



CITY OF SANTA BARBARA

COUNCIL AGENDA REPORT

AGENDA DATE: July 16, 2013

TO: Mayor and Councilmembers

FROM: Administration Division, Parks and Recreation Department

SUBJECT: Introduction Of Ordinance For Grant Of Easement At 960 East Mountain Drive

RECOMMENDATION:

That Council introduce, and subsequently adopt, An Ordinance of the Council of the City of Santa Barbara Authorizing the City Administrator to Execute and Record a Non-Exclusive Driveway Easement, in a Form of Agreement Approved by the City Attorney, over an Unused Portion of City Property Known as Gould Park, [Assessor's Parcel Number (APN) 011-010-002], for Roadway Access, Maintenance of Roadway Improvements, Subsurface Utilities, and Related Purposes Benefitting the Property Known as 960 East Mountain Drive, APN 011-250-023, both Parcels Being Located in the County Of Santa Barbara.

BACKGROUND:

In 1965, the City Council granted a written revocable license to a Mr. and Mrs. Roderick White which allowed them to construct a driveway from East Mountain Drive across a small corner of an undeveloped City Park known as Gould Park. This driveway provided vehicular access to the White's residential property located in the unincorporated area of Santa Barbara County at 960 East Mountain Drive. The 1965 license was authorized by the City Council in order to provide access to the White home (which was then under construction) by way of the only apparently feasible way of doing so. A copy of the 1965 license agreement is included in Attachment 1 to this report. A site plan showing the current location of the driveway and the proposed course of the easement is provided as Attachment 2.

As part of the 1965 request from the Whites, they proposed installation of a private fire hydrant on their property at their expense and suggested that the driveway license over Gould Park along with the new hydrant would not only to provide appropriate service to their home, but could also serve the Montecito Fire District to provide better fire protection to Gould Park and the adjacent high fire hazard areas of private and public property, such as the Los Padres National Forest. After considering the Whites' request, the City Council determined that a short driveway could be constructed over a small

unused corner of Gould Park without any “detrimental or damaging effect to the public purposes for which the Park was originally dedicated” and, as a result, that the driveway license would not constitute an encumbrance of a City park property. During construction of the White residence, the fire hydrant was installed in accordance with the license agreement granted by the City and the Uniform Fire Code. It has allowed the Montecito Fire District to provide fire protection services to Gould Park and to the larger area since that time.

Mr. and Mrs. White both passed away in 2012 and their home at 960 East Mountain was inherited by their sons, Michael and Robert White. The White brothers have been attempting to sell the property and settle their parent’s remaining estate. However, during this process, it was brought to their attention by a title company that the City’s revocable driveway license presented a significant and difficult “cloud” on their ability to transfer marketable title to this home. With this in mind, on January 10, 2013, Michael and Robert White submitted a letter to the City Public Works Department requesting that the City Council consider granting a vehicular access easement across that portion of Gould Park presently subject to the 1965 license agreement.

DISCUSSION:

The City Charter provides that no land dedicated as a City park may be sold, leased or otherwise transferred, encumbered, or disposed of without the consent of the City Council and a majority vote of the electors at a general or special City election; however, Section 520 of the Charter does provide that the City Council may issue concessions, permits, or leases “compatible with and accessory to the purposes to which the property is devoted by the City and which are permitted by contract from and regulated by the City.” Gould Park is an undeveloped property in a rural area of the County situated in very rugged and steep hillside terrain. The property was donated to the City by Anna Gould at her death in 1926 and has remained in an undeveloped and apparently unused condition since then. The primary use by the public in this area of the County is the Cold Spring Trail, which is not a part of Gould Park. Mountain Drive, from which the access road presently stems, has existed for approximately a hundred and fifty years as the primary roadway in this vicinity of the County, and also travels within a portion of Gould Park in this area.

The Parks and Recreation Department and the Public Works Department, Real Property Division staff have reviewed the Whites’ request and supporting documentation, visited the site, and have concluded that a driveway easement over the existing license area is both appropriate and beneficial to preserving and protecting the City’s park property and the surrounding adjacent National Forest public areas, such as the Cold Springs Trail. As a result, after thoroughly reviewing the circumstances of the existing license and the extremely minimal impact (if any) it has apparently had on the public’s use of Gould Park since 1965 – a park which is undeveloped and virtually totally inaccessible to the public – City staff has concluded that the easement being requested would not constitute an “encumbrance” of a City park and that it would be appropriate for the City to agree with the Whites’ request.

Furthermore, in support of the staff recommendation that the Council grant this easement, the Whites have provided written documentation of the past and active continued use of their driveway by the Montecito Fire Protection District and the Montecito Water District in order to maintain the Water District water main supplying the fire hydrant which transverses the White Property and Gould Park. The White property portion of the driveway, which sits atop a bluff on a larger flat area overlooking East Mountain Drive and Los Padres National Forest, has been used as a fire "lookout" location for District fire crews during Red Flag fire warning periods (See Attachment 3). As a result, both the Montecito Water District and the Montecito Fire Protection District have advised the City that they would like to maintain the availability of this driveway as the only access they have to the fire hydrant and as a good location for the Fire District to defend against wild fires threatening the surrounding areas. Apparently, the driveway is strategic to fire defense and has unique views to large areas of Cold Spring Canyon and into the Montecito area.

For these reasons, Staff believes that it is appropriate that the Parks and Recreation Department present this matter to Council with the recommendation that Council adopt the City ordinance required by City Charter Section 520 in order to grant the current property owners' request for a permanent easement over the existing private driveway through this small portion Gould Park. While the granting of the non-exclusive easement will enable the Whites to grant marketable title to prospective purchasers, the easement does not transfer the City's underlying fee interest in Gould Park and does not encumber the park with any debt or covenant.

If the Council agrees with the staff recommendation and adopts the required ordinance, the City Attorney's Office will provide assistance in preparing and recording the necessary easement documents in accordance with the City's Charter.

- ATTACHMENT(S):**
1. Letter from Michael and Robert White and License Agreement between the City and Roderick White
 2. Site Plan of Proposed Easement and 960 East Mountain Drive
 3. Letters of Support from the Montecito Fire Protection District and the Montecito Water District

PREPARED BY: Jill E. Zachary Assistant Parks and Recreation Director/DT
City Attorney's Office

SUBMITTED BY: Nancy L. Rapp, Parks and Recreation Director

APPROVED BY: City Administrator's Office

City of Santa Barbara

January 10, 2013

To whom this may concern,

David Thornburgh;

My brother and I are in the process of selling my families house and property at 960 E. Mountain Drive. Our parents passed away last year, and during our research have found a license agreement between the City of Santa Barbara (Parks) and my father, for a portion of the driveway. See attached.

We would like to discuss the possibility to alter this license agreement so that a buyer can get insurance in the process of the purchase of our house and property. Can this document be changed to an easement for access to this house? This is the only access to the house.

We feel that this license agreement was agreed upon between our father and the City because of access to the Montecito Water Main and benefits all parties. You can see from the attached site plan, the location of the water main and fire hydrant. Montecito Fire Department has told use that they like access to our motor court for staging area during a wildfire.

We would like to work with you and City Parks as to how to resolve this issue.

Sincerely,

Michael White and Robert White


Michael A. White

SOPHIE CALVIN
969-0559
SOPHIECALVIN@GMAIL.COM

LICENSE AGREEMENT

THIS AGREEMENT, made and entered into this 13th day of January, 1965, by and between the CITY OF SANTA BARBARA, a Municipal Corporation organized and existing under and by virtue of the Constitution and laws of the State of California, hereinafter sometimes called "CITY", and RODERICK A. WHITE, of Santa Barbara, California, hereinafter sometimes called "OWNER";

WITNESSETH:

THAT WHEREAS, the City of Santa Barbara is the owner of certain real property situated in the County of Santa Barbara, and commonly referred to as Anna Gould Park, the deed for which was recorded on June 2, 1926, in Book 98, at page 302 of Official Records of Santa Barbara County; and

WHEREAS, Owner is the owner of certain real property lying southerly and adjacent to the southerly boundary of said Anna Gould Park, said real property being commonly referred to as 1090 East Mountain Drive, Santa Barbara, California; and

WHEREAS, the Montecito County Water District maintains for the use and accommodation of the Montecito County Fire Department, a certain fire hydrant situated upon the property of Owner; and

WHEREAS, presently there is no road or other access between Mountain Drive and the location of said fire hydrant which is traversable by mechanical or vehicular equipment of said Montecito County Fire Department, and so far as fire protection is concerned, said fire hydrant has been rendered useless; and

WHEREAS, the extensive brush and mountain fires of September, 1964, destroyed the residence of Owner together with shrubbery and natural growth in said Anna Gould Park in the area adjacent to said fire hydrant; and

WHEREAS, Owner is willing to construct and maintain an access road from Mountain Drive across a portion of Anna Gould Park for the purpose of providing access to said fire hydrant, and also for the purpose of providing access to his said property, said access road to be constructed over that portion of City owned property in Anna Gould Park described as follows:

That portion of the northwest quarter of the southwest quarter of Section 6, Township 4 North, Range 26 West, San Bernardino Base and Meridian, in the County of Santa Barbara, State of California, described as follows:

An easement for the installation, maintenance and repair or a driveway over that certain strip of land being fifty feet wide, the centerline of which is described as follows:

Commencing at a cross on a rock, being the most southerly point of a strip of land designated as "City of Santa Barbara" and shown on a map of the Florence Lowery Property, filed in Book 26, at Page 46 Record of Surveys in the County Recorder's office of said county; thence N. 89°03' W. along the southerly line of said "City of Santa Barbara" strip, 102.28 feet to the true point of beginning of the centerline herein described;

Thence, N. 37°55'30" W., 171.18 feet;

Thence, N. 11°06'30" W., 32.09 feet to a point which is 25 feet easterly of the westerly line of said "City of Santa Barbara" strip, (measured at right angles thereto);

Thence, N. 0°12'40" E., parallel with, adjacent to, and 25 feet easterly of said westerly line, 91.06 feet;

Thence, N. 36°50'30" E., 70 feet more or less, to intersect the right of way line of Mountain Drive, a public road.

The easterly and westerly lines of the herein described easement to be shortened or lengthened to intersect the right of way line of Mountain Drive on the north and the southerly line of said "City of Santa Barbara" strip of land on the south; and

WHEREAS, the Park Commission and the City Council of the City of Santa Barbara have considered the request of Owner, and have determined that said road can be constructed in said Park for the purposes aforesaid without detrimental or damaging effect to the public purposes for which said Park was originally dedicated to the City;

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL TERMS AND COVENANTS HEREIN CONTAINED, AND FOR OTHER

GOOD AND VALUABLE CONSIDERATION, THE PARTIES HERETO
AGREE AS FOLLOWS:

I. Owner is hereby given a license to enter upon and into a portion of the Anna Gould Park for the purpose of constructing and maintaining an access road between Mountain Drive and the property owned by Owner over the driveway easement described above. The City, by and through the Director of Public Works of the City of Santa Barbara, shall have final and conclusive authority to determine whether or not the construction and maintenance of said access road has been constructed or maintained, or both, in accord with the sketch attached hereto as Exhibit "A".

II. Owner shall at all times maintain said access road in good condition and repair and, for such purpose, City retains hereby a continuing right to demand and receive, upon five (5) days notice, such action on the part of Owner as will cause such access road to be so maintained at the sole cost and expense of Owner.

III. Owner and City expressly agree that this license shall be revocable and terminable at any time upon thirty (30) days notice from City whenever the governing body determines by motion or resolution that said access road is not being maintained in a manner adequate for the traverse of fire equipment. Owner shall not be entitled nor shall Owner demand, assert a right to or make claim for any losses or damages of any kind or nature, because of, arising out of or due in any way to the revocation or termination of the license herein granted.

IV. It is understood and agreed that this license does not and was not intended to give Owner the right to construct, place or erect any other matter, structure or thing except such access road and incidental landscaping along the respective side lines thereof if the Director of Public Works of the City of Santa Barbara approves such landscaping.

V. Owner hereby promises and agrees to indemnify and hold harmless the City of Santa Barbara, its officers, agents and employees from any and all claims and demands whatsoever which may arise or

ATTACHMENT 1

hereafter arise, accrue or be made by or in behalf of any person whomsoever on account of or resulting from loss or damage attributable to or connected with said access road.

VI. This agreement shall be recorded, and each and every term, promise and condition thereof shall be binding upon Owner and upon Owner's heirs, successors, personal representatives and assigns.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be legally executed in duplicate, the day and year first above written.

CITY OF SANTA BARBARA,
a Municipal Corporation

By *W. D. ...*
Mayor

RODERICK A. WHITE

Roderick A. White

Approved and Countersigned:

Severed ...

Rayburn H. Wilson

Finance Committee

Approved:

Haley T. ...
City Attorney

U. S. GRANT & SON, CIVIL ENGINEERS

314 E. CARRILLO STREET, SANTA BARBARA, CALIF.

BY L.M.C. C.E.

SKETCH MAP

SHEET NO. 1 OF 1

CHKD. BY L.M.C.

PROPOSED DRIVE

TRACT NO. _____

DATE NOV. 1964

EASEMENT FOR R. HWY 101

JOB NO. 5090 & 514

AMENDED JAN 11, 1965

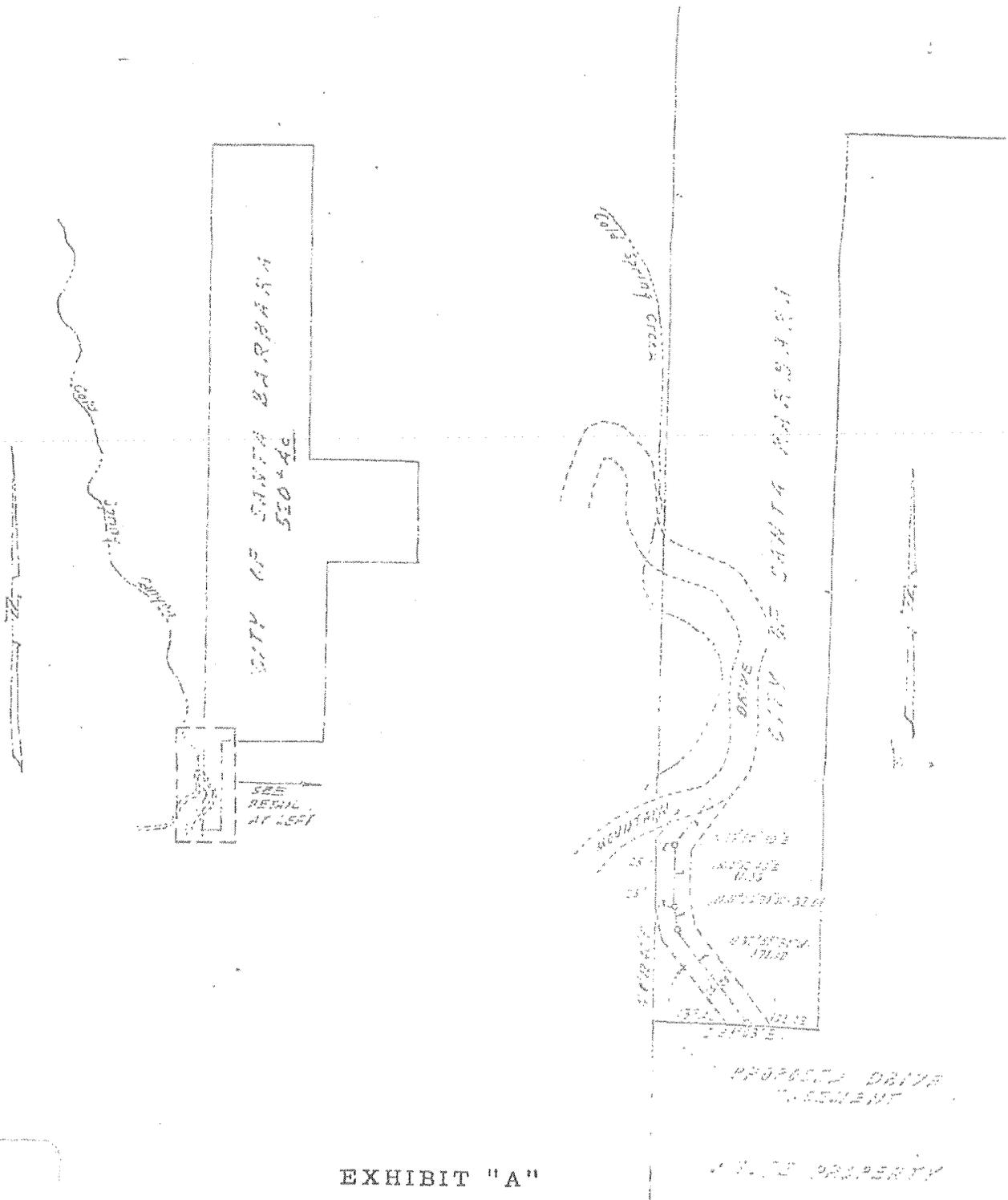


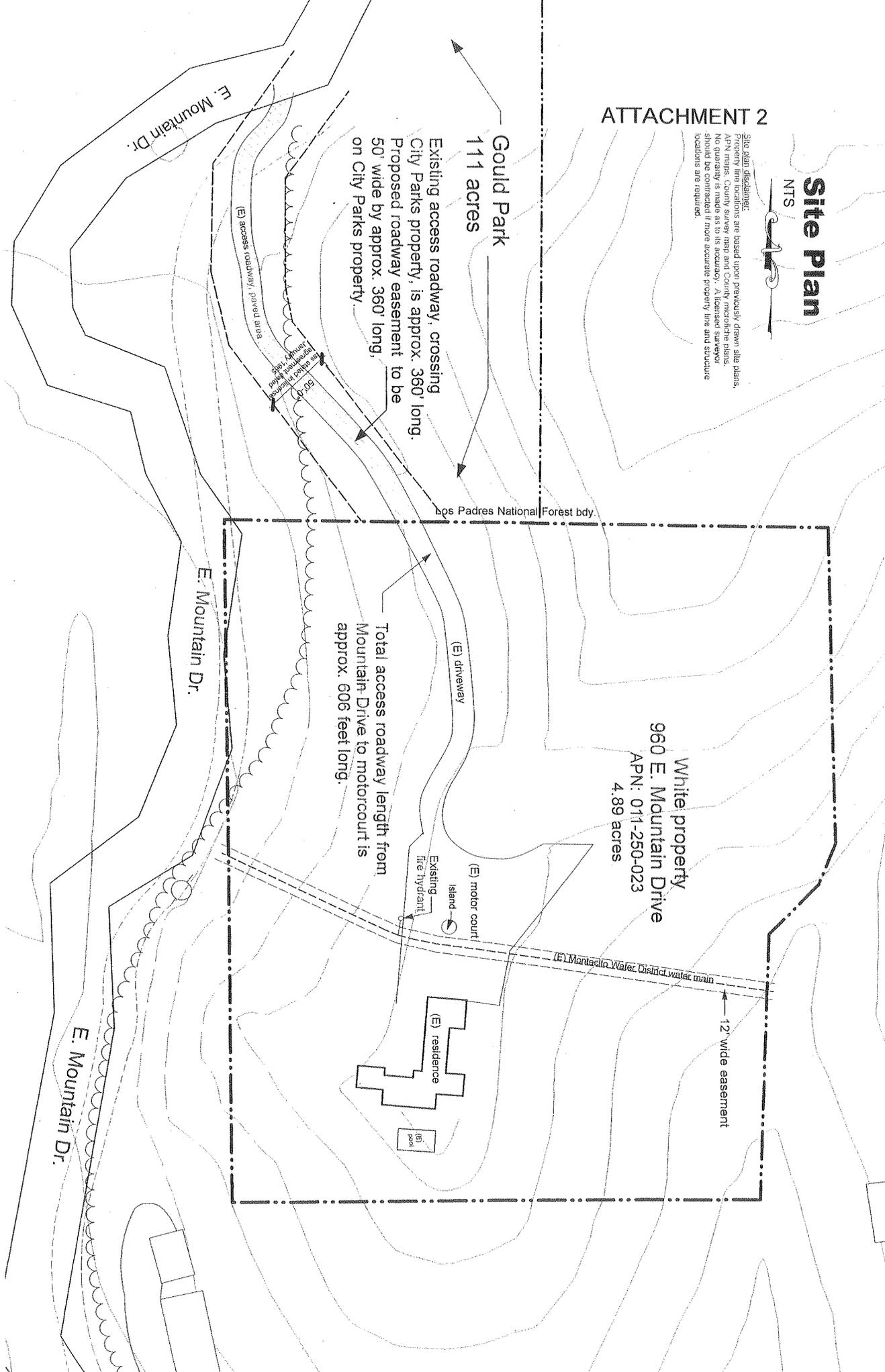
EXHIBIT "A"

Site Plan

NTS

Site plan disclaimer:
 Property line locations are based upon previously drawn site plans, APN maps, County survey map and County microfiche plans. No warranty is made as to its accuracy. A licensed surveyor should be contacted if more accurate property line and structure locations are required.

ATTACHMENT 2



Gould Park
111 acres

Existing access roadway, crossing City Parks property, is approx. 360' long. Proposed roadway easement to be 50' wide by approx. 360' long, on City Parks property.

Los Padres National Forest bdy

White property
960 E. Mountain Drive
APN: 011-250-023
4.89 acres

Total access roadway length from Mountain Drive to motorcourt is approx. 606 feet long.

12' wide easement

(E) residence

(E) pool

(E) motor court

Existing fire hydrant

(E) driveway

E. Mountain Dr.

E. Mountain Dr.

E. Mountain Dr.

(E) access (rubbish) paved area

50' wide by approx. 360' long

(E) Montecito Water District water main



MONTECITO FIRE PROTECTION DISTRICT

595 San Ysidro Road • Santa Barbara, California 93108 • (805) 969-7762 • FAX (805) 969-3598

February 15, 2013

Re: Emergency response access serving property at 960 E. Mountain Drive

To whom it may concern,

The Montecito Fire Protection District has been informed that the City of Santa Barbara has a licensing agreement attached to the title of 960 E. Mountain Drive. Evidently, this is for the purpose of permitting travel to the residence along a paved access route which passes through the City owned Gould property.

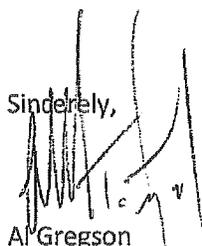
The above mentioned address is within the Montecito Fire Protection District. The District requires emergency response access/evacuation egress for each developed property in Montecito. These development standards for access roads are stated in the adopted 2010 California Fire Code and the Montecito Fire Protection Plan (FPP).

On many occasions over the years, the existing driveway serving 960 E. Mountain has been utilized to provide emergency access for medical responses, and more notably, to provide structure protection during the Zaca, Tea, and Jesusita Fires. Additionally, fire personnel utilize the plateau at the top of the driveway as a lookout post because of the excellent vantage of the district from that location.

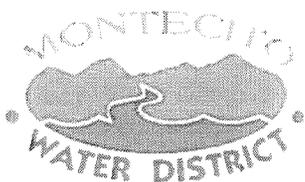
Without the current access route serving the above mentioned property, life safety would be a concern due to impeded emergency response, therefore necessitating an alternate route to the residence for occupancy clearance to be granted or continued.

Please contact me if there are any questions,

Sincerely,



Al Gregson
Fire Marshal
Montecito Fire Protection District
(805) 969-1445
agregson@montecitofire.com



February 13, 2013

Via Email

Re: Paved Driveway Access for 960 East Mountain Drive

To Whom It May Concern,

The Montecito Water District has been informed that the paved access roadway serving 960 East Mountain Drive is subject to a license agreement with the City of Santa Barbara.

Board of Directors

President
Samuel Frye

Vice President
W. Douglas Morgan

Jan E. Abel
Darlene Bieng
Richard Shaikewitz

**General Manager
and Secretary**

Thomas R. Mosby

For your information, this paved access driveway provides the District with access to its 14-inch water transmission main (referred to as the Highline) constructed in 1928. Due to its age, this water transmission main is subject to breaks and water outages that affect water levels in water storage reservoirs. This driveway provides a critical access point to the Highline for inspection, equipment and materials necessary for operation and maintenance activities.

Without this paved driveway the District's access would be significantly restricted due to the extremely steep terrain in the area, potentially denying immediate access and response to emergency repairs for this major water transmission main.

If you have any questions, please contact me at 805.969.2271.

Sincerely,

Tom Mosby
General Manager

cc: Karl Meier, Montecito Water District

583 San Ysidro Road
Santa Barbara, CA
93108-2124

Ph: 805.969.2271
Fax: 805.969.7261

This is recycled paper.
Each ton of recycled paper
saves 7,000 gallons of water.