



AGENDA REPORT

SAN CLEMENTE CITY COUNCIL MEETING
Meeting Date: February 19, 2019

Agenda Item 6E

Approvals:
City Manager [Signature]
Dept. Head [Signature]
Attorney [Signature]
Finance [Signature]

Department: Community Development/Planning Division
Prepared By: Gabriel Perez, City Planner

Subject: ABANDONMENT 18-567, CARMICHAEL EASEMENT ABANDONMENT, LOCATED AT 249 VIA BALLENA

Fiscal Impact: None

Summary: A request to consider a summary vacation of a City storm drain easement superseded by relocation and no longer in use at 249 Via Ballena. The Planning Commission recommends the City Council approve the abandonment.

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 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.

Discussion: 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 proposed abandonment and supports this request. A Quitclaim Deed is included as part of the abandonment process (Attachment 3). The property owners intend to fill the storm drain pipe with cement, requiring a Construction Inspection Permit through the Engineering Division.

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

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 reviewed the abandonment at the January 16th meeting and recommends approval to City Council.

ENVIRONMENTAL REVIEW

The Planning Commission at the January 16th meeting recommended the project is exempt from further CEQA review 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).

Recommended

Action: THE PLANNING COMMISSION RECOMMENDS THAT the City Council approve Abandonment 18-567 for the Carmichael Easement Abandonment located at 249 Via Ballena.

- Attachments:**
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

Notification: 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.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, APPROVING 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 completed an initial environmental assessment of the above matter in accordance with the California Environmental Quality Act (CEQA). The Planning Commission recommends the project is exempt from further review of 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 reviewed the abandonment request and recommended the City Council approve Abandonment 18-567.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of San Clemente does hereby resolve as follows:

Section 1. Incorporation of Recitals

The City Council hereby finds that all of the facts in the Recitals are true and correct and are incorporated and adopted as findings of the City Council as if dully 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/or City Council, and the facts outlined below, the City Council 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. Abandonment 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 City Council 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. The Mayor of the City of San Clemente shall sign this Resolution and the City Clerk shall attest and certify to the passage and adoption of this Resolution and it shall become effective at the time(s) specified above and in accordance with applicable law.

Section 5. The City Clerk shall record this resolution and the attached exhibits at the Orange Counter Recorder's Office.

Section 6. The City Clerk shall certify to the passage and adoption of this resolution and the attached exhibits and enter it into the book of original resolutions.

PASSED, ADOPTED and signed this 19th day of February, 2019 on the following vote:

AYES:

NOES:

ABSENT:

ATTEST:

City Clerk of the City of
San Clemente, California

Mayor of the City of
San Clemente, California

STATE OF CALIFORNIA)
COUNTY OF ORANGE) §
CITY OF SAN CLEMENTE)

I, JOANNE BAADE, City Clerk of the City of San Clemente, California, do hereby certify that Resolution No. _____ was adopted at a regular meeting of the City Council of the City of San Clemente held on the _____ day of _____, _____, by the following vote:

AYES:

NOES:

ABSENT:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of San Clemente, California, this _____ day of _____, _____.

Resolution No.

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CITY CLERK of the City of
San Clemente, California

Approved as to form:

City Attorney

Golden Triangle Land Surveying, Inc.

November 10, 2018

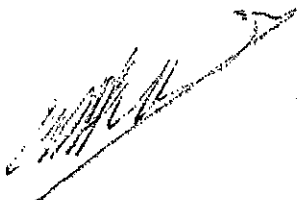
EXHIBIT "A"

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



page 1 of 2

1298 Navel Place, Vista, CA 92081
Ph 760-758-7725 – fax 760-758-7726, license LS 6788 exp 09/30/2019

2-19-19 / 6E-8

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" E 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

LOT 63 TRACT 4940



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

VIA BALLENA

60.00'
S42°00'27" W 70.00'

10.00'



City of San Clemente

Project: Carmichael Abandonment, AB 18-567

Address: 249 Via Ballena



2-19-19 / 6E-10

ATTACHMENT 3

After recording mail to:

CITY CLERK
CITY OF SAN CLEMENTE
910 Calle Negocio
San Clemente, California 92673

ABOVE SPACE FOR RECORDER'S USE

A.P.N (S): 691-041-17

DOCUMENTARY TRANSFER TAX \$ -0-
(Exempt recording requested—Gov. Code Section 6103)

The undersigned Grantor
Signature of Declarant or Agent determining tax – Firm Name

EASEMENT QUITCLAIM DEED

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, **CITY OF SAN CLEMENTE**, a Municipal Corporation, does hereby REMISE, RELEASE, AND FOREVER QUITCLAIM ANY INTEREST IT MAY HAVE IN A PARTICULAR EASEMENT USED FOR STORM DRAIN PURPOSES DEDICATED ON FINAL TRACT MAP 4940, LOCATED IN THE CITY OF SAN CLEMENTE, COUNTY OF ORANGE, STATE OF CALIFORNIA,

and is described in Exhibit A attached hereto and depicted in Exhibit B attached hereto.

Dated: _____

By: _____
Title: _____
Print Name: _____

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

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:

CITY OF SAN CLEMENTE	PROPERTY OWNER
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

