

**RESOLUTION NO. 2004-871**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CALABASAS, CALIFORNIA, APPROVING CONDITIONAL USE PERMIT NO. 03-11, DENYING VARIANCE NO. 03-06, AND ADOPTING MITIGATED NEGATIVE DECLARATION TO CONSTRUCT ENTRY GATES FOR THE PURPOSE OF PRIVATIZING THE BRAEWOOD COMMUNITY ALONG MULHOLLAND HIGHWAY. THIS REQUEST INCLUDES INITIATING THE PROCESS FOR THE VACATION OF ALL ROADS WITHIN THE COMMUNITY. THE VARIANCE REQUEST IS TO CONSTRUCT BLOCK WALLS WITH A MAXIMUM HEIGHT OF 7 FEET, 8 INCHES.**

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

1. Staff reports and Mitigated Negative Declaration were prepared by the Community Development Department.
2. Staff presentations at the public hearings held on March 3, 2004 and April 7, 2004.
3. City of Calabasas Land Use and Development Code, the General Plan, and all other applicable regulations and codes.
4. Public comments, both written and oral, received and/or submitted at or prior to the public hearings, supporting and/or opposing the applicant's request.
5. Testimony and/or comments from the applicant and their representatives submitted to the City in both written and oral form at or prior to the public hearings.
6. All related documents received and/or submitted at or prior to the public hearings.
7. Recommendations from the Design Review Panel, Traffic and the Transportation Commission and Parks and Recreational Commission.

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

1. The applicant submitted an application for a Conditional Use Permit on August 4, 2003 and a Variance on October 24, 2003.

2. The applicant requested approval to construct entry gates for the purpose of privatizing the Braewood Community along Mulholland Highway; two vehicular gates and two pedestrian gates will be located at Freedom Drive and two vehicular gates and two pedestrian gates will be located at Parched Drive. This request includes initiating the process for the vacation of all roads within the Community and to possibly construct block walls with a maximum height of 7 feet, 8 inches.
3. Within thirty (30) days of the submittal of the application to the Community Development Department, staff determined that the application was incomplete and the applicant was duly notified of this incomplete status.
4. On January 15, 2004, the application was deemed complete and the applicant was notified of this status.
5. Notices of the March 3, 2004 and April 7, 2004, City Council public hearings were posted at Juan de Anza Bautista Park, the Calabasas Tennis and Swim Center, Gelson's Market, and at Calabasas City Hall.
6. Notices of the City Council public hearings were published in the *Acorn* ten (10) days prior to the hearings.
7. Notice of the April 7, 2004 City Council public hearing was provided to property owners within 500 feet of the property as shown on the latest equalized assessment roll.
8. Notices of the City Council public hearings were mailed or delivered at least 10 days prior to the hearings to the project applicant.
9. The project site is currently zoned Residential, Single-family - Scenic Corridor (RS-SC) and Recreation - Scenic Corridor and (REC-SC).
10. The land use designation for the project site under the City's adopted General Plan is Residential-Single Family (R-SF) and Public Facility-Recreational (PF-R).
11. The surrounding land uses around the project site are single-family residential on the north, east and west, shopping center on the west and educational facility (A.C. Stelle Middle School) on the south.
12. Notices of the City Council public hearings included the notice set forth in Government Code Section 65009 (b)(2).

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

Conditional Use Permits, as discussed in Sec. 17.62.050 of the Calabasas Land Use and Development Code require the following findings:

1. The proposed use is conditionally permitted within the subject zoning district and complies with all applicable provisions of the Development Code.

The proposed entry gates in the Braewood Community are an allowed use in the Residential, Single-family (RS) zone per Section 17.12.020 of the Land Use and Development Code. As recommended, the proposed project complies with all applicable provisions of the Development Code including height, setbacks, and Scenic Corridor Development Guidelines (refer to Scenic Corridor findings below). The architectural appearance of the entry gates complement the architecture of the existing community. The Development Code does not distinguish between gated and non-gated communities. Gated communities are permitted in any residential zoning district. The installation of gates in this community will not modify the existing residential land use.

2. The proposed use is consistent with the General Plan and any applicable Specific or Master Plan.

The General Plan Consistency Review Program states in the Quality of Life section that residents have the right to "... protect the privacy of existing residential dwellings and their yard areas to the maximum feasible extent." [p.79] Additional gates will add security, protect secured areas from vandalism, and decrease the volume of pedestrian and vehicular traffic, which subsequently protects privacy.

A goal of the Transportation Element of the Calabasas General Plan is to "preserve a sense of comfort and well-being throughout the community by reducing the intrusiveness of commercial/business park traffic, the City's circulation system, and regional traffic on neighborhood streets and quality of life." [p.V1]. The proposed project will help this Community to achieve this goal. The intrusiveness and nuisance-related effects on the Community presented in public testimony and outlined in the written record that area attributable to traffic circulation patterns resulting from the recent opening of the adjacent Middle School can in part be mitigated through the use of gates.

The General Plan delineates a goal to provide a minimum of 3.0 acres of active parkland per 1,000 residents. The draft Park and Recreational Master Plan accounts for a total of 56.6 acres of existing active parkland. On January 1,

2003, the California Department of Finance estimates the population of Calabasas to be 21,100. Using this population estimate, the total number of General Plan targeted parkland is 63.3 acres, which is an 11 percent deficit. The proposal will preserve the existing park and will not result in the elimination of any existing park facilities. Therefore, the project will be consistent with the Parks, Recreation, and Trails Element of the General Plan as long as the access to the park is consistent with the conditions of approval.

3. The approval of the Conditional Use Permit for the proposed use is in compliance with the California Environmental Quality Act.

A Mitigated Negative Declaration (MND) has been prepared for the project in compliance with the City's adopted CEQA guidelines and the state's CEQA guidelines.

4. The location, and operating characteristics of the proposed use are compatible with the existing and anticipated land uses in the vicinity.

The Braewood Community is composed of single-family residences and a public park. The Braewood Community's proposal to become a gated community is compatible with the existing and future surrounding uses and characteristics of the vicinity. The Braewood Community is comprised of single-family residential homes. As defined by the Development Code, the proposed gates are considered an incidental structure to the existing Community. The single-family residential use of the Community will not be modified by the installation of the proposed gates. Furthermore, most housing stock in Calabasas is located within gated communities similar to the gating proposed by this neighborhood HOA.

The existing park will be accessible for public use. Pedestrian gates will be open during the park's existing hours of use and disabled persons can access the park by automobile using either a gate code or permit to be provided by the City upon application by any disabled person. The method of obtaining automobile access for disabled persons will be posted at the entry gates.

Projects in a Scenic Corridor, as discussed in Sec. 17.18.040 of the Calabasas Land Use and Development Code, require the following findings:

1. The proposed project design has considered and complies with the Scenic Corridor Design Guidelines adopted by the City Council.

The proposed entry gates are located within the Calabasas Scenic Corridor. The entry gates are designed to comply with the Calabasas Scenic Corridor development guidelines. The Calabasas Scenic Corridor development guidelines stipulate that, "the color of fences and walls shall blend with the

natural environment." The existing walls that will become part of the proposed project exhibit colors that blend with the surrounding natural environment. The walls are composed of dry stacked ledger stone veneer with matching capping; the gates will be painted medium bronze metallic consistent with the ledger stone color.

The Scenic Corridor development guidelines prescribe that "vines and/or clinging plant material shall be used to visually accent walls and fences where space may preclude the use of other larger plants." The applicant is proposing to install plant materials directly adjacent to the proposed walls that will visually accent the walls and gates.

2. The proposed project ensures maximum compatibility with and enhancement of the Scenic Corridor.

The elements used to construct the proposed gates and walls have been selected to complement the existing community's architecture and natural environment. The proposed project has been designed to ensure the maximum compatibility with the enhancement of the Scenic Corridor. The wrought iron and tubular steel gates and stone clad walls are consistent with architectural features that complement the rural theme prominently stated to be a design goal in the Scenic Corridor Development Guidelines.

The existing trees and vegetation that exist in the vicinity of the proposed walls and gates visually enhance the impacting view of this small neighborhood from surrounding viewsheds. The landscaping that already exists will not only conceal much of the project but also provide continued natural elements that will help integrate the neighborhood and enhance the quality of the Scenic Corridor. The project has been designed to minimize impacts to existing landscaping and to provide for additional accent landscaping. The materials used in the design of the proposed gates are non-glare producing and are not obtrusive when viewed from the surrounding communities.

3. The proposed project is within an urban Scenic Corridor designated by the General Plan and includes adequate design and landscaping which serves to enhance and beautify the scenic corridor.

The proposed project is located within a City of Calabasas Scenic Corridor. The proposed entry gates and walls are designed to be consistent with the high quality objectives imposed by the Scenic Corridor guidelines. In addition, the proposed materials are consistent with the requirements stipulated in the Design Guidelines in the Scenic Corridor Ordinance.

The Scenic Corridor guidelines require that any new development be designed and landscaped to minimize any adverse impacts to view corridors. The proposed entry gates and walls will be surrounded by trees and decorative vegetation that will integrate the appearance of the gates into the surrounding viewshed. The existing vegetation adjacent to the facade of the walls not only conceals the wall face but helps to integrate the project into the natural environment which supports the design objectives of the Scenic Corridor. The applicant has proposed new landscaping to conceal as much of the project gating and to beautify the Corridor to the extent feasible.

Variances, as discussed in Sec. 17.62.070 of the Calabasas Land Use and Development Code require the following findings:

1. That granting the Variance is necessary for the preservation and enjoyment of substantial property rights possessed by other property owners in the same vicinity and zoning district and denied to the property owner for which the Variance is sought.

The proposed stone clad block walls (which will comprise the entry gates) are located along the alignment of the property line separating public street right-of-way from private property lines adjacent to Freedom Drive and Parched Drive. The proposed block walls and gates will enclose the Braewood Community and no longer make this neighborhood accessible to the general public by automobile.

Currently, portions of the proposed block walls are non-conforming with current Code requirements (they were constructed prior to adoption of the City's Development Code) and are as high as 8 feet from existing grade, which exceeds the a 6-foot height limit in the Code. Denying the request to construct walls 7 to 8 feet in height for the gating project would not prevent the proposed development from preserving and enjoying property rights possessed by other property owners in the vicinity. The proposed project will function equally well with walls that are 6 feet in height. Because the preservation and enjoyment of property rights possessed by other property owners in the same vicinity will not be affected by installing walls that would be consistent with the Code, the Variance shall be denied.

### **Street Vacation Findings**

1. The vacation recommended by this Resolution is made under Chapter 4 of Part 3 of Article 9 of the California Streets & Highways Code, commencing with Section 8330. The Braewood Community consists of six public streets defined as local streets. All six local streets "dead-end" within this small Community and provide access only to the 72 residents that live in this Community and to an adjacent public park. These streets are not integral to the City's street grid or circulation system.

The streets to be vacated do not connect this neighborhood to other neighborhoods or provide any throughway to other streets in the surrounding area. The primary purpose of local streets is to provide access for residential and commercial uses in the City. Since in this case the local streets do not serve as connectors to other neighborhoods, do not connect to the City's primary arterial system, and do not conduct through traffic, the change of status from public to private streets would not adversely effect local, regional or intra-neighborhood circulation. As conditioned, the project will maintain access to the 72 homeowners and park users only. The project gating does not prevent access to the existing park. Park users will be required to park their automobiles on adjacent thoroughfares or streets in the project vicinity and walk to the park facility. Disabled persons wishing to access the park will be provided with gate codes or other entry methods to directly access the park by automobile.

The proposed street vacation will not eliminate access to properties in this Community because the roads will continue to provide service to all property owners and the conditions of approval will guarantee access to park users. The City of Calabasas will require Braewood Calabasas Homeowners Association to record all public service easements along the vacated streets.

2. The right-of-way to be vacated is generally described as Camay Court, Drums Court, Craft Court, Balcony Drive and portions of Parched Drive and Freedom Drive west of the proposed gate location, City of Calabasas, County of Los Angeles and is more particularly described in the Exhibit C attached hereto and incorporated herein by this reference.
3. The facts under which this summary vacation is made are stated in the recitals to this discussion and include the finding that the right-of-way to be vacated is not required for street or highway purposes. Those facts justify summary vacation of the easement pursuant to Section 8334(a) of the California Streets & Highways Code. The Braewood street vacation affects only the public streets necessary to access properties within the Braewood Community and a small public park. No other properties are affected. The public park will be accessed by potential park users through a pedestrian gate located on Parched Drive, which will be opened during existing regulated park use hours and an easement for public access to the park will be recorded by the HOA. In addition, disabled people will be able to obtain a code/permit access card or other method of entry by making inquiry at a City facility. The location for obtaining permits will be signed on each entry gate. The Homeowners Association will take possession of the roads and access will be provided to the property owners through a shared ownership.

**Section 4.** In view of all of the evidence and based on the foregoing findings and conclusions, the City Council hereby approves Conditional Use Permit No. 03-11, denies Variance No. 03-06, and adopts Mitigated Negative Declaration approving to construct entry gates for the purpose of privatizing the Braewood Community along Mulholland Highway. This request includes initiating the process for the vacation of all roads within the Community, 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 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 final action by the City to authorize these approvals.

## **II. CONDITIONS OF APPROVAL**

### **Planning**

1. 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.
2. Prior to issuance of building permits, the applicant is required to obtain Fire Department approval of the proposed gates.



3. The proposed project shall be built in compliance with the plans stamped PC Exhibit B and C Meeting Date February 12, 2004 except the new wall height shall not exceed 6 feet.
4. 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.
5. 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.
6. 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.
7. The Conditional Use Permit shall not take effect, and no building permit shall be issue, until after the street vacation is approved and recorded.
8. 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.
9. Prior to issuance of building permits, the BCHA shall enter in a written indemnity agreement with City providing City the indemnifications and protections set forth in Section 4.I of this Resolution.
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.
12. Knox boxes shall be installed at both gates for emergency access.
13. All project conditions and mitigation measures shall be imprinted on the title sheet of the construction drawings. The approved set of plans shall be retained on-site for review by Building Inspectors during the course of construction.
14. This approval shall be valid for two years from the date of adoption of the resolution. The permit may be extended in accordance with Title 17 Land Use and Development Code, Article VI - Land Use and Development Permits.
15. 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 and mitigation measures contained in the Mitigated Negative Declaration.
16. Any violation of the conditions or of approval or mitigation measures may result in the revocation of the Conditional Use Permit.
17. All exterior lights are subject to the provisions set forth in the Lighting Ordinance Chapter 17.27 of the Land Use and Development Code.
18. Prior to any use of the proposed gates, all conditions of approval and mitigation measures shall be completed to the satisfaction of the Director of Community Development or designee.
19. Prior to the Issuance of Building Permits, improvement/construction plans shall be submitted to the Engineering, Traffic Engineering, Community Development Departments for review and approval , as required by the conditions of approval.

20. Construction Activities:

Hours of construction activity shall be limited to:

7:00 a.m. to 6:00 p.m., Monday through Friday

8:00 a.m. to 5:00 p.m., Saturday

Stacking of construction worker vehicles, prior to 7:00 a.m. in the morning will be restricted to areas that do not adversely affect adjacent property owners. The applicant shall notify the Traffic and Transportation Director or designee of the construction employee parking locations, prior to commencement of construction.


21. The BCHA is responsible for the care and maintenance of all required landscaping as part of this approval. The proposed landscaping shall be maintained in good health by the HOA in perpetuity.

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

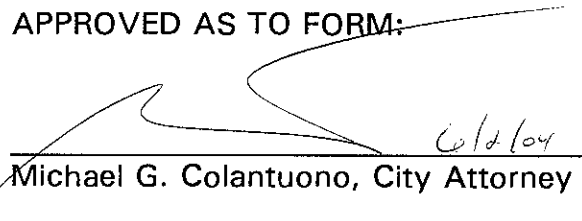
**PASSED, APPROVED AND ADOPTED** this 5th day of May, 2004.

  
\_\_\_\_\_  
Michael Harrison, Mayor

ATTEST:

  
\_\_\_\_\_  
Mark Jomsky, Deputy City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Michael G. Colantuono, City Attorney

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. 2004-871** 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.

  
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Mark Jomsky, Deputy City Clerk  
City of Calabasas, California