

Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Katy Allen

SUBJECT: EASEMENT DONATION FOR
TRAFFIC SIGNAL MODIFICATION
WILLIAMS ROAD AT WINCHESTER

DATE: 07-28-08

Approved

Date

8/1/08

COUNCIL DISTRICT: 6/1
SNI AREA: Winchester

RECOMMENDATION

Adoption of a resolution approving an agreement with Collins & Constant Investments, LLC, for the donation of an approximate 956 square foot public street right-of-way easement on, under, over and through a portion of the property at 1000 South Winchester Boulevard, as depicted in Exhibit A, and authorizing the Director of Public Works to execute any additional documents necessary to complete the transaction.

OUTCOME

Approval of the donation agreement will permit installation of new public right-of-way improvements consisting of traffic signal poles and equipment, pull boxes, conduit, conductors, a wheelchair ramp, curb, gutter and sidewalks, utilities and all necessary appurtenances at the southeast quadrant of the intersection of Winchester Boulevard and Williams Road.

This project would install new public right-of-way improvements at the southeast quadrant of the intersection of Winchester Boulevard and Williams Road. The installation of these improvements will not only mitigate the problems that have been experienced due to flooding and improper drainage, it will also enhance pedestrian safety at the intersection and provide wheelchair ramps on all four corners of the intersection.

BACKGROUND

The proposed traffic signal modification at Winchester Boulevard and Williams Road is located within the boundaries of the Winchester Strong Neighborhood Initiative (Winchester SNI). One of the top ten priorities for the Winchester SNI is to "survey and install new curbs, gutters, sidewalks, storm drains and trees." The southeast corner right of way at the intersection of Winchester and Williams is currently unimproved and abuts the property located at 1000 South

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Winchester Blvd. The area is bordered by a private fence surrounding the 1000 South Winchester Blvd property. Due to the lack of improvements, improper water drainage has been problematic in the past. In addition, because of the lack of a sidewalk, pedestrians are forced to walk in the street when the unimproved area is wet and muddy. Finally, the lack of a wheelchair ramp at the corner does not allow adequate access.

The construction of this project is scheduled to commence in November 2008 and be completed by April 2009.

Approval of this donation agreement is brought forward to Council because it contains some variations from standard requirements in agreements for acquisition of property by the City. This memorandum describes those changes and the reasons that staff recommends approval with the changes indicated below.

ANALYSIS

The installation of new public right-of-way improvements requires the acquisition, through a permanent easement, of a portion of the adjacent property. The subject property consists of an 8,000 square foot lot improved with a single family residence occupied by a tenant. The proposed easement encompasses an irregularly-shaped 956.15 square foot area located at the northwest corner of the lot just outside the existing wooden fence surrounding the property.

The property owner has agreed to donate the property but the provisions in the standard agreement typically used by City staff for acquisition of interests in public property were modified. The owner did not agree with a standard provision regarding conveyance of the easement "free and clear of any and all conditions, restrictions, reservations, liens, encumbrances, assessments, easements, leases (recorded or unrecorded), deeds of trust, mortgages, and any clouds or defects in title." Instead, the owner did agree that the owner is relying on the title report as to any possible clouds or defects in title to the easement area and is not aware of conditions that would prevent the easement from being used for its intended purpose. Staff has obtained and reviewed a preliminary title report on the easement area, and the report does not contain any such conditions, possible clouds or defects in title that would prevent use of the easement area for its intended purpose, with one exception noted below.

The property is encumbered by a mortgage lien that was created at the time of the original purchase in February 2000. Staff has worked with the title company's escrow officer in an effort to have the mortgage lender prepare a deed of partial reconveyance to remove the mortgage lien from the proposed easement area thereby ensuring that the permanent easement area is free of any encumbrances. Those efforts have been unsuccessful with the lender failing to respond to numerous attempts by City and title company staff. A reconveyance of an area covered by a mortgage lender is typically required in order to avoid a possible foreclosure on the area covered by the easement. It is possible for a lender to object to the installation of improvements on property covered by a mortgage without its consent. Regarding this potential risk, staff determined that the estimated market value of the total property to be at least twice the amount of

the mortgage loan and, therefore, the likelihood of the property owner allowing the property to go into foreclosure is very remote. Staff recommends that the City proceed without obtaining a partial reconveyance in this instance because the area of the easement is being improved which will actually enhance the total value of the property and, thereby, create an even greater equity position for the owner and less risk to the lender.

The owner objected to a provision making an absolute representation that there were no Hazardous Materials in the easement area but agreed to a provision that it was not aware of such conditions on the property. Regarding modification of the Hazardous Materials provisions contained in the standard easement agreement, City Environmental Services staff completed a Phase I Environmental Site Assessment in October 2007. The result of the environmental site assessment concluded that there were no conditions revealed that would prevent the City from acquiring the subject site to implement public improvements and no deviations discovered which would warrant further investigation. In addition, since the intended use of the easement area is for public right-of-way improvements, the easement area will be completely encapsulated in concrete and asphalt paving thereby further mitigating any potential risk. Therefore, staff recommends that the modification in the standard representation concerning hazardous materials be accepted.

Staff obtained an independent appraisal for the easement area and was advised that the estimated market value of the easement area was \$62,100. The current property owner is willing to donate the permanent easement to the City at no cost. Although the recommendation to accept the Agreement as revised by the owner and subject to the existing mortgage is not a standard practice of the City, approval of the agreement as modified is recommended under the particular circumstances of this donation, as staff believes that the risks associated with accepting the donation are not great given the due diligence staff has performed regarding this particular easement area.

EVALUATION AND FOLLOW-UP

If Council approves this agreement, no further follow-up Council action is required.

POLICY ALTERNATIVES

Alternative #1: Continue with the status quo by leaving the southeast quadrant of the Winchester/Williams intersection in its current unimproved condition.

Pros: The City will save the costs for constructing the new right-of-way improvements.

Cons: Allowing the current condition to continue will subject the properties in the immediate vicinity to ongoing flooding and drainage problems and will expose pedestrians to the dangers inherent in traveling on unpaved, uneven surfaces.

Reason for Not Recommending: This alternative is contrary to one of the goals of the Winchester SNI and eliminates the opportunity to install a new sidewalk, curbs, gutters and a wheelchair ramp on an unimproved portion of Winchester Blvd and Williams Road.

Alternative #2: Proceed with acquisition of the property that is required for the installation of new right-of-way improvements at the southeast quadrant of the Winchester/Williams intersection through the condemnation process.

Pros: The City will acquire the property that is necessary to complete the right-of-way improvements at the corner of Winchester and Williams.

Cons: The City will be required to provide the owner with just compensation in the approximate amount of \$62,100 as compared to the property owner donating the property to the City at no cost.

Reason for Not Recommending: This alternative is not recommended due to the cost and delays inherent in condemnation proceedings. In addition, this alternative would not take advantage of the opportunity to acquire the property at no cost to the City.

PUBLIC OUTREACH/INTEREST

- Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criterion 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)**
- Criterion 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 action does not meet any of the criteria listed above. This memorandum will be posted on the City's website for the August 19, 2008 Council agenda.

The San Jose Redevelopment Agency is acting as the liaison between the property owners located adjacent to the signalized intersection and the Department of Public Works.

COORDINATION

This project has been coordinated with the Departments of Transportation and Planning, Building and Code Enforcement, the City Attorney's Office and the City Manager's Budget Office.

COST IMPLICATIONS

This permanent easement agreement does not require the City to pay compensation to the property owner. The only costs associated with the acquisition will be the staff time that was required on the project together with an estimated \$2,050 for escrow, title insurance, closing expenses and lender fees.

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BUDGET REFERENCE

Fund #	Appn. #	Appn. Name	RC #	Total Appn.	Amt. For Contract	2008-2009 Proposed Capital Budget Page	Last Budget Action (Date, Ord. No.)
450	5874	Winchester Signal Mod & Countdown	147202	\$55,965	N/A	N/A	N/A
		Total					

CEQA

CEQA: Exempt PP06-210.

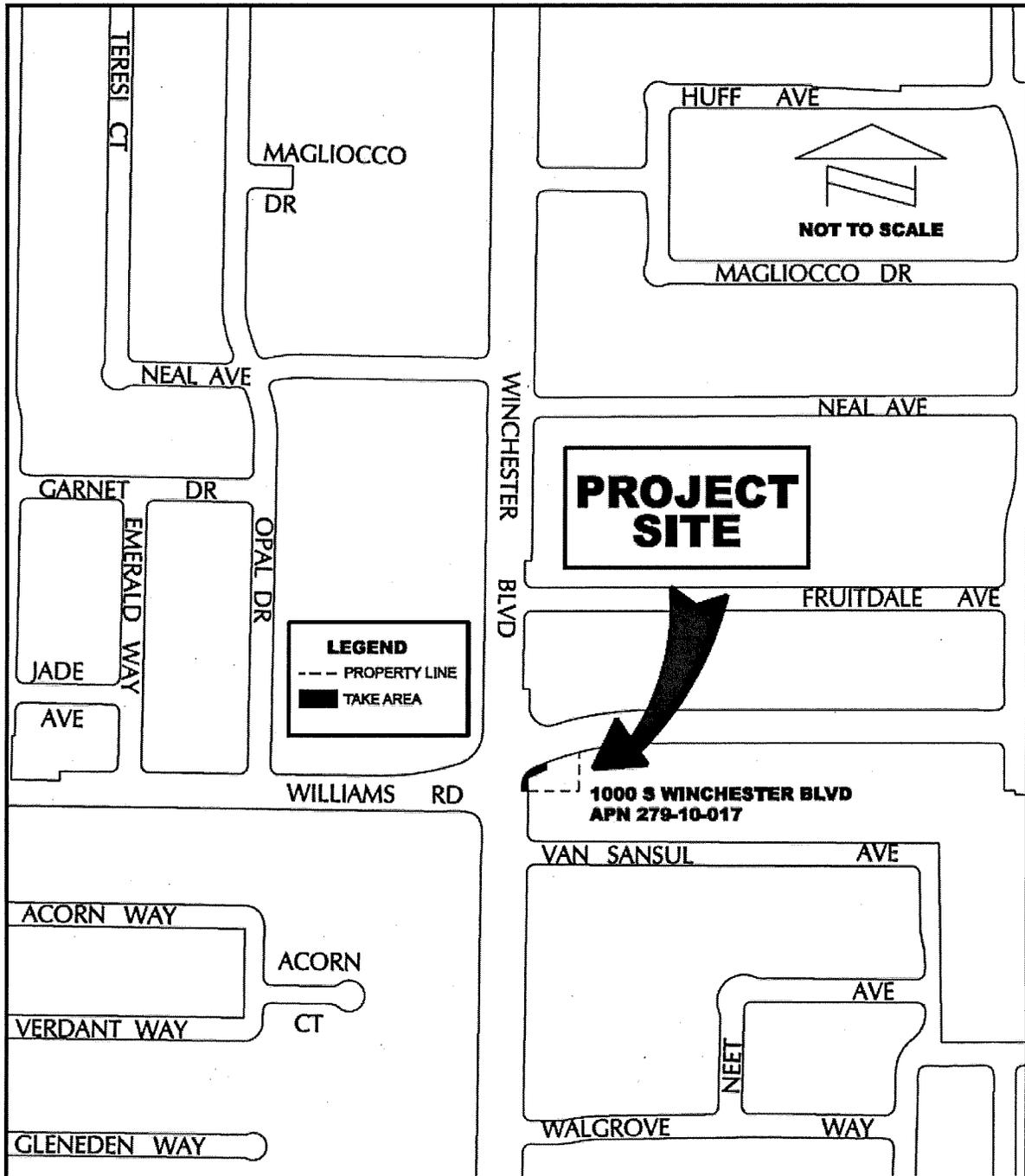


KATY ALLEN

Director, Public Works Department

For questions please contact DAVID SYKES, ASSISTANT DIRECTOR at (408) 535-8300.

EXHIBIT "A"



TRAFFIC SIGNAL MODIFICATION AT WILLIAMS RD. & WINCHESTER BLVD.