



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Peter Jensen

SUBJECT: SEE BELOW

DATE: 03-24-10

Approved

Date

3/25/10

COUNCIL DISTRICT: 3

SUBJECT: APPROVAL OF AN EXCHANGE AGREEMENT BETWEEN THE CITY OF SAN JOSE AND THE SANTA CLARA VALLEY WATER DISTRICT TRANSFERRING CERTAIN INTERESTS IN REAL PROPERTY AND PROVIDING FOR AN IRREVOCABLE RIGHT OF ENTRY PENDING TRANSFER OF TITLE, IN CONJUNCTION WITH THE GUADALUPE REACH 6 FLOOD CONTROL PROJECT

RECOMMENDATION

It is recommended that the City Council:

Approve an Exchange Agreement for the transfer of property interests between the City of San Jose and the Santa Clara Valley Water District in conjunction with the Reach 6 Flood Control Project which provides as follows:

- (1) the grant of fee title to the District of City-owned property vacated as a street;
- (2) the grant of an irrevocable right of entry to the District for construction on City properties pending the exchange of property rights;
- (3) the grant of a public street easement across District-owned property for ingress and egress to properties along the remaining portion of Edwards to Willow; and
- (4) authorizes the Director of General Services to execute the deeds and other documents on behalf of the City to complete the transaction.

OUTCOME

Approval of the Exchange Agreement will allow for the prompt transfer of property rights between the District and the City, which will facilitate the timely construction of the Reach 6 flood control project.

BACKGROUND

The Santa Clara Valley Water District (SCVWD) desires to construct its Upper Guadalupe River Improvement Project (Reach 6). As this project involves creek improvements and minor creek

realignment, the subject portions of McLellan Avenue, Grant Street, and Edwards Avenue need to be vacated and fee title transferred to SCVWD in order to accommodate this design. The vacation action will occur through separate Council action at this same Council meeting. To facilitate the vacation of the property and to ensure the project continues on schedule, the Exchange Agreement provides that the City will grant the District a Right of Entry for the property in the project area.

ANALYSIS

Title reports for the subject properties show that the City of San Jose holds fee title to subject streets proposed for vacation. In order to accommodate the construction of the Upper Guadalupe River Reach 6 Project, SCVWD has requested to acquire fee title to the subject streets.

The attached agreement provides specifics on the property rights to be exchanged. Below are the segments of streets proposed to be vacated and included in the Exchange Agreement:

1. Grant Street - west of Palm Street (also known as Parcel 1)
2. McLellan Avenue - between Palm Street and the northerly edge of Virginia Street (also known as Parcel 2)
3. McLellan Avenue - between the southerly edge of Virginia Street to the northerly edge of Edwards Avenue (also known as Parcel 3)
4. Edwards Avenue - east of McLellan Avenue to McLellan Avenue - north of Willow Street (also known as Parcel 4)

Attachment I shows the City property to be granted to the District, and the easement area to be granted to the City for ingress and egress to the remainder of Edwards Avenue.

City staff has reviewed the subject vacation application and concurs with SCVWD's proposal to abandon these streets and to transfer fee title to SCVWD. As SCVWD has purchased the other surrounding properties for the portions of Grant Street and McLellan Avenue (Parcels 1, 2, and 3) to be abandoned, there no longer remains a need for these portions of public street. However, the portion of Edwards Avenue (Parcel 4) still provides public street access to certain privately owned parcels. As such, the proposed vacation of this segment will be on the condition that the SCVWD complete the construction of a realigned Edwards Avenue with their construction project to ensure continued public access to the privately owned parcels. The realignment will be required as part of the City's regulatory approval process pertaining to the project, and the District will transfer a street easement to the City upon completion of the realigned street that will allow the City to maintain and repair the road.

The Exchange Agreement provides for the direct exchange of a grant deed and an easement deed to effectuate transfer of property interests without going through escrow. Each party is to bear its own costs with regard to the exchange of property interests. The street easement provides that the City is responsible for maintaining the street, once constructed by the District. A mutual indemnification is in the Exchange Agreement.

As compensation for this exchange the City will benefit in the reduction of residences in flood zones. Additionally, SCVWD will work with permitting agencies to create a passive recreation area in the project's mitigation area along the creek. The intent of this space will be to create walking paths and rest areas that are consistent with the goals and requirements of the project. This good faith promise in the agreement expires in three years and there may be limitations as to how it could be enforced; however staff is confident that SCVWD is a willing partner and will work in good faith to achieve this.

EVALUATION AND FOLLOW-UP

If Council adopts these recommendations for McLellan Avenue, Grant Street, and Edwards Avenue, staff will work with SCVWD to promptly execute the Exchange Agreement and other documents necessary to effectuate the transfer of fee title.

POLICY ALTERNATIVES

Not applicable.

PUBLIC OUTREACH/INTEREST

- Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criterion 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)**
- Criterion 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. All concerned utility companies have been contacted in writing and have no objection to this vacation. This memorandum will be posted to the City's website for the April 6, 2010 Council agenda.

COORDINATION

The vacation has been coordinated with the Department of Public Works. In addition, the vacation and transfer of property rights have been reviewed by the City Attorney's Office.

FISCAL/POLICY ALIGNMENT

Vacating these streets is in alignment with the FY 2009-10 Adopted Budget Mayor's Message in that this action will reduce a potential City liability.

HONORABLE MAYOR AND CITY COUNCIL

03-24-10

Subject: Reach 6 Flood Control Project Exchange Agreement.

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COST SUMMARY/IMPLICATIONS

The City will no longer be required to provide maintenance to the portions of street for which fee title will be transferred.

BUDGET REFERENCE

Not applicable.

CEQA

CEQA: Resolution No. 75043

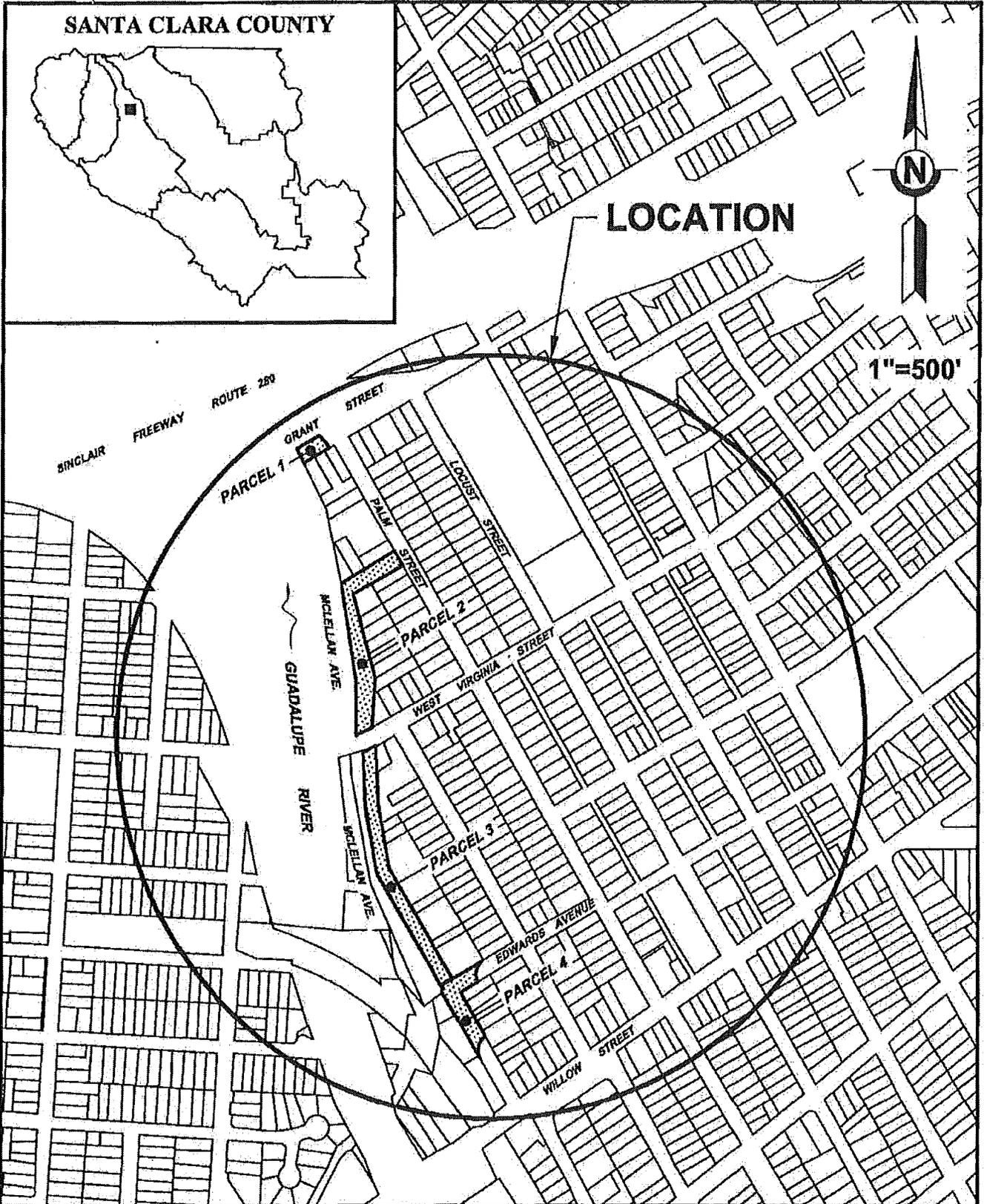
/s/

PETER JENSEN

Director of General Services

For questions please contact MATT MORLEY, DEPUTY DIRECTOR, DEPARTMENT OF GENERAL SERVICES, at 408-535-1298.

Attachment 1
Property Granted to SCVWD



SCVWD \\\W:\00\PROJECTS\GUADALUPE RIVER\26154002-1512 2007-238\Location Maps\3015-590.dwg

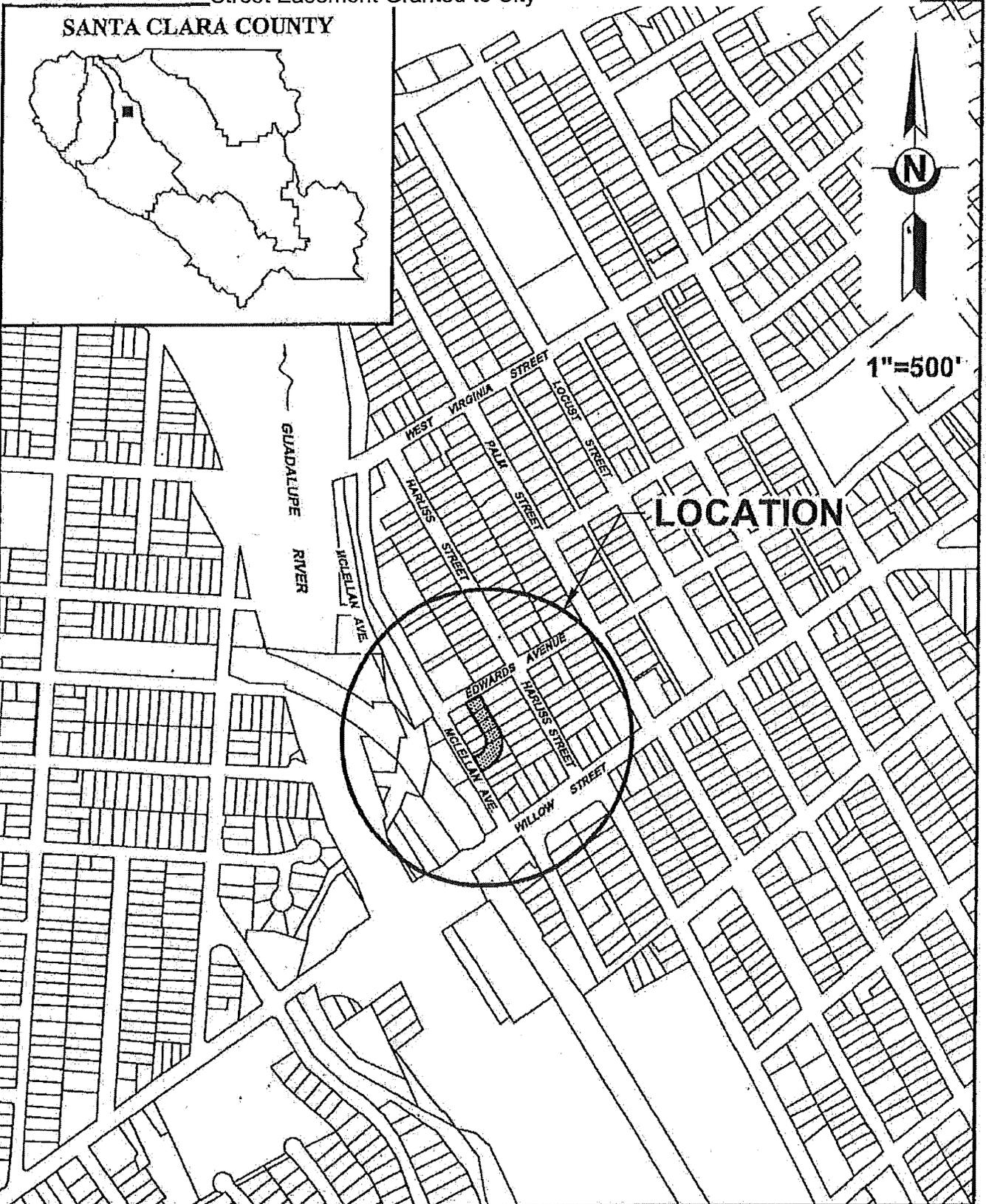
GUADALUPE WATERSHED

Santa Clara Valley Water District 

McLELLAN AVENUE
CITY OF SAN JOSE

GUADALUPE RIVER	
PROJ. NO.	3015
FILE NO.	590
APN	264-34 & 35
DRAWN	JGP
DATE	08/26/08

Attachment 1
Street Easement Granted to City



SCVWD: \ARROW\00PROJECTS\GUADALUPE RIVER\26154002-1512 2007-238\Location Maps\3015-327.01 350.01 355.01 360.01 369.01 & 372.01.dwg

GUADALUPE WATERSHED

GUADALUPE RIVER



McLELLAND AVENUE
CITY OF SAN JOSE

PROJ. NO.	3015
FILE NO.	327.01, 350.01, 355.01, 360.01, 369.01 & 372.01
APN	264-40-78, 103, 116, 117 & 126
DRAWN	JGP
DATE	09/15/08