

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE VACATING THE 25-FOOT AND 12.5-FOOT LIGHT AND AIR EASEMENTS LOCATED WITHIN TRACT 65

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 service easement if the City Council determines that it is unnecessary for present or prospective public use; and

WHEREAS, on August 28, 2018, the City Council adopted Resolution No. 78759 (“Resolution of Intention”) declaring its intention to vacate the twenty-five foot (25’) public service easement for light and air and a twelve and a half foot (12.5’) public service easement for light and air within Tract 65 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:

ALL THAT REAL PROPERTY SITUATE IN THE CITY OF SAN JOSE, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, BEING A PORTION OF THAT CERTAIN MAP ENTITLED TRACT NO. 65 ROSE PARK UNIT NO. 4, RECORDED ON OCTOBER 26, 1937 IN BOOK 3, AT PAGE 1, RECORDS OF SANTA CLARA COUNTY, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

THOSE CERTAIN AREAS DEDICATED AS PUBLIC USE EASEMENTS FOR LIGHT AND AIR UNDER, ON OR OVER THOSE CERTAIN STRIPS OF LAND LYING BETWEEN THE LINES OF STREETS AND THE LINES EACH DESIGNATED AS “BUILDING LINES” AS SHOWN ON SAID MAP WITHIN SAID TRACT NO. 65.

WHEREAS, the Resolution of Intention gave notice that on September 18, 2018 in the Council Chambers of the City Council, the Council would hear all persons interested in the proposed vacation; and

WHEREAS, the Resolution of Intention 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 July 31, 2018, the Director of Public Works approved the plat map, including exhibits thereto, entitled "Plat Map to Accompany the Legal Description for Vacation of Setback Easements within the Entire Tract No. 65" ("Plat Map"), attached hereto as "Exhibit A" and incorporated herein, which shows the Subject Property; and

WHEREAS, prior to the public hearing, the Plat 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 Plat Map and a report from the Director of Public Works to the City Council dated September 6, 2018 ("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;

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

SECTION 1. The City 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 application of Robert Mintz of Valley Home Builders, on behalf of property owners Brendon and Kirsten Bula, for the vacation of the 25' setback easement on Lot 106 of Tract No. 65; and

- B. The applicable setbacks for Lot 106 and all other lots within Tract No. 65 shall be regulated through the City of San José's Municipal Code; and
- C. Government Code Section 65402 does not apply to this vacation.

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

- A. The Subject Property is unnecessary for present or prospective public use; and
- B. The proposed vacation is consistent with the City's General Plan.

SECTION 3. Based on the above stated findings and conclusions, the City Council hereby vacates the public service easement located on the Subject Property.

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 service easement.

ADOPTED this ____ day of _____, 2018, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk


Exhibit A

PLAT MAP

TO ACCOMPANY THE LEGAL DESCRIPTION FOR VACATION
OF SETBACK EASEMENTS WITHIN THE ENTIRE TRACT NO. 65

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



MATT CANO
DIRECTOR OF PUBLIC WORKS,
CITY OF SAN JOSE

APPROVED THIS 31 DAY OF July 2018

THE SUBJECT PROPERTY PROPOSED TO BE VACATED IS DESCRIBED AS FOLLOWS:

ALL THAT REAL PROPERTY SITUATE IN THE CITY OF SAN JOSÉ, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, BEING A PORTION OF THAT CERTAIN MAP ENTITLED TRACT NO. 65 ROSE PARK UNIT NO. 4, RECORDED ON OCTOBER 26, 1937 IN BOOK 3, AT PAGE 1, RECORDS OF SANTA CLARA COUNTY, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

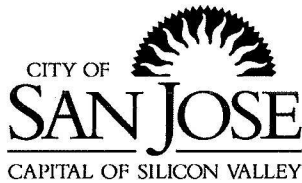
THOSE CERTAIN AREAS DEDICATED AS PUBLIC USE EASEMENTS FOR LIGHT AND AIR UNDER, ON OR OVER THOSE CERTAIN STRIPS OF LAND LYING BETWEEN THE LINES OF STREETS AND THE LINES EACH DESIGNATED AS "BUILDING LINES" AS SHOWN ON SAID MAP WITHIN SAID TRACT NO. 65.

EXHIBIT A-1: TRACT MAP NO. 65

EXHIBIT B-1: ASSESSOR PARCEL NUMBERS FOR TRACT NO. 65

EXHIBIT B-1: ASSESSOR PARCEL NUMBERS FOR TRACT NO. 65

APN	Site Address	Mailing Address	Mailing City State	Mailing Zip
27423002	1731 NAGLEE AVENUE, SAN JOSE CA 95126	2061 AVY AVE	MENLO PARK CA	94025
27423003	1745 NAGLEE AVENUE, SAN JOSE CA 95126	1745 NAGLEE AVE	SAN JOSE CA	95126-1931
27423004	1759 NAGLEE AVENUE, SAN JOSE CA 95126	1759 NAGLEE AVE	SAN JOSE CA	95126-1931
27423005	1773 NAGLEE AVENUE, SAN JOSE CA 95126	1773 NAGLEE AVE	SAN JOSE CA	95126-1931
27423006	1787 NAGLEE AVENUE, SAN JOSE CA 95126	1787 NAGLEE AVE	SAN JOSE CA	95126-1931
27423007	1801 NAGLEE AVENUE, SAN JOSE CA 95126	1801 NAGLEE AVE	SAN JOSE CA	95126-1933
27423008	1815 NAGLEE AVENUE, SAN JOSE CA 95126	1815 NAGLEE AVE	SAN JOSE CA	95126-1933
27423009	1829 NAGLEE AVENUE, SAN JOSE CA 95126	1829 NAGLEE AVE	SAN JOSE CA	95126-1933
27423010	1843 NAGLEE AVENUE, SAN JOSE CA 95126	1843 NAGLEE AVE	SAN JOSE CA	95126-1933
27423011	1857 NAGLEE AVENUE, SAN JOSE CA 95126	P.O. BOX 6467	SAN JOSE CA	95150
27423012	1871 NAGLEE AVENUE, SAN JOSE CA 95126	28 N PIN OAK DR	BOILING SPRINGS PA	17007
27423013	1885 NAGLEE AVENUE, SAN JOSE CA 95126	1885 NAGLEE AVE	SAN JOSE CA	95126-1935
27423014	1899 NAGLEE AVENUE, SAN JOSE CA 95126	1899 NAGLEE AVE	SAN JOSE CA	95126-1935
27423015	1913 NAGLEE AVENUE, SAN JOSE CA 95126	1913 NAGLEE AVE	SAN JOSE CA	95126-1935
27423016	1927 NAGLEE AVENUE, SAN JOSE CA 95126	1927 NAGLEE AVE	SAN JOSE CA	95126-1935
27423017	1941 NAGLEE AVENUE, SAN JOSE CA 95126	1941 NAGLEE AVE	SAN JOSE CA	95126-1935
27423018	1955 NAGLEE AVENUE, SAN JOSE CA 95126	32653 SEAGATE DR UNIT 208	RANCHO PALOS VERDES CA	90276
27423019	1969 NAGLEE AVENUE, SAN JOSE CA 95126	PO BOX 28717	SAN JOSE CA	95159
27423020	1983 NAGLEE AVENUE, SAN JOSE CA 95126	1983 NAGLEE AVE	SAN JOSE CA	95126-1935
27423022	1996 MCDANIEL AVENUE, SAN JOSE CA 95126	1996 MCDANIEL AVE	SAN JOSE CA	95126-1926
27423023	1982 MCDANIEL AVENUE, SAN JOSE CA 95126	1982 MCDANIEL AVE	SAN JOSE CA	95126-1926
27423024	1968 MCDANIEL AVENUE, SAN JOSE CA 95126	1968 MCDANIEL AVE	SAN JOSE CA	95126-1926
27423025	1954 MCDANIEL AVENUE, SAN JOSE CA 95126	1954 MCDANIEL AVE	SAN JOSE CA	95126-1926
27423026	1940 MCDANIEL AVENUE, SAN JOSE CA 95126	1945 EMORY ST	SAN JOSE CA	95126-1915
27423027	1926 MCDANIEL AVENUE, SAN JOSE CA 95126	1926 MCDANIEL AVE	SAN JOSE CA	95126-1926
27423028	1912 MCDANIEL AVENUE, SAN JOSE CA 95126	1912 MCDANIEL AVE	SAN JOSE CA	95126-1926
27423029	1898 MCDANIEL AVENUE, SAN JOSE CA 95126	1898 MCDANIEL AVE	SAN JOSE CA	95126-1924
27423030	1884 MCDANIEL AVENUE, SAN JOSE CA 95126	1884 MCDANIEL AVE	SAN JOSE CA	95126-1924
27423031	1870 MCDANIEL AVENUE, SAN JOSE CA 95126	1870 MCDANIEL AVE	SAN JOSE CA	95126-1924
27423032	1856 MCDANIEL AVENUE, SAN JOSE CA 95126	14677 GOLF LINKS DR	LOS GATOS CA	95032-1709
27423033	1842 MCDANIEL AVENUE, SAN JOSE CA 95126	1842 MCDANIEL AVE	SAN JOSE CA	95126-1924
27423034	1828 MCDANIEL AVENUE, SAN JOSE CA 95126	1828 MCDANIEL AVE	SAN JOSE CA	95126-1924
27423035	1818 MCDANIEL AVENUE, SAN JOSE CA 95126	1818 MCDANIEL AVE	SAN JOSE CA	95126-1924
27423036	1802 MCDANIEL AVENUE, SAN JOSE CA 95126	1802 MCDANIEL AVE	SAN JOSE CA	95126-1924
27423037	1786 MCDANIEL AVENUE, SAN JOSE CA 95126	1786 MCDANIEL AVE	SAN JOSE CA	95126-1922
27423038	1772 MCDANIEL AVENUE, SAN JOSE CA 95126	1772 MCDANIEL AVE	SAN JOSE CA	95126-1922
27423039	1758 MCDANIEL AVENUE, SAN JOSE CA 95126	1758 MCDANIEL AVE	SAN JOSE CA	95126-1922
27423040	1744 MCDANIEL AVENUE, SAN JOSE CA 95126	1138 BARCELONA DR	PACIFICA CA	94044
27423041	1730 MCDANIEL AVENUE, SAN JOSE CA 95126	1730 MCDANIEL AVE	SAN JOSE CA	95126-1922
27423051	1731 MCDANIEL AVENUE, SAN JOSE CA 95126	1731 MCDANIEL AVE	SAN JOSE CA	95126-1923
27423052	1745 MCDANIEL AVENUE, SAN JOSE CA 95126	1745 MCDANIEL AVE	SAN JOSE CA	95126-1923
27423053	1759 MCDANIEL AVENUE, SAN JOSE CA 95126	1759 MCDANIEL AVE	SAN JOSE CA	95126-1923
27423054	1773 MCDANIEL AVENUE, SAN JOSE CA 95126	1773 MCDANIEL AVE	SAN JOSE CA	95126-1923
27423055	1787 MCDANIEL AVENUE, SAN JOSE CA 95126	1787 MCDANIEL AVE	SAN JOSE CA	95126-1923
27423056	1801 MCDANIEL AVENUE, SAN JOSE CA 95126	1801 MCDANIEL AVE	SAN JOSE CA	95126-1925
27423057	1815 MCDANIEL AVENUE, SAN JOSE CA 95126	1815 MCDANIEL AVE	SAN JOSE CA	95126-1925
27423058	1829 MCDANIEL AVENUE, SAN JOSE CA 95126	1829 MCDANIEL AVE	SAN JOSE CA	95126-1925
27423059	1843 MCDANIEL AVENUE, SAN JOSE CA 95126	1843 MCDANIEL AVE	SAN JOSE CA	95126-1925
27423060	1857 MCDANIEL AVENUE, SAN JOSE CA 95126	PO BOX 6467	SAN JOSE CA	95150
27423061	1871 MCDANIEL AVENUE, SAN JOSE CA 95126	1871 MCDANIEL AVE	SAN JOSE CA	95126-1925
27423062	1885 MCDANIEL AVENUE, SAN JOSE CA 95126	1885 MCDANIEL AVE	SAN JOSE CA	95126-1925
27423063	1899 MCDANIEL AVENUE, SAN JOSE CA 95126	1899 MCDANIEL AVE	SAN JOSE CA	95126-1925
27423064	1915 MCDANIEL AVENUE, SAN JOSE CA 95126	1915 MCDANIEL AVE	SAN JOSE CA	95126-1927
27423065	1927 MCDANIEL AVENUE, SAN JOSE CA 95126	1927 MCDANIEL AVE	SAN JOSE CA	95126-1927
27423066	1941 MCDANIEL AVENUE, SAN JOSE CA 95126	PO BOX 219	DANVILLE CA	94526
27423067	1955 MCDANIEL AVENUE, SAN JOSE CA 95126	1955 MCDANIEL AVE	SAN JOSE CA	95126-1927
27423068	1969 MCDANIEL AVENUE, SAN JOSE CA 95126	1969 MCDANIEL AVE	SAN JOSE CA	95126-1927
27423069	1997 MCDANIEL AVENUE, SAN JOSE CA 95126	1997 MCDANIEL AVE	SAN JOSE CA	95126-1927



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Matt Cano

SUBJECT: SEE BELOW

DATE: September 6, 2018

Approved

D. D. S. L.

Date

9/6/18

COUNCIL DISTRICT: 6

**SUBJECT: VACATION OF THE 25-FOOT AND 12.5-FOOT SETBACK EASEMENTS
WITHIN TRACT NO. 65**

RECOMMENDATION

Conduct a Public Hearing and adopt a resolution:

- (a) Approving the report of the Director of Public Works setting forth the facts justifying the vacation of the 25-foot and 12.5-foot light and air easements ("setback easements") located within Tract No. 65;
- (b) Vacating the 25-foot and 12.5-foot setback easements located within Tract No. 65; and
- (c) Directing the City Clerk to record a certified copy of the resolution of vacation with the Office of the Recorder, County of Santa Clara.

OUTCOME

Upon recordation of the resolution of vacation, the setback easements located at within Tract No. 65 will be vacated. By vacating the setback easements, all properties within Tract No. 65 will conform to the current San Jose Municipal Code front and side setback requirements of 20-feet and 12.5-feet, respectively, for single family residences in zoning district R1-8 and the property owners within Tract No. 65 can construct building improvements up to the current setbacks.

BACKGROUND

Robert Mintz of Valley Home Builders, has submitted an application on behalf of Brendon and Kirsten Bula, property owners of 1982 McDaniel Avenue, for the vacation of the 25-foot front setback easement on their property, which is Lot 106 of Tract No. 65. The setback easement was

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created by dedication on the map of Tract No. 65 Rose Park Unit No. 4, recorded on October 26, 1937 in Book 3 of Maps, Page 1, of Official Records, Office of the Recorder, County of Santa Clara, and apply to all properties created by the subdivision. The property owners have indicated their desire to construct future improvements to their property that would encroach into the setback easement. The setback easement prohibits a building from encroaching into this area.

On August 28, 2018, the City Council adopted a resolution which declared the Council's intention to vacate the setback easements within the tract. The resolution also approved a map showing the setback easements to be vacated, set a Public Hearing for September 18, 2018, at 1:30 p.m., directed the City Clerk to file the vacation map and advertise said public hearing, and directed the Director of Public Works to post the site with a Notice of Vacation.

ANALYSIS

Staff has reviewed the vacation application and determined that the 25-foot setback easement can be vacated as they are not necessary for current or prospective use. Ordinance No. 29821 "An Ordinance of the City of San Jose Amending Title 20 of the Municipal Code to Amend Various Sections of Chapter 20.30....," effective on December 30, 2016, amended the front setback requirement of a single family residence in zoning district R1-8 from 25-feet to 20-feet. Section 20.30.200 of Title 20 of the Municipal Code also requires the side setback for a corner lot single family residence in zoning district R1-8 to be 12.5-feet. Consequently, upon review of the vacation by Planning staff, it was determined that the 25-foot setback easement on the subject property is no longer necessary for public purposes in favor of the more appropriate current zoning setbacks. Staff also concluded that it is more appropriate to regulate setbacks through the enforcement of the City's zoning code instead of through setback easements.

Since the December 2016 adoption of Ordinance No. 29821, the volume of setback easement vacation requests has increased. As a result, staff coordinated with the City Attorney's Office and the Office of the County Recorder to establish a proactive process to vacate all setback easements for entire subdivisions as opposed to the prior practice of vacating setback easements for an individual property upon request. Therefore, staff recommends including the 12.5-foot setback easement in this vacation process. Vacating setback easements by subdivision reduces the overall cost to property owners as multiple applications and corresponding costs would not be repeated.

Consequently, because zoning district R1-8 applies to all of Tract No. 65, staff has determined that the setback easements may be vacated for the entire tract, as all properties in the subdivision will be required to comply with the current setbacks for single family residences in zoning area R1-8 (Municipal Code 20.30.200). Additionally, as this proposed vacation will remove setback easements that conflict with the 2016 Council-approved reduced setback requirements in the City's zoning code for this tract, staff finds that the proposed vacation is consistent with and will facilitate the Envision San Jose 2040 General Plan goal to allow additional density and parking with the zoning district R1-8. Therefore, staff is recommending all setback easements within

Tract No. 65 be proposed for vacation and that setbacks for this subdivision be governed by the current San Jose Municipal Code.

According to the title report issued by Fidelity National Title Insurance Company, Brendon and Kirsten Bula hold fee ownership to the area being proposed for vacation at 1982 McDaniel Avenue. For the remaining properties within Tract No. 65, each property owner who holds fee title within the setback easements have been identified through County records. In addition, there are existing public utility easements within the tract that will remain on the properties.

EVALUATION AND FOLLOW-UP

If Council approves the resolution vacating the setback easements within Tract No. 65, no further action by City Council will be required. The City Clerk will record the resolution of vacation at which time the vacation will be complete.

PUBLIC OUTREACH

Extensive outreach was conducted by staff prior to the 2016 approval of Ordinance No. 29821 including facilitating numerous community and stakeholder meetings.

This memorandum will be posted on the City's website for the September 18, 2018, City Council meeting. Additionally, staff will post the site with a Notice of Vacation, file the vacation maps and advertise said public hearing, which alerts the public to the hearing date, location, and time.

COORDINATION

This vacation has been coordinated with the Department of Planning, Building and Code Enforcement and the City Manager's Budget Office. The vacation and resolution have been reviewed by the City Attorney's Office.

COMMISSION RECOMMENDATION/INPUT

No commission recommendation or input is associated with this action.

FISCAL/POLICY ALIGNMENT

Vacating the setback easements is in alignment with the November 2016 Council approval of Ordinance No. 29821 which governs the setback requirements for single family residences in zoning district R1-8.

HONORABLE MAYOR AND CITY COUNCIL

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COST SUMMARY/IMPLICATIONS

The Public Works Department collected cost-recovery fees on June 11, 2018, during fiscal year 2017-2018, of \$5,264 to process the subject vacation. These fees were received to support the Public Works Development Fee Program.

CEQA

Categorically Exempt, CEQA Guidelines Section 15305, Minor Alterations in Land Use Limitation, File No. PP18-061.

/s/

MATT CANO

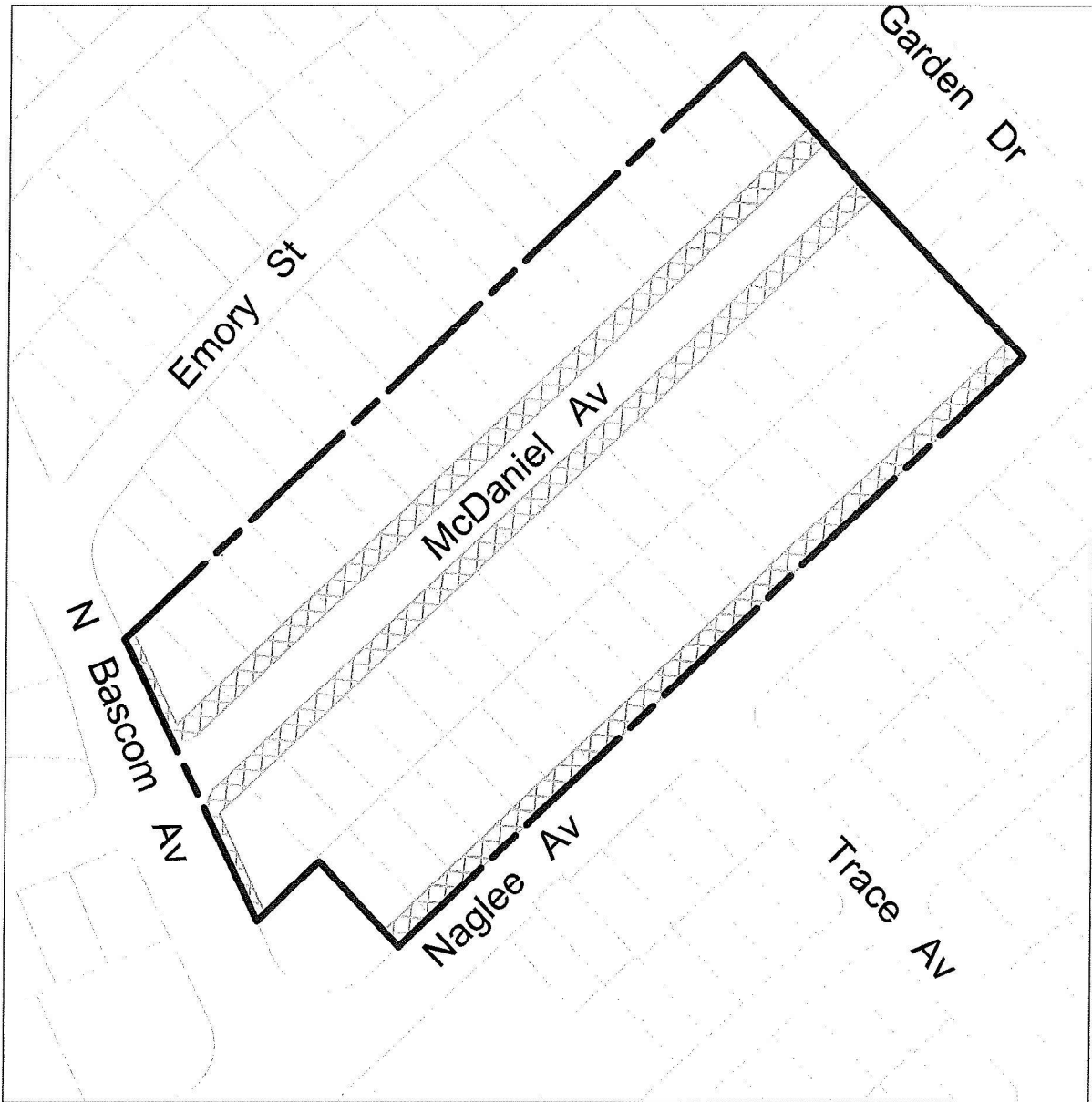
Director of Public Works

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

Attachment: Location Map

LOCATION MAP

SHOWING THE 25-FOOT AND 12.5-FOOT SETBACK EASEMENTS
WITHIN TRACT NO. 65 TO BE VACATED



AREA TO BE VACATED



BOUNDARY OF TRACT NO. 65

