

RESOLUTION NUMBER R. 301813

DATE OF FINAL PASSAGE AUG - 7 2006

WHEREAS, Section 8300 et seq. of the California Streets and Highways Code provides a procedure for the summary vacation of public street easements and abandon public service easements by City Council resolution where the easements are no longer required; and

WHEREAS, the affected property owners have requested the vacation of irrevocable offer to dedicate public street and slope easement vacation of the portions of Parcel 10 and 29 of Parcel Map 17922 located at 12608 and 12588 Senda Panacea and the vacation of irrevocable offer to dedicate public street of the portions of Lot 6 and 7 of Map 13309 located at 7994 and 8004 Eclipse Road, to unencumbered their properties; and

WHEREAS, under Charter section 280(a)(2) this resolution is not subject to veto by the Mayor because this matter requires the City Council to act as a quasi-judicial body and where a public hearing was required by law implicating due process rights of individuals affected by the decision and where the Council was required by law to consider evidence at the hearing and to make legal findings based on the evidence presented; and

WHEREAS, the project was found to have no significant impact on the natural environment in a Negative Declaration dated June 10, 2005, according to Public Resources Code Section 21080; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that it adopts the following findings with respect to Public Right-of-Way Vacation No.46295 and Easement Vacation No. 345053:

125.0941 - Findings for Public Right-of-Way Vacation Approval:

- 1. There is no present or prospective public use for the public right-of-way, either for the facility for which it was originally acquired or for any other public use of a like nature that can be anticipated.**

The portions of the public rights-of-way proposed to be vacated have never been utilized as a street and would not provide a logical connection to any other street or property. Therefore, it is not anticipated that the portion of the right-of-way proposed to be vacated would provide a public use of a similar nature.

- 2. The public will benefit from the action through improvised use of the land made available by vacation.**

The abutting property owners would benefit in that the vacation would revert the dedicated portion of the right-of-way back to private ownership. Additionally, allowing the vacation of this portion of right-of-way would reduce City liability.

- 3. The vacation does not adversely affect any applicable land use plan.**

The Rancho Penasquitos Community Plan identifies the areas proposed for the vacations as residential, low-density and the sites are zoned for single-family development. The land would revert to the abutting single-family property owners; therefore, the proposed right-of-way vacations does not adversely impact the recommendations found in the community plan.

- 4. The public facility for which the public right-of-way was originally acquired will not be detrimentally affected by the vacation.**

The California Vehicle Code [2001] defines "Street" is a way or place of whatever nature, publicly maintained and open to the use of the public for purposes of vehicular travel. The areas proposed for the vacations were dedicated as approximately 100-foot length of right-of-way which would have extended Eclipse Place and Via Escalada to adjacent undeveloped properties. Records indicate the dedications occurred as part of the Vista Alegre and Villa Panacea subdivisions and were accepted by the City in 1996. The purpose and intent for which the public right-of-way was originally dedicated no longer is in effect in that the streets have not been improved and there are no future plans to do so. Therefore, the public facility for which the public right-of-way was originally acquired will not be detrimentally affected by the proposed vacation.

125.1040 - Findings for a Public Service Easement Abandonment:

- 1. There is no present or prospective public use for the easement, either for the facility or purpose for which it was originally acquired or for any other public use of a like nature that can be anticipated.**

The portions of the slope easement proposed to be vacated have never been utilized in conjunction with the proposed Irrevocable Offer to Dedicate public street and would not provide a logical connection to any other street or property. Therefore, it is not anticipated that the portion of the right-of-way proposed to be vacated would provide a public use of a similar nature.

- 2. The public will benefit from the action through improvised use of the land made available by the abandonment.**

The abutting property owners would benefit in that the vacation would revert the dedicated portion of the right-of-way back to private ownership. Additionally, allowing the vacation of this portion of right-of-way would reduce City liability.

- 3. The abandonment is consistent any applicable land use plan.**

The Rancho Penasquitos Community Plan identifies the areas proposed for the vacations as residential, low-density and the sites are zoned for single-family development. The land would revert to the abutting single-family property owners; therefore, the proposed right-of-way vacations does not adversely impact the recommendations found in the community plan.

- 4. The public facility for which the easement was originally acquired will not be detrimentally affected by the abandonment or the purpose for which the easement was acquired no longer exists.**

The area proposed for the slope easement abandonment was dedicated in conjunction with the proposed 113-foot length of public street right-of-way which would have extended Via Escalada to the adjacent undeveloped property. Records indicate the easement dedication occurred as part of the Villa Panacea subdivision and was accepted by the City in December 1996. The purpose and intent for which the public easement was originally dedicated no longer is in effect in that the streets have not been improved and there are no future plans to do so. Therefore, the public facility for which the public easement was originally acquired will not be detrimentally affected by the proposed vacation.

BE IT RESOLVED, by the Council of The City of San Diego, as follows:

1. That the portions of Parcel 10 and 29 of Parcel Map 17922 located at 12608 and 12588 Senda Panacea located west of the intersection Senda Panacea and Via Escalada, as

described in the legal description marked as Exhibit "A-1 and A-2," and as more particularly shown on Drawing No. 20432-B, labeled Exhibit "B", on file in the office of the City Clerk as Document No. RR 301813-1 which is by this reference incorporated herein and made a part hereof, is ordered vacated.

2. That the portions of Lot 6 and 7 of Map 13309 located at 7994 and 8004 Eclipse Road located north of the intersection of Eclipse Road and Eclipse Place, as described in the legal description marked as Exhibit "A," and as more particularly shown on Drawing No. 20146-B, labeled Exhibit "B", on file in the office of the City Clerk as Document No. RR- 301813-2 which is by this reference incorporated herein and made a part hereof, is ordered vacated.

3. That the City Clerk shall cause a certified copy of this resolution, along with Exhibits "A" and "B", attested by her under seal, to be recorded in the office of the County Recorder.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By Peter A. Mesich
Peter A. Mesich
Deputy City Attorney

PAM:cfq
07/17/06
Or.Dept:DSD
R-2006-43
MMS#3493

P 301813

Passed by the Council of The City of San Diego on AUG - 7 2006, by the following vote:

Council Members	Yeas	Nays	Not Present	Ineligible
Scott Peters	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Kevin Faulconer	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Toni Atkins	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Anthony Young	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Brian Maienschein	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Donna Frye	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jim Madaffer	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ben Hueso	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage AUG - 7 2006

AUTHENTICATED BY:

(Seal)

JERRY SANDERS

Mayor of The City of San Diego, California.

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California.

By *Debbie Swenson-Cruz*, Deputy

Office of the City Clerk, San Diego, California

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