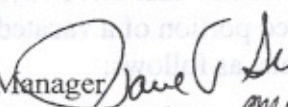



COUNTY OF SAN MATEO
COUNTY MANAGER'S OFFICE

Date: January 18, 2000
Hearing Date: February 8, 2000

To: Honorable Board of Supervisors

From: Paul T. Scannell, Assistant County Manager 
Paul M. Koenig, Director of Environmental Services 

Subject: EXECUTIVE SUMMARY: Policy on vacation of streets.

RECOMMENDATION

Adopt the attached policy to guide consideration of street vacation requests.

BACKGROUND AND DISCUSSION

While considering a street vacation request in September, your Board directed staff to prepare a policy to guide the street vacation process. In November, you referred the completed draft policy to the Planning Commission for its review. Last month, the Commission recommended that the policy be adopted, subject to several revisions.

1. Content of Proposed Street Vacation Policy

- a. Legal Foundation. The owner of a subdivided lot typically holds fee title to the center of the abutting street, but has no right to occupy that area. The owner may possess private access rights to all of the streets in the subdivision. The County may only use a dedicated street for street or allied access purposes. Your Board may vacate a street upon finding that it is unnecessary for street purposes, and that the vacation is in the public interest. Prior to vacating a street, the Planning Commission must determine whether the vacation conforms with the County General Plan.
- b. Role of the Real Property Division. The Real Property Division's primary role includes: (1) processing the vacation in accordance with State law; (2) noticing all affected departments, agencies, councils, homeowners groups, utility providers, and surrounding property owners; and (3) preparing a report including analyses of whether the street has been used for access, or is needed for future public street, pathway or utility purposes.
- c. Role of the Planning Division. The Planning Division's primary role is to analyze whether a proposed street vacation conforms with the General Plan. This involves

considering whether: (1) access is available to adjacent parcels, and (2) the site is not required for public transit, nor suitable for trail or bikeway use.

If the site either: (1) precludes access, (2) is needed for public transit, or (3) is suitable as a trail or bikeway, staff would likely recommend that the proposal be reconfigured or conditioned to conform with the General Plan. If this is not possible, staff would likely recommend that the vacation be found not to conform.

Locating structures (other than driveways) within a vacated street is prohibited. However, a specified portion of a vacated street may be used for compliance with setback requirements, as follows:

Where private access rights exist, an easement corridor within the vacated street is delineated, and must remain open. The width of the easement corridor would correspond with the standard "travel way" width for a street in that location. Any remaining portion of the vacated street may be used for compliance with setback requirements.

Should potential future development resulting from the vacation not conform with the General Plan, staff would likely recommend that the vacation be conditioned to attain conformity, or be deemed not to conform.

- d. Planning Commission and Board of Supervisors' Action. The Planning Commission holds a public hearing to determine whether the proposed vacation conforms to the General Plan. Subsequently, your Board holds a public hearing to act on the vacation request. You may approve the vacation if the site is unnecessary for street purposes, and the vacation is in the public interest. Your Board is under no legal obligation to vacate a right-of-way.

Your Board may determine that extenuating circumstances apply to an individual case, and may modify any discretionary provisions of the proposed policy as they apply to that case.

2. Planning Commission Review of Proposed Policy.

On January 12, 2000, the Planning Commission voted unanimously to recommend that your Board adopt the proposed policy, subject to several revisions. The key revisions are: (a) allow construction of a driveway or walkway within a vacated street, (b) allow use of a vacated street area for compliance with setback requirements only, and (c) require a site visit when evaluating trail suitability.

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COUNTY OF SAN MATEO

BOARD OF SUPERVISORS

POLICY ON VACATION OF STREETS

It shall be the policy of the San Mateo County Board of Supervisors that a request for any vacation of a street or road be processed, reviewed and considered in accordance with the following procedures and attached exhibits:

1. **Legal Foundation**

County Counsel has issued a series of legal opinions regarding street vacations. These collectively describe the legal parameters for considering vacation requests, and are attached as Exhibit A. A summary of Exhibit A appears below:

- a. At the time of subdivision, the subdivider may be required to dedicate to the County public access rights for future street development and use.
- b. The owner of a subdivided lot typically holds fee title to the center of the abutting street, but has no right to possess or occupy that area.
- c. The owner of a subdivided lot may possess private easement rights to use all of the streets in the subdivision, including undeveloped streets, for access.
- d. The County may only use a dedicated street for street purposes or a purpose consistent with that of a street. The County cannot use the land for a public purpose that is different from the original intent of dedication.
- e. County use of a street for non-street purposes could also conflict with the fee title rights held by the abutting owner, and the private easement rights held by all lot owners in the subdivision.
- f. The Board of Supervisors may vacate a dedicated street upon finding that it is unnecessary for street purposes, and that such vacation is in the public interest.
- g. Prior to the Board of Supervisors acting on street vacation request, the Planning Commission shall determine whether the vacation conforms with the County General Plan.
- h. Vacation of a street does not eliminate or otherwise affect any property rights other persons may have in the area to be vacated.

2. **Role of the Real Property Division**

The Real Property Division is the primary agency charged with coordinating review and processing of street vacation requests. The Division's operating procedures are included as Exhibit B. A summary of Exhibit B appears below:

a. Authority

The Public Streets, Highways and Service Easements Vacation Law (California Streets and Highways Code Section 8300 et seq.) allows property owners to file a petition requesting the Board of Supervisors to vacate a street or public utility easement. It also allows for the Board to initiate vacation of a street or easement without the filing of a petition. Adopted County resolutions: (1) designate the Assistant County Manager as the agent of the Board of Supervisors with whom petitions are filed, and (2) establish a petition filing fee based on staff processing costs.

b. Pre-application Procedures

After becoming informed that an individual intends to file a vacation request, the Real Property Division determines whether the County holds an interest in that street or easement, and whether the County's interest includes ownership of fee title to the land.

If an interest is held by the County, the Real Property Division requests that the Public Works Department determine whether the street or easement is needed for current or future public use. The Real Property Division also requests that the Planning Division determine whether the proposed vacation conforms with the General Plan and other local plans.

c. Petition Review Process

When a petition for vacation is filed, and fees paid, the Real Property Division processes the petition in accordance with the Vacation Law.

The Real Property Division transmits the proposal to the Board of Supervisors for consideration only after the following tasks are completed:

- (1) Notice of the filed petition has been sent to all affected parties, including (a) affected County departments and local agencies, including the C/CAG Bikeways Committee, (b) property owners within 300 feet of the area to be vacated, (c) homeowner's associations within the local area, (d) community councils within the local area, and (e) public utility providers.
- (2) The Planning Commission, upon referral by the Planning Division, has made a determination whether or not the vacation conforms to the County General Plan and adopted local plans.
- (3) The Assistant County Manager has prepared and submitted a written report to the Board of Supervisors regarding the proposed vacation, including: (a) all correspondence and input received from the notified affected parties, (b) the Planning Commission's determination regarding General Plan conformity, and (c) analysis and recommendation as to whether the vacation should be approved.

d. Determination Whether a Street is Necessary and Whether Vacation is in the Public Interest

In determining whether it is in the public interest to vacate the street or utility easement, the Real Property Division, based on input from the Public Works Department and Planning Division as appropriate, considers the following:

- (1) Whether the street or easement has been used for access by the public,
- (2) Whether the street or easement is needed for future public street, pathway or utility purposes,
- (3) Whether the street is needed or useful for non-motorized transportation purposes (i.e., pedestrian/bicycle/equestrian paths), and whether it is practical and economical to construct a trail or path.
- (4) Where existing structures have been built in the right-of-way with building permits, the detriment to the affected landowner if the vacation is not granted.

3. Role of the Planning Division

The Planning Division's role in the street vacation process is to analyze the request and make a recommendation to the Planning Commission as whether it conforms with the County General Plan, including applicable area and community plans. The Planning Division tasks are as follows:

a. Pre-application Review Process

Before a petitioner submits a street vacation application, the Real Property Division requests that the Planning Division conduct a "pre-application" review. This preliminary assessment of general plan conformity is intended to alert the petitioner to planning issues that may arise should the application proceed.

b. Application Review Process

Upon filing a petition for street vacation, the Real Property Division again refers the request to the Planning Division for formal determination whether the proposed vacation conforms with the County General Plan.

The request is processed as a General Plan Conformity (GPC) project. The key elements of GPC project review are (1) assessing whether the street vacation conforms with adopted County plans, (2) determining the development implications of the street vacation, and (3) assessing whether future development would conform with adopted plans.

(1) Assessing Street Vacation for General Plan Conformance

The principal planning policy relevant to street vacation is General Plan-Transportation Chapter Policy 12.17 Vacation of County Streets and Easements, which is attached as Exhibit C. The policy establishes the following criteria for evaluating a street vacation request, and includes determining whether:

- (a) Access is available to existing parcels, adjacent developed areas, or future development;
- (b) The area to be vacated is not required for public transit; and
- (c) The area to be vacated is not suitable for non-motorized use, e.g., recreational trail or bikeway.

To determine whether access would be available after vacation (a., above), the Planning Division conducts a site visit, reviews County right-of-way maps, and consults with the Public Works Department.

To determine whether the site is required for public transit (b., above), the Planning Division reviews local transit agency route maps and plans, and consults with transit agency staff. Depending on site location, this includes discussions with SamTrans, Joint Powers Board (CalTrain), and BART staff.

To determine whether the site is suitable as a trail or bikeway (c, above), the Planning Division would:

1. Review General Plan trail planning policies and maps, and depending on location, review trail planning policies and maps of the Local Coastal Program, Skyline Area Plan, Montara, Moss Beach, and El Granada Community Plan, North Fair Oaks Community Plan, Emerald Lake Hills Community Plan, and Colma Specific Plan, and other plans which may be adopted.
2. Review the trail planning policies and maps of County Trails Plan and C/CAG Bikeways Plan, and, depending on location, consult with the Parks and Recreation Division, State Parks, Coastal Conservancy, and Mid-Peninsula Regional Open Space District regarding trail suitability.
3. Conduct a site visit to evaluate trail suitability based on topography and other land features.

Should a portion of the area proposed for vacation be considered as suitable for an existing or planned trail or bikeway, the Planning Division would likely recommend that the area not be included in the vacation request.

Should the entire area proposed for vacation be considered as suitable for an existing or planned trail or bikeway, the Planning Division would likely recommend that the proposal be found not to conform with the General Plan.

(2) Determining Future Development Implications

As indicated, the owner of a subdivided lot usually holds title to the center of the abutting street, but has no right to possess or occupy that area. Zoning development standards are measured from the right-of-way boundary, which is typically referred to as the property line. An owner of a subdivided lot may also possess a private right to use the subdivision streets for access.

The Planning Director has issued a policy specifying the extent to which a vacated street may be used for development purposes. This policy appears as Exhibit D, and is summarized below:

The placement of structures (other than a driveway, walkway, or similar private accessway) within the boundaries of a vacated street is prohibited.

However, a specified portion of a vacated street may be used for compliance with setbacks and other zoning development standards. This area is determined as follows:

- (a) Where private access rights exist, the Planning Division delineates an easement corridor within the vacated street that must remain open for private access by owners within the subdivision.
- (b) The width of the easement corridor within the vacated street would correspond with the standard "travel way" width for a street at that location, as determined by the Public Works Department. The easement corridor would, to the degree feasible, be located at the middle of the vacated street.
- (c) Any remaining portion of the vacated street located outside the easement corridor may be used for compliance with setback standards.

This procedure is solely to determine the area that may be used for zoning compliance, and in no way eliminates or otherwise affects existing private access rights.

(3) Assessing Future Development for General Plan Conformity

The Planning Division comprehensively reviews all General Plan policies and other adopted plan policies to determine whether future development resulting from the street vacation would conform with these documents.

Should potential development resulting from a proposed vacation not conform with the General Plan, the Planning Division would likely recommend that the vacation: (1) be conditioned with mitigation measures to attain conformity, or (2) be deemed not to conform.

(4) Transmittal to the Planning Commission

The Planning Division transmits a street vacation proposal to the Planning Commission for determination of General Plan conformity after the following tasks are completed:

- (a) A project description has been sent to all affected County departments, public agencies, including neighboring cities, public utility providers, community councils, and homeowners' associations within the affected area for review, comment and recommendation. At least 30 days would be provided for response.
- (b) A written report has been prepared which includes: (1) an analysis of the proposal for general plan conformity, (2) a description of all comments, including suggested conditions, made by the referral agencies or organizations, and (3) the Planning Division's recommendation. The staff recommendation may include conditions that are necessary to attain General Plan conformity, as well as conditions suggested by the referral agencies and organizations.
- (c) Written notice of the scheduled Planning Commission meeting has been mailed to: (1) all referral agencies and organizations, and (2) all property owners within 300 feet of the street proposed for vacation.

(5) Planning Commission Action

The Planning Commission holds a public hearing to allow additional public comment and testimony. The hearing would culminate with a decision whether the proposed vacation conforms to the General Plan.

4. Board of Supervisors' Action

Following the Assistant County Manager's transmittal of the street vacation request to the Board of Supervisors, the Board would hold a public hearing to allow for public comment and testimony.

The Board of Supervisors may approve a vacation request if it concludes that: (1) the area being vacated is unnecessary for street purposes, and (2) the vacation is in the public interest.

If the Public Works Department indicates that the street is not needed for street purposes, the Board of Supervisors typically would vacate the entire street.

If the Department of Public Works indicates that a portion of the street is needed for street purposes, the Board of Supervisors typically would vacate that portion not required for future street purposes.

Where a public utility provider indicates a need to retain a portion of the street for present or future public utility facilities, the Board of Supervisors would typically reserve that portion of the street for public utility use.

If the County holds title to any vacated area, the Board would typically authorize sale of the property after the vacation is approved. All sales would be in accordance with the laws governing disposal of surplus real property as set forth in the California Government Code and Streets and Highways Code.

The Board is under no legal obligation to vacate a right-of-way.

The Board of Supervisors may determine that extenuating circumstances apply to an individual case, and may modify any discretionary provisions of this policy.

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