

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE SUMMARILY VACATING AN 997 SQUARE FOOT PORTION OF A PUBLIC SERVICE EASEMENT LOCATED AT 5018 ALMADEN EXPRESSWAY**

**WHEREAS**, Chapter 4 of Part 3 of Division 9 of the Streets and Highways Code of the State of California authorizes the City Council to summarily vacate a public service easement if the City Council determines that it is excess and there are no other public facilities located within the easement, and there are no in-place public utility facilities that are in use and would be affected by the vacation; and

**WHEREAS**, the City Council intends to summarily vacate a 997 square foot portion of a public service easement ("Subject Property") constituting all that real property situated in the City of San José, County of Santa Clara, State of California, more particularly described as:

BEING A PORTION OF PARCEL Q AS SHOWN ON THAT CERTAIN PARCEL MAP RECORDED DECEMBER 22, 2016 IN BOOK 900 OF MAPS AT PAGES 52 THRU 57, INCLUSIVE, SANTA CLARA COUNTY RECORDS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A CITY OF SAN JOSE STANDARD 2 ½" BRASS DISK MONUMENT LOCATED IN CHERRY AVENUE WHICH BEARS NORTH 00° 01' 51" EAST 165.31 FEET TO A CITY OF SAN JOSE STANDARD 2 ½" BRASS DISK MONUMENT ON THE CENTERLINE OF CHERRY AVENUE, SAID LINE BEING THE BASIS OF BEARING OF THIS DESCRIPTION;

THENCE LEAVING SAID MONUMENT NORTH 66° 13' 41" EAST 178.84 FEET TO THE TRUE POINT OF BEGINNING OF THIS DESCRIPTION.

THENCE FROM SAID TRUE POINT OF BEGINNING ALONG THE FOLLOWING  
FOUR (4) LINES:

- 1) SOUTH 04° 03' 18" WEST 24.23 FEET;
- 2) NORTH 85° 56' 42" WEST 44.00 FEET;
- 3) NORTH 04° 03' 18" EAST 21.11 FEET; AND
- 4) NORTH 90° 00' 00" EAST 44.11 FEET TO THE TRUE POINT OF BEGINNING.

CONTAINING 0.02 ACRES, MORE OR LESS.

**WHEREAS**, attached to this Resolution as Exhibit "A" and incorporated herein is a map approved by the Director of the Department of Public Works on January 9, 2018 entitled "PLAT MAP SHOWING THE PUBLIC SERVICE EASEMENT TO BE VACATED" showing the Subject Property; and

**WHEREAS**, attached to this Resolution as Exhibit "B" and incorporated herein is a copy of the report, dated January 3, 2018 that the Director of the Department of Public Works submitted to the City Council setting forth the facts justifying the summary vacation of the Subject Property (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:

- A. The Subject Property is excess and there are no other public facilities located within the easement; and

- B. The vacation is consistent with the City's General Plan; and
- C. There are no in-place public utility facilities that are in use and would be affected by the vacation.

**SECTION 2.** Based upon the findings made in Section 1 of this Resolution and the provisions of Chapter 4 of Part 3 of Division 9 of the Streets and Highways Code of the State of California, the City Council does hereby summarily vacate the Subject Property.

**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 Subject Property will no longer constitute a public service easement.

RD:EH:LCP  
1-3-18

ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2018, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

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SAM LICCARDO  
Mayor

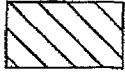
ATTEST:

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TONI J. TABER, CMC  
City Clerk

# PLAT MAP


SHOWING THE PUBLIC SERVICE EASEMENT  
TO BE VACATED

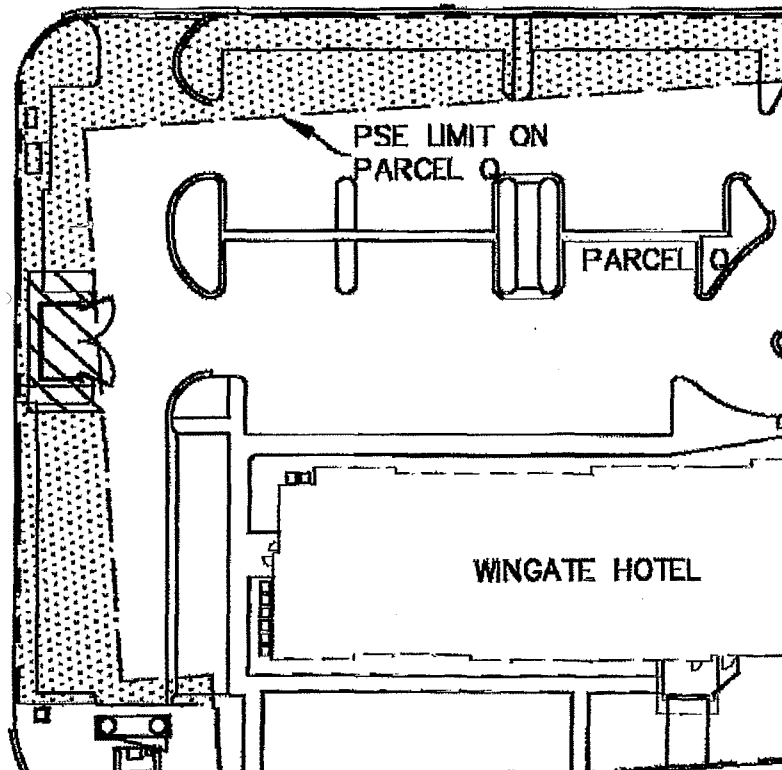


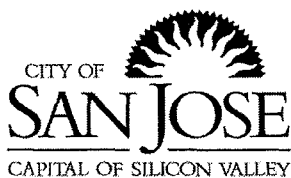
AREA TO BE VACATED

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 LIW FONG APPROVED THIS 9<sup>TH</sup> DAY OF JANUARY 2018  
BARRY NG  
DIRECTOR OF PUBLIC WORKS,  
CITY OF SAN JOSE





# Memorandum

**TO:** HONORABLE MAYOR AND  
CITY COUNCIL

**FROM:** Barry Ng

**SUBJECT: SUMMARY VACATION OF  
PUBLIC SERVICE EASEMENT  
AT 5018 ALMADEN EXPRESSWAY**

**DATE:** January 3, 2018

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Approved

Date

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**COUNCIL DISTRICT: 9**

## RECOMMENDATION

Adopt a resolution:

- (a) Approving the report of the Director of Public Works setting forth the facts justifying the summary vacation of a 997 square foot portion of a public service easement ("Subject Portion") at the Almaden Ranch Retail-Center, 5018 Almaden Expressway; and
- (b) Summarily vacating the Subject Portion which has been determined to be excess; and
- (c) 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 Subject Portion will no longer constitute a public service easement.

## BACKGROUND

Ruth and Going, Inc., acting as the agent for the property owner, Almaden Ranch, LLC, submitted an application to vacate the Subject Portion on private property located at the Almaden Ranch Retail Center, 5018 Almaden Expressway (see attached location map).

The Subject Portion was created through the recordation of a Grant of Easement, document number 22799118 of Official Records, Office of the Recorder, County of Santa Clara, on December 12, 2014, which established a blanket public service easement ("Blanket PSE") over

HONORABLE MAYOR AND CITY COUNCIL

January 3, 2018

**Subject: Summary Vacation of Public Service Easement at 5018 Almaden Expressway**

Page 2

the entire site to guarantee necessary public utility service to parcels created by the proposed Almaden Ranch Retail Center development. Because the boundaries of the Blanket PSE encumbered the entire site, it also defined areas identified as “exceptions” to the Blanket PSE that were intended to correlate with future parcels that would be developed as part of the retail center development. The boundaries of the Blanket PSE were established based on preliminary plans for the Almaden Ranch Retail Center at the time of recordation. Based on updated site plans and more recent development, some of the parcels originally envisioned did not accurately match the Blanket PSE exceptions, and thus, were partially encumbered by the Blanket PSE.

The portion of the retail center development at issue in this vacation application, Lot 2 (as recorded on the Parcel Map in Book 865 of Maps, Pages 36-38 of Official Records, Office of the Recorder, County of Santa Clara on November 5, 2013), also was partially encumbered by the Blanket PSE.

Since the recordation of the Blanket PSE, approximately 90% of the Almaden Ranch Retail Center has been constructed in accordance with approved Planned Development Permits along with all associated public service utilities. On February 8, 2017, a Planned Development Permit Amendment, PDA14-037-02, was approved for the development of a 115 room hotel on Lot 2 at the southeast corner of the retail center. The building plan for the proposed hotel calls for a trash enclosure and other non-utility structures that would encroach on a portion of the Blanket PSE.

Of note is that on May 2, 2017, the Council summarily vacated a 1,515 square foot portion of a public service easement for another portion of the Almaden Ranch Retail Center. While the subject vacation is not directly associated with the May 2017 summary vacation, staff is working with the property owner to provide a comprehensive final survey of the Almaden Ranch Retail Center to avoid multiple Council actions on the same property.

### **ANALYSIS**

Pursuant to Streets & Highways Code Section 8333(c), a public service easement may be summarily vacated if the City Council determines that it is excess and there are no other public facilities located within the easement or in use that would be affected by the vacation.

With all necessary public service utilities currently installed in the Almaden Ranch Retail Center, staff has determined that the Subject Portion is excess per its original intended purpose and this vacation will allow for the most effective site layout to accommodate on-site circulation for parking, loading, and trash pickup. Staff also has determined that there are no other public facilities located within the easement or in use that would be affected by the vacation. All concerned utility companies have been contacted in writing and have no objections to the proposed vacation.

Although staff believes that it would be preferable to vacate any and all of the excess Blanket PSE at the retail center at one time, only the Subject Portion is currently proposed for vacation. To avoid multiple Council actions on the same property, for any future request for a vacation of a

HONORABLE MAYOR AND CITY COUNCIL

January 3, 2018

**Subject: Summary Vacation of Public Service Easement at 5018 Almaden Expressway**

Page 3

portion of the Blanket PSE, staff will require a comprehensive survey and vacation of all remaining excess portions of the Blanket PSE.

According to the title report issued by First American Title Company, Almaden Ranch, LLC, a California limited liability company, is the underlying fee owner of the Subject Portion. Upon recordation of the resolution of vacation, the land within the Subject Portion will no longer be encumbered by a public service easement and no further action by the City will be required.

### **EVALUATION AND FOLLOW-UP**

If Council adopts this resolution of vacation, no further action by Council will be required.

### **PUBLIC OUTREACH**

All concerned utility companies have been contacted in writing and have no objections to the vacation of the Subject Portion.

This memorandum will be posted to the City's website for the January 23, 2018, Council agenda.

### **COORDINATION**

This vacation has been coordinated with the Department of Planning, Building and Code Enforcement, Department of Transportation, Fire Department, Police Department, and the City Manager's Budget Office. Additionally, the vacation and resolution of vacation have been reviewed by the City Attorney's Office.

### **COMMISSION RECOMMENDATION/INPUT**

No Commission recommendation was associated with this action.

### **COST SUMMARY/IMPLICATIONS**

The Department of Public Works collected cost-recovery fees in Fiscal Year 2016-2017 of \$3,370 to process the subject vacation. These fees were deposited into the Public Works Department Services Fee Fund (Fund 001).



HONORABLE MAYOR AND CITY COUNCIL

January 3, 2018

**Subject: Summary Vacation of Public Service Easement at 5018 Almaden Expressway**

Page 4

**CEQA**

Determination of Consistency with the Environmental Impact Report for the Almaden Ranch Retail Center Project (Resolution No. 76168) and addenda thereto, PDC16-049, PD14-037, and PDA14-037-02.

/s/

BARRY NG

Director of Public Works

Attachment: Location Map

For questions please contact Michael Liw, Deputy Director of Public Works, at 408-535-6835