



SUPPLEMENTAL

Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Katy Allen
Carl W. Mosher

**SUBJECT: PUBLIC USE AND NECESSITY
HEARING – RECYCLED WATER
STORAGE FACILITIES & EASEMENT**

DATE: 2-12-04

Approved

Date

2/12/04

SUPPLEMENTAL

COUNCIL DISTRICT: 8

REASON FOR SUPPLEMENTAL MEMO

Provide additional clarification of information contained in the original memo and provide Attachment C, which was not available at the time the original memo was distributed.

RECOMMENDATION

Accept additional information in support of Adoption of a resolution:

- Determining that public use and necessity require the acquisition of: (a) fee title to a portion of property located near Old Yerba Buena Road, owned by Legacy Partners, LLP for a recycled water storage facility site; (b) permanent easements for access, overflow and pipelines; and (c) temporary construction easements (TCEs) for recycled water storage facility access, pipelines and overflow drains.
2. Finding that: (a) The property to be taken is necessary for the completion of the Zone 3 recycled water storage facility Project; (b) The proposed project is planned and located in the manner that will be most compatible with the greatest public good and the least private injury; (c) City staff established an amount of just compensation not less than the approved appraisal of the fair market value; (d) City staff presented an offer to the owners for the full appraised amount; and (e) the proposed taking and use are authorized by law;
 - 3 Directing the City Attorney to file an eminent domain action to acquire the above property interests.

BACKGROUND

Additional information has become available subsequent to the distribution of the original memo dated 1/28/04 regarding the design of the seismic safety precautions for the site, and a very recent request by Legacy Partners to further reduce the amount of property to be acquired for the project.

ANALYSIS

The original memo described the project as including a berm on the west side of the parcel to redirect water away from the down slope property. The design had actually been revised to extend the berm up to and around the tanks essentially burying the majority of the structures. This revised design results in better protection of down slope properties and improved concealment. The revised design also resulted in a steeper slope approaching the tanks from the west.

The City project, as currently designed, represents the culmination of over two years of work on the part of City staff, in consultation with Legacy, to locate the City project where it will have the least impact on Legacy. The City has moved forward with design of this project and appraisal of the property, based on Legacy's prior identification of its design preferences. Following is a chronology of events that occurred during this process.

October 22, 2001 - City staff initiated negotiations with Legacy Partners to access the property needed for the project to ascertain its suitability.

Between October 2001 and January 2003, City staff worked through a variety of property issues with Legacy related to evaluating the suitability of the site.

January 16, 2003 - City staff met with Legacy Partners LLP, at their request, to review City's project and discuss Legacy's issues and concerns.

February 24, 2003 - City staff met with Legacy Partners and their design consultant to confirm the final reservoir property size and location and begin concentrating on finalizing the pipeline alignment and access road. Legacy requested that the pipeline and access road easement then being planned for construction along the southerly property line, be relocated to an alignment on the north side of the property, along the riparian corridor indicating this would have the least impact on Legacy's future use of the site. Subsequently, City staff directed their design consultant to redesign the pipeline and access road consistent with Legacy's request and continue design for the tanks

March 20, 2003 - Legacy grants City right of entry to property to continue design work.

September 5, 2003 - City's appraisers were sent legal plats and descriptions for the properties needed to construct the project that incorporated Legacy's requests.

September 19, 2003 - Legacy agreed to the new pipeline and access road alignment and granted permission to City to enter the property for the purpose of updating the appraisal.

November 7, 2003 - Legacy requested, and City Faxed, complete plats and legal descriptions for the subject property.

November 10, 2003 - City sent the purchase offer to Legacy.

November 11, 2003 - Legacy requested a meeting with City staff to discuss the offer.

November 12, 2003 - City staff met with Legacy to discuss the offer. At this time, Legacy requested that the City take additional property that Legacy claimed was useless to them.

November 24, 2003 - City sent revised legal plats and descriptions consistent with Legacy's request to City's appraiser for a revised updated appraisal.

December 9, 2003 - Final Offer was sent to Legacy, including the increased area that Legacy claimed was uneconomic.

January 14, 2004 - City staff met with representatives from Legacy Partners LLP for the expressed purpose of reviewing the final offer for the purchase of property needed to construct the Project. At this meeting, Legacy requested that City staff analyze whether the amount of property needed for this project could be reduced by realignment of a portion of the project access road. Although Legacy did not provide much detail on their proposal for realignment, it was staff's understanding that Legacy was generally requesting relocation of a portion of the proposed access road so that the access road would climb the hill on which the reservoirs are to be located and access the reservoirs from the top of the hill, rather than traversing the hill to provide access from below. The area Legacy was interested in included the area they previously claimed was uneconomic and had specifically requested the City purchase.

City staff analyzed the request based on staff's understanding of Legacy's proposal, and determined that Legacy's proposal is problematic for the following reasons:

1. The realignment would not completely eliminate the need for a lower access road. A lower access road would still be needed to provide access to the utility vaults located down slope of the reservoirs.

2. The lower access road would still need to provide sufficient turnaround space for vehicles.
3. Realignment of the road would not change the configuration of the property needed for the pipeline and utility vaults; the utility vaults cannot be located any closer to the reservoirs due to the steep slopes, as this would make maintenance access impractical and would increase the visual impact of the vaults. To provide good access and reduce visual impacts, utility vaults need to be located where the pipeline is shallowest and the ground is relatively level.
4. The new road alignment would require placement of substantial additional fill to elevate the road up to 15 feet over the surrounding natural grade.
5. The new road alignment would have greater impact on the riparian corridor than the City's planned alignment.
6. The proposed realignment would leave Legacy with a "remnant" property, which Legacy previously asked the City to acquire as part of this project, indicating that the remnant would not be usable to Legacy.

Attachment C provides additional detail on this acquisition, including descriptions of how each parcel will be used.

City staff has advised Legacy of its analysis of the most recent proposal. Staff recommends that Council make the findings that the subject property is necessary for the project and that the project has been located in the manner that is most compatible with the greatest public good and the least private injury.

PUBLIC OUTREACH

An advisory board consisting of representatives from a number of public and private agencies and organizations, including the Silicon Valley Manufacturers' Group, Santa Clara County Medical Association, League of Women Voters, participated in the development of all Phase 2 facilities, including the proposed Zone 3 recycled water storage facility. The Environmental Services Department (ESD) Marketing and Communications group supported public outreach for the proposed facility.

COORDINATION

Preparation of the memo has been coordinated with the City Attorney's Office, the Manager's Budget Office, the Department of Planning, Building and Code Enforcement, and is scheduled to be heard by the Treatment Plant Advisory Committee at its February 12, 2004 meeting.

COST IMPLICATIONS

Deposit of \$ 4,223,362 into the State Treasury Condemnation Fund and any additional funds that the court may determine.

This recommendation meets the general principals of the Mayor's FY 2003-04 Budget Strategy by protecting a core service and reducing costs.

BUDGET REFERENCE

Fund #	Appn. #	Appn. Name	RC #	Total Appn.	Amt. for Contract	2003-2004 Adopted Capital Budget Page	Last Budget Action (Date, Ord.No.)
512	6589	Revised SBAP - SBWR Extension	119553	\$34,030,000	NA	207	10/14/03, Ord. No. 26997

CEQA

Negative Declaration, PP00-05-072.


CARL W. MOSHER
Environmental Services Department


KATY ALLEN
Director, Public Works Department

Attachment

City of San Jose South Bay Water Recycling

Zone 3 Reservoir Property Acquisition Summary and Easement Use

Attachment C

Parcel A1: Reservoir Site (APN 660-19-005)

Type of Ownership Required: Permanent (Fee Title)

Temporary Access: From parcel A3 below

Permanent Access: From parcel B1

Approximate Area Required: 5.128 Acres

Description of Use: The City of San Jose will use this parcel to place two recycled water storage tanks and related facilities. Such a use will require exclusive City use of this parcel.

Parcel A2: Reservoir Site Temporary Construction Easement (APN 660-19-005,021)

Type of Ownership Required: Temporary Construction Easement

Temporary Access: From parcel A3 below

Approximate Area Required: 3.960 Acres

Description of Use: The City of San Jose will need use of this temporary construction easement. The parcel will be used throughout construction as the contractor's yard and a staging area for the reservoir and pipeline construction and startup. Soil from the reservoir excavation will be temporarily stored here along with gravel, reinforcing steel, formwork, piping and valves, drainage fabric, and the various materials required for construction of the tanks.

Parcel A3: Temporary Construction Access Easement (APN 660-19-020,021)

Type of Ownership Required: Temporary Construction Easement, approximately 50 feet wide by 1,522 feet long (approximately 20 feet of the 50 foot width of this Easement is an existing access road).

Access: From public road (Old Yerba Buena Road)

Type of Access Needed: Temporary Easement for Construction Ingress and Egress over the roadway through the existing gate in the existing fence.

Approximate Area Required: 2.089 Acres

Description of Use: This easement will be the primary ingress and egress to the reservoir site during construction. All deliveries of material and supplies will be made along this route.

Parcel B1: Permanent Access Easement (APN 660-19-005, 020, 021)

Type of Ownership Required: An easement permitting construction and maintenance of: (1) pedestrian access; (2) vehicular access to reservoir site; and (3) underground utility connections, including water, sewer and electrical conduits. Said easement being approximately 25 feet wide by about 3,004 feet long.

Temporary and Permanent Access: From public road - Yerba Buena Road (Murillo Road)

Approximate Area Required: 1.912 Acres

City of San Jose South Bay Water Recycling

Zone 3 Reservoir Property Acquisition Summary and Easement Use

Attachment C

Description of Use: This non-exclusive easement will provide the only permanent access road to the reservoir site and a pedestrian access along the riparian corridor. The easement will also permit installation and maintenance of all the major utilities that provide service to the reservoir site. The roadway and underground areas will be subject to use by the underlying property owner to such extent as those uses do not interfere with those uses allowed City under the easement.

Parcel B2: Pipeline Temporary Construction Easement (APN 660-19-005,020,021)

Type of Ownership Required: Temporary Construction Easement, 60 feet wide by about 3,004 feet long.

Temporary Access: From public road - Yerba Buena Road (Murillo Road)

Approximate Area Required: 3.463 Acres

Description of Use: This easement is adjacent to the permanent access easement and will be used during the pipeline construction for excavation and pipe laying equipment access and temporary storage of materials. The contractor will use the easement to string out the pipeline along the alignment, store imported bedding and backfill for the pipeline construction, and haul the excess excavated materials to the reservoir site for use as fill. Following installation of the water pipeline, recycled water pipeline, buried electrical conduit, storm drain, and sewer, this easement will also be used during the service road construction to store the paving materials and equipment.

Parcel C1: Overflow Drain Easement (APN 660-19-005)

Type of Ownership Required: Underground Pipeline Easement and Permanent Access Easement, approximately 25 feet wide by 100 feet long.

Temporary Access: From parcel A3, A2 and A1

Permanent Access: From parcel A1

Description of Facilities: Drainage pipelines and manholes – one 24-inch overflow drain pipeline discharging to Evergreen Creek; which accommodates one 8-inch tank drain, one 4-inch foundation drain, one 6-inch leak drain, and one 4-inch wall drain from each tank.

Type of Access Needed: Permanent Ingress and Egress, and Construction and Maintenance Ingress and Egress.

Approximate Area Required: 0.058 Acres

Description of Use: This easement will permit construction and maintenance of the overflow pipeline. Activities by the underlying fee owner shall be limited to those, which do not interfere with City's use of the easement.

**City of San Jose
South Bay Water Recycling**

Zone 3 Reservoir Property Acquisition Summary and Easement Use

Attachment C

Parcel C2: Overflow Drain Temporary Construction Easement (APN 660-19-005)

Type of Ownership Required: Temporary Construction Easement, northeast corner of Lot 5 (Tract No. 9346).

Temporary Access: From parcel A3, A2 and A1

Type of Access Needed: Construction Ingress and Egress

Approximate Area Required: 0.551 Acres

Description of Use: This exclusive temporary construction easement will be used during the pipeline construction for excavation and pipe laying equipment access and temporary storage of materials. The contractor will use the easement to string out the pipe and manhole sections and frames and covers along the alignment, store imported bedding and backfill for pipeline construction, store rip rap for the creek discharge, and haul excess excavated materials to the reservoir site for use as fill.

Total Acres = 17.161 Acres