

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

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN  
JOSE VACATING THE PUBLIC EASEMENTS FOR LIGHT  
AND AIR LOCATED WITHIN TRACT 662**

**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 April 30, 2019, the City Council adopted Resolution No. 79062 (“Resolution of Intention”) declaring its intention to vacate the thirty-five foot (35’) and twenty foot (20’) public easements for light and air within Tract 662 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. 662 HAWLEY GARDENS, RECORDED ON SEPTEMBER 12, 1950 IN BOOK 30, AT PAGES 36-37, 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 ROADS AND THE LINES EACH DESIGNATED AS “BUILDING LINE” AS SHOWN ON SAID MAP WITHIN TRACT NO. 662.

**WHEREAS**, the Resolution of Intention gave notice that on May 21, 2019 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 March 29, 2019, the Director of Public Works approved the map, including exhibits thereto, entitled “Map to Accompany the Legal Description for Vacation of Setback Easements within the Entire Tract No. 662” (“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 May 1, 2019 (“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 Sam Tajik for the vacation of the 35-foot front setback easement on Lot 4 of Tract No. 662; and
- B. The applicable setbacks for Lot 4 and all other lots within Tract No. 662 shall be regulated through the City of San José’s Municipal Code; and

C. Government Code Section 65402 does not apply to this vacation.

D. There are other public service easements located within Tract No. 662 that shall remain and are not proposed for 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; and

C. All public easements other than those for light and air within Tract No. 662 are not vacated pursuant to this action.

**SECTION 3.** Based on the above stated findings and conclusions, the City Council hereby vacates the public easements for light and air located within 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 public service easements for light and air.

ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2019, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

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SAM LICCARDO  
Mayor

ATTEST:

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TONI J. TABER, CMC  
City Clerk

**Exhibit A**

# MAP

TO ACCOMPANY THE LEGAL DESCRIPTION FOR VACATION  
OF SETBACK EASEMENTS WITHIN THE ENTIRE TRACT NO. 662

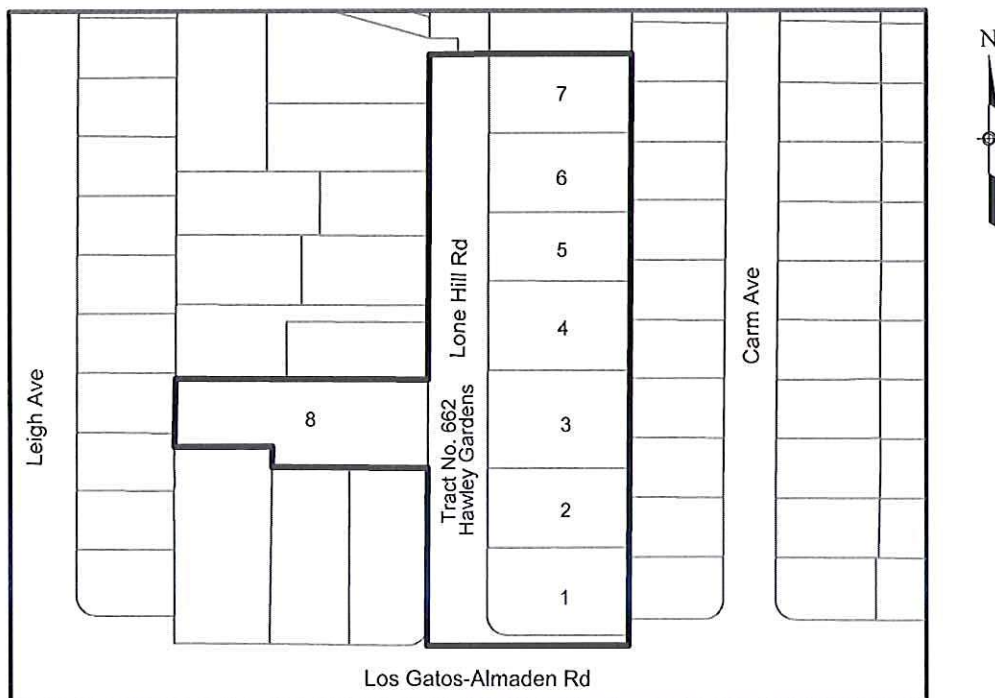
FILED WITH THE CITY COUNCIL OF THE CITY OF SAN JOSE THIS \_\_\_\_\_ DAY OF  
\_\_\_\_\_, AND APPROVED BY SAID CITY COUNCIL THIS \_\_\_\_\_ DAY OF  
\_\_\_\_\_ BY RESOLUTION NUMBER \_\_\_\_\_

\_\_\_\_\_  
CITY CLERK, CITY OF SAN JOSE

*for* *Matthew Cano* *RYAN DO* APPROVED THIS *29<sup>TH</sup>* DAY OF *MARCH 2019*  
MATTHEW CANO  
DIRECTOR OF PUBLIC WORKS,  
CITY OF SAN JOSE

EXHIBIT A-1: TRACT MAP NO. 662

EXHIBIT B-1: ASSESSOR PARCEL NUMBERS FOR TRACT NO. 662



# EXHIBIT A-1: TRACT MAP NO. 662

We hereby certify that we are the owners of or have some right, title or interest in and to the real property included within the subdivision shown upon this map, and that we are the only persons whose consent is necessary to pass a clear title to said property, and we consent to the making of said map and subdivision as shown within the border lines; and hereby dedicate to public use Lone Hill Road, a portion of the Los Gatos and Almaden Road, and the easement for storm drain, all as shown upon said map within said subdivision.

We also hereby dedicate to public use easements for public utilities under, on or over those certain strips of land lying along the sidelines of lots designated as "2x20 P.U. Easement," as shown on said map, within said subdivision; such strips of land to be kept open and free from buildings and structures of any kind.

We also hereby dedicate to public use easements for light and air under, on or over those certain strips of land lying between the lines of roads and the lines each designated as "Building line," as shown on said map within said subdivision; such strips of land to be kept open and free from buildings and structures of any kind, excepting irrigation and sprinkling systems and appurtenances thereto.

We also hereby dedicate for public use that certain strip of land designated as "1-Roadway strip" being one-foot-in-width across the end of the east one-half of Lone Hill Road, reserved exclusively for the owners of lots in said subdivision until an additional strip of land adjoining it for the extension of said Road is accepted by the Board of Supervisors of the County of Santa Clara.

*John Smith, Evelyn Smith, Mark E. Thomas, Helen Chapman, Thomas*

San Jose Abstract & Title Insurance Co.

*L. P. Edwards*  
President Secretary

Corporation of America, as trustee

*W. H. Johnson*  
Its Agent, Manager

American Securities Company, as trustee

*Joe J. O'Neil*  
Vice President Assistant Secretary

First Pioneer Company, as trustee

*John H. Drew*  
Vice President Assistant Secretary

Pioneer Investors Savings and Loan Association

*W. H. Johnson*  
Vice President Secretary

State of California }  
County of Santa Clara } s.s.

On this 11th day of Sept. 1950, before me, *Pat Ingram*, a Notary Public in and for said County of Santa Clara, State of California, residing therein, duly commissioned and sworn, personally appeared *John H. Drew, Evelyn Smith, Mark E. Thomas, Helen Chapman, Thomas*, known to me to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

*Pat Ingram*  
Notary Public in and for the County of Santa Clara, State of California

State of California }  
County of Santa Clara } s.s.

On this 11th day of Sept. 1950, before me, *Pat Ingram*, a Notary Public in and for said County of Santa Clara, State of California, residing therein, duly commissioned and sworn, personally appeared *L. P. Edwards*, known to me to be the President, and *C. J. Clark*, known to me to be the Secretary, of the San Jose Abstract & Title Insurance Co., the corporation that executed the within instrument and known to me to be the persons who executed the same on behalf of the corporation named therein, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

*Pat Ingram*  
Notary Public in and for the County of Santa Clara, State of California

State of California }  
County of Santa Clara } s.s.

On this 11th day of May 1950, before me, *B. M. C. Wright*, a Notary Public in and for said County of Santa Clara, State of California, residing therein, duly commissioned and sworn, personally appeared *B. M. C. Wright*, known to me to be the Manager of the West Coast Branch of the Bank of America and ex-officio Agent of the Corporation of America, and known to me to be the person who executed the same on behalf of the Corporation of America, and acknowledged to me that such corporation executed the same as Trustee.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

*B. M. C. Wright*  
Notary Public in and for the County of Santa Clara, State of California

It is ordered that the map of Tract No 662 be and the same is hereby approved; that the roads and other parcels of land shown upon said map and therein offered for dedication be and the same are not hereby accepted for the purposes for which the same are offered for dedication, except the 10 foot strip offered for the widening of the Los Gatos and Almaden Road which is hereby accepted for the purposes for which it is offered for dedication; and that the easement for drainage shown upon said map and therein offered for dedication be and the same is hereby accepted as such.

The Clerk of this Board is directed to endorse upon the face of said map a copy of this order authenticated by the seal of the Board of Supervisors.

I hereby certify that the foregoing order was adopted by the Board of Supervisors at a meeting of said Board held Sept. 11, 1950.

ALBERT J. NEWLIN, County Clerk and Ex-Officio Clerk of the Board of Supervisors of the County of Santa Clara, State of California.

*Albert J. Newlin*  
Deputy

662753

Accepted for record and recorded in Book 39 of Maps, Pages 227 in the office of the County Recorder of the County of Santa Clara this 12th day of Sept. 1950, at 2:07 P.M.

CHAS. A. PAYNE, County Recorder of the County of Santa Clara

By *Chas. A. Payne*, Deputy.

State of California }  
County of Santa Clara } s.s.

On this 11th day of Sept. 1950, before me, *Pat Ingram*, a Notary Public in and for said County of Santa Clara, State of California, residing therein, duly commissioned and sworn, personally appeared *John H. Drew*, known to me to be the Vice President and *S. R. Trowbridge*, known to me to be the Assistant Secretary of the First Pioneer Co., the corporation that executed the within instrument and known to me to be the persons who executed the same on behalf of the corporation named therein, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

*Pat Ingram*  
Notary Public in and for the County of Santa Clara, State of California

State of California }  
County of Santa Clara } s.s.

On this 11th day of Sept. 1950, before me, *Pat Ingram*, a Notary Public in and for said County of Santa Clara, State of California, residing therein, duly commissioned and sworn, personally appeared *S. R. Trowbridge*, known to me to be the Vice President, and *John H. Drew*, known to me to be the Secretary of the Pioneer Investors Savings and Loan Association, the corporation that executed the within instrument and known to me to be the persons who executed the same on behalf of the corporation named therein, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

*Pat Ingram*  
Notary Public in and for the County of Santa Clara, State of California

## TRACT No 662 HAWLEY GARDENS

A SUBDIVISION OF PORTIONS OF LOTS 5 AND 6  
OF CARTER SUBDIVISION NO. 2

SANTA CLARA COUNTY  
CALIFORNIA

SCALE: 1 INCH = 50 FEET

MARK THOMAS & CO. CIVIL ENGINEERS AND SURVEYORS  
SAN JOSE, CALIFORNIA

SEPTEMBER 1949

SHEET 2 OF 2 SHEETS



# EXHIBIT A-1: TRACT MAP NO. 662

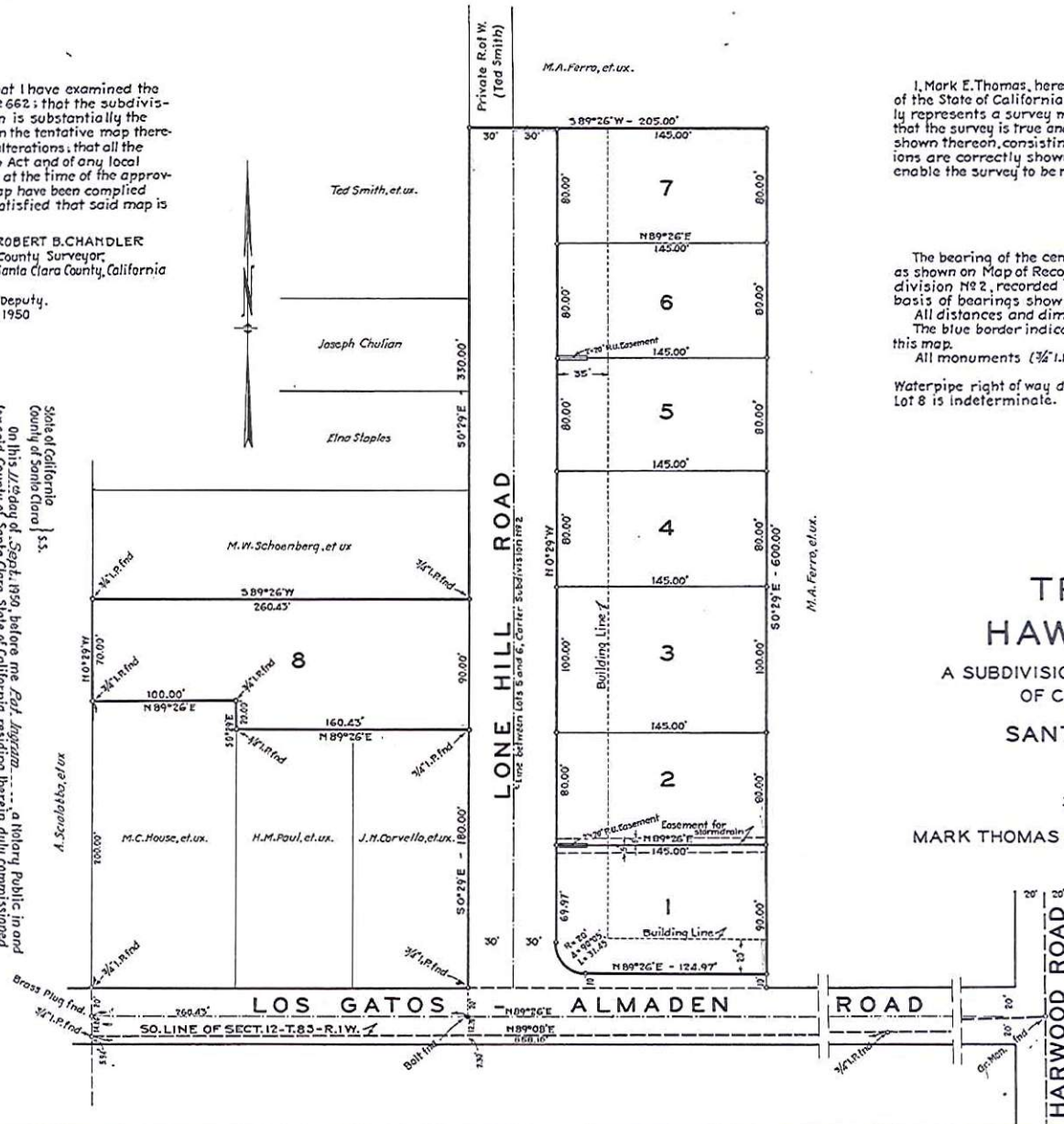
I hereby certify that I have examined the final Map of Tract No 662; that the subdivision as shown thereon is substantially the same as it appeared on the tentative map thereof and any approved alterations; that all the provisions of the Map Act and of any local ordinance applicable at the time of the approval of the tentative map have been complied with, and that I am satisfied that said map is technically correct.

ROBERT B. CHANDLER  
County Surveyor,  
Santa Clara County, California

By *Mark E. Thomas*, Deputy.  
Dated, Sept. 11, 1949

State of California } ss.  
County of Santa Clara }  
On this 11th day of Sept., 1949, before me, *Fred J. Hagman*, a Notary Public in and for said County of Santa Clara, State of California, residing therein, duly commissioned and sworn, personally appeared *Fred J. Hagman*, known to me to be the Vice President, and *W.E. Harris*, known to me to be the Assistant Secretary of the American Security Company, the corporation that executed the within instrument and known to me to be the persons who executed the same on behalf of the corporation named therein, and acknowledged to me that such corporation executed the same.  
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this day and year in this certificate first above written.

*Mark E. Thomas*  
Notary Public in and for the County of Santa Clara, State of California.



I, Mark E. Thomas, hereby certify that I am a Registered Civil Engineer of the State of California; that this map, consisting of 2 sheets, correctly represents a survey made under my supervision in September 1949; that the survey is true and complete as shown; that all of the monuments shown thereon, consisting of iron pipes, actually exist and their positions are correctly shown; and that said monuments are sufficient to enable the survey to be retraced.

*Mark E. Thomas*  
Registered Civil Engineer #2578.

The bearing of the center line of the Los Gatos-Almaden Road (N89°26'E) as shown on Map of Record of Survey of part of Lot 6 of the Carter Subdivision No 2, recorded in Book 16 of Maps at Page 4, was taken as basis of bearings shown upon this map.

All distances and dimensions are shown in feet and decimals thereof. The blue border indicates the boundaries of the land subdivided by this map.

All monuments (1/4" I.R.s) were set 1'-0" below the ground surface.

Waterpipe right of way described in Book 507 of Deeds page 263 affecting Lot 8 is indeterminate.

## TRACT NO 662 HAWLEY GARDENS

A SUBDIVISION OF PORTIONS OF LOTS 5 AND 6  
OF CARTER SUBDIVISION NO.2

SANTA CLARA COUNTY  
CALIFORNIA

SCALE: 1 INCH = 50 FEET

MARK THOMAS & CO., CIVIL ENGINEERS AND SURVEYORS  
SAN JOSE, CALIFORNIA

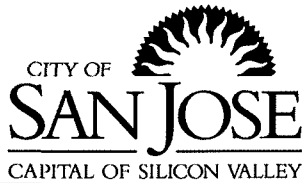
SEPTEMBER 1949

662753  
SHEET 1 OF 2 SHEETS

## EXHIBIT B-1: ASSESSOR PARCEL NUMBERS FOR TRACT NO. 662

APN	Site Address	Mailing Address	Mailing City State
41940090	15490 LONE HILL RD, SAN JOSE CA 95124	15490 LONE HILL RD	LOS GATOS CA 95032
41940091	15472 LONE HILL RD, SAN JOSE CA 95124	15472 LONE HILL RD	LOS GATOS CA 95032
41940092	15454 LONE HILL RD, SAN JOSE CA 95124	15454 LONE HILL RD	LOS GATOS CA 95032
41940095	15406 LONE HILL RD, SAN JOSE CA 95124	15406 LONE HILL RD	LOS GATOS CA 95032-2804
41940096	15384 LONE HILL RD, SAN JOSE CA 95124	15384 LONE HILL RD	LOS GATOS CA 95032-2804
41940110	15455 LONE HILL RD, SAN JOSE CA 95124	14916 CHARMERAN AVE	SAN JOSE CA 95124-3507
41940117	15438 LONE HILL RD, SAN JOSE CA 95124	1165 BUCKNAM AVE	CAMPBELL CA 95008
41940118	15422 LONE HILL RD, SAN JOSE CA 95124	15422 LONE HILL RD	LOS GATOS CA 95032





# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Matt Cano

**SUBJECT:** SEE BELOW

**DATE:** May 1, 2019

Approved

*D. D. Syl*

Date

*5/9/19*

**COUNCIL DISTRICT:** 9

**SUBJECT: VACATION OF THE 35-FOOT AND 20-FOOT SETBACK EASEMENTS  
WITHIN TRACT NO. 662**

## 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 35-foot and 20-foot light and air easements ("Setback Easements") located within Tract No. 662.
- (b) Vacating the 35-foot and 20-foot light and air easements located within Tract No. 662.
- (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 within Tract No. 662 will be vacated. By vacating the Setback Easements, all properties within Tract No. 662 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. 662 can construct building improvements up to the current setbacks.

## **BACKGROUND**

Sam Tajik, property owner of 15438 Lone Hill Road, has submitted an application for the vacation of the 35-foot front setback easement on his property, which is Lot 4 of Tract No. 662. The setback easement was created by dedication on the map of Tract No. 662 Hawley Gardens Subdivision, recorded on September 12, 1950 in Book 30 of Maps, Pages 36-37, of Official Records, Office of the Recorder, County of Santa Clara, and applies to all properties, except Lot 8, created by the subdivision. The property owner has indicated his desire to construct future improvements to his property that would encroach into the setback easement. The setback easement prohibits a building from encroaching into this area.

On April 30, 2019, 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 May 21, 2019, 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 Setback Easements along Lone Hill Road and Los Gatos-Almaden Road within Tract No. 662 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 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 application by Planning staff, it was determined that all setback easements for the entire subdivision are 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. This reduction in the setback was found consistent with the goals of the Envision San Jose 2040 General Plan ("General Plan") to encourage additional density and parking in conventional Residential Zoning Districts.

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 the entire subdivisions as opposed to the prior practice of vacating setback easements for an individual property upon request. Therefore, staff recommends including the Setback Easements in this vacation process. Vacating setback easements by subdivision would reduce 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. 662, 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 residence 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 property, staff finds that the proposed vacation is consistent with and will facilitate a General Plan goal to allow additional density and parking with the zoning district R1-8.

Through County records, staff have identified the owners within Tract No. 662 of the properties subject to the Setback Easements. 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. 662, 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 May 21, 2019, City Council agenda. 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.

### **FISCAL/POLICY ALIGNMENT**

Vacating the setback easement 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

May 1, 2019

**Subject: Vacation of the 35-Foot and 20-Foot Setback Easements Within Tract No. 662**

Page 4

**COMMISSION RECOMMENDATION/INPUT**

No commission recommendation or input is associated with this action.

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**COST SUMMARY/IMPLICATIONS**

The City's cost to process the proposed vacation consists of staff time to prepare the documents and complete the transaction.

**CEQA**

Categorically Exempt, File No. PP19-026, CEQA Guidelines Section 15305, Minor Alterations in Land Use Limitation.

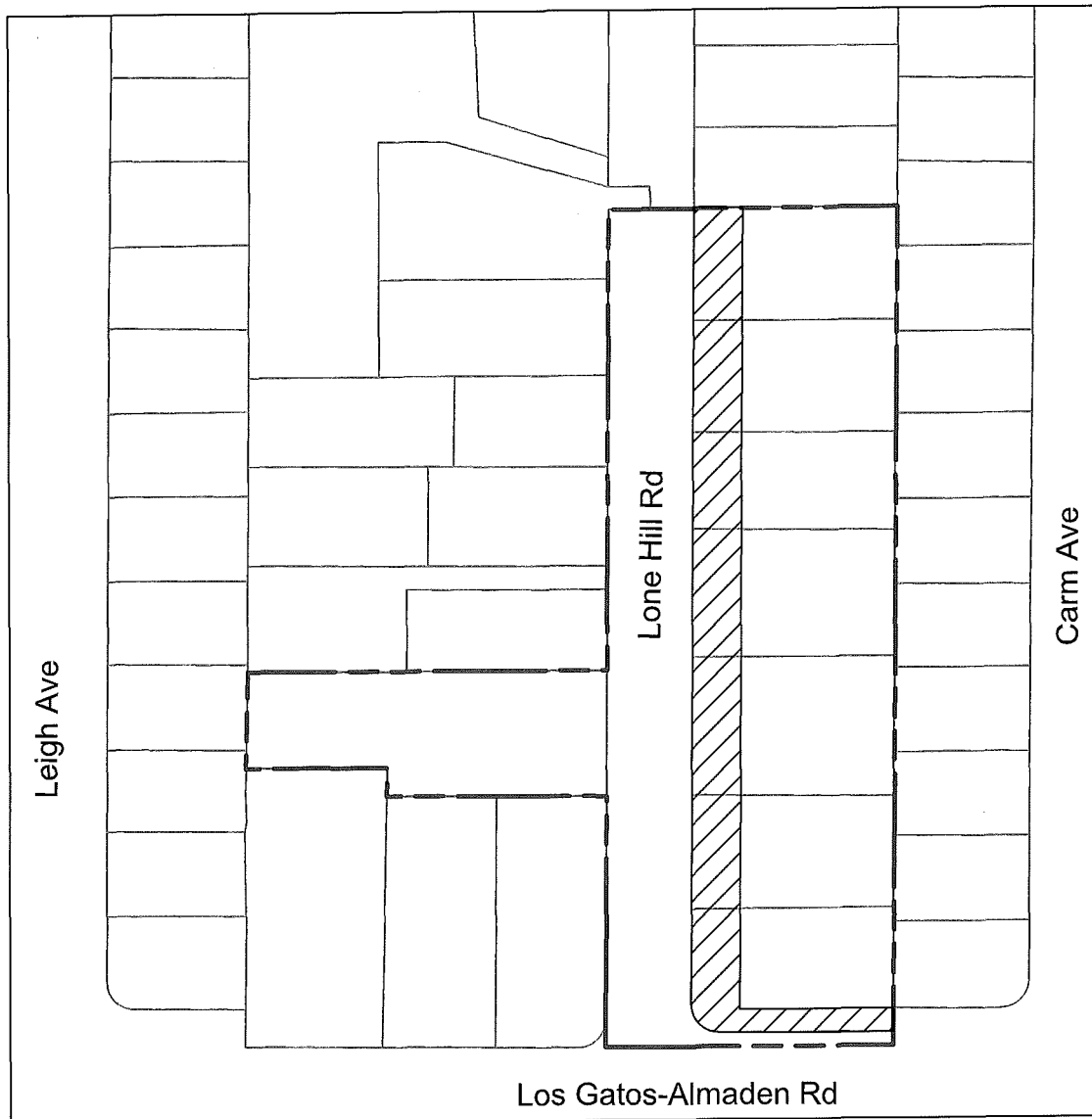
/s/  
MATT CANO  
Director of Public Works

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

Attachment: Location Map

# LOCATION MAP

SHOWING THE 35-FOOT AND 20-FOOT SETBACK EASEMENTS  
WITHIN TRACT NO. 662 TO BE VACATED



AREA TO BE VACATED



BOUNDARY OF TRACT NO. 662

