



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Katy Allen

SUBJECT: FORTUNE DRIVE SIDEWALK
EASEMENT ACQUISITIONS

DATE: 01-08-07

Approved

Deanna Sarkis

Date

1/12/07

COUNCIL DISTRICT: 4

RECOMMENDATION

Adopt a resolution approving donation agreements with Micrel, Incorporated, Rose Ventures II, Inc., Northern California Universal Enterprise Co and Fortune-Lundy Associates LLC for conveyance of public sidewalk easements and authorizing the Director of Public Works to execute any additional documents necessary to complete the transactions.

OUTCOME

Approval of the donation agreements will permit installation of public sidewalks along most of the Fortune Drive and Lundy Avenue street frontages of the eight (8) assessor parcels comprising five (5) properties owned by Micrel, Rose Ventures II, Northern California Universal Enterprise Co and Fortune-Lundy Associates in the vicinity of the Fortune-Lundy intersection.

BACKGROUND

The need for public sidewalks serving the segment of Fortune Drive extending east from Ringwood Avenue to the area around the Fortune-Lundy intersection was identified during several meetings between Redevelopment Agency and City staff. In the Fall of 2004, Redevelopment Agency staff met with Raymond Zinn, CEO of Micrel as part of the Mayor's Business Appreciation Campaign. The goal of the campaign is to help retain and expand driving-industry businesses in San Jose. During the meeting, Micrel's CEO requested the assistance of the Redevelopment Agency in improving Fortune Drive for the 3,000 employees in the area. Public Works staff surveyed Fortune Drive and determined that the area needed a public sidewalk in order to shift employees from walking along the street to a sidewalk. Public Works developed a plan for the design and installation of the Fortune Drive sidewalk. The original plan envisioned entering into agreements with all 11 property owners of the 19 assessor parcels without sidewalks abutting both sides of Fortune Drive from Ringwood to the Fortune-Lundy intersection east of Lundy Avenue. The scope of this project had to be scaled down when

most of the property owners refused to agree to donate the required easements, citing concerns about future liability, costs of maintenance and other such issues.

Efforts by City staff to point out the benefits of having sidewalks, the fact that the City was paying all construction costs and the fact that the owners themselves would be required to install sidewalks at their own expense as a condition of City's future issuance of any development permit they might apply for eventually persuaded 4 of the 11 owners to sign on to the project. With the agreement of these property owners to donate easements on all 4 parcels abutting the Fortune-Lundy intersection will now be improved with public sidewalks as well as most of the 690-feet of street frontage belonging to the Micrel properties at 1849 and 1931 Fortune Drive located approximately half-way between Ringwood and Lundy Avenues, as shown on the attached Exhibit A.

ANALYSIS

Donation agreements containing standard terms and conditions used in public sidewalk easement acquisition agreements were sent in February and March of 2006 to all 11 owners of the subject properties on Fortune Drive between Ringwood Avenue and Qume Drive. Several discussions and meetings in both individual and group settings were subsequently held involving owners and City Public Works and Redevelopment Agency staff. Four of the owners subsequently executed and submitted the donation agreements to City Real Estate staff. The Micrel property consists of two separate, adjacent properties at 1849 and 1931 Fortune Drive, each comprising one assessor parcel, while the Northern California Universal Enterprise, Fortune-Lundy Associates and Rose Ventures II agreements cover single properties, each comprising 2 assessor parcels. The easement to be acquired will cover 15'-wide strips of the entire street frontages of all the properties along Fortune Drive and Lundy Avenue. The proposed public improvements to be installed by City include construction of 5'-wide sidewalks fronting along the 8 subject assessor parcels with new wheelchair ramps and upgrades to existing wheelchair ramps, reconstruction of curbs and gutters, driveways, asphalt-concrete pavement and removal and replacement of existing, deteriorating trees.

Construction is projected to commence in July of 2007 and be completed by September of 2007.

POLICY ALTERNATIVES

Alternative #1: Continuing with the status quo by leaving the subject portions of Fortune Drive and Lundy Avenue without public sidewalks.

Pros: City can shift responsibility of constructing sidewalks to abutting owners through the permit condition process when/if the owners submit future site development permit applications.

Cons: Exposes pedestrians to increased risk of harm by requiring them to walk on the street.

Reason for not recommending: Installing the public sidewalks now eliminates the uncertainty of waiting for individual owners to install sidewalks as a City-imposed condition as part of any development permit application they might choose to submit in the future.

PUBLIC OUTREACH/INTEREST

- Criteria 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criteria 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criteria 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

The approval of this resolution does not meet any of the criteria identified by the Sunshine Reforms Work Plan. The requested Council action to approve donation agreements for City acquisition of public sidewalks easements on 5 private properties will not involve the use of public funds equal to \$1 million or greater. This memorandum will be posted on the City's website for the January 30, 2007 Council agenda.

The first public outreach for the project consisted of a meeting on November 17, 2004 attended by City staff, property owners and business owners along Fortune Drive. On November 16, 2005, City staff met with the property owners and businesses to provide an update of the project and detailed information on the proposed sidewalk improvements. At this meeting the owners were asked to donate easements on their properties for the project. In February and March of 2006, City staff sent easement donation agreements to the 11 property owners of the 19 assessor parcels originally included within the proposed project area. On March 30, 2006, City staff met with some of the owners to answer questions and address concerns about the agreements and the project. The public meetings provided the community with opportunities to discuss the project and the City with the opportunity to garner support for the proposed sidewalk improvements.

COORDINATION

This project has been coordinated with the San José Redevelopment Agency, the Departments of Transportation and Planning, Building and Code Enforcement, the City Attorney's Office and the City Manager's Budget Office.

FISCAL/POLICY ALIGNMENT

Entering into donation agreements with these property owners pursuant to which they provide the City with public sidewalk easements in exchange for the City installing the sidewalk improvements furthers those general budget principles in the 2006-2007 Mayor’s Budget Message, General Recommendations, p. 4.2 which call for the City being open to alternative ways to deliver services and reduce costs through appropriate community partnerships and public-private partnerships. The standard, non-alternative way to construct public sidewalks normally requires the City to pay property owners just compensation based on fair market value for the required right-of-way or easement rights. Under these donation agreements the City is effectively partnering with the 4 property owners to provide public sidewalks while at the same time realizing significant savings from not having to purchase property rights.

COST SUMMARY/IMPLICATIONS

There will be no compensation required to be paid to the property owners. The only costs will be the staff time associated with the project together with an estimated \$10,000 for escrow, title insurance and closing expenses, including reasonable fees required to obtain lenders’ consents on the two properties currently encumbered with mortgage liens.

BUDGET REFERENCE

Fund #	Appn. #	Appn. Name	RC #	Total Appn.	Amt. For Contract	2006-2007 Adopted Capital Budget Page*	Last Budget Action (Date, Ord. No.)
465	6257	North San Jose Deficiency Plan Improvements	135872	\$1,765,000	N/A	V-1108	10/17/06 Ord. No. 27888
		Total		\$1,765,000			

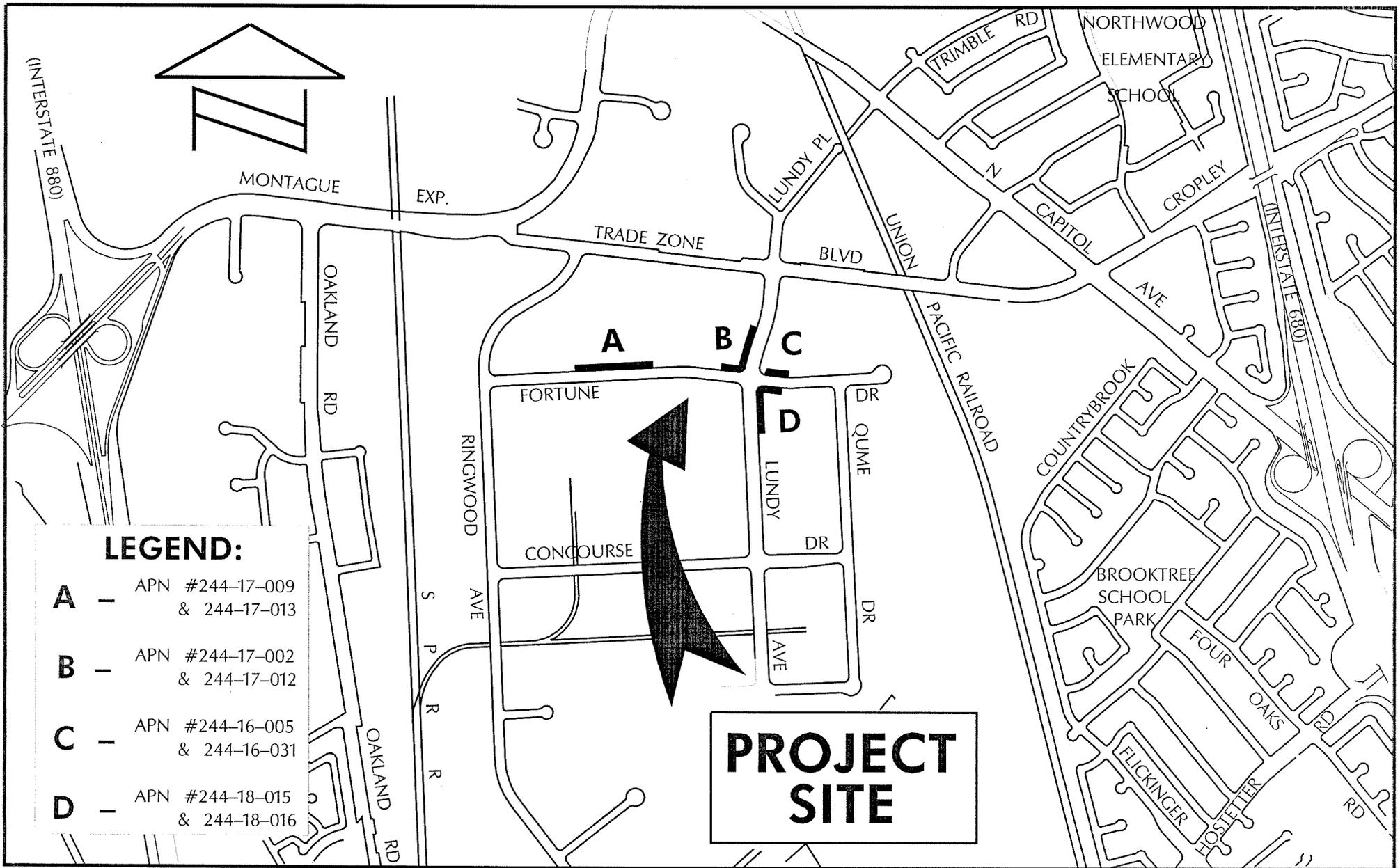
CEQA

CEQA: Exempt, File No. PP05-200.



KATY ALLEN
 Director, Public Works Department

For questions please contact DAVID SYKES, ASSISTANT DIRECTOR, at 408-535-8300.



LOCATION MAP

NOT TO SCALE

EXHIBIT A