



DATE: July 1, 2014

CATEGORY: Public Hearing

DEPT.: Public Works

TITLE: **Adopt a Resolution of Necessity and Authorize the Initiation of Eminent Domain Proceedings**

RECOMMENDATION

1. Adopt a Resolution of Necessity Determining that the Public Interest and Necessity Require the Acquisition of Certain Property Rights and Directing the Filing of Eminent Domain Proceedings, to be read in title only, further reading waived (Attachment 1 to the Council report). (Five votes required)
2. Authorize the City Attorney to take all steps necessary to commence legal proceedings in a court of competent jurisdiction to extinguish certain easement rights in a portion of Washington Alley by eminent domain.

BACKGROUND

On December 3, 2013, the City Council approved a 184-unit apartment project at 100 Moffett Boulevard that will include portions of Stierlin Road and Washington Alley. At that same meeting, the Council adopted Resolution No. 17823 declaring its intent to vacate portions of public street right-of-way on Stierlin Road and Washington Alley, and approved the conditional sale of the vacated right-of-way.

On January 21, 2014, the City Council adopted Resolution No. 17833 ordering the vacation of the portions of Stierlin Road and Washington Alley shown on Figure 1. The required closure of the Stierlin Road on-ramp to westbound Central Expressway allowing the vacation was previously approved by the City Council on June 18, 2013.

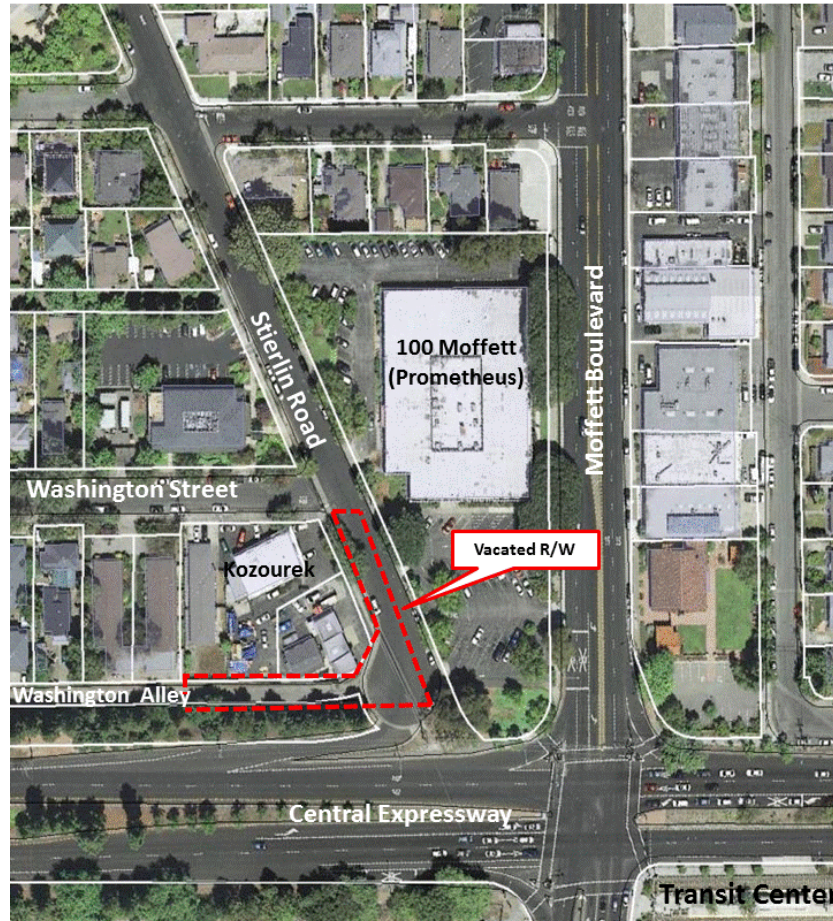


Figure 1
(illustrative purposes only)

As part of the project approval, the developer was required to make certain traffic and transportation improvements within and adjacent to the project site, including the construction of a bicycle and pedestrian paseo through the project, and the dedication of a strip of land along the project's Moffett Boulevard frontage for the construction of a dedicated right-turn lane from southbound Moffett Boulevard to westbound Central Expressway.

In late January 2014, City staff learned that a map recorded on September 28, 1904 ("Map of the Mockbee and Weilheimer Addition to the Town of Mountain View"), created an easement benefitting the lot owners within the Mockbee Map bounds, and their successors, by dedicating of all the streets and alleys for their "uses and purposes." These easement rights include the vacated portion of Washington Alley and were not extinguished through the City's formal vacation of Washington Alley.

There are currently approximately ninety (90) lot owners within the boundaries of the original Mockbee Map, all of whom have equal easement interests in Washington Alley.

ANALYSIS

In order to convey clear and insurable title to the Washington Alley properties, the City must extinguish the easement rights of all of the property owners within the vacated portion of Washington Alley (Figure 2).



Figure 2
(illustrative purposes only)

The City can extinguish the easement rights either through buying out the rights of each of the lot owners and/or the City could exercise eminent domain to extinguish the rights. Given the fact there are approximately 90 owners with an easement interest, many of whom are absentee owners (i.e., they do not reside on the property), and in the interest of extinguishing the easement rights in a timely manner, staff proposes a parallel track of continuing to pursue acquisition of the easement rights and pursuing extinguishment of the easement rights through eminent domain.

It is important to note that in this exercise of eminent domain there will be no “taking” of physical property and traffic circulation patterns of the affected property owners will not be impacted by this acquisition of rights. (The vacation of a portion of Stierlin Road, which is located outside the Mockbee Map boundaries and is not subject to the easement rights, effectively terminated any vehicle access on Washington Alley where it intersects Stierlin Road.)

In order for a public agency in California to initiate eminent domain proceedings, its governing body must adopt a Resolution of Necessity in a public hearing. California Code of Civil Procedure Section 1245.230 provides that in order to adopt a Resolution of Necessity, the public agency must find:

- The project for which the property, or property rights, to be acquired is necessary.
- The property, or property rights, is necessary for the public project.
- The project is located in such a manner as to offer the greatest public benefit with the least private detriment.
- An offer to purchase the property has been made as required by California Government Code Section 7267.2.

Each of these findings is addressed below:

Necessity

Extinguishing the easement rights is necessary to convey clear and insurable title to allow the project, including the traffic improvements, to be constructed.

Necessary for the Public Project

The property rights to be extinguished through eminent domain are necessary to ensure vehicles do not travel down the vacated portion of Washington Alley and endanger bicyclists and pedestrians using the paseo approved as part of the development.

Public Benefit and Least Private Detriment

Extinguishing the easement rights through eminent domain will enable the traffic and transportation improvements to be constructed as part of a City-approved project.

Additionally, these eminent domain proceedings will only extinguish obscure easement rights and will not result in the “taking” of any physical property or in any way affect the quiet use and enjoyment of the homesteads of property owners subject to this eminent domain action. Extinguishing the easement rights within the vacated portion of Washington Alley will not have any additional effect on the public’s ability to access Stierlin Road not already accomplished by the closure of a portion of Stierlin Road.

Offer to Purchase

In compliance with California Government Code Section 7267.2, an independent appraiser estimated the value of the easement rights to be acquired by eminent domain. The appraiser concluded the acquisition of the easement rights would not have any economic effect on the values of the properties within the Mockbee Map subdivision and concluded a value of \$1,000, in total, for the easement rights, with the value being split equally amongst the approximately 90 owners (\$11.63 per property owner). On May 30, 2014, letters were sent to each property owner offering the sum of \$25 to “quitclaim” their interest in the vacated portion of Washington Alley. Staff will continue its efforts to reach agreement with property owners while continuing to proceed with the recommended eminent domain action.

FISCAL IMPACT

An independent real estate appraiser has determined the value of the easement rights to be condemned to be a total of \$1,000, with the value being apportioned equally among all of the property owners within the original Mockbee Map subdivision. If any property owner disputes the City’s opinion of “fair and just compensation,” they will be required to bring their own evidence of value to a trial and the Superior Court will ultimately determine the award of value. It is too difficult at this time to predict what fiscal impacts the City might incur, if any, in the event of an adverse court judgment.

CONCLUSION

Extinguishing the easement rights within the vacated portion of Washington Alley through the power of eminent domain is the most appropriate approach and is within the authority of the City as a public agency. This eminent domain action will not result in the loss of any physical private property and, in the opinion of an independent appraiser, will have no economic impact on the property owners having an easement interest.

Staff recommends the adoption of the Resolution of Necessity and the filing of a Complaint in Condemnation to extinguish the easement rights within the vacated portion of Washington Alley.

ALTERNATIVES

1. Do not adopt the Resolution of Necessity. This action would result in a lengthy and uncertain effort to extinguish the easement rights through negotiated agreements with approximately 90 individuals.
2. Provide other direction.

PUBLIC NOTICING

In addition to complying with the City's standard agenda posting requirements, a Notice of Intent to Adopt a Resolution of Necessity was mailed through the United States Postal Service to all property owners within the affected area on June 13, 2014.

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Attachment: 1. Resolution of Necessity