



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Katy Allen

SUBJECT: SEE BELOW

DATE: 12-19-05

Approved

Katy Allen

Date

1/3/06

Council District: 7

SUBJECT: FINDING AND DETERMINING THE PUBLIC INTEREST AND NECESSITY FOR CONDEMNING A PORTION OF REAL PROPERTY OWNED BY WORLD OIL COMPANY, A CALIFORNIA CORPORATION, FOR PURPOSES OF THE SENTER ROAD WIDENING PROJECT CONSISTING OF WIDENING TO SIX LANES OF VEHICULAR TRAFFIC, CONSTRUCTION OF CURB, GUTTER, SIDEWALK, DRIVEWAYS, BICYCLE LANES, INSTALLATION OF STREET TREES, PAVEMENT RESTORATION, STREET LIGHT SYSTEM UPGRADE AND MODIFICATION OF TRAFFIC SIGNALS AT THE INTERSECTION OF CAPITOL EXPRESSWAY AND SENTER ROAD AND AUTHORIZING THE ACQUISITION OF THIS PROPERTY BY EMINENT DOMAIN

RECOMMENDATION

Adoption of a resolution determining that the public interest and necessity require the acquisition of a portion of a commercial parcel currently used as a gas station for purposes of improving and widening Senter Road to six vehicular lanes of traffic including construction of curb, gutter, sidewalk, driveways, bicycle lanes, pavement restoration, upgrade to the street light system, installation of street trees and modifications to the traffic signals at the intersection of Capitol Expressway and Senter Road, from the owner, World Oil Company, and located at 3148 Senter Road, San Jose, CA 95111 (APN No. 497-51-009) and authorizing the City Attorney to file suit in eminent domain to acquire such property interest, to apply for an order for possession before judgment, and to prosecute the action to final judgment, and authorizing the deposit of money in court for possession of the property from the funds lawfully available.

CEQA: EIR Resolution No. 57204.

BACKGROUND

Senter Road is an arterial street between Tully and Singleton Roads that runs north to south and maintains significant pedestrian, bicycle and vehicular traffic volume.

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Subject: Public Use and Necessity Hearing-World Oil Property For Senter Road Improvement Project

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The east side of this segment of Senter Road has various unimproved areas that need to be widened to allow six lanes of vehicular traffic and additional right-of-way. The project will provide improvements to enhance pedestrian, bicycle, traffic circulation and public safety for the traveling public. The project includes the construction of curb, gutter, sidewalk, driveways and installation of street trees, pavement restoration and upgrading of street light system. The project also includes modification of traffic signals at the intersections of Capitol Expressway and Senter Road, Southside Drive and Senter Road and Umbarger Road and Senter Road. Additional left turn lanes will be added to northbound and southbound traffic at the intersection of Capitol Expressway and Senter Road. Upon completion, this segment of the roadway will accommodate three lanes of traffic in each direction, new sidewalk and bicycle lanes on the east side of Senter Road. The project includes coordination with utility companies and other agencies for utility extensions and/or relocations, as needed. It is anticipated that construction will commence in October of 2006.

The portion of the World Oil parcel needed for this project consists of a 6,262.26 square foot semi-rectangular shaped area along the southwestern edge fronting Senter Road and a small piece of Capitol Expressway. The entire gas station parcel encompasses a total of 27,007 square feet. Street and sidewalk improvements and a driveway entrance will be constructed in the acquisition area. The attachments to this memorandum include Exhibit A and A Plat (legal description of portion of World Oil parcel to be acquired together with plat map) and Exhibit B (location map).

ANALYSIS

Acquisition

City staff determined that acquisition pursuant to the eminent domain process was the only alternative means available to acquire the subject portion of the World Oil property and complete the project in view of the owner's failure to accept the City's purchase offer.

On September 21, 2004 City staff submitted an initial offer to purchase the subject property by certified mail including the offer itself, a copy of the appraisal report, informational brochure, legal description and plat and preliminary title report, in satisfaction of Government Code section 7267.2. In subsequent discussions with representatives of World Oil and their outside legal counsel, City staff was informed that the proposed acquisition would result in severance/cost-to-cure damages in excess of \$600,000. On March 24, 2005 World Oil submitted a counter-offer in which it requested severance/cost-to-cure damages together with a copy of a study by its consultant, Fiedler Group, which concluded that the proposed acquisition would necessitate reconfiguration of the gas station facility at an estimated cost of \$1.492 million in order for it to continue to operate on the smaller parcel.

A new appraisal was commissioned by the City Attorney's Office from the Burchard and Rinehart firm and submitted to World Oil together with a second purchase offer, copy of a

preliminary title report and legal description and plat by certified mail on November 16, 2005, in accordance with Government Code section 7267.2. The amount of just compensation as determined by the second appraisal included \$50,500 in severance/cost-to-cure damages together with \$351,000 for land and \$27,000 for planters, light fixtures, paving and other such improvements for a total of \$428,500.

As of the date of the preparation of this memorandum, World Oil had not accepted the City's purchase offer.

Resolution of Necessity

On December 22, 2005, a notice was sent to World Oil Company, the owner of record, notifying it that a hearing is scheduled on January 10, 2006 before the City Council to consider the adoption of a Resolution of Necessity determining the following issues:

1. Whether the public interest and necessity require the proposed project

Most of the east side of this segment of Senter Road between Tully Road and Singleton Road is unimproved. At this particular location the sidewalks and other improvements which are in place will need to be relocated to make way for a wider roadway to accommodate conversion of the existing single left turn lane from southbound Senter Road onto eastbound Capitol Expressway to double left turn lanes. This latter improvement of the left turn lanes was one of several considered for this intersection and was found to be the only feasible alternative.

Completion of the proposed improvements will convert this segment to a fully-improved right-of-way with new sidewalk, curb, gutters and bicycle lanes together with such amenities as upgraded street light system, pavement restoration and installation of street trees. The proposed project will reduce the risks to the traveling public by widening and upgrading this segment of Senter Road in accordance with City roadway engineering standards with resulting improvements in vehicular, pedestrian and bicycle traffic flow and rainwater drainage.

2. Whether the proposed project is planned and located in a manner that would be most compatible with the greatest public good and the least private injury.

The alignment and cross-section of the proposed public street improvement have been designed to construct a six-lane arterial that will be in conformance with the General Plan. The existing right of way in front of World Oil is 90 feet wide. To accommodate the six-lane arterial street, an additional 36 feet of right of way is needed.

3. Whether the property sought to be acquired is necessary for the project.

The existing right of way is not wide enough to accommodate the six-lane arterial street. At the location to be acquired from World Oil, improvements to be installed will include new sidewalk, curb, gutter, streetlights, etc. The new sidewalk will connect to the existing sidewalk, which currently terminates on the adjoining parcel at its boundary with the World Oil parcel. The World Oil parcel is one of five of which portions will need to be acquired by the City for this project. Three of the other four owners have entered into agreements to sell their land to the City while negotiations continue with the fourth, Pacific Gas and Electric Company.

4. Whether the offer required by Section 7267.2 of the Government Code has been made to the owners of record.

A title report issued by Old Republic Title Company on June 2, 2004 shows the owner of record of the subject property to be World Oil Company, a California corporation.

An appraisal report was commissioned by the City from the Burchard and Rinehart firm and completed on November 2, 2005. In satisfaction of Government Code section 7267.2 an offer to purchase specifying a total compensation amount of \$428,500 (rounded) consisting of \$351,000 for the land, \$27,000 for existing improvements on the portion of the parcel to be acquired including light fixtures, planters, asphalt paving and bollards and \$50,500 for severance/cost-to-cure damages, together with a copy of the appraisal report containing a legal description and plat map, a preliminary title report and an informational brochure was sent to World Oil via certified mail on November 16, 2005. As of the date of preparation of this memorandum, World Oil had not accepted the City's purchase offer.

A notice of the January 10, 2006 Council hearing was sent to World Oil on December 22, 2005.

OUTCOME

Staff is requesting that the City utilize its power of eminent domain under Sections 1240.010, 1240.110 and 1240.120 of the California Code of Civil Procedure, all of which authorize the City to acquire the proposed property interest from World Oil Company.

If a Resolution of Necessity is adopted, the City Attorney will then file the necessary papers with the court to commence an eminent domain action. Upon the filing of an eminent domain action, a deposit of probable compensation may be made. A request for an Order for Prejudgment Possession may also be made which would allow the City to take possession of the property before the issue of just compensation is determined.

PUBLIC OUTREACH

This project was discussed with World Oil as well as the other property owners from whom the City will need to acquire land. Acquisition agreements have been entered into with three of the other four property owners involved in this project, including a donation from East Side Union High School District. Efforts to acquire the land from the fourth owner, Pacific Gas and Electric Company (“PG&E”) are continuing, and it is anticipated that this will be accomplished through either an acquisition agreement or through court enforcement of dedication requirements contained in a conditional use permit issued for previous improvements to the site by PG&E.

COORDINATION

Preparation of this memorandum has been coordinated with the Planning, Building and Code Enforcement Department, the City Attorney’s Office and the City Manager’s Budget Office.

COST IMPLICATIONS

The total project budget is \$3,971,000. Of this amount \$1,010,000 was assumed for land acquisition.

Total budget estimate for all land costs:	\$ 1,010,000
Amount of recommendation in this acquisition:	\$ 428,500
Amount of prior acquisitions including closing costs:	\$ 451,611
Estimated remaining costs for land acquisitions including closing costs:	\$ -0-
Number of remaining acquisitions:	-1-*
Estimated Balance for Land Acquisition:	<u>\$129,889</u>

*Note: It is anticipated that the PG&E property needed for this project will be acquired either through legal enforcement of the dedication requirements of a previously-issued conditional use permit which will not require the City to pay any compensation or closing costs or through a negotiated easement donation agreement which may require payment by City of some closing costs.

BUDGET REFERENCE

Fund #	Appn. #	Appn. Name	RC #	Total Appn.	2005-2006 Adopted Capital Budget Page	Last Budget Action (Date, Ord. No.)
429	6030	Senter Road – Tully to Singleton	127322	\$2,662,000	– V-1045	10/18/05 Ord. No. 27580

CEQA

EIR Resolution No. 57204.



KATY ALLEN
Director, Public Works Department

Attachment

EXHIBIT 'A'

DESCRIPTION OF REAL PROPERTY

All that certain real property situated in the City of San Jose, County of Santa Clara, State of California, being a portion of the Parcel described in the Grant Deed recorded on October 22, 1981 in Book G406, at Pages 428-429, Official Records of Santa Clara County; and said portion being more particularly described as follows:

BEGINNING at the most westerly corner of said Parcel, said corner being on the northeasterly line of Senter Road as shown on the Map entitled, "Parcel Map - Lands of Clair Wilson, Et. Al.," filed for record on June 17, 1980 in Book 465 of Maps, at Pages 5-6, Records of Santa Clara County; thence along the northerly boundary of said Parcel, N 74°54'26" E 33.11 feet to an angle point in said northerly boundary; thence continuing along said northerly boundary, N 49°53'25" E 6.00 feet to a point 81.00 feet distant, measured at a right angle, from the centerline of Senter Road as shown on said Map; thence leaving said northerly boundary, parallel with and 81.00 feet distant from said centerline of Senter Road, S 40°06'35" E 119.01 feet; thence along a tangent curve to the left having a radius of 50.00 feet and a central angle of 89°14'14", for an arc length of 77.87 feet to a point of cusp lying on the southeasterly boundary of said Parcel; thence along said southeasterly boundary S 50°39'11" W 36.00 feet; thence continuing along the southerly boundary of said Parcel along a tangent curve to the right having a radius of 50.00 feet and a central angle of 89°14'14", for an arc length of 77.87 feet; thence continuing along the southwesterly boundary of said Parcel, N 40°06'35" W 132.53 feet to the POINT OF BEGINNING.

Containing approximately 6,262.26 square feet (0.14 acres).

The Basis of Bearings for this description is the bearing N 40°06'35" W of the centerline of Senter Road south of Jackie Drive as shown on the Map entitled, "Parcel Map - Lands of Clair Wilson, Et. Al.," filed for record on June 17, 1980 in Book 465 of Maps, at Pages 5-6, Records of Santa Clara County.

EXHIBIT 'A'

This description was prepared from record information and does not reflect data based on a field survey.

Attached hereto and by reference a part hereof is a plat labeled "EXHIBIT 'A' PLAT" depicting the subject property.

The above description of real property was prepared by me in conformance with the requirements of Section 8726(g,k, l,m) of the Business and Professions Code of the State of California.


5-19-04
Barry E. Ng, PLS 7713



APN 497-51-007
LANDS OF
ANDREW HILL
BUSINESS PLAZA LLC

PARCEL 4
PER 465 M 5-6
APN 497-51-010
LANDS OF
GONZALEZ
PER DOCUMENT
NO. 17635487

APN 497-51-008
LANDS OF
BURGER KING CORPORATION

APN 497-51-009
LANDS OF
WORLD OIL COMPANY
PER G406 O.R. 428

(S 70°52'14" E 35.19') (1)

(N 74°54'26" E) (1)
(35.11') (1)
(32.00') (3)

POINT OF
BEGINNING

INGRESS & EGRESS
EASEMENT PER
7438 O.R. 556

INGRESS & EGRESS
EASEMENT PER
7438 O.R. 556

R = 50.00'
Δ = 89°14'14"
L = 77.87'

SENTER ROAD
BASIS OF BEARINGS
CAPITOL EXPRESSWAY

(N 40°06'55" W 132.53') (1)
(N 49°53'25" E) (1/2)
(145.00') (1/2)

(R = 50.00') (1) (R = 50.00') (2)
(Δ = 89°14'14") (1) (Δ = 89°14'15") (2)
(L = 77.87') (L = 77.87')

92.67'
(128.67') (1)
(S 50°39'14" W) (1/2)

(N 48°41'00" E) (2)



NOT TO SCALE

GRANTED TO
COUNTY OF SANTA CLARA
PER 6473 O.R. 65-68



DESCRIBED PROPERTY CONTAINS APPROXIMATELY
6,262.26 SQ. FT. (0.14 ACRES)

- () (1) RECORD DATA PER G406 O.R. 428-429
- () (2) RECORD DATA PER 6473 O.R. 65-68
- () (3) RECORD DATA PER 465 M 5-6

157-31-003.DCN

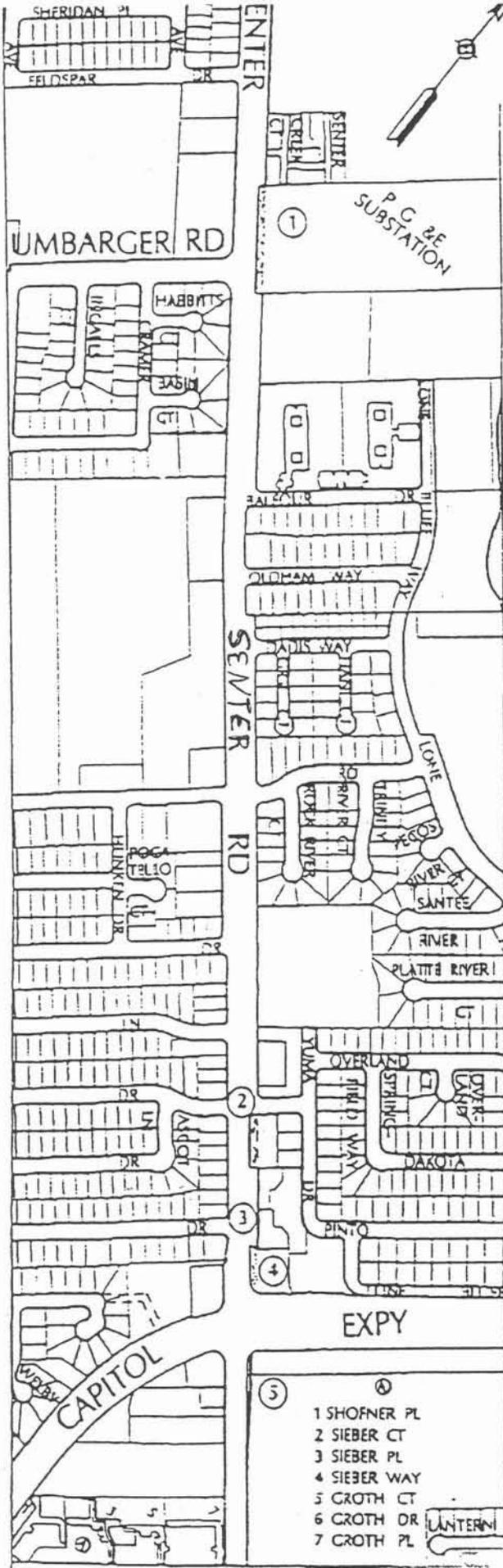
EXHIBIT 'A' - PLAT

PREPARED BY:
CITY OF SAN JOSE
SURVEY SECTION
MAY 19, 2004

EXHIBIT B

City of San Jose

SENER ROAD - From Tully Rd to Singleton



PROPERTY /APN	ACQUISITION TYPE	PROPERTY ADDRESS
① Lands of PG&E 497-42-004 17355.84 sq. ft.	Fee	Senter Rd at Umbarger Rd
② Lands of Nguyen 497-51-003 7,200 sq. ft.	Fee	3070 Senter Rd
③ Lands of Gonzalez 497-51-010 161.68 sq. ft.	Fee	3140 Senter Rd
④ Lands of World Oil Company 497-51-009 6,262,26 sq. ft.	Fee	3148 Senter Rd
⑤ Lands of East Side Union High School 494-23-003 /005 4333.59 sq. ft.	Fee	3200 Senter Rd

EXHIBIT B