SUBJECT: Adoption of a Resolution to Vacate a 10-foot Wide Public Utility Easement Upon Removal of Existing Facilities at 1060 Morse Avenue

BACKGROUND
Classic Communities (developer) is developing a new 17-unit residential townhome development at the subject site. The City received a request from the developer to vacate a 10-foot wide Public Utility Easement (PUE) on the property (see Attachments A, B, and C).

EXISTING POLICY
2011 Sunnyvale Consolidated General Plan, Chapter 4.

GOAL CC-2: Attractive Street Environment

Create an attractive street environment which will compliment private and public properties and be comfortable for residents and visitors.

Policy CC-2.2. Minimize elements which clutter the roadway and look unattractive.

Sunnyvale Municipal Code (SMC) 19.38.090 titled “Underground Utilities”

DISCUSSION
Pursuant to California Streets and Highways Code Section 8324(b) et. seq., the City may vacate a PUE by adopting a resolution of vacation if, after holding a public hearing and considering evidence, it finds that the PUE being vacated is unnecessary for present or prospective public use.

There are no existing City facilities and no prospective City utilities within the subject PUE. There are other public utilities located within the subject PUE. However, the developer plans to relocate and remove the existing utilities as part of their new residential development project which is under construction. Each of the affected utility companies have executed a “Consent and Acknowledgement of Partial PUE Vacation-Subject to Reservation for Existing Utilities”.

Council Date: October 2, 2012
FISCAL IMPACT
There is no fiscal impact associated with this PUE vacation.

PUBLIC CONTACT
Public notice was given by publishing twice in the weekly Sun newspaper and by posting at least three notices on the portion of PUE proposed to be vacated. Public contact was also made by posting the Council agenda on the City’s official notice bulletin board outside City Hall, at the Sunnyvale Senior Center, Community Center and Department of Public Safety; and by making the agenda and report available at the Sunnyvale Public Library, the Office of the City Clerk and on the City’s web site.

ALTERNATIVES
1. Adopt the resolution vacating a 10-foot wide PUE upon removal of existing facilities at 1060 Morse Avenue; and authorize the City Clerk to cause a certified copy of the resolution to be recorded with the county recorder's office.
2. Adopt the resolution vacating a 10-foot wide Public Utility Easement at 1060 Morse Avenue with modifications and conditions as deemed appropriate by the City Council; and authorize the City Clerk to cause a certified copy of the resolution to be recorded with the county recorder’s office.
3. Do not adopt the resolution vacating a 10-foot wide Public Utility Easement at 1060 Morse Avenue.
RECOMMENDATION
City staff recommends Alternative 1: Adopt the resolution vacating a 10-foot wide PUE upon removal of existing facilities at 1060 Morse Avenue; and authorize the City Clerk to cause a certified copy of the resolution to be recorded with the county recorder’s office. After the date the attached resolution is recorded, the subject PUE will be vacated except where existing utilities remain. Once those existing utilities are removed, the subject PUE will be completely extinguished with no further contingencies.

Reviewed by:

Kent Steffens, Director, Public Works
Prepared by: Eric Gonzales, Civil Engineer

Approved by:

Gary M. Luebbers
City Manager

Attachments
A. Letter of Request from applicant
B. Parcel and Location Maps
C. Legal Description of PUE to be abandoned
D. Letters of Consent from utility companies
E. Resolution of Vacation
ATTACHMENT A
July 10, 2012

Eric Gonzales, P.E.
Civil Engineer
Department of Public Works/Engineering
456 W. Olive Ave
Sunnyvale, CA 94804

Re: PUE Vacation

Mr. Gonzales,

We appreciate your help with respect to the vacation of the PUE over the northerly ten feet of our property at 1060 Morse Avenue. We purchased this property in 2011 and are redeveloping the site for 17 townhome units.

We are requesting vacation of the PUE on this property because it will no longer be needed, upon the energizing of the in-tract improvements at the Classics at Toyama Park project. The vacation of the PUE will cause the easements and other property rights to conform to the new land plan, and makes possible the implementation of the approved development by removing all encroachment issues.

Please refer to the attached Exhibit “A”, which shows the relationship of the proposed structures to the subject PUE.

I hereby certify that the information provided as attached is complete and that the facts, statements, and information presented are true and correct to the best of my knowledge and belief.

Sincerely,

Adam Kates
Vice President
Classic Communities, Inc.
ATTACHMENT B
PUBLIC UTILITY EASEMENT
PER TRACT 3115 (152 M 31) TO BE VACATED

10' PUBLIC UTILITY EASEMENT
PER TRACT 3115 (152 M 31) TO REMAIN

LOT 5
152 M 31

LOT 4
152 M 31

TOYAMA DRIVE

MORSE AVENUE

FORMERLY LOT 2
152 M 31

10' PUBLIC UTILITY EASEMENT
PER TRACT 3115 (152 M 31)
ABANDONED PER TRACT 9667
(792 M 42)

TRACT 9782
808 M 31

FORMERLY LOT 1
152 M 31

FORMERLY LOT 3
152 M 31

10' PUBLIC UTILITY EASEMENT
PER TRACT 3115 (152 M 31)
MODIFIED PER TRACT 9782 (808 M 31)

PLAT TO ACCOMPANY LEGAL DESCRIPTION

PARTIAL PUBLIC UTILITY EASEMENT VACATION
ON LOT 5 ONLY (152 M 31)
SUNNYVALE, CALIFORNIA
AUGUST 9, 2012

Carlson, Barbee, & Gibson, Inc.
CIVIL ENGINEERS • SURVEYORS • PLANNERS
6111 BOLLINGER CANYON ROAD, SUITE 150 SAN RAMON, CALIFORNIA 94583
TELEPHONE: (925) 866-0322 FAX: (925) 866-8575
BASIS OF BEARINGS:
The basis of bearings for this survey is N75°00'00"W along the centerline of Toyama Drive as shown per Tract No. 3315, filed September 29, 1962, in Book 152 of Maps, at Page 31, Santa Clara County Records.

NOTES:
1. This subdivision contains 36,207 SF or 0.83 AC, more or less.
2. Bearings not shown are perpendicular or parallel to the line it is adjacent to.

REFERENCES:
(c) TRACT 3315 (502 M 31)
TRACT NO. 8782
808 M 32
LEGAL DESCRIPTION

PARTIAL PUBLIC UTILITY EASEMENT VACATION ON LOT 5 ONLY (152 M 31)

SUNNYVALE, CALIFORNIA

REAL PROPERTY, SITUATE IN THE INCORPORATED TERRITORY OF THE CITY OF SUNNYVALE, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEING A PORTION OF THAT CERTAIN 10' PUBLIC UTILITY EASEMENT, AS SAID 10' PUBLIC UTILITY EASEMENT IS SHOWN AND SO DESIGNATED ON THE FINAL MAP OF TRACT 3315, RECORDED SEPTEMBER 25, 1962, IN BOOK 152 OF MAPS, AT PAGE 31, IN THE OFFICE OF THE COUNTY RECORDER OF SANTA CLARA COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEING ALL OF SAID EASEMENT LYING WITHIN LOT 5, AS SAID LOT 5 IS SHOWN AND SO DESIGNATED ON SAID FINAL MAP.

ATTACHED HERETO IS A PLAT TO ACCOMPANY LEGAL DESCRIPTION, AND BY THIS REFERENCE MADE A PART HEREOF.

END OF DESCRIPTION

CHRISTOPHER S. HARMISON, P.L.S.
L.S. NO. 7176
10' PUBLIC UTILITY EASEMENT PER TRACT 3115 (152 M 31) TO BE VACATED

LOT 5
152 M 31

LOT 4
152 M 31

TOYAMA DRIVE

MORSE AVENUE

10' PUBLIC UTILITY EASEMENT PER TRACT 3115 (152 M 31) TO REMAIN

LOT 3
152 M 31

FORMERLY LOT 2
152 M 31

10' PUBLIC UTILITY EASEMENT PER TRACT 3115 (152 M 31) ABANDONED PER TRACT 9667 (792 M 42)

TRACT 9782
808 M 31

FORMERLY LOT 1
152 M 31

PLAT TO ACCOMPANY LEGAL DESCRIPTION

PARTIAL PUBLIC UTILITY EASEMENT VACATION ON LOT 5 ONLY (152 M 31) SUNNYVALE, CALIFORNIA AUGUST 9, 2012

Carlson, Barbee, & Gibson, Inc.
CIVIL ENGINEERS • SURVEYORS • PLANNERS 6111 BOLLINGER CANYON ROAD, SUITE 150 SAN RAMON, CALIFORNIA 94583 TELEPHONE: (925) 866-0322 FAX: (925) 866-8575
August 3, 2012

Mr. Eric Gonzales, P.E.
City of Sunnyvale
Department of Public Works/Engineering
456 West Olive Avenue
Sunnyvale, California 94088

Re: Request for approval of the proposed abandonment of the PUE over the northerly 10' of the property at 1060 Morse Avenue in Sunnyvale.

Dear Ms. Scott,

Comcast has reviewed the attached application for the encroachment and has the following:

- No objection to the vacation.
- No objection to the vacation, but with the following reservation: existing easement to be retained
- Objects to the proposed vacation for the following reasons:
- A copy of our system map is attached for your information.

Sincerely,

Steve Morioka
Comcast Construction Specialist
August 16, 2012

Eric Gonzales, P.E.
City of Sunnyvale
Department of Public Works/Engineering
456 West Olive Avenue
Sunnyvale, CA 94088

Re: Abandonment of the 10' wide Public Utility Easement (P.U.E.) running along the northerly property line of Lot 5 as shown upon Tract No. 3315 recorded September 25, 1962 in Book 152 of Maps at Page 31, Santa Clara County Records.
Location: 1060 Morse Avenue, Sunnyvale, California
P.G.&E. File: Y12-AB-12

Dear Mr. Gonzales:

This letter is in response to the request from Adam Kates with Classic Communities, Inc. which you forwarded to our office on July 27, 2012. In reviewing our records, PG&E has no objection to the proposed abandonment of the P.U.E. at the aforementioned location.

Please feel free to call me at (408) 282-7347 or dan9@pge.com if you have any questions in regards to these matters.

Sincerely,

David Neal
Lead Land Technician
August 7th, 2012

Mr. Eric Gonzales, P.E.
City of Sunnyvale
Department of Public Works / Engineering
456 West Olive Avenue
Sunnyvale, CA 94088

Subject: Vacation of Public Utility Easement / Tract Map approval (APN: 110-14-058)

Dear Mr. Gonzales,

This endorsement letter is in response to the property owner's request for AT&T California's concurrence to the vacation of the Southerly four feet of the ten foot wide Public Utility Easement located along the North property line of 1060 Morse Ave in Sunnyvale, CA. Said easement is located on Lot 5 of Tract No. 3315 recorded September 25th, 1962 in Book 152 at page 31, County of Santa Clara. The request is made to accommodate new development of the "Classics at Toyama" tract at the above location.

Engineering has determined the vacation described above will not comprise existing aerial facilities located within the Public Utility Easement. Therefore, AT&T California approves the vacation as requested.

AT&T California approves the tentative Tract Map of "Classics at Toyama" dated January 2012 as drawn.

If you have any questions regarding the information above, please feel free to contact me.

Regards,

Ed Beyer

Ed Beyer
Public Works Coordinator
Right of Way Manager
AT&T California
(408) 635-8878
RESOLUTION NO. ________

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SUNNYVALE VACATING A PORTION OF AN EXISTING 10-FOOT WIDE PUBLIC UTILITY EASEMENT LOCATED AT 1060 MORSE AVENUE, SUNNYVALE

WHEREAS, the City of Sunnyvale, pursuant to Streets and Highways Code Section 8335, et seq., is authorized to vacate public utility easements; and

WHEREAS, that certain 10-foot wide public utility easement at 1060 Morse Avenue, more particularly described in Exhibit A attached hereto, is not needed or will not be needed once existing utilities are relocated and removed for present or prospective public use; and

WHEREAS, that certain 10-foot wide public utility easement has no existing City facilities and

WHEREAS, there are approved plans to relocate and remove other existing utilities; and

WHEREAS, Pacific Gas and Electric, Comcast Cable, and AT&T California have no objection to the vacation of that certain 10-foot wide public utility easement.

WHEREAS, a Notice of Public Hearing to consider the vacation of that certain 10-foot wide public utility easement was published for at least two successive weeks in a newspaper that is published in the City of Sunnyvale and is designated for the publication of notices and at least three notices of the hearing were posted at least two weeks before the hearing along that certain public utility easement to be vacated, pursuant to Sections 8322 and 8323 of the Streets and Highways Code; and

WHEREAS, on October 2, 2012, the City Council held a hearing on the proposed vacation of that certain 10-foot wide public utility easement and heard evidence and testimony from all persons interested; and

WHEREAS, the City Council finds that the public interest will be served by extinguishing
the public interest in that certain 10 foot-wide public utility easement being vacated upon removal of the existing facilities;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SUNNYVALE THAT:

1. The City Council finds and determines that:
   (a) Vacation of that certain 10-foot wide public utility easement is in conformity with the General Plan; and
   (b) That certain 10-foot wide public utility easement is unnecessary for present or prospective public use or purpose once existing facilities are relocated.

2. The City Council hereby vacates that certain 10-foot wide public utility easement subject to removal of existing utilities, as more particularly described in Exhibit A, pursuant to Streets and Highways Code §§ 8324(b) et seq.

3. The City Council hereby authorizes and directs the City Clerk to record a certified copy of this resolution, attested by the City Clerk under seal, with the Santa Clara County Recorder's Office.

4. Commencing with the date of recordation of this resolution and subject to removal of existing utilities, that certain 10-foot wide public utility easement shall no longer be a public utility easement.

Adopted by the City Council at a regular meeting held on October 2, 2012, by the following vote:

AYES:  
NOES:  
ABSTAIN:  
ABSENT:  

ATTEST:  
APPROVED:

____________________________  ________________________
City Clerk                        Mayor
(SEAL)

APPROVED AS TO FORMS AND LEGALITY

____________________________
Michael D. Martello, Interim City Attorney
LEGAL DESCRIPTION

PARTIAL PUBLIC UTILITY EASEMENT VACATION ON LOT 5 ONLY (152 M 31)
SUNNYVALE, CALIFORNIA

REAL PROPERTY, SITUATE IN THE INCORPORATED TERRITORY OF THE CITY OF
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CHRISTOPHER S. HARMISON, P.L.S.
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