



City of Lafayette
Staff Report
City Council

Meeting Date: May 26, 2020
Staff: Greg Wolff, Planning Director
Mike Moran, Public Works & Engineering Director
Mala Subramanian, City Attorney
Subject: Update on PG&E's EVM Program

Background

Marcos Montes, Manager of Integrated Public Affairs at PG&E, presented to the City Council on April 13, 2020, covering:

- St. Mary's Road pipeline replacement project scheduled for summer 2020
- System hardening, consisting of pole and wire replacement, on St. Mary's Road
- Routine Vegetation Management (VM) trimming vegetation to maintain clearance to electrical conductors
- Enhanced Vegetation Management (EVM) proposing to remove 79 trees along St. Mary's Road and remove 1 overhanging branch

Staff advised that PG&E submitted materials to the City on April 9, 2020 including a letter stating that the EVM work is preempted from local regulations. The City Attorney's office has completed its review of the letter, discussed below.

Mr. Montes stated that PG&E's enhanced vegetation management work includes addressing vegetation that poses a high potential for wildfire risk in high fire-threat areas. When evaluating hazardous trees that need to be removed for safety, PG&E uses the Tree Assessment Tool (TAT). The TAT was developed by a certified arborist with input from outside experts and assesses different components of a tree's health and risk of falling into PG&E facilities and causing ignitions. The TAT evaluates:

- The overall health of the tree and its limbs;
- The condition of the tree and the surrounding conditions that could cause the tree to fall;
- How likely the tree is to hit the power lines or electric equipment if it falls;
- The weight distribution of the tree or tree limb that is near a power line;
- The possible damage or harm that could result from the tree falling;
- And the likelihood that the tree could cause an ignition or outage during fire season.

In a phone call with Planning staff following the April 13, 2020 City Council meeting, Mr. Marcos reiterated that PG&E's enhanced vegetation management work reviewed approximately **191** trees along St. Mary's Road and Moraga Road in Lafayette as follows.

St. Mary's Road:

79 hazard trees that need to be removed for safety,
1 tree that requires the removal of an overhanging branch

Moraga Road:

62 hazard trees that need to be removed for safety
10 trees that require the removal of overhanging branches

Total

39 trees will remain untouched and will be monitored

<u>Count</u>	<u>Location</u>	<u>Remove/Prune/Leave</u>	
79	St Mary's	Remove	
1	St Mary's	Prune	
62	Moraga Rd	Remove	
10	Moraga Rd	Prune	
39	Unknown	Leave	
<hr/>			
191	Total		
141	Total	remove	74%
11	Total	prune	6%
39	Total	leave	20%

PG&E has provided the location, species, size, location and conclusion for each tree in a spreadsheet provided to the City.

	A	B	C	D	E	F	G	H	I	J	K
1	2020 PG&E EVM TREE WORK FOR CITY OF LAFAYETTE ROW (Rossmoor 1108)										
2	WAYPT	Latitude	Longitude	Veg Point #	DBH	HT	SPECIES	TREE TYPE	TRIM TYPE	Riparian?	Road
3	1	37.87398936	-122.1254694	VP_649219	25	70	Coast Live Oak	Hazard Tree	Remove	No	Moraga Rd
4	2	37.87434519	-122.1262013	VP_649289	40	150	Eucalyptus	Hazard Tree	Remove	No	Moraga Rd
5	3	37.87433262	-122.1262117	VP_649292	25	125	Eucalyptus	Hazard Tree	Remove	No	Moraga Rd
6	4	37.87405146	-122.1259225	VP_649302	20	50	Monterey Pine	Hazard Tree	Remove	No	Moraga Rd
7	5	37.87406367	-122.1257378	VP_649310	12	20	Coast Live Oak	Hazard Tree	Remove	No	Moraga Rd
8	6	37.87400376	-122.1256144	VP_649322	24	65	Valley Oak	Hazard Tree	Remove	No	Moraga Rd
9	7	37.88077216	-122.1215149	VP_651759	42	50	Coast Live Oak	Hazard Tree	Remove	No	Moraga Rd

It was clear to staff from the City Council's discussion on April 13, 2020 that the City Council was seeking the background information on why each tree needed to be removed, i.e. an arborist report or the Tree Assessment Tool as applied to the subject trees. To date, PG&E has not provided:

- Generic TAT as a rubric for evaluating trees
- Evaluation of the 191 trees and scoring or rationale for their removal
- Physical relationship of trees to electrical conductors (e.g. height vs. distance from conductors, sitting on a slope above, etc.)

Attached you will find correspondence between the City and PG&E on this matter following the April 13, 2020 presentation by Mr. Montes.

Preemption

PG&E has asserted that it is exempt from the City's tree ordinance for its Enhanced Vegetation Management (EVM) program as the ordinance has been preempted by the California Public Utilities Commission (CPUC). CPUC preemption can arise in two ways: (1) implied preemption and (2) express preemption. As a general rule, the CPUC has very broad authority to regulate the construction and placement of investor-owned utility facilities. When the CPUC has adopted a regulation in an area, this authority generally preempts inconsistent local ordinances. (See *San Diego Gas & Elec. Co. v. City of Carlsbad* (1998) 64 Cal.App.4th 785.)

For electric facilities, PG&E has asserted preemption under Public Resources Code section 4291 et seq., CPUC General Order 95, and the CPUC's general responsibility for regulating electric facilities. These regulations do not expressly preempt the City's tree ordinance. The question is whether the regulations impliedly preempt the ordinance.

Of note, General Order 95 probably impliedly preempts the City's tree ordinances because its regulation of tree trimming for electric facilities has been interpreted very broadly as granting the CPUC exclusive jurisdiction in this area. (See generally *Sarale v. PG&E* (2010) 189 Cal.App.4th 225 .) Based on this, we do not believe the City's tree ordinance applies to the EVM program.

PG&E's Proposed Schedule for Work on St. Mary's Road

The City has already issued an encroachment permit to PG&E for their pipeline replacement project. In addition to sharing information about this project at the April 13th Council meeting, PG&E has also sent mailers to residents in the vicinity of the St. Mary's Road project, shared information with the Town of Moraga, and is planning to have a virtual open house, or public information meeting, for the project May 28th. They plan to start work on the pipeline replacement on June 1st, complete it by August 14th, and will follow the Council-directed Monday through Friday 7 a.m. to 6 p.m. schedule.

The City has not yet issued permits for the enhanced vegetation management work or the system hardening work. However, PG&E's hope is that they will also start both of these projects this June so that most, if not all, of the work may be completed this summer. The City has already informed PG&E that we are planning a resurfacing project for Moraga Road for the summer of 2021 so we will not likely allow them to work on St. Mary's Road or Moraga Road (a major detour route when St. Mary's Road is closed) next summer. Therefore, it will be imperative that they complete their mandated work on both of these arterial routes before next summer. Staff will issue encroachment permits for the added projects on St. Mary's Road, the working days and hours will mirror those for the pipeline replacement project, and PG&E will share information about all three projects at their open house event. It should be noted that if PG&E is not able to complete all work by the time schools resume normal sessions (particularly Burton Valley Elementary, Campolindo High School, and St. Mary's College) then working hours will be reduced to help accommodate the morning and afternoon commutes. Typically, those restricted hours are 9 a.m. to 2:30 p.m.

Encroachment Permit

Based on the discussion above regarding preemption and schedule, Public Works & Engineering staff will proceed with issuance of encroachment permits for the EVM program and system hardening.

Recommendation

Receive and file.

Attachments

Letter from Mayor Anderson to Marco Montes dated April 29, 2020

Letter from Marcos Montes to Mayor Anderson dated May 5, 2020



City Council

Mike Anderson, Mayor
Susan Candell, Vice Mayor
Steven Bliss, Council Member
Cameron Burks, Council Member
Teresa Gerringer, Council Member

April 29, 2020

Marcos Montes
PG&E
77 Beale Street
San Francisco CA, 94105
marcos.montes@pge.com
(via E-Mail and USPS)

Re: Misleading statement to the Lafayette City Council about Status of Tree Removal Project
on St. Mary's Road

Dear Mr. Montes,

At the April 13, 2020 Regular meeting of the Lafayette City Council, you made a presentation on three PG&E projects proposed for implementation this summer, if allowed by COVID-19 social distancing requirements. My concern is your response to my request for information related to the rationale used to determine the 79 trees that would be removed for the improvement of the electrical lines and poles along St. Mary's Road, and to reduce wildfire ignition risk. In response to my request for the re-marking of the trees to be removed, along with their physical numbering coordinated with a list identifying each tree and the reason for its removal, your response was an agreement to re-mark the trees and that PG&E data on each of the trees had already been submitted to City staff. After recently requesting an update from staff on the schedule for the re-marking of the trees, it was revealed to me that although PG&E had submitted data, it did not contain the requested assessment and reason for why each of these trees was selected for removal.

This is a clear example of why the credibility of PG&E has fallen to such low regard. Which of course leads me to wonder what other untruths are we being told? The trust is broken, that may not bother you, but it is very unsettling for me.

I was informed by staff that you required a written request from me to provide the previously requested assessment of each tree and the reason for its removal. Here is that request. I expect to receive the information supporting the removal of the trees prior to any action on this project by PG&E.

/s/
Mike Anderson
Mayor

C: City Council • Niroop K. Srivatsa • Mala Subramanian • Jonathan Fox • CPUC: Naveed Paydar,
Terrence Eng • PG&E: Claudia Luna, Tom Guarino, Ricardo Chacon, Joshua Levenberg, Matthew
McLane, Vic Baker

17545.001 4831-1072-3513.2

3675 Mount Diablo Boulevard, Suite 210, Lafayette, CA 94549
Phone: 925.284.1968 Fax: 925.284.3169
www.ci.lafayette.ca.us



Pacific Gas and Electric Company
1850 Gateway Blvd
Concord, CA 94520

May 5, 2020

Honorable Mike Anderson, Mayor
3675 Mount Diablo Blvd., #210
Lafayette, California 94549

Subject: Enhanced Vegetation Management Work

Dear Mayor Anderson,

Thank you again for inviting Pacific Gas and Electric Company to attend the April 13 City Council Meeting and for your follow-up letter regarding additional information requested. In response to your April 29 letter, I want to address your concern regarding the information that Pacific Gas and Electric Company (PG&E) has provided in response to your requests, and to outline next steps. We appreciate the City's cooperation on this important wildfire safety work.

Information Provided to Date

We recognize that the City and some members of the community may have questions about our work, and we appreciate the opportunity for dialogue. To date, we have provided Planning and Building Director Greg Wolff and the City of Lafayette with the following information:

- **February 5:** PG&E met with Lafayette city staff to provide an overview of PG&E's anticipated wildfire mitigation and public safety-related Enhanced Vegetation Management program (EVM). PG&E provided a spreadsheet and KMZ file (useable in Google Earth) identifying the location of each hazard tree that needed to be removed and each tree that needed to be trimmed in accordance with the evaluation PG&E performed on each tree using PG&E's Tree Assessment Tool (TAT).
- **March 27:** PG&E provided the City with another KMZ file, this time identifying each of the trees PG&E evaluated in the selected areas of Moraga Road and St. Mary's Road—in high fire threat areas—to illustrate the selective process of identifying hazardous trees slated for removal vs. those slated for retention.
- **April 9:** PG&E provided a letter to the City with information regarding the CPUC's exclusive jurisdiction over PG&E's vegetation management work. To date, we have not received a response from the City.
- **April 13:** PG&E presented to the Lafayette City Council regarding the important gas and electric safety work on St. Mary's Road, including the scope and timing of the Enhanced Vegetation Management work PG&E previously previewed for the City in February and March.
- **April 16:** PG&E informed the City that PG&E is unable to provide an arborist report for each tree it evaluated, which had been requested by the City Planning Director on behalf of the Mayor. PG&E reiterated that the TAT was developed by certified arborists with input from external

experts and provided an overview of how it works and requires a rigorous analysis of each tree. PG&E also provided reassurance that all of the important safety work in Lafayette will be overseen by a certified arborist.

- **April 20:** PG&E proactively reached out to Councilmember Gerringer and the City Clerk's office to request the public comments and questions stemming from the April 13 City Council Meeting. We have since received these questions and are currently working on responses.
- **April 27:** PG&E provided an updated spreadsheet and KMZ file that included every tree inventoried and evaluated as part of PG&E's EVM program, regardless of whether work is required. Reinforcing all of the figures PG&E had already provided (as well as providing additional information about trees that were evaluated but that do not need to be worked), the spreadsheet indicates that PG&E evaluated 372 trees total and identified 141 hazard trees that need to be removed, 11 trees that require trimming and 220 trees that need no work. In that email communication, PG&E also reiterated that as a standard business practice, it does not provide the Tree Assessment Tool (TAT) or its tree-by-tree results to third parties.

As I stated in my April 13 remarks before the City Council, the information requested during the Council Meeting had previously been provided to city staff. In addition, per the Council's request, PG&E re-marked the trees identified for work in the field with yellow paint on April 27.

Next Steps

At this point, PG&E has provided the City with all of the requested information that we are able to share. Though we cannot provide you with our detailed arborist report, we have provided a very detailed plan that specifically identifies each of the trees, their location, the extent to which they require work to maintain public safety and to reduce wildfire risk and the proposed timing of our work. Please let us know if there is any additional information you might need, as we remain committed to answering your questions. With respect to the questions received from the community through Councilmember Gerringer, we will provide a comprehensive response and will communicate it to Councilmember Gerringer to distribute in the coming weeks.

The safety of the Lafayette community is paramount, and we need to move this work forward given wildfire season is fast approaching. PG&E kindly requests a response from the City on the review of legal counsel's letter dated April 9, 2020 regarding the CPUC's preemption of vegetation management work, since we intend to submit our application for the encroachment permit later this week. We are eager to complete this necessary public safety work in earnest before we get too far into the next wildfire season.

Thank you, again, for your letter and for your dedicated engagement on behalf of the City of Lafayette. We look forward to hearing from you.

Sincerely,



Marcos Montes

Manager, Public Affairs

Pacific Gas and Electric Company

707-495-0994

marcos.montes@pge.com

CC: Greg Wolf, Planning & Building Director
Niroop Srivatsa, City Manager
Jonathan Fox, Assistant Planner
Naveed Paydar, CPUC
Terrence Eng, CPUC
Tom Guarino, PG&E
Ricardo Chacon, PG&E
Joshua Levenberg, PG&E
Matt McLane, PG&E
Vic Baker, PG&E