

Office of the City Attorney
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April 28, 2010

The Friends of T.J. Martin & Jeffrey Fontana Parks
c/o Mr. Russell Petruzzelli
5843 Burchell Avenue
San José, CA 95120

**Re: PG&E Proposal to Remove Trees from T.J. Martin and
Fontana Parks**

Dear Mr. Petruzzelli:

This letter contains our response to the letters that we have received from you regarding PG&E's proposal to remove trees from T.J. Martin and Fontana Parks, to provide safety clearance under the power lines that cross the parks.

After several community meetings, PG&E has significantly reduced the number of trees that it proposes to cut. PG&E representatives told Councilmember Pyle, City staff and your representatives in a meeting on Monday, April 5, that PG&E intends to remove only 14 trees this spring and to trim 4 additional trees. PG&E representatives also said that PG&E will provide funding of \$75 for each tree to be removed and also to provide additional funding of \$75 for some number of additional tree plantings (to be determined) – to try to minimize the visual impacts of future tree removals. PG&E's tree removal plan for next year is unknown and would depend upon a review of the circumstances at the time.

We have reviewed your concerns, the state and federal guidelines, and the current agreement with PG&E. It is our recommendation at this time, that the City staff cooperate with PG&E to allow PG&E to take the steps necessary to implement its current plan to remove 14 trees and trim an additional 4 trees.

We have also recommended to the City that the City document, in writing, the representations PG&E made to the City, as follows: (i) PG&E will provide \$75 to Our City Forest to be used for tree replantings to replace each tree removed from the parks,

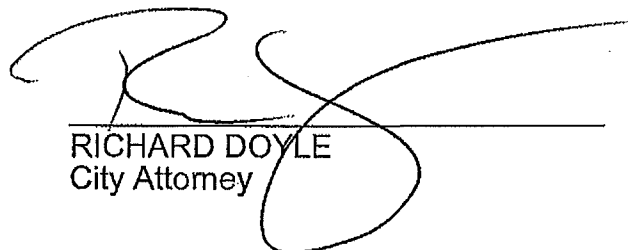
with some additional funding to plant trees in anticipation of future tree removals; (ii) PG&E will continue to consider the impacts to the parks in making its determination of which trees must be removed; (iii) PG&E will keep the City and the community informed when PG&E determines which trees should be removed or trimmed in the future in these parks; and (iv) PG&E will comply with CEQA and all laws, rules and regulations governing the impact to wildlife by tree removals, including laws related to migratory bird habitat.

While the City has an agreement with PG&E from 1987 which allows the City to place the two parks under the power lines, the agreement includes an indemnity from City to PG&E. If the City unreasonably prevented PG&E from removing trees that it feels must be removed, and thereafter an outage occurs or there is damage or an injury caused by one of those trees, the City could face liability.

Furthermore, PG&E is regulated by state and federal agencies, and is obligated to comply with both state and federal regulations in controlling vegetation growth that might cause power outages or create public safety risks. One of the power lines over the parks is a high voltage (230kV) line which apparently provides power to a substantial portion of California and the west coast. If a tree interacting with the 230kV line causes a power outage, NERC could impose a penalty on PG&E. The Federal Energy Regulatory Commission (FERC) created the National Electric Reliability Corporation (NERC) several years ago in order to improve reliability of the bulk electrical distribution in the United States. NERC has imposed penalties on utilities that well exceed \$100,000 and even exceed \$1,000,000, depending upon the circumstances.

For all of these reasons, it is our current advice that the City continue to cooperate with PG&E. We appreciate your interest in this matter and for bringing these issues to our attention.

Sincerely,



RICHARD DOYLE
City Attorney

cc: Councilmember Pyle
Albert Balagso, PRNS Director