

RESOLUTION NO. 2004-876**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CALABASAS, CALIFORNIA, ORDERING THE VACATION OF BALCONY DRIVE, CRAFT COURT, DRUMS COURT, CAMAY COURT, AND PORTIONS OF FREEDOM DRIVE AND PARCHED DRIVE SOUTHEAST OF MULHOLLAND HIGHWAY IN THE CITY OF CALABASAS.**

Section 1. The City Council has considered all of the evidence submitted into the record, which includes, but is not limited to:

- (1) A Staff Report prepared by the Community Development Department.
- (2) Presentations by staff at the Public Hearing.
- (3) Public comments, both written and oral, received and/or submitted at, or prior to, the public hearing concerning the proposed vacation of the specified streets.
- (4) Testimony and/or comments from the applicant, its representatives, and/or members submitted to the City both written and oral form at, or prior to, the public hearing.
- (5) The Planning Commission Agenda Report, the Minutes of the Planning Commission, and the Resolution of the Planning Commission on this matter from the February 26, 2004 meeting of the Planning Commission.
- (6) The relevant provisions of the California Streets and Highways Code, the City of Calabasas Municipal Code, the Los Angeles County Code, and all other applicable regulations and codes.
- (7) The Resolution of Intent to vacate the city's right, title and interest of Balcony Drive, Craft Court, Drums Court, Camay Court, and portions of Freedom Drive and Parched Drive southeast of Mulholland Highway, passed, approved, and adopted April 7, 2004.
- (8) All related documents received and/or submitted at, or prior to, the public hearing.

Section 2. Based on the foregoing evidence, the City Council finds that:

- (1) The proposed vacation complies with all applicable requirements of the anticipated General Plan, any applicable Specific Plan, and any applicable policies of the City of Calabasas.

- (2) Notice of the City Council public hearing was published in the Acorn newspaper for at least two successive weeks prior to the hearing in accordance with Chapter 3, Part 3, Division 9 of the Streets and Highways Code.
- (3) The Resolution of Intention was posted at the Las Virgenes Municipal Water District Office, the Las Virgenes Unified School District Office and at Calabasas City Hall in accordance with Chapter 3, Part 3, Division 9 of the Streets and Highways Code.
- (4) Notice of the City Council public hearing was mailed or delivered at least two weeks before the day set for the hearing pursuant to Chapter 3, Part 3, Division 9 of the Streets and Highways Code.
- (5) Notices of Vacation were posted conspicuously along the line of the street, highway, or public service easement proposed to be vacated at least two weeks before the day set for the hearing pursuant to Chapter 3, Part 3, Division 9 of the Streets and Highways Code.
- (6) The proposed project does not conflict with the City's draft Circulation Element of the anticipated General Plan regarding vacation of the existing public streets within the Braewood Community as described in the Resolution of Intent.
- (7) The streets proposed to be vacated described in the Resolution of Intention are unnecessary for present or prospective public use.

Section 3. In view of all of the evidence and based on the foregoing findings, the City Council concludes that:

- (1) From all the evidence submitted, the streets listed in the Resolution of Intention are unnecessary for present or prospective public use.
- (2) If carried out, the proposed vacation of streets will not conflict with and/or will further the purposes and goals of the City's draft Circulation Element of the anticipated General Plan as it applies to the existing public streets within the Braewood Community.

Section 4. In view of all of the evidence and based on the foregoing findings and conclusions, the City Council hereby resolves to order the vacation of the streets as listed in the Resolution of Intention, subject to the following agreements and conditions:

I. INDEMNIFICATION AGREEMENT

To the fullest extent permitted by law, Braewood Calabasas Homeowners Association ("BCHA" or "Applicant") shall defend, indemnify and hold harmless City, its employees, agents and officers, from and against any liability, claims, suits, actions, arbitration proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened including, but not limited to, actual attorneys' fees, litigation expenses and court costs of any kind without restriction or limitation, incurred in relation to, as a consequence of, arising out of or in any way attributable to, actually, allegedly or impliedly, in whole or in part: (i) the issuance of this Conditional Use Permit No. 03-11 and street vacation (hereinafter, "these approvals"), (ii) the construction activities conducted pursuant to these approvals, (iii) the existence, design, or operation of the proposed gates when constructed, (iv) the use and operation of the private street system created by these approvals, (v) actual or alleged violations of the American Disabilities Act, including the cost of any actions City is ordered to take to comply with that act as a consequence of, arising out of or in any way attributed to, actually, allegedly or impliedly, in whole or in part, the issuance of these approvals and the limitations on public access to, and the changed route, parking and other details of access to Freedom Park. BCHA shall not be responsible for ADA compliance within the boundaries of Freedom Park itself or otherwise be responsible for the safety and maintenance of Freedom Park. Applicant shall pay such obligations as they are incurred by city, its employees, agents and officers. This agreement and condition shall be implemented by a written agreement signed on behalf of BCHA and in a form acceptable to the City within 15 days of issuance of this Resolution.

II. CONDITIONS OF APPROVAL

1. Prior to issuance of building permits, the applicant is required to obtain Fire Department approval of the proposed gates.
2. An access code for ingress and egress shall be provided to the Fire Department and Sheriff's Department and any other public or semi-public agency that provides a service to the Braewood Community.
3. The Applicant shall record an easement concurrent with the recordation of the street vacation in a form reasonably acceptable to the City Attorney granting the City, the Sheriff's Department, the Fire Department, and utility providers an irrevocable easement over the private street system created by this vacation for (i) vehicular access by public agencies and utilities for fire, police, and other public services and (ii) pedestrian access and vehicular access by disabled and elderly persons to Freedom Park.

4. Prior to issuance of building permits, the BCHA shall enter in a written indemnity agreement with the City providing the City the indemnifications and protections set forth in Section 4.I of this Resolution.
5. This grant shall not be effective for any purposes until the applicant and the owner of the property involved (if other than the owner) have filed, with the office of the Community Development Department an affidavit recorded as a covenant agreement with the County of Los Angeles stating the applicant and the owner are aware of and agree to accept all conditions of approval.
6. The BCHA shall be responsible to maintain safe access to Freedom Park for all members of the public. This shall include safe pedestrian access for all persons during the hours the park is in operation and vehicular access to the park during that time for elderly and disabled persons. This access shall comply with the requirements of the federal Americans with Disabilities Act ("ADA") as the ADA now exists or may hereafter be amended.
7. Hours of use and access to Freedom Park shall be equal for all members of the public. The park shall remain open to the public Monday to Sunday from dawn to dusk or such other hours as are established by the City.
8. The Conditional Use Permit No. 03-11 shall not take effect, and no building permit shall be issue, until after the street vacation is approved and recorded.
9. The City of Calabasas shall provide the vehicular access code to any disabled or elderly persons seeking access to the park. A disabled person may obtain the code at the Tennis and Swim Center or at another designated location(s) as determined by the City Manager. Vehicular access to disabled and elderly people to the park shall be provided in perpetuity. If and when the City discontinues to provide this service it is the applicant's responsibility to provide a similar service. Notice of the availability of disabled and elderly access and provisions for obtaining this access shall be posted at each entry gate.
10. Except as otherwise may be ordered by a court of law, information regarding the identity of persons applying for, seeking or gaining access to Freedom Park shall not be used for any purpose other than denying or providing such persons access to the Park and, specifically, shall not be utilized to monitor users of the Park.

11. Any modifications to the approved plans shall require approval from the Community Development Director or designee. Any substantial modifications as determined by the Community Development Director or designee to the proposed project will require the project to be brought back to the Planning Commission.

Section 5. In accordance with Streets and Highways Code Section 8324(b), the City Council further resolves that the City Clerk is not to record this Resolution of Vacation until completion of each and every one of the conditions 1 through 5 listed in Section 4 of this Resolution.

Upon completion of each and every one of conditions 1 through 5 listed in Section 4, the City Clerk shall cause an attested certified copy hereof, under the seal of the City of Calabasas, to be recorded in the office of the County Recorder of Los Angeles County, California.

Section 6. Upon completion of each and every one of conditions 1 through 5 listed in Section 4 of this Resolution, the City Council hereby orders the vacation of the streets as listed in the Resolution of Intention, expressly reserving from said vacation the easements described below:

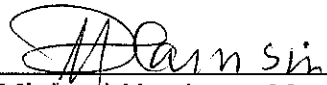
RESERVING AND EXCEPTING THEREFROM the permanent easement and right at any time, or from time to time, to construct, maintain, operate, replace, remove and renew sanitary sewers, storm drains, water mains and appurtenant structures in, upon, over and across the above described land and, pursuant to any existing franchises or renewals thereof or otherwise, to construct, maintain, operate, replace, remove, renew and enlarge lines of pipes, conduits, cables, wires, poles and other convenient structures, equipment and fixtures, for the operation of gas pipelines, telegraphic and telephone lines, cable television, railroad lines, and for the transportation and distribution of electric energy, petroleum and its products, ammonia, water and incidental purposes, including access and right to keep the property free from inflammable materials and wood growth and otherwise protect the same from all hazards in, upon and over the above described land.

A map showing the property to be vacated is on file in the City Clerk's office.

Section 7. After recordation of this Resolution as authorized in Section 5 hereof, the City Council hereby authorizes the Mayor to sign a deed quit claiming the City's interest in the streets listed in the Resolution of Intention, to the BCHA, expressly reserving from said vacation the easements described in Section 6.

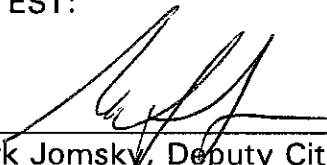
Section 8. The City Clerk shall certify to the passage and adoption of this resolution and shall cause the same to be processed in the manner required by law.

PASSED, APPROVED AND ADOPTED this 5th day of May, 2004.



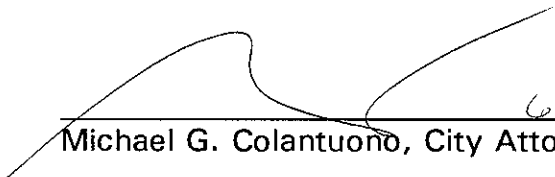
Michael Harrison, Mayor

ATTEST:



Mark Jomsky, Deputy City Clerk

APPROVED AS TO FORM:



Michael G. Colantuono, City Attorney 6/2/04

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) SS
CITY OF CALABASAS)

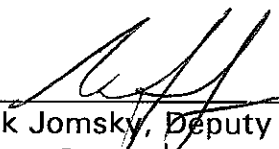
I, **MARK JOMSKY**, Deputy City Clerk of the City of Calabasas, California, **DO HEREBY CERTIFY** that the foregoing resolution, being **Resolution No. 2004-876** was duly adopted by the City Council of the City of Calabasas, at a regular meeting of the City Council held May 5, 2004 and that it was adopted by the following vote, to wit:

AYES: Mayor Harrison, Mayor pro Tem Groveman, Councilmembers Bozajian, Devine Washburn.

NOES: None.

ABSTAIN: Councilmember Devine.

ABSENT: None.



Mark Jomsky, Deputy City Clerk
City of Calabasas, California