

Subject:	5 th and Myrtle Right-of-Way Vacation and Surplus Property
Project	SV-19-0001 and SP-19-0001
Location:	Southwest of the southwesterly corner of Myrtle Avenue and 5 th Street
APN:	Adjacent to APN 001-251-012 and 002-076-004
Applicant:	City of Eureka/Pacific Outfitters
Property Owners:	City of Eureka
Purpose/Use:	Vacate and surplus a portion of 5 th Street and Myrtle Avenue rights-of-way
Application Date:	January 17, 2019
General Plan:	HSC – Highway Service Commercial
Zoning:	CS – Service Commercial
CEQA:	Exempt under §15305, Class 5 Minor Alterations in Land Use Limitation, and §15312, Class 12 Surplus Government Property Sales
Staff Contact:	Lisa Savage, Senior Planner
Recommendation:	Hold a Public Hearing; Adopt Resolutions finding the Planning Commission’s action is exempt from CEQA, the summary vacation of the 5 th and Myrtle rights-of-way, and the location, purpose, and extent of the 5 th and Myrtle surplus conforms with the General Plan, and recommending the City Council approve the application to vacate and surplus the land
Motion:	<ol style="list-style-type: none"> 1. <i>“I move the Planning Commission adopt a Resolution finding the summary street vacation of 5th and Myrtle rights-of-way conform with the General Plan, and recommending the City Council approve with conditions the application to vacate; and,</i> 2. <i>I move the Planning Commission adopt a Resolution finding the surplus of the 5th and Myrtle rights-of-way is exempt from CEQA, and the location, purpose, and extent of the surplus is in conformance with the General Plan, and direct Staff to report the Commission’s determination, and any comments, to the City Council.”</i>

Figure 1: Location Map

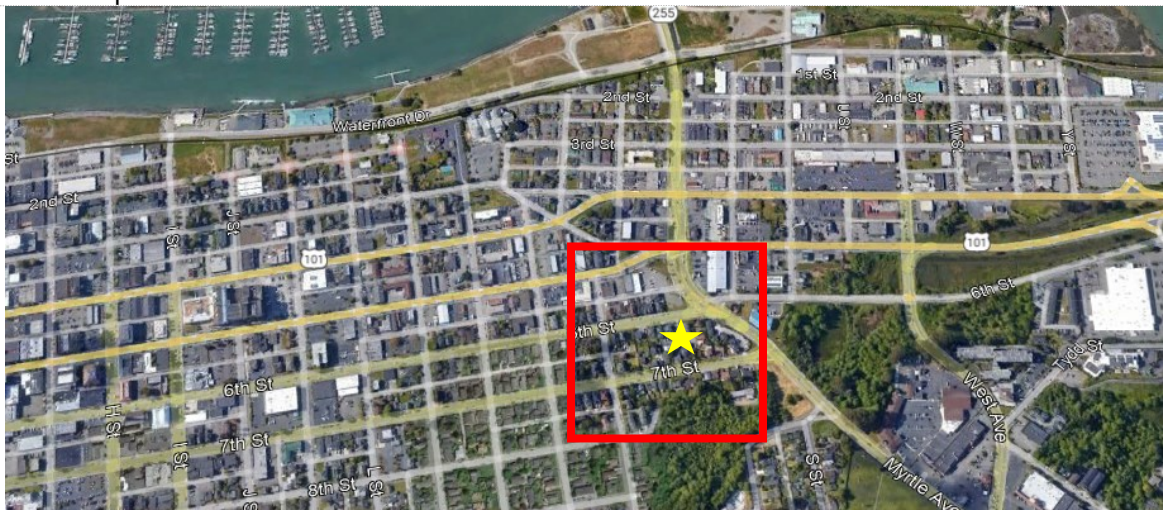


Figure 2: Street Vacation/Surplus Property Area (Aerial View)



PROJECT SUMMARY

As a result of the 5th and R Street realignment, portions of the 5th Street and Myrtle Avenue rights-of-way became unnecessary for public road use. In 2003, Caltrans relinquished and transferred portions of their 5th Street right-of-way to the City, and the City accepted the transfer via Resolution No. 2003-25 (**Attachment I**). The transferred portions are shown as Segments 1, 2, and 3 on Figure 3 (below). Segment 1 is being retained by the City as a landscaped area and Segment 3 is now a portion of the new Myrtle Avenue alignment. Segment 2 and the closed portion of Myrtle Avenue are being relinquished. Part of the right-of-way vacated by Caltrans was purchased directly from Caltrans by Pacific Outfitters, and is shown on Figure 3 below as “Formerly Frisbee”. The portion of the right-of-way to be vacated is shown on Figure 4, below. The City of Eureka intends to vacate the right-of-way and surplus the underlying City-owned land, while retaining easements for utilities (Figure 5). Pacific Outfitters is interested in purchasing the subject property. Since a portion of the property is located in the Coastal Zone (Figure 6), if Pacific Outfitters were to purchase the property and apply for a project, such as a Lot Line Adjustment (LLA), a Coastal Development Permit (CDP) may be required.

The City obtained a property appraisal in April of 2017 from Childs Appraisal Service. The Fair Market Value for the property is \$33,000. Since there is some uncertainty as to whether the City or Boss Development Corporation has the underlying fee ownership for the small triangular piece of the 5th Street right-of way, it is not included in the cost, but is included regarding the analysis for vacation and surplus purposes.

Figure 3: Proposed Relinquishments to the City of Eureka from Caltrans

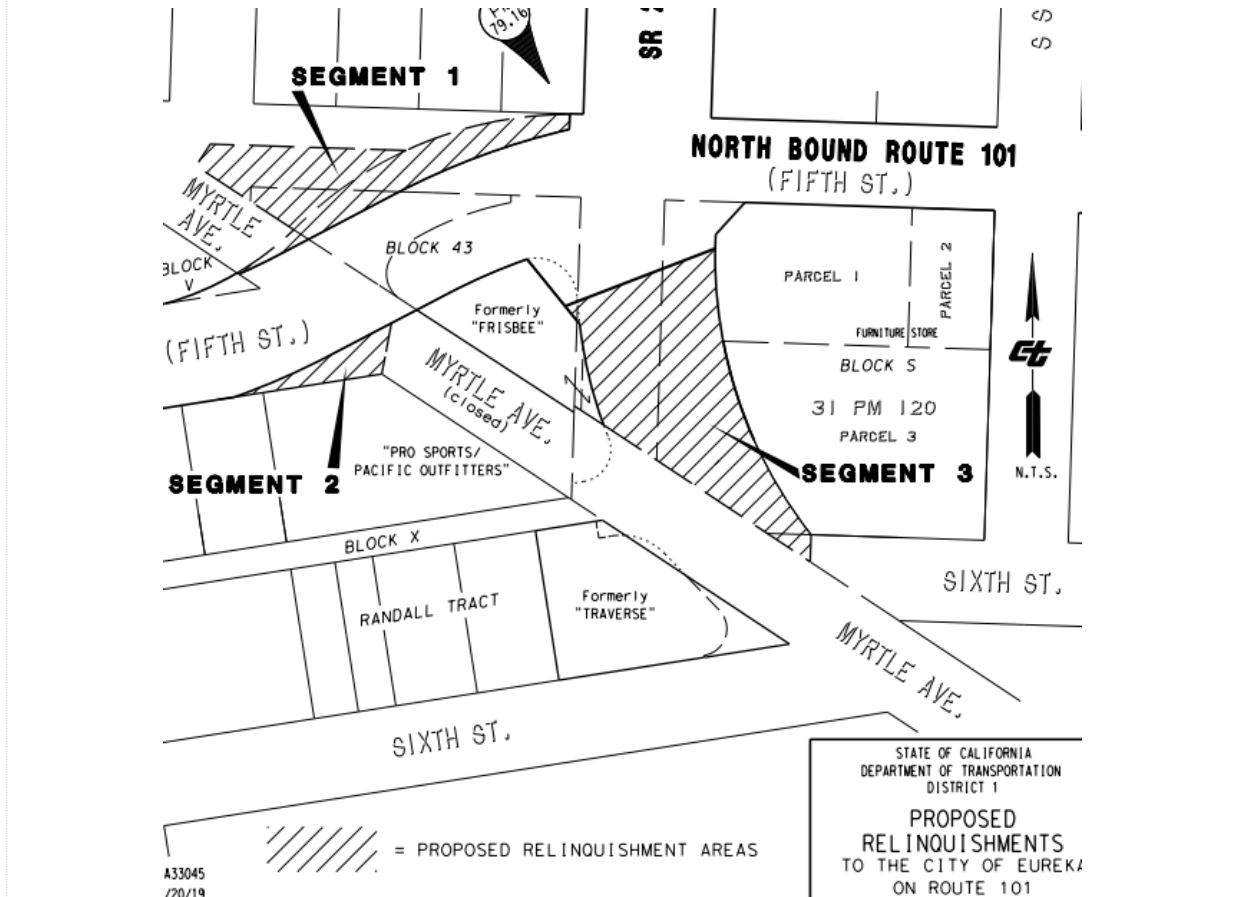


Figure 4: Street Vacation/Surplus Property Area

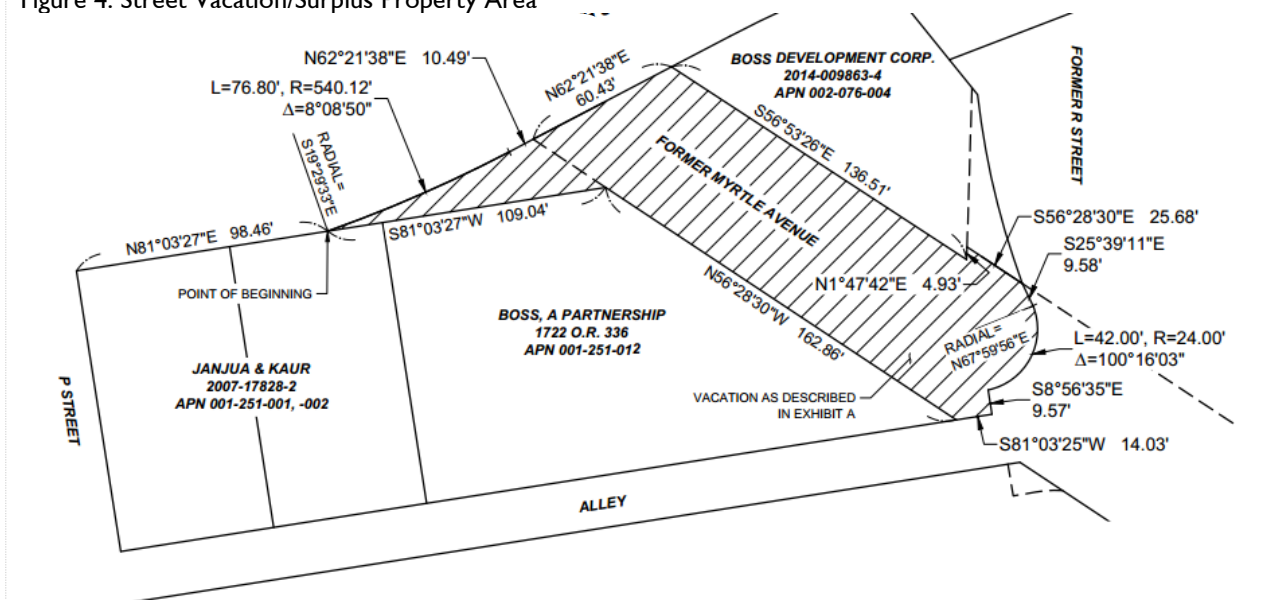


Figure 5: Easements to be retained by City

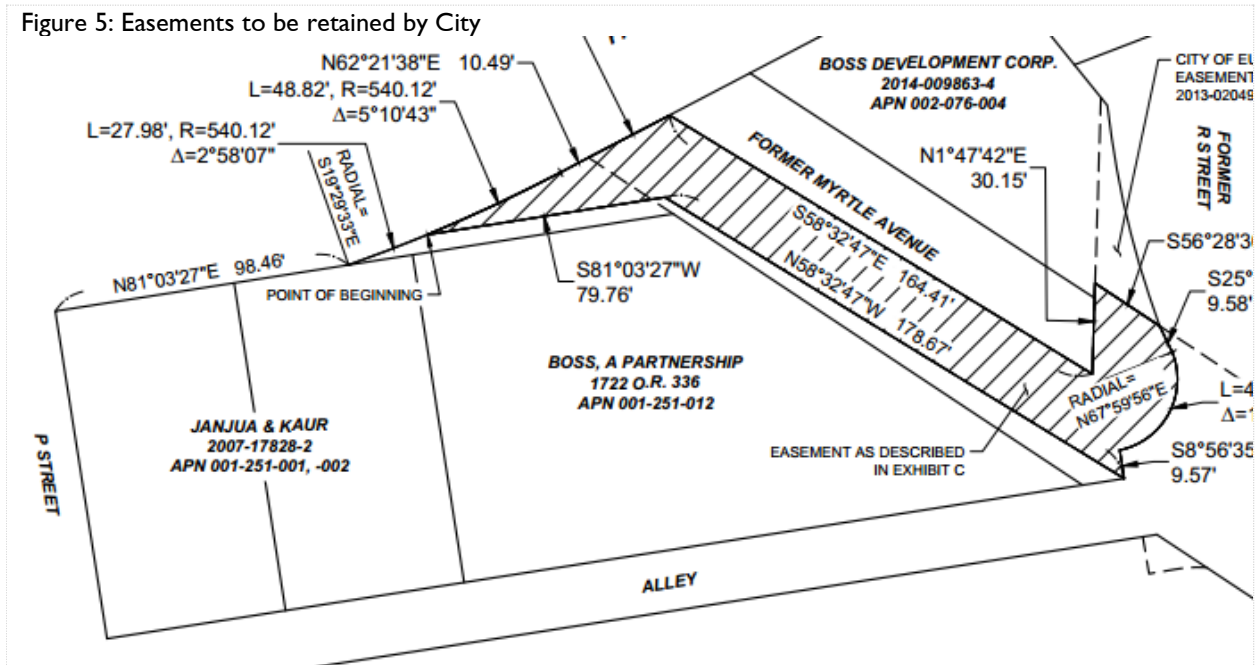
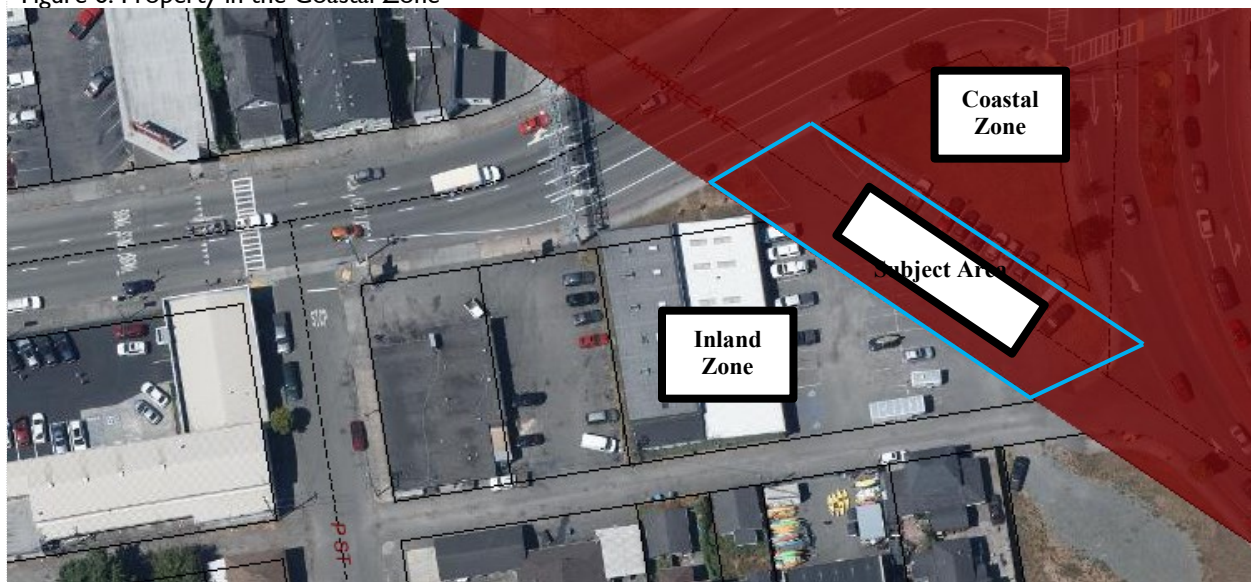


Figure 6: Property in the Coastal Zone



In order to dispose of city-owned land, the City must comply with the Surplus Land Act to declare the land surplus, and follow the City’s Policies and Procedures for the sale of City-owned real property. Per California Streets and Highways Code §8330, the City is proposing to summarily vacate the right-of-way as the land is “a street or highway that has been superseded by relocation.”

ANALYSIS

I. Surplus Property

Disposition of surplus land owned by a public agency is governed by California Government Code (CGC) § 54220-54234. When a General Plan has been adopted, and the City proposes to dispose of City-owned real property, California Government Code (CGC) 65402(a) requires the location, purpose, and extent of the property to be submitted to, and reported on by, the Planning Commission as to conformity with the adopted General Plan. This requirement is represented in the Eureka Municipal Code (EMC) in §152.01 (Planning Commission) which describes the powers and duties of the Planning Commission. EMC §152.01(B)(5) requires the Commission, “To advise with and recommend to the proper official of the city the acquisition, use, or disposition of all city owned real property.”

Additionally, according to the City of Eureka’s Policy and Procedure 2.01, Sale of City-Owned Real Property, the decision to declare the land surplus must be reviewed by the Planning Commission, and a determination made whether:

- a. The land is necessary for agency (City’s) use;
- b. The parcels are of such size and shape to allow development of uses permitted in the zone in which it is located; and,
- c. The disposition of the property is in conformance with Government Code §65402.

Upon completion, the Planning Commission’s report will be submitted to the City Council for review. If Council finds the property is not required for the City’s use, it may declare the property surplus real property and establish the minimum acceptable offer.

Once Council approves the vacation and disposition of the properties, the City is required to send written offers to sell or lease the land to appropriate local agencies for park and recreational and/or open-space purposes. If there is no response to the written offer, the City will be able to move forward with the sale directly to the only adjacent property owner, Boss Development Corporation (AKA Pacific Outfitters).

Agency’s Use:

Pursuant to CGC 54221(c)(1), the definition of “agency’s use” for the purposes of surplus land includes, but is not limited to, land which is being used, or is planned to be used pursuant to a written plan adopted by the local agency’s governing board, or is disposed of, to support [...] agency work or operations, including, but not limited to, utility sites, watershed property, land being used for conservation purposes, land for demonstration, exhibition, or educational purposes related to greenhouse gas emissions, and buffer sites near sensitive governmental uses, including, but not limited to, waste water treatment plants.

There is no public project identified in the 2023-2028 Capital Improvement Program (CIP) which requires the subject properties. The subject properties are portions of the 5th Street and Myrtle Avenue rights-of-way which are no longer required for public road use as a result of the 5th and R Street realignment project. The subject properties were vacated by Caltrans and accepted by the City in 2003. Since that time, the properties have not been used by the City of Eureka for public purposes, and in fact, have been maintained by Pacific Outfitters as part of their parking lot, and parking lot entrance from 5th Street. Based on the above analysis, the subject land is not needed for the City’s use.

Adequate size and shape for development in CS zone district:

The subject land is in a CS (Service Commercial) zone district within the coastal zone. The majority of the subject property is bounded to the north by 5th Street and to the south by an alley. To the east and west, the property is situated between two parcels owned by Boss Development (Pacific Outfitters). The property has direct access to 5th Street and access to Myrtle Avenue. The Myrtle Avenue right-of-way has been maintained and used as part of the parking lot servicing Pacific Outfitters. In addition, there is a small triangular piece of right-of way located between 5th Street and the Pacific Outfitters store on the north, which has been maintained by Pacific Outfitters as a grassy area and entrance to their parking lot.

The parking lot portion of the subject land is approximately 9,050 square feet (sf) (0.208 acres) in size, and the triangular piece is roughly 1,175 sf. The minimum parcel size for properties in the CS zone district is 6,000 sf, with a minimum parcel lot configuration of 60' wide by 100' long (depth). Although the land is of adequate shape and size for commercial development or housing, the majority of it is covered by non-buildable City sewer and water easements, (Figure 5 above) rendering it unsuitable for development. Therefore, the best use for the land is the continued use as a parking lot, parking lot entrance, and grassy area.

General Plan/Land Use Plan Conformance:

The land use designation for the subject land is HSC (Highway Service Commercial). The HSC designation provides for retail uses which are oriented primarily to traffic on Highway 101, such as hotels, motels, service stations, and restaurants.

Staff has reviewed the adopted General Plan and Local Coastal Program, and finds they are silent with regard to the necessity of retaining the subject land for City public use. In addition, there is no Goal or Policy within the adopted General Plan or Coastal Land Use Plan which calls for the retention of the land for the City's public use. Therefore, Staff believes the City's action to surplus the subject land does not conflict with the adopted General Plan/Land Use Plan.

In addition, discussion with City departments determined the appropriate easements will be retained (**Attachment 2**), and there is no need to retain the City's fee interest in the land. Moving forward with the surplus of the land will provide Pacific Outfitters the ability to purchase the properties and continue to utilize them as a parking lot, parking lot entrance, and grassy strip, which supports a local business.

2. Summary Vacation

California Streets and Highways Code (SHC), Section 8300 et. seq., grants authority to vacate public right-of-way within City limits to the Eureka City Council through either a Summary Vacation or General Vacation process; and, California Government Code Section 65402 requires, prior to the City Council vacating the public right-of-way, the location, purpose and extent of the proposed vacation must be submitted to and reported upon by the Planning Commission as to conformity with the adopted General Plan. Additionally, City of Eureka Policy and Procedure 4.02, Vacation of City Street, Alley, or Easement (**Attachment 3**) describes the process to effectively administer the vacation procedures outlined in SHC Section 8300 et seq.

The term "vacation" means the complete or partial abandonment or termination of the public right to use a street, highway, or public service easement. A "street" or "highway" is defined as

all or part of, or any right in, a state highway or other public highway, road, street, alley, trail, or other public right-of-way or easement.

Per California Streets and Highways Code §8330, the City is proposing to summarily vacate the City's portion of the 5th and Myrtle rights-of-way as the property is "a street or highway that has been superseded by relocation". The Summary Vacation is a shortened and more simple process than a General Vacation because adoption and posting of a Resolution of Intent - which would "declare the City Council's intention to 'Order the Vacation'" on the site is not required.

Public Health, Safety, and Welfare

Referrals were sent to various agencies and City departments with jurisdiction over, or possible interest in, the proposed surplus property and summary vacation of the 5th and Myrtle rights-of-way. No comments were received which indicated the proposed projects would be detrimental to the public health, safety, or welfare, or materially injurious to the properties or improvements in the vicinity.

The Wiyot, Blue Lake Rancheria, and Bear River Band Tribal Historic Preservation Officers (THPO) did not respond to the referral. PG&E indicated the street vacations do not interfere with any existing PG&E facilities or easement rights.

Based on the above analysis, the proposed project will not be detrimental to the public health, safety, or welfare, or materially injurious to the properties or improvements in the vicinity.

ENVIRONMENTAL ASSESSMENT

The decisions to vacate a street right-of-way and declare a property surplus are "projects" for the purposes of the California Environmental Quality Act (CEQA). The City of Eureka, as Lead Agency, has determined the proposed projects are categorically exempt from the provisions in accordance with §15305, Minor Alterations in Land Use Limitations, Class 5, and §15312, Class 12, Surplus Government Property Sales, of the CEQA Guidelines.

Class 5 consists of minor alterations in land uses in areas with an average slope of less than 20%, which do not result in any changes in land use or density, or result in the creation of a new parcel

The project to vacate the right-of-way is on a property with an average slope of less than 20, and will not change the land use or density, and does not result in the creation of a new parcel.

Class 12 consists of sales of surplus property except when the property is located in an area of "statewide, regional, or area wide concern" as described in CEQA Guidelines Section 15206(b)(4), and provided the property does not have a significant value for wildlife habitat or other environmental purpose and would likely qualify for an exemption if a discretionary permit were needed for development in the future.

The project to surplus the land does not include adoption or amendment of a general plan or element of the general plan; would not cause significant environmental effects beyond the City limits; and does not result in cancellation of a Williamson Act contract. An EIR is not proposed for the surplus; no sensitive wildlife habitat exists on the site; regional water quality standard attainment will not be impacted by the project; and the project will not provide housing, jobs, or

occupancy for 500 or more people within 10 miles of nuclear power plant. Therefore, the land is not located within an area of statewide, regional, or area wide concern.

The property has been utilized as a street, driveway, and parking lot, is paved, and has no significant value for wildlife habitat or other environmental purpose. Finally, it is likely future projects on the property would qualify for one, or a combination of the following categorical exemptions from CEQA: Class 1 (§15301 Existing Facilities), or Class 32 (§15332 In-Fill Development Projects).

Therefore, based on this discussion, the right-of-way vacation and the surplus of the land is exempt from CEQA pursuant to Guidelines §15305 and §15312, respectively.

PUBLIC HEARING NOTICE

Public notification consisted of notification by mail of property owners within a 300-foot radius of the site on or before June 2, 2023. In addition, the notice was posted on the City's website and bulletin boards. A public hearing notice sign was posted on the site on or before June 2, 2023.

CONCLUSION

The current project is for the vacation and surplus of existing rights-of-way, not development. Based on the analysis above, Staff believes the finding can be made the rights-of-way vacations and surplus of the land is, consistent and in accord with the General Plan, Section 8300 et. seq. of the California Streets and Highways Code and Government Code §65402; is not required for the City's use; and not suitable for conforming development.

Accordingly, Staff recommends the Planning Commission adopt resolutions determining the proposed rights-of-way vacation and surplus is consistent with the General Plan; recommend Council retain the necessary utility easements and approve the summary vacation as proposed; and recommend Council determine the City-owned land is surplus land and direct the City Manager to dispose of the land.

STAFF CONTACT

Lisa Savage, Senior Planner, 531 K Street, Eureka, CA 95501; planning@eurekaca.gov; (707) 441-4160

DOCUMENTS ATTACHED

Attachment 1: City Council Resolution No. 2003-25

Attachment 2: Right-of-Way Vacation and Public Utilities Easement and Access

Attachment 3: Procedure 4.02, Vacation of City Street, Alley, or Easement

Attachment 4: Planning Commission Resolution 2023 for SV-23-00xx

Attachment 5: Planning Commission Resolution 2023 for SP-23-00xx