

RESOLUTION NUMBER R- 314930DATE OF FINAL PASSAGE MAY 23 2023

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO DETERMINING THAT THE PUBLIC INTEREST AND NECESSITY REQUIRE ACQUISITION OF AN INTANGIBLE EASEMENT OF ACCESS TO CLOSE A DRIVEWAY TO FACILITATE THE NORMAL STREET PROMENADE PROJECT; AUTHORIZING THE CITY ATTORNEY TO COMMENCE PROCEEDINGS IN EMINENT DOMAIN AND TO OBTAIN AN ORDER FOR IMMEDIATE POSSESSION; AND AUTHORIZING EXPENDITURE OF FUNDS FOR THE INTERESTS TO BE ACQUIRED AND RELATED LITIGATION EXPENSES.

WHEREAS, the City's General Plan and Climate Action Plan both call for significant increases in bicycle ridership within the multi-modal transportation network; and

WHEREAS, the Uptown Community Plan identifies improvements to Normal Street as a priority Capital Improvement Project requested by the community; and

WHEREAS, the San Diego Association of Governments (SANDAG) has adopted a Regional Comprehensive Plan and a Regional Transportation Plan, which identify transportation infrastructure goals to support the multi-modal vision for the region, with significant investments in active transportation projects, including the Eastern Hillcrest Bikeways Project; and

WHEREAS, SANDAG has designed the Eastern Hillcrest Bikeways Project as part of the City's planned network of bicycle facilities and is included in relevant City Community Plans and the adopted City of San Diego Bicycle Master Plan; and

WHEREAS, the Eastern Hillcrest Bikeways Project is one of five segments planned as part of the Uptown Bikeways, which will enhance neighborhood connectivity between Uptown, Old Town, Mission Valley, Downtown San Diego, North Park, and Balboa Park; and

WHEREAS, the City requested, and SANDAG agreed, to expand the Eastern Hillcrest Bikeways Project to include the Normal Street Promenade Project (Project); and

WHEREAS, the Project is a collaborative effort between the City of San Diego, SANDAG and the Uptown Community Parking District and will repurpose the existing right-of-way along Normal Street from University Avenue to Washington Street, to provide a Class I bicycle facility, an expansion of the existing Pride Plaza, and an approximately 30-foot-wide pedestrian promenade by reducing Normal Street from four lanes to two lanes; and

WHEREAS, SANDAG is undertaking the planning, design and construction of the Project for its member agency, the City, and the facility will be turned over to the City, upon completion, as a City infrastructure asset, to be owned, operated, and maintained by the City; and

WHEREAS, the Project will continue to accommodate the weekly Hillcrest Farmers Market as well as other community events such as the San Diego Pride Festival and Parade, as stipulated in the Uptown Community Plan, while providing space for other community events such as movies, concerts, art showcases and street fairs; and

WHEREAS, the Project requires closing the side street driveway to property owned by Hillcrest Village Square Partnership (HVSP) abutting Normal Street (portion of APN 445-620-14) while leaving the property's main driveway opening on University Avenue intact as more particularly depicted in Exhibit 1 attached hereto; and

WHEREAS, the side driveway is already closed during the weekly Farmer's Market on Normal Street and for special events such as the Pride Parade which takes place on Normal Street alongside the property; and

WHEREAS, the Project does not require, and the City is not proposing, to acquire any permanent or temporary easements on the property; and

WHEREAS property owners, in general, enjoy an intangible easement of access which consists of the right of ingress and egress to the street upon which the landowner's property abuts and from there, in a reasonable manner, to the general system of public streets; and

WHEREAS, a property owner's right of ingress and egress is not, however, absolute and modern transportation requirements necessitate continual improvements of streets and relocation of traffic which may impact a property owner's intangible easement of access; and

WHEREAS, the City made significant effort to minimize any impacts to private property during the design phase of the Project; and

WHEREAS, the Project team met with the property owner several times which resulted in redesigning the Project to address and accommodate several concerns that the property owner had; and

WHEREAS, the City obtained a parking lot study to assess the impact that the side driveway closure would have on the property and determined closing the driveway abutting Normal Street and restriping the lot in the after condition would have minimal impacts to the HVSP property overall; and

WHEREAS, if the driveway is not closed, the Project likely cannot proceed because having vehicles crossing in that location presents a safety issue that cannot otherwise be ameliorated; and

WHEREAS, the California Environmental Quality Act (CEQA) (Public Resources Code section 21000 et seq.), section 21084, states that the CEQA Guidelines thereto (California Code of Regulations, Title 14, Chapter 3, Section 15000 et seq.) shall list those classes of projects which have been determined not to have a significant effect on the environment and which shall be exempt from CEQA; and

WHEREAS, the Planning Department has determined this Project is categorically exempt from CEQA pursuant to CEQA Guidelines Sections 15301 (Existing Facilities) which exempts the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing

public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of existing or former use, including existing streets, sidewalks, bicycle and pedestrian trails, and similar facilities (this includes road grading for the purpose of public safety), and other alterations such as the addition of bicycle facilities, including but not limited to bicycle parking, bicycle-share facilities and bicycle lanes, transit improvements such as bus lanes, pedestrian crossings, street trees, and other similar alterations that do not create additional automobile lanes; and 15304 (Minor Alterations to Land) which exempts minor public or private alterations in the condition of land, water, and/or vegetation which do not involve removal of healthy, mature, scenic trees except for forestry or agricultural purposes, including the creation of bicycle lanes on existing rights-of-way; and

WHEREAS, the proposed Project is also categorically exempt from CEQA pursuant to CEQA Guidelines Section 15305 (Minor Alterations to Land Use Limitations) which exempts minor alterations in land use limitations in areas with an average slope of less than 20%, which do not result in any changes in land use or density; and

WHEREAS, the exceptions to the exemptions listed in CEQA Guidelines Section 15300.2 would not apply in that no cumulative impacts were identified, no significant effects on the environment were identified, the Project is not adjacent to a scenic highway, no historical resources would be affected by the action, and the Project is not identified on a list of hazardous waste sites pursuant to Section 65962.5 of the Government Code; and

WHEREAS, the City has attempted in good faith to acquire the needed property interests from the property owner but has been unable to secure the intangible easement of access to close the side driveway abutting Normal Street; and

WHEREAS, the City needs to acquire the intangible easement of access from the property owner to close the side driveway abutting Normal Street to proceed with the construction of the Project; and

WHEREAS, the City negotiated with the property owners and made offers to purchase the property interests necessary for the Project at an amount consistent with the appraised fair market value of the property as determined by an MAI-accredited independent appraiser in compliance with California Government Code section 7267.2(a), and the negotiations with the property owners have not been successful as of the date of this Resolution; and

WHEREAS, funds are available to acquire the necessary real property interests sought for the Project from the existing CIP budget, B-19096.03.02, Fund 400121; and

WHEREAS, allocated funding shall be used for the purposes of property interest acquisition and related expenses including any negotiated settlements with the property owner as to the amount of just compensation owed to them for the property rights the City seeks to acquire or any Court orders relating to just compensation; and

WHEREAS, allocated funding shall also be used for the anticipated costs of eminent domain litigation including the cost of experts and updated appraisals or other related litigation expenses; and

WHEREAS, the City is vested with the power of eminent domain by Article I, Section 19 of the California Constitution, California Government Code section 37350.5, and San Diego Charter section 220, to acquire real property interests necessary for a public purpose; and

WHEREAS, the acquisition of the intangible easement of access to close the side driveway abutting Normal Street is the least amount of real property interests necessary to complete the Project; and

WHEREAS, on April 28, 2023, the City mailed a notice of hearing, and of its intent to adopt this Resolution of Necessity on May 16, 2023, to the record owner of the property, and all other persons who may have an ownership interest in the property interests sought; which notice of hearing advised said persons of their right to appear and be heard on the matters referred to therein, on the date and at the time of the place stated therein, and that a waiver of their right to appear and be heard will result upon their failure to file a written request to appear and be heard within 15 days after the date the City mailed the notice, all in compliance with California Code of Civil Procedure section 1245.235; and

WHEREAS, the property owner responded to the City's notice letter and indicated a conflict with the date set forth in the notice letter so the City agreed to reschedule the hearing to a mutually convenient date of May 23, 2023; and

WHEREAS, the hearing was held on the mutually agreeable date of May 23, 2023, at the time and place stated in the notice, and all interested parties were given an opportunity to appear and be heard on the following matters: (a) whether the public interest and necessity require the Project; (b) whether the Project is planned or located in a manner which is most compatible with the greatest public good and the least private injury; (c) whether the property interests proposed to be acquired are necessary for the Project; (d) whether an offer meeting the requirements of California Government Code section 7267.2 has been given; and (e) whether all other prerequisites for the exercise of eminent domain to acquire the property rights have been met; and

WHEREAS, the City Council, as a result of said hearing, has determined that the public health, safety and welfare require the City to acquire the intangible easement of access to close the side driveway abutting Normal Street as depicted on Exhibit 1 attached hereto; and

WHEREAS, under Charter section 280(a)(2), this Resolution is not subject to veto by the Mayor because this matter requires the City Council to act as a quasi-judicial body and where a public hearing was required by law implicating due process rights of individuals affected by the decision and where the Council was required by law to consider evidence at the hearing and to make legal findings based on the evidence presented; and

WHEREAS, under Code of Civil Procedure section 1245.240, this Resolution requires a vote of two-thirds of all the members of the governing body of the public entity; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that the public interest and necessity require acquisition of the property interest described herein as an intangible easement of access and as more particularly depicted in Exhibit I hereto.

BE IT FURTHER RESOLVED, that the Project is planned or located in a manner most compatible with the public good and least private injury.

BE IT FURTHER RESOLVED, that the property interests proposed to be acquired are necessary for the Project and that such use is a public use authorized by law (inter alia, Charter section 220, California Code of Civil Procedure sections 1240.010, 1240.020, 1240.030, 1240.040, 1240.110, 1240.120, 1240.140, 1240.510, 1240.610 and 1255.410; California Government Code section 5023.1).

BE IT FURTHER RESOLVED, that an offer to acquire the real property interests, pursuant to California Government Code section 7267.2, at the appraised fair market value, has been made to each party claiming an ownership interest(s) in the property interests sought.

BE IT FURTHER RESOLVED, that the Office of the City Attorney is hereby authorized and directed to commence an action in the Superior Court of the State of California, in and for the County of San Diego, in the name of and on behalf of the City of San Diego, against all


claimants with any interest(s) in the real property interests sought, and to seek immediate possession of the real property interests sought pursuant to California Code of Civil Procedure section 1255.410.

BE IT FURTHER RESOLVED, that the Chief Financial Officer is authorized to expend funds from the Normal Street Promenade Project, CIP B-19096.03.02, Fund 400121 to acquire the property interests found necessary for the Project, and to deposit into the State Treasury's Condemnation Fund the amount of probable compensation to be paid to the property owner, as necessary, to obtain possession of the proposed property interests. The probable amount of just compensation to be paid by the City for the necessary real property interests to be acquired has been determined by an MAI-accredited appraiser to be \$85,000 although the final amount of probable compensation will be determined by the Court or through further negotiation with the property owner and is subject to increase once a date of value is established in the eminent domain action or if the Court orders an increase in the amount of probable compensation. This authorization includes payment of any increased property acquisition amounts determined through updated appraisals after the litigation has commenced, further negotiations with the property owner and/or increased deposits ordered by the court.

BE IT FURTHER RESOLVED, that the Chief Financial Officer is authorized to expend funds from CIP B-19096.03.02, Fund 400121 to pay all related litigation expenses incurred in

the eminent domain action including, but not limited to, expert fees, deposition expenses, and all other litigation related expenses as necessary.

APPROVED: MARA W. ELLIOTT, City Attorney

By 
Jenny K. Goodman
Deputy City Attorney

JKG:msb
May 9, 2023
Or. Dept: DREAM
Doc. No. 3289850

I certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of MAY 23 2023

DIANA J.S. FUENTES
City Clerk

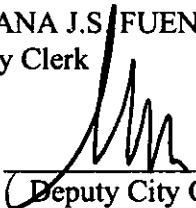
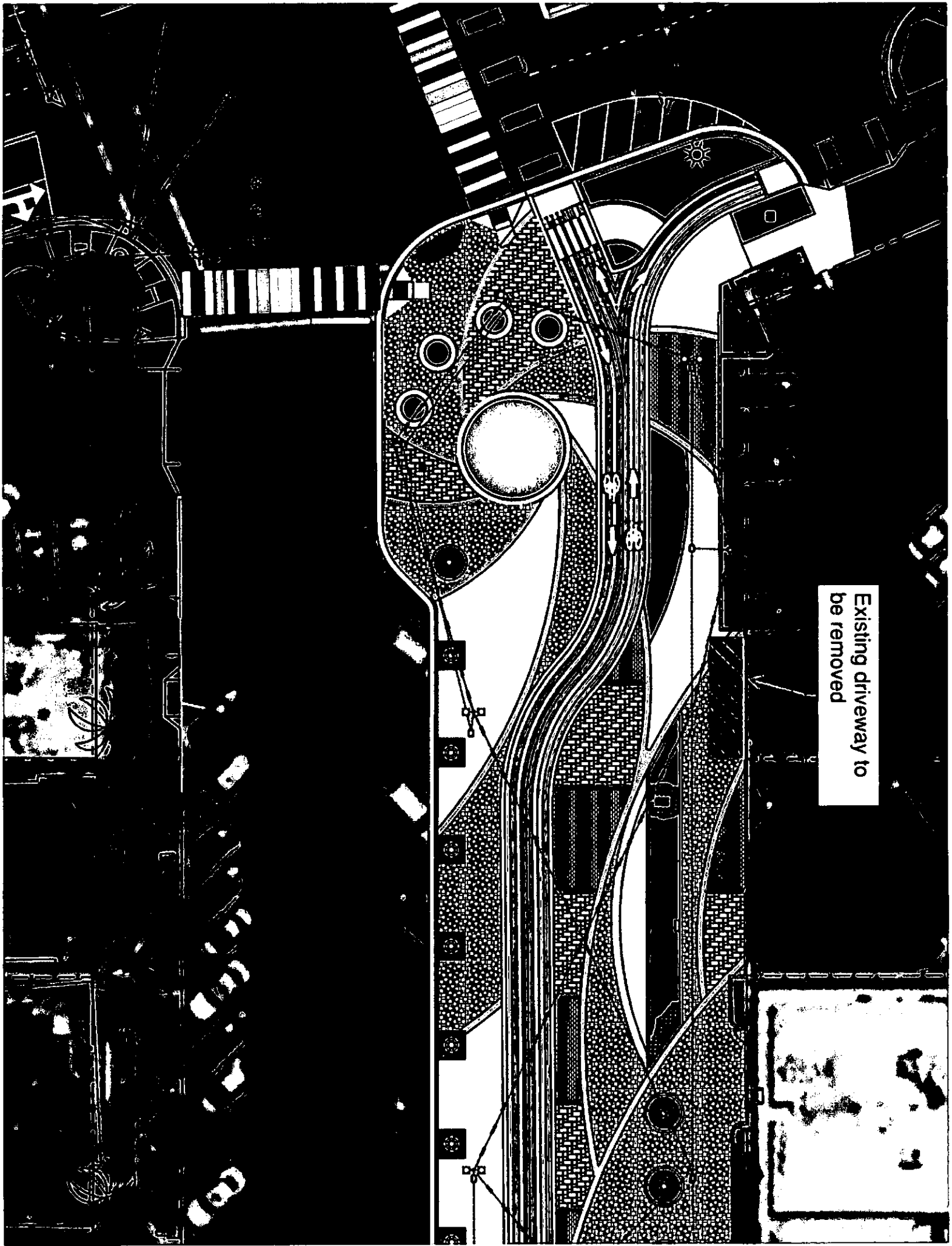
By 
Deputy City Clerk

EXHIBIT 1

100% SUBMITTAL - NOT FOR CONSTRUCTION

Existing driveway to
be removed



Passed by the Council of The City of San Diego on MAY 23 2023, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Joe LaCava	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jennifer Campbell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Stephen Whitburn	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Monica Montgomery Steppe	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marni von Wilpert	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Kent Lee	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Raul A. Campillo	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Vivian Moreno	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sean Elo-Rivera	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage MAY 23 2023.

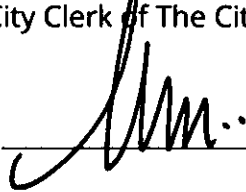
(Please note: When a resolution is approved by the Mayor, the date of final passage is the date the approved resolution was returned to the Office of the City Clerk.)

AUTHENTICATED BY:

TODD GLORIA
Mayor of The City of San Diego, California.

(Seal)

DIANA J.S. FUENTES
City Clerk of The City of San Diego, California.

By , Deputy

Office of the City Clerk, San Diego, California

Resolution Number R- 314930