



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Matt Cano  
Nanci Klein

**SUBJECT:** SEE BELOW

**DATE:** September 14, 2020

Approved

Date

9/17/2020

**COUNCIL DISTRICT: 3**

**SUBJECT: VACATION OF A PORTION OF MARBURG WAY WITH  
RESERVATION OF A PUBLIC SANITARY SEWER EASEMENT  
WITHIN THE AREA BEING VACATED**

## RECOMMENDATION

Conduct a Public Hearing and adopt a resolution to authorize the following:

- a) Approve the report of the Director of Public Works setting forth the facts justifying the vacation of a portion of Marburg Way with the reservation of a public sanitary sewer easement within the vacated area (“Subject Portion”);
- b) Vacate the Subject Portion which is unnecessary for current or prospective public use as a street;
- c) Direct the City Clerk to record a certified copy of the resolution of vacation for the Subject Portion with the Office of the Recorder, County of Santa Clara;
- d) Declare the Subject Portion of the City-owned Marburg Way as “exempt surplus land” to the needs of the City under Cal. Gov. Code §54221(f)(1)(D) as the land is not necessary for the City of San Jose’s use and is being transferred to another local agency for a necessary use; and
- e) Direct the City Manager to negotiate and execute a Purchase and Sale Agreement and Quitclaim Deed, and all other necessary documents to effectuate the transfer to the Santa Clara Valley Transportation Authority (“VTA”) from the City of San José, for the sale of the Subject Portion of the surplus City-owned Marburg Way for \$1 by direct negotiation under San Jose Municipal Code Section 4.20.080 as the transferee is a governmental agency.

## **OUTCOME**

Upon recordation of the resolution of vacation, the Subject Portion will be abandoned as a public street and no longer constitute part of Marburg Way. A public sanitary sewer easement will be reserved over the Subject Portion to preserve a City-owned sanitary sewer line. Following the declaration of the Subject Portion of the City-owned Marburg Way as “exempt surplus land” to the needs of the City and direction to the City Manager to negotiate and execute a Purchase and Sale Agreement and Quitclaim Deed, the City will convey the fee simple ownership of the Subject Portion to the VTA, releasing the City from liability of fee ownership.

## **BACKGROUND**

On June 22, 2010, the City and the Santa Clara Valley Transportation Authority (VTA) entered into an agreement entitled Master Agreement, whereby both parties agreed to consult and cooperate on the planning, environmental review, preliminary engineering, final design, construction, and funding of the Bay Area Rapid Transit (BART) Extension to Berryessa under the Silicon Valley Rapid Transit Berryessa Extension Project (SVBX). The Master Agreement established a framework for the on-going interaction between both parties and allowed for subsequent agreements to address specific project issues and future City funding.

On June 21, 2011, Council passed Resolution No. 75895 authorizing the City to enter into an agreement with VTA to support the required improvements for a future Berryessa BART Station, at no cost to the City. The City agreed to own, operate, and maintain certain improvements after construction was completed by the VTA.

BART Phase I is the first phase of the 16-mile BART Silicon Valley extension of the regional BART system under the SVBX Project to downtown San Jose and the City of Santa Clara, extending from the Warm Springs Station in Fremont south to the Berryessa/North San Jose Station. In accordance with cooperative agreements with the City, VTA designed and constructed BART Phase I and various supporting projects, including a new roadway (Berryessa Station Way), the Berryessa BART Station, and Upper Penitencia Creek Trail.

BART Phase I project construction is complete, and the Berryessa/North San Jose Station is open to the public. The City and VTA now desire to finalize real estate matters pertaining to the Master Agreement, one of the actions of which is outlined in this memo.

During BART Phase I project construction, VTA utilized Marburg Way, including the Subject Portion, to install underground electrical power systems and utilities for its train track system. BART requires VTA to acquire an exclusive right-of-way for access and maintenance to the transit infrastructure. The Subject Portion will become part of this required right-of-way for BART’s access and maintenance purposes.

The Subject Portion also abuts a property owned by the Union Pacific Railroad (UPRR). Although UPRR may have utilized the Subject Portion for access, its property will continue to have two frontages and access along Marburg Way.

According to the preliminary title report by Fidelity National Title, the City holds the underlying fee ownership to the Subject Portion. The Subject Portion was relinquished to the City by the State of California through a Grant Deed recorded on October 24, 1958 in Book 4211 at Page 300, Document Number 1534206, Official Records of Santa Clara County. The Subject Portion was remnant right-of-way from the construction of U.S. Highway 101 and thus relinquished to the City. In order to support VTA and BART for the long-term maintenance and operation of the BART facilities, the Subject Portion requires vacation and thus further discretionary approval by the City Council to declare the property as exempt surplus land to the needs of the City so that the City Manager may negotiate and execute a Purchase and Sale Agreement with the VTA.

## **ANALYSIS**

Pursuant to Streets and Highways Code §8324, all or a portion of a street may be vacated if the City Council determines that it is unnecessary for current or prospective public use. Staff has determined the Subject Portion is not required for current or prospective public street purposes. Presently, the Subject Portion is located within the northern portion of a remnant cul-de-sac with no adjacent properties requiring vehicular access. In compliance with §892 of the Streets and Highways Code, staff has also determined that the Subject Portion is not useful as a nonmotorized transportation facility as these uses (i.e. sidewalks, bike lanes, etc.) are already available along bordering streets which are more suitable for such uses given that Marburg Way is a cul-de-sac. Due to the above, staff has determined that the property is no longer necessary for the City's use. Moreover, staff has further determined that VTA has a legitimate governmental use relating to BART and therefore the proposed transfer conforms to the Surplus Land Act, as described below.

Streets & Highways Code §8340 requires the City to reserve a public service easement if there are in-place public utility facilities that are in use in the vacated area. The Subject Portion contains an in-place sanitary sewer line that will require a sanitary sewer easement reservation over the entire area. The Subject Portion does not contain any other in-place public utility facilities per written correspondence with various public utility companies.

The VTA desires to acquire fee ownership from the City. Therefore, in conjunction with the proposed vacation, staff is recommending that Council declare the Subject Portion as "exempt surplus land" as defined in California Gov. Code §54221(f)(1)(D), which allows for "exempt surplus land" to be transferred from a local agency to another government agency, such as the VTA, for that agency's use. If this item is approved, a Purchase and Sale Agreement for the Subject Portion to VTA will be negotiated and executed following the designation of the property as "exempt surplus land."

The reserved sanitary sewer easement removes all rights to construct building improvements on the Subject Portion and secures the right of the City to access the sewer for maintenance. In addition, the City is relieved of management and liability obligations through fee transfer to the VTA. Staff has analyzed comparable properties with similar easement restrictions and determined that the easement value is equivalent to that of the fee value. Due to these reasons, Staff has determined that the Subject Portion, as encumbered by the City's sanitary sewer easement, has a fair market value of \$1.

### **CONCLUSION**

The City's approval of the recommended vacation, declaration of the Subject Portion as "exempt surplus land", and authorization to negotiate and execute a Purchase and Sale Agreement will allow the City to sell the land to the VTA for \$1 and support the VTA's and BART's agreement to operate and maintain its train track facilities.

### **EVALUATION AND FOLLOW-UP**

In conjunction with the proposed vacation, staff will be recommending that adopt a resolution authorizing the City Manager execute a purchase and sale agreement with VTA to convey the Subject Portion.

### **CLIMATE SMART SAN JOSE**

The recommendations in this memo supports the SVBX Project which encourages travel by modes other than single occupancy vehicles and thus aligns with one or more Climate Smart San José energy, water, or mobility goals.

### **PUBLIC OUTREACH**

All concerned utility companies have been contacted in writing and have no objection to the proposed vacation and have not requested a reservation of public service easement as there are no facilities in Subject Portion other than the City's sanitary sewer line.

This memorandum will be posted to the City's website for the September 29, 2020 City Council agenda. The site will be posted, and the resolution of vacation published in accordance with the Streets and Highways Code.

**COORDINATION**

The vacation has been coordinated with the Department of Planning, Building and Code Enforcement, Department of Transportation, Office of Economic Development, and the City Manager’s Budget Office. Additionally, the vacation, memo, and resolution have been reviewed by the City Attorney’s Office.

**COMMISSION RECOMMENDATION/INPUT**

No commission recommendation or input is associated with this action.

**COST SUMMARY/IMPLICATIONS**

Costs incurred by the City for project management and processing of real estate transactions will be reimbursed by the VTA pursuant to the Master Agreement.

**BUDGET REFERENCE**

The table below identifies the fund and appropriations to fund the contract recommended as part of this memo. Staff costs for executing the summary vacation will be paid through the appropriation and reimbursed by the VTA.

<b>Fund #</b>	<b>Appn. #</b>	<b>Appn. Name</b>	<b>Total Appn</b>	<b>Amt. for Contract</b>	<b>2020-2021 Proposed* Budget Page</b>	<b>Last Budget Action (Date, Ord. No.)</b>
465	7439	BART Design and Construction Support	\$207,000	N/A	V-432	06/23/2020, Ord. No. 30437

\* The 2020-2021 Adopted Operating Budget was approved on June 16, 2020 and adopted on June 23, 2020 by the City Council.

HONORABLE MAYOR AND CITY COUNCIL

September 14, 2020

**Subject: Summary Vacation of a Portion of Marburg Way with a Sanitary Sewer Easement Reservation**

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**CEQA**

Determination of Consistency with the BART Extension to Milpitas, San Jose, and Santa Clara Final EIR, BART Extension to Milpitas, San Jose, and Santa Clara Final Supplemental EIR, and BART Silicon Valley Phase 1 -Berryessa Extension Final 2<sup>nd</sup> Supplemental EIR, and Addenda thereto, Resolution No. 76126.

/s/  
NANCI KLEIN  
Director of Economic Development

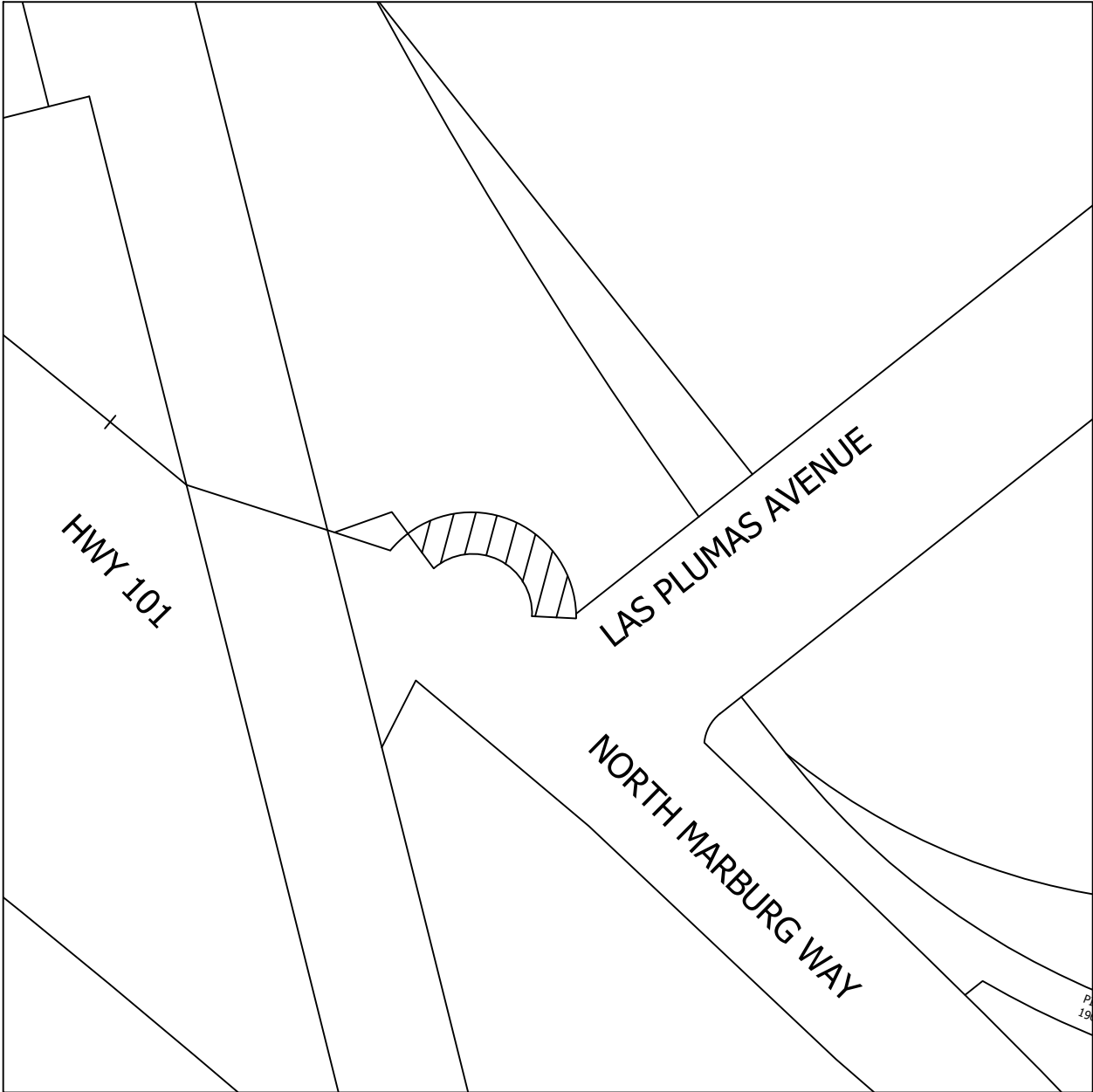
/s/  
MATT CANO  
Director of Public Works

For questions, please contact Matt Loesch, Assistant Director of Public Works, at (408) 975-7381.

Attachment: Location Map

# LOCATION MAP

SHOWING THE STREET VACATION OF MARBURG WAY WITH THE RESERVATION OF A SANITARY SEWER EASEMENT OVER THE AREA



 AREA TO BE VACATED (1785 SQ. FT ±) WITH RESERVATION OF A SSE

