

RESOLUTION NUMBER R- 310862

DATE OF FINAL PASSAGE DEC 06 2016

A RESOLUTION SUMMARILY VACATING AN OPEN SPACE EASEMENT FOR THE T-MOBILE AVENIDA VENUSTO PROJECT - PROJECT NO. 420129

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 vacation of public service easements by City Council resolution; and

WHEREAS, it is proposed that an Open Space Easement Vacation in Portion of Lot 1 of Parcel 3 of Parcel Map No. 13239, Open Space Easement Vacation No. 1659656, be vacated; and

WHEREAS, Easement Vacation No. 1659656 is located on property owned by Community Association of Bernardo Heights; 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 was required by law implicating due process rights of individuals affected by the decision, and 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 matter was set for public hearing on DEC 06 2016, 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 Open Space Easement Vacation No. 1659656 in Portion of Lot 1 of Parcel 3 of Parcel Map No. 13239, the Council finds that:

- (a) **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 lot is privately owned by the Community Association of Bernardo Heights and designated for Open Space in the Rancho Bernardo Community Plan. The vacation is proposed to accommodate the location of the Wireless Communication Facility (WCF) and the access road associated with Project No. 420129, which totals approximately 0.244 acres of a 12.38-acre site. Currently, the property is vacant with an existing water tank facility located to the northeast and residential uses to the southeast and a future residential care facility to the west. T-Mobile, in conjunction with the Community Association of Bernardo Heights, is requesting that an open space vacation be granted to allow construction of the WCF which will provide additional wireless services to the community. The WCF serves a segment of the public that subscribes to T-Mobile. Additionally, with exception to the WCF, the lot will continue to be preserved as open space consistent with the Rancho Bernardo Community Plan which states that, "All such natural and landscaped areas in the Rancho Bernardo community should remain as open space." The installation and operation of a WCF at this location will have minimal impact to the open space preservation and the easement is proposed on a privately owned lot that has no present or anticipated public use.

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

The open space easement will allow T-Mobile to construct a 60-foot-tall faux eucalyptus tree supporting twelve antennas and install an associated 240-square-foot equipment enclosure. The site will provide T-Mobile wireless coverage to Rancho Bernardo and the surrounding communities, which will benefit the public by improving communications. The existing T-Mobile site currently located within the Avenida Venusto Right-of-Way on a light standard can no longer handle the communication capacity in the area. In an effort to increase the data capacity and meet the subscriber's demand in the area, T-Mobile needs to install a macro site with twelve antennas as currently proposed with this faux tree. Both T-Mobile and the Rancho Bernardo community collaborated to identify this design and location as the most preferred candidate. The WCF is proposed on a vacant lot encumbered by an open space easement and designated for Open Space within the Rancho Bernardo Community Plan. The design of the WCF as a faux tree integrates well into the neighborhood context and will not cause any potential land use or aesthetic impacts. The remainder of the lot will continue to be encumbered with the Open Space Easement. Both the homeowner association and T-Mobile are responsible for maintaining the proposed landscaping, faux tree, the equipment enclosure, and the access road. Additionally, T-Mobile's Justification Analysis demonstrated both a significant gap in coverage and capacity related issues in this area of San Diego. The public will benefit from the vacation by provision of improved wireless coverage to the area once construction of the WCF has been completed.

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

Vacating the open space easement will enable T-Mobile to install a 60-foot-tall mono-eucalyptus tree supporting twelve antennas and 240-square-foot equipment enclosure for the purpose of providing wireless services within the surrounding Rancho Bernardo Community area. The Rancho Bernardo Community Plan designates the project site as Open Space. Furthermore, the Rancho Bernardo Community Plan does not address WCF, but the City of San Diego's General Plan, Section UD-15 requires that visual impacts of these facilities be minimized by concealing them in existing structures or using screening techniques to hide or blend them into the area in which they are proposed. The Plan also calls for these facilities to be designed to be aesthetically pleasing and respectful of the neighborhood context, as the current project is designed.

The vacation is proposed to accommodate the location of the Wireless Communication Facility (WCF) and the access road associated with Project No. 420129, which totals approximately 0.244 acres of a 12.38-acre site. With exception to the WCF, the lot will continue to be preserved as open space consistent with the Rancho Bernardo Community Plan which states that, "All such natural and landscaped areas in the Rancho Bernardo community should remain as open space". As designed, the installation and operation of a WCF at this location will have minimal impact to the open space preservation. The remainder of the lot will continue to be encumbered with the Open Space Easement. Therefore, the proposed open space easement vacation will not adversely affect the applicable land use plan.

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

The open space easement for this lot was originally acquired to comply with the Rancho Bernardo Community plan which states, "All such natural and landscaped areas in the Rancho Bernardo community should remain as open space". The vacation is proposed to accommodate the location of the Wireless Communication Facility (WCF) and the access road associated with Project No. 420129, which totals approximately 0.244 acres of a 12.38-acre site. The installation of the WCF will not detrimentally impact the original intent of the Community Plan since the remainder of the lot will continue to be encumbered with the Open Space Easement. This vacation is only for the installation and the use of the WCF. More importantly, the lot will continue to meet the objective of the easement which is, "to provide for the preservation of natural open space areas throughout the community".

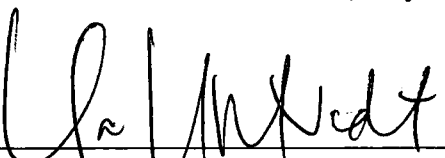
All such natural and landscaped areas in the Rancho Bernardo community will remain and will not be detrimentally affected by the proposed open space vacation. Furthermore, the proposed landscaping associated with this project will be maintained by the Community Association of Bernardo Heights and will complement the natural and visual character of the area.

BE IT FURTHER RESOLVED, that the Open Space Easement Vacation No. 1659656 located within Portion of Lot 1 of Parcel 3 of Parcel Map No. 13239, Rancho Bernardo Community Planning area in connection with Neighborhood Use Permit No. 1659655, as more

particularly described in the legal description marked as Exhibit "A" and shown on Drawing No. 39275-B, marked as Exhibit "B," which are by this reference is incorporated herein and made a part hereof, is ordered vacated

BE IT FURTHER RESOLVED, that 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.

APPROVED: JAN I. GOLDSMITH, City Attorney

By 
Inga B. Lintved
Deputy City Attorney

IBL:mcm
November 14, 2016
Or.Dept: DSD
Doc. No.: 1384107

Attachment: Exhibit A - Legal Description
Exhibit B - Drawing 39275-B

EXHIBIT "A"

LEGAL DESCRIPTION OPEN SPACE EASEMENT VACATION

BEING A VACATION OF PORTIONS OF AN OPEN SPACE EASEMENT GRANTED TO THE CITY OF SAN DIEGO BY BERNARDO HEIGHTS UNIT NO. 15, ACCORDING TO MAP THEROF NO. 11011, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, FILED AUGUST 9, 1984, LYING WITHIN LOT 1 OF SAID MAP NO. 11011.

PARCEL 1:

A STRIP OF LAND 12.00 FEET WIDE, THE CENTERLINE OF WHICH IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID LOT 1, THENCE ALONG THE NORTHEASTERLY LINE OF SAID LOT 1, SOUTH 69°52'00" EAST, 15.00 FEET TO THE TRUE POINT OF BEGINNING; THENCE LEAVING SAID NORTHEASTERLY LINE, SOUTH 20°08'00" WEST, 359.96 FEET; THENCE SOUTH 06°34'16" WEST, 50.34 FEET TO THE BEGINNING OF A TANGENT CURVE, CONCAVE EASTERLY, HAVING A RADIUS OF 75.00 FEET; THENCE SOUTHEASTERLY ALONG SAID CURVE, 72.86 FEET, THROUGH A CENTRAL ANGLE OF 55°39'44"; THENCE TANGENT TO SAID CURVE, SOUTH 49°05'29" EAST, 104.63 FEET; THENCE SOUTH 24°15'54" EAST, 140.20 FEET TO THE BEGINNING OF A TANGENT CURVE, CONCAVE NORTHWESTERLY, HAVING A RADIUS OF 30.00 FEET; THENCE SOUTHERLY AND SOUTHWESTERLY ALONG SAID CURVE, 45.10 FEET, THROUGH A CENTRAL ANGLE OF 86°08'19"; THENCE TANGENT TO SAID CURVE, SOUTH 61°52'26" WEST, 39.25 FEET TO A POINT HEREINAFTER REFERRED TO AS POINT "A".

THE SIDELINES OF SAID STRIP TO JOIN AT THE ANGLE POINTS, AND TO TERMINATE NORTHEASTERLY IN THE NORTHEASTERLY LINE OF SAID LOT 1, AND SOUTHERLY IN A RIGHT ANGLE.

CONTAINS 9,747 SQ. FT., 0.224 ACRES


PARCEL 2:

BEGINNING AT POINT "A", PREVIOUSLY DESCRIBED; THENCE NORTH 28°07'34" WEST, 6.00 FEET TO THE TRUE POINT OF BEGINNING; THENCE CONTINUING NORTH 28°07'34" WEST, 25.00 FEET; THENCE NORTH 61°52'26" EAST, 34.50 FEET; THENCE SOUTH 28°07'34" EAST, 25.00 FEET; THENCE SOUTH 61°52'26" WEST, 34.50 FEET TO THE TRUE POINT OF BEGINNING.

CONTAINS 863 SQ. FT., 0.020 ACRES

ATTACHED HERETO IS A DRAWING NO. 39275-B LABELED EXHIBIT "B" AND BY THIS REFERENCE MADE A PART HEREOF.

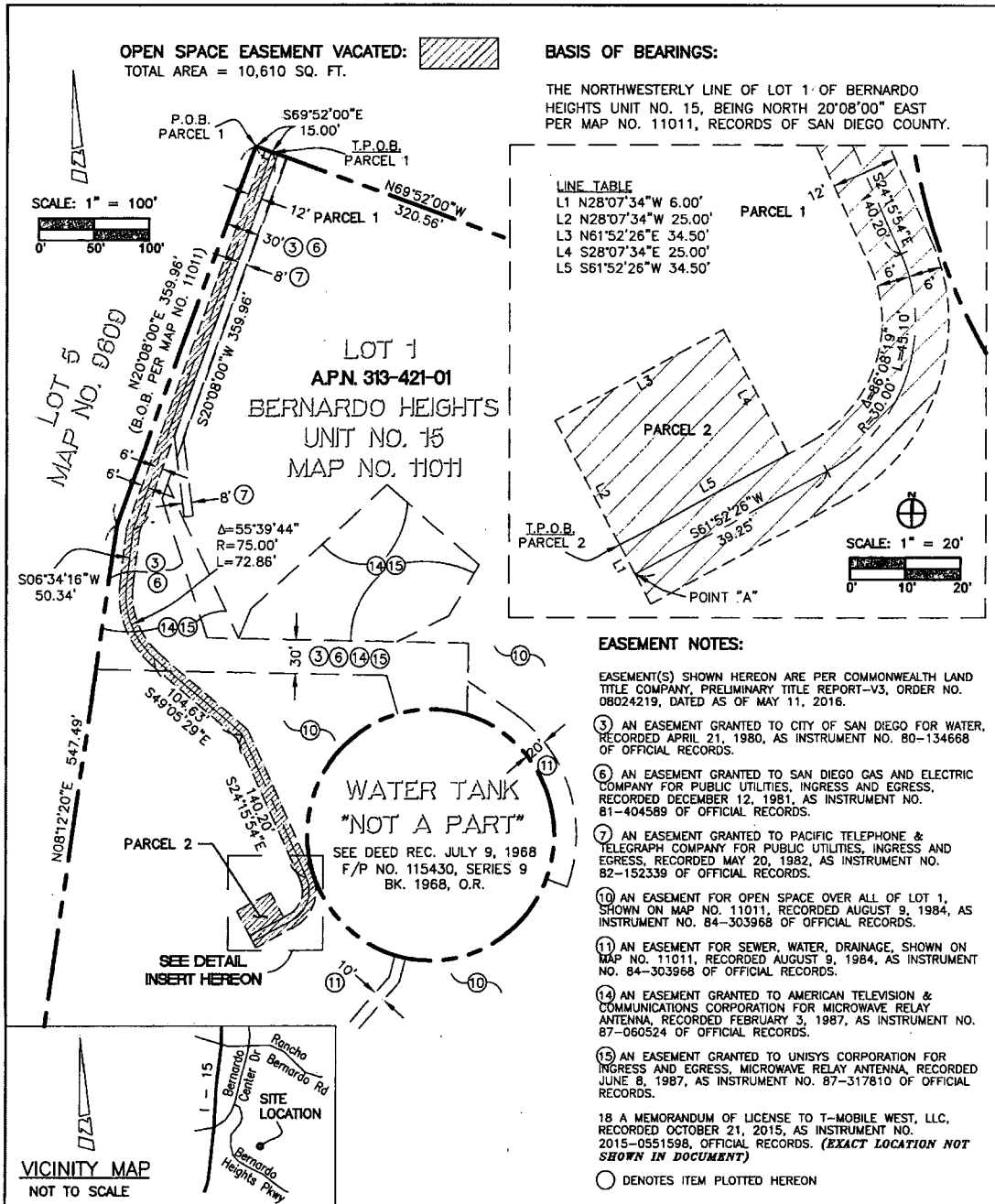
THIS DOCUMENT, CONSISTING OF 2 SHEETS, WAS MADE BY ME OR UNDER MY DIRECTION.

SIGNED 
BERT HAZE, PLS 7211
IO: 24005799
PTS: 420129

DATE 6/29/16

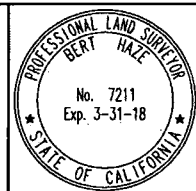


EXHIBIT "B"



BERT HAZE
AND ASSOCIATES
3188 AIRWAY AVE., SUITE K-1
COSTA MESA, CALIFORNIA 92626
714 557-1587 OFFICE

SIGNED *[Signature]* DATE *6/24/16*
BERT HAZE, PLS 7211



RESOLUTION No. _____
 RECORDED _____
 DOCUMENT No. _____
 RECORDED _____

OPEN SPACE EASEMENT VACATION IN PORTIONS OF LOT 1 OF SUBDIVISION MAP NO. 11011.

DESCRIPTION	BY	APPROVED	DATE	FILMED	CITY OF SAN DIEGO, CALIFORNIA	P.T.S. NO. 420129
ORIGINAL					SHEET 1 OF 1 SHEET	I.O. NO. 24005799
					FOR CITY ENGINEER _____	1944-6307
					DATE _____	NAD 83 COORDINATES
						304-1747
						NAD 27 COORDINATES
STATUS						39275-B

Passed by the Council of The City of San Diego on DEC 06 2016, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Sherri Lightner	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lorie Zapf	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
District 3 - (Vacant)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Myrtle Cole	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mark Kersey	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Cate	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Scott Sherman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
David Alvarez	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Marti Emerald	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage DEC 06 2016.

(Please note: When a resolution is approved by the Mayor, the date of final passage is the date the approved resolution was returned to the Office of the City Clerk.)

AUTHENTICATED BY:

KEVIN L. FAULCONER
Mayor of The City of San Diego, California.

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

(Seal)

By *Hinda Arwen*, Deputy

Office of the City Clerk, San Diego, California

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