



THE CITY OF  
**NOVATO**  
CALIFORNIA

Community Development Dept.  
75 Rowland Way  
Novato, CA 94945  
(415) 899-8989  
FAX (415) 899-8216  
[www.ci.novato.ca.us](http://www.ci.novato.ca.us)

## PLANNING COMMISSION STAFF REPORT

### MEETING

DATE: August 20, 2007

STAFF: Steve Marshall, Senior Planner

SUBJECT: **VACATION OF PUBLIC ACCESS EASEMENT  
10702R; GENERAL PLAN CONSISTENCY DETERMINATION  
APNs 140-181-78 & 85, 140-191-68; 14 GOLD MINER CT., 748  
BRADLEY AVE., & 2 BORGES CT.**

### REQUESTED ACTION

Provide a report to the City Council regarding whether or not vacating public access rights over an existing pedestrian/bicycle easement crossing privately owned parcels is consistent with the Novato General Plan.

### PROJECT DESCRIPTION

The City of Novato has received a request from the property owners at 14 Gold Miner Court, 748 Bradley Avenue, and 2 Borges Court to vacate public access rights over an existing pedestrian/bicycle path (hereafter "Bradley Path") between Bradley Avenue and Center Road. The property owners desire to have the Bradley Path closed due to alleged problems with users of the easement, including loitering, noise disturbances, litter, and graffiti. The property owners have submitted statements describing problems they have experienced (Attachments Nos. 4 and 5) with users of the Bradley Path. A map of the Bradley Path and adjacent properties is provided as Attachment No. 2. A vicinity map showing the area surrounding the Bradley Path is provided as Attachment No. 3.

### NEED FOR PLANNING COMMISSION ACTION

California Government Code Section 65402(a) requires the Planning Commission to review the location, purpose, and extent of the vacation of a public easement and provide a report to the City Council as to whether or not such a vacation is consistent with the General Plan.

### BACKGROUND

Applicants/Property Owners: Borges, Zerkel, and Roehrick

General Plan Designation: Low Density Residential (R1)

Existing Zoning:	R1-7.5; 7,500 sq. ft. minimum lot size.		
Existing Use:	Single-Family Residential		
Adjacent Zoning and Uses:	North	–	Developed Single-Family Residential
	South	–	Developed Single-Family Residential
	East	–	Developed Single-Family Residential
	West	–	Developed Single-Family Residential

**ENVIRONMENTAL ASSESSMENT**

The Environmental Coordinator has determined the proposed project is exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to the "general rule." According to the general rule, a project is exempt from CEQA where it can be seen with certainty there is no possibility the activity in question may have as significant effect on the environment. Vacating public access rights over private land would not result in a physical change to the environment.

**STAFF ANALYSIS**

*History*

The Bradley Path was acquired by the City via three separate subdivision actions dating back to 1952. The following is a brief summary of the actions creating the Bradley Path.

1952 - Paxton Place Unit 3 Subdivision is approved by the County of Marin. A 40-foot right-of-way reservation, dividing Lots 41 and 42, was accepted by the County for a future street connection between Bradley Avenue and Center Road.

1978- The City received a request to vacate the 40-foot right-of-way reservation through Paxton Place Unit 3. The City Council approved the vacation of the right-of-way for public street purposes, but reserved the full 40-feet for a public utility and drainage easement and a 6-foot pedestrian easement. The forty-foot easement was split in half with 20-feet being transferred to the owners of Lots 41 and 42 respectively. The pedestrian easement was split evenly as well, with 3-feet lying on the land transferred to the owners of Lots 41 and 42 respectively.

1979- The City approved the Borges Division of Land, including acceptance of a 6-foot pedestrian and utility easement (south of Gold Miner Court).

1990- The City approved the Zanco Subdivision (Gold Miner Court), including a 2-foot pathway easement.

### *Path Description*

The Bradley Path is approximately 434-feet in length and 6-feet wide. The path is bordered by private fencing and is illuminated by two light fixtures. The path connects Bradley Avenue to Center Road. The path does not connect to any other off-street public pedestrian or bicycle paths.

### *Maintenance & Liability*

According to Public Works staff, the city is responsible for maintaining the Bradley Path, including repairing paving, litter and weed removal, and servicing two light fixtures. However, the City is not responsible for maintaining the private fencing along the Path. Public Works staff also indicated the City holds liability for the easement.

### *General Plan Policies*

The Novato General Plan Transportation Chapter addresses pedestrian and bicycle circulation throughout the City. The following Transportation Chapter policies specifically address bicycle and pedestrian paths:

**TR Policy 12 Continuation of Streets.** Facilitate the continuation of streets and bicycle and pedestrian paths through developments wherever reasonable and feasible.

**TR Policy 22 Pedestrian Facilities.** Promote, provide, and maintain a safe and convenient pedestrian system.

The General Plan, via these policies, supports pedestrian and bicycle facilities where compatible with surrounding development. These policies are used by the City to acquire public pedestrian/bicycle paths through new developments. Conversely, these policies serve as the basis for determining whether or not vacating existing public pedestrian/bicycle access is consistent with the General Plan.

In addition to the policies noted above, public bicycle paths may be identified on General Plan Transportation Chapter TR-Map 4 and public pedestrian paths/trails shown on Environment Chapter EN - Map 5. The Bradley Path is not identified on these maps. As such, vacating public access rights over the Bradley Path would not require amendment of the General Plan.

The City last vacated an existing public pedestrian/bicycle path in 1996. In that case, a pedestrian easement at the Oaks Subdivision (near Santa Maria Drive) was closed after it was found to be a security problem for adjacent neighbors and a maintenance burden on the City. This is one instance where the City found vacating public access rights was consistent with the General Plan since the path was found to be incompatible with surrounding land uses due to verified security and maintenance problems.

In order to determine whether or not relinquishing existing public access rights is consistent with the General Plan, the Planning Commission and City Council should rely on an independently verifiable record (e.g., police reports, code enforcement complaints) of persistent problems clearly demonstrating public access is no longer compatible with surrounding development. Staff recommends such a rigorous test for any request to relinquish a public amenity.

In this instance, the City is being asked to vacate public access rights to the Bradley Path due to alleged misuse of the easement by members of the public, including graffiti, noise disturbances, litter, and other acts of vandalism. Planning staff attempted to verify the applicants' complaints by contacting the Novato Police Department, Public Works Department, and Code Enforcement Division. These City service branches were asked if they had any record of complaints or problems with the Bradley Path.

The Public Works Department and Code Enforcement Division do not have any record of complaints regarding vandalism, misuse, or maintenance problems involving the Bradley Path. The Novato Police Department has one record of a complaint regarding graffiti on a private fence along the Path. This report was filed by one of the applicants' on July 2, 2007. Planning staff visited the Path on July 2, 2007, finding and photographing (see Attachment No. 6) a significant amount of graffiti on a section of private fence abutting the path. The homeowner at 748 Bradley Avenue has since painted over the graffiti. Other than this incident, the Police Department does not have any additional records of vandalism or other incidents involving the Bradley Path.

The applicants' were advised the Police Department does not have any substantial record of complaints involving the Bradley Path. In response, the applicants stated they had stopped calling the police many years ago since the person(s) causing problems usually left the area before police arrived.

Planning staff also asked the Public Works Department and Police Department to review the lay-out of the Bradley Path to determine if its design presented any safety issues. According to the Public Works staff, the Bradley Path meets the Novato Municipal Code design requirements for walkways. However, Public Works staff commented that an easement with a blind corner section, such as occurs in the middle of the Bradley Path, would not currently be acceptable to the Public Works Department for any new path design.

Police Department staff also visited the Bradley Path. Police staff commented that the Bradley Path is primarily used by students walking to and from Lu Sutton Elementary and Hill Middle School. Police staff did not identify any safety concerns regarding the Bradley Path.

Public notices announcing the request to close the Bradley Path were mailed and published on July 12, 2007. Staff issued the notice well in advance of the Planning Commission hearing to ensure the neighborhood had a sufficient amount of time to consider the request and submit comments to the City. Staff received several comment letters from members of the public living near the Bradley Path. These comment letters are attached for Planning Commission review (see Attachment No. 7).

While Planning staff believes the applicants' have had periodic problems with users of the Bradley Path, staff does not feel there is a sufficient independent record of safety or maintenance problems to deem the Bradley Path incompatible with the surrounding residences. As such, staff is of the opinion that vacating public access rights at this time would not be consistent with the General Plan.

### **COMMISSION ALTERNATIVES**

1. Report to the City Council that vacating public access rights to the Bradley Path is not consistent with the General Plan since the City does not have a substantial record (e.g., police reports, code enforcement complaints) of persistent problems clearly demonstrating public access is no longer compatible with surrounding development.
2. Report to the City Council that vacating public access rights to the Bradley Path is consistent with the General based on the information submitted by the applicants' indicating the path is no longer compatible with surrounding residences due to misuse by members of the public.
3. Continue the item with direction to staff.

### **RECOMMENDATION**

Report to the City Council that vacating public access rights to the Bradley Path is not consistent with the General Plan since the City does not have a substantial record (e.g., police reports, code enforcement complaints) of persistent problems clearly demonstrating public access is no longer compatible with surrounding development.

### **FURTHER ACTION**

1. The Planning Commission's report will be forwarded to the City Council for consideration at a future public hearing.

### **ATTACHMENTS**

1. Resolution
2. Bradley Path Map
3. Vicinity Map
4. Applicant Statement - Zerkel
5. Applicant Statement - Roehrick
6. Bradley Path Photographs
7. Correspondence

PLANNING COMMISSION RESOLUTION

RESOLUTION NO. \_\_\_\_\_

RESOLUTION OF THE PLANNING COMMISSION REPORTING THAT THE VACATION OF EXISTING PUBLIC ACCESS RIGHTS THROUGH 14 GOLD MINER CT., 748 BRADLEY AVE., AND 2 BORGES COURT, IS NOT CONSISTENT WITH THE NOVATO GENERAL PLAN

WHEREAS, the City of Novato has received a request (City File No. 10702R) from the property owners at 14 Gold Miner Court, 748 Bradley Avenue, and 2 Borges Court to vacate public access rights over an existing pedestrian/bicycle path (hereafter "Bradley Path") between Bradley Avenue and Gold Miner Court due to alleged problems, including noise disturbances, loitering, graffiti, and other misuse by members of the public, APNs 140-181-78, 140-181-85, 140-191-70, and 140-191-68; and

WHEREAS, California Government Code Section 65402 requires the Planning Commission to review the proposed vacation of public right-of-way and render an opinion and report to the City Council as to whether or not the vacation is consistent with the applicable general plan; and

WHEREAS, these proceedings are conducted pursuant to and in accordance with the California Government Code Section 65402; and

WHEREAS, the Transportation Chapter of the Novato General Plan, including TR Policy 12 and TR Policy 22, support the provision of publicly accessible pedestrian and bicycle paths in the City of Novato where such facilities are compatible with surrounding development; and

WHEREAS, relinquishing public access rights over an existing pedestrian/bicycle path would be consistent with the General Plan, including TR Policies 12 and 22 where the City of Novato can independently verify (e.g., police reports, code enforcement complaints) that public use is no longer compatible with surrounding development due to security and/or maintenance problems negatively impacting neighboring residents and/or City resources; and

WHEREAS, Planning staff contacted the Novato Public Works Department, Police Department, and Code Enforcement Division to independently verify the applicants' report of problems with users of the Bradley Path, including noise disturbances and loitering; and

WHEREAS, neither the Public Works Department or Code Enforcement Division have any records or reports regarding misuse or maintenance problems involving the Bradley Path; and

WHEREAS, the Novato Police Department has a record of one incident of graffiti along the Bradley Path occurring on July, 2, 2007, but otherwise does not consider the Bradley Path a security problem; and

WHEREAS, the proposed vacation of public right-of-way is exempt from the requirements of the California Environmental Quality Act (CEQA), pursuant to the general rule that projects are exempt from CEQA where there is no possibility that the proposed project could have a significant effect on the environment; and

WHEREAS, public notices describing the Planning Commission's public hearing on the proposed vacation of right-of-way were sent to all property owners within 600-feet of the project area boundary, and published in the Marin Independent Journal, a newspaper of local circulation, on July 12, 2007; and

WHEREAS, the Planning Commission did consider the proposed vacation of right-of-way at its hearing on August 20, 2007.

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission does hereby report that vacating existing public access rights over the private properties at 14 Gold Miner Court, 748 Bradley Avenue, and 2 Borges Court is not consistent with the Novato General Plan based on the following finding:

The applicants' complaints regarding the misuse of the Bradley Path could not be independently verified by the City of Novato. As such, the City of Novato has an insufficient record of complaints to conclude the Bradley Path represents a maintenance and/or security problem adversely affecting surrounding development. Therefore, the Bradley Path is considered to be compatible with surrounding development and should remain available for public use.

Passed and adopted at a regular meeting of the Planning Commission of the City of Novato held on the \_\_\_ day of \_\_\_\_\_ by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

\* \* \* \* \*

I HEREBY CERTIFY that the foregoing is a full, true and correct copy of the resolution which was adopted by the Planning Commission, City of Novato, County of Marin, State of California, on the \_\_\_\_\_ day of \_\_\_\_\_.

\_\_\_\_\_  
Chair