



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Angel Rios, Jr.  
Kim Walesh

**SUBJECT:** SEE BELOW

**DATE:** June 4, 2018

Approved

*D. D. Syl*

Date

*6/14/18*

**COUNCIL DISTRICT: 4**

**SUBJECT: APPROVAL OF ACTIONS RELATED TO THE PROPERTY  
ACQUISITION FOR PARK PURPOSES OF ASSESSOR'S PARCEL  
NUMBER 595-20-001 LOCATED BETWEEN CLAITOR WAY AND  
BOULDER DRIVE**

## RECOMMENDATION

Adopt a resolution authorizing the City Manager or his designee to negotiate and execute a Purchase and Sale Agreement ("PSA") between Steve H. Eachus and M. Anne Eachus, Trustees of the Eachus Family Revocable Trust date of transfer May 2, 2000, and the City of San José for approximately 0.29 acres of real property located between Claitor Way and Boulder Drive, San José, Assessor Parcel Number (APN) 595-20-001 ("Eachus Property"), which is adjacent to existing open space parkland, for the purchase price of \$0, with closing costs not to exceed \$3,000.

## OUTCOME

Approval of the recommendation in this memorandum would allow the City Manager to negotiate and execute a PSA with Steve H. Eachus and M. Anne Eachus, Trustees of the Eachus Family Revocable Trust D/O/T May 2, 2000 for the acquisition of existing vacant land that is adjacent to City owned property along the border of Alum Rock Park. The vacant land will be acquired for no fee other than closing costs which will not exceed \$3,000.

## BACKGROUND

In July 2016, Steve Eachus, the Claitor Way property owner, approached Real Estate staff wanting to donate his property on Claitor Way to the City at no cost to the City. The Claitor Way property is adjacent to five open space parkland parcels near Alum Rock Park. Real Estate

staff advised Parks, Recreation and Neighborhood Services (PRNS) about the opportunity to acquire the property.

In September 2016, the property owner provided Real Estate staff with an appraisal report for the subject property. This appraisal report indicated that the subject property has experienced erosion from water runoff originating at a nearby storm drain. Erosion is a known issue in the area due to soil conditions and mountainous slope. If the City desired to develop the lot in the future, the appraiser has estimated that \$25,000 of 'tractor work' would be needed to backfill the area. Staff does not anticipate that the subject property and adjacent City owned parcels will ever be developed by the City, however the land could be preserved for habitat and conservation value. The City already owns parkland adjacent to the property at Alum Rock Park and preservation of this hillside could also benefit water quality in the Penitencia Creek watershed. The appraiser's opinion of fair market value of the subject property was \$150,000.

After reviewing site conditions, the appraisal report, and evaluating long term benefits to the City's park system, PRNS staff recommended that the City pursue acceptance of the donated parcel. Following this direction, Real Estate has been conducting due diligence to complete acquisition of the subject property.

In April 2017, Real Estate staff received a Preliminary Title Report from Fidelity National Title for the subject property that showed no liens on the property except for an underground water rights easement granted by a previous owner to San José Highlands Water. The easement will not impact the City's acceptance of the donated property since the intended use is to maintain it as open space. There are many properties throughout San José where underground water rights have been retained for potential future wells.

In May 2017, Real Estate staff received an enhanced environmental clearance report from the Environmental Services Department that indicated the subject has always been undeveloped fallow grasslands. In addition, the report indicated that there did not appear to be any environmental liability for the City by accepting the donated parcel.

## **ANALYSIS**

The acquisition of vacant land continues to remain a high priority in order to maintain the natural beauty of open space parkland at the Alum Rock Park. The subject property is adjacent to existing open space parkland that is currently owned by the City of San José.

The proposed land acquisition of approximately 8,600 square feet will be at no cost to the City except for typical closing costs that will not exceed \$3,000. The City has acquired a Preliminary Title Report indicating that the property is free from liens and encumbrances except for an easement retaining underground water rights for San José Highlands Water. It is quite common for water utilities to retain underground water rights when Tract or Subdivision Maps are filed. These rights are typically retained for the future should well access to ground water be required to serve the subject parcel or neighborhood.

The Seller and City will pay for their portions of closing costs related to the acquisition. If the Council approves the donation of the property, staff expects to close escrow within 30 days of execution of the purchase and sale agreement.

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

The execution of the purchase agreement and recordation of the Grant Deed between Steve H. Eachus and M. Anne Eachus, Trustees of the Eachus Family Revocable Trust D/O/T May 2, 2000 and the City is anticipated to be completed within 30 days of approval by the City Council.

### **PUBLIC OUTREACH**

This memorandum will be posted on the City Council's Agenda website prior to the June 26, 2018 City Council agenda.

### **COORDINATION**

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

### **COMMISSION RECOMMENDATION/INPUT**

No commission recommendation is associated with this action.

### **FISCAL/POLICY ALIGNMENT**

Acquisition of the proposed site aligns with public park and recreation goals of the *Greenprint 2009 Update* and the *Envision San José 2040 General Plan*.

### **COST SUMMARY/IMPLICATIONS**

A total amount not-to-exceed \$3,000 is needed for the land acquisition and associated escrow and closing costs for the property identified as APN 595-20-001.

1. **LAND ACQUISITION COST:**  
Amount of City's offer to be deposited into escrow \$0  
Amount of escrow closing and ancillary costs related to close (estimated) \$3,000  
  
**Total** \$3,000
2. **SOURCE OF FUNDING:** Construction Tax Property Conveyance Tax Fund: Parks Purposes Central Fund (Fund 390)
3. **FISCAL IMPACT:** The anticipated annual costs for operation and maintenance is approximately \$1,000 for this site.

### **BUDGET REFERENCE**

The table below identifies the fund and appropriations proposed to fund the property acquisition recommended as part of this memo.

Fund #	Appn #	Appn. Name	Total Appn	Amt. for Contract	2017-2018 Adopted Capital Budget Page	Last Budget Action (Date, Ord. No.)
381	4141	Preliminary Studies	35,000	3,000	V-386	6-20-17 Ord No. 29962

### **CEQA**

Exempt, File No. PP16-128. Section 15061(b)(3), General Rule.

/s/  
ANGEL RIOS, JR.  
Director of Parks, Recreation and  
Neighborhood Services

/s/  
KIM WALESH  
Deputy City Manager  
Director of Economic Development

For questions please contact Nanci Klein, Assistant Director, Office of Economic Development (408) 535-8182.

Attachments

## LEGAL DESCRIPTION OF PROPERTY

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SAN JOSE, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

Lot 123, as shown on that certain Map entitled, "Tract No. 3319 San Jose Highlands Unit No. 2", which Map was filed for record in the office of the recorder of Santa Clara County, State of California, on October 11, 1962 in Book 153 of Maps, pages 12 and 13.

EXCEPTING THEREFROM the underground water rights granted by Valley Title Company of Santa Clara County, a corporation, to San Jose Highlands Water Company, a corporation, by instrument dated October 16, 1962, recorded October 19, 1962 in Book 5759 of Official Records, page 412.

APN: 595-20-001

## An aerial photograph of a residential area. A red callout bubble with the text "Subject Property" points to a small house at the intersection of Boulder Dr and Clairor Way. A blue location pin is placed further along Clairor Way. The map shows streets, houses, trees, and a golf course in the background.

