



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Katy Allen

SUBJECT: SEE BELOW

DATE: 03-17-08

Approved

Christine F. Shuppley

Date

3-18-08

COUNCIL DISTRICT: 8

SUBJECT: FINDING AND DETERMINING THE PUBLIC INTEREST AND NECESSITY FOR CONDEMNING TWO EASEMENTS OVER REAL PROPERTY OWNED BY PACIFIC GAS AND ELECTRIC COMPANY, A CALIFORNIA CORPORATION ("PG&E" or "OWNER") AND ACQUISITION OF AN EXISTING PG&E EASEMENT ON REAL PROPERTY OWNED BY THE CITY OF SAN JOSE, A MUNICIPAL CORPORATION ("CITY") FOR THE CONSTRUCTION OF THE NEW FIRE STATION 36 PROJECT AT THE SOUTHEAST CORNER OF OLD SILVER CREEK AND YERBA BUENA ROADS AND AUTHORIZING THE ACQUISITION OF THESE INTERESTS BY EMINENT DOMAIN.

RECOMMENDATION

Adoption of a resolution

- (a) Determining that the public interest and necessity requires acquisition of two easements on portions of Assessors Parcel Number 676-61-063 from the owner, Pacific Gas and Electric Company, a California corporation (PG&E) and the termination of an existing gas line maintenance easement owned by PG&E on a portion of Assessors Parcel Number 679-14-001 owned by the City of San José.
- (b) Authorizing and directing the City Attorney to file suit in eminent domain to acquire such property interests, to apply for an order for possession before judgment, and to prosecute the action to final judgment and authorizing the deposit of money in court for possession of the property from the funds lawfully available.

OUTCOME

Staff is requesting that the City utilize its power of eminent domain under Sections 1240.010, 1240.110, and 1240.120 of the California Code of Civil Procedure, all of which authorize the City to acquire the subject property interests from PG&E.

If a Resolution of Necessity is adopted, the City Attorney will then file the necessary papers with the court to commence an eminent domain action. Upon the filing of an eminent domain action,

a deposit of probable compensation may be made. A request for an Order for Prejudgment Possession may also be made which would allow the City to take possession of the property interests before the issue of just compensation is determined.

Approval of the resolution will facilitate acquisition of property rights necessary to complete the construction of Fire Station 36 pursuant to the Public Safety Bond Program.

EXECUTIVE SUMMARY

The purpose of this memorandum is to recommend adoption of a resolution determining that the public interest and necessity requires the acquisition of two easements on land owned by PG&E and the termination and removal of an existing PG&E easement on an adjacent, City-owned parcel. It is necessary to acquire the two PG&E easements and to terminate the PG&E gas line easement located on City-owned property to construct new Fire Station 36 (which will house relocated resources from the former Fire Station 24) at the corner of Old Silver Creek and Yerba Buena Roads.

BACKGROUND

In March 2002, the voters in San José passed the Neighborhood Security Bond Act which approved the issuance of \$159 million in General Obligation Bonds to fund the construction of various Public Safety facilities. The Public Safety Bond Program includes funding for the relocation of six existing fire stations, including Fire Station 24.

The six existing fire stations to be replaced are currently located in either older buildings which were converted from single-family residences or in stations that are no longer adequate for continued use as fire stations. The new fire stations will be constructed to meet current building and safety codes, essential facility standards and current standards for living and working conditions for the firefighters. In addition to the Fire Department's strategy to improve facilities, the relocated facilities will substantially improve response times for the geographic area that the station serves.

In relocating existing fire stations, the Fire Department's strategy is to not only improve facilities, but also identify new locations that would improve the overall emergency response performance for the area. For each relocation project, a search area was defined in an effort to locate an appropriate parcel.

On February 8, 2006, the City Council approved placement of a ballot measure for the June 6, 2006 Municipal Election, requesting voter approval to use up to one acre of Silver Creek linear park for the purposes of constructing a new fire station. The measure was approved by the voters and marked the beginning of the acquisition process for all the property rights that were required in order to construct the new fire station. In addition to the one acre of Silver Creek linear park, it is necessary to acquire two easements from PG&E and to terminate an existing easement on City-owned property. The subject easement areas are more fully described in Exhibit A

(Description of Easement Areas—metes and bounds), Exhibits B (Plat Map) and C (proposed site plans).

The two easements proposed to be acquired are located on a PG&E parcel adjacent to a City-owned parcel. The one existing easement proposed to be terminated is located on a City-owned parcel. The PG&E facility located within this easement consists of an underground deactivated gas pipeline. Removal of the existing PG&E easement on the City parcel and acquisition of two new easements on the PG&E parcel are necessary to complete the fire station project.

The two easements to be acquired on PG&E property are commonly known as APN 676-61-063. The first easement is comprised of an area of 8,191.80 square feet and will be used for construction of surface parking, landscaping, irrigation, lighting, public utilities, catch basins and appurtenant improvements. The second easement to be acquired is located within a 776.02 square foot, triangular-shaped portion at the southern end of the PG&E property and will be used for landscaping, ingress/egress access to accommodate the turning radius of fire vehicles and equipment and appurtenant improvements. These easements are more particularly described in the attached legal description and plat map in Exhibits A and B.

The existing easement to be terminated on City-owned property consists of a PG&E gas line maintenance easement which includes an existing underground deactivated gas pipeline located on a portion of Assessors Parcel Number 679-14-001. The termination of this easement will result in the acquisition of property rights for an area comprised of $\pm 3,639.94$ square feet. This area will be used for ingress and egress and surface parking and which area is more particularly described in the attached legal description and plat map in Exhibits A and B.

On January 30, 2008, staff presented an offer of just compensation to PG&E based upon an appraisal completed by Smith and Associates, Inc. On February 5, 2008, staff presented a second offer to PG&E. PG&E has not responded to any of the offers of just compensation and negotiations have reached an impasse.

ANALYSIS

Acquisition of Property Rights

An appraisal completed on December 20, 2007, by Smith and Associates, Inc., valued the two easements on APN 676-61-063 owned by PG&E at \$2,470 and the existing PG&E easement to be acquired on APN 679-14-001 owned by the City at \$1,000. City staff prepared an offer of just compensation in the amount of \$3,470 which was mailed by certified, return-receipt requested mail together with a copy of the appraisal reports containing a legal description and plat map, preliminary title reports and an informational brochure to Mr. Alfred Poon, Land Agent, Technical & Land Services, the property Owner's representative, in accordance with Government Code Section 7267.2 on January 30, 2008.

On February 5, 2008, a Second Offer to Purchase letter with the same terms and conditions was sent by certified, return-receipt requested mail to the property Owner's representative.

As of March 5, 2008, no response to the offers has been submitted by Owner and therefore negotiations have reached an impasse. City staff has determined that acquisition of the property rights for the two easements on the PG&E property (APN 676-61-063) and the termination and acquisition of property rights on (APN 679-14-001) are necessary and in the best interest of the public in order to complete the construction of Fire Station 36.

In evaluating prospective sites, staff used the following criterion:

- **Performance Improvement** - performance efficiency improvement in the delivery of emergency response services to the immediate area and the broader community;
- **Adequate Size** - approximately 1.0 acre to accommodate a two-company fire station with a three-bay apparatus and required parking;
- **Safe ingress and egress** – effective and safe ingress and egress for fire apparatus, especially in responding to emergencies, and
- **Minimal impact on the community** - minimal disruption to the existing area, and compatibility with the park and adjacent residences.

The recommended site effectively meets the above criterion.

Construction of Fire Station 36

The new Fire Station 36 with its location at the southeast corner of Old Silver Creek and Yerba Buena Roads will accommodate two companies instead of the single engine company at Fire Station 24 and will improve the service level to the Evergreen area. In addition, the new site possesses the necessary traffic controls to facilitate ingress and egress. All of these factors will enable the new Fire Station 36 to comply with the City's stated goal of a four minute response time for emergency medical calls.

The selected site at the corner of two main arterials will allow for the installation of a driveway and parking lot accommodating a maximum of 16 spaces. In addition, PG&E will still be able to utilize the remaining portion of its property with minimal or no impact to its operations. The construction project for Fire Station 36-is scheduled to award in 2008 with expected completion before the end of 2010.

Resolution of Necessity

On March 21, 2008, a notice will be sent to Pacific Gas and Electric Company, a California corporation, the owner of record, notifying it that a hearing is scheduled on April 8, 2008, before

the City Council to consider the adoption of a Resolution of Necessity determining the following issues:

1. Whether the public interest and necessity require the proposed project

The proposed relocation of Fire Station 24 and construction of Fire Station 36 serves the public interest and is necessary to more efficiently and effectively deliver emergency services to residents and visitors within the Evergreen area and will improve emergency coverage by providing the ability to house a second engine company (i.e. a ladder truck). Adding the capability to deploy two engine companies from this location will permit additional residential development within the Evergreen area while remaining consistent with City Council adopted service levels. Verification of projected emergency response performance improvement was completed using the Fire Department's resource deployment software and through physical verification.

2. Whether the proposed project is planned and located in a manner that would be most compatible with the greatest public good and the least private injury.

The Old Silver Creek Road and Yerba Buena Road site is located on the southeast corner of a controlled intersection and is adjacent to an existing park. The corner location permits the most efficient use of the site with respect to ingress and egress driveways from the station garage facility or "apparatus bays." In absence of the corner location, site square footage requirements would be greater to accommodate apparatus turning radiuses. Furthermore, the site adjacency to a pre-existing signalized intersection significantly improves the public and responder safety when the apparatus arrives at or leaves the station.

The proposed site is optimally located to achieve performance improvements needed to bring this station district in compliance with adopted service level objectives referenced in the Fire Department's 2000 Strategic Plan. Alternative sites do not result in improved coverage in underserved areas and are otherwise less compatible with the greatest public good and the least private injury for the reasons set forth under Policy Alternative #2 below. This site is the best site as it provides the greatest public good and the least private injury.

3. Whether the property sought to be acquired is necessary for the project.

Without the acquisition of the easement areas, there is insufficient square footage to construct all site improvements necessary to support 24/7 operations.

4. Whether the offer required by Section 7267.2 of the Government Code has been made to the owners of record.

Preliminary Title Reports, dated October 18, 2007, indicate that the owner of record on parcel 676-61-063 is "Pacific Gas and Electric Company." In compliance with Government Code Section 7267.2, an Offer to Purchase letter was sent to Pacific Gas and Electric Company, a California corporation, on January 30, 2008, together with a copy of Smith and Associates, Inc., December 20, 2007, appraisal reports which contained a legal

description, plat map and informational brochure. The offer was for the full-appraised value of the two easement areas: \$2,470 was for the full-appraised amount, based upon the appraisal report, for the two easement areas located on the PG&E property. On February 5, 2008 a Second Offer to Purchase letter with the same terms, conditions and attachments was sent by certified, return-receipt requested mail to the property Owner's representative. As of March 5, 2008, no response to the offers has been submitted by the owner of record or their representative.

Preliminary Title Reports, dated October 18, 2007, indicate that the owner of record of record of APN 679-14-001 is the "City of San José." In addition, the Preliminary Title Report indicated that PG&E was the holder of record of a gas line maintenance easement on said parcel. In compliance with Government Code Section 7267.2, an Offer to Purchase letter was sent to Pacific Gas and Electric Company, a California corporation, on January 30, 2008, together with a copy of Smith and Associates, Inc., December 20, 2007, appraisal report which contained a legal description, plat map and informational brochure. This offer of \$1,000 was for the full-appraised amount, based upon the appraisal report, for the easement area located on the City of San José property. On February 5, 2008, a Second Offer to Purchase letter with the same terms, conditions and attachments was sent by certified, return-receipt requested mail to the property Owner's representative. As of March 5, 2008, no response to the offers has been submitted by the owner of record or their representative.

Based on the course of discussions between City staff and PG&E, staff does not believe that a purchase agreement can be concluded. Accordingly, a notice of the April 8, 2008 hearing is scheduled to be sent to PG&E on March 21, 2008.

EVALUATION AND FOLLOW-UP

The project is currently within budget and on schedule with a projected completion in 2010. The construction award for this project is expected to be brought to the Council for approval in October 2008.

POLICY ALTERNATIVES

Alternative # 1: Abandon the plans for relocation of Fire Station 24 and the construction of Fire Station 36.

Pros: This approach does not require further City Council action or expenditure of any additional City resources.

Cons: Fire Station 24 would remain out of compliance with the adopted service level objectives referenced in the Fire Department's 2000 Strategic Plan. Fire Station 24 may not be able to continue to meet the City's stated goal of a four minute response time for emergency calls. Service level and coverage efficiency will deteriorate over time as the population increases.

Reason for not recommending: By not relocating Fire Station 24 and constructing a two company station, resource coverage is not optimized and future development within the Evergreen area will not receive service levels consistent with City Council policy.

Alternative # 2: Select an alternative site in the immediate area.

Pros: Assuming that there is an alternative site within the immediate area that is currently owned by the City, there would not be the need to acquire additional property rights.

Cons: Other potential sites identified in the immediate area as being capable of optimizing emergency response coverage are unsuitable for the construction of a new Fire Station 36 due to their site size, seismic instability, flooding potential and/or grading requirements.

Reason for not recommending: Sites further removed from the intersection of Old Silver Creek and Yerba Buena Roads do not provide the safety of a controlled intersection for fire apparatus ingress and egress to the new Fire Station 36. In addition, this alternative would require significant grading and/or demolition of structures that exist on the other sites. Therefore, staff does not recommend this alternative.

Alternative # 3: Continue to negotiate with the property owner in an effort to reach an agreement.

Pros: There is always the possibility of reaching an agreement with the property owner regarding the value of the property rights that are being sought.

Cons: An agreement on terms to acquire the subject easements could not be accomplished in a time frame without adversely impacting the balance between maximizing public good and minimizing private injury (i.e. construction cost escalation, service levels and additional project delivery costs, etc.) to where the project is no longer financially feasible.

Reason for not recommending: The adverse impacts to the project resulting from further delay would be significantly greater than those incurred by the owner of the property interests being acquired with this alternative. Therefore, staff does not recommend this alternative.

PUBLIC OUTREACH/INTEREST

- Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

This action does not meet any of the above listed criteria; however this memorandum will be posted on the City's website for the April 8, 2008 Council Agenda.

Public outreach consisted of letters signed by the Fire Chief mailed to property owners and residents within a 500-foot radius of the proposed location of Fire Station 36.

In accordance with the Code of Civil Procedure §1253.025, the property owner has been sent a letter on January 30, 2008, stating that the property owner may hire an appraiser and be reimbursed for the reasonable costs of that appraisal, not to exceed \$5,000.

COORDINATION

Preparation of this memorandum has been coordinated with the Fire Department, Planning, Building and Code Enforcement Department, the City Attorney's Office, and the City Manager's Budget Office.

FISCAL/POLICY ALIGNMENT

This project is consistent with the March 2002 voter-approved Neighborhood Security Bond Act which approved the issuance of \$159 million in General Obligation Bonds to fund the construction of various Public Safety facilities. This project is also consistent with the Council-approved Budget Strategy to continue with capital improvement projects that keep money flowing to our local economy.

COST SUMMARY/IMPLICATIONS

The total funding amount allocated for fire station land acquisition costs are \$1,500,000 as specified in the Adopted 2007-2008 Capital Budget. With closing and related staff costs, the estimated cost is \$93,470.

1. AMOUNT RECOMMENDED FOR THE ACQUISITION:
Amount of City's offer to be deposited with filing of condemnation in court: \$3,470
(Note: Total cost may vary depending on outcome of court proceedings)
2. SOURCE OF FUNDING: Fund 475 - Land Acquisition Real Estate Fire Station
3. OPERATING COSTS: N/A-One time cost

BUDGET REFERENCE

The table below identifies the fund and appropriation proposed to fund the contract

HONORABLE MAYOR AND CITY COUNCIL

03-17-08

Subject: Public Use and Necessity for PG&E Easements for Fire Station 36 Project

Page 9

recommended as part of this memorandum and remaining project costs, including project delivery, construction and contingency costs.

Fund #	Appn #	Appn. Name	RC #	Total Appn	Amt. for Contract	Adopted Budget (Page)	Last Budget Action (Date, Ord. No.)
Current Funding Available							
475	4550	Land Acquisition	144242	\$1,583,000	\$93,470	V-873	10/16/2007, Ord. 28143
Total Funding for Projects					\$1,583,000		

CEQA

CEQA: Exempt, File No. PP08-028



KATY ALLEN

Director, Public Works Department

For questions please contact DAVID SYKES, ASSISTANT DIRECTOR, at (408) 535 -8300.

NS:kw

Attachment

EXHIBIT A

LEGAL DESCRIPTION OF EASEMENT AREAS

EASEMENT AREA 1

APN: 676-61-063 (PORTION)

Real property in the City of San José, County of Santa Clara, State of California, described as follows:

ALL THAT CERTAIN REAL PROPERTY SITUATED IN THE CITY OF SAN JOSE, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, BEING ALL OF THE PROPERTY DESCRIBED AS STRIP 2 IN THE EASEMENT RECORDED AUGUST 10, 1976 IN BOOK C201, AT PAGES 353-358, OFFICIAL RECORDS OF SANTA CLARA COUNTY.

CONTAINING APPROXIMATELY 8,191.80 SQUARE FEET

THIS DESCRIPTION WAS PREPARED FROM RECORD INFORMATION ONLY.

APN: 676-61-063

EXHIBIT A-1

LEGAL DESCRIPTION EASEMENT AREAS

EASEMENT AREA 2

APN: 676-61-063 (PORTION)

Real property in the City of San José, County of Santa Clara, State of California, described as follows:

ALL THAT CERTAIN REAL PROPERTY SITUATED IN THE CITY OF SAN JOSE, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, BEING A PORTION OF THE PROPERTY DESCRIBED IN THE GRANT DEED RECORDED ON APRIL 18, 1974 IN BOOK 0854, AT PAGES 405-406, OFFICIAL RECORDS OF SANTA CLARA COUNTY; SAID PORTION BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST WESTERLY CORNER OF SAID PROPERTY; THENCE ALONG THE NORTHERLY LINE OF SAID PROPERTY, N 77° 43' 30" E 51.70 FEET TO A POINT THAT IS 29.00 FEET, MEASURED ALONG SAID NORTHERLY LINE, FROM THE WESTERLY LINE OF THE PROPERTY DESCRIBED IN THE EXECUTRIX DEED RECORDED ON JUNE 27, 1949 IN BOOK 1809, AT PAGES 379-380, OFFICIAL RECORDS OF SANTA CLARA COUNTY; THENCE LEAVING SAID NORTHERLY LINE, S 32° 46' 25" W 42.49 FEET TO THE SOUTHWESTERLY LINE OF SAID PROPERTY DESCRIBED IN SAID GRANT DEED, SAID SOUTHWESTERLY LINE ALSO BEING PARALLEL WITH AND 20 FEET DISTANT, MEASURED AT A RIGHT ANGLE, FROM THE MONUMENT LINE OF SILVER CREEK ROAD AS SHOWN ON THE RECORD OF SURVEY RECORDED ON DECEMBER 4, 1981 IN BOOK 493 OF MAPS, AT PAGES 22-32, RECORDS OF SANTA CLARA COUNTY; THENCE ALONG SAID SOUTHWESTERLY LINE AND PARALLEL WITH SAID MONUMENT LINE OF SILVER CREEK ROAD, N 48° 03' 00" W 37.00 FEET TO THE POINT OF BEGINNING.

APN 676-61-063 (PORTION)

EXHIBIT A-2

LEGAL DESCRIPTION EASEMENT AREAS

EASEMENT AREA 3

APN: 679-14-001

Real property in the City of San José, County of Santa Clara, State of California, described as follows:

ALL THAT CERTAIN REAL PROPERTY SITUATED IN THE CITY OF SAN JOSE, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, BEING A PORTION OF PARCEL 1 AND A PORTION OF PARCEL 2 AS SAID PARCELS ARE DESCRIBED IN THE DOCUMENT RECORDED ON FEBRUARY 4, 1974 IN BOOK 0750, AT PAGES 206-210, OFFICIAL RECORDS OF SANTA CLARA COUNTY; SAID PORTIONS BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE MOST WESTERLY CORNER OF THE PROPERTY DESCRIBED IN SAID GRANT DEED; THENCE ALONG THE NORTHERLY LINE OF SAID GRANT DEED, N 77° 44' 50" E 14.79 FEET TO THE POINT OF BEGINNING, SAID POINT ON THE SOUTHWESTERLY LINE OF SAID PARCEL 2, SAID SOUTHWESTERLY LINE OF SAID PARCEL 2 BEING PARALLEL WITH AND 32.00 NORTHEASTERLY, MEASURED AT A RIGHT ANGLE, SAID MONUMENT LINE; THENCE ALONG SAID SOUTHWESTERLY LINE OF PARCEL 2 AND PARALLEL WITH SAID MONUMENT LINE, N 48° 05' 40" W 153.40 FEET TO THE BEGINNING OF A NON-TANGENT CURVE TO THE RIGHT ON THE GENERAL SOUTHERLY LINE OF SAID PARCEL 1 AS SHOWN ON SAID AMENDED RECORD OF SURVEY, CONCAVE EASTERLY, HAVING A RADIUS OF 43.00 FEET; THENCE LEAVING SAID SOUTHWESTERLY LINE OF SAID PARCEL 2, CONTINUING ALONG SAID GENERAL SOUTHERLY LINE, FROM A RADIAL BEARING OF 48° 07' 53" W, ALONG SAID CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 51° 50' 14", FOR AN ARC LENGTH OF 38.90 FEET TO THE NORTHEASTERLY LINE OF SAID PARCEL 2, THENCE LEAVING SAID CURVE, AND SAID GENERAL SOUTHERLY LINE, ALONG SAID NORTHEASTERLY LINE OF SAID PARCEL 2, S 48° 05' 40" E 199.64 FEET TO SAID NORTHERLY LINE OF SAID GRANT DEED; THENCE ALONG SAID NORTHERLY LINE, S 77° 40' 50" W 24.65 FEET TO THE POINT OF BEGINNING.

APN: 679-14-001 PORTION

EXHIBIT B

PLAT MAPS OF EASEMENT AREAS

EASEMENT AREA 1

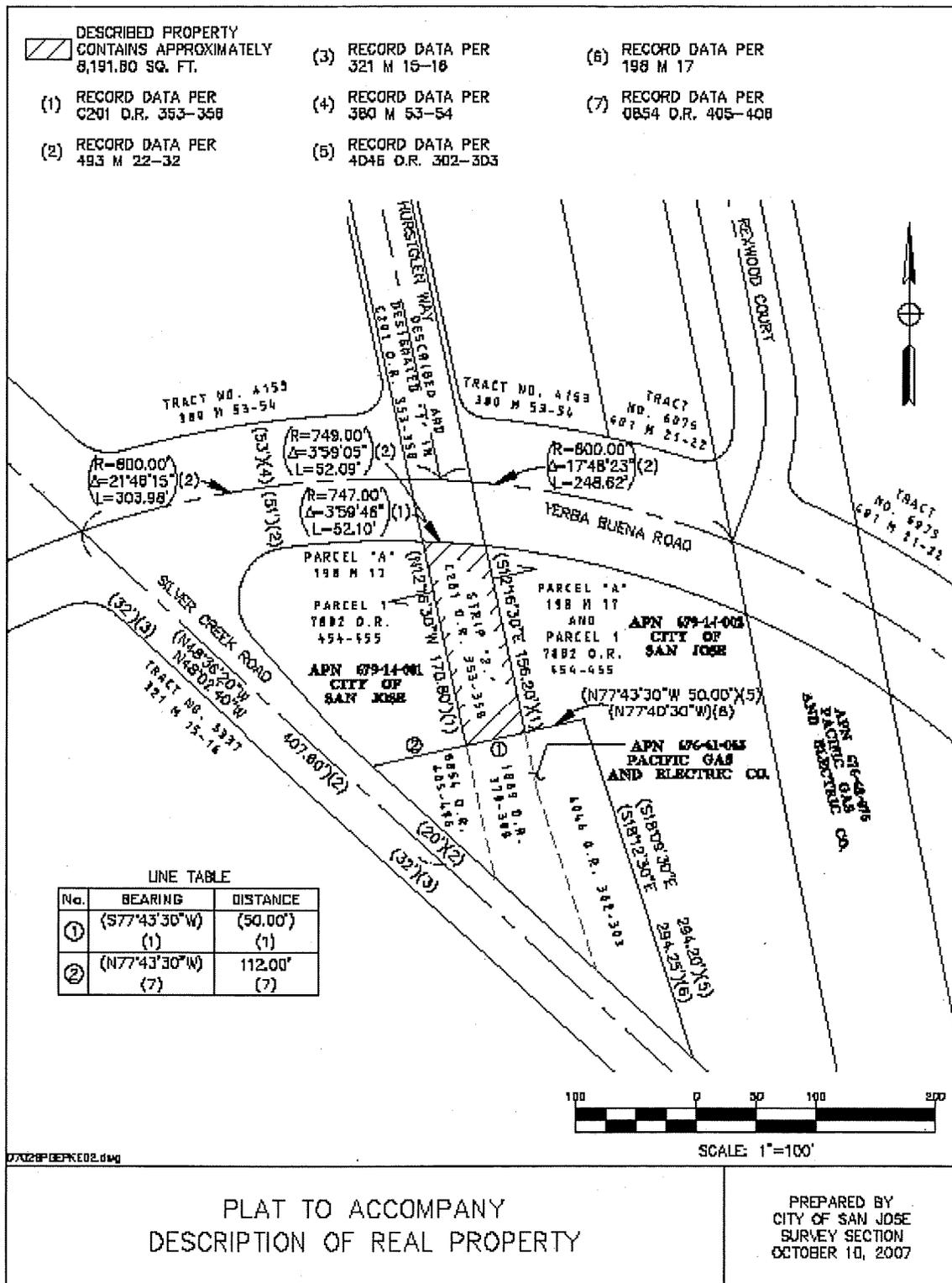


EXHIBIT B-1

PLAT MAPS OF EASEMENT AREAS

EASEMENT AREA 2

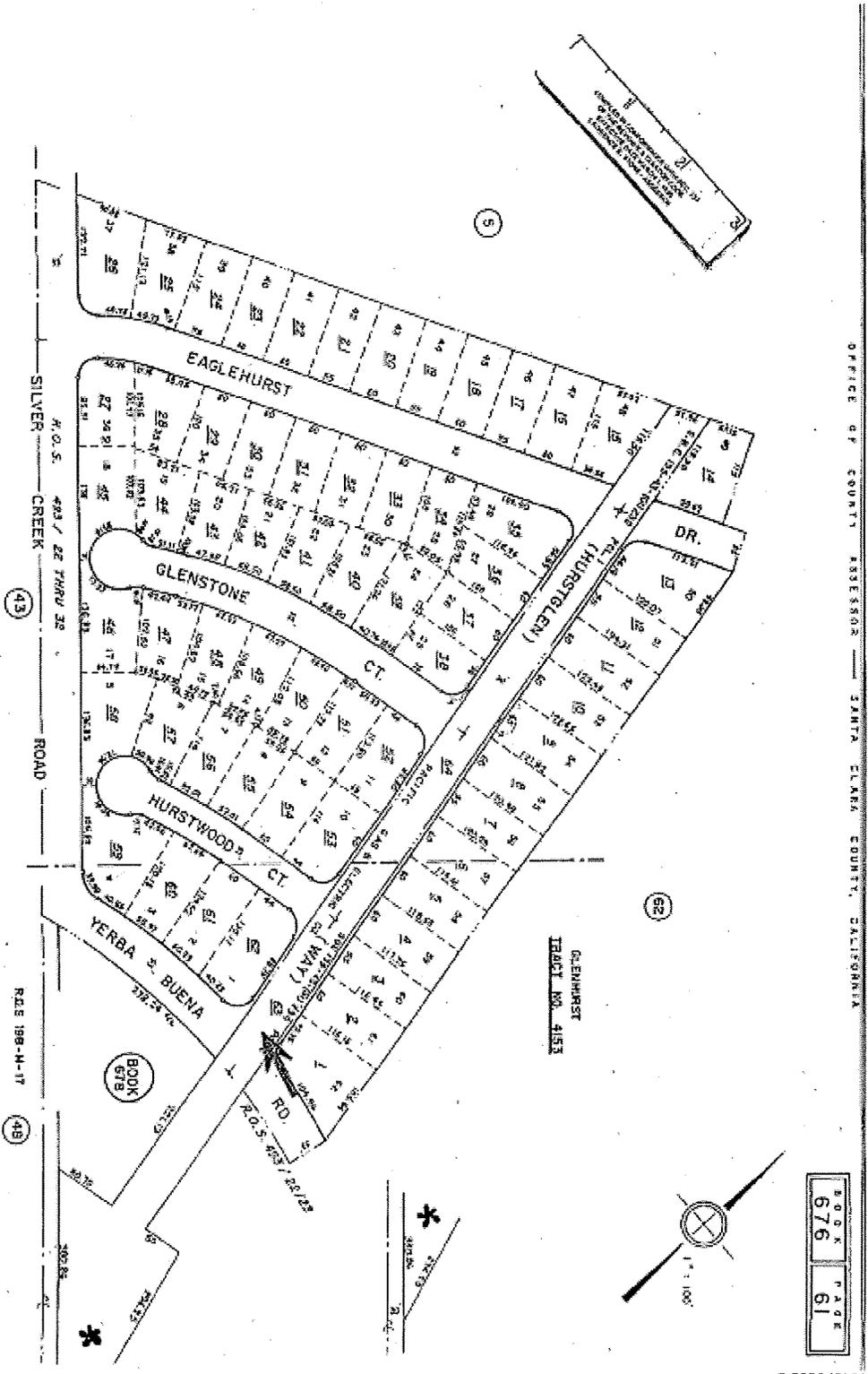
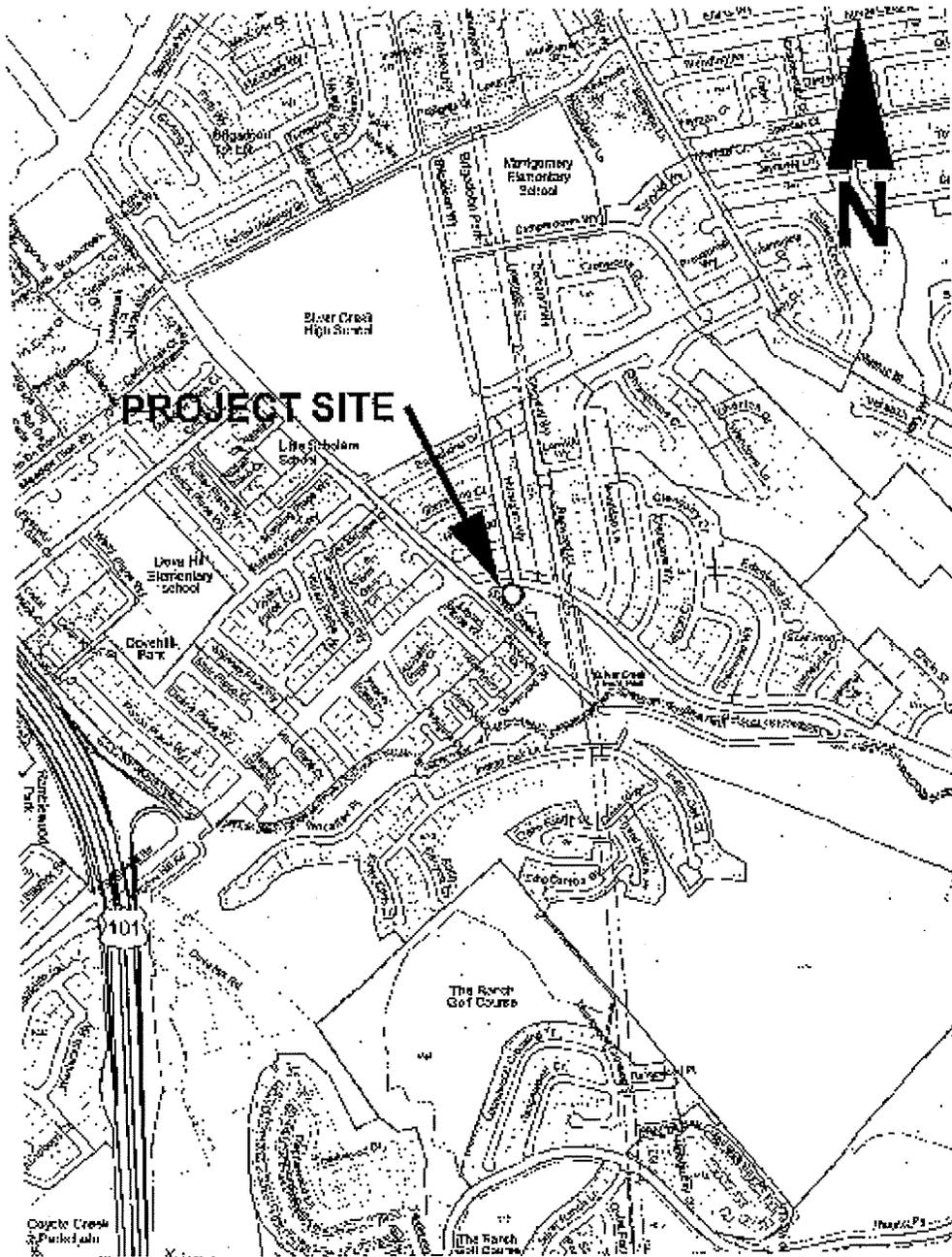


EXHIBIT C

PROPOSED SITE PLAN FOR EASEMENT AREA



**FIRE STATION #36
LOCATION MAP**
Not to Scale

EXHIBIT C-1

PROPOSED SITE PLAN FOR EASEMENT AREA

