RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE SUMMARILY VACATING A PEDESTRIAN ACCESS EASEMENT LOCATED BETWEEN CASSELINO DRIVE AND MULLINIX WAY AND RESERVING AND EXCEPTING FROM THE VACATION AN EASEMENT FOR PUBLIC TRAIL PURPOSES

WHEREAS, California Senate Bill 236 amended the Streets and Highways Code of the State of California by adding section 8334.6, which allows the City of San José to summarily vacate a public service easement located between Casselino Drive and Mullinix Way in the City of San Jose that is impassable for vehicular travel, if the City Council finds that the vacation will protect the public safety or serve the public interest and convenience;

WHEREAS, Streets and Highways Code section 8334.6 also allows the City Council to reserve and except an easement and right to construct, maintain, operate, replace, remove, and renew a nonvehicular pathway for use by the public in, upon, over, and across the public service easement proposed to be vacated;

WHEREAS, the City Council intends to summarily vacate the pedestrian access easement located between Casselino Drive and Mullinix Way in the City of San Jose that is impassable for vehicular travel (hereinafter “PAE”), which PAE constitutes a public service easement under the Streets and Highways Code, reserving and excepting from the vacation an easement and right to construct, maintain, operate, replace, remove, and renew a public trail (“Trail Easement”), constituting all that real property situated in the City of San José, County of Santa Clara, State of California, attached to this Resolution as Exhibit “A”;

WHEREAS, attached to this Resolution as Exhibit “B” is a copy of a map approved by the Director of the Department of Public Works on February 8, 2016, entitled “Plat Map Showing the Pedestrian Access Easement located between Casselino Drive and Mullinix Way to be Vacated” showing the PAE that the City Council intends to summarily vacate and the reserved Trail Easement;

WHEREAS, attached to this Resolution as Exhibit “C” is a copy of the report, dated February 1, 2016, that the Director of the Department of Public Works submitted to the City Council setting forth the reasons justifying the summary vacation of the PAE and reservation of the Trail Easement (hereinafter “Report”);

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE THAT:

SECTION 1. The City Council hereby adopts the Report and, based upon the Report and all other evidence submitted, makes the following findings:
1. The vacation of the PAE will protect the public safety and serve the public interest and convenience; and

2. The PAE is impassable for vehicular travel; and

3. The public interest and convenience require the reservation of the Trail Easement; and

4. There are no in-place public utility facilities that are in use that would be affected by the vacation.

SECTION 2. Based upon the findings made in Section 1 of this Resolution, the City Council does hereby order that the PAE shall be and hereby is summarily vacated, reserving and excepting the Trail Easement from the vacation.

SECTION 3. The City Clerk is hereby directed to record at Santa Clara County Records this Resolution, including the exhibits hereto.

SECTION 4. From and after the date of recordation of the documents identified in Section 3 of this Resolution, the PAE will no longer constitute a public service easement and the Trail Easement will be reserved and excepted from the vacation.
ADOPTED this day of , 2016, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

______________________________
SAM LICCARDO
Mayor

ATTEST:

______________________________
TONI TABER, CMC
City Clerk
EXHIBIT A

LEGAL DESCRIPTION

All that certain real property situate in the City of San Jose, County of Santa Clara, State of California, being a portion of the property shown on that certain Tract 9436 recorded on February 5th, 2005 in Book 781 of Maps at Pages 12-13, Official Records of Santa Clara County, and being more particularly described as follows:

Being all of the lands shown as the “52’ P.A.E., P.S.E., & E.A.E.” strip on Tract 9435 recorded on December 23rd, 2002 in Book 756 of Maps at Pages 47-53, said 52’ wide strip located between Lots “E” and “F” on said Tract 9435, TOGETHER WITH all of the lands shown as the “26’ P.A.E., P.S.E., & E.A.E.” strip on said Tract 9436, said 26’ wide strip located southerly of terminus of Lina Street, TOGETHER WITH all of the lands as described in Document Number 20503320 Santa Clara County Records, and being more particularly described as follows,

COMMENCING at the monument as shown on said Tract Map 9436, found in Book 781, at page 13, Sheet 2 of 2, said point being the mid-point of a 31.00’ curve being on the centerline of Mullinix Way and Montevarchi Street;

Thence along a radial line, North 25°16’10” West 26.00 feet to the northwesterly right of way line of Montevarchi Street, said point being the TRUE POINT OF BEGINNING of this description;

Thence southwesterly along said northwesterly right of way line, along a non-tangent curve to the left, from said radial bearing, having a radius of 57.00 feet, through a central angle of 30°00’00” along an arc length of 29.85 feet to a point of cusp with a curve to the left;

Thence leaving said right of way line, northerly along said curve, having a radius of 5.00 feet, through a central angle of 60°00’00”, along an arc length of 5.24 feet;

Thence along the sidelines of said 52’ and 26’ strips, the following four courses:

1) North 25°16’10” West 187.41 feet;

2) Thence North 19°18’35” East 61.64 feet;

3) Thence North 70°41’25” West 52.00 feet;
4) Thence North 19°18’35” East 178.78 feet to the said southerly terminus of Lina Street;

Thence along said southerly terminus, South 70°41’25” East 52.00 feet; Thence along the sidelines of said 26’ and 52’ strips, the following four courses:

1) Thence South 19°18’35” West 126.78 feet;

2) Thence South 70°41’25” East 52.00 feet;

3) Thence South 19°18’35” West 92.32 feet;

4) Thence South 25°16’10” East 166.10 feet to a curve to the left;

Thence southeasterly along said curve, having a radius of 5.00 feet, through a central angle of 60°00’00”, along an arc length of 5.24 feet to a point in the northeasterly right of way of Mullinix Way, being a point of cusp with a curve to the left;

Thence westerly along said right of way, and said curve to the left, from a radial bearing of South 4°43’50” West, with a radius of 57.00 feet, through a central angle of 30°00’00”, along an arc length of 29.85 feet to the TRUE POINT OF BEGINNING.

Plat labeled “EXHIBIT A-1” to accompany this description and made a part hereof.

Contains approximately 23,780+/- sq. ft. (0.55 ac).

This description, and plat attached, has been compiled from record data and not a field survey.

The above description of real property was prepared by me, or under my supervision, in conformance with the requirements of Section 8726 (g, k, l, m) of the Business and Professions Code of the State of California.
EXHIBIT "B"
PLAT MAP
SHOWING THE PEDESTRIAN ACCESS EASEMENT LOCATED BETWEEN CASSELINO DRIVE AND MULLINIX WAY TO BE VACATED

AREA TO BE VACATED WITH RESERVATION OF A PUBLIC TRAIL EASEMENT

FILED WITH THE CITY COUNCIL OF THE CITY OF SAN JOSE THIS _____ DAY OF ____________, AND APPROVED BY SAID CITY COUNCIL THIS _____ DAY OF ___________________

BY RESOLUTION NUMBER

CITY CLERK, CITY OF SAN JOSE

APPROVED THIS 8/74 DAY OF ______________

BARRY NG
DIRECTOR OF PUBLIC WORKS, CITY OF SAN JOSE

DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.
TO: HONORABLE MAYOR  
AND CITY COUNCIL  

FROM: Barry Ng  
Angel Rios, Jr.  

SUBJECT: SEE BELOW  

DATE: February 1, 2016  

COUNCIL DISTRICT: 7  

SUBJECT: SUMMARY VACATION OF PEDESTRIAN ACCESS EASEMENT FOR THE EXISTING COMMUNICATIONS HILL GRAND STAIRCASE LOCATED BETWEEN CASSELINO DRIVE AND MULLINIX WAY  

RECOMMENDATION  

Adopt a resolution:  

1. Approving the report of the Director of Public Works and the Director of Parks, Recreation and Neighborhood Services setting forth the facts justifying the summary vacation of the existing Pedestrian Access Easement with the reservation of a Public Trail Easement for the existing Communications Hill Grand Staircase located between Casselino Drive and Mullinix Way.  
2. Vacating the Pedestrian Access Easement with the reservation of a Public Trail Easement to protect the public safety and to serve the public interest and convenience.  
3. Directing the City Clerk, to record a certified copy of the resolution of vacation with the Office of the Recorder, County of Santa Clara.  

OUTCOME  

Upon recordation of the resolution of vacation, the existing Communications Hill Grand Staircase will be operated and regulated in a manner similar to how the City manages recreational facilities such as parks and trails to address continued community concerns regarding security and safety.  

BACKGROUND  

With the development of the original Communications Hill residential development in 2002, a grand public staircase was constructed per the intent of the 1992 Communications Hill Specific
Plan. Along with other public stairs within the development, these staircases were designed to provide public pedestrian access within the project while creating a pedestrian amenity that took advantage of the significant grade and topography within the property.

The subject property is part of the Tuscany Hills Phase III development (“Subject Property”) and is located on the hillside between Casselino Drive and Mullinix Way as shown in the attached location map. Specifically, the property was developed as part of Tracts 9435 and 9436 in 2002 and the public improvement plans and corresponding subdivision maps permitted the construction of a grand public staircase that serves as a pedestrian connection between two public streets Casselino Drive and Mullinix Way. The staircase is approximately 450-feet in length and is bisected by a public trail.

To facilitate public use of the staircase, a 52-foot wide pedestrian access easement (“Pedestrian Access Easement” or “PAE”) for the purposes of “pedestrian access and stairway purposes” was dedicated to the City between Casselino Drive and Mullinix Way through the recordation of: 1) Tract 9435 on December 23, 2002 in Book 756 Pages 47-53 of Official Records, Office of the Recorder, County of Santa Clara; 2) Tract 9436 on February 8, 2005 in Book 791 Pages 12-13 of Official Records, Office of the Recorder, County of Santa Clara; and 3) a separate Grant of Easement on November 10, 2009 as Document Number 20503320 of Official Records, Office of the Recorder, County of Santa Clara.

Fee title to a majority of the land within the PAE was dedicated to the City while a small portion of the PAE directly adjacent to private properties at the terminus of Casselino Drive and Lina Street are owned by the adjacent homeowners associations. Additionally, the PAE and staircase are managed by the City through Community Facilities District 8, Communications Hill, which was created on September 3, 2002.

In 2011, resident complaints of activity on the staircase began to dramatically increase and were related to 1) significantly increased activity on the staircase due to private managed exercise bootcamps designed to take advantage of the staircase as an exercise amenity; 2) parking concerns; 3) littering; 4) illicit activity; 5) general safety and security; and 6) noise and other nuisances associated with increased activity. Representatives of the affected homeowner associations have met numerous times with the City over the past several years to voice their concerns regarding the above issues related to the Grand Staircase, and the City has attempted to mitigate the situation through new landscape design measures designed to reduce pedestrian congregation adjacent to existing residences and the inclusion of new staircases within the 2013 approved entitlement plans for Phase 2 of Communications Hill development. As the general public has pedestrian rights through the PAE to utilize the staircase without a curfew restriction, the City has had limited ability to reduce nighttime nuisances in a manner that would address community concerns.

On December 16, 2014, staff provided an Informational Update (see attachment) on the issues related to the Grand Staircase. The update included information regarding options related to 1) funding security services through the existing CFD; 2) establishing and enforcing a dusk to dawn...
curfew; 3) installing pedestrian traffic control devices such as sally ports, gates, or bulb outs; and 4) working with elected representatives in Sacramento to pass legislation to allow for the legal transfer or conversion of the Grand Staircase to parkland or trail.

On January 27, 2015, Council directed staff to seek a sponsor for state legislation to allow local regulation of certain pedestrian rights of ways, such as staircases, under the California Vehicle Code. City staff drafted a proposed amendment to the California Vehicle Code that would remove certain pedestrian rights of ways from the definition of sidewalk thereby allowing the City greater latitude in regulating their use, including closing them to public use during nighttime hours.

On February 17, 2015, Senator Jim Beall introduced California Senate Bill 236 (“SB 236”). This bill would temporarily amend Section 8334 of the Streets and Highways Code and add Section 8334.6 which would allow the City of San José to do the following: 1) Summarily vacate a public service easement located between Casselino Drive and Mullinix Way; 2) Reserve a new public easement in place of the easement to be vacated; and 3) Allow this amendment to remain in effect only until January 1, 2018. SB 236 was signed by Governor Jerry Brown on September 28, 2015, with an effective date of January 1, 2016.

ANALYSIS

Under Section 8306(b) of the California Streets and Highways Code, the PAE constitutes a public service easement, and pursuant to recently added Section 8334.6 of the California Streets and Highways Code, the City Council may summarily vacate a public service easement located between Casselino Drive and Mullinix Way in the City of San José that is impassable for vehicular travel, if the City finds that the vacation will protect the public safety or serve the public interest and convenience. Section 8334.6 would authorize the City of San José to reserve and except from that vacation an easement and right to construct, maintain, operate, replace, remove, and renew a non-vehicular pathway for the use by the public in, upon, over, and across the public service easement proposed to be vacated.

Existing residents of the Communications Hill development have long complained about the issues related to the Grand Staircase. Although staff has attempted to mitigate the situation through alternate landscape improvements and pedestrian control devices, all day activity on the staircase continues. As evidenced by the actions taken by staff and the Council during the past several years to address the issues related to the Grand Staircase, management of the staircase as a trail is desired to better regulate nighttime activity. Consequently, staff believes that the public interest and convenience is served by the summary vacation of the PAE with a reservation of a Public Trail Easement and recommend approval to the City Council.
EVALUATION AND FOLLOW-UP

If Council adopts the resolutions recommended by staff, no further action by the City Council will be required. The City Clerk will be directed to record the resolution of vacation and upon recordation, the subject PAE will be vacated while a Public Trail Easement will be reserved thereby allowing the City to regulate the staircase in a manner similar to other City recreational facilities such as parks and trails. Staff will report on the management of the staircase as a trail amenity as necessary.

PUBLIC OUTREACH/INTEREST

In addition to this memorandum being posted to the City’s website for the February 23, 2016 Council Agenda, staff has communicated directly with the affected homeowners associations with the existing Communications Hill development regarding the proposed vacation.

COORDINATION

This proposed vacation has been coordinated with the Department of Transportation, Department of Planning, Building and Code Enforcement, the City Attorney’s Office, and the City Manager’s Budget Office. Additionally, staff has outreached to the affected homeowners associations with the existing Communications Hill development regarding the proposed vacation.

COST SUMMARY/IMPLICATIONS

Costs incurred by the Department of Public Works for project management will be reimbursed by the Department of Parks, Recreation and Neighborhood Services out of Preliminary Engineering Funds in the Council District 7 Construction and Conveyance Tax Fund. The current maintenance costs for the staircase are already covered under the Community Facilities District (CFD #8) budget. However, converting the staircase to a trail will increase the operational and security needs for the site that was not previously identified. Department of Parks, Recreation and Neighborhood Services staff will work with the CFD to expand the policy to allow a significant portion of the operational and security needs to be included in CFD funding. Since it will take time to work with the CFD, the Parks, Recreation and Neighborhood Services Department will absorb a limited amount of costs for operations in their current operating budget for the remainder of 2015-2016. Funding for future years will be evaluated as part of the 2017-2021 General Fund Forecast, which is scheduled to be released on February 29, 2016.
HONORABLE MAYOR AND CITY COUNCIL
February 1, 2016
Subject: Summary Vacation of Pedestrian Access Easement for the existing Communications Hill Grand Staircase located between Casselino Drive And Mullinix Way

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CEQA

Statement of Exemption, PP16-008

/s/     /s/
ANGEL RIOS, JR. BARRY NG
Director, Parks, Recreation and Director of Public Works
Neighborhood Services

For questions please contact Michael Liw, Deputy Director of Public Works, at 408-535-6835 or Matt Cano, Assistant Director of PRNS, as 408-535-3580.

ML:NM:nm
Attachment