



San Bernardino County

Legislation Text

File #: 5242, Agenda Item #: 52

REPORT/RECOMMENDATION TO THE BOARD OF SUPERVISORS OF SAN BERNARDINO COUNTY AND RECORD OF ACTION

December 7, 2021

FROM

TERRY W. THOMPSON, Director, Real Estate Services Department

SUBJECT

Conveyance of Easement Interest to the Southern California Edison Company

RECOMMENDATION(S)

1. Find and declare that the conveyance of an easement over a portion of County-owned property (portion of Assessor Parcel Number 0210-181-45), totaling 360 square feet, at Cucamonga-Guasti Regional Park, to Southern California Edison Company for electrical utility purposes is in the public interest, serves a County purpose, and will not substantially conflict or interfere with the use of the property by the County, and authorizing the conveyance by Grant of Easement to Southern California Edison Company in accordance with Government Code Section 25526.6, at no cost.
 2. Authorize the Chairman of the Board of Supervisors to execute the Grant of Easement to Southern California Edison Company to convey said easement.
 3. Authorize the Director of the Real Estate Services Department to execute any other documents necessary to complete this transaction, subject to County Counsel review.
- (Presenter: Terry W. Thompson, Director, 387-5000)

COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES

Ensure Development of a Well-Planned, Balanced, and Sustainable County.

FINANCIAL IMPACT

Approval of this item will not result in the use of Discretionary General Funding (Net County Cost). Southern California Edison Company (Edison) will be responsible for the maintenance of the easement area and the operation and maintenance of Edison's improvements thereon. The Grant of Easement area is located on County fee-owned property that is leased to Topgolf USA SBD, LLC (Topgolf).

BACKGROUND INFORMATION

The recommended actions will authorize the conveyance of an easement over a portion of County-owned property (Assessor Parcel Number (APN) 0210-181-45), totaling 360 square feet, at Cucamonga-Guasti Regional Park (Park) to Edison for electrical utility purposes to serve a portion of County fee-owned property that is leased to Topgolf for the development and operations of Topgolf's future golf entertainment facility in the City of Ontario (Project).

On April 30, 2019 (Item No. 63), the Board of Supervisors (Board) approved Ground Lease Agreement No. 19-279 (Lease) with Topgolf for approximately 13.70 acres of vacant land located at the southeast corner of

Archibald Avenue and Fourth Street in the City of Ontario, comprising a portion of the Park, for Topgolf's Project. After approval of the Lease, Topgolf began investigations under the due diligence provisions of the Lease, which was completed on March 20, 2020 and triggered the start of the construction period with rent to commence on the earlier of Topgolf's business opening or 365 days after March 20, 2020, however, as a result of the statewide lockdown in March of 2020 due to the COVID-19 pandemic, the construction did not commence. This lockdown constituted a force majeure event under the Lease lasting until January of 2021. Pursuant to the authority delegated by the Board due to the COVID-19 pandemic, the Chief Executive Officer executed Amendment No. 1 to the Lease with Topgolf on January 29, 2021 to confirm the termination of the due diligence period as of March 20, 2020, memorialize the force majeure delay period as lasting from March 21, 2020 through January 25, 2021, reset the rent commencement date to occur on the earlier of Topgolf's business opening or 365 days after January 25, 2021, and set the performance bond, which is required by the lease, in the amount of \$1,125,609. Topgolf broke ground shortly after execution of Amendment No. 1.

On May 18, 2021 (Item No. 66), the Board approved a Special Sewer Connection Agreement with the City of Ontario (City) and Topgolf and the conveyance of an Easement Deed of Right-of-Way Dedication to the City, and authorized the Director of the Department of Public Works to execute a Covenant and Agreement Regarding Water Quality Management Plan and Stormwater Best Management Practices Transfer, Access, and Maintenance agreement with Topgolf. The Board also ratified Amendment No. 1 to the Lease at that meeting (Item No. 34).

On November 18, 2021, a Topgolf project manager contacted the Real Estate Services Department (RESD) and explained that Edison will require an easement from the County in order to commence certain utility work that is needed for Topgolf to maintain their development schedule. RESD reviewed Edison's request for the easement and determined it is in the public interest, serves a County purpose, and does not substantially conflict nor interfere with the operation of the Park. The easement will be conveyed to Edison at no cost pursuant to Government Code section 25526.6 and the finding in Recommendation No. 1. The Easement is in the public interest and serves a County purpose due to the benefits it will provide to the County of facilitating public utility infrastructure for a portion of County fee-owned property at the Park and directly relating to Ground Lease Agreement No. 19-279.

Additionally, approval of this item will authorize the RESD Director to execute other documents necessary to complete this transaction, subject to County Counsel review. The RESD Director will not be authorized to execute any documents that would bind the County to any actions not contemplated by, or arising from, the transaction which is the subject of these recommendations.

In accordance with the California Environmental Quality Act (CEQA) and the CEQA Guidelines, the County as Lead Agency prepared an Initial Study/Mitigated Negative Declaration that identified and evaluated the environmental impacts of the Project. The Notice of Determination was posted on April 30, 2019 (Item No. 63). The Easement is a component of the approved Project and no additional review under CEQA is required.

PROCUREMENT

The County can convey the easement interests to Edison in accordance with section 25526.6 of the Government Code.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Scott Runyan, Supervising Deputy County Counsel, 387-5455) on December 2, 2021; Finance (Carl Lofton, Administrative Analyst, 387-5404) on December 1, 2021; and County Finance and Administration (Diana Atkeson, Deputy Executive Officer, 387-5423) on December 1, 2021.

(BJO: 659-4676)