



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Kim Walesh

**SUBJECT:** SEE BELOW

**DATE:** May 29, 2012

Approved

Date

6/6/12

**COUNCIL DISTRICT:** 4

**SUBJECT: GAS LINE EASEMENT MODIFICATION AGREEMENT WITH  
PACIFIC GAS AND ELECTRIC**

## RECOMMENDATION

- a) Approve the gas line easement modification agreement with Pacific Gas and Electric expanding the width of the existing permanent easement for the relocation and maintenance of a gas transmission line on the site of 225 Baypointe Parkway and including a temporary construction easement, and
- b) Adopt a resolution to authorize the City Manager or her designee to execute the gas line easement modification agreement and all other documents needed to conclude the transaction.

## OUTCOME

Approval of the agreement and adoption of the related resolution will allow for the widening of an existing 15 foot gas line easement by 35 feet over a portion of City-owned property located at 225 Baypointe Parkway (APN 097-07-029) and provide an additional adjacent 15 foot wide temporary construction easement, to Pacific Gas and Electric (PG&E) in consideration of a payment for \$845,000.

## BACKGROUND

On December 19, 2008, Fairview Tasman LLC granted an 'Irrevocable Offer of Dedication' to the City of San Jose for Assessor's Parcel Number (APN) 097-07-029 for vacant land that is to be used for a future park. At the time of the recording, the property was encumbered with a 15 foot gas line easement at the rear of the property in favor of PG&E.

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On May 5, 2011, Fairview Tasman, LLC recorded a Grant Deed which transferred the property (APN 097-07-029) to the City of San José. The transfer of the property to the City included the previously recorded easement in favor of PG&E that affects the property.

On December 27, 2011, PG&E contacted staff with a proposal to modify the existing easement agreement to acquire an additional 13,335 square feet of easement area that is needed for the relocation of a 24 inch gas transmission line. In addition, PG&E requested a temporary construction easement of approximately 5,715 square feet to be used for equipment storage during the installation of the new gas transmission line. PG&E's original proposal for the additional easement area and the temporary construction easement was \$654,000. Staff entered into negotiations with PG&E in February 2012 and reached a tentative agreement in May 2012, with a final proposed value of \$845,000 for the additional permanent easement area and the temporary construction easement which will expire on December 31, 2012.

### ANALYSIS

Fairview Tasman LLC filed a tentative map (Map No. PT06-083) with the City of San José for the subdivision of real property located at the Northwest Corner of Zanker Road and Tasman Drive. In accordance with Chapter 19.38 of the San José Municipal Code, the Tentative Map contained provisions requiring the payment of fees and/or the dedication of land for park purposes. Based upon the requirements of the Final Map, Fairview Tasman LLC and the City of San José entered into a Parkland Agreement whereby APN 097-07-029 would be granted to the City of San José in lieu of payment of the parkland fee.

On May 5, 2011, under Recorder's Serial Number 21166871, title was transferred from Fairview Tasman LLC to the City of San Jose for APN 097-07-029. At the time of the transfer of title the property was encumbered by an easement that was created in June 1944 and provided for a 15 foot wide strip of land at the rear of the property which allowed for the installation and maintenance of a gas transmission line by PG&E.

In December 2011, PG&E contacted the City and requested a modification to the 15 foot gas line easement located on the property. The 15 foot PG&E easement was created in 1944 through a recording by the property owner (Clyde E and Bessie R Burrell) and PG&E for the right to excavate for, install, replace (of the initial or any other size), maintain and use for conveying gas. PG&E now desires to replace and relocate the approximately 60 year old 24 inch gas transmission line and requires additional square footage for the new alignment and future maintenance of the gas transmission line. PG&E is requesting a modification to the original easement that includes adding 35 feet to the existing 15 feet for a total of a 50 foot wide easement across the rear of the property. In addition, PG&E is requesting a temporary construction easement adjacent to the proposed easement area that will be used for equipment storage during the excavation and installation of the new 24 inch gas transmission line. PG&E has submitted an updated appraisal of both the proposed easement area and the temporary construction easement area which now reflects an estimate of value of \$845,000. The widening

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of the gas line easement should not affect the use of the property as a future park; the City specifically reserves the right to use the entire expanded easement area for public park purposes, including, without limitation, the installation, maintenance and use of related facilities such as benches, tables, barbeque pits, irrigation, pathways, hardscape, sports fields (including artificial turf) and playgrounds. However, the City cannot erect or construct any building or other permanent structure, drill or operate any well, or construct any reservoir within the easement area, or plant any deep rooted trees or vines, or construct tree or vine-associated supporting structures, within ten feet of the centerline of the relocated gas transmission line. Finally, the City cannot construct any fences that will interfere with the maintenance and operation of PG&E's improvements.

### **EVALUATION AND FOLLOW-UP**

The execution and recordation of the easement modification agreement between the City and PG&E is anticipated to be completed within 30 days of approval by the City Council.

### **POLICY ALTERNATIVES**

*Alternative #1:* Not approve the easement modification agreement with PG&E.

**Pros:** By not approving the easement modification agreement the City would retain all rights to the additional proposed easement area. However, it should be recognized that PG&E would retain the original 15 foot easement that was granted in 1944 and would almost certainly seek to acquire the additional easement width through condemnation.

**Cons:** By denying the easement modification agreement, PG&E may be prevented or delayed in replacing the 60 year old gas transmission line which could pose safety or service problems, and would expose the City to a condemnation action.

**Reason for not recommending:** Not approving the easement modification agreement with PG&E could pose a risk to public service/safety. PG&E would in all likelihood file an action in Court to condemn the proposed easement area which if upheld would result in a modification to the existing easement agreement on terms and conditions that may not be as favorable to the City as those presently negotiated.

### **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)**

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- 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 it will be posted on the City's website for the June 19, 2012 Council agenda.

### **COORDINATION**

This memorandum has been coordinated with Parks, Recreation, and Neighborhood Services, Public Works Department, the City Manager's Budget Office, and the City Attorney's Office.

### **CEQA**

Not a Project File No. PP09-212.

/s/

KIM WALESH

Director of Economic Development  
Chief Strategist

For questions please contact Nanci Klein, Deputy Director at (408) 535-8184.

Attachments

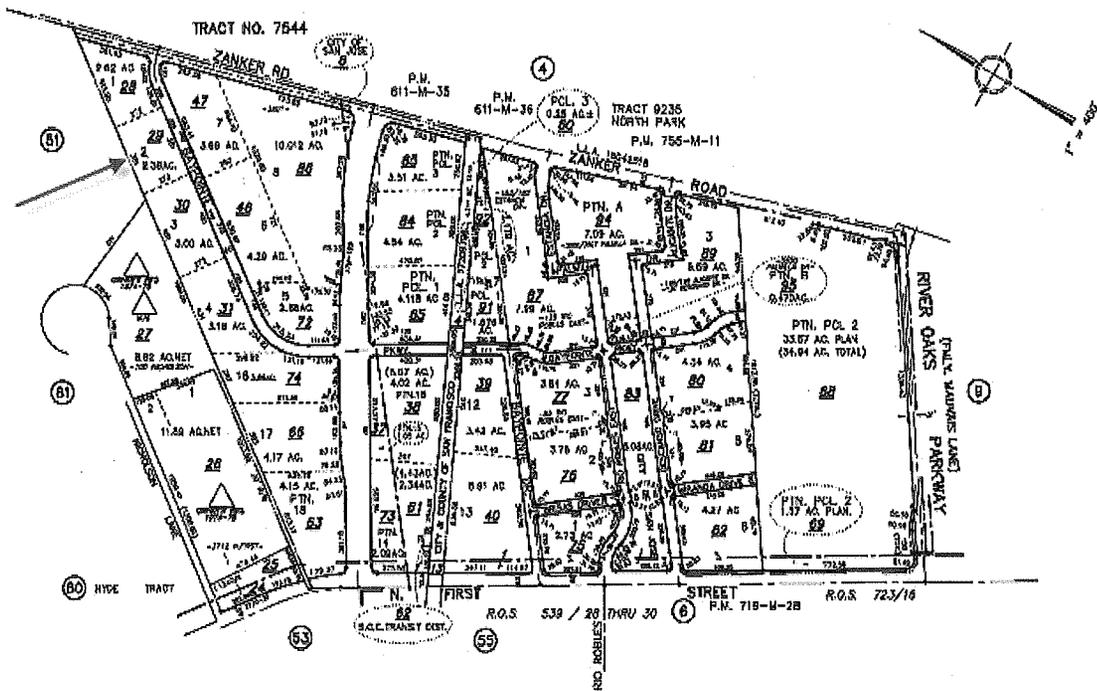
# EXHIBIT 1

## ASSESSOR'S MAP – 225 BAYPOINTE PARKWAY

OFFICE OF COUNTY ASSESSOR — SANTA CLARA COUNTY, CALIFORNIA

SITUS: 225 BAYPOINTE PKWY, SAN JOSE, CA 95134

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LAWRENCE I. STONE - ASSESSOR  
 Licensed map. In accordance with  
 Chapter 499 of P. S. Code, Sec. 327,  
 Effective July 1, 1977-1978

**EXHIBIT 2**  
**AERIAL MAP**

