

RESOLUTION NO. R10-24

A RESOLUTION OF THE CITY OF PALOS VERDES ESTATES APPROVING A NON-EXCLUSIVE EASEMENT AGREEMENT BETWEEN THE CITY AND THE SOUTH BAY CITIES SANITATION DISTRICT OF LOS ANGELES COUNTY FOR PURPOSES OF CONSTRUCTING AND MAINTAINING A RETAINING WALL WITHIN THE PASEO LUNADO CANYON TO PROTECT AGAINST SLOPE FAILURE AND POTENTIAL DAMAGE TO THE DISTRICT'S TRUNK SEWER LINE IN THE AREA

The City Council of the City of Palos Verdes Estates does hereby find, order, and resolve as follows:

SECTION 1. Recitals.

- A. City is the owner of certain real property commonly referred to as the City Open Space within the Paseo Lunado Canyon east of the intersection of Via Carrillo and Paseo Lunado, Palos Verdes Estates, California, and being more particularly described as Assessor's Parcel Number 7543-030-900 in the County of Los Angeles, State of California (the "Property").
- B. The South Bay Cities Sanitation District of Los Angeles County is a public entity that owns and maintains large-diameter trunk sewers throughout Los Angeles County, including a trunk sewer line within the Paseo Lunado Canyon east of the intersection of Via Carrillo and Paseo Lunado.
- C. In or around February 2010, a portion of the slope in Paseo Lunado Canyon above the Trunk Sewer failed, causing the Trunk Sewer to break and leading to a sewage spill. The slope failure also damaged a pedestrian access path. The slope failure prevents ready pedestrian access to the area, and continues to threaten to damage the Trunk Sewer.
- C. City desires to grant the District to a non-exclusive easement to enter onto the Property for the purpose of constructing and maintaining thereon a 15-foot-high concrete block wall to protect the Trunk Sewer and to perform attendant grading on the Property.

SECTION 2. The City Council hereby approves the Easement Agreement attached hereto as Exhibit A and authorizes the Mayor to execute the Agreement on behalf of the City.

SECTION 3. The City Clerk shall certify to the passage and adoption of this resolution and enter it into the book of original resolutions.

PASSED, APPROVED, and ADOPTED this 12th day of October, 2010.

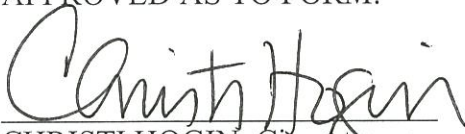

ROSEMARY HUMPHREY, Mayor

ATTEST:



JUDY SMITH, City Clerk

APPROVED AS TO FORM:



CHRISTI HOGIN, City Attorney

Recording Requested By:
County Sanitation Districts of
Los Angeles County
P.O. Box 4998
Whittier, CA 90607-4998

When Recorded Mail To Above Address
Attn: Jane Fong
Property Management Section

Space above this line for Recorder's use

This document is recorded for the benefit of the South Bay
Cities Sanitation District of Los Angeles County and is
therefore exempt from recording fees per Government Code
§ 6103 and from documentary transfer tax per Revenue and
Taxation Code § 11922.

EASEMENT AGREEMENT

This Easement Agreement (“Agreement”) is made by and between the City of Palos Verdes Estates (“City”) and South Bay Cities Sanitation District of Los Angeles County (“District”).

A. City is the owner of certain real property commonly referred to as the City Open Space within the Paseo Lunado Canyon east of the intersection of Via Carillo and Paseo Lunado, Palos Verdes Estates, California, and being more particularly described as Assessor’s Parcel Number 7543-030-900 in the County of Los Angeles, State of California (the “Property”) and as shown in Exhibit A.

B. The District is a public entity that owns and maintains large-diameter trunk sewers throughout Los Angeles County, including the Joint Outfall “J” Unit 1G trunk sewer (“Trunk Sewer”) depicted on Exhibit A. In or around February 2010, a portion of the slope in Paseo Lunado Canyon above the Trunk Sewer failed and caused the Trunk Sewer to break and led to a sewage spill. The slope failure also damaged a pedestrian access path. The slope failure prevents ready pedestrian access to the area, and continues to threaten to damage the Trunk Sewer.

C. Pursuant to the terms and conditions of this Agreement, City desires to grant the District to an easement to enter onto the Property for the purpose of constructing and maintaining thereon a 15-foot-high concrete block wall to protect the Trunk Sewer and to perform grading (the “Improvements”) on the Property. The precise location of the concrete block retaining wall and related grading is indicated on Exhibit B. The area indicated in Exhibit B constitutes the Easement Area contemplated by this Agreement.

The parties therefore agree as follows:

1. Grant of Easement. City hereby grants to the District, its successors and assigns, a perpetual, non-exclusive easement appurtenant to the Trunk Sewer with the following rights:
 - (a) the right to construct and maintain a concrete block retaining wall within the Easement Area;
 - (b) the right to perform grading within the Easement Area to the extent necessary to construct and maintain the retaining wall; and
 - (c) the right of ingress and egress over the Easement Area for the purpose of constructing and maintaining the retaining wall.
2. Additional Conditions. This Agreement is expressly subject to all conditions imposed on the proposed project by Planning Commission Resolution No. 2010-0465, adopted on May 18, 2010, attached as Exhibit C.
3. Termination. The easement granted by this Agreement is appurtenant to the Trunk Sewer. If the portion of the Trunk Sewer adjacent to the Easement Area is ever abandoned or otherwise taken out of service, then the easement granted by this Agreement will automatically extinguish. If the Trunk Sewer is ever abandoned or taken out of service by the District, District shall provide written notice to the City within 30 days of any such action. City will have 30 days after receipt of such notice to request that the District remove the retaining wall. If the City requests removal of the wall, District shall remove the wall within 180 days of the City's request. If the City does not request removal within 30 days, then the District may abandon the wall in place and title to the wall will vest in the City.
4. Repair and Maintenance. The District shall repair and maintain the retaining wall at its sole and exclusive expense and shall maintain the retaining wall in a neat and clean condition. The District shall remove any graffiti from the retaining wall within two business days of its discovery by the District or within two business days of being directed to do so by the City.
5. Insurance. The District shall maintain in full force and effect commercial general liability insurance coverage acceptable to City for the purpose of covering potential claims for bodily injury, death or disability and for property damage which may arise from or in connection with the construction or structural maintenance of the retaining wall. The insurance policy shall provide coverage limits of no less than \$1,000,000 combined single limit per occurrence and \$2,000,000 aggregate for personal injury, bodily injury and property damage. The District shall provide a copy of the policy to the City prior to commencement of any construction activity relating to the Improvements. The policy must name the City as additional insured and must be primary as to any other insurance available to City. The policy must include a clause ensuring that the City will

be provided at least 30 days notice prior to the cancellation or reduction of the insurance protection.

6. Compliance with Applicable Laws. At all times during the term of this Agreement, the District will comply with any and all applicable federal, state and local laws, rules and regulations, and shall obtain any and all permits required for the construction of the Improvements..
7. Indemnification and Hold Harmless. The District shall indemnify, defend and hold harmless City, and City's officers, officials, agents, employees and volunteers, from and against any liability, claim, or damages (including, without limitation, attorney's fees and costs of suit) arising from the District's construction activities or maintenance of the retaining wall, except for injuries and damages caused by the sole negligence of the City.
8. No Partnership. Nothing contained in this Agreement constitutes or creates a partnership between the City and the District.
9. Notices. All notices required under this Agreement may be hand-delivered or mailed. If mailed, notices must be sent via certified or registered mail. Notices sent by U.S. mail shall be deemed to have been given upon placement in the U.S. Mail, postage pre-paid.
10. Governing Law/Venue. This Agreement is made in and is to be performed in the State of California and will be governed by, interpreted under, and construed and enforced in accordance with the laws of the State of California. Exclusive venue for all disputes under this Agreement will be the Superior Court for the County of Los Angeles.
11. Attorneys Fees. In the event that either party brings any action or files any proceeding in connection with the enforcement of its respective rights under this Agreement or as a consequence of any breach by the other party of its obligations hereunder, the prevailing party in that action or proceeding will be entitled to recover all of its reasonable attorneys fees and costs from the losing party.
12. Exhibits. Each exhibit is incorporated by this reference as if fully set forth at length herein.
13. Entire Agreement/Modification. This Agreement sets forth the complete understanding of the parties and supersedes all prior or contemporaneous communications, understandings, promises and agreements, either oral or written. This Agreement may not be modified except by written instrument signed by the parties.
14. Severability. If any term or provision of this Agreement is determined to be unenforceable or invalid by any court of competent jurisdiction, the remainder of this Agreement will not be affected and will continue in full force and effect.
15. Section Headings. All section headings in this Agreement are for convenience of reference only and are not to be construed as modifying or governing the language in the section referred to or to define or limit the scope of any provision of this Agreement.

16. Representation of Authority. Each individual executing this Agreement represents that he/she is duly authorized to execute this Agreement on behalf of the entity represented.
17. Interpretation. The parties have each independently reviewed and participated in the preparation of this Agreement, and the terms hereof will not be construed in favor of or against any party, but will be construed in accordance with their common meaning.

The parties have executed this Agreement as of the dates below.

CITY
City of Palos Verdes Estates

Dated: _____

By: _____
Rosemary Humphrey
Mayor

DISTRICT
South Bay Cities Sanitation District of Los
Angeles County

Dated: _____

By: _____
Stephen R. Maguin
Chief Engineer & General Manager

Easement No. 3311 Parcel No. 7543-030-900

Name of Sewer: J.O. "J" Unit 1G Trunk Sewer

Exhibit A

JO "J" UNIT 1G- PASEO LUNADO

JOINT OUTFALL J - UNIT 1G

Project Location

Esmt. 1456

APN 7543-030-500

Owned by City of Palos Verdes Estates

APN 7543-001-900

TYBURN RD



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VIA BUENA

VIA VICTORIA

VIA RIVERA

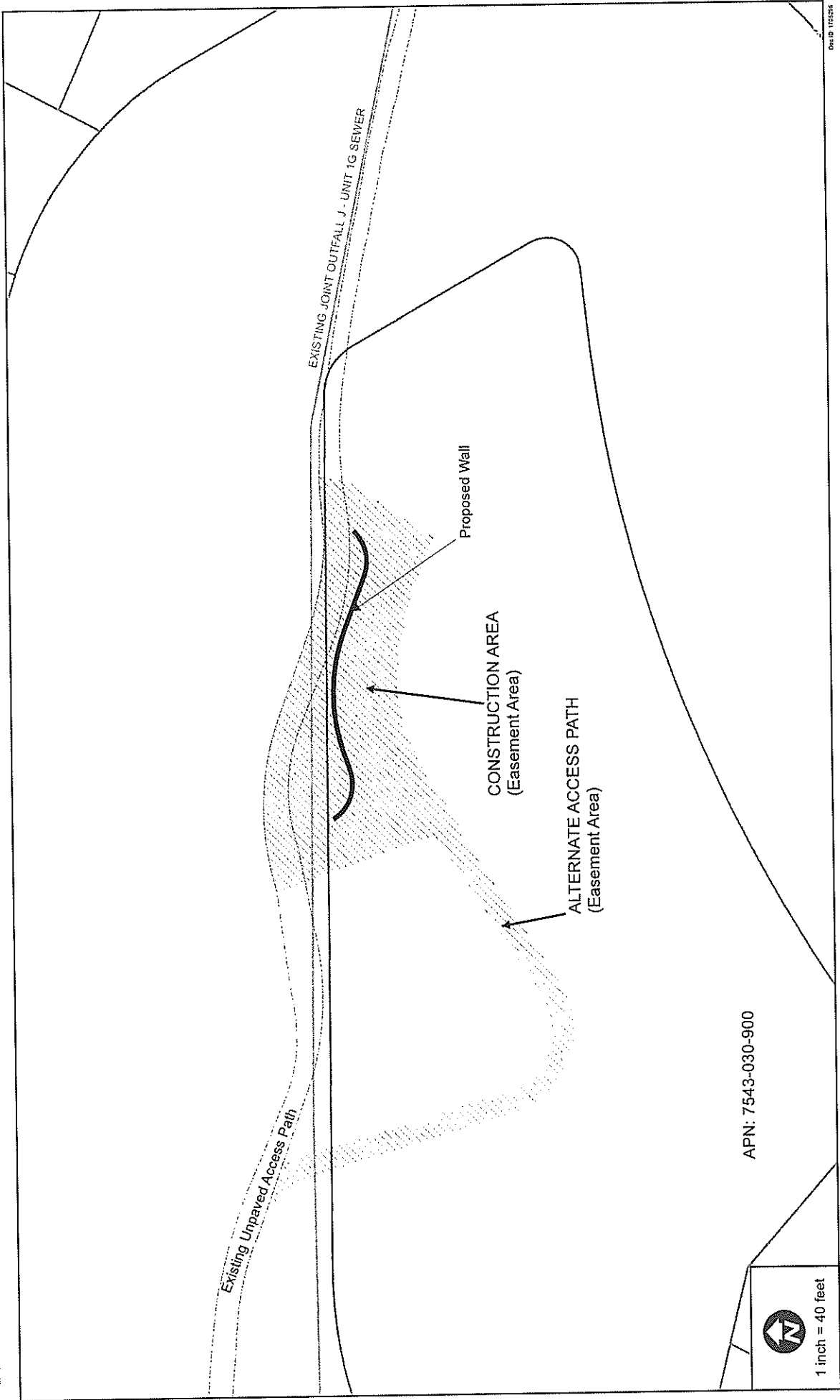
PASEO LUNADO



0 50 100 Feet



Exhibit B



APN: 7543-030-900



1 inch = 40 feet

Exhibit C

RESOLUTION NO. PCR -2010-0465

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF PALOS VERDES ESTATES, CALIFORNIA, APPROVING MISCELLANEOUS APPLICATION WITHIN THE CITY RIGHT-OF-WAY AND OPEN SPACE AT THE EASTERN EDGE OF PASEO LUNADO.

WHEREAS, on April 30, 2010, a Miscellaneous Application was submitted for the property located at Lot A, of Tract Number 7332 in the City of Palos Verdes Estates, County of Los Angeles, State of California, commonly known as the City right-of-way and Open Space at the eastern edge of Paseo Lunado Palos Verdes Estates, California ("the Property"). The application sought approval of a Miscellaneous application; and,

WHEREAS, on May 18, 2010, the Planning Commission conducted a hearing on the matter. At such hearing the Commission received and considered documentary evidence including, but not limited to, a staff report and site plans and received and considered oral testimony from the applicant and others. The Commission further received information and considered information regarding environmental review of the application and the determination that the project is categorically exempt from the California Environmental Quality Act; and,

WHEREAS, following the conclusion of the public discussion and through deliberation of the subject matter, the Planning Commission determined by a vote of 5 to 0, that Miscellaneous Application Number M-770-10, should be conditionally approved as set forth herein below.

NOW, THEREFORE, THE PLANNING COMMISSION OF THE CITY OF PALOS VERDES ESTATES, DOES HEREBY RESOLVE, AS FOLLOWS:

Section 1. Based upon the evidence presented, the Planning Commission hereby finds and determines as follows:

1. Each fact set forth in the recitals above is true and correct.
2. Each fact set forth in the memorandum for Agenda Item Number 8, Meeting Date, May 18, 2010, from Planning staff, presented to the Planning Commission on said date, is true and correct.

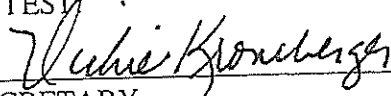
Section 2: Pursuant to the foregoing recitations and findings, the Planning Commission approves Miscellaneous Application Number M-770-10, subject to the following conditions:

1. This approval is granted for the land or land use as described in the application and any attachments thereto.
2. All buildings, fences, signs, roadways, parking areas, and other facilities or features shall be located and maintained as shown on the approved plans.
3. All buildings and structures shall be of the design as shown on the approved plans.

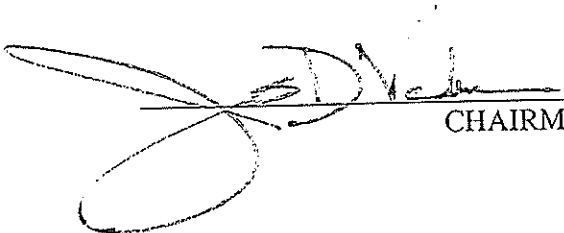
4. Compliance with and execution of all conditions listed herein shall be necessary prior to obtaining final building inspection clearance and/or prior to obtaining any occupancy clearance. Deviation from this requirement shall be only by written consent of the Director of Planning.
5. Expiration of the Miscellaneous Application approval shall be governed by the provisions of the City of Palos Verdes Estates Municipal Code that are applicable to the expiration of the Neighborhood Compatibility approval.
6. All requirements of any law, ordinance, or regulation of the State of California, City of Palos Verdes Estates, and any other governmental entity shall be complied with.
7. This approval is subject to the applicant paying all fees and assessments to the City of Palos Verdes Estates, as required by Ordinance.
8. In the event the City determines that it is necessary to take legal action to enforce any of the provisions of these conditions, and such legal action is taken, the applicant shall be required to pay any and all cost of such legal action, including reasonable attorney' s fees, incurred by the City, even if the matter is not prosecuted to a final judgment or is amiably resolved, unless the City should otherwise agree with the applicant to waive said fees or any part thereof. The foregoing shall not apply if the permittee prevails in the enforcement proceeding.
9. The applicant shall defend, indemnify, and hold harmless the City and its officers, agents, and employees from any claim, action or proceeding against the City or its officers, agents or employees to attach, set aside, void, or annul approval of this application. The City shall promptly notify the applicant of any such claim, action, or proceeding and shall cooperate fully in the defense.
10. An approval granted by the Planning Commission does not constitute a building permit or authorization to begin any construction. An appropriate permit issued by the Department of Building and Safety must be obtained prior to construction, enlargement, relocation, conversion, or demolition of any building or structure within the City.
11. **The new wall is to be painted/colored to match the natural surroundings.**
12. **A license agreement is to be executed for the nonstandard work within the City right-of-way and Open Space.**

APPROVED AND ADOPTED this 18th day of May, 2010.

ATTEST



SECRETARY



CHAIRMAN

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES)SS
CITY OF PALOS VERDES ESTATES)

I, Vickie Kroneberger, Planning Commission Minutes Secretary of the City of Palos Verdes Estates, California, do hereby certify that the foregoing Resolution No. PCR-2010-0465 was regularly approved and adopted at the regular meeting of the Planning Commission on the 18th day of May, 2010 by the following vote, to wit:

AYES: COMMISSIONERS: King, Thomas, Vandever, Chang, Evans

NOES: COMMISSIONERS: None

ABSENT: COMMISSIONERS: None

Vickie Kroneberger
Vickie Kroneberger
Planning Commission Minutes Secretary

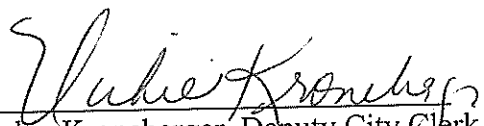
STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) SS:
CITY OF PALOS VERDES ESTATES)

I, Vickie Kroneberger, Deputy City Clerk for the City of Palos Verdes Estates, California, do hereby certify that the foregoing Resolution **R10-24** was duly and regularly approved and adopted by the City Council of the City of Palos Verdes Estates at its regular meeting of the City Council on the 12th day of October, 2010, by the following vote:

AYES: COUNCILMEMBERS: Humphrey, Rea, Perkins, Bird and Goodhart

NOES: COUNCILMEMBERS: None

ABSENT: COUNCILMEMBERS: None


Vickie Kroneberger, Deputy City Clerk