

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE SUMMARILY VACATING AN APPROXIMATELY 41,904 SQUARE FOOT PORTION OF A 25-FOOT WIDE SIDEWALK EASEMENT ALONG EAST BROKAW ROAD, BERING DRIVE, AND DEVCON COURT**

**WHEREAS**, Chapter 4 of Part 3 of Division 9 of the Streets and Highways Code of the State of California authorizes the City Council to summarily vacate a public service easement if the City Council determines that it is excess and there are no in-place public utility facilities that are in use and would be affected by the vacation; and

**WHEREAS**, the City Council intends to summarily vacate an approximately 41,904 square foot portion 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 ("Subject Property") constituting all that real property situate in the City of San José, County of Santa Clara, State of California, more particularly described as:

BEING A PORTION OF THAT CERTAIN SIDEWALK EASEMENT DEDICATED FOR PUBLIC USE ON THAT CERTAIN PARCEL MAP FILED FOR RECORD ON JUNE 6TH, 1980 AS FILE NUMBER 6748913, IN BOOK 464 OF MAPS AT PAGES 31 AND 32, SANTA CLARA COUNTY RECORDS AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE CENTER LINE INTERSECTION OF BROKAW ROAD WITH BERING DRIVE, AS SAID INTERSECTION IS SHOWN ON THE HEREINABOVE REFERENCED PARCEL MAP;

THENCE, ALONG THE CENTER LINE OF SAID BROKAW ROAD SOUTH 41°50'13" WEST 535.20 FEET AS SHOWN ON SAID PARCEL MAP; THENCE, LEAVING SAID CENTER LINE SOUTH 48°09'52" EAST 65.00 FEET TO A POINT ON THE

NORTHWESTERLY LINE OF PARCEL TWO AS SHOWN ON THAT CERTAIN PARCEL MAP FILED FOR RECORD ON OCTOBER 28TH, 1993 IN BOOK 651 OF MAPS AT PAGES 35 AND 36, BEING THE POINT OF BEGINNING FOR THIS DESCRIPTION;

THENCE, ALONG SAID PARCEL TWO, THE FOLLOWING ELEVEN (11) COURSES;

1. NORTH 41°50'13" EAST, 460.01 FEET TO THE BEGINNING OF A CURVE CONCAVE SOUTHERLY, SAID CURVE HAS A RADIUS OF 40.00 FEET;
2. EASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 98°10'03" AN ARC DISTANCE OF 68.53 FEET TO A POINT OF TANGENCY;
3. SOUTH 39°59'44" EAST, 59.93 FEET TO THE BEGINNING OF A CURVE CONCAVE NORTHEASTERLY, SAID CURVE HAS A RADIUS OF 1,000.00 FEET;
4. SOUTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 7°29'44" AN ARC DISTANCE OF 130.82 FEET TO A POINT OF TANGENCY;
5. SOUTH 47°29'28" EAST, 266.16 FEET TO THE BEGINNING OF A CURVE CONCAVE NORTHEASTERLY, SAID CURVE HAS A RADIUS OF 1,030.00 FEET;
6. SOUTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 0°40'19" AN ARC DISTANCE OF 12.08 FEET TO A POINT OF TANGENCY;
7. SOUTH 48°09'47" EAST, 85.56 FEET TO THE BEGINNING OF A CURVE CONCAVE WESTERLY, SAID CURVE HAS A RADIUS OF 40.00 FEET;
8. SOUTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 90°00'00" AN ARC DISTANCE OF 62.83 FEET TO A POINT OF TANGENCY;
9. SOUTH 41°50'13" WEST, 320.63 FEET TO THE BEGINNING OF A CURVE CONCAVE NORTHWESTERLY, SAID CURVE HAS A RADIUS OF 60.00 FEET;
10. SOUTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 41°24'35" AN ARC DISTANCE OF 43.36 FEET TO A POINT OF REVERSE CURVATURE, SAID CURVE IS CONCAVE EASTERLY AND HAS A RADIUS OF 60.00 FEET;
11. SOUTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 169°32'26" AN ARC DISTANCE OF 177.54 FEET TO A POINT OF NON-TANGENCY;

THENCE, LEAVING SAID PARCEL TWO, SOUTH 3°42'22" WEST, 25.00 FEET TO A POINT ON SAID EASEMENT AND THE BEGINNING OF A NON-TANGENT CURVE CONCAVE EASTERLY AND HAS A RADIUS OF 85.00 FEET, TO WHICH A RADIAL LINE BEARS SOUTH 3°42'22" WEST; THENCE, ALONG SAID EASEMENT, THE FOLLOWING TWELVE (12) COURSES;

1. NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 169°32'26" AN ARC DISTANCE OF 251.52 FEET TO A POINT OF REVERSE CURVATURE, SAID CURVE IS CONCAVE NORTHWESTERLY AND HAS A RADIUS OF 35.00 FEET;
2. NORTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 41°24'35" AN ARC DISTANCE OF 25.30 FEET TO A POINT OF TANGENCY;
3. NORTH 41°50'13" EAST, 320.63 FEET TO THE BEGINNING OF A CURVE CONCAVE WESTERLY AND HAS A RADIUS OF 15.00 FEET;
4. NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 90°00'00" AN ARC DISTANCE OF 23.56 FEET TO A POINT OF TANGENCY;
5. NORTH 48°09'47" WEST, 85.56 FEET TO THE BEGINNING OF A CURVE CONCAVE NORTHEASTERLY AND HAS A RADIUS OF 1,055.00 FEET;
6. NORTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 0°40'19" AN ARC DISTANCE OF 12.37 FEET TO A POINT OF TANGENCY;
7. NORTH 47°29'28" WEST, 266.16 FEET TO THE BEGINNING OF A CURVE CONCAVE NORTHEASTERLY AND HAS A RADIUS OF 1,025.00 FEET;
8. NORTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 7°29'44" AN ARC DISTANCE OF 134.09 FEET TO A POINT OF TANGENCY;
9. NORTH 39°59'44" WEST, 59.93 FEET TO THE BEGINNING OF A CURVE CONCAVE SOUTHERLY AND HAS A RADIUS OF 15.00 FEET;
10. WESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 98°10'03" AN ARC DISTANCE OF 25.70 FEET TO A POINT OF TANGENCY;
11. SOUTH 41°50'13" WEST, 460.01 FEET;
12. NORTH 48°09'47" WEST, 25.00 FEET TO THE POINT OF BEGINNING;

CONTAINING 41,904 SQUARE FEET, MORE OR LESS.

**WHEREAS**, attached to this Resolution as Exhibit “A” and incorporated herein is a map approved by the Director of the Department of Public Works on January 22, 2019 entitled “PLAT MAP SHOWING THE SUMMARY VACATION OF A 25-FOOT WIDE SIDEWALK EASEMENT ALONG EAST BROKAW ROAD, BERING DRIVE, AND DEVCON COURT” showing the Subject Property; and

**WHEREAS**, attached to this Resolution as Exhibit “B” and incorporated herein is a copy of the report, dated January 31, 2019 that the Director of the Department of Public Works submitted to the City Council setting forth the facts justifying the summary vacation of the Subject Property (hereinafter “Report”);

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

**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 Subject Property is excess and there are no other public facilities located within the easement; and
- B. The vacation is consistent with the City’s General Plan; and
- C. There are no in-place public utility facilities that are in use and would be affected by the vacation.
- D. All public easements located within the area proposed for vacation other than the Subject Property are not vacated by this Resolution.

**SECTION 2.** Based upon the findings made in Section 1 of this Resolution and the provisions of Chapter 4 of Part 3 of Division 9 of the Streets and Highways Code of the State of California, the City Council does hereby summarily vacate the Subject Property.

**SECTION 3.** 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 4.** From and after the date this Resolution is recorded, the Subject Property will no longer constitute a public easement, but portions of the Subject Property will remain public easements for public utilities and street purposes.

ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 201\_, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

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SAM LICCARDO  
Mayor

ATTEST:

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TONI TABER, CMC  
City Clerk

# Exhibit A

## PLAT MAP


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

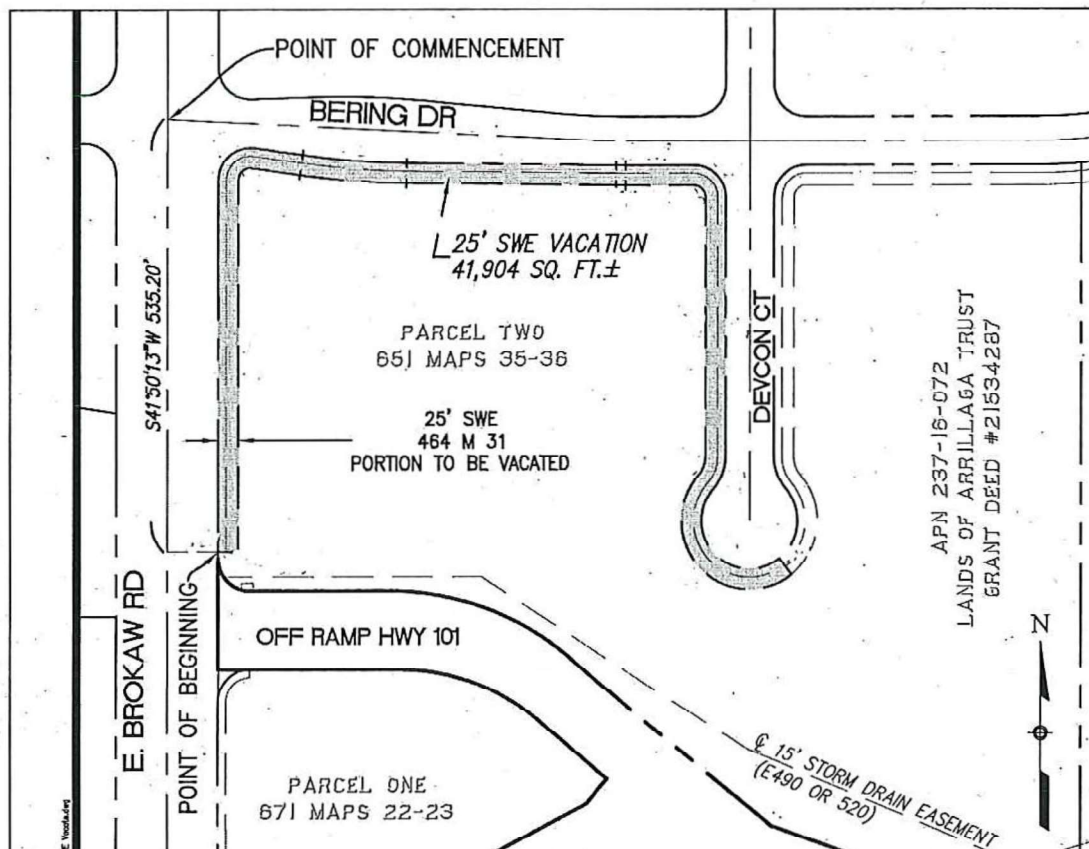


AREA TO BE VACATED

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

 RYAN DO APPROVED THIS 22<sup>ND</sup> DAY OF JANUARY 2019  
for MATTHEW CANO  
DIRECTOR OF PUBLIC WORKS,  
CITY OF SAN JOSE

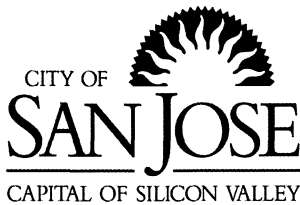


## EXHIBIT B

COUNCIL AGENDA: 02/12/19

FILE: 18-1887

ITEM: 7.2



# 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

January 31, 2019

**Subject: Summary Vacation 25-Ft Wide Sidewalk Easement E. Brokaw Rd., Bering Dr., and Devcon Ct.**

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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.

HONORABLE MAYOR AND CITY COUNCIL

January 31, 2019

**Subject: Summary Vacation 25-Ft Wide Sidewalk Easement E. Brokaw Rd., Bering Dr., and Devcon Ct.**

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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

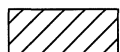
Director of Public Works

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 ±)

