



COUNCIL AGENDA: 5/21/19  
FILE: 19-347  
ITEM: 2.16

# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Jon Cicirelli  
Margaret McCahan

**SUBJECT:** SEE BELOW

**DATE:** May 10, 2019

Approved

Date

5-10-19

**COUNCIL DISTRICT: 5**

**SUBJECT: APPROVAL OF THE TURNKEY PARKLAND AGREEMENT AND ADOPTION OF APPROPRIATION ORDINANCE AND FUNDING SOURCES RESOLUTION AMENDEMENTS IN THE SUBDIVISION PARK TRUST FUND FOR THE NORTH CAPITAL AVENUE AT GIMELLI WAY PARK SITE**

## RECOMMENDATION

- (a) Approve a Turnkey Parkland Agreement between the City of San José and Pulte Home Company, LLC, a Michigan limited liability company (“Developer”) for the dedication and development of a 0.58 gross acre site, the construction of park improvements on this site, and return a portion of paid park impact in-lieu fees relating to approved File Nos. PDC16-002, PD16-025 (as amended), and PT16-035 (as amended);
- (b) Adopt a resolution authorizing the City Manager or designee to negotiate and execute a maintenance agreement with the Developer for maintenance of the park for one calendar year after the City accepts the park; and
- (c) Adopt the following 2018-2019 Appropriation Ordinance and Funding Sources Resolution Amendments in the Subdivision Park Trust Fund:
  - (1) Establish Capitol at Gimelli Turnkey Park Developer Reimbursement appropriation for \$490,000;
  - (2) Increase Future PDO/PIO Future Projects Reserve by \$169,000;
  - (3) Decrease Capitol Turnkey Park Design Review and Inspection appropriation by \$586,000; and
  - (4) Increase the Developer Contributions estimate by \$73,000.

## **OUTCOME**

Approval of the Turnkey Parkland Agreement and budget actions will facilitate the design and construction of improvements on an existing approved public park site.

## **BACKGROUND**

The project site is located along Gimelli Way, fronting North Capitol Avenue (641 North Capitol Avenue) in the North Capitol Avenue/McKee Road Urban Village. Surrounding land uses include residential developments to the north, east, and west. Interstate 680 (I-680) is south of the project's property line. The La Buona Vita-Mobile Park is located directly south of the project site.

In 2017, The Orchard (also referred to as "Merlino Village") project received City Council approval that allows the development of:

- 188 residential townhomes;
- 108,000 square feet of commercial space;
- A two-story 28,000 square foot medical office building;
- A 70,000 square foot self-storage warehouse facility;
- A bicycle shop;
- Publicly accessible, privately owned outdoor recreation areas; and
- A 0.58-acre public park.

Primary vehicle access to the park is provided along Gimelli Way and North Capitol Avenue road frontage. Pedestrian access to the park is provided via existing sidewalks located on North Capitol Avenue and new sidewalks along Gimelli Way. Pulte Homes purchased the project in 2017. The project is currently under construction. (Approved File Nos. PDC16-002, PD16-025 [as amended]), and PT16-035 [as amended], Figure 1.)

Existing neighborhood-serving recreational resources within a ¼-mile radius include:

- Penitencia Creek Trail (City and County)
- Penitencia Creek Park (County)
- Overfelt Gardens Park (City)
- Children of the Rainbow (City)
- Lobue Park (City)
- Alum Rock Youth Center (City)

## ANALYSIS

Per the City's Parkland Dedication Ordinance (SJMC 19.38) requirements, the project had a parkland obligation to dedicate 1.59 acres of land. Parks, Recreation, and Neighborhood Services (PRNS) staff worked with the community, the Department of Planning, Building and Code Enforcement (PBCE), Council District 5 office, and the Developer to create a beneficial recreational strategy for the project and the neighborhood. During the entitlement review process, it was determined that the project should fulfill its parkland obligation by dedicating 0.58 acres of land for a public park; providing turnkey improvements to complete the park; constructing private recreation credit amenities (that are mostly publicly accessible); and paying the remaining park impact in-lieu fees. This was the preferred approach as it serves the need for a park in an underserved area, and it provides resources to increase the amount of publicly accessible recreational space within the project.

The development of the park's program (its purpose and functionality in consideration of likely users and surrounding residents) was a collaborative effort that included the Developer, PBCE, Councilmember Carrasco (Council District 5), and the community. PBCE conducted the community outreach, including three community meetings and two public hearings, that led to the approval of the project. This resulted in an approach that will provide over an acre of recreational space by combining 0.58 acres of dedicated and improved public parkland with 0.45 acres of publicly accessible private recreational amenities (Figure 1), effectively producing one seamless public park with amenities that reflect input received at the meetings. The combination of private recreation and public park space achieves the project's intended program.

The land dedication, initial provision of private recreation credits, and in-lieu fees are recorded in an administrative Interim Parkland Agreement (File No. PA 3-18939). The Interim Agreement was executed to facilitate issuance of building permits, which allowed the project's construction to commence while updates were completed to the park Master Plan and Cost Estimates. This Interim Agreement requires that this Turnkey Parkland Agreement (Turnkey Agreement) return a portion of the paid park impact fees in exchange for the developer constructing the park. The Turnkey Agreement associated with this memo meets the requirements of the Interim Agreement in that it provides the same amount of land with the Interim Agreement and facilitates the return of a portion of the paid park impact in-lieu fees to fund the turnkey improvements in the public park.

Staff negotiated with the Developer to provide the following within this Turnkey Parkland Agreement to satisfy the 1.59-acre parkland obligation, which is equal to \$3,124,000 in park impact in-lieu fees.

A total of 0.58 acres of land for park purposes was dedicated by the developer. Credit was provided 0.54 acres (the remaining 0.04-acre access easement does not qualify for credits), which is equivalent to \$1,061,000 in park impact in-lieu fees. After applying the credit towards the developers obligation, the remaining park impact fee obligation totals \$2,063,000.

In addition, private recreation credit of \$884,000 has been applied towards the developer parkland obligation. This credit will provide improvements for 0.45 acres, including:

- Two public plaza spaces, which include shade trees, bench seating, bike racks, and landscaped and shaded areas;
- A public paseo, called "The Link," that connects the Capitol Avenue plaza to private gardening plots for the future residences along the south side of the park; and
- A private dog park for the future residents.

Construction of additional park improvements are estimated at \$834,000. The developer will construct the improvements, which are anticipated to include a fenced play lot, a large turf area for informal play, installation of park furniture, and construction of picnic areas.

After accounting for the private recreation credit and the park construction being performed by the developer, the remaining parkland obligation totals \$345,000, which is anticipated to be expended on Public Works Department design review and inspection costs (\$124,000), staffing and administrative City costs (\$52,000), and future parksite improvements that have not yet been identified (\$169,000).

The 2018-2019 Mid-Year Budget Review recognized and allocated funding of \$710,000 related to this project. However, updated information (as displayed above) has necessitated budgetary actions to correctly align the revenue and expenditures. Therefore, this memorandum includes actions to recognize funding that has been received by the developer (\$73,000), decrease the Capitol Turnkey Park Design Review and Inspection allocation by \$586,000 (from \$710,000 to \$124,000), allocate funding to the Future PDO/PIO Reserve for future parksite improvements (\$169,000), and recognize the additional funding that has already been received by the developer \$73,000.

### **Maintenance of the Park**

The Developer has agreed to maintain the park for one calendar year after park acceptance by the City. Staff will negotiate the final terms of a maintenance agreement upon authorization by the City Council. The maintenance agreement will be fully executed prior to the completion of 100% construction drawings and be recorded in a deed restriction over the project site. At a minimum, the agreement will require routine litter removal, graffiti abatement, and maintenance and repair of playground equipment, water fountain, fixtures, landscape amenities, mowing of grass/turf, vegetation, trees, irrigation, and lighting. The maintenance agreement will outline all Worker's Compensation and General Liability insurance requirements to the satisfaction of the City.

In the event that residential portions of the project are sold to different owners, the future owners will be jointly responsible to fully comply with the executed maintenance agreement. The agreement will also outline a procedure to transfer maintenance of the site back to the City after one calendar year. Following the Developer's required maintenance of the park, the City will assume the ongoing maintenance, currently estimated at \$15,000 annually. The maintenance impact has been included in the 2020-2024 Five-Year Forecast and Revenue Projections, which was released in February 2019.

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

Approval of the Turnkey Parkland Agreement by the City Council will provide final authorization for the City to oversee the park design construction details with the acceptance of public recreational improvements after final inspections are completed. The Department of Public Works (PW) staff will review and approve the project construction documents and will work with PRNS and the Developer to refine the design as necessary to complete the project in accordance with City construction standards, and public life and placemaking goals.

Next steps include completing the construction documents, construction of the park by the Developer, and naming the park. "North Capitol Avenue at Gimelli Way Park Site Master Plan" is a working title. (It has also been informally referred to as "The Capitol Park". The working name was changed because it was often confused with the existing "Capitol Park.") The final name for the park must be consistent with the Council Policy 7-5, "Naming of City Owned Land and Facilities." Potential park name nominations can be submitted by any members of the public. The Parks and Recreation Commission will consider name nomination prior to City Council consideration. The City Council will ultimately decide upon the name of the park during a public hearing. Staff will work with the Council Office to solicit names per the City's "Naming of City Owned Land Facilities" policy. The form for nominating names can be found at:

<http://www3.sanjoseca.gov/clerk/forms/CityOwnedFacilities.pdf>

### **POLICY ALTERNATIVES**

***Alternative #1: The City Council could reject the Turnkey Parkland Agreement and/or any of its current terms, retain the paid park impact fees and design and construct the park in-house.***

**Pros:** Redrafting the Agreement and Master Plan could result in an alternative design or other method to comply with the Park Impact Ordinance. City staff could better influence park design.

**Cons:** The timing of the new park's construction and the entire development project would be delayed or jeopardized. Additionally, most of the paid fees would be applied to administrative costs leaving a minimal budget for park improvements. It is also unlikely the park could be constructed within two years.

**Reason for not recommending:** The proposed turnkey improvements are consistent with the plans that both the Parks and Recreation Commission and the community reviewed, the adopted Planned Development rezoning, and the approved Planned Development permit. The improvements create a quality urban area with public amenities designed to support mixed-use development and the greater community. The Developer can complete the design in coordination with the City and construct the park improvements within a year after design and construction drawings are complete.

**Alternative #2:** *The City Council could reject the Turnkey Parkland Agreement and the City could retain the paid park impact in-lieu fees and fund improvements at other sites located within ¾ mile of the site.*

**Pros:** The paid park impact in-lieu fees could be spent within the project's nexus to fund improvements at other park sites, such as Overfelt Gardens or Children of the Rainbow park, the Alum Rock Youth Center, or other PRNS facilities within a nexus of either ¾ of a mile (neighborhood-serving), or three-mile (community-serving) nexus.

**Cons:** Failure to accept the Turnkey Agreement for the recreational park improvements would not support the City's goal of providing a park on the site, would not meet community expectations, and would not be consistent with approved entitlements.

**Reason for not recommending:** The project is producing 188 new units within an existing highly populated residential area. This project helps alleviate the strong need for community-serving recreation areas in an underserved area.

## **PUBLIC OUTREACH**

Three noticed community meetings occurred on March 10, June 20, and September 8, 2016. During these meetings, City staff discussed the proposed mixed-use project including the design of the park. Preliminary park programming was discussed during the first meeting. Context plans and the presented Master Plan were developed during the later meetings. Most attendees were excited about the park and on-site amenities; however, a few expressed some uncertainty about the overall project's neighborhood compatibility.

The Parks and Recreation Commission recommended approval of the Master Plan on December 7, 2016. The Planning Commission recommended approval of the project on December 14, 2016. The City Council approved the project January 10, 2017 (Ordinance No. 29858). This memorandum will be posted on the City's website for the May 21, 2019 City Council agenda.

### **COORDINATION**

This item has been coordinated with Planning, Building and Code Enforcement Department, the Public Works Department, and the City Attorney's Office.

### **COMMISSION RECOMMENDATION/INPUT**

The Parks and Recreation Commission considered and approved the Master Plan for the park on December 7, 2016. Commissioner Quint moved to accept the report and recommend the City Council approve the Master Plan. This was seconded by Commissioner Mandair. The motion carried, accepting the report (8-0-2). Absent: Commissioners Bejarano and Del Real.

The Planning Commission unanimously approved the project on December 14, 2016 with Commissioner Bit-Badal absent.

### **FISCAL/POLICY ALIGNMENT**

The proposed action aligns with the City's Park Impact and Parkland Dedication Ordinances (SJMC 14.25 and 19.38) as well as the approve zoning, development permits, the 2009 Greenprint, and the Envision San José 2040 General Plan.

### **COST SUMMARY/IMPLICATIONS**

As previously detailed, a combination of land dedication credit, private recreation credits, and park improvements that will be constructed by the developer total approximately \$2.8 million of the \$3.1 million parkland dedication obligation. Remaining funding has been provided to the City for design review and inspection costs, administrative staff costs, and future (unidentified) park improvements.

Given the Developer's current project schedule, the public park will likely be operational, conveyed to the City, and open to the public within two years. Once completed, the annual operating and maintenance impact for baseline improvements are estimated to be approximately \$15,000 annually. This funding would provide a basic level of service consistent with other parks in the City. The 2019-2020 Proposed Operating Budget includes \$5,000 for the partial Capital Turnkey Park operating and maintenance, which assumed the park would come on line partially through 2019-2020. As the park is not scheduled to come on line in 2019-2020, actions will be included in the 2019-2020 Proposed Budget Rebudget/Clean-up Manager's Budget, scheduled for release later this month, to eliminate this allocation.

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**BUDGET REFERENCE**

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

Fund #	Appn #	Appn Name	Current Total Appn	Rec. Budget Action	2018-2019 Adopted Capital Budget Page*	Last Budget Action (Date, Ord. No.)
375	411Q	Capitol Trunkey Park Design Review and Inspection	\$710,000	(\$586,000)	N/A	02/12/2019, Ord. No.30223
375	NEW	Capitol at Gimelli Turnkey Park Developer Reimbursement	N/A	\$490,000	N/A	N/A
375	8845	Future PDO/PIO Projects Reserve	\$8,319,904	\$169,000	V-613	03/26/2019, Ord. No.30241
375	R240	Developer Contribution	\$1,305,000	\$73,000	V-529	02/12/2019, Ord. No. 78982

**CEQA**


“641 North Capitol Avenue Mixed-Use Project” Adopted Mitigated Negative Declaration (Resolution No. 78053), File Nos. PDC16-002, PD16-025 (Resolution No. 78055 as amended), & PT16-035 (Resolution No. 78054, as amended).

/s/

Jon Cicirelli  
Acting Director  
Parks, Recreation and Neighborhood Services

  
Margaret McCahan  
Budget Director

I hereby certify that there will be available for appropriation in the Subdivision Park Trust Fund in the Fiscal Year 2018-2019 moneys in excess of those heretofore appropriated there from, said excess being at least \$73,000.

  
Margaret McCahan  
Budget Director

For questions, please contact Nicolle Burnham, Deputy Director, at (408)793-5514.

Attachments:

- Figure 1. Approved project Master Plan with Private Recreation Credit Amenities
- Figure 2. Park Master Plan



FIGURE 1



- PRIVATE RECREATION AMENITIES**
- PUBLIC PARK  
"Capital Park"
  - 1 PLAZA 1  
Private Plaza (Active): 7068 sqft.  
Private Garden Plot (Active): 1386 sqft.  
Recreation Room (Inactive): 836 sqft
  - 2 PLAZA 2  
Private Plaza (Active): 4442 sqft.
  - 3 PRIVATE PET AMENITY  
Dog Park (Active): 13446 sqft.
- TOTAL: 27238 sqft.**

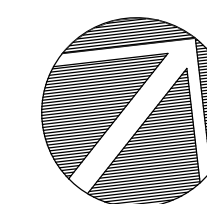


Figure 2 - Park Master Plan

