



ARLINGTON COUNTY, VIRGINIA

**County Board Agenda Item
Meeting of July 7, 2007**

DATE: June 19, 2007

SUBJECT: Enactment of an Ordinance to Amend and Reenact an Ordinance to Vacate a Portion of a Public Use Easement for Recreational Purposes, Parcel 1 of Crystal Park, 2451 Crystal Drive, Arlington, Virginia, RPC #34020243, with Conditions.

Applicant: Fifth Crystal Park Associates, L.P.

By: M. Catherine Puskar
Walsh, Colucci, Lubeley, Emrich & Terpak, P.C.
2200 Clarendon Blvd, 13th Floor
Arlington, Virginia 22201

C. M. RECOMMENDATIONS:

1. Enact the attached Ordinance to Amend and Reenact an Ordinance to Vacate a 6,964.2 Square Foot Portion of a Public Use Easement for Recreational Purposes, Parcel 1 of Crystal Park, 2451 Crystal Drive, Arlington, Virginia, RPC #34020243, with Conditions, and;
2. Authorize the Real Estate Bureau Chief, Engineering and Capital Projects Division, Department of Environmental Services, to execute, on behalf of the County Board, the Deed of Vacation and all related documents, subject to approval as to form of all documents by the County Attorney, regarding the above-described Ordinance.

ISSUE: None.

SUMMARY: This is a request to enact an Ordinance (the "Amended Ordinance") to amend and reenact an Ordinance to Vacate a 6,964.2 square foot portion of a limited-term, public use easement for recreational purposes previously approved by the County Board on July 8, 2006 (the "Original Ordinance"). The proposed Amended Ordinance is necessary to revise the expiration date of the Original Ordinance, providing the Applicant with an additional twelve months to meet the conditions of the Original Ordinance. Upon enactment of the Amended Ordinance, satisfaction by the Applicant of the applicable conditions, and recordation by the

County Manager: _____

County Attorney: _____

Staff: Michael R. Halewski – DES Real Estate Bureau

Applicant of the Deed of Vacation before the expiration of the Amended Ordinance, the County's interest in the vacated easement will be extinguished.

BACKGROUND: In 1989, the County Board approved Site Plan SP #167 for the construction of a multi-story office building at 2451 Crystal Drive (the "Property"). The site plan conditions required that the developer grant to County a 30-year, 124,312 square foot public use easement for recreational purposes. The easement area was granted on December 15, 1989, and is currently improved with three lighted outdoor volleyball courts, picnic tables, an outdoor exercise area, two half basketball courts and a small pedestrian path. The recreational area is maintained and managed by the property owners, Fifth Crystal Park Associates Limited Partnership.

The Original Ordinance was enacted by the County Board on July 8, 2006, in connection with a Minor Site Plan Amendment in order to retrofit an approximately 11,000 square foot portion of the first floor of the office building into a daycare center. The vacation area is situated in the open space located on the south end of the Crystal Park V Office Building on the Property. The vacation was requested and approved by the County Board in order for the Applicant to provide outdoor playground space that is necessary for the Applicant to obtain State daycare licensing approval. While the vacation would eliminate one of three outdoor volleyball courts, the property owner will immediately grant to the County a Deed of Easement over the vacated area that will allow for public use of the playground during evenings, weekends and Federal holidays, excepting Veteran's Day.

The enactment of the Amended Ordinance will amend the Original Ordinance by changing the expiration date of the Original Ordinance (Condition No. 6) from July 8, 2007 to July 8, 2008. This will allow the Applicant additional time to meet all conditions of the Ordinance.

DISCUSSION: County staff has determined that the Crystal City area is underserved by daycare facilities. This proposed daycare center will be available to approximately 140-160 children per day; operating during daytime hours from Monday through Friday. A state licensing requirement for daycare operation is the presence of an outdoor children's play area. The vacation of the specified easement area would provide a sufficient area for the property owner on which to build the required playground. While the daycare center is considered to be a community benefit, the trade-off is that a portion of the recreational easement must be vacated. However, the Applicant has agreed to grant, to the County Board, another public use easement for recreational purposes over the same area that is proposed to be vacated. The easement termination date will be the same: January 1, 2020. The new Deed of Easement would allow public access and use of the area, including use of the playground equipment, during evenings, early mornings, weekends, and most Federal holidays. The daycare facility will have exclusive use of the play area on weekdays from 8:00 a.m. until 6:00 p.m., excepting most Federal holidays.

The three lighted volleyball courts that the Applicant has provided as part of the original approved site plan are a unique and valuable recreational resource in Arlington County. The courts provide a place for drop-in outdoor active play to occur and support the County's goal of providing opportunities for its residents to pursue and enjoy healthy lifestyles. While a new

playground area will bring a different recreational activity to the area, the removal of one of the courts from the lighted complex will reduce the current user capacity, the flexibility of use, and the community-building value afforded by the existing three courts. In order to minimize the impact of the loss of one volleyball court, the Applicant has agreed to ensure the viability of the remaining two courts during construction of the play area and throughout the remaining term of the public access easement. In addition, the County Board has tasked staff to explore opportunities elsewhere in the County where a volleyball experience and venue, similar to the one that currently exists at 2451 Crystal Drive, could be created. Staff will begin a process of examining and analyzing potential locations to determine preliminary feasibility based on several factors including, but not limited to: access to Metro, proximity to Crystal City, presence of existing lighting, availability of adequate space, and compatibility with existing recreational uses. Once preliminary findings have been assembled, staff will begin a public process to determine a suitable location for multiple lighted volleyball courts in the County.

A staff report addressing a Minor Amendment to Site Plan #167 was presented to the County Board at the July 8, 2006 meeting. The report addressed the continued use of the remaining volleyball courts and the public use of the playground in the area vacated by the Ordinance of Vacation, attached as "Attachment 1". A vicinity map is attached as Exhibit D, showing the location of the subject site in Crystal City.

Legal and Physical Description: The 124,312 square foot public use easement for recreational purposes was conveyed to the County by a Deed of Easement recorded in the County's Land Records on December 15, 1989 in Deed Book 2423 at Page 1463. The 6,964.2 square foot portion of the easement that is the subject of this vacation request is shown on attached Exhibit A entitled "Plat Showing the Vacation of a Portion of a Surface Easement for Public Use, Deed Book 2423, Page 1463, Parcel 1, Crystal Park, Deed Book 2354, Page 428, Arlington County, Virginia.", prepared by VIKA Incorporated, dated January 10, 2006 and revised June 15, 2006. Exhibit C shows the existing site conditions with an overlay of the proposed vacation area.

With the enactment of the Ordinance, upon satisfaction of the conditions, and upon recordation of the Deed of Vacation, the County's interest in the area that is the subject of this request will be extinguished. Immediately thereafter, the Applicant will grant to the County a Deed of Easement over the same land area for other recreational purposes.

Compensation: The Applicant will be dedicating a new Deed of Easement, also for public recreational purposes, but with more limiting language, in place of the vacated portion of the existing Deed of Easement. No compensation is being required of the Applicant because, in exchange for the legal interests vacated, the Applicant will be constructing and maintaining a playground and County residents will have use of the playground during specified hours.

Public Notice: Public notice was given in accordance with state law. Public notices were placed in the June 11, 2007 and June 18, 2007 issues of the Washington Times for the June 25, 2007 Planning Commission Hearing, and the July 7, 2007 County Board Meeting.

FISCAL IMPACT: None

CONCLUSION: It is recommended that the County Board enact the following:

An Ordinance to amend and reenact an Ordinance to a vacate portion of the public use easement for recreational purposes, Parcel 1 of Crystal Park, 2451 Crystal Drive, Arlington, Virginia, RPC #34020243 (Attachment 1); subject to the following conditions:

1. The Applicant shall prepare and submit to the County the Deed of Vacation, Deed of Easement, and required plats, subject to the review and approval of the deeds and plats by the County Manager, or his designee, and approval of the deeds as to form by the County Attorney.
2. The Applicant, and all persons or entities holding a legal interest in the vacated area (jointly “Grantor”), shall convey to the County Board (“Grantee”) a Deed of Easement-Public Use Easement For Recreational Purposes (“Deed of Easement”), over the entirety of the area hereby vacated (“Easement Area”), which Deed of Easement shall be in content acceptable to the County Manager or his designee, and in a form acceptable to the County Attorney. The Real Estate Bureau Chief is authorized to accept the Deed of Easement on behalf of the County Board. Such Deed of Easement shall contain provisions required by the County Manager, or his designee, including but not limited to, the following:
 - a. The Easement Area shall be fully open to the public at large, year round, from Monday evenings through Friday mornings between the hours of 6:00 p.m. and 8:00 a.m. daily and between 6:00 p.m. on Friday until 8:00 a.m. on Monday, and all Federal holidays (except Veteran’s Day), which holidays include New Year’s Day, Martin Luther King, Jr. Day, Presidents’ Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Thanksgiving and Christmas. The Grantor shall have the exclusive use of the Easement Area, year round, between the hours of 8:00 a.m. and 6:00 p.m. on Mondays through Fridays except for the Federal holidays described above.
 - b. During the time periods when the Easement Area is open to the public at large, use of the Easement Area shall be subject to the applicable County Parks Rules and Regulations, as may be revised from time to time by the Grantee.
 - c. The Applicant shall design, acquire, construct, and install recreational improvements and fencing, at Grantor’s sole expense, within the boundaries of the Easement Area, subject to the prior written approval of the type and design of the recreational improvements and fencing by the Director of the Arlington Department of Parks, Recreation, and Cultural Resources (“DPRCR”), or his designee.
 - d. Upon final completion of the design, acquisition, construction and installation of the recreational improvements and fencing by the Grantor, and written notification to the County that the recreational improvements and fencing have been installed and erected, the Director of DPRCR, or his designee, shall have the opportunity to inspect the recreational improvements and fencing to make certain that the improvements meet with the design and safety standards approved by DPRCR.

- e. i. The recreational improvements and fencing shall be fixtures appurtenant to the Property, and shall be owned solely by Grantor. The Grantee shall have no obligations concerning the recreational improvements and fencing. The Grantor shall be solely responsible for, and obligated to, among other things, inspect, maintain, repair, and remove the recreational improvements and fencing (jointly, “Work”). The Grantor shall perform Work in accordance with the manufacturer’s recommendations, the Americans with Disabilities Act standards and the specifications delineated in the attached Exhibit B entitled “Minimum Maintenance Standards”, undated, and all successor recommendations, standards, and procedures generally applicable to public parks in Arlington County, Virginia, all as may be hereafter revised by the Grantee.
- ii. Throughout the term of the Deed of Easement, the Grantor shall be responsible, at its sole cost and expense, for maintaining the Easement Area in accordance with the attached Minimum Maintenance Standards.
- iii. The Grantor shall be solely responsible for the maintenance and upkeep of the Easement Area.
- f. Any improvements existing within the Easement Area, at the commencement of the Deed of Easement, that are to be removed, shall be removed at Grantor’s sole expense.
- g. During the term of the Deed of Easement, except in the event of danger to the public health, safety or welfare, the Grantor shall neither remove, add, nor make changes to the recreational improvements and fencing, without the prior written permission from the Grantee. No such removals, additions, or changes to the recreational improvements or fencing shall endanger the public health, safety, and welfare. The prohibitions of this paragraph include, but are not limited to, any changes contrary to, or inconsistent with, the then current provisions of American Society of Testing Materials (“ASTM”) Standard F1487, "Standard Consumer Safety Performance Specification for Playground Equipment for Public Use."
- h. At all times, during the term of the Deed of Easement, the Grantor shall carry and maintain a comprehensive general liability insurance policy written by a company authorized to do business in the Commonwealth of Virginia. The policy shall carry limits of not less than \$ 1,000,000 per occurrence and \$ 3,000,000 annual aggregate. The County, its elected and appointed officials, officers, employees, and agents shall be named as additional insureds by endorsement to the policy. Prior to acceptance of the Deed of Easement on behalf of the County Board and annually thereafter, a Certificate of Insurance showing pertinent information and referencing this Deed of Easement shall be delivered to the Arlington County Office of Risk Management along with a copy of the endorsement adding the additional insureds.
- i. The Grantor shall indemnify and hold-harmless the County, its elected and appointed officials, officers, employees, and agents from losses, liability, suits, demands, costs and expenses caused by, or arising out of, use of the Easement Area or Grantor’s failure to comply with its obligations pursuant to the Deed of Easement
- j. The conveyance of the Deed of Easement from the Grantor to the Grantee shall be free and clear of all liens, and encumbrances. The Grantor shall covenant that it is seized of and has the right to convey the Deed of Easement to the Grantee and that Grantor shall make no use of the Easement Area that is inconsistent with the rights

- hereby conveyed.
- k. The Deed of Easement shall not be assignable.
 - l. The Deed of Easement shall be binding upon the respective successors in title and successors in interest of the parties.
 - m. The Deed of Easement shall include a clause stating that the Deed of Easement covers all agreements between the parties hereto.
 - n. The Deed of Easement shall be construed, interpreted, and applied according to the law of the Commonwealth of Virginia.
 - o. The Deed of Easement shall terminate on January 1, 2020.
3. The Applicant shall complete the requirements of the Minor Site Plan Amendment to Site Plan #167, Condition # s 6, 7, 8, and 10, approved by the County Board of Arlington County, Virginia, on July 8, 2006 or on any deferred or continued meeting thereof (“Minor Site Plan Amendment”). The Ordinance shall be null and void unless the County Board has approved the Minor Site Plan Amendment.
 4. The Applicant shall record the Deed of Vacation and, immediately thereafter, record the Deed of Easement.
 5. The Applicant shall pay all fees, including the fees for review, approval and recording of the required documents associated with this Ordinance of Vacation.
 6. All conditions of the Ordinance of Vacation shall be met by noon on July 8, 2008, or this Ordinance of Vacation shall become null and void without the necessity of any further action by the County Board.

ATTACHMENT 1

AN ORDINANCE TO AMEND AND REENACT AN ORDINANCE TO VACATE A PORTION OF A PUBLIC USE EASEMENT FOR RECREATIONAL PURPOSES, PARCEL 1 OF CRYSTAL PARK, 2451 CRYSTAL DRIVE, ARLINGTON, VIRGINIA, RPC #34020243, WITH CONDITIONS.

BE IT ORDAINED that, pursuant to a request by Fifth Crystal Park Associates, L.P., (“Applicant”) on file in the offices of the Department of Environmental Services, a portion of a Public Use Easement for Recreational Purposes, which portion is shown on an attached plat entitled “Plat Showing the Vacation of a Portion of a Surface Easement for Public Use, Deed Book 2423 Page 1463, Parcel 1, Crystal Park, Deed Book 2354 Page 428, Arlington County, Virginia” (the “Plat”) prepared by VIKA Incorporated, dated January 10, 2006, revised June 15, 2006, designated as Exhibit A, attached to this Ordinance, which public use easement was created by Deed of Easement recorded in Deed Book 2423 at page 1463, located at 2451 Crystal Drive, RPC #34020243 (“Property”), and as shown on Plat with area designated as “Portion of Existing Surface Easement for Public Use D.B 2423 PG. 1463 Hereby Vacated (6,964.2 SQ. FT.)” is hereby vacated, subject to the following conditions:

1. The Applicant shall prepare and submit to the County the Deed of Vacation, Deed of Easement, and required plats, subject to the review and approval of the deeds and plats by the County Manager, or his designee, and approval of the deeds as to form by the County Attorney.
2. The Applicant, and all persons or entities holding a legal interest in the vacated area (jointly “Grantor”), shall convey to the County Board (“Grantee”) a Deed of Easement-Public Use Easement For Recreational Purposes (“Deed of Easement”), over the entirety of the area hereby vacated (“Easement Area”), which Deed of Easement shall be in content acceptable to the County Manager or his designee, and in a form acceptable to the County Attorney. The Real Estate Bureau Chief is authorized to accept the Deed of Easement on behalf of the County Board. Such Deed of Easement shall contain provisions required by the County Manager, or his designee, including but not limited to, the following:
 - a. The Easement Area shall be fully open to the public at large, year round, from Monday evenings through Friday mornings between the hours of 6:00 p.m. and 8:00 a.m. daily and between 6:00 p.m. on Friday until 8:00 a.m. on Monday, and all Federal holidays, (except Veteran’s Day), which holidays include New Year’s Day, Martin Luther King, Jr. Day, Presidents’ Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Thanksgiving and Christmas. The Grantor shall have the exclusive use of the Easement Area, year round, between the hours of 8:00 a.m. and 6:00 p.m. on Mondays through Fridays except for the Federal holidays described above.
 - b. During the time periods when the Easement Area is open to the public at large, use of the Easement Area shall be subject to the applicable County Parks Rules and Regulations, as may be revised from time to time by the Grantee.
 - c. The Applicant shall design, acquire, construct, and install recreational improvements and fencing, at Grantor’s sole expense, within the boundaries of the Easement Area, subject

to the prior written approval of the type and design of the recreational improvements and fencing by the Director of the Arlington Department of Parks, Recreation, and Cultural Resources (“DPRCR”), or his designee.

- d. Upon final completion of the design, acquisition, construction and installation of the recreational improvements and fencing by the Grantor, and written notification to the County that the recreational improvements and fencing have been installed and erected, the Director of DPRCR, or his designee, shall have the opportunity to inspect the recreational improvements and fencing to make certain that the improvements meet with the design and safety standards approved by DPRCR.
- e.
 - i. The recreational improvements and fencing shall be fixtures appurtenant to the Property, and shall be owned solely by Grantor. The Grantee shall have no obligations concerning the recreational improvements and fencing. The Grantor shall be solely responsible for, and obligated to, among other things, inspect, maintain, repair, and remove the recreational improvements and fencing (jointly, “Work”). The Grantor shall perform Work in accordance with the manufacturer’s recommendations, the Americans with Disabilities Act standards and the specifications delineated in the attached Exhibit B entitled “Minimum Maintenance Standards”, undated, and all successor recommendations, standards, and procedures generally applicable to public parks in Arlington County, Virginia, all as may be hereafter revised by the Grantee.
 - ii. Throughout the term of the Deed of Easement, the Grantor shall be responsible, at its sole cost and expense, for maintaining the Easement Area in accordance with the attached Minimum Maintenance Standards.
 - iii. The Grantor shall be solely responsible for the maintenance and upkeep of the Easement Area.
- f. Any improvements existing within the Easement Area, at the commencement of the Deed of Easement, that are to be removed, shall be removed at Grantor’s sole expense.
- g. During the term of the Deed of Easement, except in the event of danger to the public health, safety or welfare, the Grantor shall neither remove, add, nor make changes to the recreational improvements and fencing, without the prior written permission from the Grantee. No such removals, additions, or changes to the recreational improvements or fencing shall endanger the public health, safety, and welfare. The prohibitions of this paragraph include, but are not limited to, any changes contrary to, or inconsistent with, the then current provisions of American Society of Testing Materials (“ASTM”) Standard F1487, "Standard Consumer Safety Performance Specification for Playground Equipment for Public Use."
- h. At all times, during the term of the Deed of Easement, the Grantor shall carry and maintain a comprehensive general liability insurance policy written by a company authorized to do business in the Commonwealth of Virginia. The policy shall carry limits of not less than \$ 1,000,000 per occurrence and \$ 3,000,000 annual aggregate. The County, its elected and appointed officials, officers, employees, and agents shall be named as additional insureds by endorsement to the policy. Prior to acceptance of the Deed of Easement on behalf of the County Board and annually thereafter, a Certificate of Insurance showing pertinent information and referencing this Deed of Easement shall be delivered to the Arlington County Office of Risk Management along with a copy of the endorsement adding the additional insureds.
- i. The Grantor shall indemnify and hold-harmless the County, its elected and appointed

officials, officers, employees, and agents from losses, liability, suits, demands, costs and expenses caused by, arising out of, use of the Easement Area or Grantor's failure to comply with its obligations pursuant to the Deed of Easement.

- j. The conveyance of the Deed of Easement from the Grantor to the Grantee shall be free and clear of all liens, and encumbrances. The Grantor shall covenant that it is seized of and has the right to convey the Deed of Easement to the Grantee and that Grantor shall make no use of the Easement Area that is inconsistent with the rights hereby conveyed.
 - k. The Deed of Easement shall not be assignable.
 - l. The Deed of Easement shall be binding upon the respective successors in title and successors in interest of the parties.
 - m. The Deed of Easement shall include a clause stating that the Deed of Easement covers all agreements between the parties hereto.
 - n. The Deed of Easement shall be construed, interpreted, and applied according to the law of the Commonwealth of Virginia.
 - o. The Deed of Easement shall terminate on January 1, 2020.
3. The Applicant shall complete the requirements of the Minor Site Plan Amendment to Site Plan #167, Condition #s 6, 7, 8, and 10, approved by the County Board of Arlington County, Virginia, on July 8, 2006 or on any deferred or continued meeting thereof ("Minor Site Plan Amendment"). The Ordinance shall be null and void unless the County Board has approved the Minor Site Plan Amendment.
 4. The Applicant shall record the Deed of Vacation and, immediately thereafter, record the Deed of Easement.
 5. The Applicant shall pay all fees, including the fees for review, approval and recording of the required documents associated with this Ordinance of Vacation.
 6. All conditions of the Ordinance of Vacation shall be met by noon on July 8, 2008, or this Ordinance of Vacation shall become null and void without the necessity of any further action by the County Board.

Exhibit A



Exhibit B

MINIMUM MAINTENANCE STANDARDS

The Grantor shall perform maintenance in accordance with the manufacturer's recommendations, the Americans with Disabilities Act standards, the maintenance procedures contained herein, and all successor procedures generally applicable to public parks in Arlington County, Virginia, all as may be hereafter amended.

Turf Care: Grass height should be maintained according to species and variety of grass. In most locations, turf areas should be mowed on a weekly basis. Reseeding or sodding should be done as needed.

Irrigation: Frequency of use follows rainfall, temperature, and seasonal length and demand of plant material. Irrigation should take place when natural rainfall is not sufficient to maintain excellent plant health.

Litter Control: Litter should be removed once per day, seven days a week. Receptacles should be plentiful enough to hold all trash generated between servicing.

Snow Removal: Snow removal starts the same day an accumulation of ½ inch is present. Appropriate quantities of snow melting compound and/or sand should be applied to reduce the danger of injury due to falls.

Playground Maintenance: Equipment should be inspected, cleaned, and serviced every day. Any conditions that threaten the public safety should be removed or repaired immediately in accordance with play equipment manufacturer's warranty guidelines.

Surfaces: Surfaces should be replaced or repaired when safety is a concern. Graffiti should be washed off or painted over the next working day after discovery.

Amenities Repairs: Inspection of benches, tables, light poles, flagpoles, trash receptacles, fencing, and any other site amenities should be done daily. Repairs necessary to ensure safe use and function should be done immediately.

Landscaping: Plant material shall be maintained seasonally, as appropriate, to control size and shape. Any conditions that threaten the public safety should be rectified immediately.

Pedestrian Trails: Should be inspected daily for safety hazards or on complaint basis. Safety hazards should be removed and, when necessary, repairs including resurfacing should be done immediately. Trails should be swept or blown each workday to remove leaves or debris.

Picnic Areas: When present, should be inspected, cleaned, and serviced every day.

Signage: Signs should be inspected daily and if missing or damaged, should be repaired or replaced as soon as possible.

Exhibit C

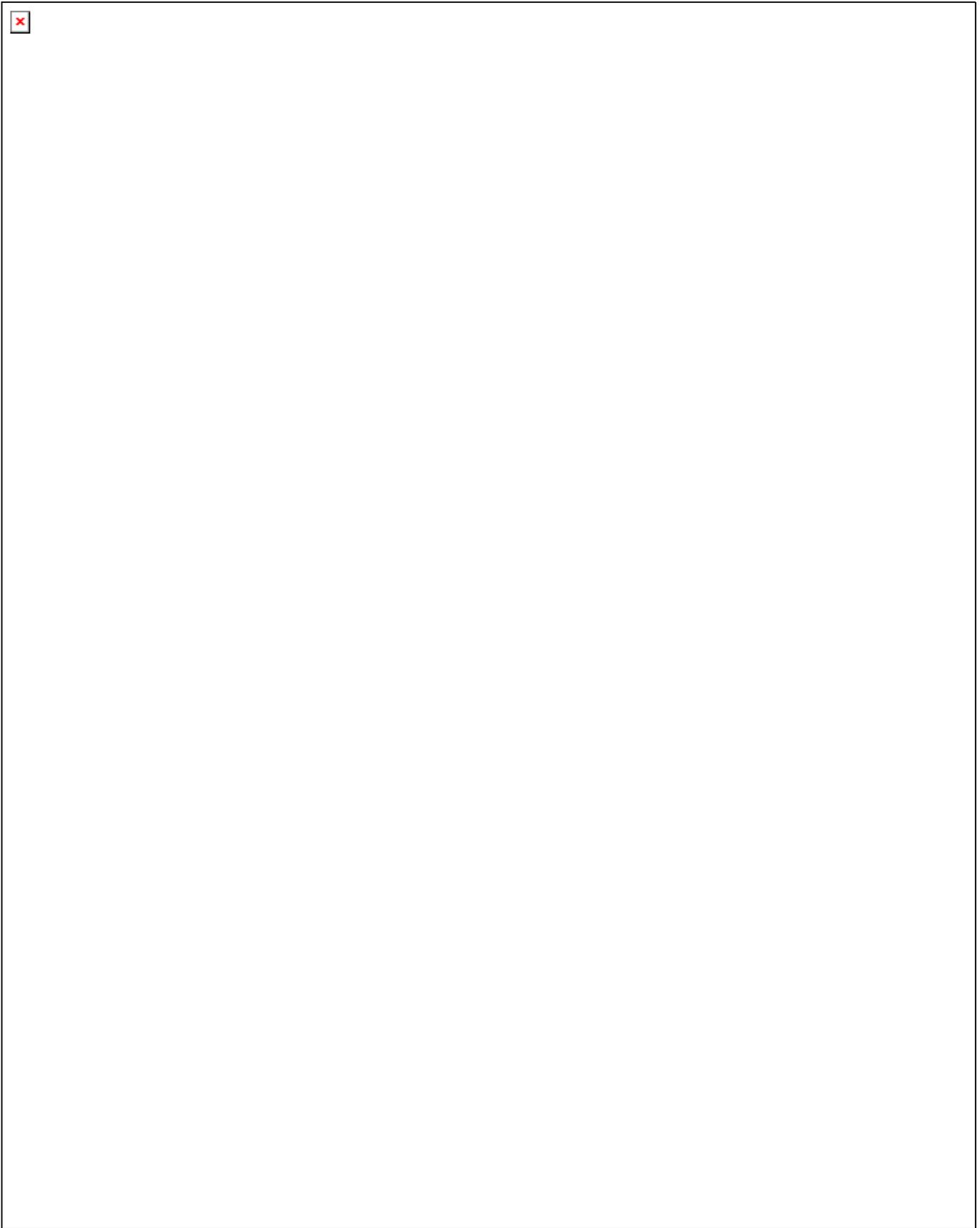


Exhibit D

VICINITY MAP SHOWING SUBJECT PROPERTY LOCATION ON WHICH PUBLIC USE EASEMENT FOR RECREATIONAL PURPOSES IS LOCATED

