



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Nanci Klein

SUBJECT: SEE BELOW

DATE: August 21, 2023

Approved

Date

8/29/23

COUNCIL DISTRICT: 3

**SUBJECT: PURCHASE AND SALE AGREEMENT FOR PROPERTIES EXTENDING
THE FIVE WOUNDS TRAIL FROM E. WILLIAM ST. TO THE
PROPOSED LITTLE PORTUGAL BART STATION**

RECOMMENDATION

Adopt a resolution:

- (a) Authorizing the City Manager, or designee, to negotiate and execute a Purchase and Sale Agreement between the City of San José and Santa Clara Valley Transportation Authority, for the fee simple acquisition of the property known as Assessor's Parcel Numbers 467-36-095, 467-36-094, 472-05-069, 467-35-108, 467-35-109, 467-35-089, 467-33-075, 467-33-092, 467-33-087, 467-33-091, and 249-65-077, and acquisition of a recreation trail easement on Assessor's Parcel Numbers 467-07-052, 467-07-070, 467-09-077, and 467-09-078, for the amount of \$0, plus any closing costs; and
- (b) Authorizing the City Manager, or designee, to execute all other documents necessary to effectuate the transfer of property to the City.

SUMMARY AND OUTCOME

The recommended actions authorize the City Manager, or designee, to acquire, on behalf of the City of San José (City), former railway parcels (APN Nos. 467-36-095, 467-36-094, 472-05-069, 467-35-108, 467-35-109, 467-35-089, 467-33-075, 467-33-092, 467-33-087, 467-33-091, and 249-65-077) (Property) at no cost save for associated closing costs from the Santa Clara Valley Transportation Authority (VTA) for the uses relating to the Five Wounds Trail alignment between Alum Rock Avenue/East Santa Clara Street and East Julian Street. The City will receive a recreation trail easement on four parcels retained by the VTA (APN 467-07-052, 467-07-070, 467-09-077, and 467-09-078) (Easement Parcels). The completed project would deliver approximately 2.17 miles of paved multimodal trail from Story Road to Lower Silver Creek,

providing a regional connection between Coyote Creek Trail and the future Little Portugal BART Station and Transit Village. (**Attachment** - Five Wounds Trail Parcel Map). The parcels will transfer to the City in phases, when they are no longer required for BART construction. This may be as soon as 2024 for certain segments, but overall, Little Portugal BART construction is anticipated to be completed in 2031. Master planning for the Five Wounds Trail will commence when the City acquires parcels sufficient to extend the existing Five Wounds Trail to the Little Portugal BART Station.

BACKGROUND

The identified alignment for the Five Wounds Trail is a former single-track railway spur from East William Street to Lower Silver Creek near Wooster Avenue. The land historically was undeveloped until the construction of the railroad tracks between 1915 and 1939. The railroad is no longer in service and the land is now owned in fee by the VTA which acquired the property in conjunction with the BART development. The land remains mostly undeveloped with some remaining railroad tracks and outbuildings used as storage.

The trail alignment appears in the City's General Plan 2040 with portions designated as "Transportation and Utilities" and "Open Space, Parklands, and Habitat." The alignment is an identified trail system for future development by the Department of Parks, Recreation, and Neighborhood Services. The City has not prepared a formal master plan for the trail corridor because parcels are not yet owned by the City or otherwise currently not ready for recreational development based on connectivity issues.

Negotiation for the City to acquire Five Wounds Trail parcels from the VTA has been in progress since 2014. Originally, the City agreed to acquire the segment between East William Street and Whitton Avenue for \$1,500,000 with financial assistance from our two partners, the Santa Clara Valley Open Space Authority and Santa Clara County Parks. However, this segment lacks a regional trail connection that the partners require to fund the acquisition. In 2020, the City was informed that additional parcels between Whitton Avenue and the Lower Silver Creek would be available when BART was complete. City staff were able to negotiate a no cost transfer due to the significant financial burden for remediation and in June 2022, the VTA approved a no-cost transfer of the Property to the City, including transferring a recreation trail easement to the City for the Easement Parcels. Subsequent to VTA's authorization, City staff performed environmental due diligence on the full extent of the Property, and coordinated with partners, including the Santa Clara Valley Open Space Authority and Santa Clara County Parks, to be prepared to accept a portion of the Property from the VTA as soon as 2024.

These acquisitions will support pedestrian and bicycle access to the planned Little Portugal BART Station, anticipated to be completed in 2031, and the recently developed Berryessa BART Station to the north of the subject parcels.

ANALYSIS

Development of the Five Wounds Trail project would serve as an active transportation route with a direct connection to the regional 18-mile Coyote Creek Trail system including serving the Berryessa and Little Portugal BART Stations.

VTA has an agreement allowing for BART's use of the Property as staging to construct the Little Portugal BART Station. BART construction is anticipated to be complete in 2031. However, the VTA is willing to transfer individual parcels to the City in phases, once BART no longer needs any individual parcel. The first phase of parcels, sufficient to extend the existing Five Wounds Trail to the Little Portugal BART Station (E. William Street to E. Santa Clara Street), may be available as soon as 2024. VTA indicated that it will be able to provide confirmation by the first quarter of 2024 whether it can release these parcels for transfer early, or if it will be needed for BART through construction of the station.

The Santa Clara Valley Open Space Authority and Santa Clara County Parks each intend to contribute \$500,000 to the project, for a total of \$1,000,000 in exchange for a conservation easement, subject to terms and conditions to be negotiated and subject to approval by their respective governing boards and City Council. The Santa Clara Valley Open Space Authority and Santa Clara County Parks have indicated that they will each individually present to their boards a Resolution of Support by the end of the year committing the \$500,000 each.

Prior to transfer of any parcels, the VTA will remove from title any railroad easements or rights-of-way, utility easements, leases, or encroachments.

In 2015, the City conducted soil testing for the former railroad section from E. William Street to Whitton Avenue. Results from the 2015 investigation identified elevated concentrations of lead and arsenic in the soil and ballast material often associated with former railroad spur alignments. More isolated and sporadic elevated concentrations of total petroleum hydrocarbons in the diesel (TPHd), oil (TPHo), and gasoline ranges (TPHg) were also detected. In 2022, the City analyzed the soil throughout the Property and found similar soil contamination as was identified in the segment from E. William Street to Whitton Avenue in 2015. It is estimated that the current clean-up costs of soil remediation to develop the trail would be over \$5,000,000. VTA will commit to "freezing" current environmental conditions and will be responsible for clean-up of any new contamination found on the Property when the City begins remediation. Remediation will be performed as part of project build-out, which will be subject to future City Council actions related to project master planning and development. Grant funds are expected to offset the cost of remediation and project development to the extent possible.

The City will begin California Environmental Quality Act (CEQA) analysis and development of the Trail Master Plan for the Five Wounds Trail once the VTA transfers parcels sufficient to extend the existing Five Wounds Trail to the Little Portugal BART Station (E. William Street to E. Santa Clara Street). Trail Master Plans typically take between one to three years to complete. Additional trail development tasks related to development of the Five Wounds Trail are remediation, design, and Coyote Creek Trail and Lower Silver Creek Trail crossing analysis.

Once completed, the formal adoption of the CEQA and master plan will be brought for City Council approval.

Policy Alternatives

Alternative #1: Do not proceed with Property acquisition.

Pros: Preserves funding for other projects, eliminates risk of increased environmental remediation costs above and beyond the current \$5,000,000 cost estimate, and reduces the liability of the City assuming ownership of a property that requires environmental remediation.

Cons: City would miss an opportunity to advance the proposed Five Wounds Trail alignment and would not create a multimodal transportation connection to Little Portugal BART.

Reason for not recommending the “Do not proceed with Property acquisition alternative”:

Development of the Five Wounds Trail is strongly desired by the community. This approach is inconsistent with the City’s General Plan goal of developing an interconnected trail network. Development of the trail aligns with Climate Smart San José goals providing residents with multimodal options to BART aside from gas-powered vehicles.

Climate Smart San José Analysis

This project reduces vehicle miles traveled by expanding the choice of mobility options other than single-occupancy, gas-powered vehicles.

EVALUATION AND FOLLOW-UP

Staff will report on project development efforts as part of its annual update to the Parks and Recreation Commission, which includes the publication of the Annual Trail Program Report. Upon the approval of this recommendation, staff will negotiate and execute a Purchase and Sale Agreement with the VTA for the Property. VTA will provide the City with confirmation by the first quarter of 2024 whether it can release parcels for transfer early, or if it will be needed for construction staging of the BART station through 2031.

COST SUMMARY/IMPLICATIONS

The transfer of the Property and Easement Parcels will be at no cost. The City will be responsible for title, escrow, and recording closing costs, estimated at less than \$10,000, to be funded by the Preliminary Engineering – Trails appropriation within the City-wide Parks Purpose Construction Tax and Property Conveyance Tax Fund. Development of the Five Wounds Trail, including remediation, will be the subject of future City Council action.

BUDGET REFERENCE

The table below identifies the fund and appropriation to fund the title, escrow, and recording closing costs recommended as part of this memorandum.

Fund #	Appn #	Appn. Name	Total Appn	Rec. Budget Action	2023-2024 Proposed Capital Budget Page ¹	Last Budget Action (Date, Ord. No.)
391	6729	Preliminary Engineering – Trails	\$150,000	N/A	467	06/20/2023 Ord. No. 30933

¹ The 2023-2024 Adopted Capital Budget was approved on June 13, 2023 and adopted on June 20, 2023 by the City Council.

COORDINATION

This memorandum has been coordinated with the City Attorney's Office, the City Manager's Budget Office, and the Departments of Environmental Services; Parks, Recreation, and Neighborhood Services; and Planning, Building, and Code Enforcement.

PUBLIC OUTREACH

This memorandum will be posted on the City's Council Agenda website for the September 12, 2023 City Council meeting.

COMMISSION RECOMMENDATION AND INPUT

No commission recommendation or input is associated with this action.

CEQA

Not a Project, File No. PP17-003, Agreements/Contracts (New or Amended) resulting in no physical changes to the environment.

PUBLIC SUBSIDY REPORTING

This item does not include a public subsidy as defined in section 53083 or 53083.1(e) of the California Government Code or the City's Open Government Resolution.

HONORABLE MAYOR AND CITY COUNCIL

August 21, 2023

Subject: Purchase and Sale Agreement for Properties Extending the Five Wounds Trail from E. William St. to the Proposed Little Portugal BART Station

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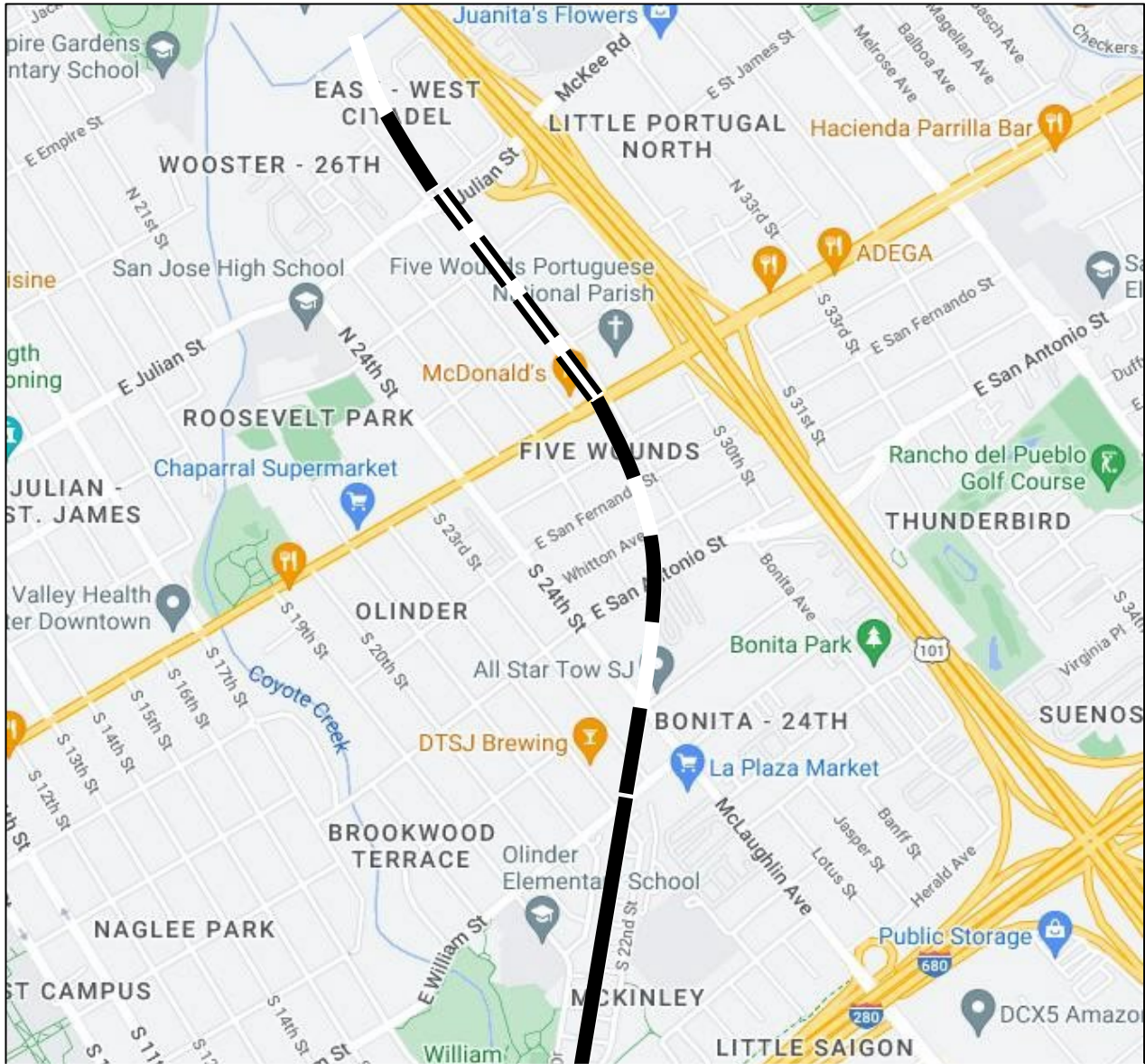
NANCI KLEIN

Director of Economic Development and
Cultural Affairs

For questions, please contact Kevin Ice, Senior Real Estate Manager at (408) 535-8197.

ATTACHMENT: Five Wounds Trail Parcel Map

Attachment Five Wounds Trail Parcel Map



LEGEND	LIMITS	CURRENT OWNERSHIP	REAL ESTATE TRANSACTION
	Julian to Lower Silver Creek	VTA	Fee Acquisition Subject to this memorandum.
	Santa Clara to Julian	VTA	Recreation Trail Easement Subject to this memorandum.
	William Street to Whitton Ave	VTA	Fee Acquisition Subject to this memorandum.
	Story Road to Williams Street	CITY	City owned; no transaction needed.