



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Matt Cano

**SUBJECT:** SEE BELOW

**DATE:** January 31, 2019

Approved

Date

1/31/19

**COUNCIL DISTRICT: 3**

**SUBJECT: SUMMARY VACATION OF A 25-FOOT WIDE SIDEWALK EASEMENT  
ALONG EAST BROKAW ROAD, BERING DRIVE, AND DEVCON COURT**

## **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 summary vacation of a 25-foot wide sidewalk easement along East Brokaw Road between Bering Drive and US-101 off-ramp, Bering Drive between East Brokaw Road and Devcon Court, and the north side of Devcon Court;
- (b) Summarily vacating the sidewalk easement, which has been determined to be excess; 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 25-foot wide sidewalk easement ("SWE") will be extinguished and no longer constitute a public easement. The newly dedicated street easement and the existing public service easement for utilities will remain after vacating the SWE.

## **BACKGROUND**

On March 19, 2014, the City approved a Site Development Permit (H13-040) to allow the construction of office buildings totaling up to 2.025 million square feet ("Project") located at the

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south side of East Brokaw Road between North 1<sup>st</sup> Street and Bering Drive. The conditions of approval for the Project include the dedication of a street easement along East Brokaw Road and Bering Drive, the vacation of the SWE and construction of a new linear sidewalk to allow the project frontage to conform to the City's requirement for attached sidewalks and the widening of Bering Drive.

An application for the vacation of a portion of the SWE was submitted to the City of San Jose by Vance Brown, Inc., on behalf of the property owners, Richard T. Peery and John Arrillaga. The SWE was dedicated on a parcel map and recorded on June 6, 1980 in Book 464 of Maps at Pages 31 through 32 of Official Records, Office of the Recorder, County of Santa Clara (APN 237-16-066, -069, -071, & -072). A 10-foot wide public service easement, coincident with the SWE was dedicated on a parcel map and recorded on August 9, 1979 in Book 447 of Maps at Pages 29 through 30 of Official Records, Office of the Recorder, County of Santa Clara all of which will remain. The PSE was required as part of the subdivision while a 25-foot wide SWE was necessary to construct the meandering sidewalk along the proposed project frontage.

Through a separate instrument, the property owners have dedicated to the City up to 16,577 square foot public street easement along East Brokaw Road and Bering Drive. The newly dedicated street area includes all of the area required for the construction of the new linear sidewalk along the project frontage. The City issued a minor sidewalk permit to the property owners to remove the existing meandering sidewalk and install the required linear sidewalk along the project frontage. A certificate of deposit was obtained in conjunction with the permit for the estimated cost of the new sidewalk construction.

## **ANALYSIS**

Under Section 8306(a) of the California Streets and Highway Code, the SWE constitutes a public service easement. Pursuant to Streets and Highways Code Section 8333(c), a public service easement may be summarily vacated if the easement has been determined to be excess, and there are no other public facilities within the easement that would be affected by the vacation.

As a condition of approval, the Project is required to remove the existing meandering sidewalk and construct an attached linear sidewalk within the street easement in conformance with the Council adopted San Jose Complete Street Design Guidelines. The widening of Bering Drive will extend the street and new sidewalk into the SWE which is currently limited to sidewalk purposes. The property owner's prior street easement dedication accommodates both street and sidewalk uses. The City has secured the construction of the new linear sidewalk, and the developer will execute a City-Private Developer Agreement in the future to secure the street widening and other required public improvements. As a result, staff has determined that the SWE proposed for vacation is excess. Utility companies were not contacted since the existing public service easement for utilities located within the SWE will remain and any utilities located within that public service easement will not be affected.

According to the title report issued by First American Title Insurance Company, Richard T. Peery and John Arrillaga hold the underlying fee ownership to the area proposed for vacation. If Council

approves the proposed vacation, the land will be unencumbered by the SWE upon recordation of the vacation.

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

If Council adopts the resolution summarily vacating the SWE, no further action by the Council will be required.

### **PUBLIC OUTREACH**

The public was given the opportunity to comment on the proposed development and site plan with the inclusion of the proposed vacation area as part of the Planning permit review and approval process.

This memorandum will be posted to the City's website for the February 12, 2019, City Council agenda.

### **COORDINATION**

The vacation has been coordinated with the Department of Planning, Building and Code Enforcement, Department of Transportation, and the City Manager's Budget Office. Additionally, 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.

### **COST SUMMARY/IMPLICATIONS**

The Department of Public Works collected cost-recovery fees during Fiscal Year 2018-2019 in the amount of \$4,292.00 to process the subject vacation. The fees were deposited into the Public Works Development Fee Program in the General Fund.

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**CEQA**

Addendum to the North San Jose Development Policies Update Final Environmental Impact Report (Resolution No. 72768), Envision San Jose 2040 General Plan Final Environmental Impact Report (Resolution No. 76041), Envision San Jose 2040 General Plan Supplemental Environmental Impact Report (Resolution No. 77617), and Addenda thereto (File No. HA13-040-02).

/s/

MATT CANO

Director of Public Works

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

Attachment: Location Map

# LOCATION MAP

SHOWING THE SUMMARY VACATION OF A 25-FOOT WIDE SIDEWALK EASEMENT  
ALONG EAST BROKAW ROAD, BERING DRIVE, AND DEVCON COURT



AREA TO BE VACATED (41,904 SQ. FT  $\pm$ )

