

(A)

11/17

RESOLUTION NUMBER R- 305424

DATE OF FINAL PASSAGE NOV 17 2009

RESOLUTION OF SUMMARY VACATION OF A SIX-FOOT DRAINAGE EASEMENT BETWEEN PEARL STREET AND MARINE STREET TO UNENCUMBER THE PROPERTY FOR THE HABITERRA PROJECT NO. 136041.

WHEREAS, California Streets and Highways Code section 8320 *et seq.* and San Diego Municipal Code section 125.1001 *et seq.* provide a procedure for the summary vacation of public service easements by City Council resolution; and

WHEREAS, the vacation of a public service easement may be initiated by resolution of the City Council or by petition or request of any person; and

WHEREAS, Marco Sanchez and Enrique Salcedo submitted an application for the vacation of a six-foot drainage easement between Pearl Street and Marine Street parallel to Herschel Avenue to unencumbered the property for development of the Habiterrra Project No. 136041; and

WHEREAS, a public service easement may be summarily vacated if it does not contain public utility facilities or does not contain active public utility facilities that would be affected by the vacation, and if one of the following applies: (1) the easement has not been used for the purpose for which it was dedicated or acquired for 5 consecutive years immediately preceding the proposed abandonment; (2) the date of dedication or acquisition is less than five years and more than one year immediately preceding the proposed abandonment, and the easement has not been used continuously since the date of dedication; or (3) the easement has been superseded by relocation and there are no other public facilities located within the easement; and

WHEREAS, this six-foot drainage easement between Pearl Street and Marine Street may be summarily vacated because it contains no public utility facilities and at the time when the easement vacation is recorded the easement will have been superseded by relocation; and

WHEREAS, the applicants are required by permit and bond to relocate the existing storm drain within the drainage easement to another location within existing public-right-of-way of Herschel Avenue and Pearl Street; 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, a public hearing is required by law implicating due process rights of individuals affected by the decision, and the Council is required by law to consider evidence at the hearing and to make legal findings based on the evidence presented; and

WHEREAS, the matter was set for public hearing on NOV 17 2009, testimony having been heard, evidence having been submitted, and the City Council having fully considered the matter and being fully advised concerning the same; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that with respect to that portion of the six-foot drainage easement between Pearl Street and Marine Street parallel to Herschel Avenue, Drainage Easement No. 652678, the Council finds that:

(a) There is no present or prospective 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 twenty-four inch storm drain pipe will be relocated within the public right-of-way of Herschel Avenue and Pearl Street; thus, the existing easement and existing storm drain pipe will

have no prospective use. The new twenty-four inch storm drain pipe will serve the drainage needs which necessitated the original pipe and easement. There is no other use of a like nature for this specific easement which can be reasonably anticipated.

(b) The public will benefit from the action through improved use of the land made available by the vacation.

Presently, the properties that are encumbered by the drainage easement are limited because the properties may not redevelop or place new buildings over the area of the existing easement. The adopted La Jolla Community Plan designates these sites for a recommended density greater than the existing development. Without the vacation of the existing easement, new buildings may not be placed over the area of the easement. Thus, without the vacation of the easement, the recommended density of the adopted La Jolla Community Plan may not be realized. Without the redevelopment of the property at 7460 Herschel Avenue, three new dwelling units would not be available to increase the housing stock within the City. The public will benefit by the vacation of the easement through the addition of new housing opportunities, the increase in property tax revenue, the improved utilization of urban land and the development of new housing units designed and constructed to current state and local code requirements.

(c) The vacation is consistent with any applicable land use plan.

The adopted La Jolla Community Plan identifies this property for Medium High density Residential development. The abandonment of the drainage easement will facilitate the redevelopment of the site at the density recommended by the adopted La Jolla Community Plan and without the abandonment of the easement the recommended density for the site at 7460 Herschel Avenue as identified by the La Jolla Community Plan would not be realized. For these

reasons the proposed easement abandonment is consistent with the policies and goals of the adopted La Jolla Community Plan.

(d) The public facility for which the easement was originally acquired will not be detrimentally affected by this vacation or the purpose for which it was acquired no longer exists.

The easement was acquired for the purposes of placing and maintaining a public storm drain pipe of twenty-four inches in diameter to serve the drainage needs of the neighborhood. With the relocation of a new twenty-four inch storm drain pipe within the public right-of-way of Herschel Avenue, the easement across private properties at 7444, 7452, and 7460 Herschel Avenue will no longer be necessary. With the relocation of a new twenty-four inch storm drain pipe to the public right-of-way of Herschel Avenue, the drainage needs of the neighborhood will continue to be served and the purpose for which the drainage easement was acquired will be met with the new drain pipe. The existing easement will no longer be a material necessity to meet the drainage needs of the neighborhood.

BE IT FURTHER RESOLVED, that Drainage Easement No. 652678 located at 7444, 7452, and 7460 Herschel Avenue, in connection with Coastal Development Permit No. 472934, Tentative Map Waiver No. 477793, and the Habiteria Project No. 136041, as more particularly described in the legal description marked as Exhibit "A," and shown on Drawing No. 21055-B, marked as Exhibit "B," which are by this reference incorporated herein and made a part hereof, is ordered vacated upon the completion of the conditions of this resolution.

BE IT FURTHER RESOLVED, that said easement vacation is conditioned upon the relocation of the existing twenty-four inch storm drain by the owners/permittees to the satisfaction of the City Engineer, including the City Engineer's inspection and acceptance of all

related work. If this condition is not satisfied by November 17, 2012, then this resolution shall become void and be of no further force or effect.

BE IT FURTHER RESOLVED, that after the City Engineer has determined all conditions of this resolution have been satisfied, the Development Services Department shall record a certified copy of this resolution with attached exhibits, attested by the City Clerk under seal, in the office of the County Recorder.

BE IT FURTHER RESOLVED, that upon recordation the vacation is complete.

APPROVED: JAN I. GOLDSMITH, City Attorney

By



Nina M. Fain
Deputy City Attorney

NMF:js
10/19/2009
Or.Dept:DSD
R-2010-292
MMS #10712

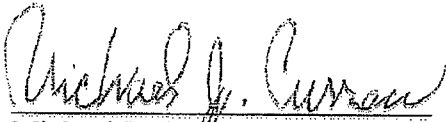
EXHIBIT "A"

EASEMENT VACATION

LEGAL DESCRIPTION

All of that 6 feet wide easement and Right-of-Way in lots 28 through 32 in Block 16 of Center Addition to La Jolla Park according to Map thereof 915 recorded November 17, 1915. Said Easement described in Book 1621, Page 248, recorded April 24, 1929 in the office of the County Recorder of San Diego County, State of California.

Attached hereto is a Drawing No. 21055-B labeled Exhibit "B" and by this reference a part hereof is made.



Michael J. Curran PLS 3163
Licensed Surveyor

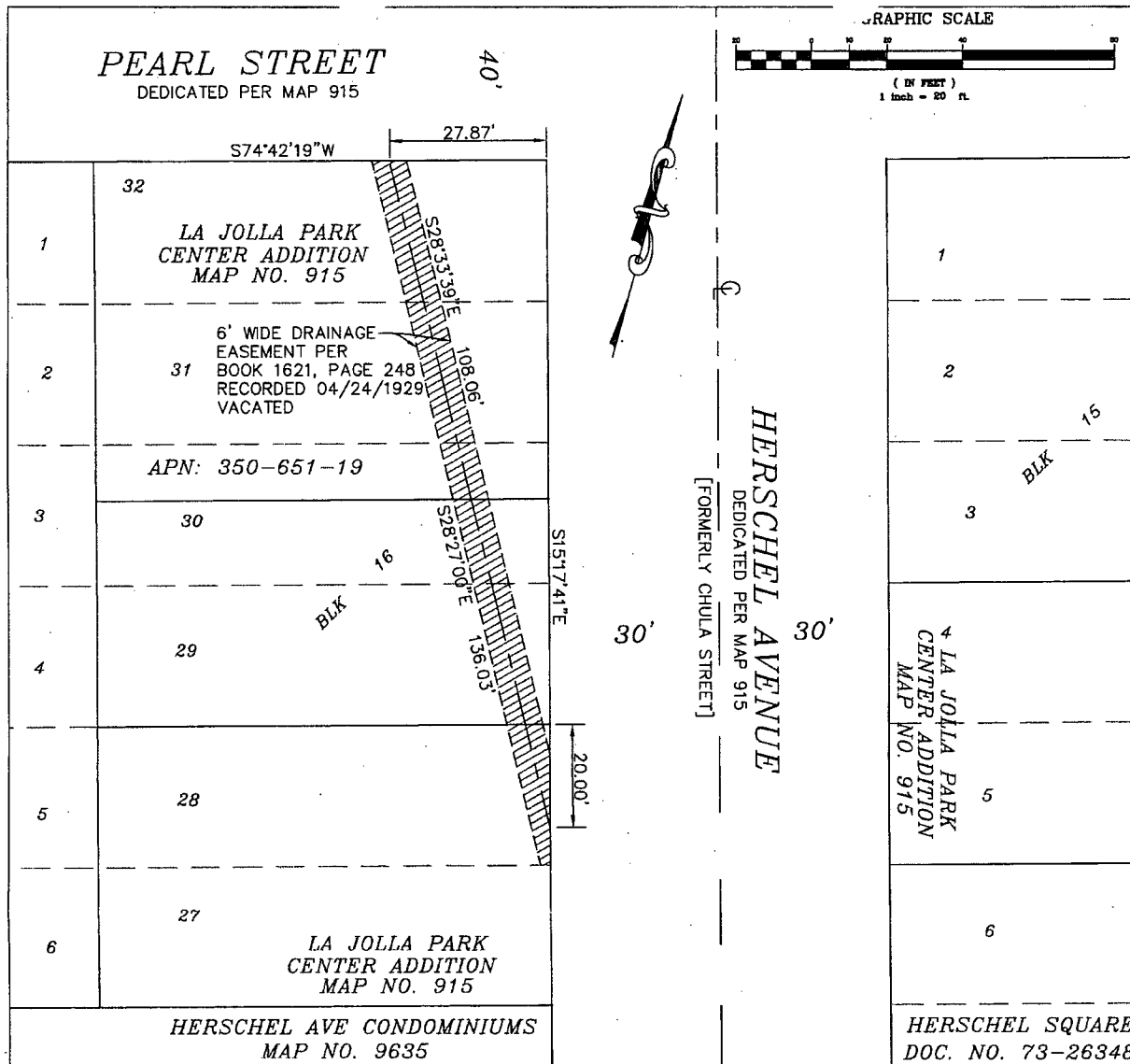
8/5/09

Date

PTS #136041
Dwg 21055-B
J.O. 428154



R- 305424



BASIS OF BEARINGS:
THE BASIS OF BEARINGS FOR THIS MAP IS THE EASTERLY LINE OF CABRILLO AVE PER RECORD OF SURVEY 4096. IE S15°16'20"E.

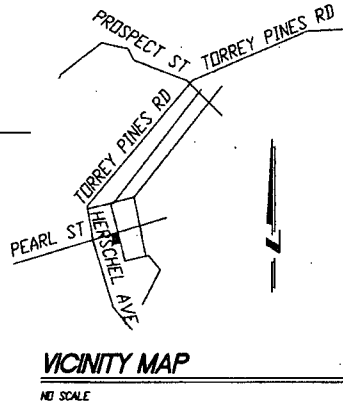
REFERENCE:
CITY DRAWING 1640-B

MICHAEL J. CURREN _____ DATE _____

EASEMENT VACATION

VON REITER GROUP
Civil Engineering Consultants

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san diego, ca 92131
www.vonreiter.com
phone (619) 232-4580
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EASEMENT VACATION - IN LOTS 28 THROUGH 32 IN BLOCK 16 OF CENTER ADDITION TO LA JOLLA PARK

DESCRIPTION	BY	APPROVED	DATE	FILMED
ORIGINAL	VRG			

CITY OF SAN DIEGO, CALIFORNIA
SHEET 1 OF 1 SHEETS

FOR CITY ENGINEER _____ DATE _____

W.D. NO. 428154
P.T.S. NO. 136041

1886-6246
NAD83 COORDINATES

246-1686
LAMBERT COORDINATES

21055-B

R-305424