



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Nanci Klein  
Matt Cano  
Jim Shannon

**SUBJECT:** SEE BELOW

**DATE:** March 29, 2021

Approved

Date

3/30/2021

**COUNCIL DISTRICT: 3**

**SUBJECT: RESOLUTIONS OF NECESSITY DECLARING THAT THE ACQUISITION BY EMINENT DOMAIN OF A FEE INTEREST IN FOUR PARCELS LOCATED IN THE PUBLIC RIGHT-OF-WAY ALONG THE NORTH SIDE OF PARK AVE. BETWEEN MARKET ST. AND SOUTH ALMADEN BLVD., ARE NECESSARY FOR THE PARK AVENUE RECONFIGURATION PROJECT; AUTHORIZING THE CITY ATTORNEY TO FILE SUIT IN EMINENT DOMAIN TO ACQUIRE SAID PARCELS AND TO DEPOSIT MONEY NOT TO EXCEED THE APPRAISED VALUE OF THE PARCELS INTO THE STATE TREASURY CONDEMNATION FUND; AND CONDITIONAL SUMMARY VACATION OF A PORTION OF PARK AVENUE ALONG THE CITYVIEW PARK AVENUE FRONTAGE BETWEEN SOUTH ALMADEN BOULEVARD AND MARKET STREET**

## **RECOMMENDATION**

- (a) Conduct a Public Hearing to allow each person whose property is to be acquired a reasonable opportunity to appear and be heard on the matters referred to in Section 1240.030 of Cal. Cod of Civ. Proc.
- (b) Adopt a resolution determining that the public interest and necessity require the acquisition through condemnation of Parcel A (consisting of  $\pm 1,281$  square feet and owned by the heirs and devisees of James Smith, deceased), with the Parcel referred to as a "Property" for the Park Avenue Reconfiguration Project in conformance with Cal. Code Civ. Proc. Section 1245.220, et. seq., and making the following findings and determinations to declare that:
  - (1) The City is authorized to acquire the Property and exercise the power of eminent domain to and in accordance with Article 1, Section 19 of the California Constitution, the California Eminent Domain Law (Code of Civil Procedure

Sections 1230.010 *et seq.*), Section 200 of the City of San José Charter, and Government Code Sections 37350, 37350.5, 37351, 37353 and 40404;

- (2) The public interest and necessity require the project, described below, which is in the Park Avenue public right-of-way, at the corner of Almaden Boulevard and Park Avenue as described in Exhibit “A” to Parcel A’s proposed resolution of necessity, to be posted separately and by reference made a part hereof, for the Park Avenue Reconfiguration Project;
- (3) The Property to be acquired for the proposed Park Avenue Reconfiguration Project is planned or located in the manner which will be most compatible with the greatest public good and the least private injury;
- (4) The acquisition of Property, as described in Exhibit “A” to Parcel A’s proposed resolution of necessity, to be posted separately, is necessary for the public uses proposed in the Park Avenue Reconfiguration Project;
- (5) The offer required by Section 7267.2 of the Government Code, together with the accompanying statement of the amount established as just compensation, for the acquisition of the Property, has not been made by the City to the owner of record, the heirs and devisees of James Smith, deceased, because the heirs or devisees of the deceased owner cannot be identified with reasonable diligence;
- (6) The City has complied with all conditions and statutory requirements that are necessary for approval and adoption of the Park Avenue Reconfiguration Project, including those prescribed by the California Environmental Quality Act (“CEQA”, Pub. Res. Code § 21000, *et seq.*). On September 3, 2019, the City prepared a Determination of Consistency of the Park Avenue Reconfiguration Project to the Downtown Strategy 2040 Final Environmental Impact Report certified by the City on December 18, 2018 (State Clearinghouse No. 2003042127). The City has also determined that the Park Avenue Reconfiguration Project is exempt from environmental review under the provisions of Section 15301(c) of the State Guidelines for Implementation of CEQA as an existing public facility;
- (7) All conditions and statutory requirements necessary to exercise the power of eminent domain to acquire the Property have been complied with by the City;
- (8) Authorizing the City Attorney, or their designee, to institute, maintain, and prosecute to final judgment, in the name of the City of San José, proceedings in eminent domain in the Superior Court of the State of California, County of Santa Clara, for the condemnation of the Property herein described, and to take all steps necessary, including applying for an Order for Possession before Judgment, for said condemnation in the name of the City and correcting any errors or to making or agreeing to non-material changes in the description of the Property interests to be acquired that are deemed necessary for the conduct of the condemnation action; and
- (9) Authorizing the City Attorney, or their designee, to make a deposit in the State Treasury Condemnation Fund from lawfully available funds of the City, in the amount determined by the summary appraisals of the Property or by the court in which eminent domain proceedings concerning the Acquisition Parcels herein

authorized are commenced or which may otherwise be required by law for the maintenance of the proceeding in eminent domain. The deposit is conditioned on the availability of funds under the Real Property Purchase and Sale and Cost Payment Agreement dated December 4, 2020 between SJ CityView LLC and the City of San José.

- (c) Adopt a resolution determining that the public interest and necessity require the acquisition through condemnation of Parcel B (consisting of ±2,849 and owned by the heirs and devisees of Jose M. Villar, deceased (Brad Jepson, Trustee of Estate of Charleyne Nobes, Janet Lipscomb, Karen Washburn, Michael Nobes, Rose Nobes Rawcliffe, Carol Nobes, Garret Nobes, Kyle Nobes, Lyndsey Nobes and Tammy Nobes Hill), with the Parcel referred to as a “Property”) for the Park Avenue Reconfiguration Project in conformance with Cal. Code Civ. Proc. Section 1245.220, *et seq.*, and making the following findings and determinations to declare that:
- (1) The City is authorized to acquire the Property and exercise the power of eminent domain to and in accordance with Article 1, Section 19 of the California Constitution, the California Eminent Domain Law (Code of Civil Procedure Sections 1230.010 *et seq.*), Section 200 of the City of San José Charter, and Government Code Sections 37350, 37350.5, 37351, 37353 and 40404;
  - (2) The public interest and necessity require the project, described below, which is in the Park Avenue public right-of-way, at the corner of Almaden Boulevard and Park Avenue as described in Exhibit “A” to Parcel B’s proposed resolution of necessity, to be posted separately and by reference made a part hereof, for the Park Avenue Reconfiguration Project;
  - (3) The Property to be acquired for the proposed Park Avenue Reconfiguration Project is planned or located in the manner which will be most compatible with the greatest public good and the least private injury;
  - (4) The acquisition of Property, as described in Exhibit “A” to Parcel B’s proposed resolution of necessity, to be posted separately, is necessary for the public uses proposed in the Park Avenue Reconfiguration Project;
  - (5) The offer required by Section 7267.2 of the Government Code, together with the accompanying statement of the amount established as just compensation, for the acquisition of the Property, has been made by the City to the living heirs and devisees of the last owner of record Jose M. Villar, deceased;
  - (6) The City has complied with all conditions and statutory requirements that are necessary for approval and adoption of the Park Avenue Reconfiguration Project, including those prescribed by the California Environmental Quality Act (“CEQA”, Pub. Res. Code § 21000, *et seq.*). On September 3, 2019, the City prepared a Determination of Consistency of the Park Avenue Reconfiguration Project to the Downtown Strategy 2040 Final Environmental Impact Report certified by the City on December 18, 2018 (State Clearinghouse No. 2003042127). The City has also determined that the Park Avenue Reconfiguration Project is exempt from environmental review under the

provisions of Section 15301(c) of the State Guidelines for Implementation of CEQA as an existing public facility;

- (7) All conditions and statutory requirements necessary to exercise the power of eminent domain to acquire the Property have been complied with by the City;
  - (8) Authorizing the City Attorney, or their designee, to institute, maintain, and prosecute to final judgment, in the name of the City of San José, proceedings in eminent domain in the Superior Court of the State of California, County of Santa Clara, for the condemnation of the Property herein described, and to take all steps necessary, including applying for an Order for Possession before Judgment, for said condemnation in the name of the City and correcting any errors or to making or agreeing to non-material changes in the description of the Property interests to be acquired that are deemed necessary for the conduct of the condemnation action; and
  - (9) Authorizing the City Attorney, or their designee, to make a deposit in the State Treasury Condemnation Fund from lawfully available funds of the City, in the amount determined by the summary appraisals of the Property or by the court in which eminent domain proceedings concerning the Acquisition Parcels herein authorized are commenced or which may otherwise be required by law for the maintenance of the proceeding in eminent domain. The deposit is conditioned on the availability of funds under the Real Property Purchase and Sale and Cost Payment Agreement dated December 4, 2020 between SJ CityView LLC and the City of San José.
- (d) Adopt a resolution determining that the public interest and necessity require the acquisition through condemnation of Parcel C (consisting of  $\pm 782$  square feet owned by the heirs and devisees of Carmen I. De Queveda, deceased, Adelena Quevedo and Alfonso Quevedo), with the Parcel referred to as a "Property") for the Park Avenue Reconfiguration Project in conformance with Cal. Code Civ. Proc. Section 1245.220, et. seq., and making the following findings and determinations to declare that:
- (1) The City is authorized to acquire the Property and exercise the power of eminent domain to and in accordance with Article 1, Section 19 of the California Constitution, the California Eminent Domain Law (Code of Civil Procedure Sections 1230.010 *et seq.*), Section 200 of the City of San José Charter, and Government Code Sections 37350, 37350.5, 37351, 37353 and 40404;
  - (2) The public interest and necessity require the project, described below, which is in the Park Avenue public right-of-way, at the corner of Almaden Boulevard and Park Avenue as described in Exhibit "A" to Parcel C's proposed resolution of necessity, to be posted separately and by reference made a part hereof, for the Park Avenue Reconfiguration Project;
  - (3) The Property to be acquired for the proposed Park Avenue Reconfiguration Project is planned or located in the manner which will be most compatible with the greatest public good and the least private injury;

- (4) The acquisition of Property, as described in Exhibit “A” to Parcel C’s proposed resolution of necessity to be posted separately, is necessary for the public uses proposed in the Park Avenue Reconfiguration Project;
  - (5) The offer required by Section 7267.2 of the Government Code, together with the accompanying statement of the amount established as just compensation, for the acquisition of the Property, has been made by the City to the living heirs and devisees of Carmen I. De Queveda, deceased;
  - (6) The City has complied with all conditions and statutory requirements that are necessary for approval and adoption of the Park Avenue Reconfiguration Project, including those prescribed by the California Environmental Quality Act (“CEQA”, Pub. Res. Code § 21000, *et seq.*). On September 3, 2019, the City prepared a Determination of Consistency of the Park Avenue Reconfiguration Project to the Downtown Strategy 2040 Final Environmental Impact Report certified by the City on December 18, 2018 (State Clearinghouse No. 2003042127). The City has also determined that the Park Avenue Reconfiguration Project is exempt from environmental review under the provisions of Section 15301(c) of the State Guidelines for Implementation of CEQA as an existing public facility;
  - (7) All conditions and statutory requirements necessary to exercise the power of eminent domain to acquire the Property have been complied with by the City;
  - (8) Authorizing the City Attorney, or their designee, to institute, maintain, and prosecute to final judgment, in the name of the City of San José, proceedings in eminent domain in the Superior Court of the State of California, County of Santa Clara, for the condemnation of the Property herein described, and to take all steps necessary, including applying for an Order for Possession before Judgment, for said condemnation in the name of the City and correcting any errors or to making or agreeing to non-material changes in the description of the Property interests to be acquired that are deemed necessary for the conduct of the condemnation action; and
  - (9) Authorizing the City Attorney, or their designee, to make a deposit in the State Treasury Condemnation Fund from lawfully available funds of the City, in the amount determined by the summary appraisals of the Property or by the court in which eminent domain proceedings concerning the Acquisition Parcels herein authorized are commenced or which may otherwise be required by law for the maintenance of the proceeding in eminent domain. The deposit is conditioned on the availability of funds under the Real Property Purchase and Sale and Cost Payment Agreement dated December 4, 2020 between SJ CityView LLC and the City of San José.
- (e) Adopt a resolution determining that the public interest and necessity require the acquisition through condemnation of Parcel D (consisting of 1,312 square feet owned by the heirs and devisees of Francois Baptiste Christian, deceased), with the Parcel referred to as a “Property”) for the Park Avenue Reconfiguration Project in conformance with Cal.

Code Civ. Proc. Section 1245.220, et. seq., and making the following findings and determinations to declare that:

- (1) The City is authorized to acquire the Property and exercise the power of eminent domain to and in accordance with Article 1, Section 19 of the California Constitution, the California Eminent Domain Law (Code of Civil Procedure Sections 1230.010 *et seq.*), Section 200 of the City of San José Charter, and Government Code Sections 37350, 37350.5, 37351, 37353 and 40404;
- (2) The public interest and necessity require the project, described below, which is in the Park Avenue public right-of-way, at the corner of Almaden Boulevard and Park Avenue as described in Exhibit “A” to Parcel D’s proposed resolution of necessity, to be posted separately and by reference made a part hereof, for the Park Avenue Reconfiguration Project;
- (3) The Property to be acquired for the proposed Park Avenue Reconfiguration Project is planned or located in the manner which will be most compatible with the greatest public good and the least private injury;
- (4) The acquisition of Property, as described in Exhibit “A” to Parcel D’s proposed resolution of necessity, to be posted separately, is necessary for the public uses proposed in the Park Avenue Reconfiguration Project;
- (5) The offer required by Section 7267.2 of the Government Code, together with the accompanying statement of the amount established as just compensation, for the acquisition of the Property, has not been made by the City to the owner of record, the heirs and devisees of Francois Baptiste Christian, deceased, because the heirs or devisees of the deceased owner cannot be identified with reasonable diligence;
- (6) The City has complied with all conditions and statutory requirements that are necessary for approval and adoption of the Park Avenue Reconfiguration Project, including those prescribed by the California Environmental Quality Act (“CEQA”, Pub. Res. Code § 21000, *et seq.*). On September 3, 2019, the City prepared a Determination of Consistency of the Park Avenue Reconfiguration Project to the Downtown Strategy 2040 Final Environmental Impact Report certified by the City on December 18, 2018 (State Clearinghouse No. 2003042127). The City has also determined that the Park Avenue Reconfiguration Project is exempt from environmental review under the provisions of Section 15301(c) of the State Guidelines for Implementation of CEQA as an existing public facility;
- (7) All conditions and statutory requirements necessary to exercise the power of eminent domain to acquire the Property have been complied with by the City;
- (8) Authorizing the City Attorney, or their designee, to institute, maintain, and prosecute to final judgment, in the name of the City of San José, proceedings in eminent domain in the Superior Court of the State of California, County of Santa Clara, for the condemnation of the Property herein described, and to take all steps necessary, including applying for an Order for Possession before Judgment, for said condemnation in the name of the City and correcting any errors or to making or agreeing to non-material changes in the description of the Property interests to

be acquired that are deemed necessary for the conduct of the condemnation action; and

- (9) Authorizing the City Attorney, or their designee, to make a deposit in the State Treasury Condemnation Fund from lawfully available funds of the City, in the amount determined by the summary appraisals of the Property or by the court in which eminent domain proceedings concerning the Acquisition Parcels herein authorized are commenced or which may otherwise be required by law for the maintenance of the proceeding in eminent domain. The deposit is conditioned on the availability of funds under the Real Property Purchase and Sale and Cost Payment Agreement dated December 4, 2020 between SJ CityView LLC and the City of San José.

(f) Adopt a Resolution:

- (1) Approving the report of the Director of Public Works setting forth the facts justifying the conditional summary vacation of the 14,348 square feet portion of Park Avenue between Almaden Boulevard and Market Street (“Subject Property”);
- (2) Conditionally vacating the Subject Property, which after the satisfaction of the condition, will be superseded by relocation; and
- (3) After the satisfaction of the condition, directing the City Clerk to record a certified copy of the resolution of vacation with the Office of the Recorder, County of Santa Clara.

- (g) Accept the funds of \$310,000 from a Real Property and Sale and Cost Payment Agreement to reimburse the City for any City-incurred costs, fees, and expenses associated with the pursuit and/or completion of the purchase or condemnation action related to the Acquisition Parcels to support the construction of the Park Avenue Reconfiguration Project and CityView Development Project.

(h) Adopt the following 2020-2021 Appropriation Ordinance and Funding Sources Resolution amendments in the General Fund:

- (1) Increase the estimate for Other Revenue by \$310,000; and
- (2) Increase the Office of Economic Development’s Non-Personal/Equipment appropriation in the amount of \$310,000.

## **OUTCOME**

Approval of the resolutions of necessity will allow City to file complaints in Santa Clara County Superior Court to acquire, through eminent domain, the Acquisition Parcels consisting of four parcels comprising ±6,224 square feet portion of real property located in the Park Avenue public right-of-way, between Almaden Boulevard and Market Street for the Park Avenue Reconfiguration Project. Authorizing the City Attorney to file the condemnation action, including petitioning for early possession, and to transfer funds to the State Treasury

Condemnation Fund, which are to be reimbursed by the developer pursuant to the Real Property Purchase and Sale and Cost Payment Agreement dated December 4, 2020 between SJ CityView LLC and the City of San José (“Reimbursement Agreement”), will allow the City to begin the legal process of condemnation and to take early possession of the parcels so that construction activities can begin prior to the City acquiring a fee interest at the conclusion of the proceedings. The condemnation of these parcels will allow the City to reconfigure the north side of Park Avenue into a pedestrian friendly throughfare with greater separation between pedestrians, cyclists, cars, and the planned commercial buildings while supporting the construction of a mixed-use project, known as the CityView Plaza project, consisting of approximately 3.8 million square feet of office space and associated retail and ancillary uses on an 8.1-acre site located in the northeast corner of South Almaden Boulevard and Park Avenue. CityView Plaza’s approved land use plan is conditioned on implementing that section of Park Avenue fronting the development in accordance with the Park Avenue Reconfiguration Project. Upon recordation of the resolution of vacation, the Subject Property will be abandoned as a public street. If the abutting property owner acquires fee title from the City, it will be able to develop the vacated area consistent with their future development plans and in conformance with the Park Avenue Reconfiguration Project.

## **EXECUTIVE SUMMARY**

On September 3, 2019, the City approved a Determination of Consistency with the Downtown Strategy 2040 Final Environmental Impact Report (SCH # 2003042127) and Statement of Exemption for the realignment of Park Avenue (“Park Avenue Reconfiguration Project”) project to reconfigure the Park Avenue right-of-way between the Guadalupe River and South Market Street to reduce the area for vehicular circulation, maximize the area for pedestrians, and integrate the street with adjacent open space on private property.

On June 16, 2020, the San José City Council approved the CityView Plaza Project under Site Development Permit No. H19-016 (“CityView Development”), which allows for construction of an office development totaling approximately 3.8 million square feet of office and commercial space on an approximately 8.1 gross-acre site by SJ CityView LLC (“Developer”). The Developer included an approximate 14,348 square foot portion of real property located at Park Avenue (“Subject Property”) as part of its approved project plans, included as Attachment B. All parcels in the Subject Property are part of the Park Avenue right-of-way that is a part of the Park Avenue Reconfiguration Project.

The Developer currently does not own the Subject Property and desires to receive conveyance of the Subject Property for the CityView Development project to align with the Park Avenue Reconfiguration Project. A title report issued for the Subject Property shows that it is owned by the City of San José and four other parties that are deceased. The City of San José is the fee owner of a portion of the Subject Property containing approximately 8,124 square feet of real property (“City-Owned Parcels”) and the other four deceased parties are owners of the remaining



approximate 6,224 square feet of real property (“Acquisition Parcels”). The Developer has also submitted an application to vacate the Subject Property.

In order to accomplish the land use plan as approved under H19-016, the Developer must acquire the Subject Property. For this to be achieved the City must acquire by condemnation the fee interest in the four privately-owned parcels (the “Acquisition Parcels”) located within Park Avenue and subsequently convey its fee interests in those parcels along with its fee interests in the City-Owned Parcels to the Developer. Obtaining an order for pre-judgment possession will allow for construction to begin prior to the transfer of fee interest which will come at the conclusion of the condemnation proceedings. Resolutions of Necessity for the Acquisition Parcels must be adopted for the City to acquire the parcels through eminent domain. In addition, the City must vacate the public easement over the City and third party-owned parcels which reside within Park Avenue.

To accomplish this acquisition through condemnation, the City and the Developer have entered into a Reimbursement Agreement whereby the Developer shall reimburse the City for its costs and expenses incurred in acquiring the Subject Property including retaining outside counsel as well as acquisition costs. As of the date of this Memo and pursuant to the Reimbursement Agreement, the City has retained outside counsel to assist in the pre-litigation activities which include performing due-diligence to determine if any rightful heirs to the Acquisition Parcels in the Subject Property exist, commissioning appraisals of the Acquisition Parcels, initiating negotiations with the heirs of the two parcels where heirs have been found, and preparing the documents and court filings necessary to begin the condemnation proceedings. It is anticipated that outside counsel will work with and/or represent the City in the condemnation proceedings, should Council approve staff recommendations.

## **BACKGROUND**

### **Park Avenue Reconfiguration Project**

In 2016, the City of San José was selected to be part of the Cities + initiative, which partnered municipalities with top architecture and design firms to address and reimagine social and environmental opportunities in their communities. This opportunity, presented to the City through its close relationship with the Knight Foundation, intended to support visionary thinking, world-class design and actionable next steps to help reimagine and redevelop up to three key civic assets. The Cities + inaugural project brought together key Downtown stakeholders to explore and achieve the potential of San Jose’s central walking and commercial corridor running from San Jose State University via the Paseo de San Antonio and Park Avenue to the Guadalupe River Park Trail.

A number of major developments and financial opportunities made the Paseo/Park Avenue Corridor ripe for re-imagination and redevelopment. These included: support inside City Hall from elected officials and executive staff, transition of program management and

implementation of the Hammer Theater to San Jose State University, newly planned developments in the vicinity of the corridor, engaged leadership at anchor institutions in the area (e.g. Adobe, SJ Museum of Art, the Tech Interactive, Team San Jose) and planning for a robust Diridon Intermodal Station. A clear, compelling and community-supported vision and conceptual plan for this corridor would enable alignment and attraction of resources—including city, private, and philanthropic. The conceptual plan generated through input from a series of community and one-on-one meetings in 2016, referred to as the Park Paseo vision, evolved to a schematic design in 2018 and then design guidelines for the portion of the corridor between Plaza de Cesar Chavez and Woz Way by 2019. The Park Paseo design guidelines were then incorporated into development plans for the approximately 5.5M square feet of commercial office space being proposed along the corridor

On September 3, 2019, the City approved a Determination of Consistency with the Downtown Strategy 2040 Final Environmental Impact Report (SCH # 2003042127) and Statement of Exemption for the realignment of Park Avenue (“Park Avenue Reconfiguration Project”). The Park Avenue Reconfiguration Project will expand Park Avenue’s median, reduce its vehicular lanes, and provide additional open space. Specific to the properties discussed in this Memorandum, the street alignment along Park Avenue from Almaden Boulevard to Market Street will shift south, the median island will be removed, and the curb line to curb line width will be reduced from 94 feet to 34 feet in order to maximize the area for pedestrians. The City’s approved Park Avenue Reconfiguration Project will reduce the area for vehicular circulation, maximize the area for pedestrian and bike circulation, create more open space and landscaped areas with more trees and public plazas and seating, and regrade the street to achieve a flush curb with new paving and plantings to better integrate the street with the adjacent open space on the approved CityView Plaza development. A diagram of the project plan is included as Attachment A. The Park Avenue Reconfiguration Project includes the following elements:

- Reduced Vehicle Travel Area and Increased Bicycle and Pedestrian Areas. The Park Avenue Reconfiguration Project includes expansion of the median island and lane reduction (one in each direction) between Guadalupe River to Almaden Boulevard to provide for public open space. Between Almaden Boulevard and Market Street, the median island will be removed in order to reduce the curb to curb width (travel lanes remains at two lanes, one in each direction) within a new shared use zone to accommodate bicycles and cars in the same lanes, and a new turn lane on Park Avenue at Almaden Boulevard will allow for traffic light sequencing at this intersection to remain the same as current conditions. The alignment of the travel lanes/shared-use zone will shift northward midblock and enter the intersection at Market Street at the location of the current eastbound travel lanes. In addition, the project will include raised table-top intersections at Park Avenue/Market Street and Park Avenue/Almaden Boulevard. The shift in alignment and installation of table-top intersections will reduce traffic speeds and create improved pedestrian areas along Park Avenue. Wide pedestrian crossings at the shared-use zone will be identified with tactile paving and crosswalk markings. The area for both pedestrian and bike circulation will be maximized.

- Utility Relocation and Upgrade: The Park Avenue Reconfiguration Project requires the relocation and/or consolidation of existing wet and dry utility systems within the public right-of-way. In addition, storm water in ground flow-through planters will be added to the public right-of-way.
- Flush Curb: Existing paving and sub-base will be removed, and the street regraded to achieve a flush curb with new paving, and planting.
- Public Amenities: New amenities along Park Avenue will include trees and planting areas, lighting, seating areas, shade canopies, street rooms, paving areas for movable tables and chairs, paving areas for special events, plazas to create public realms, median park with new amenities to be determined, and potential areas for art/tech installations. In addition, new decorative pavers and/or colored concrete will be used for the vehicle travel lanes and sidewalk to define the space. There will be a seamless public and private domain with the open space area along the CityView Plaza's frontage.
- Green Infrastructure: The newly reconfigured Park Avenue will include new biotreatment areas within the public right-of-way to treat stormwater runoff.

#### **CityView Plaza Development (File No. H19-016)**

On June 16, 2020, the San José City Council adopted a resolution certifying the CityView Supplemental Environmental Impact report and approving the CityView Plaza Project under Site Development Permit No. H19-016 ("CityView Development") which allows for the demolition of the approximately 960,567 square-foot CityView Plaza and construction of an office development totaling approximately 3.8 million square feet of office and commercial space above a five level, subterranean parking garage on an approximately 8.1 gross-acre site by SJ CityView LLC ("Developer"). The subterranean parking garage, serving the development, is partially located beneath the Property, described below, which is planned to be conveyed to the Developer. The Developer's project site is located at the northeast corner of South Almaden Boulevard and Park Avenue (150 South Almaden Boulevard, San Jose).

The CityView Development project is expected to create 2,600 full-time construction jobs a year during development over the next half-decade and approximately 20,000 jobs at the campus once it is completed, strengthening downtown San Jose as a regional job center. This project will raise nearly \$9.1 million in tax revenue for the City per year and \$16 million for the San Jose Unified School District.

The Developer included an approximately 14,348 square foot portion of real property ("Subject Property") (included as Attachment B) located in the Park Avenue right-of-way as part of its approved project plans. The Subject Property located on Park Avenue, between Market Street and Almaden Boulevard, has been an operating public right-of-way since at least 1886.

The Site Development Permit's conditions of approval require the Developer to improve its property's frontage on Park Avenue consistent with the Park Avenue Reconfiguration Plan. The Developer does not own the Subject Property and desires to receive conveyance of the Subject Property to meet these requirements. A title report was issued for the Subject Property, determining that it is owned by the City of San José and four other parties that are deceased.

### **Property Ownership and Manner of Acquisition**

The preliminary title report issued by First American Title Insurance Company, dated September 24, 2020 ("Title Report"), shows that the Subject Parcels are owned by five parties: (1) the heirs or devisees of James Smith, deceased 1908, subject to the administration of the decedent's estate; (2) the heirs or devisees of Jose M. Villar, deceased 1905, subject to the administration of the decedent's estate; (3) the heirs or devisees of Carmen I. De Quevada, deceased 1881, subject to the administration of the decedent's estate and; (4) the heirs or devisees of Francois Baptiste Christian, deceased 1894, subject to the administration of the decedent's estate, and as their interest appears of record; and the City of San José.

The City of San José is the fee owner of a portion of the Subject Property containing approximately 8,124 square feet of real property ("City-Owned Parcels") and an additional 2 square feet that will remain as part of the public street, totaling 8,126 square feet (included as Attachment C). The other four parties are owners of the remaining approximate 6,224 square feet of real property ("Acquisition Parcels") (included as Parcel A, B, C, and D in Attachment D). The four owners of the Acquisition Parcels have been deceased for over a hundred years.

First American Title Insurance Company advised that the City would need to acquire the Property by condemnation for it to insure title to the Property against any future claims of any unknown heirs or devisees of the deceased owners. Acquisition through condemnation also assures that the descendants of the deceased owners are justly compensated for their interests in the property taken. The City of San José, a public entity, may exercise the power of eminent domain, but only if it has adopted a Resolution of Necessity ("RON") that meets the requirements of Code of Civil Procedure sections 1245.210, et seq.

In order to accomplish the land use plan as approved under H19-016, the Developer must acquire the Subject Property. For this to be achieved, the City must acquire by condemnation the fee interest in the four privately-owned parcels (the Acquisition Parcels) located within Park Avenue and subsequently convey its fee interests in those parcels along with its fee interests in the City-Owned Parcels to the Developer to be improved (included as Attachment E is a map of the four parcels overlaid on the CityView Plaza's Site Plan Map GO.81 and as Attachment F is a rendering showing the CityView Plaza Development and reconfigured Park Avenue, GO.14 from the approved entitlement packet).

## **ANALYSIS**

The land use plan approved by the City under Permit No. H19-016 for the CityView Development project is conditioned on the Developer implementing the Park Avenue Reconfiguration Project between Market Street and South Almaden Boulevard. For this to be accomplished, the City Council should adopt the Resolutions of Necessity to authorize the condemnation of the Acquisition Parcels to allow for the development outlined above along the northside of Park Avenue, which will align with the Park Avenue Reconfiguration Project. The City must own the Acquisition Parcels in fee for the City to vacate and convey the Acquisition Parcels to the Developer for their improvement consistent with the project. No further development of the Acquisition Parcels is possible unless, and until, the fee ownership of the Acquisition Parcels is transferred to an active owner. Any rightful heirs, which the City can identify and locate with reasonable diligence, will be compensated for the fair market value of the parcels they own that are acquired by the City through voluntary purchase or condemnation.

The owners of the Acquisition Parcels, which are burdened by Park Avenue, an operating public right-of-way, are deceased. For each of the deceased owners identified in the Title Report, a diligent search of public records was done to identify and locate any potential living heirs of the deceased owners. A public historian assisted in the research. Living heirs were discovered for Carmen I. De Queveda, the owner of Parcel C, and Jose M. Villar, the owner of Parcel B. Offers to purchase their parcels have been extended. Despite diligent efforts made, no surviving heirs have been identified or located for James Smith, the owner of Parcel A, and Francois Baptiste Christian, the owner of Parcel D. A report on the search for descendants and any living heirs or devisees to the deceased owners is included as Attachment G.

Staff is in support of the condemnation of the Acquisition Parcels and the ultimate proposed conveyance of the Subject Property to Developer as this supports the City's objective in replacing aging infrastructure and realigning, improving and beautifying Park Avenue through improvements made by Developer consistent with the City's Park Avenue Reconfiguration Project. These improvements will provide a pedestrian-focused avenue with open space, trees and landscaped areas for the use and enjoyment of the public including the other public benefits described above. The Acquisition Parcels are also not independently developable, and their condemnation and proposed conveyance to Developer to improve Park Avenue in accordance with the approved land use plan for the CityView Development will serve and benefit the public interest.

## **Proposed Resolutions of Necessity (RON)**

The Acquisition Parcels are located on Park Avenue, a public right-of-way since at least 1886. The research for living descendants and heirs of the deceased owners was comprehensive and diligent but due to the lack of probate records, the title company will not insure title based on the research to date. Thus, condemnation is required to provide free and clear title of the Acquisition Parcels to the City. The descendants of deceased owners of Parcel C and Parcel B, Carmen I. De Queveda and Jose M. Villar, have been advised that if they are agreeable to the City's acquisition

of their property at the value stated in the City's Summary Appraisal, the acquisition of the property will have to proceed by way of condemnation and a stipulated judgment whereby the parties agree to the City's condemnation of the property upon payment to the owners of just compensation. This is sometimes referred to as a *friendly condemnation*. The reason the City still must proceed with condemnation, despite the potential agreement between all parties, is because only through condemnation can the fee title of these properties be acquired free and clear of any potential, future liens and claims by any living heirs or devisees of the last owners of record which are presently unknown despite diligent efforts to discover.

If the Council adopts the proposed RONs, the City can proceed to file in the Superior Court, County of Santa Clara ("Superior Court"), the Complaints in Eminent Domain against the four owners of the Acquisition Parcels. The City will seek from the Superior Court default judgments against the deceased owners of Parcel A and Parcel D, James Smith and Francois Baptiste Christian, as they have no living heirs/descendants that the research could discover. As for the descendants of Carmen I. De Quevada (owner of Parcel C) and Jose M. Villar (owner of Parcel B), the acquisitions of their property will likely proceed by way of Stipulated Judgment in Condemnation, as stated above, assuming the parties reach agreement on the just compensation due for the acquisition of the property interests. Once the judgments are obtained and payments are made to the living descendants (pending future Council action to acquire the properties), the City can then obtain the Final Orders of Condemnation from the Superior Court to record in the office of the County Recorder. The City will likely desire to have possession of the parcels prior to the ultimate court order, or agreement, to transfer fee interest and, as such, staff is seeking authorization to apply for an Order for Possession before Judgment, which will require the deposit of money equal to the statutory summary appraisal amount for each of the parcels, or as otherwise ordered by the Court, as a condition of granting the Order for Possession. This deposit amount is subject to the Reimbursement Agreement, and any payment authorized pursuant to this Memorandum shall be conditioned upon having at least the deposit amount prefunded into the reimbursement account.

**A. Required Findings for a Resolution of Necessity (RON)**

The mandatory contents of a RON are set forth in Code of Civil Procedure section 1245.230. The RON must contain a general statement of the public use for which the property is to be taken, a reference to the statute authorizing the exercise of eminent domain, a description of the property to be acquired, and a declaration stating that each of the following have been found and determined by the Council to be the case and supported by the evidence presented below:

1. The City is authorized to acquire the Property and exercise the power of eminent domain to and in accordance with Article 1, Section 19 of the California Constitution, the California Eminent Domain Law (Code of Civil Procedure Sections 1230.010 *et seq.*), Section 200 of the City of San José Charter, and Government Code Sections 37350, 37350.5, 37351, 37353 and 40404; and

2. The public interest and necessity require the proposed project (see C. 2 below); and
3. The proposed project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury; (see C.3 below); and
4. The acquisition of the Property is necessary for the public uses proposed in the CityView Plaza Development as it aligns with the Park Avenue Reconfiguration Project; and
5. The property described in the resolutions is necessary for the proposed project; (see C.4 below); and
6. The offer required by Section 7267.2 of the Government Code, together with the accompanying statement of the amount established as just compensation for the acquisition of the Property, has not been made by the City to the owners of record for two parcels: the heirs and devisees of James Smith (Parcel A), deceased, and the heirs of Francois Baptiste Christian, (Parcel D) because the heirs or devisees of the deceased owners cannot be identified with reasonable diligence (see C. 5 below); and
7. That the offers of just compensation required by Section 7267.2 of the Government Code has been made to the located heirs of Carmen I. De Quevada (Parcel C) and Jose M. Villar (Parcel B), (see C. 5 below); and
8. City has complied with all conditions and statutory requirements that are necessary for approval and adoption of the Park Avenue Reconfiguration Project, including those prescribed by the California Environmental Quality Act (“CEQA”, Pub. Res. Code § 21000, et seq.). On September 3, 2019, the City prepared a Determination of Consistency of the Park Avenue Reconfiguration Project to the Downtown Strategy 2040 Final Environmental Impact Report certified by the City on December 18, 2018 (State Clearinghouse No. 2003042127). The City has also determined that the Park Avenue Reconfiguration Project is exempt from environmental review under the provisions of Section 15301(c) of the State Guidelines for Implementation of CEQA as an existing public facility; and
9. All conditions and statutory requirements necessary to exercise the power of eminent domain to acquire the Property have been complied with by the City.

**B. Conduct of Hearing for Adoption of the Resolutions of Necessity (RON)**

If the Council decides to acquire the Acquisition Parcels for the Park Avenue Reconfiguration Project, it will need to do so by eminent domain. As stated above, despite a diligent search effort, no living heirs or descendants for two of the deceased owners, James Smith (owner of Parcel A) and Francois Baptiste Christian (owner of Parcel D), were discovered. For the two other deceased owners, Carmen I. De Queveda (owner of Parcel C) and Jose M. Villar (owner of Parcel B), living heirs have been identified and contacted with an offer to purchase their property interests through a friendly condemnation proceeding. To obtain title to these parcels free and clear of all other unknown property interests, liens and encumbrances, a condemnation is necessary.

The four RONs must be adopted by no less than a two-thirds vote of the entire governing body. The law provides further that the RONs may only be adopted after the governing body has given each party with an interest in the affected property a reasonable opportunity to appear and be heard and lodge any objections. This notice requirement however only applies "...if the name and address of the person appears on the last equalized county assessment roll." (Code of Civ. Proc. §1245.350(b).) The notice requirement does not apply here, given that no such names and addresses appear on the County's assessment roll because all the owners are deceased. However, notice was given to those known, living heirs/devisees of Carmen I. De Queveda (owner of Parcel C) and Jose M. Villar (owner of Parcel B) for which names and addresses were discovered and staff provided the opportunity for the heirs to be heard at the hearing if any so request.

If the Council determines that all requirements have been met, and that all findings can be made, staff recommend that the Council adopt the four proposed RONs for the Acquisition Parcels, which will be posted separately. The City Council has full discretion on whether or not to adopt the recommended RONs.

The Proposed Project is the Park Avenue Reconfiguration Project as described above.

**C. Support for Findings and Determinations Required in Adopting the Resolutions of Necessity.**

**1. General Statement of Public Use and Condemnation Authority**

The four parcels (the Acquisition Parcels) burdened by Park Avenue, a public right-of-way, are to be acquired for the implementation of the City's Park Avenue Reconfiguration Project.

California Code of Civil Procedure section 1240.010, et seq., gives entities authorized by statute the right to use eminent domain to acquire property for public use. The City's general eminent domain authority is found in Government Code section 37350.5: "A City may acquire by eminent domain any property necessary to carry out its powers or functions." The City is specifically authorized to acquire property for laying out and improving streets under Government Code section 37353. Additional authority for exercising the power of eminent



domain is found in Government Code sections 37350, 37351, 37353 and 40404, as well as section 200 of the City of San José's Charter.

## **2. Public Interest and Necessity**

Code of Civil Procedure sections 1245.230 and 1240.030 require that the Council find and declare that the public interest and necessity require the Proposed Project. As explained in the Legislative Committee Comments to Section 1240.030, "public interest and necessity include all aspects of the public good including but not limited to social, economic, environmental and aesthetic considerations." The finding can be made by the Council that the public interest and necessity require the Park Avenue Reconfiguration Project. The public benefits from the Project are described above and include the following primary public benefits:

- **New Public Amenities:** New public amenities along Park Avenue including trees and planting areas, lighting, seating areas, shade canopies, street rooms, paving areas for movable tables and chairs, paving areas for special events, plazas to create public realms, median park with new amenities to be determined, and potential areas for art/tech installations. In addition, new decorative pavers and/or colored concrete will be used for the vehicle travel lanes and sidewalk to define the space. There will be a seamless public and private domain with the open space area along the CityView Plaza's frontage.
- **Reduced Vehicle Travel Area and Increased Bicycle and Pedestrian Areas.** The existing median on Park Avenue between Almaden Boulevard and Market Street will be removed and the width of the vehicle travel lanes will be reduced within a new shared use zone to accommodate bicycles and cars in the same lanes. The project will include raised table-top intersections at Park Avenue/Market Street and Park Avenue/Almaden Boulevard. The shift in alignment and installation of table-top intersections will reduce traffic speeds and create improved pedestrian areas along Park Avenue. Wide pedestrian crossings at the shared-use zone will be identified with tactile paving and crosswalk markings. The area for both pedestrian and bike circulation will be maximized and the existing paving and sub-base will be removed, and the street regraded to achieve a flush curb with new paving, and planting.
- **Utility Relocation and Upgrade:** The existing wet and dry utility systems within the public right-of-way will be relocated and/or consolidation. Storm water in ground flow-through planters will be added to the public right-of-way.

## **3. Planning and Location of the Project**

The second element of public necessity required by Code of Civil Procedure section 1240.030 is that "the proposed project is planned or located in the manner that will be most compatible with the greatest public good and least private injury." (Code of Civ. Proc. §§1245.230(c) and 1240.030.) Most often, this element involves a comparison of different geographical locations for a project. Given the properties are within the boundaries of Park Avenue, an operating public

right-of-way, and have been so for over a hundred years, and the Proposed Project is the reconfiguration of this very section of Park Avenue, there are no alternate locations for the Proposed Project. Moreover, the reconfiguration of Park Avenue encompasses more than the scope of this particular section and this specific section is integral to the greater reconfiguration as a whole with staff having analyzed the most efficient manners of reconfiguration accounting for pedestrians, cyclists, ingress and egress of surrounding buildings, density of potential nearby development, traffic flow patterns, and existing obligations and needs, among other such criteria.

#### **4. Necessity for Acquiring the Property Interests**

The third element of public necessity which must be established for the resolutions is whether the property sought to be acquired is necessary for the Proposed Project. (Code of Civ. Proc. §§1245.230(c) and 1240.030.) The accompanying Legislative Committee Comments state that evidence on this aspect of necessity is limited to evidence showing whether the particular property will be suitable and desirable for the construction and use of the proposed public project. The City must have title to the fee of the Acquisition Parcels, free and clear of all other interest, liens and encumbrances, to achieve the City's planned CityView Development Project and improvements along the northside of Park Avenue, needed to complete this portion of the Park Avenue Reconfiguration Project. Fee interest is necessary as the parcels cannot otherwise be vacated, transferred, and developed given the clouded title and lost heirs.

#### **5. Compliance with Government Code Section 7267.2**

The City has complied with its obligations under Government Code section 7267.2 to make an offer of compensation to purchase the property if with reasonable diligence the owner can be located. According to the title report issued by First American Title Insurance Company, the four owners of record are deceased. A reasonably diligent search was conducted to find any living heirs of these owners. As more fully explained in Attachment G, based on this research, only two of the four owners, Carmen I. De Queveda and Jose M. Villar, have living heirs/descendants who would be considered owners of the property. The City made offers to purchase these two parcels as required by Gov. Code section 7267.2; and the offers were in an amount not less than the approved appraisals for each parcel along with a summary appraisal statement, the basis of the offer, prepared by the appraisal firm Valbridge Property Advisors.

The descendants of Carmen I. De Queveda, Adelen Quevedo and Alfonso Quevedo, have verbally agreed to the City's offer to acquire their property interest. As explained above, the City must still file the condemnation action to obtain free and clear title to the property. The City will proceed by way of Stipulated Judgment in Condemnation to acquire the Quevedo's property interest and provide payment of just compensation based on the Summary Appraisal value, or a higher amount, depending on how negotiations proceed. Based on preliminary discussions with the primary descendants of Jose M. Villar, it is expected that the City will also proceed by way of Stipulated Judgment in Condemnation to acquire the Villar descendants' property interest and provide payment of just compensation.

No agreement has yet been reached between any of the parties and the City. Negotiations shall be ongoing for the purchase of these properties.

## **6. CEQA Review and Compliance**

The City has complied with all requirements of the California Environmental Quality Act (“CEQA”, Pub. Res. Code §21000, et seq.) for the Park Avenue Reconfiguration Project. On September 3, 2019, the City approved a Determination of Consistency of the Park Avenue Reconfiguration Project to the Downtown Strategy 2040 Final Environmental Impact Report certified by the City on December 18, 2018 (State Clearinghouse No. 2003042127), based on its determination that this Project is within the scope of the earlier approved Downtown Strategy FEIR which adequately describes its activity for purposes of CEQA. The City also approved a Statement of Exemption for the realignment of Park Avenue (“Park Avenue Reconfiguration Project”) finding that the Project is exempt from environmental review under the provisions of Section 15301(c) of the State Guidelines for Implementation of CEQA as an existing public facility.

### **Conditional Summary Vacation**

Per Sections 8330(a) of the California Streets and Highway Code, the City may summarily vacate a street or highway that has been superseded by relocation if there are no in-use public facilities located within the vacated area that would be affected by the vacation. With the implementation of the Park Avenue Reconfiguration Project, staff has determined that the Subject Portion will be superseded by relocation. As part of the conditions of approval for H19-016, the Developer is required to construct frontage improvements in accordance with the Park Avenue Reconfiguration Project.

City staff have been meeting with the Developer to discuss the CityView Development project construction schedule. In consideration of the development timelines, staff is recommending that Council condition the proposed vacation on the Developer’s execution of a City-Private Developer Construction Agreement that guarantees the completion of the public improvements and realignment of Park Avenue along the Developer’s frontage to the satisfaction of the Director of Public Works.

There are existing, in-use, public sanitary/storm sewers, and other public utilities located within the Subject Property that will require relocation, in part or in whole. All concerned utility companies have been contacted in writing and have no objections to the proposed vacation provided that their respective utilities are relocated within the proposed public right-of-way limits. Because all utilities will be relocated by the Developer, they will not be negatively affected by this vacation.

The vacation of the Subject Property was found to be in conformance with the adopted San José 2040 General Plan during the June 16, 2020, City Council Hearing to approve H19-016 and the City’s September 3, 2019, approval of the Determination of Consistency with the Downtown

Strategy 2040 Final Environmental Impact Report (SCH # 2003042127) and Statement of Exemption for the Park Avenue Reconfiguration Plan.

In compliance with Section 892 of the Streets and Highways Code, staff determined that the Subject Portion is not useful as a nonmotorized transportation facility, as these uses (i.e. bike lanes) will be accommodated within the proposed right-of-way under the Park Avenue Reconfiguration Project.

Mass excavation is anticipated to begin late 2021; however, the work is contingent on the timing of the vacation and the Developer's acquisition of the Subject Property.

## **CONCLUSION**

The City Council approved Site Development Permit (H19-016) on June 16, 2020, to allow for the Developer's construction of approximately 3.8 million square feet of office space and associated retail space, which includes the Subject Property that is located along the north side of Park Avenue between South Almaden Boulevard and Market Street. City staff have been meeting with the Developer to discuss and determine the construction schedule.

Staff recommends that City Council approve the conditional summary vacation of the Subject Property and adopt four Resolutions of Necessity, authorizing the City's acquisition by eminent domain of the four parcels (the Acquisition Parcels), to accomplish the land use plan as approved under H19-016 and complete the Park Avenue Reconfiguration Project between Almaden Boulevard and Market Street.

## **EVALUATION AND FOLLOW-UP**

If Council accepts staff's recommendations as described herein, staff will return to City Council and bring recommendations forward for approval of the acquisition of the Acquisition Parcels through the eminent domain proceeding, either via a stipulated judgment in condemnation if an agreement is reached with the found heirs, and/or through a default judgment to acquire the parcels where living heirs have not been located. If and once acquired, staff will also seek a declaration of the Subject Property as "exempt surplus land" allowing the property to be transferred to the Developer pursuant to the Surplus Land Act at Gov. Code section 54221(f)(1)(B) and the Reimbursement Agreement.

If Council adopts the resolution summarily vacating the Subject Property, no further action by Council will be required for the vacation. After receiving written confirmation from the Director of Public Works and the Office of the City Attorney that the conditions to the vacation have been satisfied, the City Clerk will record the resolution of vacation at which time the vacation will be complete. Prior to the Developer commencing any work in the Subject Property, the Developer will need to acquire the fee interest in the Subject Property from the City pursuant to the terms

and conditions of the Real Property Purchase and Sale and Cost Payment Agreement dated December 4, 2020 by and between Developer and the City.

### **CLIMATE SMART SAN JOSE**

The recommendation in this memo 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 provided that their respective utilities are either retained or relocated within the proposed public right-of-way limits.

In addition, H19-016 was posted on the City's website for the City Council approval of the project on June 16, 2020.

This memorandum will be posted to the City's website for the April 13, 2021 Council agenda.

### **COORDINATION**

This memorandum has been coordinated with the Department of Planning, Building and Code Enforcement, Department of Transportation, Fire Department, and the City Attorney's Office.

### **COMMISSION RECOMMENDATION/INPUT**

No commission recommendation or input is associated with this action.

### **FISCAL/POLICY ALIGNMENT**

Approval of this recommendation to adopt the four Resolutions of Necessity and vacate the Subject Property will allow the City of San José to pursue the purchase and/or condemnation actions related to the Acquisition Parcels to support the construction of a mixed-use project, consisting of approximately 3.8 million square feet of office and associated retail and ancillary uses on the City View Plaza development, which also aligns with the City's Park Avenue Reconfiguration Project. Vacating the Subject Property is in alignment with the Council-approved Budget Strategy Expenditure Control section by eliminating a City maintenance obligation and liability.

**COST SUMMARY/IMPLICATIONS**

The City and the Developer entered into a Real Property Purchase and Sale and Cost Payment Agreement effective December 4, 2020, which allowed the Developer to prefund a reimbursement account with \$310,000 to promptly reimburse City for any City-incurred costs, fees and expenses associated with the pursuit and/or completion of the purchase or condemnation action related to the Acquisition Parcels to support the construction of the Park Avenue Reconfiguration project and CityView Development project. All future costs associated with the acquisition are to be reimbursed by the Developer including litigation expenses, payments to the State Treasury Condemnation Fund, and compensation to sellers or other parties as directed by court order up to the appraised or court-ordered amounts. Council's authorization of payment from this fund is conditioned on the prefunding of the reimbursement account by the Developer of the funds to be expended. As the City has already received the funds and anticipates their full expenditure prior to the end of the fiscal year, actions are included in this memorandum to recognize revenues of \$310,000 in the General Fund and correspondingly increase the Office of Economic Development's Non-Personal/Equipment appropriation.

The Public Works Department collected cost-recovery fees during fiscal year 2020-2021 of \$7,917 to process the subject vacation. These fees were deposited to the Public Works Development Fee Program.

**BUDGET REFERENCE**

The table below identifies the fund and appropriations to fund the contract recommended as part of this memo and remaining project costs, including project delivery, construction, and contingency costs.

Fund #	Appn #	Appn. Name	Total Appn	Rec. Budget Action	Amt. for Contract	2020-2021 Adopted Operating Budget Page	Last Budget Action (Date, Ord. No.)
001	R130	Other Revenue	\$200,910,694	N/A	N/A	III-1	02/09/2021 Reso. No. 79889
001	0182	Non-Personal / Equipment	\$1,130,174	\$310,000	\$310,000	VIII-81	10/20/2020 Ord. No. 30494

March 29, 2021

**Subject: Park Avenue Resolutions of Necessity and Conditional Summary Vacation**

Page 23

**CEQA**

Supplemental Environmental Impact Report to the Downtown Strategy 2040 Final Environmental Impact Report (Resolution No. 79586) for CityView, File No. H19-016; Addendum to the Downtown Strategy 2040 Final Environmental Impact Report for 200 Park Avenue Office Project, File No. H18-045; Determination of Consistency to the Downtown Strategy 2040 Final Environmental Impact Report for the Park Avenue Reconfiguration Project, File No. PP19-071.

/s/

NANCI KLEIN  
Director of Economic  
Development

/s/

MATT CANO  
Director,  
Public Works



JIM SHANNON  
Budget Director

I hereby certify that there will be available for appropriation in the General Fund in the Fiscal Year 2020-2021 moneys in excess of those heretofore appropriated therefrom, said excess being at least \$310,000.



JIM SHANNON  
Budget Director

For questions, please contact Nanci Klein, Director of Economic Development at (408) 535-8181 or Matt Loesch, Assistant Director of Public Works, at (408) 975-7381.

**Attachments:**

Attachment A: Diagram of Park Avenue Reconfiguration Project

Attachment B: Map of Subject Property

Attachment C: Plat Map of City-owned Parcel

Attachment D: Plat Map of Acquisition Parcels

Attachment E: Map of Acquisition Parcels Overlaid on CityView Plaza's Site Plan Map GO.81

Attachment F: Rendering of the CityView Plaza Development and reconfigured Park Ave GO.14

Attachment G: Summary of Research for Living Heirs and Devises of the Deceased Owners of  
Record of the Acquisition Parcels

## Attachment A

### Diagram of Park Avenue Reconfiguration Project

**Note:** Diagram is indicative only. Placement of planting areas, paving, jointing, lighting fixtures, seating elements, and other furnishings to be coordinated by project design teams and developers.



MEDIAN OPEN SPACE			PARK AVENUE		
1 CREEK OVERLOOK	4 EXERCISE GROVE	7 DRIVE AISLE	10 CITY VIEW FRONTAGE	13 TECH MUSEUM FRONTAGE	16 SEATING NOOKS
2 PICNIC GROVE	5 EVENT LAWN	8 RAISED INTERSECTION	11 200 PARK FRONTAGE	14 VEHICLE DROPOFFS	
3 KIOSKS	6 CAFE SEATING GROVE	9 CROSSWALK	12 MUSEUM PLACE FRONTAGE	15 KIOSKS	



**Attachment B**  
Map of "Subject Property"

# LOCATION MAP

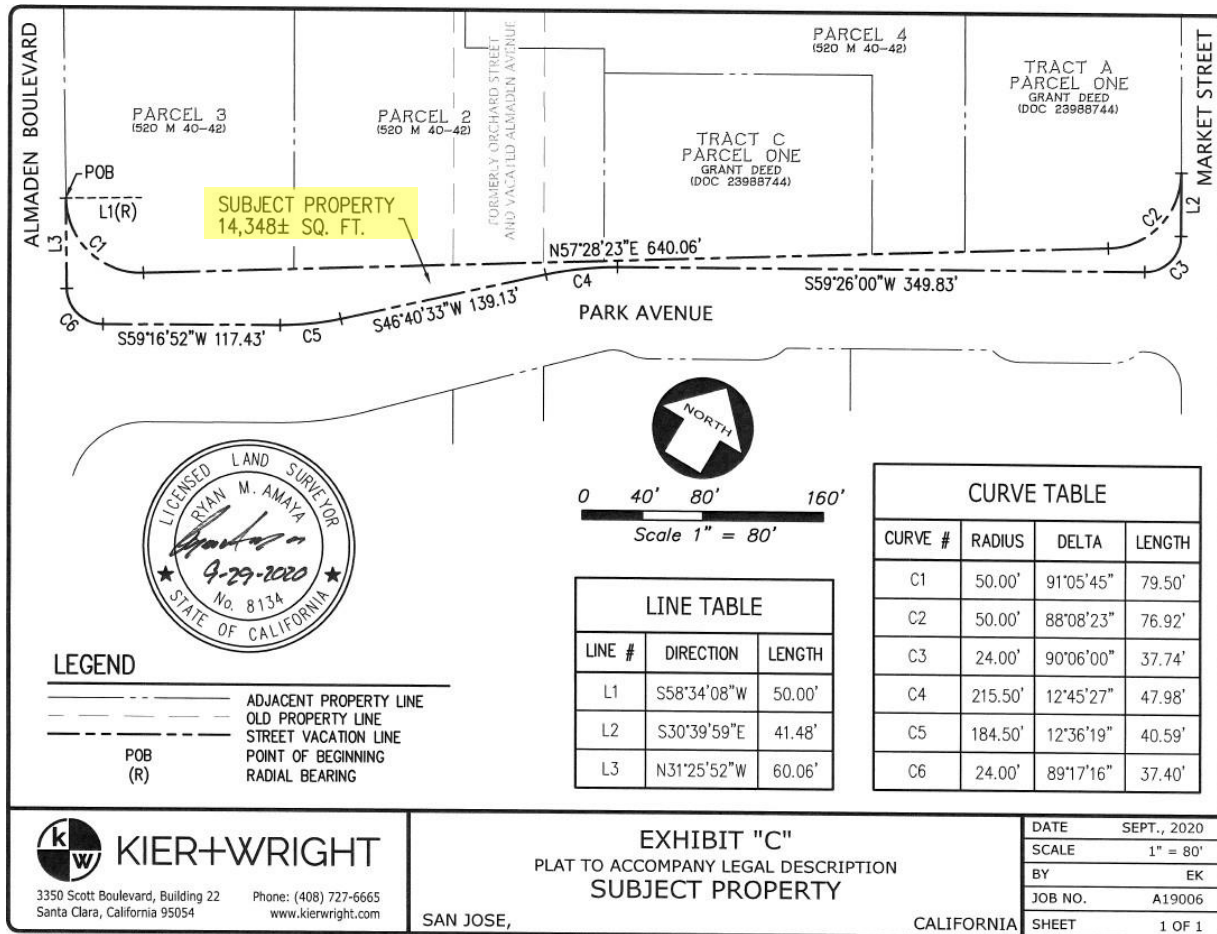
SHOWING THE SUMMARY VACATION OF A PORTION OF PARK AVENUE ALONG THE  
CITYVIEW PARK AVENUE FRONTAGE BETWEEN SOUTH ALMADEN BOULEVARD AND  
MARKET STREET



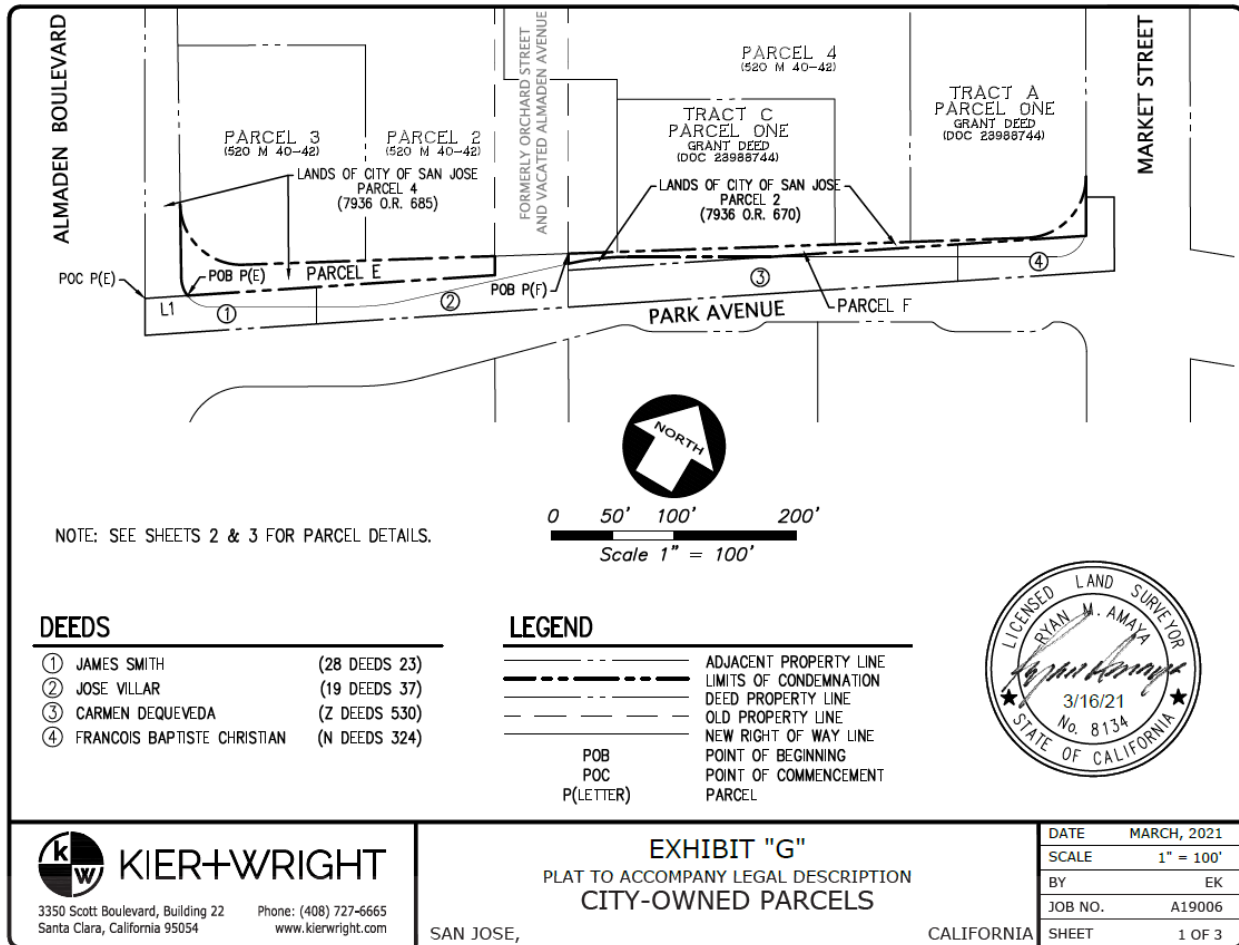
AREA TO BE VACATED



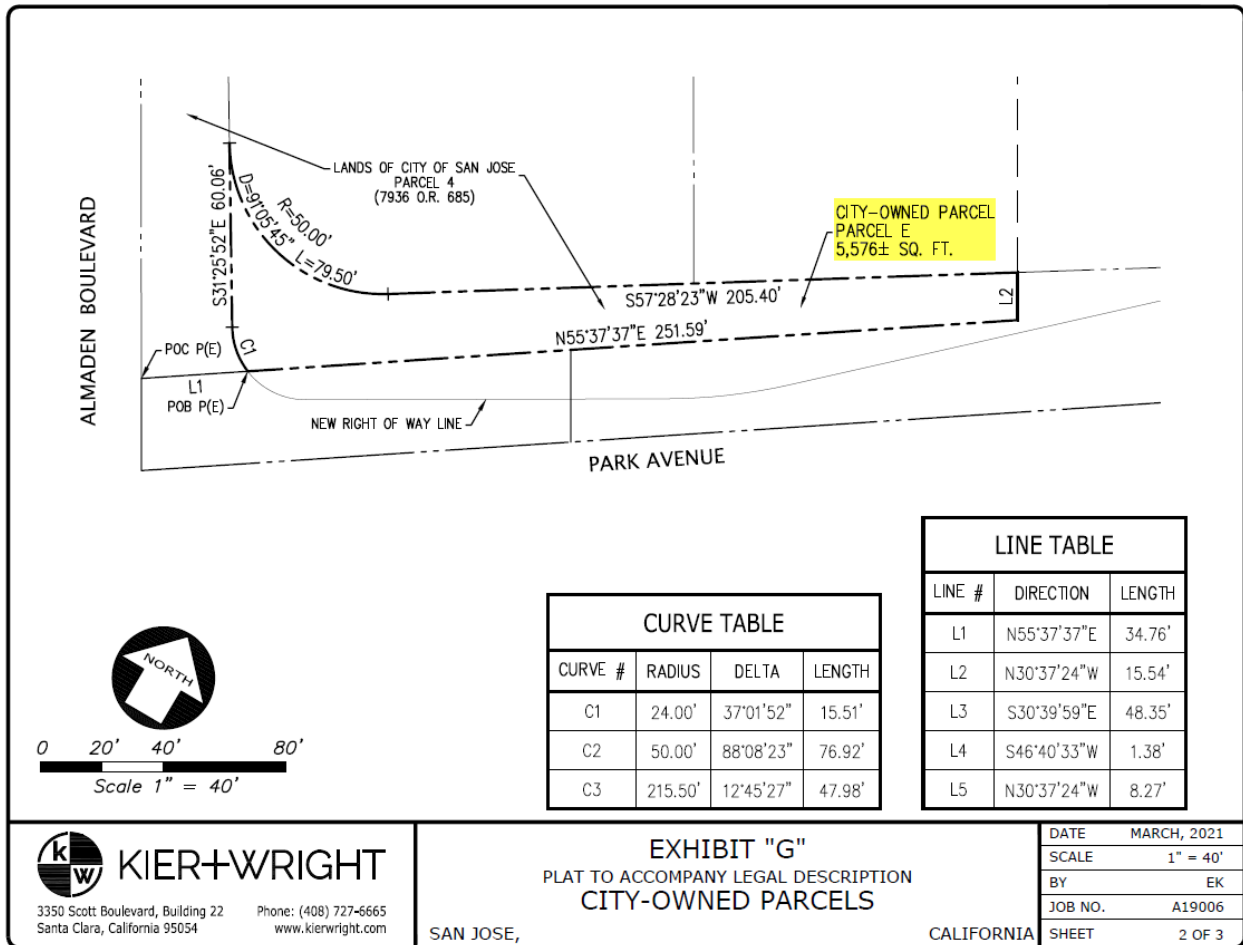
**Attachment B (continued)**  
**Map of "Subject Property"**



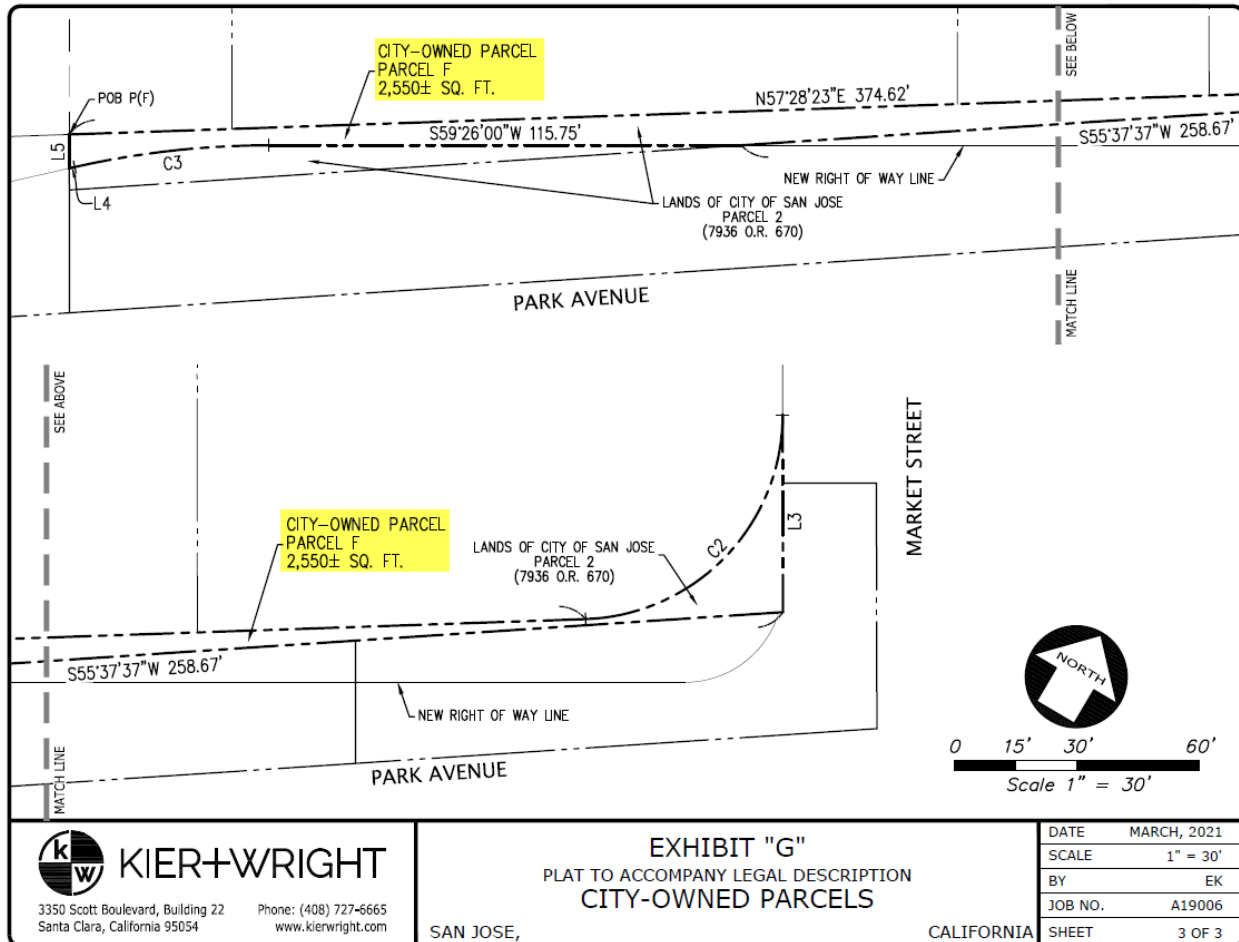
# **Attachment C** **Plat Map of "City-Owned Parcel"**



**Attachment C (continued)**  
**Plat Map of "City-Owned Parcel"**



**Attachment C (continued)**  
**Plat Map of "City-Owned Parcel"**



**KIER+WRIGHT**  
 3350 Scott Boulevard, Building 22  
 Santa Clara, California 95054  
 Phone: (408) 727-6665  
 www.kierwright.com

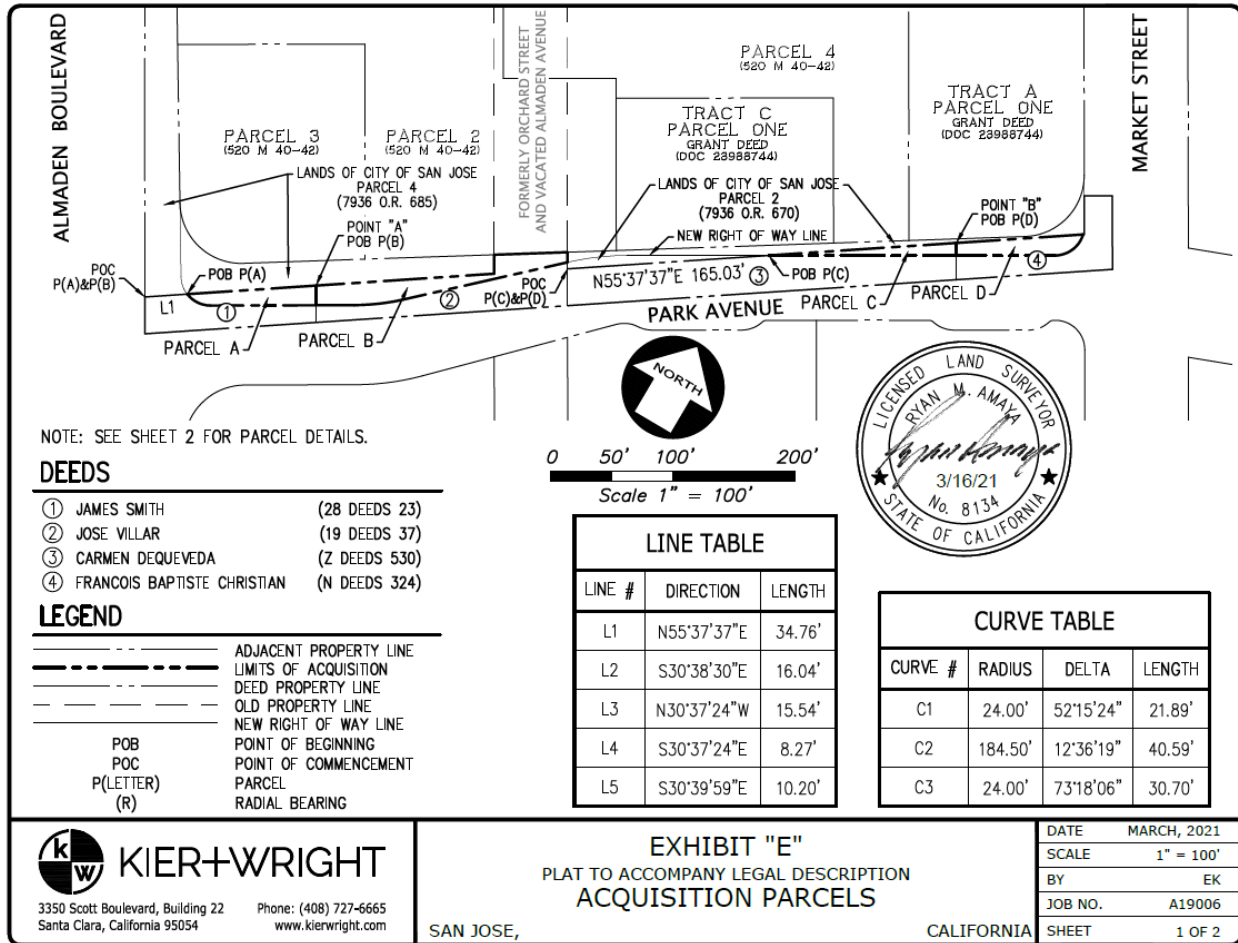
**EXHIBIT "G"**  
**PLAT TO ACCOMPANY LEGAL DESCRIPTION**  
**CITY-OWNED PARCELS**

SAN JOSE,

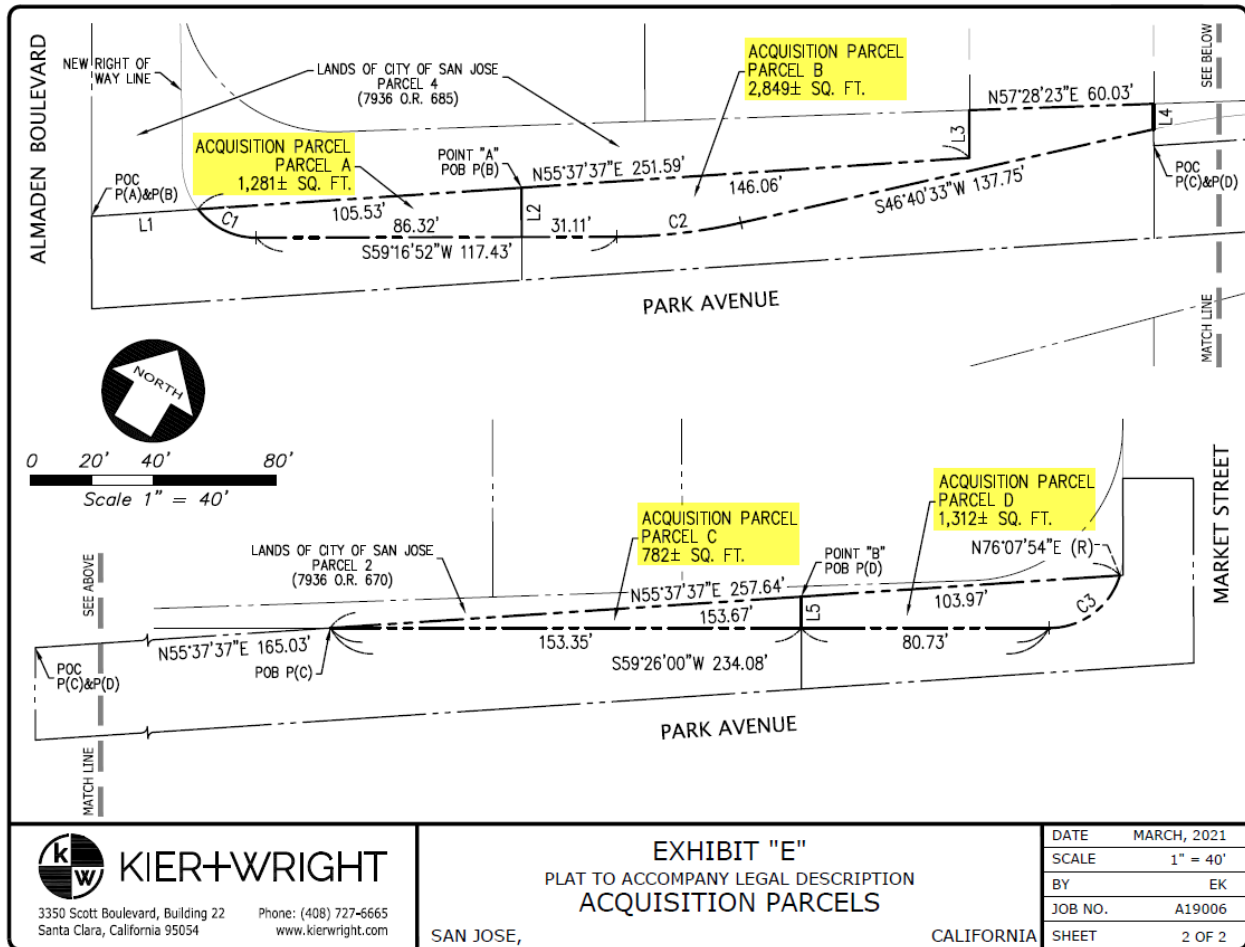
CALIFORNIA

DATE	MARCH, 2021
SCALE	1" = 30'
BY	EK
JOB NO.	A19006
SHEET	3 OF 3

# **Attachment D** Plat Map of "Acquisition Parcels"



**Attachment D (continued)**  
**Plat Map of "Acquisition Parcels"**



**KIER+WRIGHT**

3350 Scott Boulevard, Building 22  
 Santa Clara, California 95054

Phone: (408) 727-6665  
 www.kierwright.com

**EXHIBIT "E"**  
**PLAT TO ACCOMPANY LEGAL DESCRIPTION**  
**ACQUISITION PARCELS**

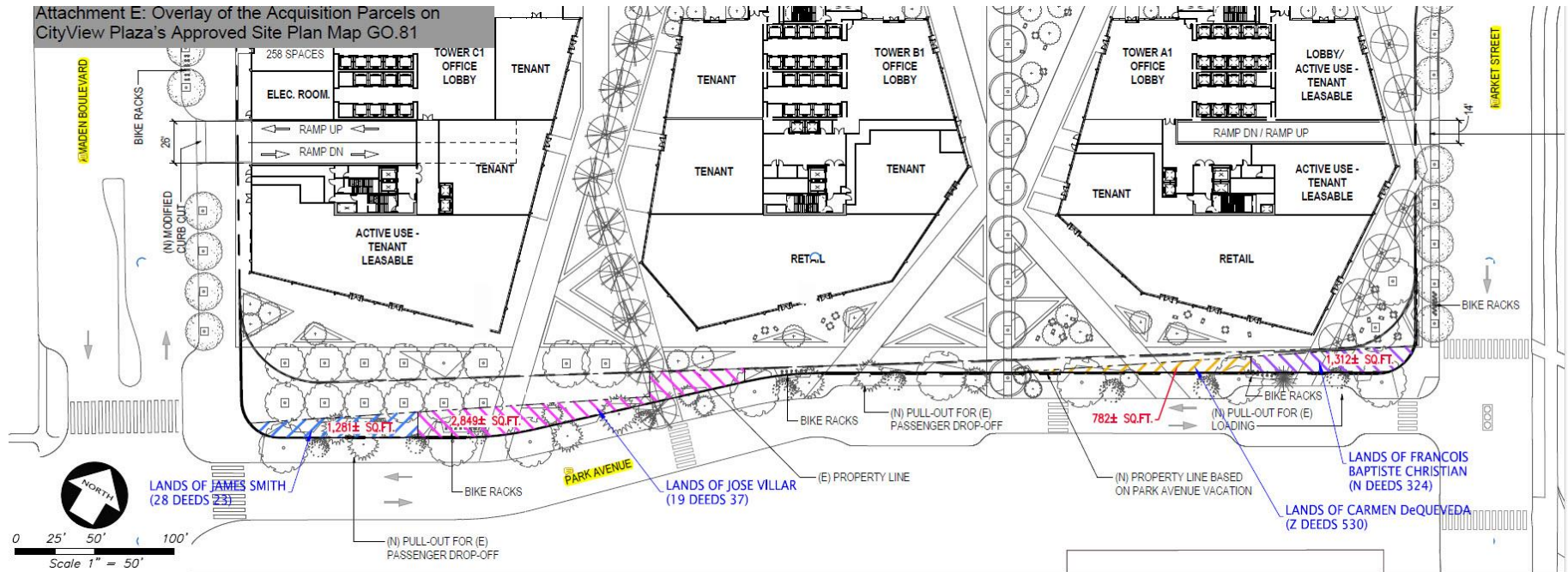
SAN JOSE,

CALIFORNIA

DATE	MARCH, 2021
SCALE	1" = 40'
BY	EK
JOB NO.	A19006
SHEET	2 OF 2

## Attachment E

### Map of Acquisition Parcels Overlaid on CityView Plaza's Site Plan Map GO.81

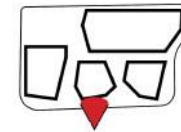




## Attachment F

### Rendering of the CityView Plaza Development and reconfigured Park Ave GO.14

#### Attachment F: Renderings of CityView and Reconfigured Park Avenue



NOTE: ILLUSTRATIVE RENDERINGS FOR REFERENCE ONLY. REFER TO LANDSCAPE SHEETS FOR LATEST SITE DESIGN.

FRONTAL AERIAL VIEW, LAST UPDATED APRIL 2019

#### SJ CityView LLC

100 Jay Peak Company  
Plan Development Center, Suite 300  
San Francisco, CA 94111  
United States  
Tel: 415.252.7400

#### Gensler

45 Fremont St # 1000  
San Francisco, CA 94105  
United States  
Tel: 415.432.3700

#### JAMES CORNER FIELD OPERATIONS

451 Battery Street  
San Francisco, CA 94111  
United States  
Tel: 415.432.3700



1280 Scott Boulevard, Ste. 22  
Santa Clara, CA 95054  
United States  
Tel: 408.727.8885



1001 Park Avenue, #2000  
Seattle, WA 98101  
United States  
Tel: 206.262.1200

#### WATKINS DESIGN, INC.

2200 Gateway Place #100  
San Jose, CA 95128  
United States  
Tel: 408.352.7500

#### LANGAN

550 Montgomery Street, Suite 1300  
San Francisco, CA 94111  
United States  
Tel: 415.398.5200



1001 The Alameda, Suite 200  
San Jose, CA 95126  
United States  
Tel: 408.242.2000



40 Golden Gate Avenue  
San Francisco, CA 94102  
United States  
Tel: 415.544.7500

#### ewcg

112 East 10th Avenue, Suite 1  
McClellan, CA 94541  
United States  
Tel: 415.388.1800

Date	Description
08.31.2019	SDP PRELIMINARY
09.12.2019	100% SD
11.19.2019	SDP PRELIMINARY #2
01.17.2020	SDP PRELIMINARY #3
03.12.2020	SDP PRELIMINARY #4

Scale / Signature

Project Name

**CityView**

Planning Reference Number: 0102018

Project Number

**01.3635.000**

Scale

Description

RENDERINGS

**G0.14**

**Attachment F (continued)**

Rendering of the CityView Plaza Development and reconfigured Park Ave GO.14





## **Attachment G**

### **Report on the Search for Descendants and Living Heirs**

#### **Summary of Research for Living Heirs and Devises of the Deceased Owners of Record of the Acquisition Parcels**

**(March 12, 2021)**

The following is a summary of the research done to date to identify any living heirs or devises of the four last known property owners of record of the Acquisition Parcels all of whom are long deceased. The research was conducted for James Smith, Parcel A; Jose M. Villar, Parcel B; Carmen De Quevada, Parcel C; and Francois Baptiste Christian, Parcel D.

A historian, Charlene Duval, with an expertise in researching land ownership in San Jose and genealogies, developed a descendant report for each last known fee owner of record through a review of federal census data, voting records, city directories, birth, marriage and death records, historical newspaper records, social security records, passenger lists, family trees developed by others, and other historical records. In addition, she researched ancient maps and land records for the subject area. The law firm of Matteoni, O’Laughlin & Hechtman reviewed these same records, as well as court records and other data bases for probate files and lodged wills for the last known fee owners and their possible heirs and devises. As a result of these efforts, the following determinations were made as to the living heirs and devises of the last known owners of record of the Acquisition Parcels.

#### **1. Summary of James Smith’s Heirs and Devises (Acquisition Parcel A)**

According to the preliminary title report issued by First American Title Insurance Company on September 24, 2020, Acquisition Parcel A is owned by the heirs and devises of James Smith, deceased. The historian was able to determine that James Smith, possible middle name Henry, was born in 1824 in New York. He was married to a woman named Harriet, maiden name unknown, at the time he acquired the property in 1872. There is no evidence that they had any children.

Mr. Smith is listed as a retired farmer in the 1880 census. The Smiths appear to have remained in San Jose until about 1890 when Mr. Smith’s name appears in the local paper as having gone on a hunting trip. After this, both James and Harriet Smith disappear from the records. Their home along Park Avenue was transferred to Joseph Delmas in 1890. There was no 1890 census and there is no mention of either of them in the 1900 census. There is no voter registration, no death or cemetery records, and no further mention of them in the local newspapers. Despite diligent efforts, we were not able to locate a will or probate file for either one.

## **Attachment G (continued)**

### **Report on the Search for Descendants and Living Heirs**

#### **Conclusion:**

Despite diligent efforts, we were unable to locate any possible living heirs or devisees of James Smith, the last owner of record for Parcel A.

## **2. Summary of Jose M. Villar's Heirs and Devisees (Acquisition Parcel B)**

According to the preliminary title report issued by First American Title Insurance Company on September 24, 2020, Acquisition Parcel B is owned by the heirs and devisees of Jose M. Villar, deceased.

#### **Jose M. Villar:**

Jose M. Villar died on July 22, 1905 in Alviso, California. Despite diligent efforts, no will or probate file was located for Jose M. Villar, thus it is assumed any interest he held in this property at the time of his death passed intestate. He was married to Enedina Villar at the time he acquired his interest in the subject property. Under the applicable law at the time of Mr. Villar's death (Cal. Civ. Code § 1401), there was a legal presumption that the property was community property, in which case it would have passed entirely to his wife Enedina Villar upon his death, assuming he died intestate. However, if the property were in fact separate property, then it would have passed 1/3 to his wife and 2/3 to his five children: John Baptist Villar, Alice Villar Riegel, Margaret Villar Newton, Arthur Villa and Joseph Villar.

#### **Joseph Villar:**

Joseph Villar died in 1908. Despite diligent efforts, no will or probate file was located for Joseph Villar. He was not married, nor did he have any children. Thus, if he died intestate, any interest he had in the property would have passed to his mother, Enedina Villar. Furthermore, it is reasonably assumed since people typically leave their estate to their closest relatives, that if he did have a will, by its terms, he would have left his estate to his mother and/or siblings.

#### **Enedina Villar:**

Enedina Villar died in 1933. Despite diligent efforts, no will or probate file was located for Enedina Villar. Thus, it is assumed that she died intestate in which case the property would have passed to her surviving children: John Baptist Villar, Alice Villar Riegel, Margaret Villar Newton and Arthur Villar. It can also be assumed that if she had a will, by its terms, she would have left her estate to her children.

### Attachment G (continued)

#### Report on the Search for Descendants and Living Heirs

##### Arthur Villar:

Arthur Villar died on January 6, 1936. Despite diligent efforts, no will or probate file was located for him. He was not married, nor did he have any children. Thus, if he did die intestate, any interest he had in the property would have passed to his surviving siblings: John Baptist Villar, Alice Villar Riegal, and Margaret Villar Newton. Furthermore, it is assumed that if he did have a will, by its terms, he would have left his estate to his siblings since people typically leave their estate to their closest relatives.

##### Margaret Villar Newton:

Margaret Villar Newton died on August 31, 1948. Despite diligent efforts, no will or probate file was located for her. It appears her husband predeceased her, or they were divorced at the time of her death. It appears her only child also predeceased her. Thus, if her estate passed by intestacy, any interest she had in the property would have passed to her siblings: John Baptist Villar and Alice Villar Riegal. Furthermore, it is assumed that if she did have a will, by its terms, she would have left her estate to his siblings since people typically leave their estate to their closest relatives.

##### John Baptist Villar:

John Baptist Villar died on May 27, 1956. Despite diligent efforts, we were unable to locate a will or probate file for him. Thus, it is assumed he died intestate. At the time of his death, he was a widow. He may have been survived by a daughter from his first marriage, Pearl Villar, although we have been unable to locate any records for her after 1912-1913. Moreover, the historian was unable to locate anyone named Pearl with the same birthdate in the records after 1912-1913. Assuming she had predeceased her father, then any interest he held in the property would have passed to his remaining sibling: Alice Villar Riegal.

##### Alice Villar Riegal:

Alice Villar Riegal died on February 1, 1966. Despite diligent efforts, no will or probate file has been located for her. She was a widow with no children at the time of her death. Assuming she died intestate, then if her niece Pearl Villar survived her, any interest she had in the property would have passed to Pearl. However, given that there is no evidence that Pearl was still alive at the time of Alice's death, it is assumed that any interest Alice inherited would have passed to her next of kin, Camille Noriega Nobes, who was a first cousin on her mother's side.

##### Camille Noriega Nobes:

Camille Noriega Nobes died on or about April 25, 1967. Despite diligent efforts, no will or probate file was located for her. Camille Nobes was married to William P.



### Attachment G (continued)

#### Report on the Search for Descendants and Living Heirs

Nobes at the time of her death. Her parents had predeceased her, and she apparently had no children or siblings. As such, any interest she had in the property would have passed by intestacy to her husband, William P. Nobes.

#### William P. Nobes:

Despite diligent efforts, we have found no will or probate file for William P. Nobes, who died on June 3, 1967; nor have his descendants been able to locate a will for him. Under the laws of intestate succession, any interest he had inherited in the property would have passed to his children: Lillian Nobes Billou Ferris and William T. Nobes.

#### William T. Nobes:

William T. Nobes died in 1976. Despite diligent efforts, no will or probate file has been located for him. At the time of his death, he was survived by his second wife, Charleyne Nobes, who later remarried and became Charleyne Castro, and his children: William Edward Nobes from his first marriage and Charleyne Nobes Aschenbrenner and Jack Nobes from his second marriage. It is assumed that if he had a will, he would have left his estate to his wife and three children. If he died intestate, any interest he inherited in the property would have passed to his wife and children.

#### Lillian Billou Ferris:

Lillian Billou Ferris died on or about April 8, 1984 in Santa Clara County. Despite diligent efforts, we have found no will or probate file for her; nor have her living family members been able to locate a will for her. It appears that at the time of her death, she was a widow with no children. Assuming she did die intestate, any interest she had in the property would have passed to the children of her predeceased brother: William Edward Nobes, Charleyne Nobes Aschenbrenner, and Jack Nobes.

#### Charleyne Castro:

Charleyne Castro died in 1998. It appears that she was a widow at the time of her death. Despite diligent efforts, we have been unable to locate a will or probate file for her. Thus, we have treated any interest she inherited in the property as passing by intestate succession to her two children: Jack Nobes and Charleyne Nobes Aschenbrenner. It is also reasonable to assume if she did have a will or trust, she would have left her estate to her children.

#### William Edward Nobes:

William Edward Nobes died on November 8, 1989. Despite diligent efforts, we have been unable to locate a will or probate file for him. Our research has revealed that

### **Attachment G (continued)**

#### **Report on the Search for Descendants and Living Heirs**

he was married to Antoinette Nobes who is also deceased. We have located their two daughters, Tamara Hill and Rose Rawcliffe who have advised that their parents left their entire estate to the two of them.

#### **Jack Nobes:**

Jack Nobes married Beverly Linda and had four children. He died in 1997 and Beverly Nobes died in 2009. Despite diligent efforts, no wills or probate files have been located for them. The couple had four children Janet Lipscomb, William Nobes, Karen Washburn, and Michael Nobes.

His son William Nobes passed away in 2018. He was survived by his widow Carol Nobes and their three children: Garrett, Kyle, and Lyndsey Nobes. We have not been able to find a will or probate file for him and his family has advised he died intestate.

#### **Charleyne Aschenbrenner:**

Charleyne Aschenbrenner recently passed away. Her family has advised us that she left her entire estate to the Char's Trust dated 6/24/14 as Amended and Restated.

#### **Conclusion:**

Based on the research conducted and the available information learned, we have reasonably concluded that the following individuals would have a claim of ownership to Acquisition Parcel B: Janet Lipscomb, Karen Washburn, Michael Nobes, Carol Nobes, Garret Nobes, Kyle Nobes, Lyndsey Nobes, the Char's Trust dated 6/24/14 as Amended and Restated, Rose Rawcliffe, and Tamara Hill.

### **3. Summary of Carmen I. De Queveda's Heirs and Devises (Acquisition Parcel C)**

According to the preliminary title report issued by First American Title Insurance Company on September 24, 2020, Acquisition Parcel C is owned by the heirs and devises of Carmen I. De Queveda, deceased. A review of historical documents determined that the Carmen I. De Queveda was actually Carmen I. De Quevedo and that various descendants of her husband went by the last name of Quevedo.

#### **Carmen I. De Queveda aka Carmen De Quevedo:**

Carmen I. De Queveda died in 1881 in San Jose, California. At the time of her death, she was married to Angel De Quevedo and had no children. Despite a diligent search, no will or probate file was located for her. Under the laws in effect at the time of

### Attachment G (continued)

#### Report on the Search for Descendants and Living Heirs

her death (Cal. Civ. Code § 1401), her property was presumed community property and thus, the subject property would have passed entirely to her husband Angel De Quevedo.

#### Angel and Sara De Quevedo:

After Carmen's death, her husband Angel remarried Sara De Quevedo and had three children: Angelo, Alphonse, and Alfred De Quevedo. Angel De Quevedo died on or about January 6, 1890. Under the terms of his will, his entire estate passed to his wife, Sara De Quevedo. Sara De Quevedo died on or about October 31, 1947. Under the terms of her will, other than some specific bequests that are not relevant here, her estate passed to her three sons. Subsequently Alphonse and Angelo conveyed any interest they inherited in the estate to their brother Albert.

#### Albert, Angelo and Alphonse De Quevedo:

Albert died on or about April 23, 1978 in Santa Clara County. At the time of his death, he was married to Margaret Hayes De Quevedo and had no children. No probate file or lodged will has been located for him. Neither the Quevedo descendants nor the living relatives of Margaret Hayes De Quevedo, whom we were able to identify and locate, were able to provide any information on a will or trust of Margaret or Albert. Thus, based on our research it is presumed Albert died intestate. As such, the subject property he inherited would have passed  $\frac{1}{2}$  to his widow and the other  $\frac{1}{2}$  to his brother Alphonse, if Alphonse were still alive, and to the children and grandchildren of his predeceased brother, Angelo De Quevedo aka Angelo Quevedo.

Angelo died in Havana, Cuba in 1959. At the time of his death, he was married to Irene Pagliery and had three children: Alfonse Quevedo, Francisco Quevedo, and Irene Quevedo who later became Irene O'Naghten. See below for further discussion about Alfonse Quevedo, Francisco Quevedo, and Irene Quevedo.

As to Alphonse, after exhaustive research, we have been unable to determine when and where he died. It is known that he was a Jesuit priest for at least a portion of his life. The last record we have been able to locate for him shows that he was living in Canada in 1947. The Quevedo family was unable to provide any information regarding Alphonse, the date and location of his death, or who his heirs might have been.

#### Margaret Hayes De Quevedo:

Margaret Hayes De Quevedo died on or about February 3, 1988 in Santa Clara County. Despite diligent efforts, no will or probate file has been located for her. As stated above, our further inquiry of her cousins provided no further information of a will or trust. Thus, it is presumed she died intestate and under the applicable law at the time of her death, the interest she had inherited in the property would have passed to her



### **Attachment G (continued)**

#### **Report on the Search for Descendants and Living Heirs**

husband's brother, Alphonse, if he were still alive and to the children and grandchildren of his predeceased brother, Angelo.

#### **Alfonse Quevedo, Francisco Quevedo, and Irene Quevedo:**

Angelo De Quevedo's three children were: Alfonse Quevedo, Francisco Quevedo, and Irene O'Naghten (born Irene Quevedo).

Alphonse Quevedo died 1963. He had two children: Adelena Quevedo and Alfonso Quevedo.

Francisco Quevedo died on or about February 5, 1982 in Dade Florida. It appears he never married and had no children. Despite diligent efforts, we have been unable to locate a will or probate file for him; nor has the Quevedo family been able to provide any information regarding Francisco Quevedo's heirs. Assuming he died intestate, his interest in the subject property would have passed ½ to his sister Irene Quevedo and ½ to his niece and nephew, Adelena Quevedo and Alfonso Quevedo.

Irene Quevedo married Luis O'Naghten who predeceased her in 1998. It appears Irene O'Naghten had no children. She died on April 13, 2007 in Miami, Florida. To date, we have been unable to locate a will or probate for her, and her niece and nephew Adelena and Alfonso Quevedo have no information of a will or trust for Irene Quevedo. They did provide certain financial documents consisting of a Northern Trust Bank of Florida N.A. bank statement from 2004-2005 in the names of both Irene O'Naghten and Adelena Quevedo, a sample check from that same account, and a promissory note in the amount of \$10,000 with Irene and Adelena identified as the Payees. Assuming Irene died intestate, as our research indicates, then any interest she had in the subject property would have passed to her niece and nephew, Adelena and Alfonso Quevedo.

#### **Conclusion:**

Based on the research conducted and the available information learned, we have reasonably concluded that Adelena Quevedo and Alfonso Quevedo are the only living heirs to Acquisition Parcel C.

#### **4. Summary of Francois Baptiste Christian's Heir and Devises (Acquisition Parcel D)**

According to the preliminary title report issued by First American Title Insurance Company on September 24, 2020, the subject property is owned by the heirs and devises of Francois Baptiste Christian, deceased. Mr. Christian (who also used the last name "Chretien") died on April 25, 1894. At the time of his death, he was a widow and was survived by only one child: Baptiste Francois Chretien, who was born in 1858.

**Attachment G (continued)**

Report on the Search for Descendants and Living Heirs

Baptiste Francois Chretien filed a petition for letters of administration stating that no will had been found for his father and he was the sole heir at law. Thereafter, the court ordered that Mr. Christian's entire estate be distributed to Baptiste Francois Chretien under the rules of intestate succession.

Baptiste Francois Chretien, the only child, died on May 26, 1922. Despite diligent efforts, no will or probate file has been located for him. He was married to Agapita "Nettie" Bejarano Chretien at the time of his death and his only child predeceased him. Thus, under the laws of intestate succession, his wife would have inherited his entire estate.

Nettie Chretien died on February 24, 1937 in Santa Clara County. Despite diligent efforts, no will or probate file was located for Nettie Chretien. It appears that she was a widow with no surviving children at the time of her death. Under the laws of intestate succession, her estate would have passed to her next of kin. However, despite diligent efforts, neither the historian nor the Matteoni law firm were able to discover any possible family members, descendants or heirs for Nettie Chretien.

Conclusion:

Despite diligent efforts, we were unable to locate any possible living heirs or devisees for Francois Baptiste Christian, the last owner of record of Acquisition Parcel D.

MATTEONI, O'LAUGHLIN & HECHTMAN

Dated: March 18, 2021

By: \_\_\_\_\_



BRADLEY MATTEONI