RESOLUTION NO. 75330

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE CONDITIONALLY VACATING A PORTION OF McLELLAN AVENUE, EDWARDS AVENUE, AND GRANT STREET

WHEREAS, the conditional vacation of a portion of McLellan Avenue, Edwards Avenue, and Grant Street described in Section 3 of this Resolution is being conducted pursuant to and in accordance with the provisions of Chapter 3 of Part 3 of Division 9 of the Streets and Highways Code of the State of California; and

WHEREAS, on March 16, 2010, the City Council adopted Resolution No. 75305 ("Resolution of Intention") declaring its intention to conditionally vacate a portion of McLellan Avenue, Edwards Avenue, and Grant Street described in Section 3 of this Resolution; and

WHEREAS, the Resolution of Intention gave notice that on Tuesday, the 6th day of April, 2010 at 1:30 p.m., in the Council Chambers of the City Council, in the City Hall of the City of San José, the Council would hear any and all persons interested in or objecting to the conditional vacation of said portion of McLellan Avenue, Edwards Avenue, and Grant Street; and

WHEREAS, the Resolution of Intention giving notice of the date, time and place of the public hearing was published in the manner prescribed by law; and

WHEREAS, notices of the proposed conditional street vacation, stating the purpose of the Resolution of Intention and the time and place set for the public hearing, were posted in the manner prescribed by law; and

WHEREAS, prior to the public hearing the plat map approved by the Director of Public Works on February 24, 2010, entitled "PLAT MAP SHOWING A PORTION OF McLELLAN AVENUE, EDWARDS AVENUE AND GRANT STREET TO BE CONDITIONALLY VACATED" and showing the said portions of street proposed for conditional vacation ("Plat Map"), was filed in the Office of the City Clerk and made available for examination by any persons desiring to do so; and

WHEREAS, on April 6, 2010, at 1:30 p.m. in the City Council chambers, the City Council heard any and all persons interested in or objecting to the proposed conditional vacation of a portion of McLellan Avenue, Edwards Avenue, and Grant Street, and received and considered all evidence submitted; and

WHEREAS, at the public hearing on the conditional vacation of a portion of McLellan Avenue, Edwards Avenue, and Grant Street described in Section 3 of this Resolution, the City Council had before it a report from the Director of Public Works to the City

Council, dated March 15, 2010, identified as "EXHIBIT A" and incorporated herein, and the Location Map, identified as "EXHIBIT B" and incorporated herein

.

NOW, THEREFORE, BE IT HEREBY RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. The City Council hereby adopts the Report and, based upon the Report and all other evidence submitted at the public hearing, makes the following findings of relevant fact:

A. This conditional vacation is in conjunction with the Santa Clara Valley Water District's (SCVWD) Upper Guadalupe River Improvement Project (Reach 6) and is necessary as the project scope extends into the areas proposed for conditional vacation; and

B. There are public facilities located within the area proposed for conditional vacation described in Section 3 of this Resolution; and

C. All affected public utilities have been contacted and have no objections to the proposed conditional vacation so long as their facilities are abandoned, removed, or relocated; and

D. The SCVWD has contracted with the affected public utilities to abandon, remove, or relocate their facilities; and

E. There are certain properties that currently maintain public access from Parcel 4 (Edwards Avenue), more particularly described in Section 3 of this Resolution; and

F. The SCVWD will maintain physical and legal public access to these properties until such time that the City accepts the construction and conveyance of necessary rights of way to provide public access.

SECTION 2. The City Council makes the following conclusions and finding based upon an analysis of the above facts:

A. The portions of street described in Section 3 of this Resolution and depicted in the Plat Map are not necessary for prospective public street purposes; and

B. In order to accommodate the public utilities currently located within the area proposed for vacation, this vacation will be conditional upon the abandonment, removal, or relocation of said facilities.

C. In order to maintain proper public access to certain properties (which maintain public access over Parcel 4 (Edwards Avenue), more particularly described in Section 3 of this Resolution), the vacation will be conditional on the City's acceptance and recordation with the County of Santa Clara Recorder's Office of the dedication of necessary rights of way for the portion of Edwards Avenue to be realigned.

SECTION 3. Based on the above stated facts, conclusions and findings, the City Council hereby conditionally vacates the following portions of McLellan Avenue, Edwards Avenue, and Grant Street, as hereinafter described:

All that certain real property situated in the City of San Jose, County of Santa Clara, State of California, described as follows:

PARCEL 1

Being a portion of the lands shown as Grant Street (60 feet wide) on that certain map entitled, "EMERALD ISLE SUBDIVISION" and filed in Book F3 of Maps at page 23 in the office of the Recorder, County of Santa Clara, State of California, to wit:

BEGINNING at southwesterly corner of Lot 3 as shown on said map; thence N27°16'00"W 60.11 feet to a point on the northerly line of said Grant Street (60 feet wide) as shown on said map; thence along said northerly line, N59°20'00"E 99.66 feet; thence leaving said northerly line, along a curve to the right from a tangent which bears S47°25'29"E, having a radius of 330.55 feet, through a central angle of 10°37'35", for an arc distance of 61.31 feet to a point on the southerly line of said Grant Street; thence along said southerly line, S59°20'00"W 115.37 feet to the POINT OF BEGINNING.

Containing 6509 square feet or 0.149 acre of land, more or less.

PARCEL 2

All of the lands shown as Killarney Place (now McLellan Avenue) on that certain map entitled, "EMERALD ISLE SUBDIVISION" and filed in Book F3 of Maps at page 23 in the office of the Recorder, County of Santa Clara, State of California, to wit:

Being bounded on the East by the northwesterly prolongation of the westerly sideline of Palm Street (60 feet wide) and bounded on the South by the southwesterly prolongation of the northerly sideline of West Virginia Street (60 feet wide) as it exists today.

Containing 0.937 acre of land, more or less.

PARCEL 3

All of the lands shown as McLellan Avenue (50 feet wide) (now McLellan Avenue) on that certain map entitled, "Map of the Conkling and Col Subdivision" filed in Book N of Maps at page 82 in the office of the Recorder, County of Santa Clara, State of California, to wit:

Being bounded on the North by the westerly prolongation of the southeasterly sideline of West Virginia Avenue (60 feet wide) as it exists today and on the South by the southwesterly prolongation of the northerly sideline of Edwards Avenue.

Containing 1.089 acres of land, more or less.

PARCEL 4

Being a portion of the lands shown as Edwards Alley (now Edwards Avenue) 58.25 feet wide and McLellan Avenue (60 feet wide) (now McLellan Avenue) on that certain map entitled, "MAP OF THE PALM TRACT" and filed in Book K of Maps at page 90 in the office of the Recorder, County of Santa Clara, State of California, to wit:

BEGINNING at southwest corner of Lot 22 as shown on said map; thence along the easterly line of McLellan Avenue (now McLellan Avenue) as shown on said map, S30°40'00"E 192.00 feet; thence leaving said easterly line, along a curve to the left from a tangent which bears, S59°20'00"W, having a radius of 60.00 feet, through a central angle of 86°25'00", for an arc distance of 90.49 feet; thence S27°05'00"E 1.92 feet to a point on the westerly line of said McLellan Avenue (now McLellan Avenue); thence along said westerly line, N30°40'00"W 278.42 feet; thence continuing said westerly line, along a curve to the right from a tangent which bears, N31°03'16"W, having a radius of 18.50 feet, through a central angle of 53°54'20", for an arc distance of 17.41 feet to a point of reverse curvature; thence along a curve to left having a radius of 18.50 feet, through a central angle of 53°54'20", for an arc distance of 17.41 feet to a point on the northerly line of Edwards Alley (now Edwards Avenue) as shown on said map; thence along said northerly line, N59°20'00"E 173.67 feet; thence leaving said northerly line, along a curve to left from a tangent which bears S51°00'19"W, having a radius of 60.00 feet, through a central angle of 80°36'28", for an arc distance of 84.41 feet to the southerly line of said Edwards Alley (now Edwards Avenue); thence along said southerly line, S59°20'00"W 77.37 feet to the POINT OF BEGINNING.

Containing 0.479 acre of land, more or less.

SECTION 4. The City Clerk is directed to record a certified copy of this Resolution in the Santa Clara County Recorder's Office.

SECTION 5. This vacation is conditional and will not take effect until:

A. All existing utilities in the portions of the streets to be vacated have been abandoned, removed, or relocated; and

B. The City has accepted and recorded with the County of Santa Clara Recorder's Office the dedication of necessary rights of way for the portion of Edwards Avenue to be realigned.

ADOPTED this 6th day of April, 2010, by the following vote:

AYES: CAMPOS, CHIRCO, CHU, CONSTANT, HERRERA, KALRA, LICCARDO, NGUYEN, OLIVERIO, PYLE; REED.

NOES: NONE.

ABSENT: NONE.

DISQUALIFIED: NONE.

Chuck Reed

CHUCK REED
Mayor

ATTEST:

Lee Price

LEE PRICE, MMC
City Clerk

EXHIBIT A

COUNCIL AGENDA: 04-06-10
ITEM:

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: Katy Allen
Peter Jensen

SUBJECT: STREET VACATION OF MCLELLAN AVENUE, GRANT STREET, AND EDWARDS AVENUE

DATE: 03-15-10

Approved

Date

COUNCIL DISTRICT: 3

RECOMMENDATION

Conduct a public hearing and adopt a resolution to conditionally vacate a portion of McLellan Avenue, Grant Street, and Edwards Avenue.

OUTCOME

Council adopts a resolution to conditionally vacate a portion of McLellan Avenue, Grant Street, and Edwards Avenue.

BACKGROUND

The Santa Clara Valley Water District (SCVWD) submitted an application to vacate a portion of McLellan Avenue, Grant Street, and Edwards Avenue (map attached). The abandonment of the subject streets is necessary to facilitate the completion of the SCVWD's 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 in order to accommodate this design.

On March 16, 2010, the Council adopted a resolution which declared the Council's intention to conditionally vacate a portion of McLellan Avenue, Grant Street, and Edwards Avenue. The resolution approved a map showing the subject right-of-way to be conditionally vacated, set the public hearing for April 6, 2010, at 1:30 p.m., and directed the Director of Public Works to post the site with a Notice of Vacation.

ANALYSIS

This vacation application includes the abandonment of the following City street segments:

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)

City staff has reviewed the subject vacation application and concur with the SCVWD's proposal to abandon these streets. As the SCVWD has purchased the 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. In order to accommodate the vacation of this portion of Edwards Avenue, the SCVWD has proposed the relocation of this street segment. The SCVWD will construct this relocated street with their construction project and dedicate the necessary public rights of way to accommodate this design. The existing street will provide access to abutting properties until such time that the replacement by the Water District has been completed to City standards. Therefore, staff is recommending that the vacation of Edwards Avenue (Parcel 4) be conditional and not be effective until such time that the relocation is complete and the necessary public rights of way are obtained from the SCVWD.

All concerned utility companies have been contacted in writing and have no objection to this vacation provided the existing facilities of Pacific, Gas, and Electric (PG&E) and San Jose Water Co. (SJWC) are abandoned, removed, and/or relocated from the proposed vacation area. The SCVWD has contracted with both PG&E and SJWC to relocate their facilities. As a result, the vacation of a portion of McLellan Avenue, Grant Street, and Edwards Avenue is conditional and will take effect when the utilities have been completely abandoned, removed, or relocated.

In summary, if the Council adopts a resolution vacating McLellan Avenue, Grant Street, and Edwards Avenue, none of the street vacations will take effect until the above mentioned conditions are satisfied.

According to the title reports submitted, the City of San José holds fee title to subject streets proposed for vacation. In order to accommodate the construction of the Upper Guadalupe River Reach 6 Project, the SCVWD has requested to acquire fee title to the subject streets. Therefore, concurrent with the proposed resolution to vacate the subject streets, Council will also be asked via separate memorandum from the Department of General Services to approve an agreement authorizing the conveyance of fee interest to the project properties to the SCVWD.

EVALUATION AND FOLLOW-UP

If Council adopts this resolution to conditionally vacate a portion of McLellan Avenue, Grant Street, and Edwards Avenue, staff will work with the SCVWD to complete the above mentioned conditions necessary to effectuate the Street Vacation.

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 Planning, Building, and Code Enforcement, Transportation, Police, Fire, and the City Manager's Budget Office. In addition, the vacation and required resolution have been reviewed by the City Attorney's Office. All appropriate public utility companies have consented to the proposed vacation, except that PG&E and SJWC required abandonment or relocation of their respective facilities.

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.

COST SUMMARY/IMPLICATIONS

The Public Works Department collected cost-recovery fees to process this street vacation.

BUDGET REFERENCE

Not applicable.

CEQA

CEQA: Resolution No. 75043.

/s/

KATY ALLEN
Director, Public Works Department
Department

/s/

PETER JENSEN
Director, General Services

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

PD:ML:dcs
Attachment
3-18457 2nd CC Memo 030410

EXHIBIT B

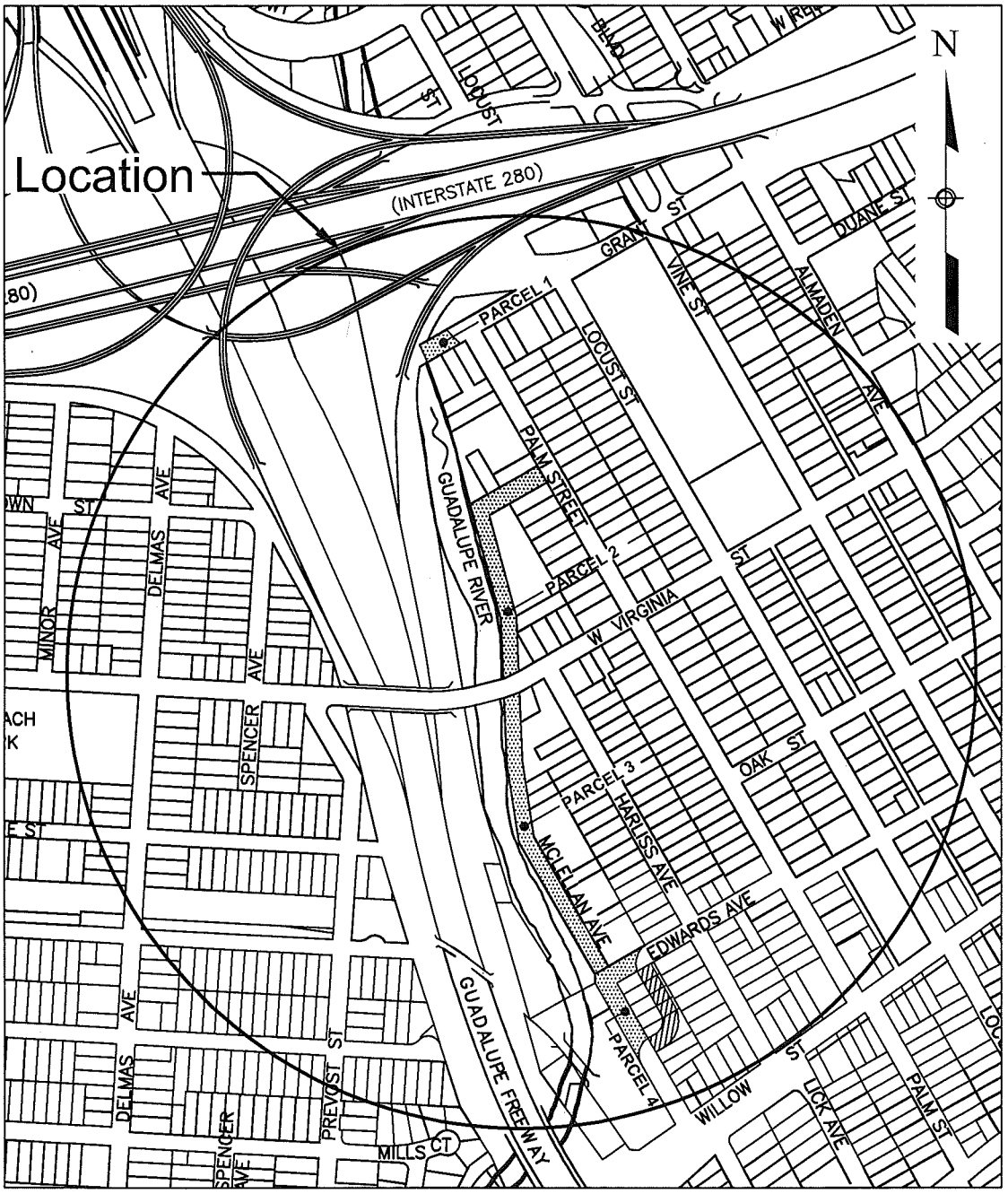
75330

LOCATION MAP

SHOWING THAT PORTION OF MCLELLAN AVENUE, GRANT STREET & EDWARDS AVENUE TO BE CONDITIONALLY VACATED

AREA TO BE VACATED

AREA TO BE DEDICATED



75330

PLAT MAP

SHOWING A PORTION OF McLELLAN AVENUE, EDWARDS AVENUE AND GRANT STREET TO BE CONDITIONALLY VACATED

AREA TO BE VACATED

AREA TO BE DEDICATED

FILED WITH THE CITY COUNCIL OF THE CITY OF SAN JOSE THIS 6th DAY OF APRIL, 2010, AND APPROVED BY SAID CITY COUNCIL THIS 6th DAY OF APRIL, 2010 BY RESOLUTION NUMBER 75330

Susan M Davis, Deputy
CITY CLERK, CITY OF SAN JOSE

APPROVED THIS 24th DAY OF February, 2010

KATY ALLEN
DIRECTOR OF PUBLIC WORKS,
CITY OF SAN JOSE

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