



COUNCIL AGENDA: 04-26-05
ITEM: 4.3

Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Katy Allen

SUBJECT: SEE BELOW

DATE: 04-06-05

Approved

Date

4/13/05

Council District: 5
SNI: East Valley/680

SUBJECT: FINDING AND DETERMINING THE PUBLIC INTEREST AND NECESSITY FOR CONDEMNING AN EASEMENT OVER A PORTION OF REAL PROPERTY OWNED BY PACIFIC GAS AND ELECTRIC COMPANY FOR PURPOSES OF A PUBLIC-USE PARK TRAIL, LANDSCAPING AND ASSOCIATED IMPROVEMENTS FOR THE WENLOCK COMMONS PARK TRAIL 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 park trail, including the rights to construct, install, maintain and operate said park trail, associated landscaping, signs, call boxes, irrigation and other related improvements, and necessary subsurface rights, on vacant land owned by Pacific Gas and Electric Company abutting the west side of Wenlock Drive between Story Road and Brenford Drive, San Jose, CA 95124 (Portion of APN No. 486-39-029; State Board Equalization No. 135-43- (01) - 22V Parcel 1) 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: Exempt, PP04-03-065.

BACKGROUND

The City has identified the need to create a small park with landscaping, benches, signs, call boxes, irrigation and a bicyclist-pedestrian trail on Pacific Gas and Electric Company ("PG&E") property abutting the west side of Wenlock Drive between Story Road and Brenford Drive. The proposed City improvements are to be located on a portion of the PG&E property which is vacant and unimproved apart from overhead electrical transmission lines and subsurface gas facilities. Converting this non-landscaped, vacant land to a park trail with landscaping will

enhance the appearance of the neighborhood, provide a recreation destination and facilitate pedestrian and bicycle access throughout the area. The new trail will also be consistent with the long-term plan for creation of a park trail chain linking PG&E transmission line corridors in the area. The subject property and the future City improvements are more fully described in Exhibit A-1 (Description of Real Property – metes and bounds); Exhibit A-2 (Plat Map); Exhibit A-3 (Easement Interest Description) and Exhibit A-4 (Wenlock Trail/Linear Park Conceptual Plan). 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 Division of City Facilities Architectural Services of the Department of Public Works at 170 West San Carlos Street in San José.

The easement will encompass the entire portion of this PG&E property located between Story Road and Brenford Drive which comprises a total of 50,731 square feet. The entire parcel extends south to Ocala Avenue and encompasses a total of 185,000 square feet. 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.

Construction is anticipated to commence September 15, 2005 and be completed by January 31, 2006.

ANALYSIS

Acquisition

An appraisal was conducted and completed on December 2, 2002 by Carneghi-Bautovich & Partners, Inc., now known as Carneghi, Blum & Partners, Inc. ("Carneghi"). An initial offer was sent to PG&E on November 20, 2003 together with the metes and bound description and plat map. The City's appraisal report from the Carneghi firm was subsequently submitted to PG&E on February 3, 2004. PG&E responded by letter dated July 16, 2004 stating that it was not able to accept the November 20, 2003 initial offer.

In satisfaction of Government Code section 7267.2, a Statement of Just Compensation and offer letter, together with the legal description, assessor plat map and legal interest description, were sent to PG&E, certified mail, on December 28, 2004. On January 6, 2005, PG&E informed City Real Estate staff by telephone that it would be conducting additional review of the project plans and specifications before responding to the December 28, 2004 offer. On March 25, 2005 the City sent another purchase offer by certified mail in satisfaction of Government Code section 7267.2 together with the legal description, plat map and revised legal interest description, along with a copy of the revised appraisal report prepared by the Carneghi appraisal firm 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 the subject neighborhood's appearance and image and for facilitating pedestrian circulation throughout the area. The PG&E transmission corridor was specifically identified as one of the private and public places in need of neighborhood beautification. The new park trail will be consistent with the long-term plan for a park trail chain linking PG&E transmission corridors throughout the area.

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 public-use park trail, landscaping and related improvements are designed in such a manner so as not to interfere with PG&E's use of the property. PG&E will continue to have access to their 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 operation, repair, replacement, maintenance or relocation of its improvements if such does not unreasonably impair the use of the City's public-use 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 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 is within an overhead high tension electrical line corridor and, as such, constitutes the only unimproved property in this residential neighborhood. The history of the subject property as a magnet for illegal dumping led to it being specifically identified through the City's Strong Neighborhood Initiative and Neighborhood Revitalization Strategy processes as a private and public place in need of beautification. In addition, converting the subject land to a pedestrian corridor will facilitate access to and from Story Road for neighborhood residents.

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 October 8, 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 December of 2001. An initial offer was sent to PG&E on November 20, 2003 together with a metes and bounds legal description and plat map. A copy of the City's appraisal report dated December 2, 2002 prepared by the Carneghi appraisal firm, was forwarded to PG&E on February 3, 2004. PG&E representatives responded by letter dated July 16, 2004 stating that it could not accept the initial offer.

On December 28, 2004 a statement of just compensation offer in the full amount of the appraisal report of \$26,000 together with a transmittal letter and metes bounds legal description, plat map and legal interest description were sent by certified mail to PG&E. On January 6, 2005 PG&E informed City staff by telephone that it would perform further review of the City's project plans and specifications before submitting a response to the December 28, 2004 offer.

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 Carneghi firm. On March 24, 2005, staff received the new appraisal in the amount of \$51,000 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 together with a copy of the revised appraisal report prepared by the Carneghi appraisal firm. As of the date of preparation of this memorandum, no response had 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 public-use park trail use does not unreasonably interfere with PG&E's public use of the subject utility corridor site.

For all the reasons set forth above, the proposed public-use park trail including associated landscaping and improvements 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 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 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 Wenlock trail connection 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.

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 project budget is \$481,000. With this easement purchase from PG&E it is estimated that there will be \$430,000 remaining.

1. Total Estimated Cost of all Land needed for this project: \$51,000
2. Amount of Recommendation in this Acquisition: \$51,000

Amount of City's offer to be deposited with filing of condemnation in court: \$51,000
(Note: total cost may vary depending on outcome of court proceedings)

3. Estimated Remaining Costs For Land Acquisition: \$-0-
Number of remaining acquisitions: -0-

4. Source of Funding:

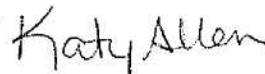
Cost implications associated with the Wenlock Commons park walkway construction project will be discussed in future Council memoranda concerning those improvements.

BUDGET REFERENCE

Fund #	Appn. #	Appn. Name	RC #	Total Appn.	Adopted Capital Budget Page	Last Budget Action (Date, Ord. No.)
382	6991	PG&E Easement Wenlock Drive	117650	\$250,000	Page V -609	
001	6991	PG&E Easement Wenlock Drive	117650	\$210,000	Page V -609	
		TOTAL		\$460,000		

CEQA

Exempt, PP04-03-065.



KATY ALLEN
Director, Public Works Department

DF:hla
df032505cc

Attachments

EXHIBIT "A-1"
DESCRIPTION OF EASEMENT

All that certain real property situated in the City of San Jose, County of Santa Clara, State of California, being a portion of the parcel (hereinafter "Parcel") described in the Grant Deed recorded on May 22, 1949 in Book 1828, at Pages 146-147, Official Records of Santa Clara County, and being more particularly described as follows:

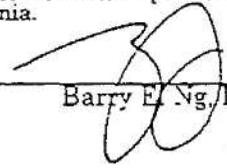
Beginning at the most westerly corner of Lot 56 as shown on the map of Tract No. 6170 filed for record on October 24, 1977 in Book 406 of Maps, at Pages 23-24, Records of Santa Clara County, said point also being on the northeasterly line of said Parcel; thence along the southwesterly line of said Tract No. 6170, said line also being the northeasterly line of said Parcel, S 38°13'42" E 480.83 feet to an angle point; thence continuing along said southwesterly line, S 37°29'42" E 515.45 feet; thence leaving said southwesterly line of Tract No. 6170, and running southwesterly and westerly along a tangent curve, concave to the northwest, having a radius of 25.00 feet and a central angle of 180°00'00" for an arc distance of 78.54 feet to a point that is 50.00 feet distant, measured at a right angle, to said southwesterly line of Tract No. 6170, said point also being on the northeasterly line of Tract No. 5808, the map of which was filed for record on July 22, 1976 in Book 375 of Maps, at Pages 15-17, Records of Santa Clara County, said last mentioned line also being the southwesterly line of said Parcel; thence generally along said northeasterly line of Tract No. 5808 and along the southwesterly line of said Parcel, N 37°29'42" W 515.44 feet to an angle point, thence continuing along the southwesterly line of said Parcel, N 38°13'42" W 250.76 feet to the easterly corner of Parcel 'B' as shown on the Parcel Map recorded on August 9, 1972 in Book 306 of Maps, at Page 16, Records of Santa Clara County; thence along the northeast line of said Parcel 'B', N 38°13'42" W 227.55 feet to the southeasterly right-of-way line of Story Road as shown on said Parcel Map; thence along said southeasterly right-of-way line, N 49°36'33" E 50.04 feet to the POINT OF BEGINNING.

Containing approximately 50,730.65 square feet (1.16 acres).

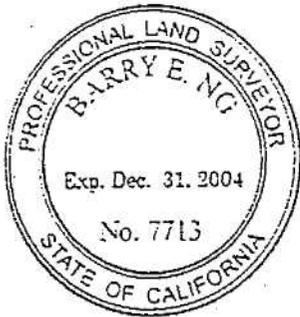
This description was prepared from record information only and does not reflect data based on a field survey. The Basis of Bearings for this description is the bearing N 38°13'42" W, being the bearing of the most northwest portion of the southwesterly line of Tract No. 6170, the map of which was filed for record on October 24, 1977 in Book 406 of Maps, at Pages 23-24, Records of Santa Clara County.

Attached hereto and by reference a part hereof is a plat labeled "EXHIBIT 'A' PLAT" depicting the subject property.

The above description of real property was prepared by me in conformance with the requirements of Section 8726 (g, k, l, m) of the Business and Professions Code of the State of California.


Barry E. Ng, PLS 7713

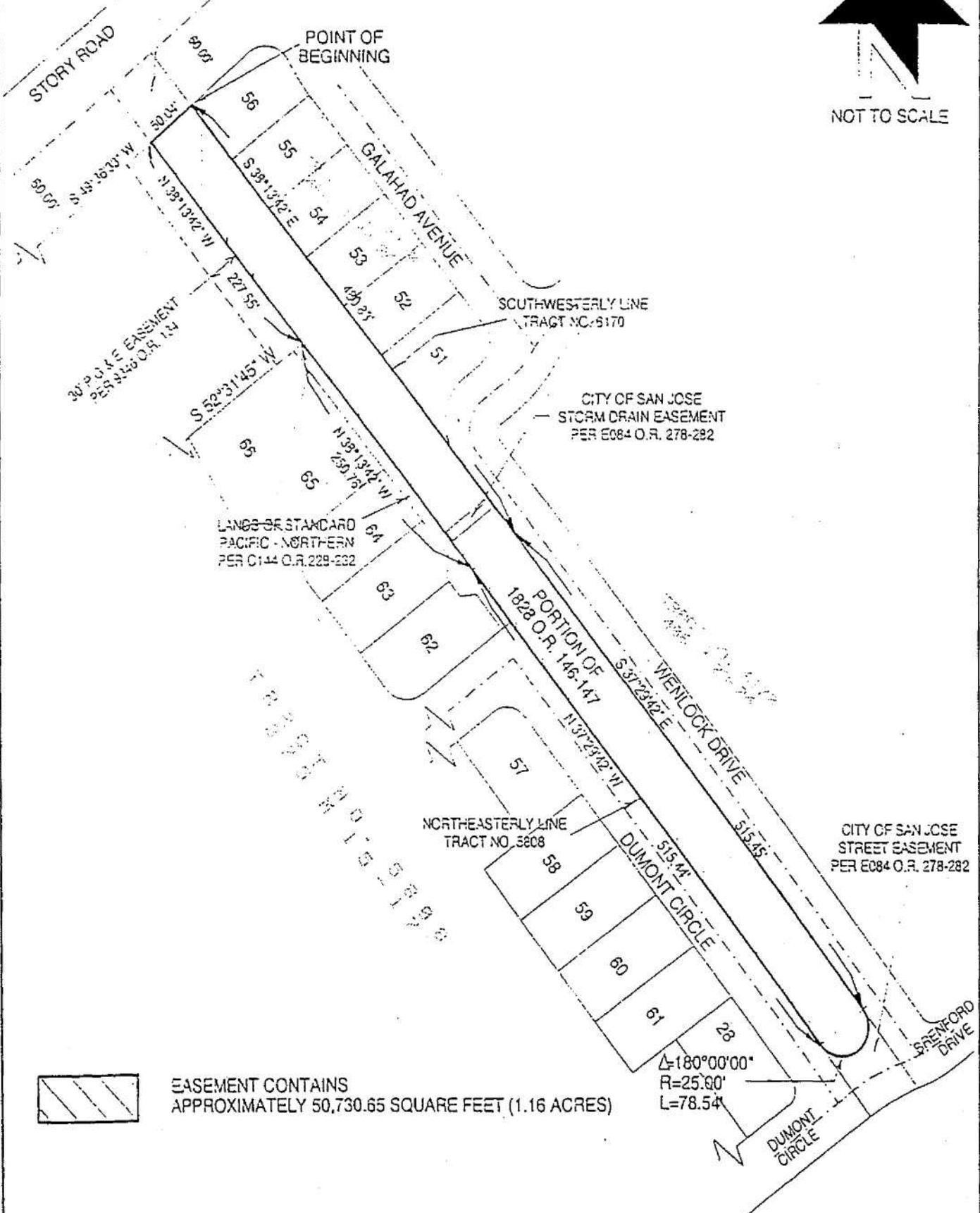
10-16-02



CITY OF SAN JOSE
STREET EASEMENT
PER E084 O.R. 278-282



NOT TO SCALE



EASEMENT CONTAINS
APPROXIMATELY 50,730.65 SQUARE FEET (1.16 ACRES)

$\Delta=180^{\circ}00'00''$
 $R=25.00'$
 $L=78.54'$

EXHIBIT "A-2"

PREPARED BY
CITY OF SAN JOSE
SURVEY SECTION
OCTOBER 15, 2002

EXHIBIT A-3

Legal Interest Description

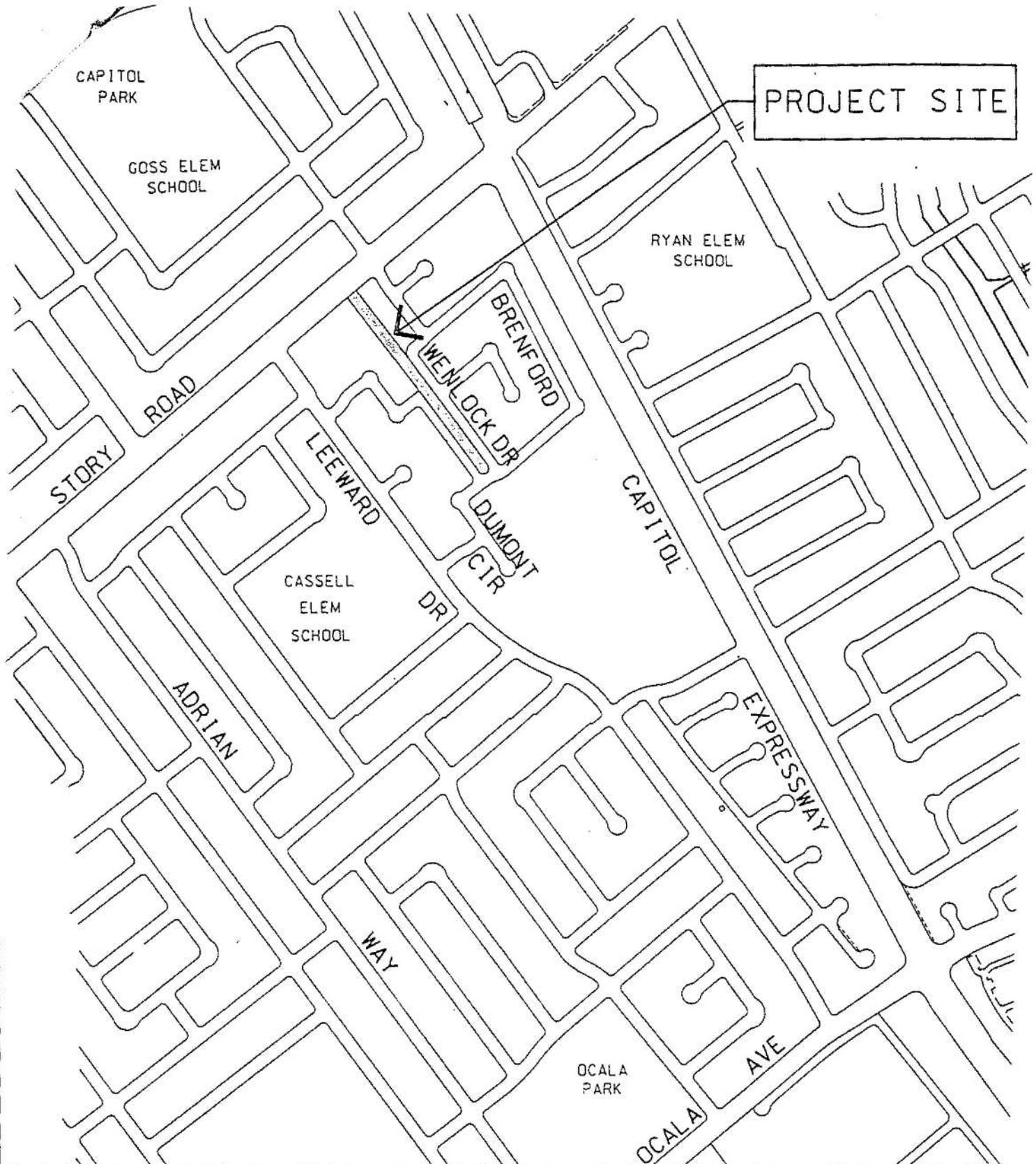
An easement to install, construct, maintain, and operate a public-use park trail with associated landscaping, signs, call boxes, irrigation and other related improvements (the "Improvements") on the parcel owned by Pacific Gas and Electric Company ("PG&E") on Story Road abutting, in part, the west side of Wenlock Drive and also known as assessor parcel number 486-39-029. Included with the easement are such subsurface rights as are reasonably necessary for the installation, construction, operation and maintenance of the 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 José ("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.



PROJECT SITE

CAPITOL PARK

GOSS ELEM SCHOOL

RYAN ELEM SCHOOL

BRENFORD

WENLOCK DR

DUMONT CIR

CAPITOL

STORY ROAD

LEeward DR

CASSELL ELEM SCHOOL

ADRIAN

EXPRESSWAY

WAY

OCALA PARK

OCALA AVE



WENLOCK DRIVE PARK
STORY ROAD to BRENFORD DRIVE
Not to Scale