



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Katy Allen
Carl W. Mosher

**SUBJECT: PUBLIC USE AND NECESSITY
HEARING – LEGACY PARTNERS**

DATE: 06-07-04

Approved

Date

Council District: 8

RECOMMENDATION

Adoption of a resolution:

1. Determining that public use and necessity require the acquisition of: (a) Fee title to a portion of property located near Old Yerba Buena Road, owned by Yerba Buena OPCO LLC for a recycled water storage facility site; (b) Permanent easements for access, overflow and pipelines; and (c) Temporary construction easements (TCEs) for recycled water storage facility access, pipelines and overflow drains.
2. Finding that: (a) The property to be taken is necessary for the completion of the Zone 3 Recycled Water Storage Facility Project; (b) The proposed project is planned and located in the manner that will be most compatible with the greatest public good and the least private injury; (c) City staff established an amount of just compensation not less than the approved appraisal of the fair market value; (d) City staff presented an offer to the owners for the full appraised amount; and (e) The proposed taking and use are authorized by law;
3. Directing the City Attorney to file an eminent domain action to acquire the above property interests.

CEQA: Negative Declaration, PP00-05-072, and addenda thereto, PD03-077.

BACKGROUND

The City owns and operates a recycled water system serving parts of San José, Milpitas and Santa Clara. Currently the system is completely dependent on electricity supplied by the local power grid to pump water throughout the system. Any interruption in the electrical supply results in a loss of service to system customers. In order to ensure reliable service delivery to all system customers, it is necessary to construct a 5.5 million gallon (MG) storage facility, consisting of two 2.75 MG capacity storage tanks, at sufficient elevation to supply water to the

system using gravity. Design and construction of the Zone 3 recycled water storage facility is part of the South Bay Water Recycling Near-Term Development Plan approved by Council on June 26, 2001. Environmental Services Department (ESD) staff identified a site for this project in the Silver Creek area.

The proposed tank site is a portion of APN 660-17-01 currently owned by Yerba Buena OPCO LLC. All of the City’s communications with Yerba Buena OPCO LLC have been through Legacy Partners, LLP, its managing agent. The proposed tank site is described in Exhibit A1 and depicted on Exhibits A2 and A3. Previous owners of this property identified the site as reserved for the City facilities on a subdivision map submitted to the City in 1998. In 2003, Legacy Partners, LLP identified an alignment appropriate for construction of the pipeline and an additional alignment to serve as all-weather access to the recycled water storage facilities. The area recommended for acquisition is consistent with the property owner’s designations. The interests to be acquired are summarized as follows:

<u>Parcel</u>	<u>Use</u>	<u>Interest</u>	<u>Area (acres)</u>	<u>Fair Market Value</u>
A	Recycled water storage facility Site	Fee	4.839	\$2,318,657
B	Pipeline & Permanent Access	Easement	1.912	\$822,624
C	Drain Overflow	Easement	0.058	\$278
D	Recycled water storage facility Site	24-month Temporary Easement	4.248	\$398,058
E	Recycled water storage facility Access	24-month Temporary Easement	2.089	\$195,749
F	Pipeline	24-month Temporary Easement	3.463	\$324,499
G	Drain Overflow	24-month Temporary Easement	0.551	\$46,198
		Total Area	17.16	
			Total:	\$4,106,063

Exhibit H is a summary map that shows all seven property interests to be acquired.

Negotiations for the acquisition of the required property rights were initiated in October 2001. The following is a chronology of events that occurred during this process.

Between 1998 and 2001, City staff evaluated a number of potential sites for recycled water storage facilities throughout the system and identified the Legacy property as the best choice.

October 22, 2001 - City staff initiated negotiations with Legacy Partners to access the property needed for the project to ascertain its suitability.

Between October 2001 and January 2003, City staff and consultants worked with Legacy to evaluate the suitability of the site in terms of access, geological issues, engineering requirements and environmental impacts. City sub-consultant Parikh Consultants completed a geological evaluation in October 2002.

January 16, 2003 - City staff met with Legacy Partners LLP, at its request, to review the City's project and discuss Legacy's issues and concerns regarding the impact of the proposed project on Legacy's ability to develop the property.

February 24, 2003 - City staff met with Legacy Partners and its design consultant to confirm the final reservoir property size and location and begin concentrating on finalizing the pipeline alignment and access road. Legacy requested that the pipeline and access road easement then being planned for construction along the southerly property line be relocated to an alignment on the north side of the property, along the riparian corridor. Legacy indicated that this would have the least impact on Legacy's future use of the site. City staff then had the design consultant redesign the pipeline and access road consistent with Legacy's request.

March 20, 2003 – Legacy granted the City a right of entry to the property to continue design work.

September 5, 2003 – The City's appraisers were sent legal plats and descriptions for the properties needed to construct the project that incorporated Legacy's requests.

September 19, 2003 - Legacy agreed to the new pipeline and access road alignment and granted the City permission to enter the property for the purpose of updating the appraisal.

November 7, 2003 - Legacy requested, and the City faxed, complete plats and legal descriptions for the subject property.

November 10, 2003 - The City sent the purchase offer to Legacy.

November 12, 2003 – City staff met with Legacy to discuss the offer. At this time, Legacy requested that the City take additional property that Legacy claimed was useless to them.

November 24, 2003 – The City sent revised legal plats and descriptions consistent with Legacy's request to the City's appraiser for a revised updated appraisal.

December 19, 2003 – A formal pre-condemnation offer was sent to Legacy, including the increased area that Legacy claimed was uneconomic.

January 14, 2004 - City staff met with representatives from Legacy Partners, LLP for the purpose of reviewing the final offer for the purchase of property needed to construct the Project. At this meeting, Legacy requested that City staff analyze whether the amount of property needed for this

project could be reduced by realignment of a portion of the project access road. Although Legacy did not provide much detail on its proposal for realignment, it was staff's understanding that Legacy was generally requesting relocation of a portion of the proposed access road so that the access road would climb the hill on which the reservoirs are to be located and access the reservoirs from the top of the hill, rather than traversing the hill to provide access from below. The area Legacy was interested in included the area they claimed was uneconomic and had previously specifically requested the City purchase. City staff analyzed the request based on staff's understanding of Legacy's proposal, and determined that Legacy's proposal was problematic.

February 24, 2004 - Staff recommended that Council make the findings that the subject property is necessary for the project and that the project has been located in the manner that is most compatible with the greatest public good and the least private injury. Council deferred action and directed staff to make one last attempt to resolve issues.

February 26, 2004 - Staff met with representatives of Legacy and agreed to attempt to find an alternative design that would be acceptable to the City while still reducing the size of the parcel to be purchased in fee.

March 24, 2004 - Staff met with representatives from Legacy and agreed on an alternative design that reduced the size of the parcel to be purchased outright to the minimum without adversely impacting the project. Reappraisal of the property was initiated.

On May 27, 2004, City staff made a subsequent offer of \$4,106,063 based upon an updated appraisal report reflecting changes in the acquisition areas as discussed by Legacy and City staff. This last offer was based on the fair market value as determined by an independent third party appraiser. The appraisal update was needed to reflect the changes to the proposed acquisition areas as agreed to by Legacy and the City at the March 24, 2004 meeting. The area that is to be purchased in fee was reduced. However, a temporary construction easement will still be needed over the area deleted from the fee take.

ANALYSIS

The location of the recycled water storage facility is severely constrained by the fact that it must work in conjunction with the existing system. To accomplish this, the facility must be located on a site with a floor elevation of 660 feet and a maximum water elevation of 685 feet above sea level. The facility must also be able to store a minimum of 5.5 million gallons. In addition, to function properly and minimize the taking of additional private property, the facility must be located in close proximity to the existing pipeline.

The parcel to be acquired has been determined to be the most suitable location to construct the tanks and pipeline based on several factors including: 1) the site is at the proper elevation for use as gravity storage with the existing pumping system; 2) the property is undeveloped; 3) the

property is geologically suitable; 4) the site does not contain endangered species habitat, 5) the property is in close proximity to the existing SBWR pipeline; and 6) the site has significant natural screening from public view. In contrast, all other alternative sites were eliminated after failing to meet some or all of the criteria listed above. For example, the few other sites that initially appeared appropriate from a technical point of view were either much farther along in the process of being developed or were identified endangered species habitat that had already been dedicated as permanent open space. In addition, at the time of the site selection process, the then owner of the Legacy property expressed a willingness to sell or dedicate the property to the City for the tanks.

During the initial design study, several site-specific constraints were identified. These were that the facility must avoid: 1) the 100-foot wide Quimby Fault setback line to the east; 2) the SCVWD easement and its 100-foot setback from the top of the creek bank lines to the north; and 3) the 50-foot setback from the Thompson property line to the south. After analyzing the site in relation to the required setbacks, it was determined that one single 5.5 MG tank would not fit. Therefore, the proposed design calls for two smaller 2.75 MG tanks. Fortunately, the two-tank design will also aid in operation and maintenance of the facility, especially during the winter months, by allowing one tank to be out of service for work without adversely affecting system reliability.

It should be noted that the City project, as currently designed, represents the culmination of over two years of work on the part of City staff, in consultation with Legacy, to locate the City project where it will have the least impact on Legacy. The City has moved forward with design of this project and appraisal of the property based on Legacy's prior identification of its design preferences. Exhibits A1 through G3 identify the specific property areas and interests that need to be acquired for the Project.

To date, Legacy has not responded to the City's latest offer. However, approval to condemn this property is being sought at this time because, based on the past several years of discussions with Legacy, it appears that a negotiated purchase cannot be achieved in a reasonable timeframe.

PUBLIC OUTREACH

An advisory board consisting of representatives from a number of public and private agencies and organizations, including the Silicon Valley Manufacturers' Group, Santa Clara County Medical Association and League of Women Voters, participated in the development of all Phase 2 facilities, including the proposed Zone 3 recycled water storage facility. The ESD Marketing and Communications group supported public outreach for the proposed facility.

COORDINATION

Preparation of the memo has been coordinated with the City Attorney’s Office, the Manager’s Budget Office, the Department of Planning, Building and Code Enforcement, and was heard by the Treatment Plant Advisory Committee at its February 12, 2004 meeting.

COST IMPLICATIONS

Deposit of \$4,106,063 into the State Treasury Condemnation Fund and any additional funds that the court may determine.

BUDGET REFERENCE

Fund #	Appn. #	Appn. Name	RC #	Total Appn.	Amt. for Contract	2003-2004 Adopted Capital Budget Page	Last Budget Action (Date, Ord.No.)
512	6589	Revised SBAP – SBWR Extension	119553	\$34,030,000	NA	Page 207	10/14/03, Ord. No. 26997

CEQA

Negative Declaration, PP00-05-072, and addenda thereto, PD03-077.

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