



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Les White  
Harry S. Mavrogenes

**SUBJECT: BANIKAZEMI AND SOLTANI  
NEIGHBORHOOD PARK  
LAND ACQUISITION**

**DATE:** 10-11-06

**COUNCIL DISTRICT:** 6

**SNI AREA:** Burbank/Del Monte

## RECOMMENDATION

(a) Adoption of a resolution by the City Council:

- (1) Approving the Purchase and Sale Agreement in an amount not to exceed \$1,300,000 with Reza Banikazemi and Mehrdad John Soltani, for the purchase of properties located at 487 and 499 Clifton Avenue, San José, California (APN Nos. 277-12-051, 059 and 060), to include a Right of Entry to conduct a Phase II investigation at the sole expense of the City and with any necessary remediation expenses at the sole expense of the property owners; and
- (2) Authorizing the Director of Public Works to execute all other documents necessary to complete the transaction; and
- (3) Making certain determinations regarding the expenditure of Redevelopment Agency Funds for the acquisition of property that will be publicly owned.

(b) Adoption of a resolution by the Redevelopment Agency Board authorizing the Executive Director to deposit \$1,330,000 into escrow after City's inspections and City's final determination that the condition of the site is appropriate for a park use.

## OUTCOME

Acquisition of the subject property will assist in meeting the goal of adding additional parkland within City Council District 6's Burbank/Del Monte community and is consistent with the area improvement plan developed by the Burbank/Del Monte NAC.

The Burbank/Del Monte Area is lacking in recreational lands, as is all of Council District 6, which has a need for 149 acres of additional parklands to meet the City's service level objective of 3.5 acres of recreational lands per 1000 population. The current Burbank/Del Monte Area ratio is 0.6 acres per 1000 population. Council District 6, as a whole, provides 1.8 acres of

recreational lands per 1000 population. In the Burbank/Del Monte Area, development of the Buena Vista Tot Lot was for pre-school kids. The proposed park site at Scott Street and Clifton Avenue will focus on the elementary school age kids.

## **BACKGROUND**

The subject property consists of three legal parcels. APN 277-12-060 is located at the northwest corner of Scott Street and Clifton Avenue; the other two APN's (051 & 059) are immediately north and adjacent and front on Clifton Avenue. The total site comprises 17,425 square feet. The parcels are level and at street grade with surrounding properties.

On December 13, 2005, the City Council adopted a resolution authorizing the City Manager to negotiate and execute a Purchase and Sale Agreement in an amount not to exceed \$1,300,000 with Reza Banikazemi and Mehrdad John Soltani for the purchase of the properties located on Clifton Avenue which included a Right of Entry to conduct a Phase II investigation, with the purchase price dependent upon the result of the Phase II investigation and with any necessary remediation expenses at the sole expense of the property owners.

Continuous negotiations between the property owners and the City resulted in changing the terms of the original Purchase and Sale Agreement. Those negotiations have centered on the City's need to conduct a Phase II study and have full disclosure of any toxics on the site that would make the site unsuitable for park purposes, prior to completing the purchase. The purpose of this memorandum is to recommend approval of the land acquisition and explain to Council the new terms of the Purchase and Sale Agreement.

## **ANALYSIS**

The attorney acting on behalf of the property owners presented to the City a different proposal regarding the Phase II findings. The owners would pay for the remediation of the site (as to be determined by the Phase II study). The City would buy the site for \$1,300,000, without a re-appraisal of the property if contamination was found. Staff continued to negotiate with the property owners in order to arrive at a means of protecting the City in the event that the property was determined, after inspection pursuant to a Right of Entry, to be unsuitable for its intended use as a park. Negotiations recently concluded, and the owners have executed the proposed Purchase and Sale Agreement.

The proposed Agreement now contains the following provisions:

- A Right of Entry will be granted to the City immediately upon approval of the Agreement to conduct inspections and a Phase II study on the parcel.
- The Phase II study will be conducted by a contractor retained by the City.

- If in the City's sole discretion, any of City's inspections, including but not limited to, geotechnical and chemical substance testing, and other site investigation work and inspections, indicate that the property is not suitable for park purposes, the City may terminate the Agreement.
- The City can decide whether to require remediation of any contamination found on the property in order to proceed with the purchase. The Sellers may then be offered the opportunity to conduct the remediation.
- If the Sellers decide to proceed with remediation, such will be conducted with a contractor and a scope of services satisfactory to the City, and in accordance with a strict timeframe. Any remediation is at the Sellers' sole cost and expense.
- At the conclusion of the remediation and review of any other disclosure pertaining to the site, the City, at its sole discretion, may decide to proceed with the purchase. Only at this point is the purchase price deposited into escrow.
- The Sellers are indemnifying the City for any contamination on the site.

### **REDEVELOPMENT LAW FINDINGS**

Section 33445 of the Redevelopment Law requires the City Council to make certain determinations with respect to publicly owned improvements funded by the Redevelopment Agency. The required findings are as follows:

- **The improvements are of primary benefit to the Strong Neighborhoods Redevelopment Project Area.**

A park at the northwest corner of Scott and Clifton will provide primary benefit to residents of the Burbank/Del Monte SNI Redevelopment Project Area because it is directly adjacent to the SNI Redevelopment Project Area. Having prioritized Open Space as its number one goal, this neighborhood project area is deficient in parkland. Additional parkland, especially the .4 acres proposed for this site, will provide significant benefit to the families living in the Redevelopment Project area that will have close access to a neighborhood park.

- **There is no other reasonable means of financing the park.**

Due to the financial constraints at all levels of government, there are currently no alternative means of funding this project other than the Agency's contribution. Staff from the Department of Parks, Recreation and Neighborhood Services of the City of San José (PRNS) is working closely with the San José Redevelopment Agency to help implement this goal of a neighborhood park and additional open space in the SNI Project Area. However, PRNS does not have capital funds to acquire and build this neighborhood priority. Therefore, a partnership that includes Redevelopment Agency funding is required in order to finance the acquisition and development of this park. The

Redevelopment Agency's Adopted FY 2006-07 Capital-Program Budget includes \$1.415 million allocated to Burbank/Del Monte Open Space and an additional \$500,000 in the FY 2007-08 Capital Improvement Program with the goal of acquiring and developing additional park sites, such as Scott/Clifton.

- **The acquisition of the park will assist in elimination of blight.**  
Currently, the parcel at the northwest corner of Scott/Clifton is the site of an empty, blighted house and corrugated iron structures. With the purchase of this property and subsequent development—proposed for a neighborhood-serving park—the acquisition of this park will eliminate the blight currently on this site, replace it with a vibrant use and contribute to the open space and beautification of this under-served neighborhood.
- **The acquisition of parkland is consistent with the Implementation Plan.**  
The Implementation Plan includes the goal of providing quality parks in the neighborhoods, such as the proposed park at Scott/Clifton in the Burbank/Del Monte SNI Project Area. A specific objective stated in the Implementation Plan is to create open space and assist in park development through acquisition and construction programs. The Burbank/Del Monte Neighborhood Improvement Plan, accepted by City Council in June 2002, identifies its number one priority as “Complete development of the Buena Vista Tot Lot, and acquire the parcel at Scott Street and Clifton Avenue for use as a pocket park.” The Buena Vista Tot Lot was completed in November 2003; acquisition of this parcel is the remaining element of the number one priority of this SNI Plan.
- **The acquisition of parkland is provided for in the SNI Redevelopment Plan.**  
The SNI Redevelopment Plan calls for elimination of blight and the provision of infrastructure that encourages the attractive development of the residential area, addresses the need for increased recreational opportunities, and increases the incentive for private investment in the Strong Neighborhoods Initiative Redevelopment Project Area. In addition, as noted above, the Burbank/Del Monte Neighborhood Improvement Plan specifically includes the acquisition of the parcel at Scott and Clifton as part of its number one priority.

### **PUBLIC OUTREACH/INTEREST**

- ✓ **Criteria 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- ☐ **Criteria 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**

**Criteria 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

This item meets Criteria 1. This memorandum will be on the City's website for the October 31, 2006 Council agenda.

The project is a community-identified, Strong Neighborhood priority project. Through public workshops and monthly Neighborhood Advisory Committee meetings, hundreds of residents participated in the creation of the Burbank/Del Monte SNI Plan that identified this project as a priority. The Planning Commission and City Council approved the Plan in June 2002.

**COORDINATION**

Preparation of this memorandum has been coordinated with the Departments of Parks, Recreation and Neighborhood Services, Planning, Building and Code Enforcement, Strong Neighborhoods, the City Manager's Budget Office the City Attorney's Office and the General Counsel's Office.

**FISCAL/POLICY ALIGNMENT**

This project is consistent with the Council-approved Budget Strategy to continue with capital investments that spur construction spending in our local economy.

**COST SUMMARY/IMPLICATIONS**

As discussed above, the land acquisition is estimated to cost \$1,300,000 million; an additional \$30,000 is estimated for closing costs. The Redevelopment Agency will deposit the acquisition funds directly into the escrow account, after the Phase II investigation and any remediation is completed and upon the City's final decision to acquire, as provided in the Agreement. Project funding will be provided from the San José Redevelopment Agency Burbank/Del Monte Open Space budget.

1. AMOUNT OF RECOMMENDATION/COST OF PROJECT

Land Acquisition	\$1,300,000
Closing Costs	<u>30,000</u>
<b>TOTAL COST</b>	<b>\$1,330,000</b>

2. FISCAL IMPACT: This project is consistent with the Council/Redevelopment Agency-approved Improvements Plan for the Burbank/Del Monte Strong Neighborhood Area. Upon the acquisition of the site, the City will need approximately \$750,000 to design, construct and inspect the proposed park improvements to serve the youth of that community. The yearly operating and maintenance cost is estimated at \$10,000. These costs will be considered during future budget processes.

**BUDGET REFERENCE**

Department of Public Works soft costs for acquisition are covered by the following budget reference:

Fund #	Appn. #	RC#	Appn. Name	Total Appn.	2006-2007 Adopted Capital Budget (Page)	Last Budget Action (Date, Ord. No.)
390	4191	048392	Property Services	\$124,000	V-523	
			<b>Total</b>	<b>\$124,000</b>		

The \$1,330,000 is in the Agency's FY 2006-07 Adopted Capital Budget, Burbank/Del Monte Open Space line-item.

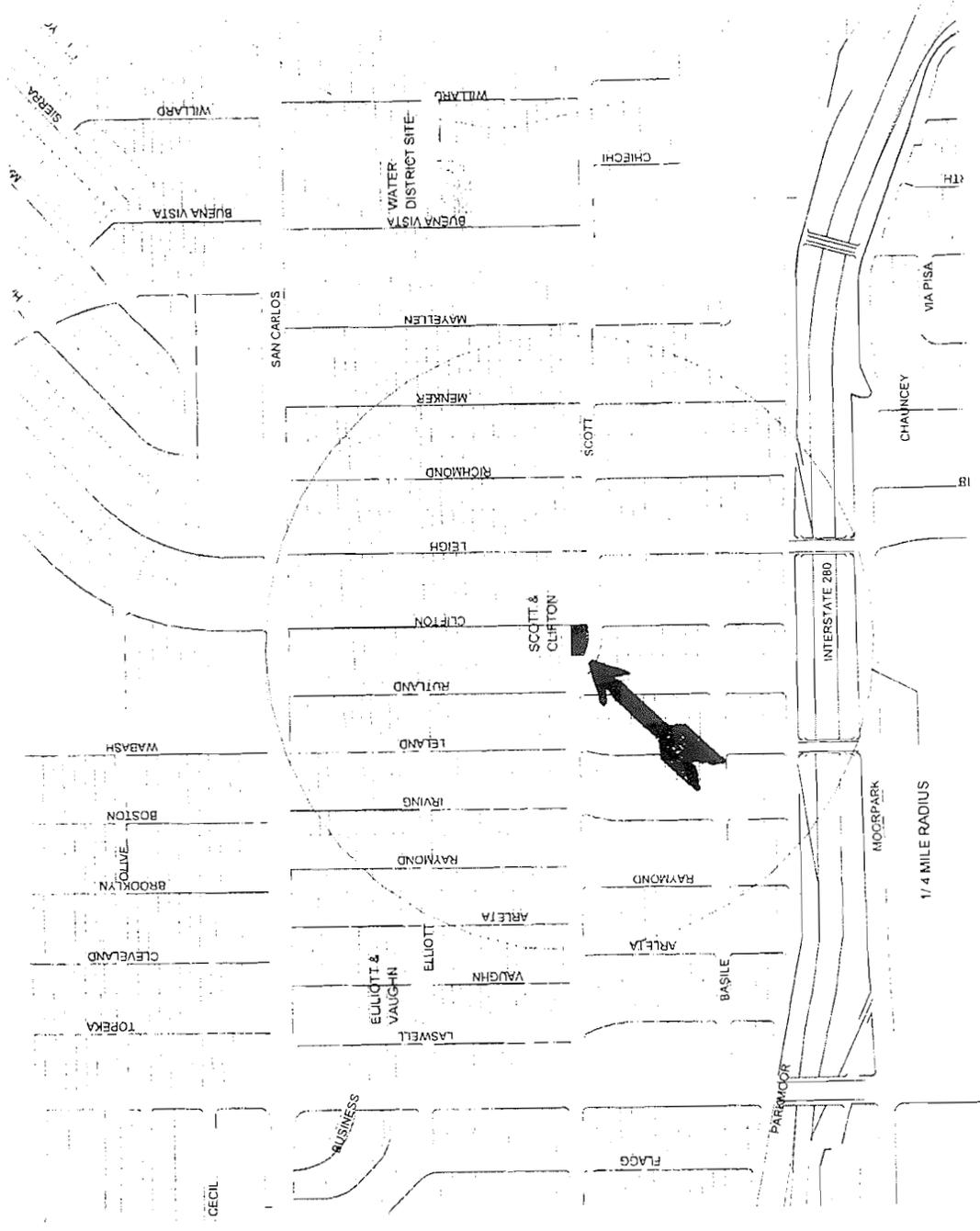
**CEQA**

CEQA: Exempt, File No. PP05-226

  
LES WHITE  
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HARRY S. MAVROGENES  
Executive Director

For questions please contact DAVID SYKES, ASSISTANT DIRECTOR, PUBLIC WORKS DEPARTMENT, at 408-535-8300.



RESIDENTIAL POCKET PARK LOCATION