



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Kim Walesh

**SUBJECT: SALE OF CITY-OWNED  
PROPERTY AT STORY ROAD**

**DATE:** April 2, 2012

Approved

Date

4/11/12

**COUNCIL DISTRICT: 7**

## RECOMMENDATION

Adopt a resolution:

- a. Declaring the .958 acre of City-owned property near Story Road and Roberts Avenue surplus to the needs of the City; and
- b. Approving an agreement between the City and Loanie Lam and Lisa Lam, owners of the adjoining property, for the sale of the property in the amount of \$42,000; and
- c. Approving the Grant of Easements to City for the maintenance and operation of monitoring wells and associated ingress and egress to the sale property; and
- d. Authorizing the City Manager to execute the sale agreement, and the deed, Grant of Easements, and all other documents necessary to complete the transaction.

## OUTCOME

Adoption of this resolution will allow the sale of approximately 41,730 square foot (0.958 acre) of a City-owned property at Story Road near Roberts Avenue, more commonly known as Assessor's Parcel Number (APN) 472-11-073, as defined in Attachment A, to Loanie Lam and Lisa Lam for an amount of \$42,000 that will be deposited to the General Fund. The City will receive a Grant of Easements from the new property owner over the City-owned property being transferred and the adjoining property for the operation and maintenance of monitoring wells and ingress and egress for access to those wells.

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## **BACKGROUND**

This parcel is approximately 41,730 square foot of vacant land near Story Road, north of Roberts Avenue. The site is adjacent to the old Story Road landfill and has served primarily as an area to monitor possible landfill-related hazardous materials migration to surrounding properties.

In February 1995, the City Council adopted a resolution accepting the grant of this property from Arcadia Associates, the owners of the adjoining property.

In August 1997, Arcadia Associates sold a portion of the adjoining property to American G.I. Forum of San Jose. American G.I. Forum developed their property as a non-profit office center and clubhouse facility. In order to develop the facility, American G.I. Forum required additional parking spaces. In order to provide those spaces, in June 1998, the City and American G.I. Forum executed a 50 year lease agreement for use of the proposed sale land for parking, and entered into a "No Build" covenant whereby the City agreed to not build on that land. The City agreed to offset the monthly rent to \$3 in recognition of the value of services provided by American G.I. Forum to the community.

On December 6, 2006, American G.I. Forum sold their property and building to Loanie and Lisa Lam, although the parking lease over the sale property was not assigned to the Lams, and was subsequently terminated. In addition to the current facilities, there is more construction being planned by the current owner. One of the requirements for site construction is to provide additional parking and open space. The Lams requested that the City sell them the sale property. Staff has negotiated a sales price of \$42,000 which is comparable to the land appraisal prepared in March 2011 on the adjoining landfill property valued at \$40,000 per acre.

On February 28, 2012, the City Council approved staff recommendations for streamlining the process to sell surplus City owned properties. Staff is currently working with the City Attorney's Office to amend the relevant ordinances to implement the direction provided by the City Council on the streamlining of real estate actions to sell surplus property.

## **ANALYSIS**

This City-owned property is adjacent to the old Story Road Landfill. This long, triangular piece of property was granted to the City as buffer land adjacent to the old Story Road Landfill site and is being used for monitoring ground water. The property has limited use due to its proximity to the former landfill site and was most recently used as overflow parking by the former adjoining property owner (American GI Forum). Since the sale of the adjoining property from American GI Forum to Loanie Lam and Lisa Lam in 2006 this proposed sale parcel has not been used. Given the close proximity to the former landfill site, the inability to develop the property, and the requirement that the property only be used as open space or surface parking, staff has determined that there are no other municipal purposes now or in the foreseeable future for which it could be used and therefore no reason to continue to own and maintain the property.

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In 2010, the adjoining property owner (Lam) applied for a Planned Development Permit (PD) for the interior remodel of offices to a religious retreat center and the addition of a 1,732 square foot religious assembly building. The application was approved under PD10-009. In order to meet the requirements of PD10-009, the owner is required to provide additional parking. The adjoining property owner has expressed an interest in purchasing the City owned property (APN 472-11-073) in order to satisfy the parking requirements of PD10-009. The adjoining property owner has also agreed to grant permanent easements to the City to allow for the operation and maintenance of the underground monitoring wells on the sale property and for ingress and egress to those wells across the buyers' adjacent property. The Grant of Easements document also restricts the buyers' rights to construct buildings or similar improvements on the sale property (primarily limiting interference with City's monitoring activities), contains certain property condition related hold harmless provisions in favor of the City, as well as serves to terminate the prior "No Build" covenant (superseded by the new building restrictions). Finally, the buyer has agreed upon a purchase price of \$42,000 which is comparable to the land appraisal that was prepared in March 2011 on an adjoining landfill property that was valued at \$40,000 per acre.

Municipal Code Chapter 4.20 permits the sale of City-owned surplus property upon Council finding and determining that the property is not needed for, nor adaptable to, municipal purposes. Further, while such sales are generally required to be undertaken on a competitive basis, Municipal Code Section 4.20.070 authorizes the sale of surplus property through direct negotiation at fair market value, and upon such other terms and conditions as Council may direct, to the owner of property adjacent to such surplus property. The City property has been determined to not be independently developable. Staff reviewed market activity in the area prior to offering the property for sale including recent sales and properties currently for sale and has determined that the proposed sale price represents fair market value for the property, particularly in light of the significant restrictions on its use.

### **EVALUATION AND FOLLOW-UP**

The transfer of the subject property is anticipated to be completed within 30 days of approval by Council.

### **POLICY ALTERNATIVES**

*Alternative # 1:* Reject the sale of the property and continue City ownership.

**Pros:** By retaining the property, the City retains the ability to develop the property for future municipal purposes.

**Cons:** By rejecting the sale, the City will continue to incur costs for maintenance of the property and the ongoing liability for repairs and safety.

**Reason for not recommending:** Continuing ownership of the property will result in continued maintenance expenses and potential liability. No future municipal uses have been identified.

### **PUBLIC OUTREACH**

- 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 above listed criteria; however it will be posted on the City's website for the April 24, 2012 Council agenda.

### **COORDINATION**

This memorandum has been coordinated with the City Manager's Budget Office, the Environmental Services Department and the City Attorney's Office.

### **FISCAL/POLICY ALIGNMENT**

This sale is in alignment with the Mayor's March 2009 Budget Message in the Section Investment Strategies, Item 1h which stated: "The city is currently undergoing a rigorous asset management review to include the sale of nonessential and underperforming city-owned properties, restructuring of existing leases with for-profit and non-profit operators of city facilities, and leasing of city infrastructure to private or other governmental operators."

### **COST SUMMARY/IMPLICATIONS**

The net proceeds (\$42,000) from the sale of this property will be deposited into the General Fund.

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**CEQA**

Exempt File No. PP10-009.

/s/  
KIM WALESH  
Director of Economic Development  
Chief Strategist

For questions please contact Nanci Klein, Deputy Director, at (408) 535-8184.

Attachment

ATTACHMENT A  
LEGAL DESCRIPTION

P.035 PAGE 1974

LEGAL DESCRIPTION:

"SCHEDULE C"

SP 110226  
Amendment B

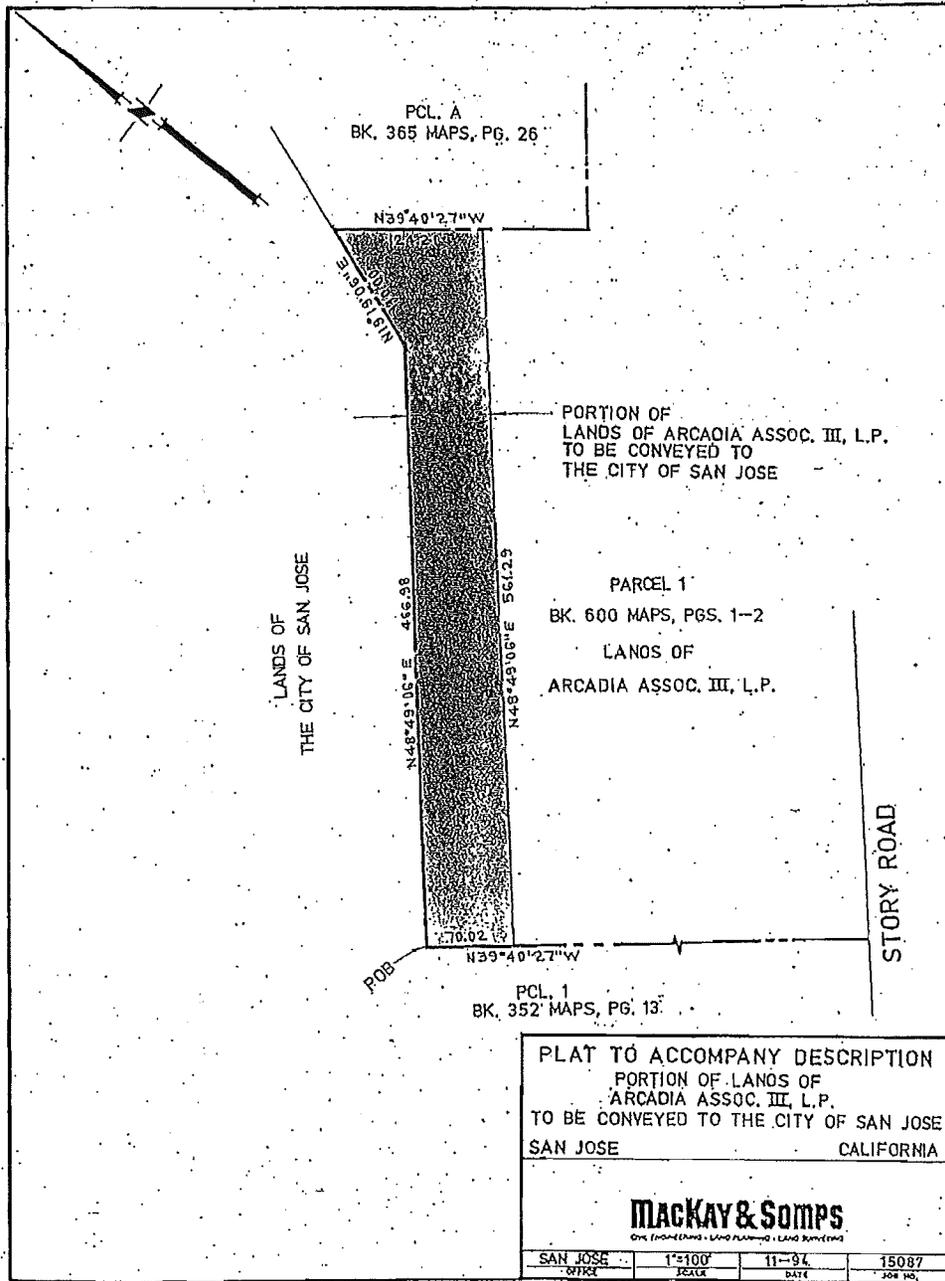
All that real property situate in the City of San Jose, County of Santa Clara, State of California, described as follows:

Being a portion of Parcel 1, as shown on that certain Parcel Map filed for record in Book 600 of Maps, at pages 1 and 2, Santa Clara County Records, described as follows:

Beginning at the most Westerly corner of above said Parcel 1; thence from said point of beginning along the Southwesterly line of said Parcel 1, S. 39° 40' 27" E. 70.02 feet; thence leaving said Southwesterly line along a line parallel with and distant 70.00 feet Southeasterly from the most Northwesterly line of said Parcel 1, N. 48° 49' 06" E. 561.29 feet to a point in a Northeasterly line of said Parcel 1; thence leaving said parallel line along a Northeasterly line of said Parcel 1, N. 39° 40' 27" W. 124.21 feet to a Northerly corner of said Parcel 1; thence leaving said Northeasterly line along the most Northwesterly line of said Parcel 1, the following courses: S. 19° 19' 06" W. 110.00 feet; and S. 48° 49' 06" W. 466.98 feet to the point of beginning.

ARB No. 472-11-x14 and x14.02.01

ATTACHMENT A  
PLAT MAP





ATTACHMENT A  
AERIAL MAP

