

RESOLUTION NO. 26-024

A RESOLUTION OF THE CUPERTINO CITY COUNCIL VACATING A PORTION OF PUBLIC RIGHT-OF-WAY LOCATED ALONG THE WESTERLY EDGE OF MARY AVENUE (APN 326-27-053) AS PROVIDED IN SECTIONS 8320-8325 OF CALIFORNIA STREETS AND HIGHWAYS CODE

WHEREAS, the real property at issue is wholly owned by the City of Cupertino and is situated along the westerly edge of Mary Avenue, between Stevens Creek Boulevard and Lubec Street, in the City of Cupertino (APN 326-27-053) ("Property"). The Property is more particularly described as Parcel 1 shown on that certain Parcel Map filed for record in the Office of the Recorder of the County of Santa Clara, State of California, on May 2, 2023, in Book 953 of Maps, Pages 53 and 54 ("Parcel Map"), attached hereto and as further described in Exhibit A; and

WHEREAS, all of Parcel 1 contained within the current public right-of-way is depicted on the Parcel Map, which shall be vacated ("Vacation Area") to allow for the construction of an affordable housing project identified in the Housing Element of the City's General Plan as the Mary Avenue project; and

WHEREAS, the City previously entered into a Disposition and Development Agreement ("DDA") pertaining to the Mary Avenue project, which prior decision to enter into the DDA has no binding effect or limitation on the City Council's ability to exercise its discretion with regard to the current design as to whether the Vacation Area is unnecessary for a present or prospective public use as the City entered into the DDA with the clear understanding that the DDA is contingent upon the City separately finding the Vacation Area to be unnecessary for the present or prospective public use, pursuant to California Streets and Highways Code section 8324(b);

WHEREAS, on February 10, 2026, the Planning Commission found the Vacation Area of the proposed vacation to be consistent with the City's adopted General Plan pursuant to California Government Code section 65402 and adopted Planning Commission Resolution No. 2026-01 so finding; and

WHEREAS, the proposed roadway design after the Vacation Area is vacated from the public right-of-way incorporates sidewalks, roadway lanes, and

bicycle lanes that meet all applicable design standards, including requirements for width and materials. The design maintains adequate access throughout the area and does not result in any obstruction to public access; and

WHEREAS, all public utilities having any right, title, or interest in the right-of-way have been notified of the City's planned vacation, including AT&T, Comcast, Cupertino Sanitary District, PG&E, and San Jose Water Company, and "no-objection" letters have been obtained from each entity.

WHEREAS, a city may initiate vacation proceedings by noticing a public hearing and posting signs as to the date, time, and place of the public hearing at which the city will consider said vacation, in accordance with California Streets and Highways Code sections 8320; 8322; and 8323; and

WHEREAS, pursuant to California Streets and Highways Code section 8324(a), a public hearing was held on March 3, 2026 at which time the City Council received testimony and evidence from all persons interested in the proposed street vacation who indicated their desire to be heard, from all persons protesting the same who indicated their desire to be heard, and from members of City staff, wherein this City Council considered all of the evidence submitted concerning the proposed vacation of the Vacation Area; and

WHEREAS, the City Council now desires to approve the vacation of the Vacation Area subject to the reservations, conditions and exemptions set forth herein.

NOW, THEREFORE, BE IT RESOLVED that the City Council does hereby find and resolve as follows:

Section 1: The City Council has duly considered the full record before it, including the staff report and presentation, facts, exhibits, public testimony, the findings of the Planning Commission contained in the adopted Planning Commission Resolution No. 2026-01, and other evidence and materials submitted or provided to the Council, in compliance with California Streets and Highways Code section 8324(a), and the City Council understood at the time the Council approved the DDA, that the legal effect of the DDA would be contingent upon independently finding the Vacation Area unnecessary for present or prospective public use.

Section 2: The recitals set forth above are found to be true and correct and are incorporated herein by reference.

Section 3: The City has performed an environmental assessment for the Mary Avenue housing project, and the City hereby determines that it falls within the Categorical Exemption set forth in Section 15332 of the Guidelines for Implementation of the California Environmental Quality Act ("CEQA Guidelines") which exempts Class 32 Infill Development Projects because (a) the project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations; (b) the proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses; (c) the project site has no value, as habitat for endangered, rare or threatened species; (d) approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality; and (e) the site can be adequately served by all required utilities and public services. None of the exceptions to Categorical Exemptions set forth in the CEQA Guidelines, section 15300.2 apply to this project and, specifically, this project does not present any unusual circumstances. The proposed vacation of the Vacation Area does not constitute a separate project under CEQA and is an implementation action within the scope of the affordable housing development project. Based on the whole of the administrative record, the City Council determines the project is categorically exempt from CEQA pursuant to the Class 32 exemption.

Section 4. The City Clerk published notice and posted signs declaring said intention, and the date, time, and place of a public hearing to be held to consider said vacation of the Vacation Area, in accordance with California Streets and Highways Code sections 8320, 8322, and 8323; and

Section 5. The proposed roadway design incorporates sidewalks, roadway lanes, and bicycle lanes that meet all applicable design standards, including requirements for width and materials. The design maintains adequate access throughout the area and does not result in any obstruction to public access.

Section 6: Based on all the evidence submitted, the Vacation Area as described in the notice of hearing is unnecessary for present or prospective public use, pursuant to California Streets and Highways Code section 8324(b).

Section 7. The City Council does hereby vacate the Vacation Area, as described and depicted on the Parcel Map.

Section 8. Pursuant to California Streets and Highways Code section 8340(c), the City of Cupertino reserves for the benefit of public utility companies and excepts from the foregoing vacation the permanent public utility easement shown on the Parcel Map, and its correlating rights in connection with such easement existing in, under, or over the Vacation Area, unless quitclaimed or released by the owner thereof. The correlated rights include, but are not limited to, at any time, and from time to time, to excavate for, construct, reconstruct, maintain, operate, replace, remove, renew, inspect and use the public utility facilities, including, but not limited to electric, gas and communication facilities, the ingress to and egress from the public utility facilities, and also the right to trim and cut down trees and other vegetation that may be a hazard to the public utility facilities. The area shall be kept open and free of buildings, structures, wells or other obstructions.

Section 9. City staff is directed to cause a certified copy of this Resolution, attested by the City Clerk under the seal of the City, to be recorded in the Office of the County Recorder of Santa Clara County, upon notification from the Director of Public Works that the Developer of the Mary Avenue Project, as defined in that certain Disposition and Development Agreement executed on February 3, 2026 and approved by City Council Resolution No. 26-018, has met all precedent conditions as set forth therein.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Cupertino this 3rd day of March, 2026, by the following vote:

Members of the City Council

AYES:	Moore, Fruen, Mohan
NOES:	Chao, Wang
ABSENT:	None
ABSTAIN:	None

SIGNED: <u><i>Katherine "Kitty" Moore</i></u> Kitty Moore, Mayor City of Cupertino	<u>3/5/2026</u> Date
ATTEST: <u><i>Lauren Sapudar</i></u> Lauren Sapudar, Acting City Clerk	<u>3/5/2026</u> Date

PARCEL MAP

CONSISTING OF TWO (2) SHEETS
BEING A PORTION OF THE WEST ½
OF THE NORTHEAST ¼ OF SECTION
14 T 7 S., R 2 W., M.D.B.&M.
SANTA CLARA COUNTY RECORDS.
CITY OF CUPERTINO
SANTA CLARA COUNTY, CALIFORNIA
NOVEMBER 2021

Giuliani & Kull - San Jose, Inc.

Engineers • Planners • Surveyors

4880 Stevens Creek Blvd. Suite 100
San Jose, California 95129
(408) 615-4000

LEGEND

- DISTINCTIVE BORDER
- CENTERLINE OF RIGHT-OF-WAY
- EXISTING LOT LINE
- SET 3/4" IRON PIPE, TAGGED L.S. 7999
- ⊙ MONUMENT IN MONUMENT BOX, AS DESCRIBED
- O.R. OFFICIAL RECORDS
- DOC. NO. DOCUMENT NUMBER
- MON. MONUMENT
- () RECORD DATA HELD
- [] RECORD DATA IN CONFLICT WITH HELD DATA
- BD BRASS DISC
- FD. FOUND

REFERENCES

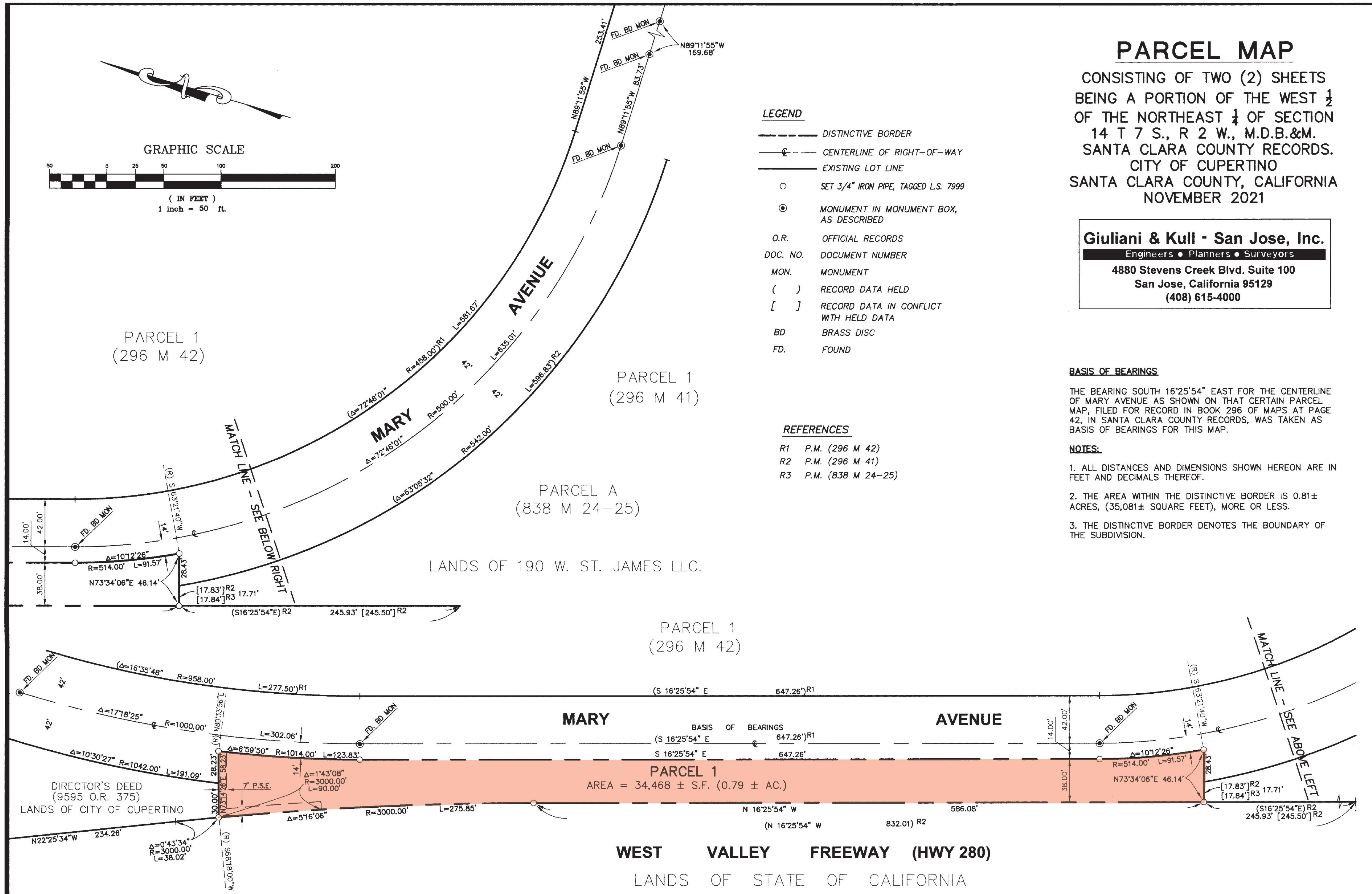
- R1 P.M. (296 M 42)
- R2 P.M. (296 M 41)
- R3 P.M. (838 M 24-25)

BASIS OF BEARINGS

THE BEARING SOUTH 16°25'54" EAST FOR THE CENTERLINE OF MARY AVENUE AS SHOWN ON THAT CERTAIN PARCEL MAP, FILED FOR RECORD IN BOOK 296 OF MAPS AT PAGE 42, IN SANTA CLARA COUNTY RECORDS, WAS TAKEN AS BASIS OF BEARINGS FOR THIS MAP.

NOTES:

1. ALL DISTANCES AND DIMENSIONS SHOWN HEREON ARE IN FEET AND DECIMALS THEREOF.
2. THE AREA WITHIN THE DISTINCTIVE BORDER IS 0.81± ACRES, (35,081± SQUARE FEET), MORE OR LESS.
3. THE DISTINCTIVE BORDER DENOTES THE BOUNDARY OF THE SUBDIVISION.



Book
953
Pg:
54-54

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