



## STAFF REPORT SAN CLEMENTE PLANNING COMMISSION

Date: January 16, 2019

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**PLANNER:** Veronica Morones, Assistant Planner

**SUBJECT:** **Abandonment 18-567, Carmichael Easement Abandonment,** a request to consider a summary vacation of a City storm drain easement superseded by relocation and no longer in use at 249 Via Ballena.

### **REQUIRED FINDINGS**

The Zoning Ordinance does not stipulate any required findings for a request for abandonment. However, California Government Code provides language for crafting legal findings for the abandonment request.

### **BACKGROUND**

The existing storm drain easement is approximately .026 acres, containing approximately 1,156 square feet of residentially zoned land, located on the eastern portion of the residential lot at 249 Via Ballena. A precise description and plot of the easement is provided as Exhibit A and Exhibit B of the draft resolution (Attachment 1).

On June 16, 2015, the City Council approved the Via Ballena Storm Drain Capital Improvement Project (CIP) to relocate a damaged storm drain located on Via Ballena. On June 29, 2015, California Coastal Commission issued a Coastal Development Permit Waiver for the installation of the relocated storm drain. The City prepared a Mitigated Negative Declaration for the CIP in accordance with the California Environmental Quality Act (CEQA). Subsequent to the Ballena Storm Drain CIP, the discontinued storm drain was left in place at the 249 Via Ballena property and capped on the end abutting Via Ballena by the City. The storm drain located within the easement is no longer in use and is still located in the existing easement.

### **PROJECT DESCRIPTION**

On September 11, 2018 an application was submitted to the Planning Division by the property owners for a request to abandon a City-held storm drain easement on a private parcel, at 249 Via Ballena located in the Residential Low and Special Residential 12 zoning districts, and Coastal Zone. The Engineering Division reviewed the abandonment request and determined it is consistent with City Policy 901-1 related to the appropriate sales of unused City-owned property. Engineering staff supports this request and include a Quitclaim Deed as part of the abandonment process (Attachment 3). The property

owners intend to fill the storm drain pipe with cement, requiring permitting Construction Inspection Permit through the Engineering Division.

A Hold Harmless Agreement is provided under Attachment 4. The agreement includes, but is not limited to, language surrounding indemnification, maintenance, and terms related to the agreement.

Per Section 12.20.010 of the San Clemente Municipal Code, abandonments of City held easements are subject to Planning Commission review for recommendation to the City Council for final action. Section 12.20.020 of the San Clemente Municipal Code dictates abandonments be processed pursuant to State law.

The California Streets and Highways Code, Division 9, Part 3, Chapter 4, Article 1 [8330.(c)], states a local authority is permitted to summarily vacate a public service easement if the easement has been superseded by location.

The proposed abandonment request is consistent with the San Clemente Municipal Code, General Plan, applicable City policies, and the California Streets and Highways Code. Legal findings to support the request are detailed in the draft resolution (Attachment 1). The Planning Commission's recommendation will be forwarded to the City Council for final action.

### **ENVIRONMENTAL REVIEW / COMPLIANCE (CEQA)**

The Planning Division completed an initial environmental assessment of the project per CEQA. Staff recommends the Planning Commission recommend to the Council that the project is exempt from further review CEQA because it is an administrative activity which will not result in a direct or reasonably foreseeable indirect physical change to the environment and is not a "project" as defined by section 15378 pursuant to State CEQA Guidelines 15060(c)(2 and 3).

### **CALIFORNIA COASTAL COMMISSION REVIEW**

The location is within the Coastal Zone, and is exempt pursuant to Exclusion Order E-82-1.

### **NOTICING**

Pursuant to California Streets and Highways Code, Division 9, Part 3, Chapter 4, and the San Clemente Municipal Code there is no noticing requirement for a summary vacation.

### **RECOMMENDATION**

Staff recommends the Planning Commission:

1. Recommend the City Council find the project is exempt from the requirements of the CEQA pursuant to CEQA Guidelines Sections 15378 and 15060(c)(2 and 3); and
2. Adopt Resolution PC 19-002, recommending the City Council approve Abandonment 18-567, Carmichael Easement Abandonment.

***Attachment***

1. Resolution
  - a) Exhibit A – Precise (legal) Description
  - b) Exhibit B – Plot of easement
2. Location Map
3. Easement Quitclaim Deed
4. Hold Harmless Agreement

# ATTACHMENT 1

## RESOLUTION NO. PC 19-002

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF SAN CLEMENTE, CALIFORNIA, RECOMMENDING THE CITY COUNCIL APPROVE ABANDONMENT 18-567, CARMICHAEL EASEMENT ABANDONMENT, TO ABANDON A CITY STORM DRAIN EASEMENT ON A SINGLE-FAMILY RESIDENTIAL LOT, LOCATED AT 249 VIA BALLENA

WHEREAS, on September 11, 2018, an application was submitted by Thomas and Susan Carmichael, 103 Dolphin Drive, San Clemente, CA 92672, for Abandonment (AB) 18-567, Carmichael Easement Abandonment and deemed complete on November 6, 2018; a request to abandon a City storm drain easement on a single-family lot, located at 249 Via Ballena, in the Residential Low Zone and Special Residential 12 and Coastal Zone Overlay (SR12-CZ), the legal description being Lot 62 of Tract 4940, Assessor's Parcel Number 691-041-17; and

WHEREAS, the Planning Division has completed an initial environmental assessment of the above matter in accordance with the California Environmental Quality Act (CEQA) and recommends the Planning Commission recommend to the City Council that the project is exempt from further review of the CEQA because it is an administrative activity which will not result in a direct or reasonably foreseeable indirect physical change to the environment and is not a "project" as defined by section 15378 pursuant to State CEQA Guidelines 15060(c)(2 and 3). This is recommended because the project consists of a summary vacation of a City-held easement to a private property owner; and

WHEREAS, on September 13, 2018, the City's Development Management Team (DMT) reviewed the proposed project and determined it complies with the General Plan, Zoning Ordinance, and other applicable City ordinances and codes. The DMT recommendation supports the project; and

WHEREAS, the vacation of the City property comprising .026 acres on the eastern portion of Lot 62, Tract 4940, which contains approximately one thousand one hundred and fifty-six (1,156) square feet of residentially zoned land, is being made under Division 9, Part 3, Chapter 4 of the California Streets and Highways Code and the City has no present or future use for the existing storm drain easement proposed to be abandoned; and

WHEREAS, the San Clemente Municipal Code, Chapter 12.20 dictates requests for abandonments shall be subject to Planning Commission and City Council review and subject to State law; and

WHEREAS, on January 16, 2019, the Planning Commission of the City of San

Clemente held a duly noticed public hearing on the subject application, considered written and oral comments, and facts and evidence presented by the applicant, City staff, and other interested parties.

NOW, THEREFORE, The Planning Commission of the City of San Clemente does hereby resolve as follows:

Section 1. Incorporation of Recitals.

The Planning Commission hereby finds that all of the facts in the Recitals are true and correct and are incorporated and adopted as findings of the Planning Commission as fully set forth in this resolution.

Section 2. CEQA Findings.

Based upon its review of the entire record, including the Staff Report, any public comments or testimony presented to the Planning Commission, and the facts outlined below, the Planning Commission hereby finds and determines that the application is exempt from further review of the California Environmental Quality Act (CEQA) because it is an administrative activity which will not result in a direct or reasonably foreseeable indirect physical change to the environment and is not a "project" as defined by section 15378 pursuant to State CEQA Guidelines 15060(c)(2 and 3). This is recommended because the project consists of a summary vacation of a City-held easement to a private property owner. Furthermore, the property is of such a size, shape and inaccessibility that it is incapable of independent development

Section 3. Findings

With regard to Abandonment (AB) 18-567, the vacation of the City property comprising .026 acres on the eastern side of Lot 62, Tract 4940, which contains approximately one thousand one hundred and fifty-six (1,156) square feet of residentially zoned land, and is being made under Division 9, Part 3, Chapter 4 of the California Streets and Highways Code and the City has no present or future use for the storm drain easement, this Planning Commission finds as follows:

- A. Pursuant to Division 9, Part 3, Chapter 4, Article 1, Section 8333, of the California Streets and Highways Code, the legislative body of a local agency may summarily vacate a public service easement in specific circumstances.
  1. The easement has been superseded by relocation, and there are no other public facilities located within the easement.
  2. Capital Improvement Project number 13016 approved and carried out the relocation of the Via Ballena storm drain system. This project resulted in the storm drain easement located on 249 Via Ballena being relocated to an alternate route for storm drain flow.

3. The storm drain located on 249 Via Ballena has been capped and is no longer an active storm drain for public service.
- B. Pursuant to Division 9, Part 3, Chapter 4, Article 2, Section 8334.5, of the California Streets and Highways Code, the legislative body may vacate a public service easement pursuant to the easement not having in-place public facilities that would be affected by the vacation.
1. The easement has been superseded by relocation, and there are no other public facilities located within the easement.
  2. Capital Improvement Project number 13016 approved and carried out the relocation of the Via Ballena storm drain system. This project resulted in the storm drain easement located on 249 Via Ballena being relocated to an alternate route for storm drain flow.
  3. The storm drain located on 249 Via Ballena has been capped and is no longer an active storm drain for public service.
- C. Pursuant to Division 9, Part 3, Chapter 4, Article 2, Section 8335, of the California Streets and Highways Code, the legislative body may vacate a public service easement pursuant to the authority provided in this chapter by adopting a resolution of vacation.
1. A precise description is provided of the portion to be vacated under Exhibit A and Exhibit B of this resolution.
  2. From and after the date the resolution is recorded, the public service easement vacated no longer constitutes a public service easement.
  3. The vacation is being conducted pursuant to Government Code Section 65402 in that the abandonment and disposition of the right-of-way is consistent with the San Clemente General Plan.
  4. The public service easement is excess right-of-way and is not required for City purposes.
  5. Upon recordation of the resolution, per Section 8325 of the Streets and Highways Code, the vacated right-of-way will no longer constitute public right-of-way.

Section 4. Planning Commission Recommendation.

Based on the entire record, including all written and oral evidence presented to the Planning Commission, and the findings made and evidence discussed in the staff report

and this Resolution, the Planning Commission hereby recommends that the City Council approve the abandonment of a City held easement, set forth in Attachment 1 to the accompanying staff report and incorporated here by reference.

PASSED AND ADOPTED at a regular meeting of the City of San Clemente Planning Commission on January 16, 2019.

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Chair

CERTIFICATION:

I HEREBY CERTIFY this Resolution was adopted at a regular meeting of the City of San Clemente Planning Commission on January 16, 2019, carried by the following roll call vote:

AYES: COMMISSIONERS:

NOES: COMMISSIONERS:

ABSTAIN: COMMISSIONERS:

ABSENT: COMMISSIONERS:

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Secretary of the Planning Commission



# Golden Triangle Land Surveying, Inc.

November 10, 2018

## EXHIBIT "A"

### LEGAL DESCRIPTION

### QUITCLAIM EASEMENT

In the City of San Clemente, County of Orange, State of California, being that portion of Lot 62 of Tract No. 4940, as per Map recorded in Book 200, Pages 44 to 47 inclusive, of Miscellaneous Maps, in the Office of the County Recorder of said Orange County, more particularly described as follows:

Beginning at the most Northerly corner of said Lot 62: thence along the Northeasterly boundary of said Lot 62 South 47°59'33" East 116.24 feet to the most Easterly corner of said Lot 62: thence along the Southeasterly boundary of said Parcel 62 South 42°00'27" West 10.00 feet; thence leaving said boundary North 47°59'33" West 115.66 feet to a point in the Nothwesterly boundary of said Lot 62; said point being South 38°40'21" West 10.02 feet from the most Northerly corner of said Lot 62; thence along the most Northwesterly boundary of said Lot 62 North 38°40'21" East 10.02 feet to the POINT OF BEGINNING.



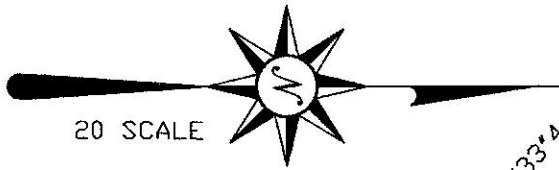
Willard Hall  
PLS 6788



EXHIBIT B  
SKETCH TO ACCOMPANY LEGAL DESCRIPTION

LOT 61 TRACT 4940

PORTION OF HUGO FORSTER  
376.60 ACRE PARCEL  
RECORD OF SURVEY 11-29



N47°59'33"4 112.16'

N38°40'21"E 70.12'  
60.10'

LOT 62 TRACT 4940

N47°59'33"W 115.66'  
10' WIDE STORM DRAIN EASEMENT AS SHOWN  
ON LOT 62 TRACT 4940 TO BE QUITCLAIMED  
S47°59'33"E 116.24'

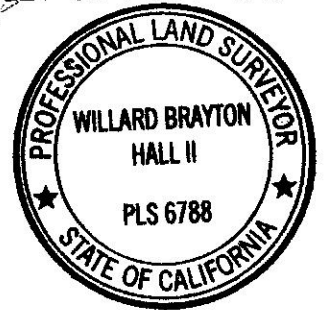
POINT OF BEGINNING

VIA BALLENA

60.00'  
S42°00'27"W 70.00'

10.00'

LOT 63 TRACT 4940



WILLARD HALL PLS 6788  
GOLDEN TRIANGLE LAND  
SURVEYING INC  
1298 NAVEL PLACE  
VISTA CALIFORNIA 92081  
PH 760.207.1115

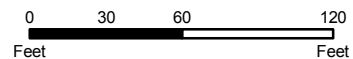




**City of San Clemente**

Project: Carmichael Abandonment, AB 18-567

Address: 249 Via Ballena





ATTACHMENT 3

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA                    )  
  ) ss  
COUNTY OF \_\_\_\_\_)

On \_\_\_\_\_, before me, \_\_\_\_\_,  
personally appeared \_\_\_\_\_

\_\_\_\_\_  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_

Signature of Notary Public

(Notary Seal)

\_\_\_\_\_  
PLACE INTERNAL REVENUE STAMPS HERE



# ATTACHMENT 4

Recording Requested By and  
When Recorded Mail to:

CITY OF SAN CLEMENTE  
Attn: Joanne Baade, City Clerk  
910 Calle Negocio  
San Clemente, CA 92673

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APN 691-041-17

Space above this line for Recorder's Use

This Agreement is recorded at the request and for the benefit of the City of San Clemente, California, and is exempt from the requirement for payment of recording fees pursuant to Government Code Sections 6103 and 27383.

## **HOLD HARMLESS AGREEMENT 249 Via Ballena, San Clemente, California 92672**

This Hold Harmless Agreement ("Agreement") is made and entered into on this \_\_\_\_\_ day of \_\_\_\_\_, 2018 by and between the City of San Clemente ("City") and Thomas and Susan Carmichael ("Property Owner"). City and Property Owner are sometimes referred to individually as "Party" and collectively as "Parties."

### **RECITALS**

**WHEREAS**, Property Owner owns that certain real property commonly located at 249 Via Ballena and also referred to as APN 691-041-17, situated in San Clemente, California ("Property"); and

**WHEREAS**, as part of the approval for tract 4940, the City accepted a drainage easement along the northeasterly 10 feet of the Property ("City Property"); and

**WHEREAS**, in 2016 the City abandoned and relocated a storm drain pipe that existed within said City Property through City Project number 13016; and

**WHEREAS**, Property Owner has applied for an abandonment of the City Property;

**NOW THEREFORE**, in consideration of the mutual promises and benefits provided for herein, the Parties agree as follows:

### **TERMS**

1. **INCORPORATION OF RECITALS.** The recitals listed above are hereby incorporated by reference into this Agreement.

## ATTACHMENT 4

2. **REAFFIRMATION OF TERMS AND CONDITIONS OF HOLD HARMLESS AGREEMENT; TERMINATION OF THE AGREEMENT.** Property Owner reaffirms the terms and conditions of the Hold Harmless Agreement, and Property Owner's obligations thereunder. This Agreement shall terminate upon revocation or termination of the Agreement by the City; provided, however, that the terms and provisions of Section 5 of this Agreement shall survive the revocation or termination of this Agreement.

3. **MAINTENANCE OF CITY PROPERTY.** Property Owner shall maintain the City Property in a clean and safe condition at all times. Property Owner shall be fully responsible for the existing drainage improvements within the City Property and shall abandon said improvements to the satisfaction of the City Engineer through the issuance and inspection of a Construction Inspection Permit. Property Owner's failure to do so may constitute, in addition to a breach of this Agreement, a nuisance, and the City may institute a nuisance or other legal action against Property Owner to obtain compliance.

4. **INDEMNIFICATION.** In consideration of the granting of the abandonment of City Property, Property Owner agrees to defend, indemnify and hold the City, its officials, officers, agents, and employees free and harmless from any and all claims, demands, causes of action, costs, expenses, liabilities, losses, damages and/or injuries of any kind, in law or equity, with regard to persons or property, including without limitation, wrongful death, arising out of or incident to any alleged acts, omissions or willful misconduct on the part of Property Owner, its officers, agents, contractors, and employees in connection with work undertaken or the use, maintenance, or occupation of the City Property, including without limitation, the payment of all consequential damages, attorneys' fees and other related costs and expenses. Property Owner further agrees to defend, indemnify and hold free and harmless the City, its officials, officers, agents, and employees from and against any and all claims, demands, causes of action costs, expenses, liabilities, losses, damages and/or injuries of any kind, in law or equity, to any persons or property including without limitation, wrongful death, arising out of or in connection with the drainage and the drainage improvements on the City Property.

5. **ADDITIONAL ACTIONS.** The Parties agree to execute such other documents and take such other actions as may reasonably be necessary to further the purpose of this Agreement, and to effectuate the terms of this Agreement. Property Owner shall be responsible for obtaining any additional permits or other entitlements that may be required for his or her use of the City Property.

6. **BINDING POWER ON SUCCESSORS-IN-INTEREST AND ASSIGNS; AUTHORITY TO EXECUTE.** This Agreement shall be binding upon the successors-in-interests and assigns of the Parties and the persons signing this Agreement hereby warrant that he or she has the authority to bind the Party for which he or she is signing.

7. **GOVERNING LAW.** This Agreement will be governed by and construed in accordance with the laws of the State of California.

8. **VENUE.** The venue of any disputes arising out of this Agreement shall be the Superior Court of the State of California for the County of Orange.

## ATTACHMENT 4

9. **NOTICES, DEMANDS, AND COMMUNICATIONS.** Formal notices, demands, and communications between the Parties shall be deemed sufficiently given if and shall not be deemed given unless dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered by express delivery service, return receipt requested, or delivered personally, to the principal address of the Parties as follows:

<b>CITY OF SAN CLEMENTE</b>	<b>PROPERTY OWNER</b>
City Manager, City of San Clemente	Thomas and Susan Carmichael
910 Calle Negocio	249 Via Ballena
San Clemente, CA 92673	San Clemente, CA 92673
(949) 361-8200	(760) 594-2053

10. **WAIVERS.** All waivers must be in writing. Failure to insist upon strict performance of any provision, right, duty, or obligation in this Agreement is not a waiver of the right to enforce that provision, right, duty, or obligation, nor any other provision, right, duty, or obligation in the future.

11. **MODIFICATIONS.** This Agreement can only be changed, modified, amended, supplemented, or rescinded in a separate writing signed by both Parties.

12. **ATTORNEYS' FEES.** If any lawsuit is commenced to enforce any of the terms of this Agreement, the prevailing Party will have the right to recover its reasonable attorneys' fees and costs of suit from the other Party.

13. **INTEGRATION.** This Agreement constitutes the final, complete, and exclusive expression of all the terms and provisions pertaining to Property Owner's use of the City Property.

**[SIGNATURES ON FOLLOWING PAGE]**



# ATTACHMENT 4

## SIGNATURE PAGE FOR HOLD HARMLESS AGREEMENT BETWEEN THE CITY OF SAN CLEMENTE AND THOMAS AND SUSAN CARMICHAEL

CITY OF SAN CLEMENTE

Thomas and Susan Carmichael

By: \_\_\_\_\_  
James Makshanoff  
City Manager

By: \_\_\_\_\_  
Its: Property Owner

Printed Name: \_\_\_\_\_

By: \_\_\_\_\_

Its: Property Owner

Printed Name: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
Joanne Baade  
City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Scott C. Smith  
City Attorney

# ATTACHMENT 4

## ALL CAPACITY ACKNOWLEDGEMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA            )  
  ) ss  
COUNTY OF \_\_\_\_\_)

On \_\_\_\_\_, before me, \_\_\_\_\_,  
personally appeared \_\_\_\_\_

\_\_\_\_\_  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

# ATTACHMENT 4

## ALL CAPACITY ACKNOWLEDGEMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA             )  
  ) ss  
COUNTY OF \_\_\_\_\_)

On \_\_\_\_\_, before me, \_\_\_\_\_,  
personally appeared \_\_\_\_\_

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who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.