



COUNCIL AGENDA: 04-19-05

ITEM: 4.5

Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Katy Allen

SUBJECT: SEE BELOW

DATE: 04-12-05

Approved

Date

4/4/05

Council District: 5

SNI: East Valley/680

SUBJECT: FINDING AND DETERMINING THE PUBLIC INTEREST AND NECESSITY FOR CONDEMNING AN EASEMENT OVER REAL PROPERTY OWNED BY PACIFIC GAS AND ELECTRIC COMPANY FOR PURPOSES OF A PUBLIC-USE PEDESTRIAN BRIDGE, PARK TRAIL AND ASSOCIATED IMPROVEMENTS FOR THE DOBERN-BAMBI PEDESTRIAN BRIDGE PROJECT AND AUTHORIZING THE ACQUISITION OF THIS INTEREST BY EMINENT DOMAIN

RECOMMENDATION

Adoption of a resolution determining that the public interest and necessity require the acquisition of an easement for a surface public use bicycle and pedestrian bridge and park trail, including the rights to construct, install, maintain and operate said bridge and parkway, associated landscaping, signs, call boxes, irrigation and other related improvements, and necessary subsurface rights, on vacant land owned by Pacific Gas and Electric Company located between the residential parcels at 2499 and 2513 Bambi Lane, San Jose, CA 95124 (APN No. 484-38-022; State Board Equalization No. 135-43-49, Parcel 6 and 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.

CEQA: Negative Declaration and addenda thereto, File No. PP03-11-352.

BACKGROUND

The City has identified the need to construct a pedestrian bridge crossing the Lower Silver Creek between Dobern Avenue and Bambi Lane in order to improve neighborhood access. The City has been working cooperatively with Santa Clara Valley Water District ("District") to address this need. The District initiated the design and construction of flood protection facilities on

Lower Silver Creek, encompassing the project area. The City and District sought to enhance pedestrian access and identified the need for additional improvements including trail construction, landscape improvements and construction of a new pedestrian bridge within the project limits. A Cooperative Agreement with the District for construction of the pedestrian bridge was approved by City Council on May 4, 2004. Council Resolution No. 71573 adopted January 22, 2003, authorized the City Manager to submit a \$250,000 grant application to the District for the Dobern bridge project. The City was successful in securing the grant. Council Resolution No. 72216 adopted June 22, 2004, authorized the City Manager to negotiate and execute the grant agreement with the District.

Easements on three properties owned by Pacific Gas and Electric Company ("PG&E"), Mr. and Mrs. Efren Ramos and Mr. Hans Hager will be needed for this project. Council approved the easement purchase agreements on the Ramos and Hager properties on June 15, 2004 and February 8, 2005. The subject property owned by PG&E is the last remaining parcel needed for this project. The proposed bridge and park trail and the PG&E site are more fully described in Exhibit A-1 (Description of Real Property – metes and bounds); Exhibit A-2 (Assessor Parcel Map); Exhibit A-3 (Legal Interest Description) and Exhibit A-4 (Dobern-Bambi Trail Connection). Project plans and specifications were submitted to and discussed with PG&E and revisions were made by District and City staff in response to PG&E's comments. The plans and specifications are currently available for inspection at the District's Coyote Watershed Program Office in San José.

The easement will encompass the entire 9,741 square foot area of the subject PG&E parcel which is currently vacant apart from overhead electrical transmission lines and subsurface gas facilities. The proposed bicyclist/pedestrian bridge, park trail and associated improvements will be constructed and installed in such a manner as to permit PG&E continued access for the use, repair and maintenance of its utility installations on the site.

The District anticipates construction to begin in May with completion in August.

ANALYSIS

Acquisition

An appraisal was conducted by Carneghi-Bautovich & Partners, Inc. (now known as Carneghi, Blum & Partners, Inc.) and completed on January 30, 2004. An initial offer was sent to PG&E on March 2, 2004 together with a copy of the appraisal report. PG&E responded by letter dated July 16, 2004 stating that it was not able to accept the March 2, 2004 offer. In satisfaction of Government Code section 7267.2, a purchase offer, together with the legal description, assessor plat map and legal interest description, were sent to PG&E, certified mail, on December 22, 2004. On January 6, 2005, PG&E responded by stating that a donation agreement would be forwarded to the City. No donation or other agreement was submitted by PG&E and the City sent another purchase offer by certified mail on March 25, 2005 in satisfaction of Government

Code section 7267.2 together with the legal description, assessor plat map and a revised legal interest description, along with a copy of the revised appraisal report prepared by Carneghi, Blum and Partners, Inc. and dated March 24, 2005. As of the date of preparation of this memorandum, no response to the last offer had been submitted by PG&E. Efforts to resolve technical and easement use issues with PG&E have not been successful to date and staff does not believe that further attempts at negotiation will be fruitful.

Resolution of Necessity

On April 1, 2005, a notice was sent to PG&E, the owner of record, notifying it that a hearing is scheduled on April 19, 2005 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's Strong Neighborhoods Initiative ("SNI") and Neighborhood Revitalization Strategy ("NRS") processes identified the need for improving neighborhood access by installing a public-use bicyclist and pedestrian bridge crossing the Lower Silver Creek between Bambi Lane and Dobern Avenue. The need for this City project coincided with the Santa Clara Valley Water District's plans to perform various flood control projects along this segment of the Lower Silver Creek and a cooperative agreement was duly entered into by the City and the District.

With the February 8, 2005 Council approval of the easement purchase agreement on the Hager property on the Dobern side of the creek, the PG&E parcel is the last remaining property needed for this project.

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 PG&E parcel is unimproved apart from overhead electrical wires and subsurface gas facilities. The proposed bicyclist/pedestrian bridge including approach ramps and connecting park trails to Bambi Lane and to Dobern Avenue are designed so as not to interfere with PG&E's use of the property. PG&E will continue to have access to its overhead electrical wires and subsurface gas facilities. 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 bicyclist-pedestrian bridge and park trail.

Thus, 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 bicyclist-pedestrian bridge and park 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 PG&E's responsibility. Exhibit A-3 describes the legal interests to be taken in this action.

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

The location of the subject PG&E property together with the Hager and part of the Ramos properties on the Dobern side of the creek are within an overhead high-tension electrical line "corridor" and, as such, constitute the only unimproved properties in the neighborhood. This makes it the only feasible location for the bicyclist-pedestrian bridge crossing over the Lower Silver Creek. The proposed park trail will connect at Bambi Lane with the existing park trail in Capitol Park on the south side of said street. The electrical line "corridor" continues north of Dobern Avenue through other properties also owned by Mr. Hager until it reaches Capitol Expressway. An existing park trail then picks up on the north side of Capitol Expressway through LoBue Park. The acquisition of the easement on the Hager property between Lower Silver Creek and Dobern Avenue places the City in a position to acquire additional easement rights over the Hager property between Dobern Avenue and Capitol Expressway for a future link with the existing trail on the north side of Capitol.

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

A title report dated April 9, 2002, shows the owner of record on the tax roll as "Pacific Gas and Electric Company, A California Corporation".

Staff entered into negotiations with PG&E in April 2002. An initial offer was sent to PG&E on March 2, 2004 together with a copy of the City's appraisal report dated January 30, 2004 and prepared by the Carmeghi, Bautovich & Partners, Inc. firm. PG&E representatives responded by letter dated July 16, 2004 stating that it could not accept the initial offer. On December 22, 2004 a statement of just compensation offer in the full amount of the appraisal report of \$5,000 together with a transmittal letter were sent by certified mail to PG&E. On January 6, 2005 PG&E informed City staff by telephone that it would be submitting a donation agreement. No donation or other agreement was submitted by PG&E,

In consultation with the City Attorney's Office, staff subsequently determined that the Project required a more extensive easement interest than the one on which the previous appraisal was based. Accordingly, staff and the City Attorney's Office prepared a new easement interest description and had the new easement interest appraised by the Carmeghi firm. On March 24, 2005, staff received the new appraisal in the amount of \$9,800 and immediately sent another purchase offer by certified mail in satisfaction of Government Code section 7267.2. The purchase offer again included the legal description, plat map and a revised legal interest description, along with a copy of the revised appraisal report prepared by the Carmeghi appraisal firm. As of the date of

preparation of this memorandum, no response has been submitted by PG&E. It is not anticipated that a negotiated agreement will be concluded for reasons unrelated to compensation based upon past discussions between City and PG&E staff. A notice of the April 19, 2005 hearing was sent to PG&E on April 1, 2005.

5. Whether the City's proposed pedestrian bridge and park trail use does not unreasonably interfere with PG&E's public use of the parking lot site

For all the reasons set forth above, the proposed public bicyclist-pedestrian bridge and park 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 the bicyclist-pedestrian bridge and park trail improvements the City will construct. Under the terms of the easement as described in Exhibit A-3 "Legal Interest Description", 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 City pedestrian bridge and park walkway improvements for any period up to four (4) months in any given 12 month period. Staff has been informed that a complete replacement of the existing pipe under the property would take approximately three months. Therefore, the proposed City use will not unreasonably interfere with PG&E's existing use of the site.

OUTCOME

Staff is requesting that the City utilize its power of eminent domain under Sections 1240.010, 1240.110, 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 easement interest 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 before the issue of just compensation is determined.

PUBLIC OUTREACH

Community support for the Dobern Avenue Bridge and associated improvements has been extremely strong throughout the Neighborhood Revitalization Strategy (NRS) and Strong Neighborhoods Initiative (SNI) processes. The project is included as a community priority within the Greenprint for Parks and Community Facilities and Programs. The status of this

project is a routine agenda item during the ongoing Dobern-Capitol/Goss NRS and the East Valley/680 Communities Neighborhood Advisory Council (NAC) meetings. Partial funding for the project has been provided through the NRS process, as well as through a recent District grant, for which the NAC wrote a letter of support.

COORDINATION

Preparation of this memorandum has been coordinated with the City Attorney's Office, the City Manager's Budget Office and Department of Parks, Recreation and Neighborhood Services.

COST IMPLICATIONS

The total budgeted contribution from the City is \$870,000. Through an agreement with the Santa Clara Valley Water District both entities are sharing project costs. The Water District's contribution is \$360,000 for design and management costs together with a \$250,000 Clean and Safe Creeks grant to the City. The agreement specifies that City, subject to appropriation of funds by Council, provide additional funding support if the cost of management, permitting and other project management expenses exceed 40%. With this easement purchase from PG&E it is estimated that there will be \$860,200 remaining of the City's total budgeted contribution amount.

1. Total Estimated Cost of all Land needed for this project: \$66,000.
2. Amount of Recommendation in this Acquisition:

Amount of City's offer to be deposited with filing of condemnation in court: \$9,800*

*Note: the total cost may vary depending on outcome of court proceedings

3. Estimated Remaining Costs For Land Acquisition: \$-0-**

Number of remaining acquisitions: -0-

**Note: The second of the required acquisitions involving the Hager easement purchase agreement was approved by Council on February 8, 2005 with a total purchase price of \$40,250 and estimated escrow and title cost of \$865. The first acquisition of the purchase of the Ramos easement closed escrow January 21, 2005 with a total purchase price of \$14,700 and escrow and title costs of \$871 following Council approval on June 15, 2004.

4. Source of Funding:

Cost implications associated with the Dobern-Bambi Pedestrian Bridge construction project will be discussed in future Council memoranda concerning those improvements.

BUDGET REFERENCE

Fund #	Appn. #	Appn. Name	RC #	Total Appn.	Amt. For Contract	Budget Page	Last Budget Action (Date, Ord. No.)
001	4013	Pedestrian Bridge at Silver Creek	118593	\$215,000		2004-2005 Adopted Capital Budget, Page V - 608	
001	2872	Neighborhood Revitalization Strategy ¹	705002	\$826,796		2004-2005 Adopted Operating Budget, Page IX - 10	10/12/04, Ord. No. 27267
382	5944	TRAIL - Silver Creek/Dobern Bridge/(SCVWD)	134345	\$250,000			04-05 Appropriation Ordinance, Ord. No. 27201 6/29/04, Section No. 12.05 Page 1 1/27/05
		TOTAL		\$1,291,796			

¹ The Neighborhood Revitalization Strategy funds are a pool of project funds and do not represent an entire allocation for the Dobern Bridge project. Of the funding indicated, \$405,000 is allocated to the project. The total budgeted by the City for this project is \$870,000.

CEQA

Negative Declaration and addenda thereto, PP03-11-352.

Katy Allen

KATY ALLEN

Director, Public Works Department

DF:hla

df020205cc

Attachments

GL201#Z1

Vis.Code Inquiry

Active

Expense Vis.Code: 1 577050024001 EAST DOBERN/PURCHASE PROP

	Entered	Approved	Proofed
Actuals:	11,896.74	10,516.42	10,516.42
Commitments:			
Total:	11,896.74	10,516.42	10,516.42

Posting from JC: N

Budget Carry Forward P0: Y

Budget Amount: Ver 25001: 825,523.01

Budget Remaining: Summary 691,425.39

Estimate:

Person Responsible: STEVE MC

DWOFflag:

CP05

Display: (en) transactions (1) V/C (3) GL structure (4) previous (5) next
 Search by: (6) Fund (7) Department (8) CapPr/C (9) Department/CapPr/CWP
 (10) Capital (11) Object T (12) Fund/Department (13) Vis.Code (14) Approp.
 Display: (19) Proofed Balances by Month (16) exit
 (21) Job Costing (22) Budget Inquiry (23) Budget Ver Inquiry

GL201#Z1

Vis.Code Inquiry

Vis.Code: 1 577050014001

Entered

Approved

Proofed

Actuals:

Commitments:

Total:

Posting from JC:

Budget Carry Forward P0:

Budget Amount: Ver 25001:

Budget Remaining: Summary

Estimate:

Person Responsible: 0000000000

DWOFflag: 0000000000

There is no record with this key value

CP05

Display: (en) transactions (1) V/C (3) GL structure (4) previous (5) next
 Search by: (6) Fund (7) Department (8) CapPr/C (9) Department/CapPr/CWP
 (10) Capital (11) Object T (12) Fund/Department (13) Vis.Code (14) Approp.
 Display: (19) Proofed Balances by Month (16) exit
 (21) Job Costing (22) Budget Inquiry (23) Budget Ver Inquiry

EXHIBIT A-1
LEGAL DESCRIPTION

All that certain real property situated in the City of San Jose, County of Santa Clara, State of California, described as follows:

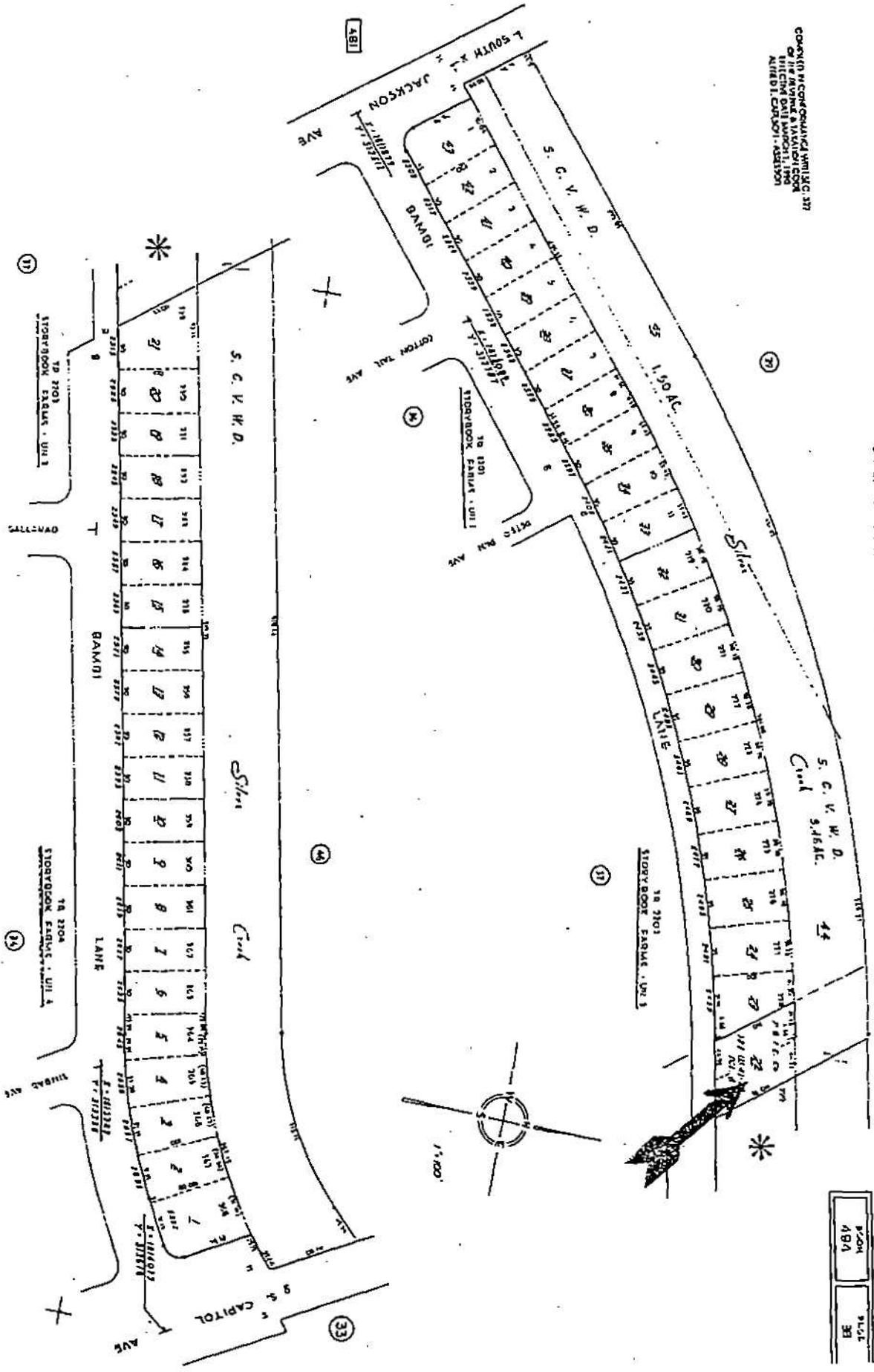
Beginning at the most Westerly corner of Lot 229, as said Lot 229 is shown upon the Map of TRACT NO. 2203, STORYBOOK FARMS UNIT NO. 3, filed for record in the office of the County Recorder of said County of Santa Clara in Book 108 of Maps at Pages 2 and 3, and running thence North $78^{\circ} 24' 48''$ East, along the Northerly boundary line of said Lot 229, a distance of 44.22 feet to a point in the Northeasterly boundary line of the strip of land described and designated 2 in the Deed from Ulrich Boesch and wife to Pacific Gas and Electric Company, dated June 8, 1949 and recorded in the office of said County Recorder in Book 1815 of Official Records at Page 183, (said Northeasterly boundary line being parallel with and distant 60 feet Northeasterly from, measured at a right angle to, the center line of the line of towers, now upon the ground, erected under and by virtue of the judgment of the Superior Court of the State of California in and for the County of Santa Clara entitled Pacific Gas and Electric Company vs. Henry Silva, as administrator of the estate of John V. Costello, deceased, and others, dated April 16, 1928, being Action No. 55575 in the files of said Court), said point also being distant 40 feet Northeasterly from, measured at a right angle to, the boundary line common to said Lot 229 and Lot 228, as said Lot 228 is shown upon said Map; thence South $36^{\circ} 49' 26''$ East, along the Northeasterly boundary line of said strip of land designated 2 and parallel with said common boundary line, 110.55 feet to a point in the Northerly boundary line of Bambi Lane, as said Bambi Lane is shown upon said Map; thence South $78^{\circ} 24' 48''$ West, along the Northerly boundary line of said Bambi Lane, 88.44 feet to a point in the Southwesterly boundary line of the 1.8 acre parcel of land described in said judgment, said last mentioned point also being distant 40 feet Southwesterly from, measured at a right angle to, said common boundary line; thence North $36^{\circ} 49' 26''$ West, along the Southwesterly boundary line of said 1.8 acre parcel of land and parallel with said common boundary line, 109.99 feet to a point in the Northerly boundary line of said Lot 228; thence along the Northerly boundary line of said Lot 228, the following two courses and distances, namely: Easterly on a curve to the right, with a radius of 1555.0 feet, through a central angle of $1^{\circ} 27' 24''$, and tangent at the Westerly terminus thereof to a line which has a bearing of North $76^{\circ} 57' 24''$ East, an arc distance of 39.53 feet; and thence North $78^{\circ} 24' 48''$ East, 4.46 feet, more or less, to the point of beginning.

EXCEPTING THEREFROM the underground water rights, with no rights of surface entry, as granted to San Jose Water Works, a California corporation, by Deed recorded July 1, 1959 in Book 4466, Page 742, Official Records.

EXHIBIT A-2 ASSESSOR PARCEL MAP

CONVERTED METROPOPOLITAN WATER DISTRICT
OFFICE OF ENGINEERING & SURVEYING
11111 CALIFORNIA AVENUE, SUITE 100
SANITA CLARA, CALIFORNIA 95050

OFFICE OF EQUITY ASSESSOR - SANTA CLARA COUNTY, CALIFORNIA.



BOOK	PAGE
484	33

EXHIBIT A-3

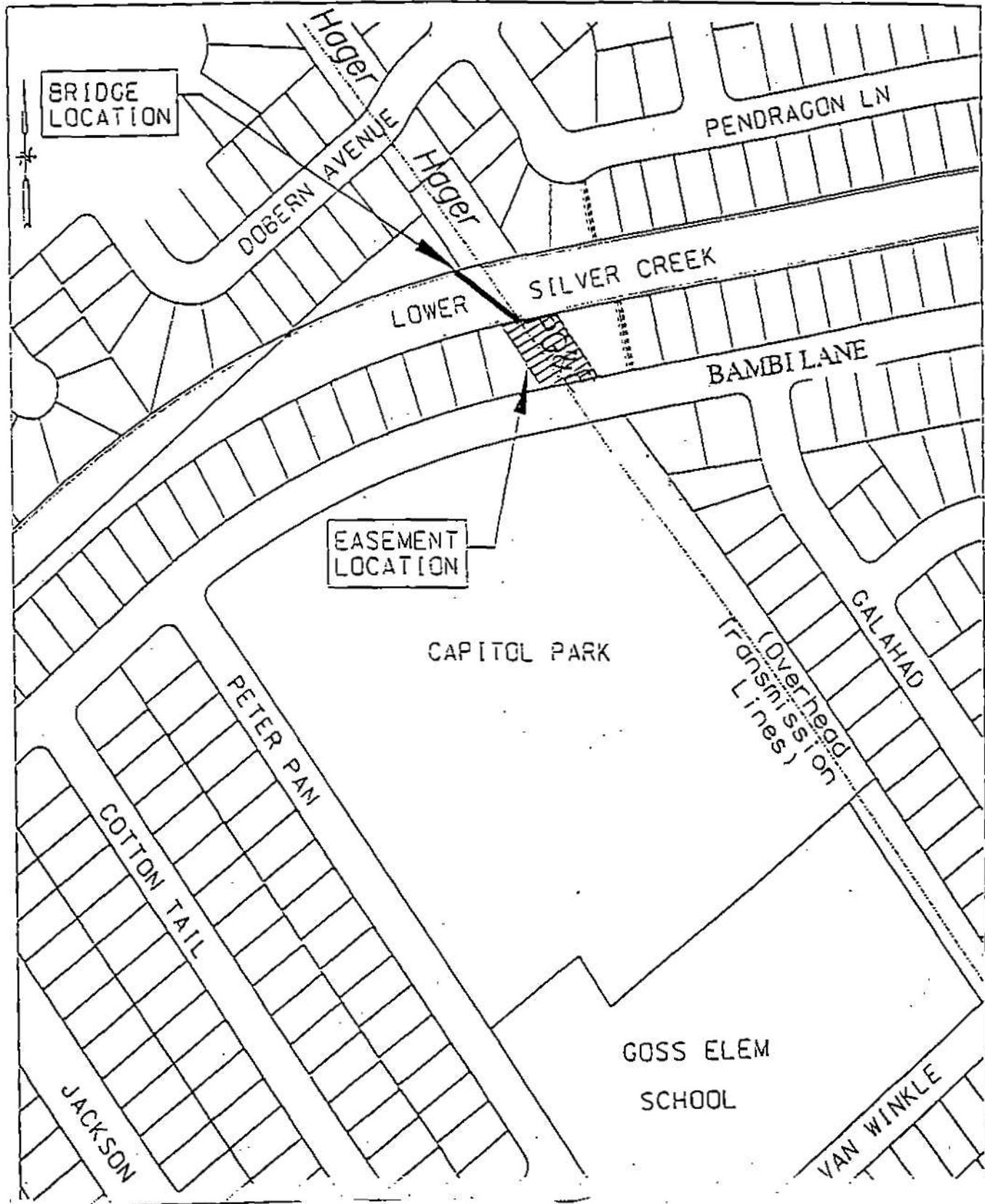
Legal Interest Description

An easement to install, construct, maintain, and operate a public-use bicycle and pedestrian bridge, park trail with associated landscaping, signs, call boxes, irrigation and other related improvements (the "Improvements") on the parcel owned by Pacific Gas and Electric Company ("PG&E") on Bambi Lane also known as assessor parcel number 484-38-022. Included with the easement are such subsurface rights as are reasonably necessary for the installation, construction, operation and maintenance of bridge, park trail, irrigation and associated improvements. The public shall have access to, and use of, the Easement Area twenty-four hours a day, seven days a week for the purposes described herein and the City of San Jose ("City") may operate and regulate the use of the Easement Area in accordance with all applicable federal, state and local laws.

City shall not interfere with PG&E's access to the easement to operate, repair, replace, relocate, upgrade, improve and maintain its utility installations on the subject property, provided, however, that PG&E shall not interfere or deny public access to the Easement in order to conduct such activities for longer than one four (4) month period in any twelve (12) consecutive months.

As to any other parties other than PG&E and City, the easement is exclusive. Any damage to the Improvements by PG&E, its employees, agents, invitees, contractors, or subcontractors during the course of its use and operations on the Easement Area shall be PG&E's responsibility and at PG&E's expense. City shall have all rights available to it in law or in equity to cause repair or recover damages to the Improvements or for loss of use caused by the actions or omissions of PG&E.

DOBERN/BAMBI PEDESTRIAN BRIDGE & PARK TRAIL EASEMENT ACQUISITION



Dobern-Bambi Trail Connection

PP 03-11-352

**CITY OF SAN JOSE
ADDENDUM TO A NEGATIVE DECLARATION**

Pursuant to Section 15164 of the CEQA Guidelines, the City of San Jose has prepared an Addendum to a Negative Declaration (ND) adopted for a previous project. Because minor changes made to the project described below do not raise important new issues about the effects on the environment, this project is adequately covered by this Addendum to the Negative Declaration from the previous project.

PROJECT DESCRIPTION AND LOCATION

PP03-11-352. Public project for (1) acquisition of three parcels, and (2) construction of a pedestrian bridge and associated pedestrian/bicycle trail improvements located within a Pacific Gas and Electric Company (PG&E) utility easement that extends across a segment of Lower Silver Creek between Dobern Avenue and Bambi Lane on a 0.64-gross acre site.

Council District 5.

County Assessor's Parcel Nos. 484-38-022; 484-45-079; 484-39-003, 004 (portion) and 109

CERTIFICATION

The environmental impacts of this project were addressed by an Initial Study and documented by a Negative Declaration for a Lower Silver Creek Watershed Project, File No. SCH 200102034 that the Santa Clara Water District certified as final on December 19 , 2000. Specifically, the ND evaluated the following impacts:

- | | | |
|--|---|---|
| <input type="checkbox"/> Traffic and Circulation | <input type="checkbox"/> Soils and Geology | <input checked="" type="checkbox"/> Noise |
| <input checked="" type="checkbox"/> Cultural Resources | <input type="checkbox"/> Hazardous Materials | <input checked="" type="checkbox"/> Land Use |
| <input type="checkbox"/> Urban Services | <input checked="" type="checkbox"/> Biotics | <input type="checkbox"/> Air Quality |
| <input checked="" type="checkbox"/> Aesthetics | <input type="checkbox"/> Airport Considerations | <input type="checkbox"/> Microclimate |
| <input type="checkbox"/> Energy | <input type="checkbox"/> Relocation Issues | <input checked="" type="checkbox"/> Construction Period Impacts |
| <input type="checkbox"/> Transportation | <input type="checkbox"/> Utilities | <input type="checkbox"/> Facilities and Services |
| <input checked="" type="checkbox"/> Water Quality | <input checked="" type="checkbox"/> Flooding | <input type="checkbox"/> |

In addition, an attached Second Addendum to the ND was prepared in August 2003.

Bill Scott
Project Manager

Stephen M. Haase, AICP
Director, Planning, Building and Code Enforcement

November 3, 2003
Date

Ron Eddow
Deputy

Received 11/3