



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Katy Allen

SUBJECT: SEE BELOW

DATE: 02-02-09

Approved

Date

2/10/09

COUNCIL DISTRICT: 3

SUBJECT: ADOPTION OF A RESOLUTION APPROVING A PURCHASE AGREEMENT OF REAL PROPERTY LOCATED AT JACKSON AVENUE FOR THE WATSON PARK EXPANSION PROJECT.

RECOMMENDATION

Adoption of a resolution approving a purchase agreement with Joe E. Levitt and Jane Levitt, Trustees of the Joe E. Levitt and Jane C. Levitt Family Trust dated September 29, 1983, for the purchase of real property located at Jackson Avenue, San José, CA (APN No. 249-64-010) for an amount not to exceed \$352,000, with an estimated additional amount of \$7,000 for closing and escrow costs, and authorizing the Director of Public Works to execute any additional documents necessary to complete the transaction.

OUTCOME

Acquisition of the subject property will allow the expansion of the eastern boundary of Watson Park to the Coyote River centerline. The proposed expansion is one of several components to the park including first phase Master Plan implementation and contamination remediation which will better serve the needs of the community.

BACKGROUND

In May 2004, the City began construction on the Watson Skate Park. During excavation activities for the concrete skate park, the contractor uncovered refuse materials indicative of an old burn dump site. After some preliminary evaluations of the soil conditions, the City took the precautionary action of closing the park pending further study. The park remains fenced and closed.

The City subsequently entered into a Voluntary Cleanup Agreement with the State of California, Department of Toxic Substances Control ("DTSC") for the characterization and cleanup of the Watson Park site. In September 2005, the City contracted with URS Corporation to prepare a Preliminary Waste Characterization Study (PWCS), and a

Removal Action Plan (RAP). The RAP identified a preferred alternative for remediating the burn ash and dump debris identified at the site. Once DTSC approves the RAP, the City will be ready to move on to the next phase of work: the design completion and construction of improvements at Watson Park that seek to both implement the remedial alternative identified in the RAP and prepare for first phase Master Plan implementation. The parcel is required for first phase improvements for replacing an existing stormwater outfall into the creek that no longer functions efficiently. Absent acquisition, the Master Plan implementation will not be realized. In addition, the subject property is also required for future construction of a pedestrian bridge over the Coyote Creek and trail as indicated in the Watson Park Remedial Action Plan and Master Plan Initial Study/Mitigated Negative Declaration prepared in September of 2008.

The subject property is more fully described in Exhibit A.

ANALYSIS

The subject property is located at the northeast edge of Watson Park near the end of Jackson Street near Highway 101 in central San José. To the east of the subject property on Taylor Street are areas of residential-serving retail but the area is overwhelmingly single family residential. The predominant topographic feature in this area is the Coyote River, the centerline of which forms the eastern boundary of the subject parcel. The river along this area is contained by flood control levees and the area has experienced substantial flooding in the past. Part of the park project involves relocating clean soil from the northern end of the park to the southern end of the park with a depth varying from three to ten feet. This is to cap any remaining contamination found at the park without significantly affecting flood capacity of the park and surrounds.

Highway 101 forms the narrow northern edge of the parcel at a point where the Coyote River goes under the freeway. There is no freeway access to Highway 101 from this point. Vehicular access from this area would require returning back to the Old Oakland Road entrance to Highway 101. The parcel is vacant and has never been developed.

The subject parcel is comprised of approximately 3.66 acres or 159,430 square feet and is undeveloped land. The parcel has an irregular shape that basically follows the Coyote River. The centerline of the river forms the eastern boundary of the subject parcel. The parcel is partly wooded along the river channel with mostly open areas and grass land as one moves away from the river and towards the park. Approximately 50% of the subject parcel lies within the flood control channel. The other 50% of the parcel is relatively level, but still in the flood zone.

An appraisal was completed on October 13, 2008, by Smith and Associates, Inc. On October 30, 2008, Real Estate staff prepared an offer of just compensation in the amount of \$320,000 which was mailed by certified, return-receipt requested mail together with a copy of the appraisal report containing a legal description and plat map, a preliminary title report and an informational brochure to Mr. Barton G. Hechtman, the property owner's representative. The property owners responded with a written counteroffer dated November 12, 2008 asking \$363,500. Upon further review by staff, a revised offer was presented to the owners in the amount of \$352,000 which

increased the original offer by 10%. The 10% increase in purchase price is supported by the comparable properties within the appraisal report and which staff believes to represent fair market value. The offer was accepted by the owners on December 10, 2008.

The City's standard practice is to seek representations and indemnification pertaining to the status of the property with regard to hazardous materials. However, the property owners were unwilling to sell the property to the City on any basis other than "as-is" due to the proximity of the parcel to Watson Park. Environmental studies prepared for the Watson Park Dump site, which included the Levitt property, concluded that the site did not appear to be impacted by the former burn dump activities that occurred on the adjacent City property (no evidence of burn ash was observed and no elevated concentrations of lead above screening limits were detected in samples taken from the site). No remediation action was recommended. Thus, staff is recommending that the City agree to acquire the property on as "as is" basis, without the usual representations and warranties as to condition of the property.

Staff recommends Council approve the purchase agreement so that first phase Master Plan implementation may occur.

EVALUATION AND FOLLOW-UP

Staff will seek City Council approval at a later date for the appropriation of funds for the construction of the remediation and first phase park improvements.

POLICY ALTERNATIVES

Alternative #1: Do not purchase property.

Pros: City may implement the remediation and non-irrigated hydroseed portions of work reducing the overall cost of the project. Maintaining a 35 acre hydroseeded area will reduce operations and maintenance cost impact to the General Fund.

Cons: The City will be unable to implement the Master Plan infrastructure and amenities improvements. Adjacent Empire Gardens Elementary School and neighboring community will lack accessible park space in a parkland deficient area of the City.

Reason for not recommending: Without ownership, the City will need to acquire easement rights for the stormwater outfall for long term maintenance, formalize parcel access through roadway construction to remove its landlocked situation and abandon the current Master Plan and its amenities for public use.

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)**

While this action does not meet any of the above criteria, this memorandum will be posted on the City's website for the February 24, 2009 Council agenda.

Staff and DTSC have conducted extensive outreach throughout the life of the Watson Park Site Remediation and Master Plan project including community meetings, capital project advisory committee meetings, e-mail, website postings, mailed and hand delivered information, legal postings and maintenance of three local information repositories located at Dr. Martin Luther King, Jr. Library, Northside Community Center and Empire Gardens Elementary School.

COORDINATION

This project and memorandum have been coordinated with the Department of Planning, Building and Code Enforcement, the City Attorney's Office, the Council District 3 Office and the City Manager's Budget Office.

FISCAL/POLICY ALIGNMENT

This purchase agreement complies with the general budget principles in the March 2008 Mayor's Budget Message, General Recommendations by being open to alternative ways to deliver services and reduce costs through appropriate community partnerships and public-private partnerships.

COST SUMMARY/IMPLICATIONS

1. AMOUNT RECOMMENDED FOR THE ACQUISITION:

Amount of City's offer to be deposited in escrow:	\$352,000
Estimated escrow and closing costs	<u>\$7,000</u>
TOTAL PROJECT COSTS	\$359,000

2. SOURCE OF FUNDING: 001 – General Fund: Capital Improvements

3. OPERATING COST: This memorandum provides funding for the purchase of land for the future expansion of an existing park. Once the design of the expanded park has been completed, the operating and maintenance impact will be finalized. However, the current estimated annual operating and maintenance impact to the General Fund for the expanded park is approximately \$32,000. This funding was included in the Preliminary 2010-2014 General Fund Forecast, released on November 20, 2008.

BUDGET REFERENCE

The table below identifies the funds and appropriations proposed to fund the acquisition recommended as part of this memorandum and remaining project costs, including project delivery, construction, and contingency costs.

Fund #	Appn. #	Appn. Name	RC #	Total Appn.	Amt. for Acquisition	2008-09 Adopted Budget Page	Last Budget Action (Date, Ord.)
Current Funding Available							
001	6696	Watson Site Clean Up and Restoration	154942	\$8,632,000	\$359,000	V-380	10/21/08 Ord. No. 28422
Total Funding Available				\$8,632,000	\$359,000		

CEQA

CEQA: Mitigated Negative Declaration, File No. PP07-130.


KATY ALLEN
Director, Public Works Department

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

EXHIBIT "A-1"

SITE MAP

