

STAFF REPORT

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06/28/19

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M. Schroeder

INDEMNIFICATION AGREEMENT

PARTIES:

Pacific Gas and Electric Company (PG&E)

California State Lands Commission

BACKGROUND:

On April 23, 2015, the Commission authorized Lease No. PRC 1977.1 to the City of Larkspur (City) for the demolition and removal of the existing Bon Air Road Bridge; relocation of existing utilities; and construction, use, and maintenance of temporary cofferdams, two temporary trestle bridges, and a new Bon Air Road Bridge in Corte Madera Creek in Marin County ([Item C47, April 23, 2015](#)). While construction of the new bridge has commenced, it has not been completed. The lease to the City is for a term of 25 years and expires on April 22, 2040. Under a separate staff report, also scheduled for consideration at the June 28, 2019 Commission meeting, the City has applied for an amendment of the lease for removal of PG&E as a sublessee.

PG&E maintains a franchise agreement with the City for the right to use City easements and rights-of-way adjoining the lease premises for the installation, operation, and maintenance of electrical lines, poles, wires, conduits, and appurtenances for the conveyance, distribution, and supply of electricity to the public. Because Lease No. PRC 1977.1 is a right-of-way leased to the City, the PG&E improvements are a valid and consistent use within that lease. And because of PG&E's franchise agreement with the City, Commission authorization of a separate lease with PG&E for the electrical lines is not required.

This proposed Indemnification Agreement is intended to indemnify the State for any harm that may occur or arise from the installation, operation, and maintenance of the PG&E electrical lines on the bridge.

STAFF ANALYSIS AND RECOMMENDATION:

Authority:

Public Resources Code sections 6005, 6216, and 6301.

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Public Trust and State's Best Interests Analysis:

As general background, the State of California acquired sovereign ownership of all tidelands and submerged lands and beds of navigable lakes and waterways upon its admission to the United States in 1850. The State holds these lands for the benefit of all people of the State for statewide Public Trust purposes that include, but are not limited to, waterborne commerce, navigation, fisheries, water-related recreation, visitor-serving amenities, habitat preservation, and open space. The Commission is the trustee of these sovereign lands within the bed of the Corte Madera Creek.

Commission staff and PG&E have negotiated an Indemnification Agreement indemnifying the State for any harm that may occur or arise from the operation and maintenance of PG&E's two 6-inch diameter, 12-kilovolt electrical distribution ducts and appurtenant facilities attached to the bridge. PG&E agrees to indemnify the State, without limitation, for any claim or liability arising from the installation, use, operation, or maintenance of the PG&E electrical lines and any PG&E facilities or improvements located within the lease premises of Lease No. PRC 1977.1.

Based on a review of the bridge plans and PG&E's electrical lines, staff believes the electrical lines will be attached in a manner that does not interfere, inhibit, or cause unreasonable risk to public access or navigation on sovereign land.

Staff believes that the PG&E electrical lines on the Bon Air Road Bridge in the Corte Madera Creek do not substantially interfere with the Public Trust needs and values in the area at this location, at this time. Further, the proposed Indemnification Agreement will provide sufficient liability protection for the State. For all the reasons above, staff believes approval of the Indemnification Agreement is in the best interests of the State.

OTHER PERTINENT INFORMATION:

1. This Indemnification Agreement will remain in effect indefinitely or end upon termination of PG&E's franchise agreement with the City, or as mutually agreed upon by PG&E and the Commission.
2. This action is consistent with Strategy 1.1 of the Commission's Strategic Plan to deliver the highest levels of public health and safety in the protection, preservation, and responsible economic use of the lands and resources under the Commission's jurisdiction.

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3. Approval of an Indemnity Agreement is not a project as defined by the California Environmental Quality Act because it is an administrative action that will not result in direct or indirect physical changes in the environment.

Authority: Public Resources Code section 21065 and California Code of Regulations, title 14, section 15378, subdivision (b)(5).

4. Approval or denial of the agreement is a discretionary action by the Commission.

EXHIBITS:

- A. Land Description
- B. Site and Location Map
- C. Franchise Agreement

RECOMMENDED ACTION:

It is recommended that the Commission:

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that the proposed Indemnification Agreement will not substantially interfere with the public rights to navigation or the Public Trust needs and values at this location, at this time; and is in the best interests of the State.

AUTHORIZATION:

Authorize the Indemnification Agreement, substantially in the form on file at the Sacramento office of the Commission, between the Commission and PG&E, beginning April 23rd, 2019, and ending upon termination of PG&E's franchise agreement with the City of Larkspur, or as mutually agreed upon by the Parties; concerning the installation, use, operation, and maintenance of two 6-inch diameter 12-kilovolt electrical distribution ducts on the Bon Air Road Bridge, as described in Exhibit A and shown on Exhibit B (for reference purposes only), attached and by this reference made a part hereof.

EXHIBIT A

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LAND DESCRIPTION

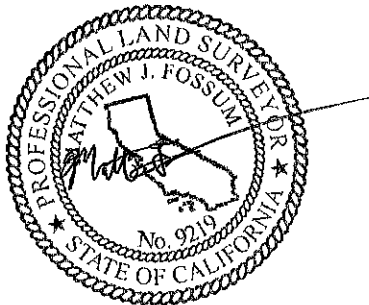
A two hundred and twenty (220) foot wide strip of submerged land situate in the bed of Corte Madera Creek, lying adjacent to, on the left bank, BTLC Lot 27, and on the right bank, BTLC Lot 26 as shown on "Map No 2. Of Salt Marsh and Tide Lands", County of Marin, State of California and lying 110 feet on each side of the following described centerline:

COMMENCING at Station 103 of the Corte Madera Canal Line (Per Superior Court Case No. 14851), as shown on that certain map titled "Map of State Sovereign Lands in Corte Madera Creek Vicinity of Larkspur" on file at the Sacramento office of the California State Lands Commission, (CB-1295); thence along the easterly canal line per said map North $11^{\circ}14'40''$ West 248.09 feet to the POINT OF BEGINNING; thence South $50^{\circ}57'00''$ 326.71 feet to a point on the westerly canal line per said map and the terminus of said centerline.

The sidelines of said strip are to be lengthened or shortened so as to begin and terminate on the Corte Madera Canal Line, of the right and left banks of Corte Madera Creek, per said map.

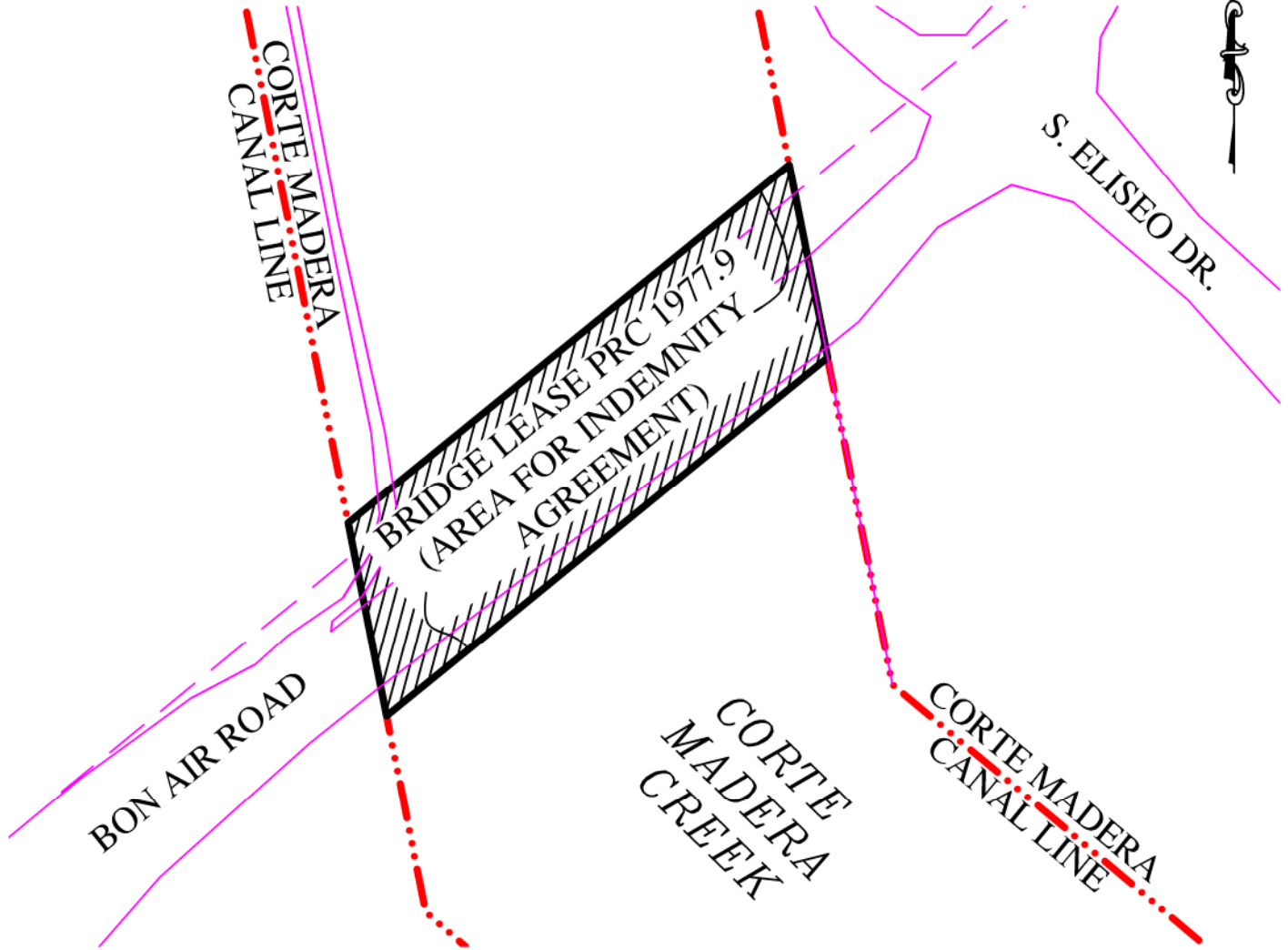
END OF DESCRIPTION

PREPARED 5/06/19 BY THE CALIFORNIA STATE LANDS COMMISSION BOUNDARY UNIT



NO SCALE

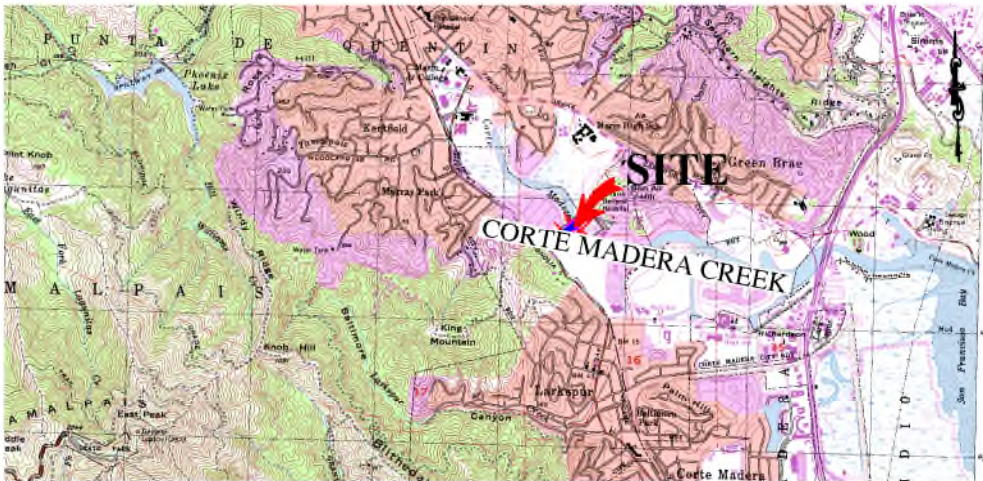
SITE



Bon Air Road Bridge - Corte Madera Creek

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

Exhibit B

A 2066
 PACIFIC GAS & ELECTRIC
 COMPANY
 INDEMNITY AGREEMENT
 MARIN COUNTY



This Exhibit is solely for purposes of generally defining the lease premises, is based on unverified information provided by the Lessee or other parties and is not intended to be, nor shall it be construed as, a waiver or limitation of any State interest in the subject or any other property.

ORDINANCE NO. 223

ORDINANCE GRANTING TO PACIFIC GAS AND ELECTRIC COMPANY ITS SUCCESSORS AND ASSIGNS, THE FRANCHISE (1) TO USE, FOR TRANSMITTING AND DISTRIBUTING ELECTRICITY SUITED FOR LIGHTING BUT FOR USE BY CONSUMERS FOR ANY AND ALL LAWFUL PURPOSES OTHER THAN LIGHTING, ALL POLES, WIRES, CONDUITS AND APPURTENANCES WHICH ARE NOW OR MAY HEREAFTER BE LAWFULLY PLACED AND MAINTAINED IN THE PUBLIC STREETS AND PLACES WITHIN THE CITY OF LARKSPUR UNDER THAT CERTAIN FRANCHISE OF GRANTEE ACQUIRED PURSUANT TO SECTION 19 OF ARTICLE XI OF THE CONSTITUTION OF THE STATE OF CALIFORNIA, AS SAID SECTION EXISTED PRIOR TO ITS AMENDMENT ON OCTOBER 10, 1911, AND (2) TO CONSTRUCT, MAINTAIN AND USE IN SAID PUBLIC STREETS AND PLACES ALL POLES, WIRES, CONDUITS AND APPURTENANCES WHENEVER AND WHEREVER SAID CONSTITUTIONAL FRANCHISE IS NOT NOW NOR SHALL HEREAFTER BE AVAILABLE THEREFOR, NECESSARY TO TRANSMIT AND DISTRIBUTE ELECTRICITY SUITED FOR, AND FOR USE BY CONSUMERS FOR, ANY OR ALL LAWFUL PURPOSES.

The City Council of the City of Larkspur does ordain as follows:

Section 1. Whenever in this ordinance the words or phrases hereinafter in this section defined are used, they shall have the respective meanings assigned to them in the following definitions:

- (a) The word "grantee" shall mean Pacific Gas and Electric Company, its lawful successors or assigns;
- (b) The word "city" shall mean the City of Larkspur, a municipal corporation of the State of California, in its present incorporated form or in any later reorganized, consolidated, enlarged or reincorporated form;
- (c) The word "streets" shall mean the public streets, ways, alleys and places as the same now or may hereafter exist within city, including state highways, now or hereafter established within city, and freeways hereafter established within city;
- (d) The phrase "poles, wires, conduits and appurtenances" shall mean poles, towers, supports, wires, conductors, cables, guys, stubs, platforms, crossarms, braces, transformers, insulators, conduits, ducts, vaults, manholes, meters, cut-outs, switches, communication circuits, appliances, attachments, appurtenances and, without limitations to the foregoing, any other property located or to be located in, upon, along, across, under or over the streets of city, and used or useful in transmitting and/or distributing electricity;
- (e) The phrase "construct, maintain and use" shall mean to construct, erect, install, operate, maintain, use, repair or replace.
- (f) The phrase "constitutional franchise" shall mean the right acquired through acceptance by grantee or its predecessor in estate of the offer contained in the provisions of Section 19 of Article XI of the Constitution of the State of California, as said section existed prior to its amendment on October 10, 1911.

Section 2. The franchise (1) to use, for transmitting and distributing electricity suited for lighting but for use by consumers for any and all lawful purposes other than lighting, all poles, wires, conduits, and appurtenances

which are now or may hereafter be lawfully placed and maintained in the streets within city under the constitutional franchise of grantee, and (2) to construct, maintain and use in said streets all poles, wires, conduits and appurtenances whenever and wherever the constitutional franchise of grantee is not now nor shall hereafter be available therefor, necessary to transmit and distribute electricity suited for, and for use by consumers for, any or all lawful purposes, is hereby granted to Pacific Gas and Electric Company, its successors and assigns.

Section 3. Grantee of this franchise shall relocate, without expense to the city, any poles, wires, conduits and appurtenances theretofore installed, and then maintained or used under this franchise, if and when made necessary by any lawful change of grade, alignment or width of any streets by city, including the construction of any subway or viaduct, provided, however, that this provision shall remain in effect only so long as such street, subway or viaduct shall remain under the jurisdiction of city as a city street, but shall cease to be applicable to any such street if and when the same shall become a freeway, nor shall it constitute a contractual obligation in respect to such freeway within the purview of Section 703 of the Streets and Highways Code of the State of California, or any corresponding provisions of law.

Section 4. Said franchise shall be indeterminate, that is to say, said franchise shall endure in full force and effect until the same shall, with the consent of the Public Utilities Commission of the State of California, be voluntarily surrendered or abandoned by grantee, or until the state or some municipal or public corporation thereunto duly authorized by law shall purchase by voluntary agreement or shall condemn and take under the power of eminent domain, all property actually used and useful in the exercise of said franchise and situate in the territorial limits of the state, municipal or public corporation purchasing or condemning such property, or until said franchise shall be forfeited for non-compliance with its terms by grantee.

Section 5. Grantee of said franchise shall during the term thereof pay to city a sum annually which shall be equivalent to two per cent of the gross annual receipts of grantee arising from the use, operation or possession of said franchise; provided, however, that such payment shall in no event be less than a sum which shall be equivalent to one-half per cent of the gross annual receipts derived by grantee from the sale of electricity within the limits of city under said franchise and said constitutional franchise.

Section 6. Grantee shall file with the Clerk of city, within three months after the expiration of the calendar year, or fractional calendar year, following the date of the granting hereof, and within three months after the expiration of each and every calendar year thereafter, a duly verified statement showing in detail the total gross receipts of grantee during the preceding calendar year, or such fractional year, from the sale of electricity within city. Grantee shall pay to city within fifteen days after the time for filing such statement, in lawful money of the United States, the aforesaid percentage of its gross receipts for such calendar year, or such fractional calendar year, covered by such statement. Any neglect, omission or refusal by grantee to file such verified statement, or to pay said percentage at the time and in the manner specified, shall be grounds for the declaration of a forfeiture of this franchise and of all rights of grantee hereunder.

Section 7. This franchise is granted under the Franchise Act of 1937.

Section 8: This ordinance shall become effective thirty days after its final passage, unless suspended by a referendum petition filed as provided by law.

Section 9. Grantee of said franchise shall pay to city a sum of money sufficient to reimburse it for all publication expenses incurred by it in connection with the granting thereof; such payment to be made within thirty days after city shall have furnished grantee with a written statement of such expenses.

Section 10. The franchise granted hereby shall not become effective until written acceptance thereof shall have been filed by grantee with the City Clerk.

Section 11: The City Clerk shall cause this ordinance to be published once within fifteen (15) days after its passage in Independent Journal, a newspaper of general circulation published and circulated in city.

First read at a regular meeting of the City Council of city held on the 4th day of August, 1954, and finally adopted and ordered published at a regular meeting of said Council held on the 18th day of August, 1954, by the following vote.

AYES: Councilman Gray, Wheeler, Heston, Austin
 NOES: Councilmen None
 ABSENT: Councilmen Leftwich

A P P R O V E D

Harold H. Heston
 ACTING MAYOR OF CITY OF LARKSPUR

A T T E S T:

Anna L. Lantieri
 CLERK OF CITY OF LARKSPUR

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