

**CITY OF ALBANY
CITY COUNCIL AGENDA
STAFF REPORT**

Agenda Date: October 17, 2011

Reviewed by:

SUBJECT: Easement and Quitclaim Agreement for Public Sanitary Sewer and
Public Trail Facilities – Bayside Commons -- 535 Pierce Street

REPORT BY: Ann Chaney, Community Development Consultant
Randy Leptien, City Engineer

STAFF RECOMMENDATION

Approve Resolution No. 2011-49 accepting the attached Easement and Quitclaim Agreement between the City and Bayside Commons Homeowners Condominium Owners Association (535 Pierce Street) correcting the recorded locations of an existing public sanitary sewer easement and public trail easement to match the physical location of the constructed sewer and trail facilities.

BACKGROUND

Sanitary Sewer Easement

In 2000, the City of Berkeley constructed a relief sewer through Albany to accommodate Berkeley's sanitary sewer needs. Along the south side of Cerrito Creek, between Adams and Pierce Streets, this sanitary sewer became a new joint line that serves both cities. A portion of the line is located on land owned by Bayside Commons Homeowners Condominium Owners Association (Bayside Commons). The existing easement for the old abandoned sewer is also partially located on Bayside Commons land.

Trail Easement

The Bayside Commons condominium project was built around 1989. As a condition of approval, the property owner was required to dedicate a trail easement along Cerrito Creek. Thus, a public trail easement was irrevocably offered to the City and recorded in 1997. However, the location of the recorded easement runs along the "toe of slope" (creek bank), rather than the "top of bank" where an existing informal trail currently exists. Because of topography, the existing trail is better suited for pedestrian travel and therefore the preferred location.

Prior City Council staff reports and discussions with Bayside Commons have addressed the benefits of abandoning the recorded sewer and trail easements and establishing a new easement over the existing sewer and trail.

DISCUSSION

Bayside Commons recently approached City staff and asked to revisit the easement issue, where the location of the existing easements does not coincide with the constructed facilities. Concerns over liability and maintenance of publicly used facilities were the primary motivating factors that lead Bayside Commons to resolve this inconsistency.

On June 2, 2011, the Bayside Commons Board of Directors Executive Committee unanimously gave approval to support the city's goal of abandoning the recorded locations of the existing public sanitary sewer easement and public trail easement, and obtaining new easements over the physical location of the constructed facilities. As a result, City staff proceeded to prepare an Easement and Quitclaim Agreement (attached).

This Agreement includes legal descriptions and maps to be recorded of the proposed 20' wide sewer easement (Exhibit A – Sewer Easement), and 10' wide trail easement (Exhibit B – Trail Easement). Each exhibit includes three maps because the sewer and trail extend over three separate parcels owned by Bayside Commons. The Agreement also includes language regarding liability, maintenance responsibilities and a hold harmless clause. The Agreement has been reviewed by the City Attorney and the attorney for Bayside Commons. On September 30, 2011, the Agreement was approved by the Bayside Commons Board of Directors and signed by Bayside Commons President, Jack Rosano.

In summary, Bayside Commons grants to the City, an exclusive subsurface and nonexclusive surface easement over their land for the sanitary sewer, and a nonexclusive easement over their land for a public trail. The City quitclaims all interests, regarding the sewer easement recorded in 1962 and the trail easement recorded in 1997, to Bayside Commons. Lastly, the City agrees to promptly repair and restore, to its original condition, any portion of Bayside Commons' land that may be "altered, damaged or destroyed" in connection with the use of the public sewer or trail easement per this Agreement, and indemnify and defend Bayside from "all liability, loss, costs, or obligations" arising out of any injury or losses caused by the City's negligence "in the exercise of the Easements rights or use of the Easements".

SUSTAINABILITY IMPACT

The pedestrian trail along Cerrito Creek was included in the 2004 Alta Planning Study as part of the pedestrian system to connect the Ohlone Greenway with the Bay Trail. This trail is also included in the City's Active Transportation Plan. This link furthers the City's goal of encouraging walking as an alternative to driving, and thereby reducing greenhouse gas emissions.

FINANCIAL IMPACT

Costs incurred by the City Engineer and Land Surveyor, to prepare the Agreement (including legal descriptions and maps), is being paid for through the Sewer Fund and amount to approximately \$8,000. Recordation costs are expected to be minimal.

Attachments:

1. Resolution No. 2011-49 accepting the Easement and Quitclaim Agreement
2. Easement and Quitclaim Agreement between City of Albany and Bayside Commons Homeowners condominium Owners Association (including Exhibits A and B containing maps and legal descriptions)
3. Bayside Commons Board of Directors Executive Meeting Minutes, June 2, 2011
4. Color Exhibits noting existing and proposed easements locations (shown for discussion purposes only)