, Mileposts, Color Orthophotos, County Boundaries, San Joaquin County Roads, and Staging Areas, SFPUC, 2004-2007; Hydrography, Tuolumne County Roads, San Joaquin National Wildlife Refuge, and NAIP Color County Aerials, CASIL (california spatial information library), 1994-2006; Stanislaus County Roads and Rail, Stanislaus County, 1999-2006; Access Roads/Survey Areas, Map Grid Boundaries and Habitat and Wetlands, 250-foot radii, URS+ATS, 2006 - 2007; Fish Sample Areas, Entrix, July 2006.

Biological Resources within the SJPL Project Area - Habitats
San Joaquin Pipeline System Project
Environmental Impact Report

Figure 4.5-1(g)