



City of San Leandro

Meeting Date: June 3, 2013

Staff Report

File Number: 13-020

Agenda Section: CONSENT CALENDAR

Agenda Number: 8.D.

TO: City Council

FROM: Chris Zapata
City Manager

BY: Uchenna Udemezue
Engineering & Transportation Director

FINANCE REVIEW: David Baum
Finance Director

TITLE: Staff Report for a Resolution Approving an Easement Agreement with PG&E for a Portion of City Property Located at 454 Warden Avenue, a Strip of Land that Serves as an Access to the Area Underneath I-880 and as an Emergency Access Road for the Davis West Neighborhood

SUMMARY AND RECOMMENDATIONS

Staff recommends that the City Council approve an easement agreement with PG&E to allow PG&E to continue to install, maintain, and access its facilities on and under this particular City property. The property serves as an emergency access road for the Davis West Neighborhood and as an access point to the area under the I-880 freeway.

BACKGROUND

PG&E contacted the City on behalf of Caltrans to request permission to relocate its underground facilities to accommodate the I-880 Southbound HOV Lane project. An encroachment permit was issued to allow PG&E to complete the work in the short time frame it had in advance of the project. However, PG&E did not have the property rights necessary to have its facilities on City property. The City and PG&E worked together to draft an easement agreement and PG&E issued a check to the City for \$10,000 for the easement rights.

Analysis

The area is residential, and there are homes surrounding the access road. Having PG&E's facilities on the property does not impact the residential property owners and tenants in the area. There are no plans to use the property for any purpose other than as an access road.

Permits and/or Variances Granted

An encroachment permit (ENC2012-00603) was issued on November 6, 2012 to allow PG&E to trench and install conduit. PG&E was informed that it would also need to acquire an easement.

Legal Analysis

The City Attorney helped draft the easement agreement and has approved it in its final form .

Fiscal Impacts

The General Fund will receive a one-time payment of \$10,000. There is no cost to the City.

PREPARED BY: Tara H. Peterson, Administrative Services Manager, Engineering & Transportation



City of San Leandro

Meeting Date: June 3, 2013

Resolution - Council

File Number: 13-019

Agenda Section: CONSENT CALENDAR

Agenda Number:

TO: City Council

FROM: Chris Zapata
City Manager

BY: Uchenna Udemezue
Engineering & Transportation Director

FINANCE REVIEW: David Baum
Finance Director

TITLE: ADOPT: Resolution Approving an Easement Agreement with PG&E for a Portion of City Property Located at 454 Warden Avenue, a Strip of Land that Serves as an Access to the Area Underneath I-880 and as an Emergency Access Road for the Davis West Neighborhood (grants PG&E a 1,000 square foot easement for facilities PG&E requires for the distribution of electricity and communications)

WHEREAS, an agreement between the City of San Leandro and PG&E, a copy of which is attached, has been presented to this City Council; and

WHEREAS, the City Council is familiar with the contents thereof; and

WHEREAS, the City Manager has recommended approval of said agreement.

NOW, THEREFORE, the City Council of the City of San Leandro does RESOLVE as follows:

That said easement agreement is hereby approved and execution by the City Manager is hereby authorized.

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:**

City of San Leandro
City Hall
835 E. 14th Street
San Leandro, CA 94577
Attention: City Engineer

EXEMPT FROM RECORDING FEES PER
GOVERNMENT CODE §§ 6103, 27383

(SPACE ABOVE THIS LINE RESERVED FOR
RECORDER'S USE)

GRANT DEED FOR EASEMENT TO ACCESS UNDERGROUND FACILITIES

This Grant Deed for an Easement to Access Underground Facilities ("Easement") is entered into on this ____ day of _____, 2013 ("Effective Date") by and between the City of San Leandro ("Grantor"), owner in fee of that certain real property to be granted as described below, and the Pacific Gas and Electric Company, a California corporation ("Grantee") (collectively, the "Parties").

RECITALS

1. Grantor is the owner of that certain real property described in the deed from Sterling Homes Co., to the City dated July 22, 1955 and recorded in Book 7754 at page 395, Alameda County Records (the "Property").

2. The facilities and easement area requested by Grantee are described as follows:

Such underground conduits, pipes, manholes, service boxes, wires, cables, and electrical conductors; aboveground marker posts, risers and service pedestals; underground and aboveground switches, fuses, terminals and transformers with associated concrete pads, and fixtures and appurtenances necessary to any and all thereof, as Grantee deems necessary for the distribution of electric energy and communication purposes located within the strip of land described as follows:

A strip of land of the uniform width of 10 feet lying contiguous to and southeasterly of the northwesterly boundary line of said land extending from the southwesterly boundary line of said land northeasterly approximately 100.84 feet to the northeasterly boundary line of said lands.

The easement is more fully set out in the legal description and diagrammed attached hereto as Exhibit A, which is incorporated herein and made a part hereof. PG&E drawing No. 30769735 is recorded for reference purposes only.

GRANT AGREEMENT

1. Grant of Easement to Access Underground Facilities. The Recitals above are true and correct and made a part hereof. For valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor hereby grants and conveys to Grantee a permanent easement to access underground facilities beneath the Property described in Exhibit A, subject to the conditions set forth in this Agreement (the "Easement").

2. Purpose and Use of Easement. Grantee may only use the Easement to gain reasonable access to and operate, maintain, inspect, repair and improve the underground facilities beneath the Easement, including but not limited to the installation, removal and modification of the underground facilities and other utilities. At no time shall Grantee have any right or ability to restrict Grantor or Grantor's invitees' use of the Property. Grantee must obtain Grantor's written approval before relocating any equipment or facilities within the Easement. Grantor grants to Grantee the right to assign to another public utility as defined in Section 216 of the California Public Utilities Code the right to install, inspect, maintain, replace, remove and use communications facilities within the Easement. Grantee may not trim or cut down any trees and/or brush within said Easement, or along each side of the Easement without the prior written approval of Grantor. Grantee may not install anything beneath, upon or above the Easement that will interfere with its use as an access road or any other use to which it is put by Grantor.

3. Covenant Running With the Land; Binding on Successors. The Easement created under this Agreement and each term, condition and covenant contained in this Agreement constitutes a covenant running with the land and inures to the benefit of and is binding upon the Parties and their respective successors and assigns, including, without limitation, all subsequent owners of the Property burdened hereby or any portion thereof or interest therein. It is the intent of the Parties that the Easement granted hereby and all agreements set forth herein shall be "covenants running with the land" binding upon the Property.

4. No Barriers. Grantor shall not erect or construct any building or other structure or drill or operate any well under or within said strip of land.

5. Notices. Except as otherwise specified herein, all notices to be sent pursuant to this Agreement shall be made in writing, and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other Parties in accordance with this Section. All such notices shall be sent by:

- (i) personal delivery, in which case notice is effective upon delivery; or
- (ii) certified or registered mail, return receipt requested, in which case notice shall be deemed delivered on receipt if delivery is confirmed by a return receipt; or
- (iii) nationally recognized overnight courier, with charges prepaid or charged to the sender's account, in which case notice is effective on delivery if delivery is confirmed by the delivery service; or
- (iv) facsimile transmission or email, in which case notice shall be deemed delivered upon transmittal, provided that (a) a duplicate copy of the notice is promptly delivered by first-class or

certified mail or by overnight delivery, or (b) a transmission report is generated reflecting the accurate transmission thereof. Any notice given by facsimile or email shall be considered to have been received on the next business day if it is received after 5:00 p.m. recipient's time or on a non-business day.

To Grantor: City of San Leandro
City Hall
835 E. 14th Street
San Leandro, CA 94577
Attn: Administrative Services Manager
Engineering & Transportation Department
Telephone No.: (510) 577-3432
Facsimile No.: (510) 577-3294

With a copy to: Meyers Nave
555 12th Street, Suite 1500
Oakland, CA 94607
Attention: City Attorney
Telephone No.: (510) 808-2000
Facsimile No.: (510) 444-1118
Email: rpioroda@meyersnave.com

To Grantee: Pacific Gas and Electric Company
Land Management
1850 Gateway Boulevard, 7th Floor
Concord, CA 94520

With a copy to: Joe Block
Land Agent
Pacific Gas and Electric Company
1850 Gateway Boulevard, 7th Floor
Concord, CA 94520

6. Governing Law; Venue. This Agreement shall be construed in accordance with the laws of the State of California without regard to principles of conflicts of law.

7. Maintenance. Grantee shall be responsible for maintaining any equipment and appurtenances thereto, as described herein, that it installs in the Easement in good condition and repair. Grantee shall not unreasonably interfere with the rights of Grantor to use the Easement Area. Grantee shall be fully responsible for the repair of any damage caused to the Easement Area during the course of its use by Grantee and shall make such repair as necessary to restore the Easement Area to its original condition upon notice of any damage.

8. Indemnity. Grantee shall indemnify, protect, and defend Grantor against and hold Grantor harmless from any and all claims, causes of action, judgments, obligations or liabilities, and all reasonable expenses incurred in investigating or resisting the same (including reasonable attorneys' fees) that arise out of the installation, maintenance, and/or use of the equipment and appurtenances thereto in the Easement Area by Grantee and/or Grantee's agents, employees, contractors (and their subcontractors), and invitees (including any subtenant or assignee of Grantee), except to the extent it arises from the active negligence or willful misconduct of Grantor, or Grantor's agents, employees, contractors, or invitees.

9. Severability. If any term, provision, covenant or condition contained in this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of this Agreement shall continue in full force and effect unless the rights and obligations of the Parties are materially altered or abridged by such invalidation, voiding or unenforceability.

10. Representation. This Agreement is executed voluntarily by each of the Parties hereto, both of which have had the opportunity to obtain legal advice by independent counsel of their choice as to the content and effect of this Agreement.

11. Authorization. Each signatory to this Agreement warrants that he or she has full authority to execute this Agreement on behalf of and thus bind the entity represented.

SIGNATURES ON FOLLOWING PAGE

IN WITNESS WHEREOF, the Grantor and Grantee have executed this Grant Deed for Easement as of the Effective Date first written above.

GRANTOR,
City of San Leandro

GRANTEE,
Pacific Gas and Electric Company

By: Chris Zapata
Its: City Manager

April Hug 4-30-13
By: *Barah Hug*
Its: *Supervisor, Land Rights Services*

ATTEST:

By: Marian Handa
Its: City Clerk

APPROVED AS TO FORM:

By: Richard D. Pio Roda
Its: City Attorney

STATE OF CALIFORNIA)
)
COUNTY OF ALAMEDA)

On _____, 2013, before me, _____, (here insert name and title of the officer), personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

STATE OF CALIFORNIA)
)
COUNTY OF ALAMEDA)

On _____, 2013, before me, _____, (here insert name and title of the officer), personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

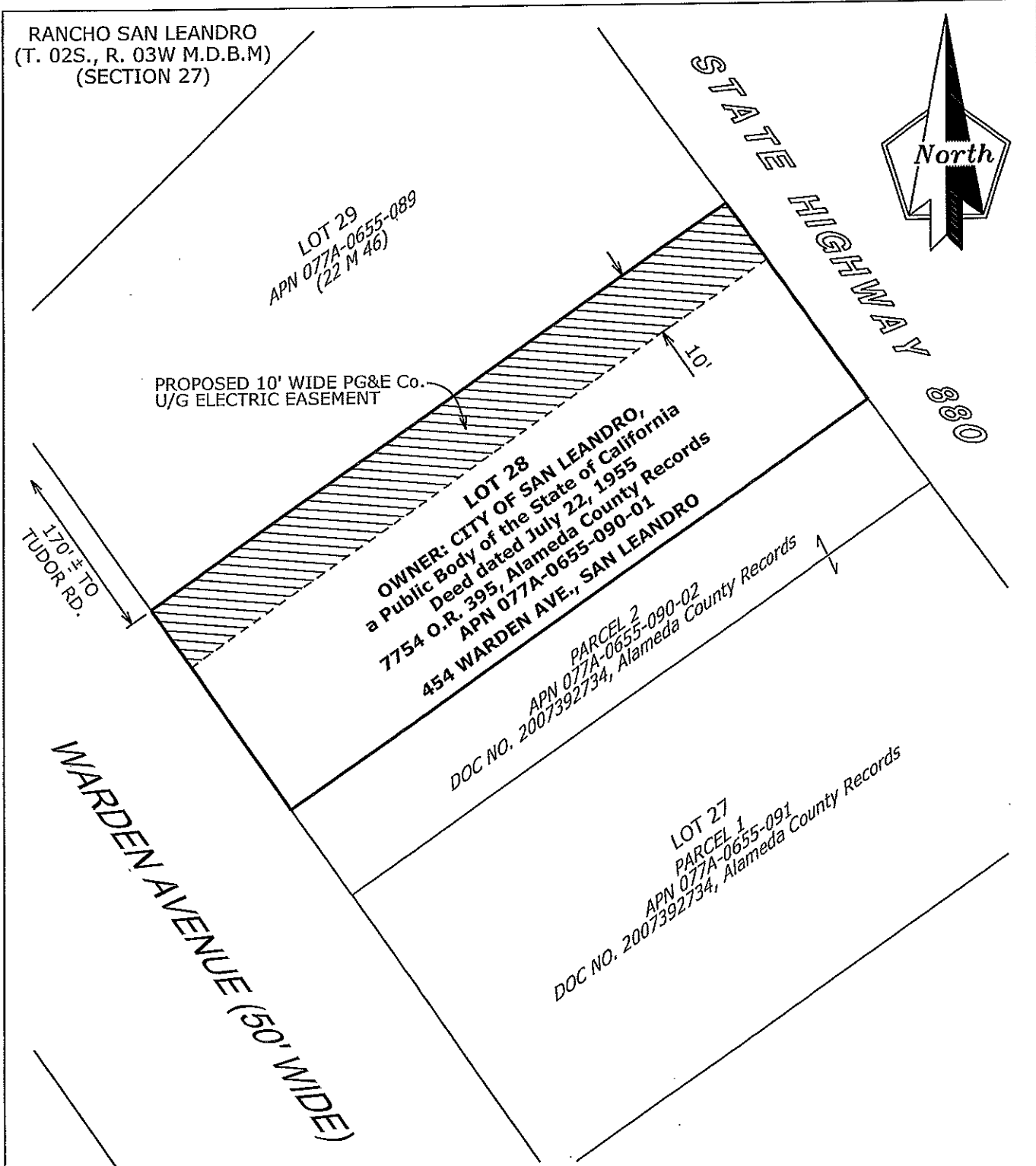
Signature _____ (Seal)

Exhibit A

EASEMENT DESCRIPTION & DIAGRAM

(Insert legal description)

2054201.1



UNLESS OTHERWISE SHOWN ALL COURSES EXTEND TO OR ALONG BOUNDARIES OR LINES

Applicant:				454 WARDEN AVE., SAN LEANDRO		SCALE 1"=20'	DATE 11/19/12
SECTION (SEC 27) NE 1/4 OF SW 1/4	TOWNSHIP (2S)	RANGE (3W)	MERIDIAN M.D.B.M.	COUNTY OF: ALAMEDA	CITY OF: SAN LEANDRO		
PLAT MAP H0717				PG&E	EAST BAY DIVISION	N/A AUTHORIZ	30769735 DRAWING NO.
REFERENCES 22 M 46; 7754 OR 396							

EXHIBIT "A"

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

State of California

County of Contra Costa

On 4/30/13 before me, Rebecca Marshall, Notary Public

personally appeared Sarah Hug

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature: [Handwritten Signature]

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Grant Deed for Easement to Access UG Facilities

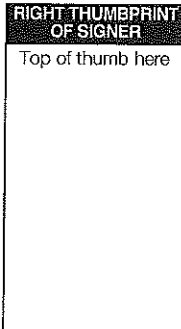
Document Date: 4/30/13 Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: Sarah Hug

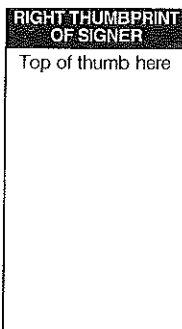
- Corporate Officer - Title(s): Supervisor
Individual
Partner - Limited General
Attorney in Fact
Trustee
Guardian or Conservator
Other:



Signer Is Representing: _____

Signer's Name: _____

- Corporate Officer - Title(s): _____
Individual
Partner - Limited General
Attorney in Fact
Trustee
Guardian or Conservator
Other:



Signer Is Representing: _____