



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Katy Allen
Carl W. Mosher

**SUBJECT: PUBLIC USE AND NECESSITY
HEARING – LEGACY PARTNERS**

DATE: 01-28-04

Approved

Date

Council District: 8

RECOMMENDATION

Adoption of a resolution:

1. 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.

CEQA: Negative Declaration, PP00-05-072

BACKGROUND

The City owns and operates a recycled water system serving parts of San Jose, Milpitas and Santa Clara. Currently the system is completely dependent on electricity supplied by the local power grid to pump water throughout the system. Any interruption in the electrical supply results in a loss of service to system customers. In order to insure reliable service delivery to all system customers, it is necessary to construct a 5.5 million gallon (MG) storage facility, consisting of two 2.75 MG capacity storage tanks, at sufficient elevation to supply water to the

system using gravity. Design and Construction of the Zone 3 recycled water storage facility is part of the South Bay Water Recycling Near-Term Development Plan approved by Council on June 26, 2001. ESD identified a site for this project in the Silver Creek area.

The site is a portion of APN 660-17-01 currently owned by Legacy Partners, LLP. The site is depicted on Exhibit A and further described in Exhibits B and C. Previous owners of this property identified the site as reserved for the City facilities on a subdivision map submitted to the City in 1998. In 2003, Legacy Partners, LLP identified an alignment appropriate for construction of the pipeline and an additional alignment to serve as all-weather access to the recycled water storage facilities. The area recommended for acquisition is consistent with the property owner’s designations. The interests to be acquired are summarized as follows:

<u>Parcel</u>	<u>Use</u>	<u>Interest</u>	<u>Area (acres)</u>	<u>Fair Market Value</u>
A1	Recycled water storage facility Site	Fee	5.128	\$2,457,136
A2	Recycled water storage facility Site	24-month Temporary Easement	3.960	\$373,370
A3	Recycled water storage facility Access	24-month Temporary Easement	2.089	\$196,962
B1	Pipeline & Permanent Access	Easement	1.912	\$822,623
B2	Pipeline	24-month Temporary Easement	3.463	\$326,509
C1	Drain Overflow	Easement	0.058	\$278
C2	Drain Overflow	24-month Temporary Easement	0.551	\$46,484
		Total Area	17.161	
			Total:	\$4,223,362

Negotiations for the acquisition of the required property rights were initiated in October 2001. During these negotiations, Staff worked with Legacy to determine the placement of the tanks, pipelines, easements and access road on the property where they would have the least possible impact. On December 9, 2003 City staff made a final offer of \$4,223,362 to the owner. This offer was based on fair market value as determined by an independent third party appraiser. On January 14, 2004 Legacy made a request to analyze a reduced area for the facility. Staff performed a preliminary analysis of the reduced site as requested and determined that it would create significant adverse impacts to the project. Most notably, it would require the elimination of a berm on the west side of the parcel. The berm is being designed as a safety precaution to redirect water from the remaining Legacy Property should the tanks rupture during a seismic event and to provide additional screening from future neighbors to the west. In addition, the access to the site would be severely compromised, potentially requiring large maintenance vehicles and fire trucks to back up several thousand feet to exit the site. Approval to condemn

this property is being sought at this time because it appears that a negotiated acquisition cannot be achieved with Legacy Partners to purchase the property in a reasonable timeframe.

ANALYSIS

The location of the recycled water storage facility is severely constrained by the fact that it must work in conjunction with the existing system. To accomplish this, the facility must be located on a site with a floor elevation of 660 feet, and a maximum water elevation of 685 feet above sea level. The facility must also be able to store a minimum of 5.5 million gallons. In addition, to function properly and minimize the taking of additional private property, the facility must be located in close proximity to the existing pipeline.

The parcel to be acquired has been identified as a suitable location to construct the tanks and pipeline based on several factors including: 1) the site is at the proper elevation for use as gravity storage with the existing pumping system; 2) the property is undeveloped; 3) the property is geologically suitable; 4) the site does not contain endangered species habitat, 5) the property is in close proximity to the existing SBWR pipeline; and 6) the site has significant natural screening from public view. This site has been thoroughly studied and determined to be suitable based on the criteria listed above. No superior location for this facility has been identified.

During the initial design study, several site-specific constraints were identified. These were that the facility must avoid 1) the 100-foot wide Quimby Fault setback line to the east, 2) the SCVWD easement and its 100-foot setback from the top of the creek bank lines to the north; and 3) the 50 foot setback from the Thompson property line to the south. After analyzing the site in relation to the required setbacks, it was determined that one single 5.5 MG tank would not fit. Therefore, the proposed design calls for two smaller 2.75 MG tanks. Fortunately, the two-tank design will also aid in operation and maintenance of the facility especially during the winter months, by allowing one tank to be out of service for work without adversely affecting system reliability.

As a result, 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 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.

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.

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Director, Public Works Department

CARL W. MOSHER
Director, Environmental Services Department

DR:hla
dr012704cc

Attachment