

# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Katy Allen

**SUBJECT:** SEE BELOW

**DATE:** 08-09-06

Approved

Date

**COUNCIL DISTRICT:** 6

**SUBJECT: VACATION OF MCKINLEY AVENUE BETWEEN ST. ELIZABETH DRIVE AND MERIDIAN AVENUE**

## RECOMMENDATION

Conduct a public hearing and adopt two resolutions as follows:

- a) Resolution to conditionally vacate a portion of McKinley Avenue, between St. Elizabeth Drive and Meridian Avenue.
- b) Resolution to:
  - 1) Declare a 3,511 square foot area surplus to the needs of the City;
  - 2) Authorize its sale to Sisters of the Holy Family for \$58,400 and the exchange of 2,344 square feet of Sisters of the Holy Family owned property, which will be transferred to the City to be dedicated for parkland purposes; and
  - 3) Delegate authority to the Director of Public Works to negotiate and execute all documents necessary to complete the transfer of the property.

## OUTCOME

Adoption of these resolutions will permit the conditional vacation of the subject portion of McKinley Avenue with reservation of a public service easement, emergency access easement, and sanitary sewer easements over a portion of the vacated area, declare the property surplus to the needs of the City and authorize the proposed sale of the property to the adjoining property owner.

## BACKGROUND

Pinn Brothers Fine Homes, the project general contractor, has submitted an application, on behalf of Pfeiffer Ranch Investors II, Inc. for the vacation of McKinley Avenue between St. Elizabeth Drive and Meridian Avenue (Exhibit A attached). This vacation is required to fulfill development conditions of Planned Development Zoning PDC 05-046, which proposes construction of 46 single family attached residences on 2.2 acres at the southeast corner of Curci

and St. Elizabeth Drives. The McKinley Avenue right of way to be vacated will become a future private drive accessing the proposed development, a small portion of the vacated area will become the future development site, and another small portion will be dedicated for use as part of a new public park.

The Sisters of the Holy Family are owners of the adjoining property to the south and to the east of the City-owned, vacated portion of the street. The Sisters of the Holy Family and Pinn Brothers Fine Homes have entered into an agreement whereby the Sisters of the Holy Family will transfer a portion of their property in the vacated street in exchange for the City-owned property also located in the area of the street vacation. Funding for the Sisters of the Holy Family acquisition of City property will be provided to the Sisters by Pinn Brothers Fine Homes. Pinn Brothers Fine Homes will have access to and over the private road as provided in the agreement with the Sisters of the Holy Family.

On August 8, 2006, the Council adopted a resolution, which declared its intention to conditionally vacate a portion of McKinley Avenue, between St. Elizabeth Drive and Meridian Avenue. The resolution approved a map showing the subject right-of-way to be vacated, set a public hearing for August 29, 2006, at 1:30 p.m. and directed the Director of Public Works to post the site with a Notice of Vacation.

## **ANALYSIS**

Staff has determined that this portion of McKinley Avenue between St. Elizabeth Drive and Meridian Avenue is no longer needed as a public street. Currently, McKinley Avenue does not function as a through street and will not be needed in the future as thoroughfare from St. Elizabeth Drive to Meridian Avenue.

The title report indicates that the Sisters of the Holy Family is the underlying fee owner for 0.214 acres, the City is the underlying fee owner for 0.118 acres, and the Pinn Brothers Fine Homes is the underlying fee owner for 0.026 acres of the remaining area to be vacated.

A sanitary sewer easement will be reserved for the existing public sanitary sewer main which traverses the proposed area for vacation. The existing storm sewer main will be relocated and converted to a private storm sewer main and be privately maintained.

All concerned utility companies have consented to the vacation with the reservation of a public service easement (PSE) over the future private street area and provided that the existing facilities not covered within the proposed public service easement are removed, abandoned or relocated when no longer needed. This street vacation is therefore conditioned upon abandonment, removal or relocation of existing utilities not covered within the proposed PSE prior to recordation of the street vacation.

Additionally, an emergency access easement will be reserved to facilitate emergency access to the Pinn Brothers project site.

Municipal Code Section 4.20.050 permits the City Council to declare City-owned property surplus to the needs of the City and to authorize its direct sale to the adjoining property owner when it finds: 1) that a property is neither needed for, nor adaptable to, municipal purposes; and 2) the public interest would be served thereby; and 3) conveyance of title to the adjoining property owner is at fair market value. Following outreach efforts, there has been no indication from City Departments that there is an operational or facility need for this property. The fair market value of the portion to be vacated has been determined to be for \$58,400. This value takes into consideration the exchange of 2,344 square feet of vacated street owned by the adjoining owner. Both the vacated City property and the adjoining owner's property are not independently developable.

Following adoption of the resolution to vacate and the resolution declaring the property surplus, authorizing the sale of the vacated street and delegating authority to the Director of Public Works, all documents necessary to complete the transfer of property will be executed.

Maps illustrating the subject property's general and specific location are attached as Exhibits A, B1, B2 and C.

### **POLICY ALTERNATIVES**

Not applicable.

### **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)**

This action does not meet any of the criteria above; however, the public was afforded the opportunity to comment on proposed development and associated street vacation during the planning process. On April 26, 2006, the Planning Commission held a public hearing on the subject vacation and forwarded a recommendation to the Council for approval of the vacation. Additionally, as directed at the August 8, 2006 Council hearing, staff has posted the site with a Notice of Vacation and the City Clerk has advertised this public hearing.

**COORDINATION**

The vacation has been coordinated with the Departments of Planning, Building and Code Enforcement, Transportation, General Services, Parks, Recreation and Neighborhood Services, and the City Manager's Budget Office. Additionally, the vacation and required resolutions have been reviewed by the City Attorney's Office. All appropriate public utility companies have consented to the proposed vacation on the condition that the City reserves a public service easement over the future private street area and that the existing facilities not covered within the proposed PSE are removed, abandoned or relocated when no longer needed. Additionally, on April 29, 2006 the Planning Commission recommended approval of the proposed vacation. The proposed sale of this parcel has been coordinated with all necessary City Departments.

**FISCAL/POLICY ALIGNMENT**

This project is in alignment with the Mayor's Budget Strategy Expenditure Control Principle No. 4 in that it eliminates City maintenance obligations and liability.

**COST SUMMARY/ IMPLICATIONS**

The Public Works Department collected cost-recovery fees to process this street vacation. Additionally, in coordination with the Department of General Services, the City will receive compensation for the granting of City fee owned property to the adjoining property owner.

The sale of this property generates revenue of \$58,400 to the General Fund. The City's costs will consist of staff time to complete the transaction. The buyer will pay all title, tax and recording fees.

**CEQA**

CEQA: Mitigated Negative Declaration, PDC05-046/C05-102.



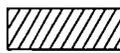
KATY ALLEN  
Director, Public Works Department

For questions please contact TIMM BORDEN, DEPUTY DIRECTOR, at 408-535-8300.

# LOCATION MAP

SHOWING A PORTION OF MCKINLEY AVENUE  
BETWEEN ST ELIZABETH DRIVE AND MERIDIAN AVENUE TO BE VACATED



 AREA TO BE VACATED

## EXHIBIT A

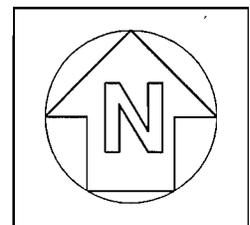
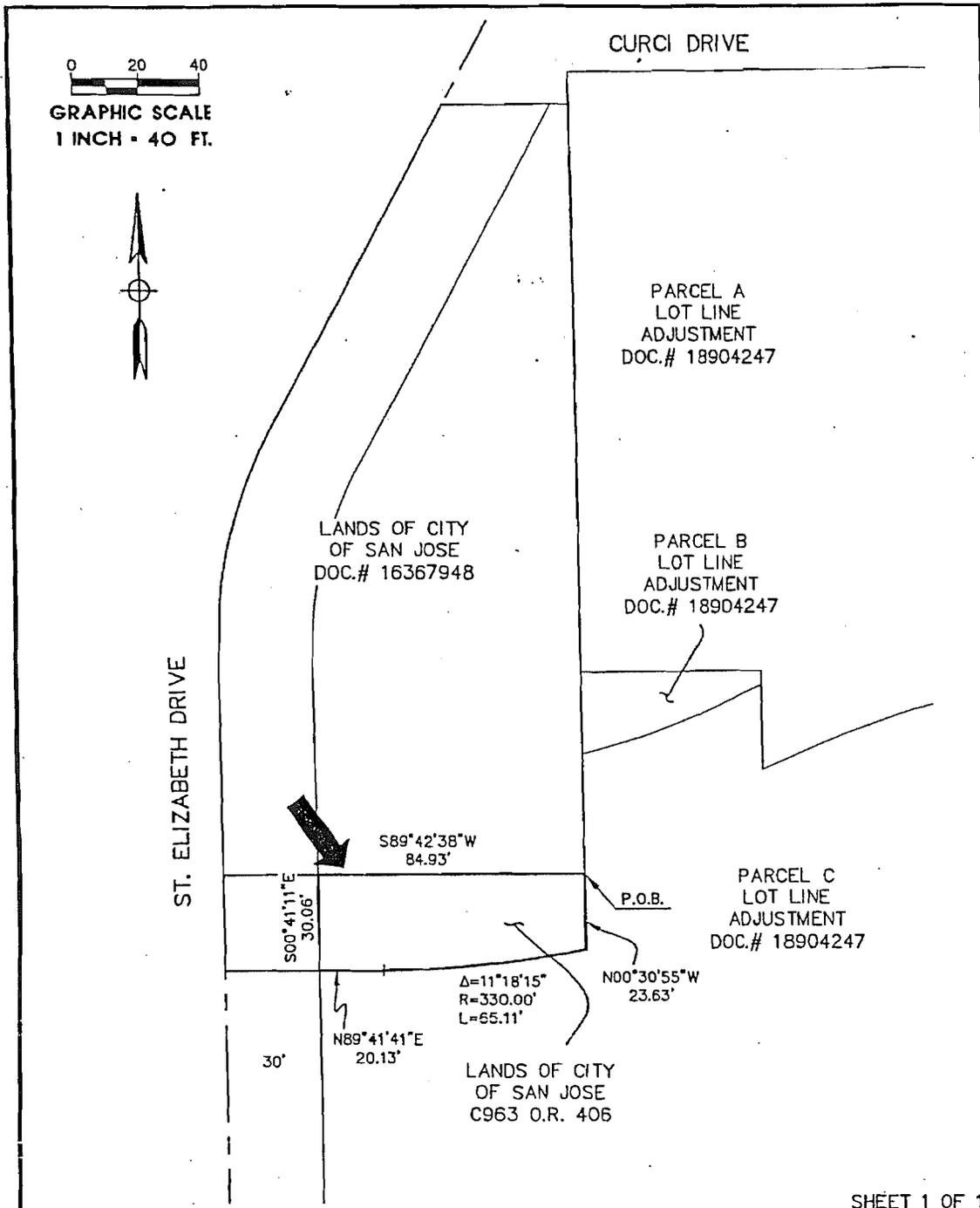


EXHIBIT B1

DESCRIPTION OF CITY PROPERTY



SHEET 1 OF 1

Date:	05-24-06
Scale:	1" = 40'
Designed:	-
Drawn:	JM
Checked:	SD
Proj. Eng.:	-
Dwg. Name:	3409PL10

**HMH**  
ENGINEERS

San Jose  
(408) 487-2200

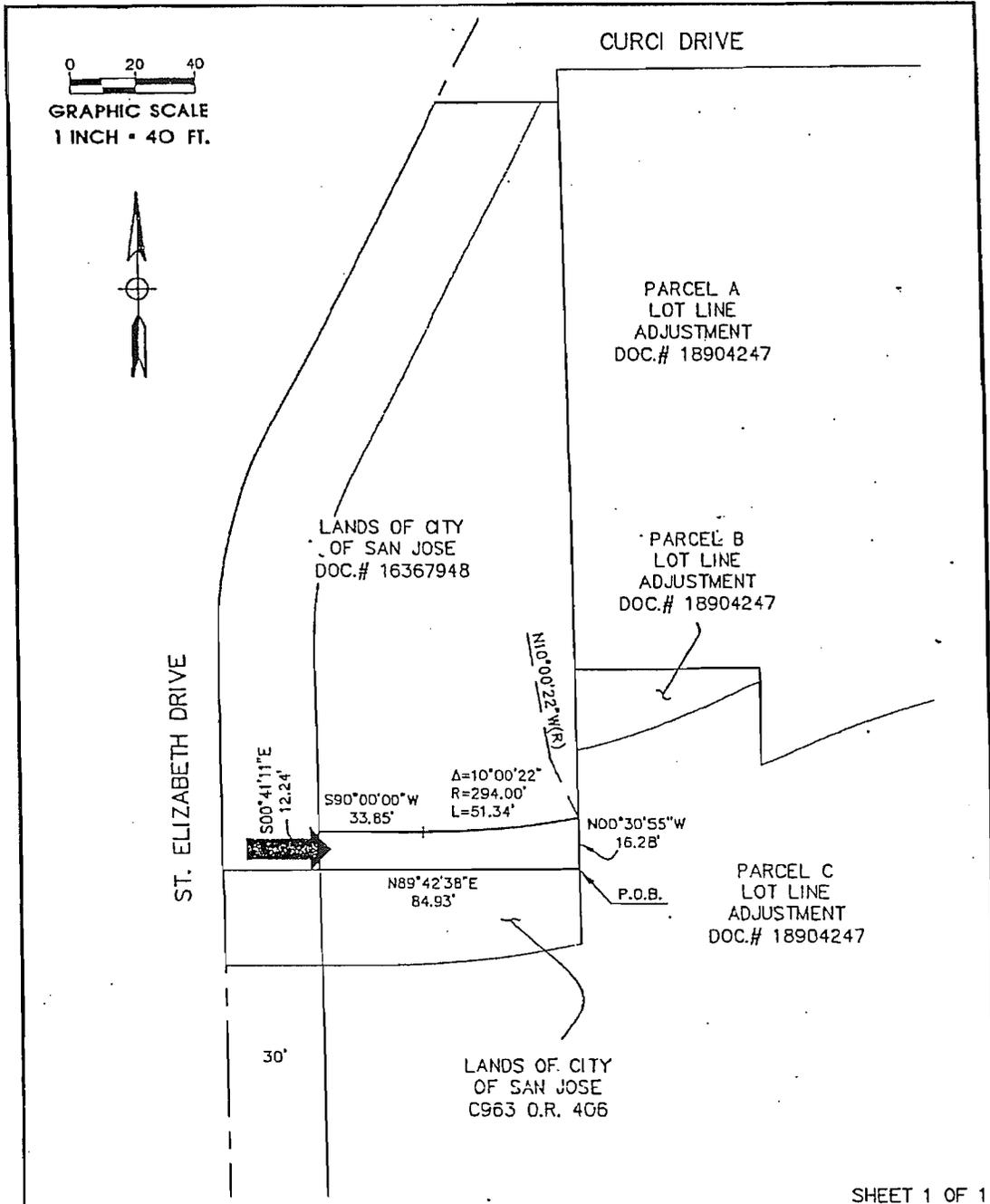
Gilroy  
(408) 848-0797

www.hmh-engineers.com

Plot to accompany description:  
LANDS OF THE CITY OF SAN JOSE  
PARCEL C

SAN JOSE CALIFORNIA

EXHIBIT B2  
DESCRIPTION OF CITY PROPERTY

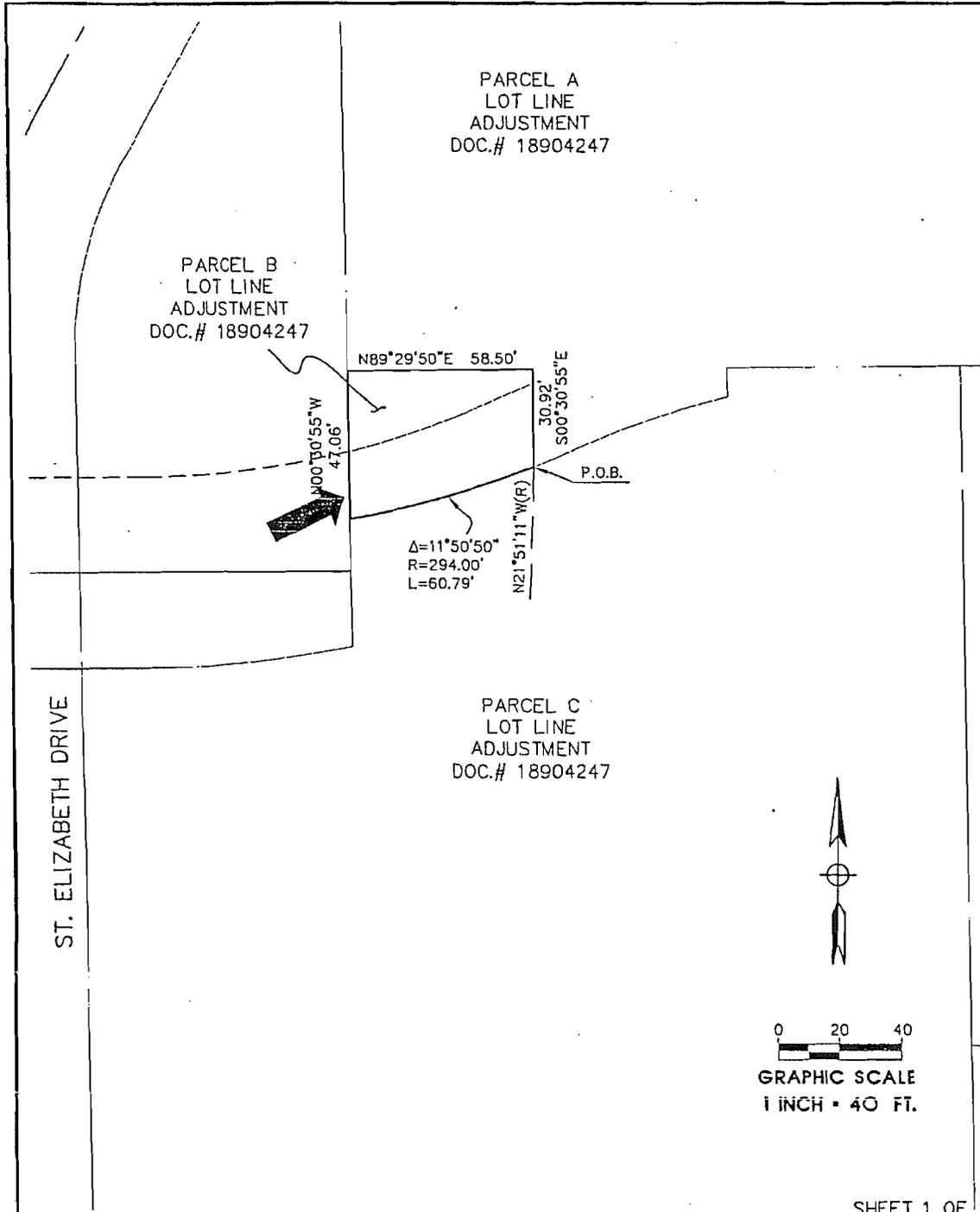


SHEET 1 OF 1

20160524.114 Date: 05-24-06 Scale: 1" = 40' Designed: - Drawn: JM Checked: SD Proj. Eng: - Desig. Name: 3409PLOS		San Jose (408) 473200	Plot to accompany description: LANDS OF THE CITY OF SAN JOSE PARCEL A SAN JOSE CALIFORNIA
		Gilroy (408) 8460777	
		www.hmh-engineers.com	
		SAN JOSE	
		CALIFORNIA	

# Exhibit C

## DESCRIPTION OF DEVELOPER PROPERTY



SHEET 1 OF 1

Date: 05-19-06  
Scale: 1" = 40'  
Designed: -  
Drawn: TG/JM  
Checked: SD  
Proj. Eng.: -  
Dwg. Name: 3409PL06

**HMH**  
ENGINEERS

San Jose  
(408) 487-2308  
GHeary  
(408) 486-4777  
www.hmh-engineers.com

Plat to accompany description:  
LANDS OF THE SISTERS OF THE HOLY FAMILY

SAN JOSE

CALIFORNIA