



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Katy Allen

SUBJECT: SEE BELOW

DATE: 03-21-07

Approved

Date

3/26/07

COUNCIL DISTRICT: 10

SUBJECT: FINDING AND DETERMINING THE PUBLIC INTEREST AND NECESSITY FOR CONDEMNING AN EASEMENT OVER REAL PROPERTY OWNED BY PACIFIC GAS AND ELECTRIC COMPANY, A CALIFORNIA CORPORATION, FOR PURPOSES OF ACCESS TO THE GUADALUPE CREEK PARK TRAIL AND AUTHORIZING THE ACQUISITION OF THIS PROPERTY BY EMINENT DOMAIN.

RECOMMENDATION

Adoption of a resolution

(a) Determining that the public interest and necessity require the acquisition of an easement over parcels located at Singletree Way, San Jose, CA 95124 (APN No. 567-27-007 and 009), which are currently undeveloped apart from an overhead power transmission pole, and a small brick building for purposes of constructing a on-street access to the Guadalupe Creek Park Trail Route from the owner, Pacific Gas and Electric Company, a California Corporation ("PG&E"); and

(b) Authorizing the City Attorney to file suit in eminent domain to acquire such property interest, 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 and 1240.510 (acquisition for use not unreasonably interfering with an existing public use) of the California Code of Civil Procedure, all of which authorize the City to acquire the proposed property interest from PG&E.

If a Resolution of Necessity is adopted, the City Attorney will then file the necessary documents 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 before the issue of just compensation is determined.

Approval of the resolution will facilitate land acquisition and will enable developing of an interim trail, and at a future date, with Council approved appropriation funds, the design and construction of the trail as defined by the Guadalupe Creek Trail Master Plan ("Trail Master Plan" approved by City Council on June 14, 2004 and completed in July 2004).

EXECUTIVE SUMMARY

The purpose of this memorandum is to recommend adoption of a resolution determining that the public interest and necessity require the acquisition of easements over two parcels currently improved with a support pole for high voltage wires and a small brick building surrounded by wood and chain link fencing situated adjacent to the pole. The purpose of acquiring these easements is for opening an interim trail as part of the Guadalupe Creek trail system. Negotiations have not been successful and filing of an eminent domain action is recommended at this time.

BACKGROUND

The approved Trail Master Plan (City Council meeting June 14, 2004, item 5.2) defined trail access from Singletree Avenue, via PG&E's property. The plan described an interim trail, utilizing the existing surface materials, and future improvements such as a paved trail and parking lot to serve as a trailhead. The easement rights to be acquired in this action would make the interim plan, permanent.

The subject site consists of two legally separate, physically non contiguous parcels. The two parcels are separated by properties owned by the City of San José and the Santa Clara Valley Water District (SCVWD). The City of San José, in conjunction with the SCVWD, is creating a public park trail extending from Singletree Way south to the Guadalupe Creek. Permanent surface easements are required over the subject Owner's owned properties to complete the proposed public trail.

Parcel 567-27-009 consists of a trapezoidal parcel containing approximately 0.233 acres (10,149 square feet). This parcel is landlocked, being separated from Singletree Way by properties under the ownership of the City of San José and SCVWD. Parcel number 567-27-007 is located further south (also landlocked) and is separated from the first subject parcel by additional sites owned by the City of San José and SCVWD. This second parcel is also trapezoidal in shape and contains a land area of 0.229 acres (9,975 square feet). Combined the proposed surface easements will cover a total land area of 0.462 acres (20,124 square feet). Both parcels are referred to as the "Subject Property" in this memorandum.

Existing on-site improvements consist of a support pole for high voltage wires and a small brick building surrounded by wood and chain link fencing situated adjacent to the pole. The function

of this building is unknown, but it appears to be part of PG&E's utility infrastructure situated on the site. In addition, both parcels are currently encumbered by overhead high voltage wires and subsurface water pipelines. The high voltage wires and the pipeline travel the entire length of the parcels and essentially render the sites undevelopable. The proposed surface easements would not impact the continuing use of the Subject Property for utility infrastructure purposes.

The City is in the process of securing permits from the SCVWD for installation of signage and fencing alterations to permit public use of the interim trail alignment.

ANALYSIS

Acquisition

City staff determined that acquisition pursuant to the eminent domain process was the only alternative means available to acquire the property interests in the Subject Property necessary to complete the Trail Master Plan in view of PG&E's failure to accept the City's purchase offer.

An appraisal of the Subject Property was conducted by Cameghi, Blum & Partners, Inc. and completed on March 3, 2006. An initial offer was sent to Owner on April 3, 2006, together with a copy of the appraisal report containing a legal description and plat map, a preliminary title report and an informational brochure to Mr. Leonard Grilli, Land Agent, the property Owner's representative, in satisfaction of Government Code section 7267.2. The amount of just compensation as determined by the appraisal was \$19,700.00. As of the date of preparation of this memorandum, no response to the offer had been submitted by Owner.

Resolution of Necessity

On March 23, 2007, a notice will be sent to Pacific Gas and Electric, A California Corporation, the owner of record, notifying it that a hearing is scheduled on April 10, 2007 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 City Council approved funding for preparation of a master plan to define a trail alignment along Guadalupe Creek. The Trail Master Plan approved by Council on July 19, 2004, defined a phased approach to trail development. Developing of an interim trail, with minimal improvements, was shown in the plan bounded by Almaden Expressway and Singletree Way, with a mid-point under-crossing at Meridian Avenue. Development further to the west was to be pursued in later phases since two pedestrian bridges and significant grading were required for further development. An entry point at Singletree Way is the most logical point as homes back to the creek between Meridian Avenue and Singletree Way, offering no other access opportunities. The ultimate trail utilizes the same alignment as the interim improvement, and the paved parking lot would occupy the frontage of Singletree Way.

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.

PG&E's parcel is unimproved apart from overhead electrical wires, a transmission tower and a utility shed. The proposed interim trail and ultimate trail and parking lot are designed so as not to interfere with Owner's use of the property. PG&E will continue to have access to its infrastructure. Additionally, the easement interest to be taken will permit PG&E to continue access to the property for the operation, repair, replacement, maintenance or relocation of its improvements if such does not unreasonably impair the use of the City's public-use trail. PG&E will be able to continue using the surface of the subject site for accessing the existing utility infrastructure. In addition, the construction, operation and maintenance of the trail by the City will relieve PG&E of certain maintenance responsibilities for the property. Permanent damage caused by PG&E to City-installed improvements will be Owner's responsibility.

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

The location of PG&E's property is within an overhead high-tension electrical line "corridor" and, as such, constitute the only unimproved property in the neighborhood. This makes it the only feasible location for the trail. In addition, as discussed above, residential homes back up to the Guadalupe Creek, which makes the access point at Singletree Way the most logical location for the trail.

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

A title report (Update No. 1) issued by Financial Title Company dated January 2007, shows PG&E of record of the subject property to be Pacific Gas and Electric Company, a California Corporation.

An Appraisal report was commissioned by the City from Carneghi-Blum & Partners, Inc. and completed on March 3, 2006. In satisfaction of Government Code section 7267.2, an offer to purchase specifying a total compensation amount of \$19,700.00, together with a copy of the appraisal report containing a legal description and plat map, a preliminary title report and an informational brochure was sent to Mr. Leonard Grilli, Land Agent, the property owner's representative, on April 3, 2006. On May 30, 2006 confirmation that the offer to purchase had been delivered was received. As of the date of preparation of this memorandum, no response from Owner has been received regarding this offer to acquire easement rights. Efforts to obtain a response from the owner have not been successful to date and staff does not believe that further attempts at negotiation will be fruitful.

A notice of the April 10, 2007 Council hearing was sent to PG&E on March 23, 2007.

For all the reasons set forth above, the proposed trail use is compatible with PG&E's existing use because it will not interfere with the operation, maintenance, repair, replacement, relocated, upgrade, or improvement of the utility installations on the site. The project has been designed with PG&E's continued use in mind and the only impact on PG&E will be potential expenses that PG&E may incur to repair any damage it may do to interim trail and ultimate trail and parking lot improvements the City will construct.

PG&E retains the right as property owner to utilize the parcel for purposes of maintenance, operation and repair even if these activities interrupt the public's use of the future interim trail and ultimate paved trail and parking lot for any period up to four (4) months in any given 12 month period.

POLICY ALTERNATIVES

Alternative # 1: Abandon acquisition of trail easement

Pros: This approach does not require further City Council action and expenditure of City resources.

Cons: This does not permit development of the interim trail and ultimate paved trail and parking lot as defined by the City Council approved master plan.

Reason for not recommending: Inconsistent with the City Council's past authorizations associated with the trail project.

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

Pros: This approach would not require an easement agreement with PG&E.

Cons: Preparation of the master plan included a careful analysis of all access opportunities. The access point at Singletree Way was deemed as the only access point to adequately serve the neighborhood and future trailhead parking lot.

Reason for not recommending: There are no alternative sights in the immediate area.

Alternative # 3: Continue to negotiate with the property Owner

Pros: Potential for acquiring the subject property without eminent domain.

Cons: There is no guarantee that an agreement on terms to acquire the subject easement could be accomplished between the City and PG&E within a time frame that would not adversely impact the balance between maximizing public good and minimizing private injury (i.e. construction cost escalation, additional project delivery costs, service levels in light of proposed development, etc.)

Reason for not recommending: Impacts to the project from a delay stand point would be significantly greater than those incurred by the private interest.

PUBLIC OUTREACH/INTEREST

A community outreach process was conducted as part of the Guadalupe Creek Trail Master Plan. Three meetings were conducted to seek input and revise the master plan alignment as necessary, the meetings occurred on April 30, September 24, and December 9, 2002.

- Criteria 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criteria 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)**
- Criteria 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 memo does not meet any of the above listed criteria; however it is posted on the City's website for the April 10, 2007 Council Agenda.

In accordance with Code of Civil Procedure Section 1253.025, the property owner has been sent a letter on February 5, 2005, 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 Planning, Building and Code Enforcement Department, the City Attorney's Office, the City Manager's Budget Office and the Department of Parks, Recreation and Neighborhood Services.

FISCAL/POLICY ALIGNMENT

This project is consistent with the Council-approved Greenprint that defined a 100-mile trail network to increase access to recreation and open space. The Council-approved trail master plan defined an alignment that required development of an interim trail with access from Singletree Way. This project is consistent with the Council-approved Budget Strategy to continue with capital investments that spur construction spending in our local economy.

COST SUMMARY/IMPLICATIONS

The total funding for the Guadalupe Creek (Singletree Easement) land acquisition costs is \$50,000 in the adopted 2006-2007 Capital Budget. With closing and related staff costs, the estimated cost is \$47,770.

1. AMOUNT OF RECOMMENDATION/COST OF PROJECT:

Total Budget Estimate for Owner Easement Acquisition	\$19,700
Amount of Recommendation in this Acquisition (This amount includes escrow and closing costs estimated at \$500 and staff costs including appraisal, title report fees and environmental site assessment estimated at \$27,570)	\$28,070
Owner' appraisal (New legal requirement, not included in original budget)	\$5,000
Total Estimated Cost for Easement Acquisition:	\$52,770

2. SOURCE OF FUNDING: 389- Council District 10 Construction and Conveyance Tax Fund

3. OPERATING COSTS: Cost implications associated with the Guadalupe Creek Park Trail construction project will be discussed in future Council memoranda concerning those improvements.

BUDGET REFERENCE

Fund #	Appn #	Appn. Name	Total Appn	Amt. for Contract	2006-2007 Adopted Budget Page	Last Budget Action (Date, Ord. No.)
389	5281	Guadalupe Creek Trail-Meridian to Singletree	\$50,000	\$19,700	V-490	9/12/06, Ord. No. 27857

CEQA

CEQA: Mitigated Negative Declaration PP04-03-061, May 4, 2004

KATY ALLEN
Director, Public Works Department

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

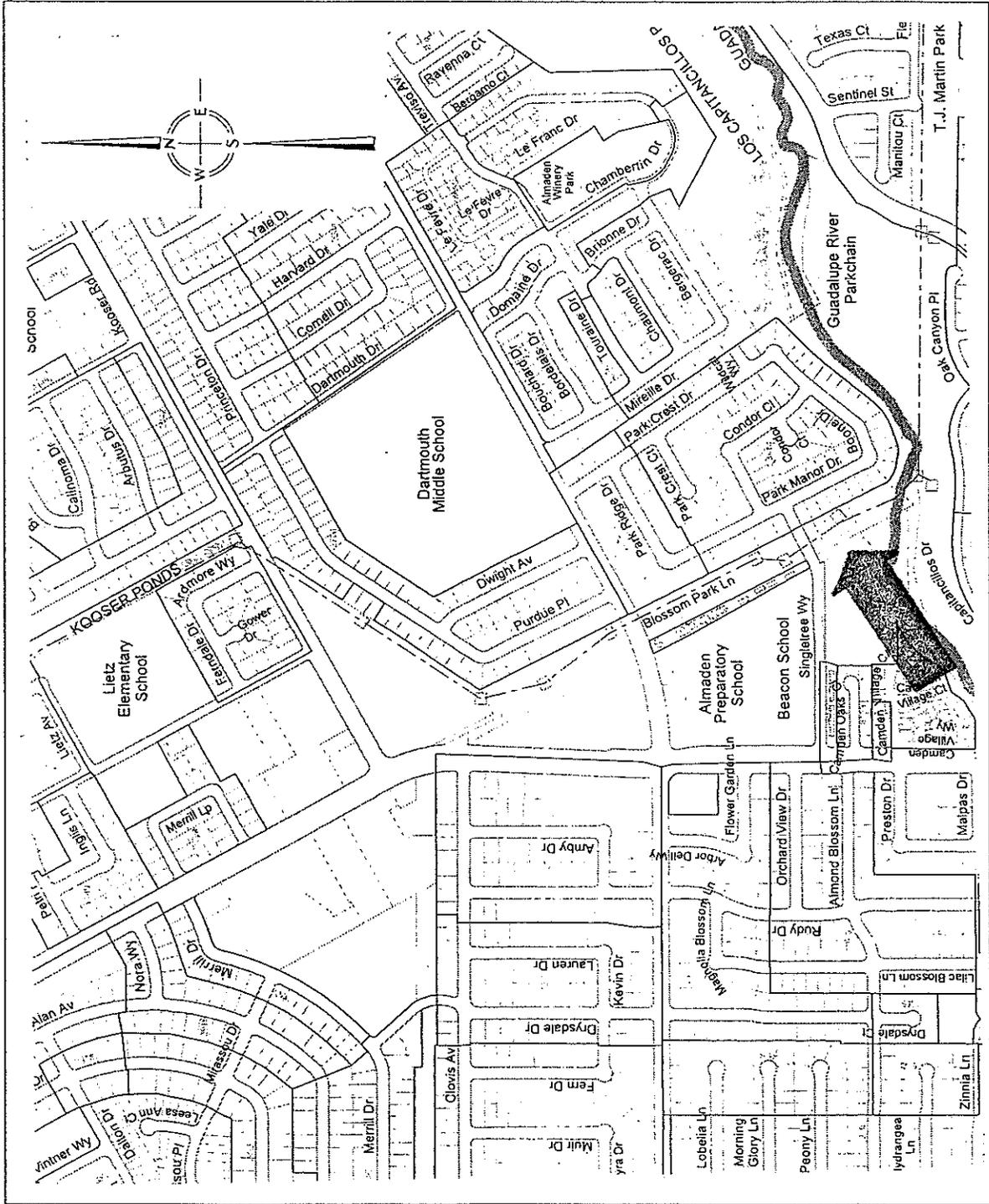
HONORABLE MAYOR AND CITY COUNCIL

03-21-07

Subject: Public Interest and Necessity for an Owner Property Easement for Guadalupe Creek Park Trail

Page 8

Attachment



PROJECT LOCATION
SINGLETREE WAY
Not to scale

588
586
584
582

28

R. M. 375 - M - 49

SINGLE TREE C/L WAY

520 101.91 82.14 76.69 147.52 50.51 57.12

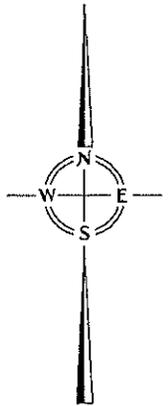
PCL. A

4.34 AC. NET

PACIFIC GAS & ELECTRIC CO.

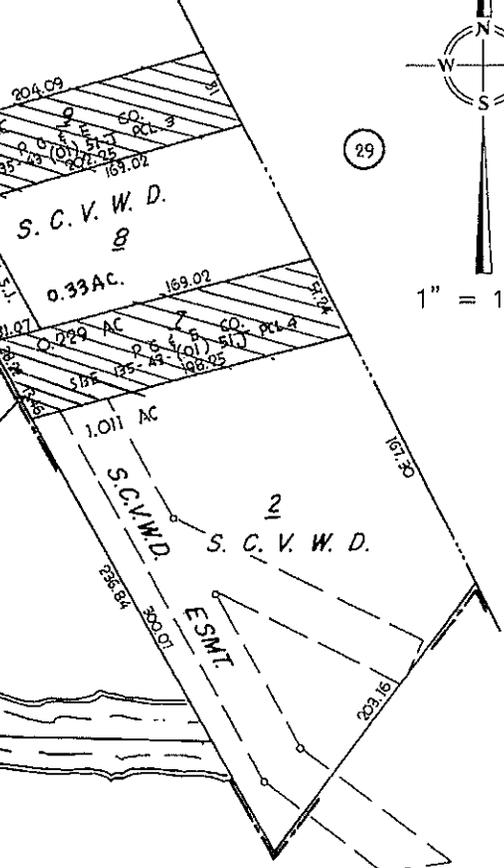
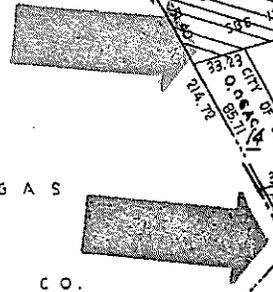
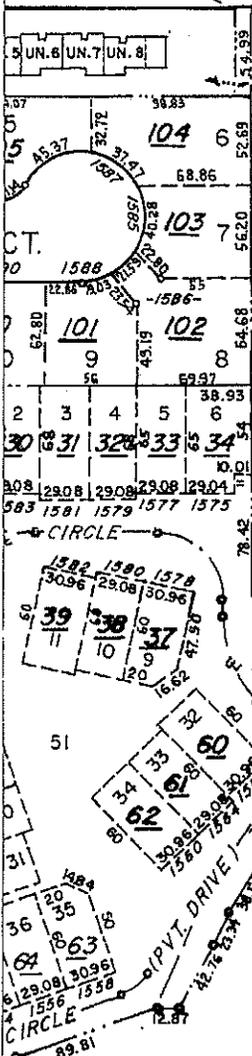
S.B.E. 135-43-(01) 51J PCL.2

25



1" = 100'

29



Arroyo Seco De Las Capitancillos

25