



## Staff Report

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**File #:** TMP-1899

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**PLANNING COMMISSION MEETING DATE:**

May 15, 2023

**SUBJECT:**

PLANNING COMMISSION RESOLUTION PC23-5042 RECOMMENDING TO CITY COUNCIL THE SUMMARY VACATION AND ABANDONMENT OF A PORTION OF THE EASEMENT FOR STREET PURPOSES GRANTED BY DOCUMENT 1980-136705 OVER RICHMAR AVENUE AND RESERVING UTILITY AND DRAINAGE RIGHTS THEREFROM, ADJACENT TO THE CREEKSIDE ASSISTED LIVING (ACOYA) PROJECT

**CASE NUMBERS:**

Summary Vacation VAC 23-0010, Categorical Exemption EX23-047

**Recommendation**

ADOPT and APPROVE the following, in the order below:

1. ADOPT Categorical Exemption EX22-047 per CEQA Section 15305, Class V (Minor Alterations in Land Use Limitations); and
2. APPROVE Resolution PC 23-5042 (VAC23-0010) recommending to City Council the summary vacation and abandonment of a portion of the Easement for Street Purposes granted by Document 1980-136705 over Richmar Avenue and reserving utility and drainage rights therefrom, adjacent to the Creekside Assisted Living (Acoya) project.

**Board or Commission Action**

On June 21, 2021, the Planning Commission recommended approval of the Breakers Real Estate Creekside Assisted Living entitlements to the City Council. On October 26, 2021, City Council approved Resolution No. 2021-8914 (General Plan Amendment GPA20-0001) to amend the land use maps related to Specific Plan changes in the Land Use Element and to remove the Richmar Avenue bridge from the Mobility Element.

**Background**

The project site is a 3.78-acre vacant property located at the southeast corner of Twin Oaks Valley Road and Richmar Avenue within the Heart of the City Specific Plan Area. The project proposes a 121,566 square-foot, 3-story, 138-unit residential care facility for assisted living and memory care with sixty (60) parking spaces and landscaping.

The Richmar bridge was removed from the General Plan Mobility Element by General Plan Amendment GPA20-0001. Accordingly, the right-of-way obtained for a bridge across Twin Oaks Valley Creek from the easterly terminus of Richmar Avenue to Woodward Street is proposed to be vacated. Utilities and drainage rights are to be reserved from the vacation. The affected right-of-way for Richmar Avenue was dedicated as an Easement for Street Purposes by Document 1980-136705 recorded April 23, 1980 (Attachment A).

A portion of Richmar Avenue east of Twin Oaks Valley Road will remain a public street and provide access to the Creekside Assisted Living (Acoya) site and to the 7-11 shopping center north of Richmar Avenue.

## **Discussion**

California Streets and Highways Code (CSHC) Section 8334(a) provides that the legislative body of a local agency may summarily vacate an excess right-of-way or highway not required for street or highway purposes. The portion of right-of-way proposed to be vacated on Richmar Avenue is in excess, has not been used for, and is not needed for present or future public street purposes.

CSHC 8334.5 requires that a street may not be summarily vacated if there are in-place public utility facilities that are in use and would be affected by the vacation. Further, Section 8340(c) provides that if there are in-place public utility facilities that are in use, a public entity shall, unless the legislative body determines the public convenience and necessity otherwise require, reserve, and except from the vacation any easement and right necessary to maintain, operate, replace, remove, or renew the public utility facilities. In this case, drainage and general utility rights are to be reserved from the public street vacation of Richmar Avenue. The existing utilities in place within Richmar Avenue will remain unaffected by the vacation of public street.

In accordance with California Streets and Highways Code (CSHC) Section 8313 and Government Code Section 65402, the local planning agency is required to consider the proposed vacation action and to report on the conformity with the adopted General Plan. Staff reviewed the limits of the proposed right-of-way vacation, the road and utility infrastructure existing and proposed, and the General Plan. Staff concluded that a public road is not needed along the portion of Richmar Avenue to be vacated. Accordingly, the public street bridge through this area was removed from the General Plan Mobility Element by GPA20-0001.

The attached resolution recommends to City Council the summary vacation of the affected right-of-way (Attachment 1). Following Planning Commission action, the proposed vacation and abandonment of excess right-of-way can be considered by the City Council. If City Council orders the vacation and abandonment, the vacated rights-of-way will revert to the underlying owners on either side of Richmar Avenue. The vacated right-of-way will remove encumbrances on the affected properties and allow use of the area by the underlying property owners.

## **Environmental Review**

The removal of the Richmar Bridge was within the scope of Mitigated Negative Declaration MND ND20-008 (SCH No. 2020120110), adopted by City Council on October 26, 2021, which is in accordance with the California Environmental Quality Act (CEQA) Section 15162. Further, the proposed vacation and abandonment is deemed Categorically Exempt (EX23-047) pursuant to Section 15305 Class 5 (Minor Alterations in Land Use Limitations), in that this is a minor realignment of right-of-way.

## **Public Comment**

No public comments were received during the processing of these vacation applications.

## **Attachments**

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**File #:**TMP-1899

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A. Aerial Easement Exhibit: Public Right-of-Way at Richmar Avenue

Adopting Resolutions:

1. APPROVE Resolution PC 23-5042 (VAC23-0010) recommending to City Council the summary vacation and abandonment of a portion of the Easement for Street Purposes granted by Document 1980-136705 over Richmar Avenue and reserving utility and drainage rights therefrom, adjacent to the Creekside Assisted Living (Acoya) project, including Exhibits A and B.

Prepared by:

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Stephanie Kellar, Deputy City Engineer

Reviewed by:

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Saima Qureshy, Principal Planner

Submitted/Approved by:

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Joseph Farace, Planning Division Director



ATTACHMENT A: Aerial Easement Exhibit



LEGEND:

- EX. EASEMENT FOR STREET PURPOSES, TO THE CITY OF SAN MARCOS, PER DOCUMENT NO. 80-136705, RECORDED APRIL 23, 1980,
- LIMITS OF RICHMAR STREET VACATION. PORTION TO BE VACATED HEREON. DRAINAGE & UTILITY RIGHTS ARE TO BE RESERVED.
- PROPOSED PROPERTY LINE
- EX. PROPERTY LINE
- CENTER LINE
- EASEMENT



GRAPHIC SCALE  
SCALE: 1" = 100'



RESOLUTION PC 23-5042

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF SAN MARCOS  
RECOMMENDING TO CITY COUNCIL THE SUMMARY VACATION AND  
ABANDONMENT OF A PORTION OF THE EASEMENT FOR STREET PURPOSES  
GRANTED BY DOCUMENT 1980-136705 OVER RICHMAR AVENUE AND RESERVING  
UTILITY AND DRAINAGE RIGHTS THEREFROM, ADJACENT TO THE CREEKSIDE  
ASSISTED LIVING (ACOYA) PROJECT

VAC 23-0010

Ryan Companies US, Inc.

Brief Legal Description: Refer to Exhibits A and B

WHEREAS, staff considered a request for the vacation and abandonment of a portion of Richmar Drive adjacent to the Creekside Assisted Living (Acoya) Project, located east of Twin Oaks Valley Road, west of Woodward Street, and north of Mission Road; the affected portions of Richmar Avenue more particularly described in Exhibits A and B; and

WHEREAS, the Easement for Street Purposes was granted by Document 1980-136705 recorded April 23, 1980 in the Office of the County Recorder of San Diego County; and

WHEREAS, California Streets and Highways Code (CSHC) Section 8334(a) provides that the legislative body of a local agency may summarily vacate an excess right-of-way or highway not required for street or highway purposes, and staff have determined that the streets proposed to be vacated are in excess; and

WHEREAS, CSHC Section 8340(c) provides that if there are in-place public utility facilities that are in use, a public entity shall, unless the legislative body determines the public convenience and necessity otherwise require, reserve, and except from the vacation any easement and right necessary to maintain, operate, replace, remove, or renew the public utility facilities; and

WHEREAS, drainage and utility rights as granted for Richmar Avenue are to be reserved from the public street vacation and the existing utilities in place will remain unaffected by the vacation of public street; and

WHEREAS, in accordance with Streets and Highways Code Section 8313 and Government Code Section 65402, the local planning agency is required to consider the proposed vacation action and to report on the conformity with the adopted General Plan; and

WHEREAS, on at a regularly-scheduled and duly noticed meeting held on May 15, 2023, the Planning Commission did consider the proposed summary vacation of street right-of-way; and

WHEREAS, the Planning Commission did review and consider a Categorical Exemption (EX23-047) pursuant to the California Environmental Quality Act (CEQA) Section 15305, Class 5 (Minor Alterations in Land Use Limitations) with respect to such proposed summary vacation; and

NOW, THEREFORE, the Planning Commission does hereby resolve as follows:

- A. The foregoing recitals are true and correct, and are hereby incorporated by reference into this Resolution.
- B. The Planning Commission hereby recommends that the City Council approve the summary vacation of this public street right-of-way as described and depicted on the attached Exhibits A and B, incorporated by reference and made a part of this Resolution as though fully set forth herein, and reserving therefrom drainage and utility rights.
- C. The Planning Commission's decision is based on the following findings and determinations:
  - 1. The proposed right-of-way vacation is consistent with the City's General Plan.
  - 2. The proposed right-of-way vacation complies with the objectives of the adopted City-wide Land Use Policy Plan.
  - 3. The affected right-of-way is hereby determined to be excess and not required for street or highway purposes.
  - 4. The street vacation proposes to reserve and except from the vacation drainage and utility rights as necessary to maintain, operate, replace, remove, or renew the public utility facilities;
  - 5. The proposed right-of-way vacation will not be detrimental to public health, safety, and welfare.
  - 6. All requirements of CEQA have been met, in that the proposed project is Categorically Exempt from environmental review pursuant to CEQA Section 15305, Class 5 (Minor Alterations in Land Use Limitations) in that this is a minor realignment of right-of-way.
- D. To the extent permitted by law, the applicant/developer shall defend and hold the City of San Marcos, its agents and employees harmless from liability from: (i) any and all actions, claims, damages, injuries, challenges and/or costs of liabilities arising from the City's approval of any and all entitlements or permits arising from the project as defined in the conditions of approval, or issuance of grading or building permits; (ii) any damages, liability and/or claim of any kind for any injury to or death of any person, or damage or injury of any kind to property which may arise from or be related to the direct or indirect operations of the applicant/developer or its contractors, subcontractors, agents, employees

or other persons acting on applicant/developer's behalf which relate to the project; and (iii) any and all damages, liability and/or claims of any kind arising from operation of the project. The applicant/developer further agrees that such indemnification and hold harmless shall include all defense related fees and costs associated with the defense of City by counsel selected by the City. This indemnification shall not terminate upon expiration of the conditions of approval or completion of the project, but shall survive in perpetuity.

PASSED, APPROVED AND ADOPTED by the Planning Commission of the City of San Marcos, California, at a regular meeting thereof, held on this 15<sup>th</sup> day of May, 2023 by the following roll call vote:

AYES: COMMISSIONERS:

NOES: COMMISSIONERS:

ABSENT: COMMISSIONERS:

APPROVED:

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Christopher Carroll, Chairman

ATTEST:

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Gina Henderson, Senior Office Specialist

**Exhibit(s):**

Exhibit A – Street Vacation Legal Description

Exhibit B – Plat of Street Vacation

**EXHIBIT "A"**  
**(LEGAL DESCRIPTION OF SUMMARY STREET VACATION)**

That portion of Richmar Avenue dedicated as street purposes filed in the office of the county recorder of San Diego County on April 23, 1980 as file no. 80-136705 of Official Records, more particularly described as follows:

**COMMENCING** at the Northwest corner of said Lot 1;

Thence, Easterly, along the Northerly line of said Lot 1, South  $83^{\circ}14'53''$  East, 18.00 feet, to an intersection with a line, drawn parallel with and distant 18.00 feet Easterly, measured at right angles, to the Westerly line of said Lot 1;

Thence, Southerly, along said parallel line, South  $06^{\circ}22'46''$  West, 14.11 feet, to the beginning of a tangent 20.00 foot radius curve, concave Northeasterly, said curve being also tangent to a line drawn parallel with and distant 33.86 feet Southerly, measured at right angles, to the Northerly line of said Lot 1;

Thence, Southeasterly, along said curve, through a central angle of  $89^{\circ}37'39''$ , an arc length of 31.29 feet;

Thence, tangent from said curve, South  $83^{\circ}14'53''$  East, 161.28 feet, to the **POINT OF BEGINNING**;

Thence, continuing South  $83^{\circ}14'53''$  East, 440.20 feet to the beginning of a tangent 20.00 foot radius curve, concave Northwesterly; said curve being also tangent to the Easterly line of said Lot 1;

Thence, Northwesterly, along said curve, through a central angle of  $90^{\circ}20'58''$ , an arc length of 31.54 feet;

Thence, along said Easterly line of Lot 1, non-tangent from said curve, South  $06^{\circ}24'09''$  West, 100.00 feet, to the beginning of a non-tangent 20.00 foot radius curve, concave Southwesterly, a tangent line to beginning of said bears, North  $06^{\circ}24'09''$  East, said curve being tangent to a line parallel with and distant 93.86 feet Southerly, measured at right angles, to said Northerly line of Lot 1;

Thence, Northwesterly, along said curve, through a central angle of  $89^{\circ}39'02''$ , an arc length of 31.29 feet;



Thence, tangent from said curve, North 83°14'53" West, 440.81 feet;

Thence, North 06°45'07" East, 60.00 feet to the **POINT OF BEGINNING**.

Legal description prepared by Commercial Development Resources.



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Robert J. Russell, PLS 8211

May 2, 2023



# EXHIBIT "B"

## RADIAL DATA

R1 N06°45'07"E (R)  
R2 S83°35'51"E (R)  
R3 N83°35'51"W (R)  
R4 N06°45'07"E (R)

VALLEY ROAD

PORTION DEDICATED BY DOC.  
NO. 282477, BK. 1972 OF O.R.

TWIN OAKS

POINT OF COMMENCEMENT

N83°14'53"W 18.00'

N06°22'46"E 14.11'

$\Delta=89^{\circ}37'39''$   
R=20.00'  
L=31.29'

POINT OF BEGINNING

LINE DATA  
L1 N06°45'07"E 60.00'

LOT 1  
BLOCK 60  
MAP NO. 806

APN  
220-050-45-00

LOT 1  
BLOCK 51  
MAP NO. 806

EASEMENT FOR STREET PURPOSES, TO THE CITY OF SAN MARCOS, PER DOCUMENT NO. 80-136705, RECORDED APRIL 23, 1980, PORTION TO BE VACATED HEREON. DRAINAGE AND UTILITY RIGHTS RESERVED.

RICHMAR AVENUE

NORTHERLY LINE OF LOT 1,  
BLOCK 60, MAP NO. 806.

S83°14'53"E 601.61'  
440.20'

EXISTING VWD EASEMENT TO REMAIN

AREA: 27,802.32 SF, 0.638 ACRES

N83°14'53"W 440.81'

APN 220-063-05-00

EXISTING PROPERTY LINE.

APN  
220-063-03-00

NORTHERLY LINE OF THE  
SOUTHERLY 209 FEET OF LOT 1,  
BLOCK 60, MAP NO. 806.

APN  
220-063-04-00

PROPERTY LINE.

(A) EXISTING EASEMENT FOR PIPELINES AND INCIDENTAL PURPOSES, RECORDED JULY 5, 1961 AS INSTRUMENT NO. 114617 OF O.R. IN FAVOR OF VALLECITOS WATER DISTRICT, SUCCESSOR SAN MARCOS WATER DISTRICT.

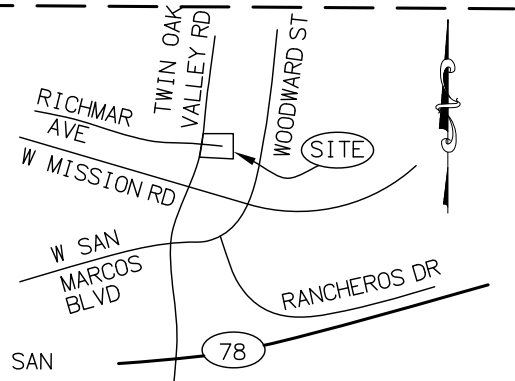
(B) EASEMENT FOR STREET PURPOSES, TO CITY OF SAN MARCOS, PER DOCUMENT NO. 80-136705, RECORDED APRIL 23, 1980, PORTION TO BE RESERVED.

GRAPHIC SCALE



( IN FEET )

1 inch = 100 ft.



VICINITY MAP

WOODWARD STREET



CITY OF SAN MARCOS

SUMMARY STREET VACATION  
PORTION OF RICHMAR AVENUE



Today's Ideas. Tomorrow's Reality.  
4121 Westerly Place #112 Newport Beach CA 92660  
T 949-640-8997 www.CDRwest.com

05/03/23  
ROBERT J. RUSSELL, PLS 8211 DATE