

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE VACATING AN APPROXIMATELY 1,786 SQUARE FOOT PORTION OF MARBURG WAY WITH THE RESERVATION OF A PUBLIC SERVICE EASEMENT OVER THE ENTIRE AREA VACATED, DECLARING THE VACATED PROPERTY TO BE “EXEMPT SUPPLUS LAND” UNDER CAL. GOV. CODE § 54221(F)(1)(D) and S.J.M.C. § 4.20.080, AND AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE A PURCHASE AND SALE AGREEMENT, AND ALL OTHER DOCUMENTS NECESSARY TO EFFECTUATE THE PROPERTY TRANSFER, WITH THE SANTA CLARA VALLEY TRANSPORTATION AUTHORITY FOR THE TRANSFER OF THE VACATED PROPERTY FOR A PRICE OF \$1.

WHEREAS, Chapter 3 of Part 3 of Division 9 of the Streets and Highways Code of the State of California authorizes the City Council to vacate a public street if the City Council determines that it is unnecessary for present or prospective public use; and

WHEREAS, Council intends to vacate an approximately 1,786 square foot portion of Marburg Way with the reservation of a public service easement over the entire area vacated, constituting all that real property situated in the City of San José, County of Santa Clara, State of California (“Subject Property”), more particularly described as:

BEING A PORTION OF PARCEL 3 AS DESCRIBED IN THE RELINQUISHMENT, RECORDED OCTOBER 24, 1958, IN BOOK 4211 AT PAGE 300, AD DOCUMENT NO. 1534206, SANTA CLARA OFFICIAL RECORDS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE MOST WESTERLY CORNER OF PARCEL 1 AS DESCRIBED IN THE GRANT DEED, RECORDED AUGUST 14, 1956, IN BOOK 3577 AT PAGE 543, AS DOCUMENT NO. 1242969, SANTA CLARA COUNTY OFFICIAL RECORDS, BEING ON THE EASTERLY LINE OF PARCEL 49 (60 FEET WIDE) AS SHOWN ON THAT CERTAIN RECORD OF SURVEY FILED DECEMBER 7, 2009 IN BOOK 821 OF MAPS AT PAGE 1, SANTA CLARA COUNTY RECORDS;

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DRAFT – Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.

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THENCE ALONG THE GENERAL NORTHERLY LINE OF SAID PARCEL 1, BEING ON THE RIGHT-OF-WAY LINE OF NORTH MARBURG WAY, SOUTH 72°09'57" EAST, 31.59 FEET TO THE BEGINNING OF THE NON-TANGENT CURVE TO THE RIGHT;

THENCE CONTINUING ALONG SAID GENERAL NORTHERLY LINE AND ALONG NON-TANGENT CURVE TO THE RIGHT, HAVING RADIUS OF 50.00 FEET, THE RADIAL BEARING OF WHICH BEARS NORTH 50°21'07" WEST, THROUGH A CENTRAL ANGLE OF 13°13'00" FOR AN ARC LENGTH OF 11.53 FEET TO THE TRUE POINT OF BEGINNING, BEING THE SOUTHEASTERLY TERMINUS OF THAT CERTAIN COURSE SHOWN AS "NORTH 36°35'40" WEST, 12.99 FEET" OF PARCEL B3000-01 AS DESCRIBED IN THE FINAL ORDER OF CONDEMNATION RECORDED JULY 29, 2016 AS DOCUMENT NO. 23385099, SANTA CLARA COUNTY OFFICIAL RECORDS;

THENCE CONTINUING ALONG SAID NORTHERLY LINE AND ALONG SAID NON-TANGENT CURVE TO THE RIGHT, HAVING A RADIUS OF 50.00 FEET, THROUGH A CENTRAL ANGLE OF 127°44'24" FOR AN ARC LENGTH OF 111.47 FEET;

THENCE NORTH 87°13'33" WEST, 21.13 FEET TO THE BEGINNING OF A NON-TANGENT CURVE TO THE LEFT;

THENCE ALONG SAID NON-TANGENT CURVE TO THE LEFT, HAVING A RADIUS OF 28.33 FEET, THE RADIAL BEARING OF WHICH BEARS SOUTH 87°13'33" EAST, THROUGH A CENTRAL ANGLE OF 133°32'56" FOR AN ARC LENGTH OF 66.03 FEET;

THENCE NORTH 36°35'40" WEST, 20.60 FEET, TO THE TRUE POINT OF BEGINNING.

WHEREAS, a notice of the proposed vacation was published in the manner prescribed by law; and

WHEREAS, notices of the proposed vacation were posted conspicuously along the line of the Subject Property in the manner prescribed by law; and

WHEREAS, on September 16, 2020, the Director of Public Works approved a map entitled "MAP SHOWING A PORTION OF MARBURG WAY TO BE VACATED WITH

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RESERVATION OF A SANITARY SEWER EASEMENT WITHIN THE AREA BEING VACATED” (“Map”), attached hereto as “Exhibit A” and incorporated herein, which shows the Subject Property; and

WHEREAS, prior to the public hearing, the Map was filed in the Office of the City Clerk and made available for examination by any persons desiring to do so; and

WHEREAS, at the public hearing, the City Council had before it the Map and a report from the Director of Public Works to the City Council dated September 14, 2020 (“Report”), attached hereto as “Exhibit B” and incorporated herein; and

WHEREAS, at the public hearing, the City Council heard all persons interested in the proposed vacation and considered all evidence submitted; and

WHEREAS, the City owns the Subject Property in fee; and

WHEREAS, on June 21, 2011, the City Council passed Resolution No. 75895, authorizing the City to enter into an agreement with Valley Transportation Authority (“VTA”) to support the required improvements for a future Berryessa Bay Area Rapid Transit (“BART”) Station (“Master Agreement”), at no cost to the City; and

WHEREAS, under the Master Agreement the City agreed to own, operate, and maintain certain improvements after construction was completed by the VTA; and

WHEREAS, pursuant to BART’s Phase I construction VTA utilized Marburg Way, including the Subject Portion, to install underground electrical power systems and utilities for its train track system; and

WHEREAS, BART requires VTA to acquire an exclusive right-of-way for access and maintenance to the transit infrastructure and the Subject Property will be necessary for the VTA's use as it will become part of this required right-of-way for BART's access and maintenance purposes; and

WHEREAS, land that is transferred from a local agency to another government agency, such as VTA, for that agency's use is "exempt surplus land" under Government Code Section 54221(f)(1)(D);

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. Council hereby adopts the Report and, based upon the Report and all other evidence submitted, makes the following findings:

- A. The proposed vacation is in conjunction with the Santa Clara Valley Transit Authority's BART Phase I; and
- B. Government Code Section 65402 does not apply to this vacation; and Rights-of-way bordering the Subject Property are available for nonmotorized transportation; and
- C. There are in-use public facilities located within the Subject Property; and
- D. The City finds that the Subject Property is no longer necessary for the City's use and should be declared "exempt surplus property" pursuant to Government Code Section 54221(f)(1)(D) as the proposed transfer shall be to VTA as a local government agency and its use will be necessary for VTA's functions pertaining to BART.

SECTION 2. Council makes the following conclusions based on the above findings:

- A. The Subject Property is unnecessary for present or prospective public street use; and
- B. The proposed vacation is consistent with the City's General Plan; and
- C. The Subject Property is not useful as a nonmotorized transportation facility as bordering rights-of-way are more suitable for such transportation; and
- D. The public convenience and necessity requires the reservation of a public service easement as specified in Section 3 of this Resolution; and
- E. The City Council hereby declares the Subject Property as "exempt surplus land" pursuant to Government Code Section 54221(f)(1)(D).

SECTION 3. Based on the above stated findings and conclusions, Council hereby vacates the public street located on the Subject Property, reserving and accepting from the vacation, on, over, under and through the Subject Property, a public service easement and all rights necessary to construct, maintain, operate, modify, enlarge, replace, remove and renew any and all in-place public utility facilities, said public service easement to be kept open and free from buildings and structures of any kind except irrigation systems and appurtenances thereto, lawful fences and all lawful unsupported roof overhangs.

SECTION 4. The City Clerk is hereby directed to record a certified copy of this Resolution, including the exhibits hereto, with the Office of the Recorder for the County of Santa Clara.

SECTION 5. From and after the date this Resolution is recorded, the Subject Property will no longer constitute a public street and will constitute a public service easement as specified in Section 3 of this Resolution.

SECTION 6. The City Manager is hereby authorized to negotiate and execute a purchase and sale agreement, and all other documents necessary to effectuate the

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transfer, for the transfer to the VTA of the Subject Property from the City for a price of \$1, pursuant to Government Code Section 54221(f)(1)(D) and San José Municipal Code Section 4.20.080.

ADOPTED this _____ day of _____, 2020, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

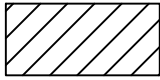
TONI J. TABER, CMC
City Clerk

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MAP

SHOWING A PORTION OF MARBURG WAY TO BE VACATED WITH RESERVATION OF A PUBLIC SANITARY SEWER EASEMENT WITHIN THE AREA BEING VACATED



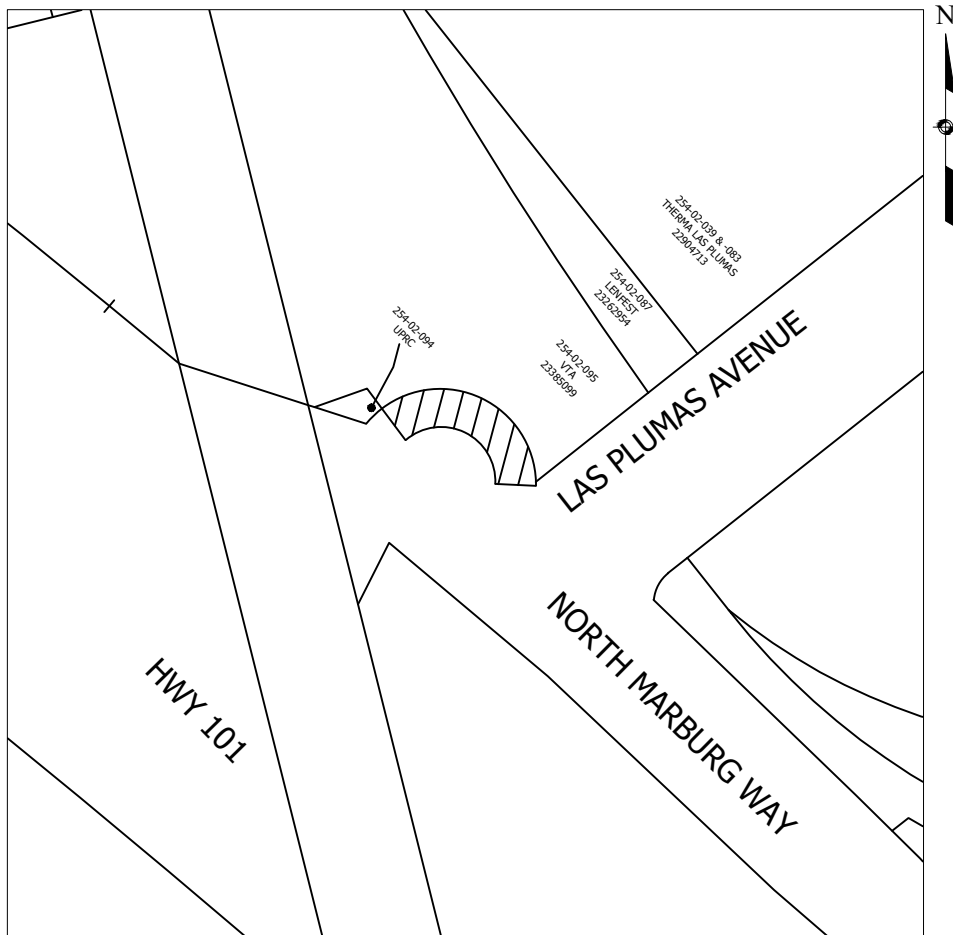
AREA TO BE VACATED WITH RESERVATION OF SANITARY SEWER EASEMENT

FILED WITH THE CITY COUNCIL OF THE CITY OF SAN JOSE THIS _____ DAY OF _____, AND APPROVED BY SAID CITY COUNCIL THIS _____ DAY OF _____ BY RESOLUTION NUMBER _____

CITY CLERK, CITY OF SAN JOSE

for _____ APPROVED THIS 16TH DAY OF SEPTEMBER 2020

MATTHEW CANO
DIRECTOR OF PUBLIC WORKS,
CITY OF SAN JOSE





Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Matt Cano
Nanci Klein

SUBJECT: SEE BELOW

DATE: September 14, 2020

Approved

D. D. Syl

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.

Fund #	Appn. #	Appn. Name	Total Appn	Amt. for Contract	2020-2021 Proposed* Budget Page	Last Budget Action (Date, Ord. No.)
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 2nd Supplemental EIR, and Addenda thereto, Resolution No. 76126.

/s/
NANCI KLEIN
Director of Economic Development

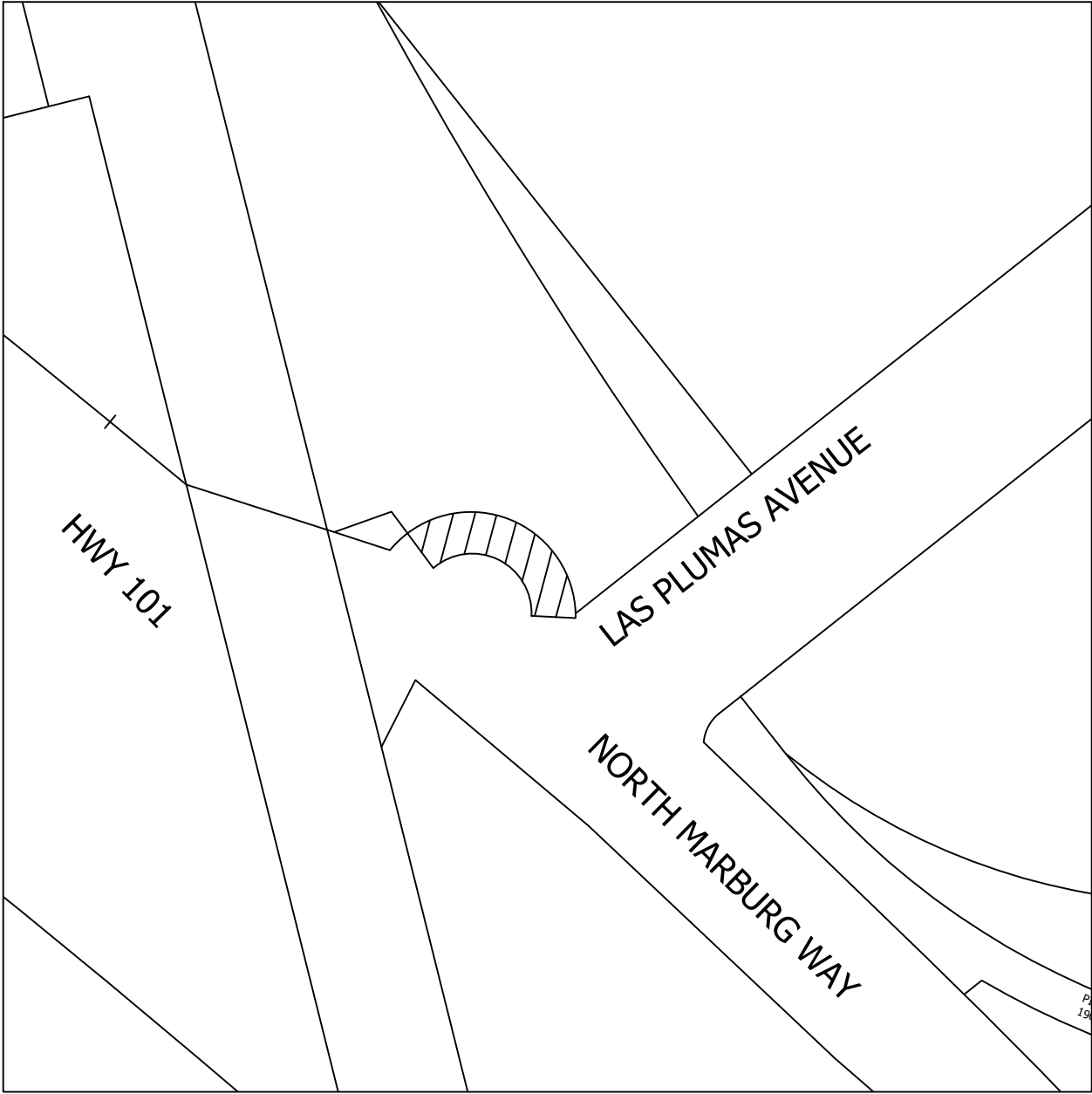
/s/
MATT CANO
Director of Public Works


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

