

Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Julie Edmonds-Mares

SUBJECT: SEE BELOW

DATE: May 9, 2012

Approved

Date

5/9/12

SUBJECT: "SONS OF SAN JOSE" MONUMENT AND CONSIDER ADOPTION OF RESOLUTION TO CLARIFY AND CONSOLIDATE PREVAILING WAGE REQUIREMENTS FOR PARK CONSTRUCTION AND MAINTENANCE

RECOMMENDATION

1. Adopt a resolution to clarify and consolidate the City's prevailing wage requirements related to the construction and maintenance of park and recreational improvements and to repeal prior resolutions related thereto.
2. Adopt a resolution authorizing the City Manager the authority to negotiate and execute an agreement between the City of San José and the San José Vietnam War Memorial Foundation, Inc. for the design, fabrication, installation, and maintenance of a monument honoring the individuals from San José who lost their lives in the Vietnam War, to be located at Confluence Point in the Guadalupe River Park, at no cost to the City.

OUTCOME

Approval by the City Council of these recommendations will result in the execution of an agreement with the San José War Memorial Foundation, Inc. for the design, fabrication, installation, and maintenance of the monument and provide for additional public-private partnership opportunities for park development in the future.

BACKGROUND

The San José Vietnam War Memorial Foundation is a California non-profit corporation (Applicant). The Applicant is interested in erecting a memorial in San José to honor the 142 men from San José who died during the Vietnam War. The Applicant submitted a proposal to the City on January 13, 2011, to design, fabricate, install, and maintain a monument at Confluence Park in the Guadalupe River Park to honor these men.

May 9, 2012

Subject: "Sons of San Jose" Monument

Page 2

City Council Policy 9-14 (Monument Policy) sets the criteria and guidelines for the City to accept the installation of monuments in parks or plazas. The Monument Policy states that by placing monuments on City property, the City intends only to engage in government speech and does not intend to open a public forum for free speech activity. In accordance with the Monument Policy, the City may install or accept City-approved monuments in recognition of significant events or people, on such topics as the following:

- The contributions of individuals or groups who made a substantial impact upon the City of San José or Santa Clara County;
- The City's position on topics of interest to the community, as determined by City Council;
- The history of San José, California, or of the United States;
- Historical or cultural influences on San José;
- Native flora, fauna and wildlife of San José and the greater bay area;
- Local innovation or creativity that has contributed to San José growth and prosperity;
- or
- Other criteria selected by City Council and set forth in an amendment to the Monument Policy.

Under the Monument Policy, the City Manager initially screens the proposals to determine if the proposal complies with the Monument Policy. The proposals are reviewed to see (i) whether the person, group, or event has made a significant contribution to merit a monument of the scale, cost, and visibility proposed, (ii) whether the proposed monument duplicates existing monument themes, (iii) whether there has been adequate community outreach, (iv) whether the proposed monument is objectionable to persons or the community, (v) whether the proposed site is appropriate for the monument, (vi) whether the proposed monument has been designed by or under a qualified professional, and (vii) whether there are committed and verifiable funding sources for review, design, fabrication, installation, and maintenance.

Prevailing Wage Policy

On September 25, 2007, as part of item 4.3, the City Council confirmed the existing prevailing wage policy requirements for park maintenance services where the City is a party to the contract that exceeds \$1,000. The City Council also directed staff to evaluate exempting private entities that donate park maintenance services to the City from the prevailing wage requirements. On February 12, 2008, as part of item 3.6 "Public Private Partnership Case Study Wrap-Up and Recommendations," the City Council directed staff to prepare an amended Prevailing Wage Policy to exclude volunteers, volunteer coordinators, work performed by employee of the San José Conservation Corps, Habitat for Humanity, and Our City Forest and community service days by paid employees for corporations. It also modified the City Council direction regarding maintenance agreements for City owned buildings, structures and ground facilities to provide an exemption for agreements for donated parks maintenance services (including landscaping, restroom cleaning and other routine maintenance), when those services are paid for solely by the donor, subject to certain criteria. The amendment has never been prepared for Council review

May 9, 2012

Subject: "Sons of San Jose" Monument

Page 3

and approval because of issues over how to incorporate some of the requirements into the existing prevailing wage policy.

On November 16, 2010, the City Council adopted Resolution No. 75638 which modified the park maintenance exemption to the City's prevailing wage requirements to include any "donated" park establishment period services or park maintenance by a developer or other entity with, or without, an interest in a development in the City, under certain conditions including, but not limited to, the maintenance being in effect for a minimum of two years. Resolution No. 75638 was later repealed and the modified park maintenance exemption to the City's prevailing wage requirements was incorporated into Resolution No. 75848 (adopted on June 14, 2011).

ANALYSIS

In accordance with the Monument Policy, the City Manager initially reviewed the application and found that the proposed monument complies with the Monument Policy. The proposed monument is a thirteen by six foot polished black granite wall with four flag poles and benches. The monument will have 142 names of the known individuals from San José who died during the Vietnam War. The four flags will be the United States, California, City, and POW/MIA flags. A map with the proposed location and conceptual plan of the monument is attached. The total cost estimate for the design, fabrication, and installation of the monument is approximately \$165,000. This total amount includes the City's review and inspection fees of \$20,000 that has already been paid by the Applicant to the City. The Applicant will be solely responsible for the cost of the monument. Additionally, the Applicant has agreed to be solely responsible for the maintenance and repair cost of the monument, performing the majority of the work through volunteer management, similar to the model currently in practice at the Municipal Rose Garden.

City staff has performed a thorough review of the application and believes the proposed monument meets the requirements of the Monument Policy. Based upon staff's evaluation, the City Manager requested that the Parks and Recreation Commission (PRC) review the application and provide an advisory recommendation on whether or not the monument aligns with the Monument Policy. At the March 2, 2011, public hearing, the PRC reviewed the monument application and voted to recommend approval of the proposed monument (5-0) to the City Manager. The PRC also voted to recommend approval for the proposed monument location at Confluence Point in Guadalupe River Park. (4-0) (1 abstained).

Staff has negotiated an agreement with the Applicant for City Council review and consideration. The proposed Agreement is summarized as follows:

1. The Applicant, at its sole cost and expense, would be responsible for design, plans, and specifications for, the construction of, and the maintenance of the Monument;
2. There must be a committed and verifiable funding source for the review, design, fabrication, installation and maintenance of the donated monument as described further in the Cost Implications Section;

May 9, 2012

Subject: "Sons of San Jose" Monument

Page 4

3. The Monument must be designed by or under the direct supervision of a qualified professional;
4. Applicant or Applicant's Contractor, at Applicant's sole cost and expense, and agrees to maintain the insurance policies set forth in the agreement until the City accepts the Monument. The Applicant shall maintain no less than:
 - a. \$1,000,000 of Commercial General Liability;
 - b. \$1,000,000 of Automobile Liability;
 - c. \$1,000,000 of Workers' Compensation and Employers Liability;
 - d. \$1,000,000 of Professional Liability Errors & Omissions; and
 - e. the completed value of the Project of Builders' Risk;
5. Applicant or Applicant's Contractor, at Applicant's sole cost and expense, shall furnish to the City the following security prior to the issuance of a Notice to Proceed and commencement of any work under the agreement:
 - a. Performance Security: 100% of the estimated cost of the Monument.
 - b. Payment Security: 100% of the estimated cost the Monument;
6. Because the Monument is 100% privately funded and the Applicant is donating the Monument, competitive bidding is not being required;
7. After the Monument is accepted by the City, title to the Monument shall automatically vest with City and City may remove, relocate and shall otherwise have sole control over the Monument;
8. The estimated completion for construction of the Monument is fall 2012.

In accordance with the City of San José Monument Policy 9-14 the proposed Monument meets the Policy criteria based on the following:

1. The Monument proposal conforms to the approved "Government Speech" topics in that it recognizes significant events or people who made a substantial impact upon the City of San José or Santa Clara County and the history of San José, California, or of the United States;
2. The Monument proposal does not duplicate exiting Monument themes. Although there is a Veterans Memorial in the City, the proposed Monument specifically honors those from San Jose who sacrificed their lives in the Vietnam War;
3. The Monument proposal has been through community outreach conducted by the Applicant and at the PRC;

May 9, 2012

Subject: "Sons of San Jose" Monument

Page 5

4. The Monument proposal is not objectionable to the persons or community that the Monument is intended to honor;
5. The proposed Monument location in the park is approved by the City;
6. The Monument has been designed by or under the direct supervision of a qualified professional in the art or design field, and provides a quality, scale, and character commensurate with the location, circulation, and use patterns of the City property;
7. The Applicant is donating the design, fabrication, installation and annual maintenance of the Monument;
8. The Monument will be constructed of a durable material that will be able to withstand the elements for a minimum of 50 years with minimum maintenance, will be made of materials resistant to vandalism and graffiti as much as reasonably possible, will be of scale, materials, color and style appropriate and consistent with aesthetics of the proposed location at Confluence Point;
9. The Applicant will provide a verifiable funding source for the review, design, fabrication, installation and maintenance of the Monument before a 'Notice to Proceed' to begin construction is granted;
10. The Applicant has gone through the appropriate review processes and has met the review criteria.

Prevailing Wage Policy

The agreement negotiated by staff does not require the payment of prevailing wages. Staff is requesting the City Council to enhance the opportunity for public-private partnerships by adopting a resolution clarifying that the City's prevailing wage policy does not apply in those limited situations where a new park improvement is constructed privately using only private funds.

The City's prevailing wage policy is set forth in Resolution No. 61144, which was adopted in 1989. In relevant part, Resolution No. 61144 states that prevailing wages are required for:

City public works construction projects *funded in whole or in part* by City funds, where work is performed pursuant to any public works construction contract to which the City is a party.

Emphasis added. Similarly, State law generally requires the payment of prevailing wages for construction or repair work done under contract and "paid for in whole or in part out of public funds."

While Resolution No. 61144 contains a "funding" requirement, over the years the City has often required the payment of prevailing wages in other contexts. However, staff is unaware of a

May 9, 2012

Subject: "Sons of San Jose" Monument

Page 6

situation in which the City has required the payment of prevailing wages for a donated park improvement project that is funded completely with private funds. For example, the agreement for the construction of the Vietnamese Heritage Gardens at Kelly Park includes prevailing wage requirements, but that project contains City funding. Additionally, on May 15, 2012 staff is planning to seek approval to negotiate and execute an agreement with a nonprofit for the construction of improvements to Gore Park. That agreement, which also includes City funding, will also contain prevailing wage requirements.

The City Council has already adopted a resolution establishing a park maintenance exemption to the City's prevailing wage requirements to include any "donated" park establishment period services or park maintenance by a developer or other entity with, or without, an interest in a development in the City, if certain conditions are satisfied. Those conditions include, but are not limited to, the maintenance being fully funded by the donor for a minimum period of two years. Consistent with that action already taken by the City Council with regard to park maintenance, staff is asking the City Council to clarify that the construction of a park improvement would **not** be subject to the prevailing wage requirements under the following conditions:

- 1) The improvement must be constructed on real property that is part of the City's park or community center inventory, that is designated by the City as open space, or that is used by the City as a trail, whether or not the trail is improved;
- 2) The donor agrees to perform the construction at no cost to the City other than those costs associated with negotiating and approving a donation agreement, providing any needed access, and approving a work plan;
- 3) The City Council approves the donation agreement if the estimated value of the donated work exceeds the amount of the City manager's authority set forth in San Jose Municipal Code Section 4.04.020, as it may be amended; and
- 4) Construction of the improvements is not done for the purpose of satisfying any current or future development requirement, and the donor does not receive any credit, reduction, or other type of similar benefit from developer fees or requirements.

The above requirements are, in relevant part, the same requirements that are applicable to the park maintenance exception already approved by the City Council.

This exemption would not include turnkey park development projects where the developer is constructing the turnkey project in order to fulfill their parkland dedication or parkland impact ordinance requirements. This proposed exemption would assist the City in moving forward with projects such as the "Sons of San Jose" monument. For this project, the San José Vietnam War Memorial Foundation is either paying for, or receiving donated services for, all project design and construction costs. Additionally, the Foundation is paying all applicable city design review, inspection and permitting fees. Clarifying the City's prevailing wage policy to include an

May 9, 2012

Subject: "Sons of San Jose" Monument

Page 7

exemption for projects such as this, which are on City property but there is no city funding involved, will facilitate the City in the development of additional public private partnerships in the future.

For ease of administration and to reflect the City Council's previous direction, the resolution proposed by staff would also incorporate into one document the Council's clarifications in 2007 and 2008 regarding excluding certain workers from the prevailing wage requirements in order to facilitate public/private partnerships. It would also incorporate the City Council's action on June 14, 2011, which modified the park maintenance exemption. This would result in the prevailing wage requirements aimed at facilitating public/private partnerships being located in one resolution.

EVALUATION AND FOLLOW-UP

This project aligns with Council Policy 9-14 regarding the installation of monuments on City property. The City Council will be informed on the construction status of the project through updates in the City Manager's weekly report.

POLICY ALTERNATIVES

Alternative #1: City declines to allow the project.

Pros: Will not require additional staff time dedicated to the project and agreement.

Cons: Should the City wish not to participate, the Applicant will have to find another location for the monument.

Reason for Not Recommending: City staff has been working closely with the Applicant and has recommended this site. The proposed monument complies with the Monument Policy and honors the 142 men of San José who lost their lives during the Vietnam War.

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)**

May 9, 2012

Subject: "Sons of San Jose" Monument

Page 8

This item does not meet any of the above criteria. However, community outreach included two community meetings focusing on Veteran's organizations on September 14, 2010 and December 8, 2010, which resulted in support for this project. This memo will be posted to the City Council Agenda website for the May 22, 2012 meeting.

COORDINATION

This memorandum has been coordinated with the Planning Building and Code Enforcement Department, the Department of Public Works, the City Manager's Budget Office, and the City Attorney's office.

FISCAL/POLICY ALIGNMENT

This project is consistent with Council-approved 2010-2011 Budget Balancing Strategy principles in that it protects vital core city services and considers alternative service delivery mechanisms (e.g. appropriate partnerships) to reduce costs of delivering needed services to the community. It is also consistent with the Council-approved Budget Strategy Economic Recovery section in that it will spur construction spending in our local economy.

COST SUMMARY/IMPLICATIONS

1. TOTAL POTENTIAL AGREEMENT AMOUNT: See description below.
2. SOURCE OF FUNDING: San José Vietnam War Memorial Foundation, Inc.
3. OPERATING COSTS: The proposed operating and maintenance costs of this project are estimated based on experience with similar projects at other facilities as follows:

The Applicant intends to establish a fund with revenues generated from Applicant's annual golf tournament and donations that will support operations, maintenance, capital repair and capital replacement for the Monument. Currently, this project is anticipated to have a minimal impact on the General Fund and the Capital Improvement Program funds. The majority of the regular maintenance work will be provided by the Applicant through a volunteer service agreement with the applicant only paying the City for the annual electrical utility bill and graffiti removal, as needed. The golf tournament gross revenues for the Applicant are estimated at \$7,000 annually. The Applicant will raise \$60,000 to cover estimated capital replacement and repair costs for the monument with \$20,000 being raised prior to the City issuing the notice to proceed with the construction work and the remaining \$40,000 raised within ten years. In addition, the Applicant is investigating feasibility of an insurance policy through Farmer's Insurance for repair or replacement in the event of vandalism.

HONORABLE MAYOR AND CITY COUNCIL

May 9, 2012

Subject: "Sons of San Jose" Monument

Page 9

CEQA

Exempt, File No. PP11-081.

/s/

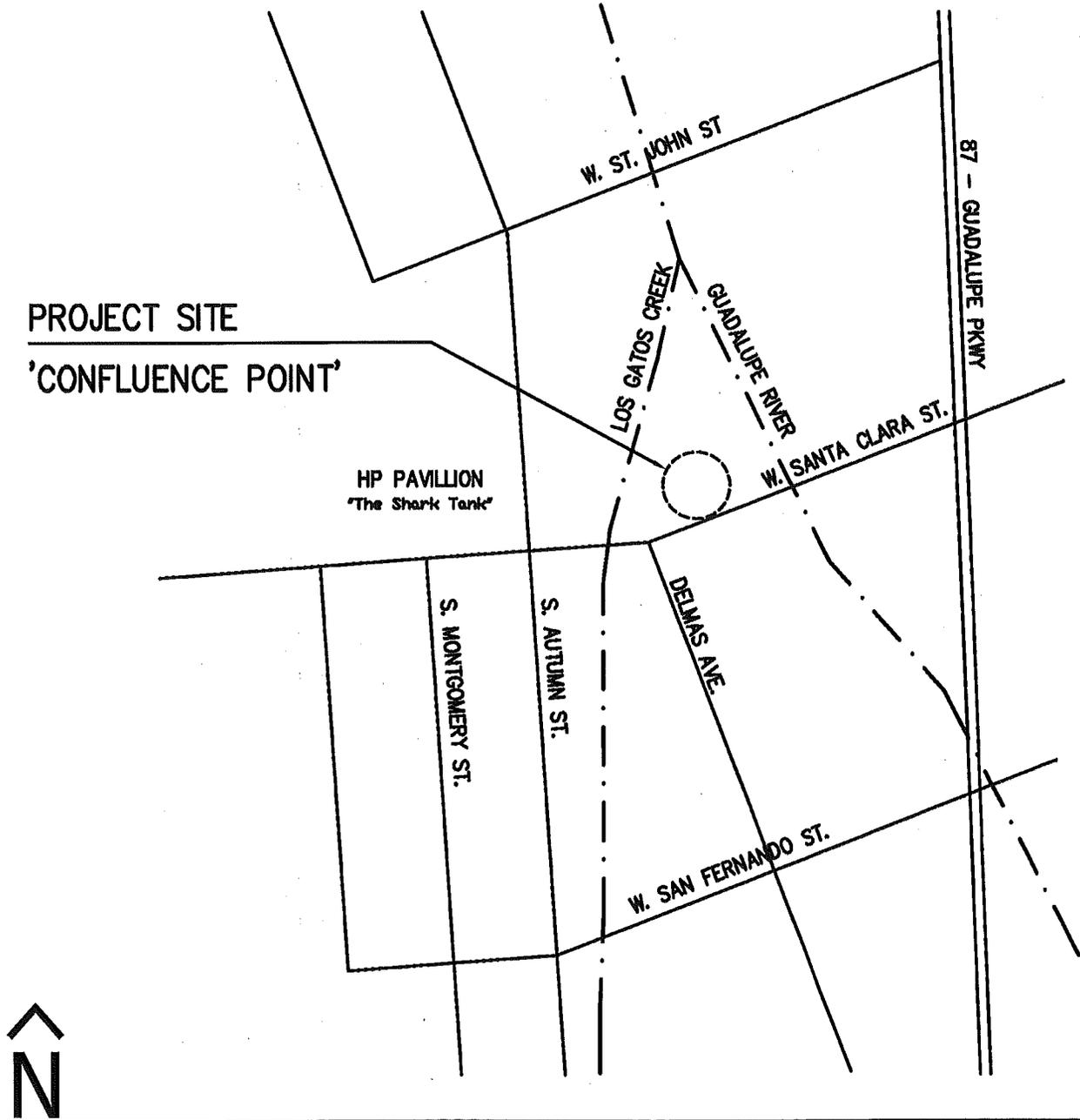
JULIE EDMONDS-MARES
Acting Director of Parks, Recreation and
Neighborhood Services

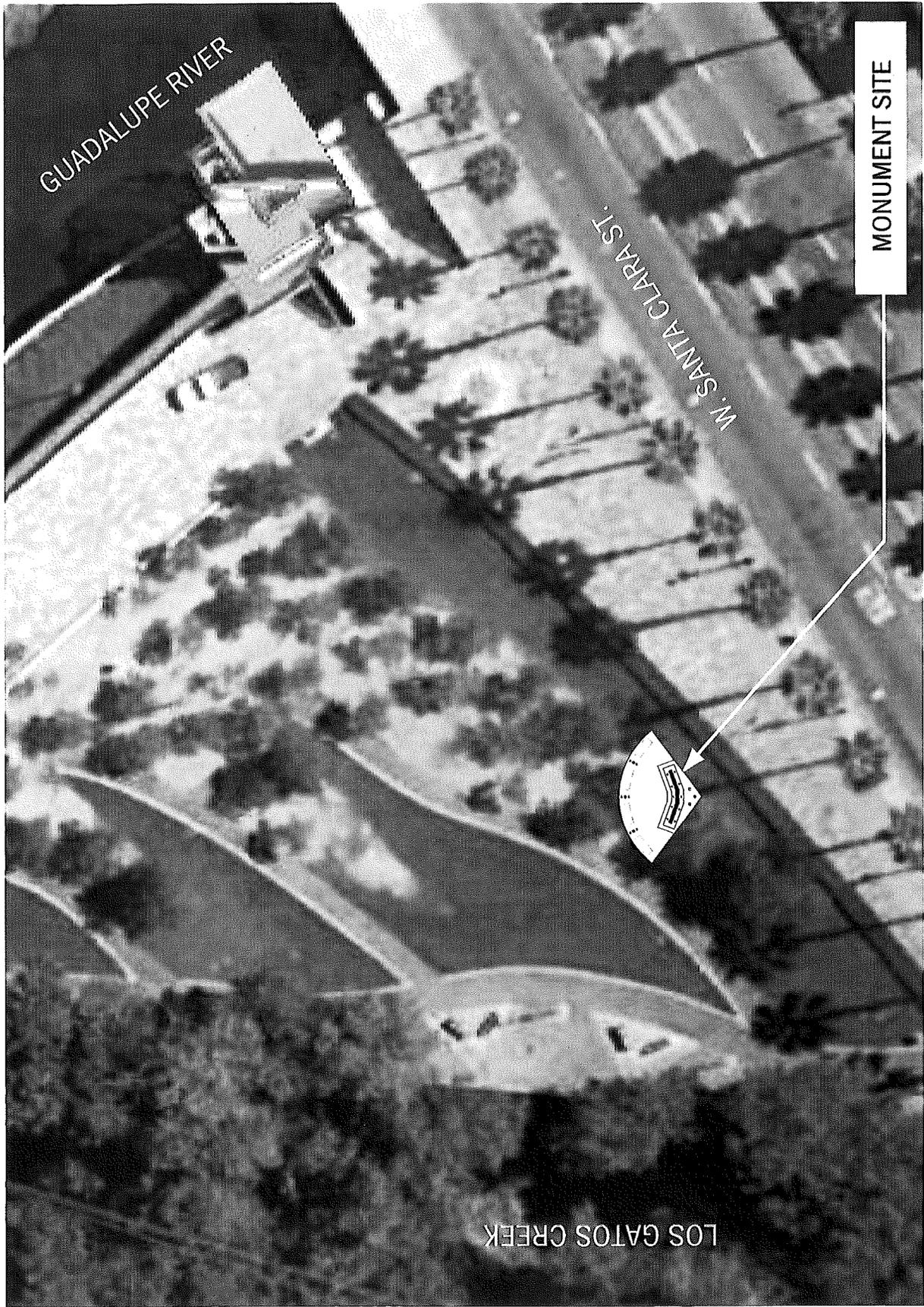
For questions please contact Matt Cano, Deputy Director, at 408-535-3580.

Attachment

Attachment

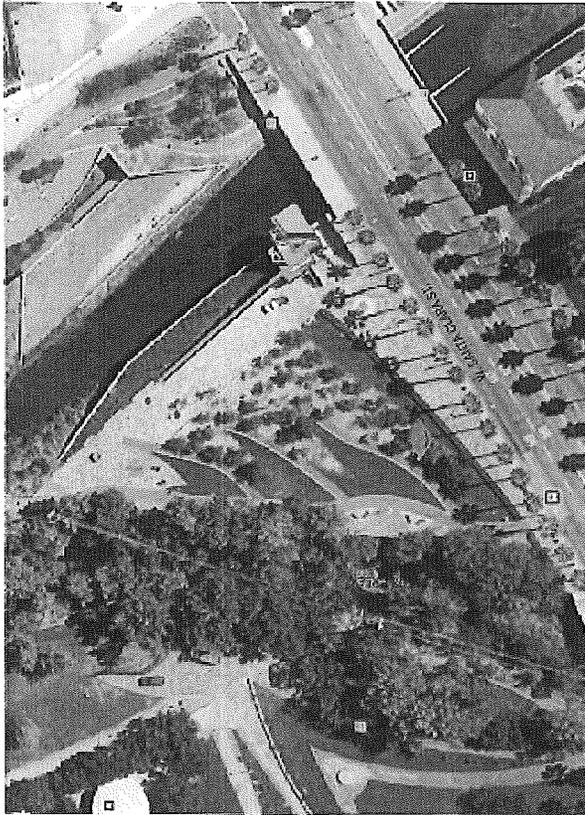
DESIGN AND LOCATION OF MONUMENT



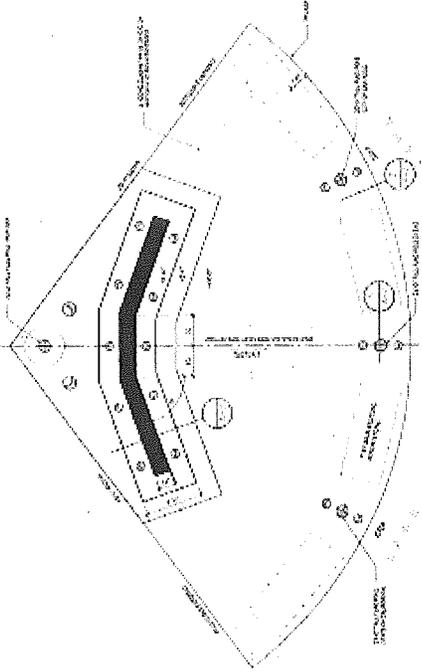


Steinberg Architects

Architects
 10000 Wilshire Blvd, Suite 1000
 Los Angeles, CA 90024
 Tel: 310.206.1000
 Fax: 310.206.1001
 www.steinbergarchitects.com



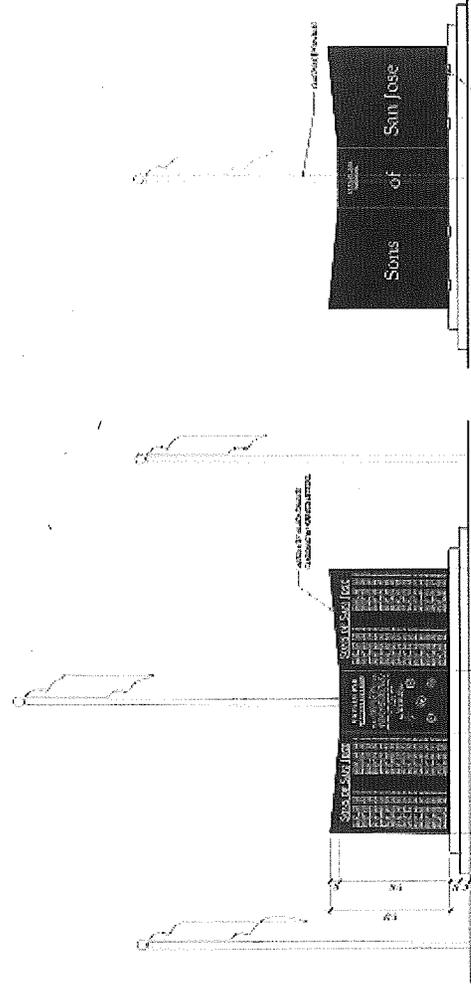
SITE PLAN



ENLARGED SITE PLAN



1" = 100'



FRONT ELEVATION

REAR ELEVATION

VIETNAM WAR
 MONUMENT
 SAN JOSE VIETNAM WAR
 MEMORIAL FOUNDATION INC.

10000 WILSHIRE BLVD
 SUITE 1000
 LOS ANGELES, CA 90024

SITE PLAN ELEVATIONS

ARCHITECTS
 10000 WILSHIRE BLVD
 SUITE 1000
 LOS ANGELES, CA 90024

A-1