

Decision 04-03-022 March 16, 2004

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Pacific Gas and Electric Company (U 39 M) for Authorization Under Public Utilities Code Section 851 to Allow Installation of a Swimming Pool Within Pacific Gas and Electric Company's Easement Area.

Application 03-10-009
(Filed October 6, 2003)

**DECISION AUTHORIZING AMENDMENT
OF CONSISTENT AGREEMENT**

Summary

This decision grants the application of Pacific Gas and Electric Company (PG&E) for approval of an amendment to a consent agreement (Agreement) that would permit the owner of land, over which PG&E has an easement, to construct a swimming pool.

Proposed Transaction

Jeffrey McAdams (Owner) is the owner of certain real property within the City of Lemoore, in Kings County, California. PG&E owns a right of way and easement, a portion of which crosses Owner's property (easement area). Under the terms of the easement, the Owner may not construct any building or other structure within the easement area.

In 1990, PG&E entered into a consent agreement with the Owner's predecessor whereby PG&E allowed the construction of improvements such as roads, a sewer main, lighting, fences and gates. The consent agreement prohibited, among other things, the construction of swimming pools. The

consent agreement also prohibits any use of the easement area that would interfere with or endanger PG&E's facilities or use of the easement area.

The Owner has requested PG&E's permission to install, operate and maintain a swimming pool on his property in the easement area.¹ The swimming pool would be for the Owner's private use. As a result, PG&E proposes an amendment, included as Attachment A to this decision, to the consent agreement that would allow the construction of the swimming pool. Under the terms of the amendment, PG&E may terminate the Owner's right to install or use the swimming pool at any time, with 180 days' notice, if PG&E determines that the Owner's use of the easement area is inconsistent with its operational needs, or in any way impedes PG&E's use of current or future facilities installed in the vicinity of the easement area. Upon termination, the Owner is required to remove the swimming pool and restore the area to its condition prior to the construction of the swimming pool. The Owner would bear the cost for the removal, and restoration. In addition, the amendment provides that Owner indemnifies PG&E, to the maximum extent permitted by law, from any claims or other liabilities arising from Owner's use of the easement area. Also, the Owner is required to maintain appropriate insurance. The amendment does not provide for any compensation to PG&E for the use of the easement area.

PG&E contends that the amendment will not interfere with operation of its facilities, and will not interfere with its provision of service to its customers. It

¹ Specifically, a 14-foot by 28-foot swimming pool, surrounded by a 3-foot deck, on Lot 60 of Windsor Court, City of Lemoore, Kings County, California.

also says that the amendment will serve the public interest because it will allow increased use of the easement area.

Approval of the Amendment

Pub. Util. Code § 851 requires Commission authorization before a public utility can encumber any part of its property that is necessary or useful in the performance of its duties to the public. The primary question for the Commission in § 851 proceedings is whether the proposed transaction serves the public interest. The purpose of this and related sections is to enable the Commission, before any encumbrance of public utility property is consummated, to review the situation and to take such action as the public interest may require. Since the proposed amendment would encumber the property, §851 applies.² The primary question for the Commission is whether the proposed transaction is adverse to the public interest.

We have determined in previous decisions that the public interest is served when utility property is used for other productive purposes without interfering with the utility's operation or affecting service to utility customers.³ We have also determined that making land available to the public for recreation is a productive purpose.⁴

The amendment will allow the Owner to install operate and maintain a swimming pool on his own property. In addition, it will not interfere with

² As the Commission previously stated: "The language of Section 851 is expansive, and we conclude that it makes sense to read "encumber" in this statute as embracing the broader sense of placing a physical burden, which affects the physical condition of the property, on the utility's plant, system, or property." (D.92-07-007, 45 CPUC 2d 24, 29.)

³ D.03-04-010, D.02-01-058, D.00-07-010.

⁴ D.03-04-010.

PG&E's present or future operations or use of its facilities, and will not affect its provision of service to its customers. In the future, if PG&E finds that it could interfere, it can have the swimming pool removed at no cost to PG&E. In addition, PG&E is indemnified against liability, and the Owner is required to be properly insured. Therefore, there is no negative impact on PG&E's ability to serve its customers, and the easement area is put to productive recreational use. As a result, the amendment serves the public interest.

California Environmental Quality Act

The California Environmental Quality Act (Public Resources Code Section 21000, *et seq.*, hereafter CEQA) applies to discretionary projects to be carried out or approved by public agencies, and requires the Commission to consider the environmental consequences of its discretionary decisions, such as § 851 approvals. A basic purpose of CEQA is to “inform governmental decision-makers and the public about the potential significant environmental effects of the proposed activities.” (Title 14 of the California Code of Regulations, hereinafter CEQA Guidelines, Section 15002.)

Here, PG&E requests that the Commission find that approval of the amendment is categorically exempt from CEQA.⁵ CEQA and the CEQA Guidelines enumerate various categorical exemptions to the requirement for environmental review under CEQA. CEQA Guideline 15303 provides an exemption from CEQA review for specified new construction and the specified conversion of small structures. In particular, subpart (e) exempts the construction of accessory (appurtenant) structures including garages, carports, patios, swimming pools and fences. The amendment to the consent agreement

would allow construction of a swimming pool on the Owner's property. It appears from the description and map included with the application, that the swimming pool would be constructed as an appurtenant structure to the residential structure at that location. Accordingly, we find that the facts submitted in PG&E's application support a conclusion that construction of the swimming pool is exempt from CEQA review.

Comments on Draft Decision

This is an uncontested matter, in which the decision grants the relief requested. Accordingly, pursuant to Pub. Util. Code § 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

Categorization and Need for Hearings

In Resolution ALJ 176-3121 dated October 16, 2003, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary. No protests have been received. There is no apparent reason why the application should not be granted. Given these developments, a public hearing is not necessary, and it is not necessary to disturb the preliminary determinations.

Assignment of Proceeding

Loretta M. Lynch is the Assigned Commissioner and Jeffrey P. O'Donnell is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. PG&E owns a right of way and easement, a portion of which crosses the Owner's property.

⁵ The Commission is the lead agency.

2. Under the terms of the consent agreement, the Owner may not construct any building or other structure within the easement area.

3. Under the terms of the amendment, PG&E may terminate the Owner's right to install or use the swimming pool if PG&E determines that the Owner's use of the easement area is inconsistent with its operational needs, or in any way impedes PG&E's use of current or future facilities installed in the vicinity of the easement area.

4. The amendment provides that, upon termination, the Owner is required to remove the swimming pool and restore the area to its condition prior to the construction of the swimming pool. The Owner would bear the cost for the removal, and restoration.

5. The amendment provides that the Owner indemnify PG&E from any claim or liability arising from the Owner's use of the easement area, and maintain appropriate insurance.

6. The amendment would allow construction of a swimming pool.

7. The Commission has determined in previous decisions that the public interest is served when utility property is used for other productive purposes without interfering with the utility's operation or affecting service to utility customers, and that making land available to the public for recreation is a productive purpose.

8. The amendment will not interfere with PG&E's present or future operations or use of its facilities, will not affect its provision of service to its customers, and will allow the easement area to be put to productive recreational use.

9. The swimming pool would be constructed appurtenant to a residential structure.

10. Notice of the application appeared in the Daily Calendar on October 8, 2003.

11. There were no protests to the application.

12. No hearings are necessary.

Conclusions of Law

1. Pub. Util. Code § 851 requires Commission authorization before a public utility can encumber any part of its property that is necessary or useful in the performance of its duties to the public.

2. The primary question for the Commission in § 851 proceedings is whether the proposed transaction serves the public interest.

3. Since the proposed amendment would encumber the property, § 851 applies.

4. The amendment serves the public interest.

5. CEQA Guideline Section 15303 (e) exempts from CEQA review the construction of accessory (appurtenant) structures including garages, carports, patios, swimming pools, and fences.

6. The proposed construction of a swimming pool is exempt from CEQA.

7. In order to avoid delaying construction of the swimming pool, the approval of the application should be made effective immediately.

O R D E R

IT IS ORDERED that:

1. Pursuant to Public Utilities Code Section 851, the application of Pacific Gas and Electric Company for approval of an amendment to a consent agreement, included as Attachment A to this decision, that would allow Jeffrey McAdams to construct, operate, and maintain a 14-foot by 28-foot swimming pool,

surrounded by a three-foot deck, on Lot 60 of Windsor Court, City of Lemoore, Kings County, California, is granted.

2. Application 03-10-009 is closed.

This order is effective today.

Dated March 16, 2004, at San Francisco, California.

MICHAEL R. PEEVEY
President
CARL W. WOOD
LORETTA M. LYNCH
GEOFFREY F. BROWN
SUSAN P. KENNEDY
Commissioners

ATTACHMENT A

RECORDING REQUESTED BY AND RETURN TO:

PACIFIC GAS AND ELECTRIC COMPANY

Land Rights Office - Fresno

650 "O" Street, Third Floor

Fresno, CA 93760-0001

Location: City/Uninc _____

Recording Fee \$ _____

Document Transfer Tax \$ _____

☐ Computed on Full Value of Property Conveyed, or

☐ Computed on Full Value Less Liens

& Encumbrances Remaining at Time of Sale

Signature of declarant or agent determining tax

(APN 021-370-67)

AMENDMENT TO CONSENT AGREEMENT

This Amendment to Consent Agreement (this “**Amendment**”) is made and entered into this _____ day of _____, 200__ (the “**Effective Date**”) by PACIFIC GAS AND ELECTRIC COMPANY, a California corporation, hereinafter called “**PG&E**”, and JEFFREY McADAMS, an individual, hereinafter called “**Owner.**”

RECITALS

A. Owner is the fee title owner of certain real property within the City of Lemoore, County of Kings, State of California, (hereinafter, the “**Property**”) described as follows:

(Assessor’s Parcel Number 021-370-67)

Lot 60 of Windsor Court, Tract No. 616, as said lot is shown on the map filed for record in Book 14 of Licensed Survey Plats at page 68, Kings County Records; excepting therefrom the northerly 4.50 feet of said lot.

B. PG&E is the owner of a certain right of way and easement (the "Easement") for the transmission and distribution of electric energy and for all other purposes connected therewith, as more specifically set forth in the deed dated September 29, 1952 (the "Deed") and recorded in Book 538 of Official Records at page 435, Kings County Records, a portion of which encumbers the Property. The portion of the Property encumbered by the Easement is hereinafter referred to as the "Easement Area." The Deed provides that the grantor, and grantor's successors "shall not erect or construct any building or other structure, or drill or operate any well, within said strip."

C. PG&E and Owner's predecessor-in-interest entered into a Consent Agreement dated September 17, 1990 (the "Consent Agreement") and recorded as Document No. 9017745, Kings County Official Records on November 15, 1990, whereby PG&E consented to the construction of certain improvements on the area encumbered by the Easement, including but not limited to, roads, a sanitary sewer main, lighting, fences and gates. The Consent Agreement prohibits various activities, including, but not limited to, the construction of "buildings, structures, mobile homes, sheds, awnings, canopies, carports, swimming pools or spas with related appurtenances" within the Easement Area.

D. Owner has requested that PG&E grant permission for the installation, maintenance and use of a swimming pool on the Property within the Easement Area. PG&E is willing to amend the Consent Agreement to allow such installation, maintenance and use on the terms and subject to the conditions set forth herein.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Owner and PG&E hereby agree as follows:

1. Use of Defined Terms; Recitals.

(a) Definitions. Unless otherwise defined herein or unless the context clearly requires otherwise, all capitalized terms used herein shall have the defined meanings ascribed to them in the Consent Agreement.

(b) Recitals. The provisions of the Recitals above are fully incorporated herein by this reference.

2. Consent. In regard to the Property only, notwithstanding the prohibition in the Deed and Section 17 of the Consent Agreement, Owner shall have the right to install, maintain and use a swimming pool, as shown on the map labeled EXHIBIT A, attached hereto and

- made a part hereof, on the Property within the Easement Area upon and subject to the terms and conditions set forth in this Amendment.
3. Governmental Approvals. This Amendment shall not become effective, notwithstanding that it may have been executed and delivered by the parties, and Owner shall not commence construction or other activities hereunder, unless and until the California Public Utilities Commission (the "**CPUC**") approves this Amendment by an order which is final, unconditional and unappealable (including exhaustion of all administrative appeals or remedies before the CPUC), and the terms and conditions of such CPUC approval are satisfactory to PG&E in its sole and absolute discretion. Owner further acknowledges and agrees that PG&E makes no representation or warranty regarding the prospects for CPUC approval, and Owner hereby waives all Claims against PG&E which may arise out of the need for such CPUC approval or the failure of the CPUC to grant such approval. This Amendment is made subject to all the provisions of such approval, as more particularly set forth in CPUC Decision D-[**insert decision number**] (Application No. [**Insert application number**]), in like manner as though said provisions were set forth in full herein.
4. **Termination; Restoration.** PG&E may terminate Owner's rights to install, maintain and use a swimming pool under this Amendment, at any time, upon one hundred eighty (180) day written notice to the Owner, if PG&E, in its sole and absolute discretion, should determine that Owner's use of the Easement Area for a swimming pool is inconsistent with PG&E's operational needs in the future, or in any way interferes with, impairs or otherwise impedes PG&E's full use of facilities installed or that may be installed by PG&E in the vicinity of the Easement Area. Upon such termination, Owner, at Owner's sole cost and expense, shall remove the swimming pool and shall repair and restore the Easement Area as nearly as possible to the condition that existed prior to the installation of said swimming pool. Owner shall pay the entire cost of such removal and restoration, and PG&E shall have no liability for any costs caused by or related to any such termination. If Owner fails to remove the swimming pool or fails to repair or restore the Property within said one hundred eighty (180) day period, PG&E may perform such removal, repair or restoration as necessary and recover such costs and expenses therefor from Owner. Owner agrees to allow access to PG&E onto the Property for such purpose, and Owner shall pay all such costs and

expenses within ten (10) days of receipt of an invoice therefor. Owner further acknowledges that PG&E's termination right shall not be affected by any improvements that Owner has made to the Easement Area, regardless of the nature or extent of those improvements. Owner understands and agrees that notwithstanding that Owner may have made a substantial investment installing said swimming pool, Owner shall not be entitled to any compensation whatsoever for the termination of Owner's rights to install, maintain and use a swimming pool under this Amendment by PG&E. (Owner to initial here _____, _____).

5. Indemnification; Release; Statutory Waiver.

(a) Indemnification. Owner shall, to the maximum extent permitted by law, indemnify, protect, defend and hold harmless PG&E, its parent corporation, subsidiaries and affiliates, and their respective officers, managers, directors, representatives, agents, employees, transferees, successors and assigns (each, an "Indemnatee" and collectively, "Indemnitees") from and against all claims, losses (including, but not limited to, diminution in value), actions, demands, damages, costs, expenses (including, but not limited to, experts fees and reasonable attorneys' fees and costs) and liabilities of whatever kind or nature (collectively, "Claims"), which arise from or are in any way connected with the occupancy or use of the Easement Area by Owner or Owner's contractors, agents, or invitees, or the exercise by Owner of its rights hereunder, or the performance of, or failure to perform, Owner's duties under this Amendment, including, but not limited to, Claims arising out of: (1) injury to or death of persons, including but not limited to employees of PG&E; (2) injury to property or other interest of PG&E, Owner or any third party; (3) violation of any applicable federal, state, or local laws, statutes, regulations, or ordinances, including all legal requirements relating to human health or the environment, and including any liability which may be imposed by law or regulation without regard to fault; excepting only with respect to any Indemnatee, any Claim arising from the sole, active negligence or willful misconduct of such Indemnatee. In the event any action or proceeding is brought against any Indemnatee for any Claim against which Owner is obligated to indemnify or provide a defense hereunder, Owner upon written notice from PG&E shall defend such action or proceeding at Owner's sole expense by counsel approved by PG&E, which approval shall not be unreasonably withheld, conditioned or delayed.

(b) Release. Owner accepts all risk relating to its occupancy and use of the Easement Area. PG&E shall not be liable to Owner for, and Owner hereby

waives, releases, exonerates, discharges and covenants not to sue PG&E and the other Indemnitees from, any and all liability, whether in contract, tort or on any other basis, for any injury, damage, or loss resulting from or attributable to any occurrence on or about the Easement Area, the condition of Easement Area, the use or occupancy of the Easement Area by Owner, or PG&E's operation and maintenance of PG&E's facilities in the vicinity of the Easement Area, except in the case of any Indemnitee, any injury, damage, or loss arising from the sole, active negligence or willful misconduct of such Indemnitee.

(c) Statutory Waiver. Owner acknowledges that it may hereinafter discover facts different from or in addition to those which it now knows or believes to be true with respect to the matters which are the subject of this Amendment, and agrees that this Amendment shall remain in effect in all respects, notwithstanding the discovery of such different or additional facts. In addition, Owner understands and agrees that its agreements and covenants contained in this Amendment extend to all claims of any nature and kind, known or unknown, suspected or unsuspected, based in whole or in part on facts existing in the past or as of the date hereof, and in that regard, Owner acknowledges that it has read, considered and understands the provisions of Section 1542 of the California Civil Code which reads as follows:

Section 1542. General Release

A general release does not extend to claims which a creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

Based upon the advice of its counsel, Owner knowingly and voluntarily waives and relinquishes any and all rights that it may have under Section 1542 as well as under the provisions of all comparable, equivalent, or similar statutes and principles of common law or other decisional law of any and all states of the United States or of the United States. Owner understands and acknowledges the significance and consequences of this waiver and hereby assumes the risk of any injuries, losses or damages which may arise from such waiver.

Owner:

Jeffrey McAdams

6. Compliance with Laws. Owner shall, at its sole cost and expense, promptly comply with all laws, statutes, ordinances, rules, regulations,

requirements or orders of municipal, state, and federal authorities now in force or that may later be in force, with the conditions of any permit, relating to Owner's use or occupancy of the Easement Area; and with any liens, encumbrances, easements, covenants, conditions, restrictions and servitudes (if any) of record, or of which Owner has notice, which may be applicable to the Easement Area regardless of when they become effective, insofar as they relate to the use or occupancy of the Easement Area by Owner.

7. Reserved Rights. PG&E reserves the right to use the Easement Area for such purposes as it may deem necessary or appropriate if, and whenever, in the interest of its service to its patrons or consumers or the public, it shall appear necessary or desirable to do so. Furthermore, PG&E reserves the right to restrict access to the Easement Area if emergency repairs or maintenance are required to PG&E facilities in the vicinity of the Easement Area. Owner further acknowledges that PG&E may have previously granted, and may in the future grant, certain rights in and across the Easement Area to others.
8. Insurance. Prior to the Effective Date of this Amendment, Owner shall procure, and thereafter Owner shall carry and maintain in effect at all times the insurance specified in **Exhibit B**, attached hereto and made a part hereof by this reference, provided that PG&E reserves the right to review and modify from time to time the coverages and limits of coverage required hereunder, as well as the deductibles in effect from time to time (but PG&E agrees that it will not increase required coverage limits more often than once in any five-year period). All insurance shall be written on forms and with insurance carriers acceptable to PG&E. Owner is also responsible for causing its agents, contractors and subcontractors to comply with the insurance requirements of this Amendment at all relevant times.
9. Notice. Any notices or communications hereunder shall be in writing and shall be personally delivered or sent by first class mail, certified or registered, postage prepaid, or sent by national overnight courier, with charges prepaid for next business day delivery, addressed to the addressee party at its address or addresses listed below, or to such other address or addresses for a party as such party may from time to time designate by notice given to the other party. Notices shall be deemed received, if sent by personal delivery upon actual receipt by the party being sent the notice, or on the expiration of three (3) business

days after the date of mailing, or on the following business day if sent
by overnight courier

If to PG&E:

Pacific Gas and Electric Company
Attention: Land Agent
650 "O" Street, 3rd Floor
Fresno, CA 93760-0001

With a copy to:

Pacific Gas and Electric Company
P.O. Box 7442, Mail Code B3OA
San Francisco, California 94120
Attention: Sharon Silverman, Esq.

If to Owner:

Jeffrey McAdams
296 Devon Drive
Lemoore, CA 93245

10. Governing Law. This Amendment shall in all respects be interpreted, enforced, and governed by and under the laws of the State of California.
11. Entire Agreement. This Amendment, together with the Consent Agreement and the Deed, supersedes all previous oral and written agreements between and representations by or on behalf of the parties and constitutes the entire agreement of the parties with respect to the subject matter hereof. This Amendment may not be amended except by a written agreement executed by the parties.
12. Binding Effect. This Amendment and the covenants and agreements contained herein shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective heirs, successors and assigns (subject to the provisions of Section 13 below). No assignment or delegation by Owner, whether by operation of law or otherwise, shall relieve Owner of any of its duties, obligations or liabilities hereunder, in whole or in part. The covenants of Owner hereunder shall run with the land.
13. Assignment. This Amendment and the rights of Owner hereunder are appurtenant to the Property presently owned by Owner and may not be separately assigned, transferred, conveyed or encumbered. Any

purported assignment, transfer, conveyance or encumbrance violating the foregoing condition shall be void and of no effect.

14. Attorneys' Fees. Should either party bring an action against the other party, by reason of or alleging the failure of the other party with respect to any or all of its obligations hereunder, whether for declaratory or other relief, then the party which prevails in such action shall be entitled to its reasonable attorneys' fees (of both in-house and outside counsel) and expenses related to such action, in addition to all other recovery or relief. A party shall be deemed to have prevailed in any such action (without limiting the generality of the foregoing) if such action is dismissed upon the payment by the other party of the sums allegedly due or the performance of obligations allegedly not complied with, or if such party obtains substantially the relief sought by it in the action, irrespective of whether such action is prosecuted to judgment. Attorneys' fees shall include, without limitation, fees incurred in discovery, contempt proceedings and bankruptcy litigation, and in any appellate proceeding. The non-prevailing party shall also pay the attorney's fees and costs incurred by the prevailing party in any post-judgment proceedings to collect and enforce the judgment. The covenant in the preceding sentence is separate and several and shall survive the merger of this provision into any judgment on this Amendment or the Consent Agreement. For purposes hereof, the reasonable fees of PG&E's in-house attorneys who perform services in connection with any such action shall be recoverable, and shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the relevant subject matter area of the law, in law firms in the City of San Francisco with approximately the same number of attorneys as are employed by PG&E's Law Department.
15. Survival of Obligations. Owner's obligations under Sections 4 and 5 of this Amendment, and all representations, warranties, indemnities or other provisions which by their nature survive termination shall survive the exercise of PG&E's termination rights pursuant to Section 4 of this Amendment.
16. No Waiver. No waiver with respect to any provision of this Amendment shall be effective unless in writing and signed by the party against whom it is asserted. No waiver of any provision of this Amendment by a party shall be construed as a waiver of any

- subsequent breach or failure of the same term or condition, or as a waiver of any other provision of this Amendment.
17. Captions. The captions in this Amendment are for reference only and shall in no way define or interpret any provision hereof.
18. Time. Except as otherwise expressly provided herein, the parties agree that as to any obligation or action to be performed hereunder, time is of the essence.
19. Severability. If any provision of this Amendment shall be invalid or unenforceable, the remainder of this Amendment shall not be affected thereby, and each provision of this Amendment shall be valid and enforced to the full extent permitted by law, provided the material provisions of this Amendment can be determined and effectuated.
20. Counterparts. This Amendment may be executed in identical counterpart copies, each of which shall be an original, but all of which taken together shall constitute one and the same agreement.
21. **WAIVER OF JURY TRIAL; VENUE. PG&E AND OWNER EACH HEREBY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER PARTY AGAINST THE OTHER ON ANY MATTER WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AMENDMENT, INCLUDING ANY CLAIM OF INJURY OR DAMAGE. PG&E AND OWNER ALSO AGREE THAT THE VENUE OF ANY SUCH ACTION, PROCEEDING OR COUNTERCLAIM SHALL BE IN THE COUNTY OF SAN FRANCISCO, CALIFORNIA. THE COVENANTS OF THE PARTIES CONTAINED IN THIS SECTION 21 SHALL SURVIVE THE TERMINATION OF THE CONSENT AGREEMENT OR THIS AMENDMENT.**
22. Recording. Owner hereby consents and agrees to the recording by PG&E of this Amendment against the Property. Owner agrees to sign any additional documents reasonably required to complete such recording.
23. Other Documents. Each party agrees to sign any additional documents or permit applications which may be reasonably required to effectuate the purpose of this Amendment; provided, however, that PG&E will not be required to take any action or execute any document that would result in any cost, expense or liability to PG&E.
24. Ratification of Deed and Consent Agreement. Except as modified by this Amendment in regard to the Property, all of the terms, conditions and provisions of the Deed and the Consent Agreement shall remain in

full force and effect and are hereby ratified and confirmed. To the extent the terms of the Deed or the Consent Agreement are inconsistent with this Amendment, the terms of this Amendment shall control.

IN WITNESS WHEREOF, the parties have executed this Amendment as of the day and year first set forth above.

"PG&E"

"Owner"

PACIFIC GAS AND ELECTRIC
COMPANY,
a California corporation

By: _____
Richard A. Gigliotti
Its: Manager, Land Services

JEFFREY McADAMS

NOTE: OWNER TO INITIAL
SECTION 4 AND SIGN SECTION 5

EXHIBIT A
MAP
(see attached)

[Note: This exhibit is not included in Attachment A to this decision.]

EXHIBIT B
INSURANCE REQUIREMENTS

Owner shall procure, carry and maintain in effect throughout the term of this Amendment, in a form and with deductibles acceptable to PG&E and with such insurance companies as are acceptable to PG&E, the following insurance coverages (subject to periodic revision of the required coverage and limits of coverage as provided in this Amendment). Owner is also responsible for the compliance of its contractors and subcontractors with the insurance requirements set forth below, as appropriate, provided that Owner may, in the exercise of its reasonable judgment, permit its contractors and subcontractors to maintain coverages and limits lower than those specified below so long as the coverages and limits required by Owner are commercially reasonable in light of applicable circumstances.

A. Homeowners' Liability

(1) Homeowners' Liability coverage with respect to the Property and the use, occupancy and activities by and on behalf of Owner or Owner's agents, contractors or invitees on or about the Property, against claims for personal injury and property damage, and at least as broad as the Insurance Services Office ("ISO") Homeowners' Liability insurance occurrence policy form, or a substitute form providing equivalent coverage as approved by PG&E. Limits shall not be less than One Million Dollars (\$1,000,000) per occurrence for bodily injury, death and property damage. Defense costs are to be provided as an additional benefit and not included within the limits of liability of the Homeowners' Liability Insurance.

(2) Coverage shall: a) by "Additional Insured" endorsement add as additional insureds PG&E, its directors, officers, agents and employees with respect to liability arising out of Owner's activities, and b) be endorsed to specify that Owner's insurance is primary and that any insurance or self-insurance maintained by PG&E shall not contribute with it.

B. Additional Insurance Provisions

1. Owner shall furnish PG&E with certificates of insurance and endorsements of all required insurance for Owner prior to the Effective Date of this Amendment.

2. The documentation shall state that coverage shall not be canceled except after thirty (30) days prior written notice has been given to PG&E.

3. The documentation must be signed by a person authorized by that insurer to bind coverage on its behalf and shall be submitted to:

Pacific Gas and Electric Company
Insurance Department - B24H
Post Office Box 770000
San Francisco, CA 94177

A copy of all such insurance documents shall be sent to PG&E's Insurance Department, with a copy to the Land Services Department, at the address set forth under Notices in this Amendment.

4. PG&E may inspect the original policies or require complete certified copies, at any time.

5. Upon request, Owner shall furnish PG&E the same evidence of insurance for its agents or contractors as PG&E requires of Owner.

6. All insurance required under this Amendment shall be effected under valid enforceable policies issued by insurers of recognized responsibility and licensed to do business in the State of California.

**CERTIFICATE OF ACKNOWLEDGMENT
OF NOTARY PUBLIC**

STATE OF _____)
) ss.
COUNTY OF _____)

On _____, _____, before me, the undersigned, personally appeared _____, personally known to me (or 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.
WITNESS my hand and official seal.

Signature (Seal)

**CERTIFICATE OF ACKNOWLEDGMENT
OF NOTARY PUBLIC**

STATE OF _____)
)ss.
COUNTY OF _____)

On _____, _____, before me, the undersigned, personally appeared _____, personally known to me (or 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.
WITNESS my hand and official seal.

Signature (Seal)