RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE SUMMARILY VACATING A PORTION OF A SEISMIC SETBACK EASEMENT AT 5667 SILVER CREEK VALLEY ROAD

WHEREAS, subdivision (c) of Section 8333 of the Streets and Highways Code of the State of California authorizes the City Council to summarily vacate a public service easement if the Council determines that it is excess and there are no other public facilities located within the easement;

WHEREAS, the Council intends to summarily vacate a portion of the seismic setback easement (hereinafter the “Easement”), upon and over the real property located on 5601 Silver Creek Valley Road constituting all that real property situated in the City of San José, County of Santa Clara, State of California, more particularly described as:

LYING WITHIN PARCEL 1, AS SAID PARCEL IS SHOWN ON THAT CERTAIN PARCEL MAP RECORDED IN BOOK 727 OF MAP AT PAGES 41 THROUGH 43, SANTA CLARA COUNTY RECORDS AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE MOST NORTHERLY CORNER OF PARCEL 1 AS SHOWN ON SAID PARCEL MAP, SAID CORNER BEING A POINT ON THE SOUTHWESTERLY RIGHT OF WAY LINE OF SILVER CREEK VALLEY ROAD AS SHOWN ON SAID PARCEL MAP; THENCE ALONG THE NORTHWESTERLY LINE OF SAID PARCEL 1 SOUTH 41°40’58” WEST 38.00 FEET; THENCE SOUTH 51°28’23” WEST 29.43 FEET; THENCE SOUTH 41°40’58” WEST 44.87 FEET TO THE INTERSECTION WITH SOUTHWESTERLY LINE OF THE SEISMIC EASEMENT SHOWN ON SAID PARCEL MAP; THENCE ALONG SAID SOUTHWESTERLY LINE OF THE SEISMIC EASEMENT NORTH 45°09’12” WEST 243.37 FEET TO THE TRUE POINT OF BEGINNING; THENCE NORTH 41°40’58” EAST 82.82 FEET TO THE BEGINNING OF A NON-TANGENT CURVE; THENCE ALONG A CURVE TO THE RIGHT, CONCAVE TO THE SOUTHWEST, THE RADIAL POINT OF WHICH BEARS SOUTH 43°22’18” WEST, THROUGH A CENTRAL ANGEL OF 22°15’42” HAVING A RADIUS OF 602.38 FEET, AN ARC DISTANCE OF 234.05 FEET; THENCE SOUTH 41°41’07” WEST 43.75 FEET TO A POINT ON SAID SOUTHWESTERLY LINE OF THE SEISMIC EASEMENT; THENCE ALONG SAID SOUTHWESTERLY LINE OF THE SEISMIC EASEMENT NORTH 45°09’12” WEST 227.13 FEET TO THE TRUE POINT OF BEGINNING.

CONTAINING AN AREA OF 0.370 ACRES, MORE OR LESS
WHEREAS, attached to this Resolution as Exhibit “A” is a map approved by the Director of Public Works on November 2, 2016 entitled “PLAT MAP SHOWING THE EASEMENT TO BE VACATED ON 5667 SILVER CREEK VALLEY ROAD” showing the Easement that the Council intends to vacate.

WHEREAS, attached to this Resolution as Exhibit “B” is a copy of the report, dated November 7, 2016, that the Director of the Department of Public Works submitted to the Council setting forth the facts justifying the summary vacation of the Easement (hereinafter “Report”).

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

SECTION 1. The Council hereby adopts the Report and, based upon the facts recited in the Report and all other evidence submitted, makes the following findings:

1. The Easement is excess;
2. No public facilities are located within the Easement;
3. The proposed vacation is consistent with the City’s General Plan; and
4. The public convenience and necessity does not require reservation of any portion of the Easement.

SECTION 2. Pursuant to Section 8333 (c) of the Streets and Highways Code, and based on the findings made in Section 1 of this Resolution, the Council does hereby summarily vacate the Easement.

SECTION 3. The City Clerk is hereby directed to record a certified copy of this Resolution, including the exhibits hereto, with the Office of the Recorder for the County of Santa Clara.

SECTION 4. From and after the date this Resolution is recorded, the Easement will no longer constitute a public service easement.
ADOPTED this _____ day of ____________, 2016, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

VACANT:

_____________________________
SAM LICCARDO
Mayor

ATTEST:

_____________________________
TONI J. TABER, CMC
City Clerk
PLAT MAP

SHOWING THE PORTION OF THE SEISMIC SETBACK EASEMENT TO BE VACATED

AREA TO BE VACATED

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

MICHAEL LIN, CITY CLERK

BARRY NG
DIRECTOR OF PUBLIC WORKS,
CITY OF SAN JOSE

APPROVED THIS 2ND DAY OF November 2014
TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Barry Ng

SUBJECT: SEE BELOW

DATE: November 7, 2016

COUNCIL DISTRICT: 8

SUBJECT: SUMMARY VACATION OF A PORTION OF SEISMIC SETBACK EASEMENT ON 5667 SILVER CREEK VALLEY ROAD

RECOMMENDATION

Adopt a resolution:

1. Approving the report of the Director of Public Works setting forth the facts justifying the summary vacation of a portion of the Seismic Setback Easement (SSE) on 5667 Silver Creek Valley Road owned by Canyon Creek Plaza, a California limited partnership;


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, a portion of the SSE will be terminated and will no longer constitute a public easement.

BACKGROUND

A seismic setback easement is a “building exclusion zone” established for the purpose of prohibiting construction of structures for human occupancy within an area of known seismic fault traces. The portion of the SSE proposed for vacation is located at 5667 Silver Creek Valley Road and was created on subdivision map Tract No. 8841 (Silver Creek Valley Country Club Neighborhood No. 2), recorded on January 30, 1997 in Book 685, Pages 38-44 of Official Records, Office of the Recorder, County of Santa Clara.
Silver Creek Valley Country Club Neighborhood No. 2 is located within the City of San José’s Geologic Hazard Zone, the City of San José’s Fault Hazard Zone of the Silver Creek Fault and the State of California’s Seismic Hazard Zone of Required Investigation for Liquefaction. The boundaries for a SSE for the potentially active Silver Creek Fault were identified and recommended in the approved geologic hazard reports by Terrasearch Inc. (TI, 1988) and Kleinfelder Inc. (KI, 1989) for the Silver Creek Valley Country Club Neighborhood No. 2 development. The SSE is located on Lot 69 of the subdivision map Tract No. 8841, approximately 100 feet in width and runs north-south adjacent to Silver Creek Valley Road in some areas. On May 18, 2000, a subsequent parcel map was approved by the City and recorded in Book 727, Pages 41-43 of Official Records, Office of the Recorder, County of Santa Clara, which further subdivided Lot 69 of Tract No. 8841 into two parcels, Parcel 1 and Parcel 2. The subject property, 5667 Silver Creek Valley Road, is Parcel 1 and is located on the west side Silver Creek Valley Road, approximately 300 feet south of Beaumont Canyon Drive.

On March 22, 2016, the City approved a Planned Development Rezoning (PDC15-022) to allow for the construction of a 8,413 square foot commercial building on 5667 Silver Creek Valley Road. As a part of the City’s environmental review for the project, the applicant submitted two geologic studies for the project: 1) “Geotechnical and Geologic Hazards Report Update, Canyon Creek Plaza, 5601-5667 Silver Creek Valley Road, San Jose California,” by Cornerstone Earth Group, August 28, 2015, and 2) “Geologic and Geotechnical Investigation, Canyon Creek Plaza 5601 to 5667 Silver Creek Valley Road, San Jose, California,” by Cornerstone Earth Group, July 11, 2014. Staff reviewed both reports and subsequently issued a Geologic Hazard Clearance for the proposed project on October 5, 2015. Included with the Cornerstone Earth Group report is a recommendation that the 100-foot SSE dedicated on Tract No, 8841 be reduced to 50-foot in width on 5667 Silver Creek Valley Road based on new geologic investigations conducted in this area. Of note is that the proposed site plan for PDC15-022 shows the encroachment of the proposed commercial building into the original SSE boundary and the need to reduce the 100-foot SSE to allow the project to obtain building permits.

As a result, an application for the vacation of a portion of the SSE has been submitted by Charles W. Davidson Company, engineer, on behalf of the property owner, Canyon Creek Plaza, a California limited partnership.

**ANALYSIS**

Pursuant to California Streets and Highways Code Section 8333(c), the City Council may summarily vacate a public service easement that has been superseded by relocation, or determined to be excess by the easement holder, if there are no other public facilities located within the easement. Under Section 8306 of the California Streets and Highways Code, the SSE constitutes a public service easement, established for the limited use of keeping a portion of the subject property free from habitable structures.
As mentioned above, the July 11, 2014 Cornerstone Earth Group report proposed decreasing the width of the SSE from 100-feet to 50-feet and also proposed that the location of the Silver Creek Fault be refined based on more recent detailed consultant investigations in the project area. City staff has reviewed the foregoing reports and concurs with the conclusion that the portion of the SSE proposed for vacation is no longer needed for current and prospective public purposes and can be vacated to accommodate the proposed commercial building footprint of PDC15-002. As the proposed SSE vacation is more than 50 feet wide in some areas, the project is required to dedicate additional SSE in those areas to complete the 50 foot SSE. This dedication will be completed under a separate process.

Upon recordation of the resolution of vacation, the subject property will no longer be encumbered by the portion of the SSE proposed for vacation and no further action by the City will be required.

EVALUATION AND FOLLOW-UP

If Council adopts the resolution vacating a portion of the SSE on 5667 Silver Creek Valley Road, no further action by the Council will be required.

PUBLIC OUTREACH/INTEREST

The public was given the opportunity to comment on the proposed development and project site plan, with the inclusion of the proposed vacation area, during the entitlement process for PDC15-002. Additionally, PDC15-022 was also heard at the Planning Commission Hearing on February 24, 2016.

This memorandum will be posted to the City’s website for the November 29, 2016 Council agenda.

COORDINATION

The vacation has been coordinated with the City Manager’s Budget Office and the Planning, Building and Code Enforcement Department. The resolution of vacation has been reviewed by the City Attorney’s Office.

COMMISSION RECOMMENDATION

This proposed vacation was included as part of the site plan for the Planned Development Rezoning (PDC15-022) for the construction of a new 8,413 square foot office and retail
commercial building. On February 24, 2016, the Planning Commission approved PDC15-022 with a vote of 5-0-2.

**COST SUMMARY/IMPLICATIONS**

The Department of Public Works collected cost recovery fees in 2016 in the amount of $3,370 to process the vacation. These fees were deposited into the Department of Public Works Services Fee Fund (Fund 001).

**CEQA**

Mitigated Negative Declaration, File No. PDC15-022.

/s/

BARRY NG
Director of Public Works

For questions please contact Michael Liw, Deputy Director, at 408-535-8300.

ML:NM:av:jk
Attachment