



AGENDA REPORT

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

Agenda Item 6N

Approvals:

City Manager AM

Dept. Head GD

Attorney _____

Finance _____

Department: Community Development
Prepared By: City Attorney

Subject: A RESOLUTION REGARDING TRANSFER TO CAPISTRANO SHORES OF THE 4 BY 325-FOOT (1,300-SQUARE FOOT) PORTION OF SENDA DE LA PLAYA TO THE CAPISTRANO SHORES MOBILEHOME PARK.

Fiscal Impact: This resolution will create no additional costs to the City.

Summary: Staff recommends that the City Council adopt the resolution to approve the transfer of a portion of Senda de la Playa to Capistrano Shores, finding that the transfer conforms to the General Plan and is for the common benefit.

Background: This proposed transfer of property stems from a settlement agreement in *Capistrano Shores, Inc. on behalf of itself and its members v. City of San Clemente* (Orange County Superior Court Case No. 30-2014-007099897-CU-EI-CXC) approved by City Council on August 20, 2019. Capistrano Shores, Inc. owns the Capistrano Shores Mobilehome Park located at 1880 N El Camino Real in San Clemente. The lawsuit concerned a number of issues relating to the City's General Plan, Zoning Code, and Coastal Land Use Plan. As part of the settlement, the City agreed to transfer to Capistrano Shores a 4 by 325-foot stretch of Senda de la Playa.

Senda de la Playa is a small street south of Avenida Estacion and between the railroad tracks and Capistrano Shores Mobilehome Park. The City currently holds title to the street in fee. The street is 20 feet wide and 400 feet long (8,000 square feet) and runs from north to south. To its north, the street intersects with Avenida Estacion at an existing at-grade railroad crossing. To its south, the street dead-ends. At the east side of the street there is a stretch of land currently and primarily used for residential parking. At the west side of the street are nine manufactured homes and the Capistrano Shores management building. Currently, eight manufactured homes' structures and one manufactured home's frontage encroach onto the Senda de la Playa. The encroachment is no greater than 4 feet into and 325 feet across the street (1,300 square feet).

The property proposed for transfer to Capistrano Shores is the current 4 by 325-foot (1,300-square foot) encroachment onto Senda de la Playa mentioned above.

The transfer of property in this case follows the process required by Government Codes sections 37350, 37351 (common benefit transfer), and 65402 (general plan conformity). Sections 37350 and 37351 authorize the City to dispose of property when "for the common benefit." Section 65402 requires that the Planning Commission

prepare a report for the City Council as to whether the transfer conforms to the City's General Plan. The City Council then votes on whether to approve the transfer. No public notice or hearing is required. The City's approval of the transfer must also comply with CEQA.

Should the City Council approve the transfer, the transfer will be executed by way of a grant deed that includes a legal description and depiction of the property. The draft grant deed is included as Attachment A to the draft resolution, and the legal description and depictions are attached as Exhibits A and B, respectively, to the draft grant deed

Discussion:

As explained above, this item concerns the transfer to Capistrano Shores of a 4 by 325-foot stretch of Senda de la Playa. Generally, Staff finds that the current encroachment and proposed transfer in no way limits public access, creates circulation problems, nor presents safety issues. Specifically, staff recommends that Planning Commission make the findings:

Class 5 CEQA Exemption (State CEQA Guidelines, § 15305). Staff has reviewed the proposed transfer of the portion of Senda de la Playa and determined that it is the proposed offer of dedication is categorically exempt from environmental review under State CEQA Guidelines section 15305 (Class 5, Minor Alterations in Land Use Limitations) for the following reasons:

1. The transfer represents a minor adjustment of the line between the private and public use of the street, but in a manner entirely consistent with existing conditions.
2. The existing mobilehomes already encroach upon the public street and in no way impact the access to or use of the street.

Accordingly, Staff recommends that it be directed to file a Notice of Exemption for the transfer.

General Plan Conformity (Gov. Code, § 65402). Staff recommends that the City Council find that the transfer conforms to the City's General Plan for the following reasons.

1. The General Plan Land Use Map (LU-1A) shows this portion of the street is designated as Private Open Space (OS2), as are the mobilehome lots immediately adjacent. Accordingly, the transfer will not change or be inconsistent with the designated land use for the site.
2. The transfer in no way alters or impacts the City's circulation or mobility plans. Senda de la Playa is not identified on the General Plan Roadway System Map (figure M-1) as an arterial, secondary, collector or other major roadway. Even if the street were identified on the map, transfer of the 4 by 325-foot portion of the street in no way compromises the use of the street.
3. After the transfer, the remaining 6,700 square feet of the public street will remain in compliance with the General Plan's mobility policies, including

necessary transportation infrastructure to accommodate vehicles and pedestrians (policy M-1.02) as well as enhancement of neighboring uses (policy M-1.18). In this case, the remaining public street will provide more than adequate space for vehicles and pedestrians alike as well as continue to provide public access from the adjacent manufactured homes.

Common Benefit (Gov. Code, § 37350). Staff recommends that the City Council find that the transfer of this portion of this portion of the street is for the common benefit for the following reasons:

1. The transfer clarifies ownership of a small portion the street in a way that recognizes the existence of established manufactured homes.
2. The transfer resolves an existing encroachment issue without in any way compromising or impacting public access to or use of the street.
3. The transfer helps settle an 18-year lawsuit against the City.

Direction to Staff. Should the City Council approve the transfer, Staff recommends that the City Council direct staff to:

1. File a Notice of Exemption for the transfer; and
2. Execute and record the grant deed effectuating the transfer.

Commission

Review:

At its regular meeting on November 6, 2019, the Planning Commission recommended that the City Council find that the transfer conforms to the City's General Plan.

Recommended

Action:

STAFF RECOMMENDS THAT the City Council adopt a resolution regarding transfer to Capistrano Shores of the 4 by 325-foot stretch of Senda de la Playa to Capistrano Shores, which:

1. Find that the transfer is categorically exempt from environmental review under Class 5 (Minor Alterations in Land Use Limitations) per State CEQA Guidelines section 15303;
2. Find that the transfer conforms to the City's General Plan per Government Code section 65402;
3. Find that the transfer is of the common benefit per Government Code section 37350;
4. Direct Staff to file an Notice of Exemption for the transfer within five days after approval; and
5. Direct staff to execute the grant deed effectuating the transfer within five days after the approval.

Notification: Noticing in the local newspaper or special postings were not provided and are not required for the proposed action.

- Attachments:**
1. Draft Resolution CC __-__.
 2. Attachment A to the Resolution: Draft Grant Deed.
 3. Exhibit A to the Grant Deed: Description of the Property.
 4. Exhibit B to the Grant Deed: Depiction of the Property.

ATTACHMENT 1

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, REGARDING THE TRANSFER OF A 4 BY 325-FOOT (1,300-SQUARE FOOT) PORTION OF SENDA DE LA PLAYA TO THE CAPISTRANO SHORES MOBILEHOME PARK.

WHEREAS, the City entered into a settlement agreement in *Capistrano Shores, Inc. on behalf of itself and its members v. City of San Clemente* (Orange County Superior Court Case No. 30-2014-007099897-CU-EI-CXC) approved at by City Council on August 20, 2019;

WHEREAS, Capistrano Shores, Inc. owns the Capistrano Shores Mobilehome Park located at 1880 N El Camino Real in San Clemente;

WHEREAS, the lawsuit concerned a number of issues relating to the City's General Plan, Zoning Code, and Coastal Land Use Plan, and as part of the settlement, the City agreed to transfer to Capistrano Shores a 4 by 325-foot stretch of Senda de la Playa;

WHEREAS, the City currently holds title to Senda de la Playa in fee;

WHEREAS, Senda de la Playa is a small street south of Avenida Estacion and between the railroad tracks and Capistrano Shores Mobilehome Park. The street is 20 feet wide and 400 feet long (8,000 square feet) and runs from north to south. To its north, the street intersects with Avenida Estacion at an existing at-grade railroad crossing. To its south, the street dead-ends. At the east side of the street there is a stretch of land currently and primarily used for residential parking;

WHEREAS, at the west side of the street are nine manufactured homes and the Capistrano Shores management building. Currently, eight manufactured homes' structures and one manufactured home's frontage encroach onto the Senda de la Playa. The encroachment is no greater than 4 feet into and 325 feet across the street (1,300 square feet);

WHEREAS, per Government Code section 65402, the Planning Commission, at its regular meeting on November 6, 2019, found that the transfer of the portion of Senda de la Playa conformed to the General Plan;

WHEREAS, per Government Code section 37350, the City Council, at its regular meeting on November 19, 2019, found that transfer the above portion of Senda de la Playa to the Capistrano Shores Mobilehome Park as a common benefit to the City;

WHEREAS, per the California Environmental Quality Act, the City staff recommended that the City Council determine that the transfer is categorically exempt from further environmental review under the Class 5 (Minor Alterations to Land Use Limitations) categorical exemption;

WHEREAS, all legal prerequisites to the adoption of this Resolution have

occurred.

NOW, THEREFORE, 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 fully set forth in this resolution.

Section 2. CEQA Findings.

The City Council finds that the proposed transfer of the portion of Senda de la Playa is categorically exempt from environmental review under State CEQA Guidelines section 15305 (Class 5, Minor Alterations in Land Use Limitations) for the following reasons:

1. The transfer represents a minor adjustment of the line between the private and public use of the street, but in a manner entirely consistent with existing conditions.
2. The existing mobilehomes already encroach upon the public street and in no way impact the access to or use of the street.

Section 3. General Plan Conformity Findings.

The City Council finds, per Government Code section 65402, that the transfer conforms to the City's General Plan for the following reasons:

1. The General Plan Land Use Map (LU-1A) shows this portion of the street is designated as Private Open Space (OS2), as are the mobilehome lots immediately adjacent. Accordingly, there transfer will not change or be inconsistent with the designated land use for the site.
2. The transfer in no way alters or impacts the City's circulation or mobility plans. Senda de la Playa is not identified on the General Plan Roadway System Map (figure M-1) as an arterial, secondary, collector or other major roadway. Even if the street were identified on the map, transfer of the 4 by 325-foot portion of the street in no way compromises the use of the street.
3. After the transfer, the remaining 6,700 square feet of the public street will remain in compliance with the General Plan's mobility policies, including necessary transportation infrastructure to accommodate vehicles and pedestrians (policy M-1.02) as well as enhancement of neighboring uses (policy M-1.18). In this case, the remaining public street will provide more than adequate space for vehicles and pedestrians alike as well as continue to provide public access from the adjacent manufactured homes.

Section 4. Common Benefit Findings.

The City Council, per Government Code section 37350, finds that the transfer of this portion of this portion of the street is for the common benefit for the following reasons:

1. The transfer clarifies ownership of a small portion the street in a way that recognizes the existence of established manufactured homes.
2. The transfer resolves an existing encroachment issue without in any way compromising or impacting public access to or use of the street.
3. The transfer helps settle an 18-year lawsuit against the City.

Section 5. Notice of Exemption

The City Council directs staff to file a Notice of Exemption for the transfer after five days of the approval of this resolution.

Section 6. Execution and Recordation

The City Council directs staff to execute and record grant deed, in substantially the same form as provided in Attachment A, within five days after the approval of this resolution.

PASSED AND ADOPTED this _____ day of _____, _____.

ATTEST:

City Clerk of the City of
San Clemente, California

Mayor Pro Tem 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 _____, _____.

 CITY CLERK of the City of
 San Clemente, California

Approved as to form:

 City Attorney

ATTACHMENT 2

Attachment A to Resolution 19-037

Draft Grant Deed
Exhibit A Property Description
Exhibit B Property Depiction

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

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

ABOVE SPACE FOR RECORDER'S USE

DOCUMENTARY TRANSFER TAX \$ -0- (Exempt recording requested—Gov. Code Section 27383)

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

GRANT DEED

For a valuable consideration, receipt of which is hereby acknowledged, **THE CITY OF SAN CLEMENTE**, a California Municipal Corporation, herein described as the Grantor ("Grantor"), does hereby Grant to **CAPISTRANO SHORES, INC.**, a California mutual benefit corporation ("Grantee"), the following real property in the City of San Clemente, County of Orange, California which is described in Exhibit A attached hereto and depicted in Exhibit B attached hereto.

Dated: _____

CITY OF SAN CLEMENTE
A Municipal Corporation

By: _____

Name: _____

Title: _____

ATTACHMENT 3

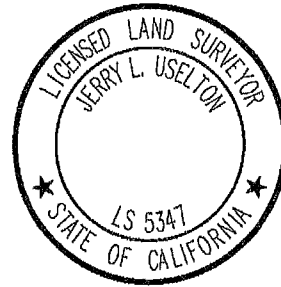
EXHIBIT A

LEGAL DESCRIPTION

THE WESTERLY 4.00 FEET OF THE SOUTHERLY 325.00 FEET OF THAT CERTAIN STRIP OF LAND IN THE CITY OF SAN CLEMENTE, COUNTY OF ORANGE, STATE OF CALIFORNIA, DELINEATED AS "SENDA DE LA PLAYA" AS SHOWN ON MAP OF TRACT NO. 981, "THE SPANISH VILLAGE", RECORDED IN BOOK 31 PAGE 26 OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA.

DATED THIS 5th DAY OF SEPTEMBER, 2019.

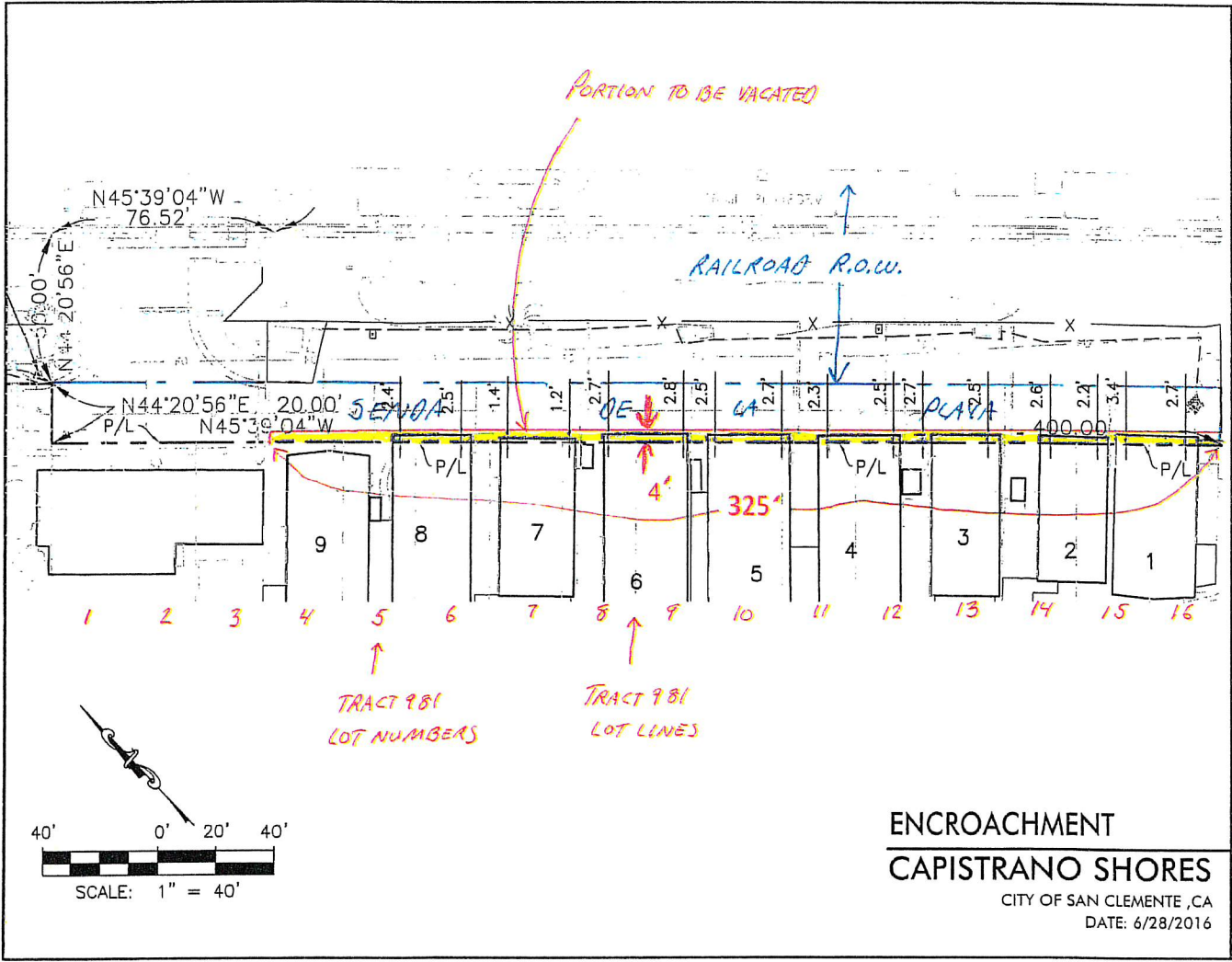
JERRY L. USELTON, L.S. 5347



ATTACHMENT 4

EXHIBIT B

[see separate document for draft graphic]



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 Orange)

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)