



**DATE:** January 21, 2014

**CATEGORY:** Public Hearing

**DEPT.:** Public Works

**TITLE:** **Vacation of Portions of Stierlin Road and Washington Alley**

### **RECOMMENDATION**

Adopt a Resolution Ordering the Vacation of a Portion of Public Street Right-of-Way on Stierlin Road and Washington Alley, to be read in title only, further reading waived (Attachment 1 to the staff report).

### **BACKGROUND**

On December 13, 2011, the City Council approved a Gatekeeper request from Prometheus Real Estate Group (Prometheus) for a 190-unit apartment project at 100 Moffett Boulevard (the proposed project has since been reduced to 184 units). The project area includes four private properties owned or leased by Prometheus, including a long-term ground lease of lands owned by Walter Berthold Kozourek and Renate Kozourek. The project area also includes portions of the City-owned Washington Alley and Stierlin Road rights-of-way (Attachment 2) which adjoin the Kozourek fee-owned property. The total area of the City right-of-way proposed to be vacated and conveyed is 9,593 square feet. Essentially the easterly half (northbound lane) of Stierlin Road will be retained by the City for public utilities and will be developed as a bicycle/pedestrian paseo by Prometheus. With the vacation, the City right-of-way would be conveyed to the Kozoureks, merged into the Kozourek property through the filing of a parcel map, and Prometheus and the Kozoureks would then amend their ground lease to incorporate the former City right-of-way.

During its June 18, 2013 meeting, the City Council authorized Prometheus to proceed with their development application to include the City right-of-way. As a precondition to any conveyance of the City right-of-way, the California Streets and Highways Code requires Council to take two actions: (1) adopt a Resolution of Intention to Vacate the right-of-way and set a date for a Public Hearing to consider the vacation; and (2) adopt a Resolution in a Public Hearing formally vacating the right-of-way. The resolution formally vacating the right-of-way must then be recorded with the County.

On December 3, 2013, the City Council:

- Adopted Resolution No. 17823, Series 2013, and declared its intent to vacate a portion of public street right-of-way on Stierlin Road and Washington Alley and set January 21, 2014 as the date for a Public Hearing on the vacation to hear all persons interested in supporting or objecting to the proposed vacation.
- Approved the conditional sale of the public street right-of-way, conditioning the close of escrow on the adoption and recordation of a resolution formally vacating the right-of-way.
- Introduced an ordinance amending the Zoning Map for the Prometheus project and approved a Planned Community Permit and Heritage Tree Removal Permit for the project.

On December 10, 2013, the Council adopted the ordinance amending the Zoning Map Amendment on the second reading. The ordinance became effective January 9, 2014.

### **ANALYSIS**

The City's vacation of the public street right-of-way on Stierlin Road and Washington Alley will enable Prometheus to develop the 184-unit residential development approved by Council. Once the property is vacated, Prometheus will acquire property rights to a portion of Stierlin Road and Washington Alley right-of-way and incorporate the area to be vacated into their development and construct a new right-turn lane and bicycle lane from southbound Moffett Boulevard to westbound Central Expressway. Attachment 2 shows the proposed Stierlin Road and Washington Alley vacations. Although the property will be vacated, it will not be conveyed to the Kozourek until the conditions set forth in the Purchase and Sale Agreement are satisfied; i.e., the Resolution of Vacation is recorded and Prometheus submits shoring and excavation plans acceptable to the City and pays all Shoring and Excavation Permit fees. Deferring transfer of title until Prometheus submits shoring and excavation plans all but ensures Prometheus will proceed with development when the land is conveyed.

### **FISCAL IMPACT**

The vacation of the City-owned portions of Stierlin Road and Washington Alley, and the conditional and subsequent sale of the vacated right-of-way, will generate \$1,238,950 in revenue to the City's Open Space Reserve Fund (\$1,438,950 in sale

proceeds minus a \$200,000 credit to Prometheus for construction of a new right-turn lane and bike lane from southbound Moffett Boulevard to westbound Central Expressway).

**ALTERNATIVES**

Do not adopt the resolution ordering the vacation. Without the vacation, Prometheus' project would not be buildable consistent with the Planned Community Permit approved by Council on December 3, 2013.

**PUBLIC NOTICING**

In accordance with Sections 8322 and 8323 of the California Streets and Highways Code, notices of this Public Hearing and the Resolution of Vacation were posted along the portion of the right-of-way to be abandoned and published in the *San Jose Post Record*.

Prepared by:

Dennis P. Drennan  
Real Property Program Administrator

Linda Forsberg  
Transportation and Business Manager

Approved by:

Michael A. Fuller  
Public Works Director

Daniel H. Rich  
City Manager

DPD-LF/7/CAM  
930-01-21-14CR-E

- Attachments: 1. Resolution of Vacation  
2. Plat and Legal Description of Right-of-Way to be Vacated