



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Kim Walesh

**SUBJECT:** SEE BELOW

**DATE:** October 25, 2019

Approved

*D. D. S. L.*

Date

*10/28/19*

**COUNCIL DISTRICT: 2**

**SUBJECT: ACTIONS RELATED TO THE PURCHASE AND SALE OF THE  
BRANDENBURG AND SOBRATO NORTH COYOTE PROPERTIES**

## RECOMMENDATION

- (a) Approve a Purchase and Sale Agreement and Escrow Instructions between the Brandenburg entities as Seller, the City as Buyer, and the Peninsula Open Space Trust ("POST") for the purchase of approximately 572 acres of real property located in the Coyote Valley ("Brandenburg Property") for a purchase price of \$37,500,000, less a credit of \$398,800 for relocation and demolition costs, with a contribution by the City in the amount of \$32,441,200 (funded with Measure T bond proceeds) and the remaining \$4,660,000 paid by POST ("Brandenburg PSA").
- (b) Approve a Purchase and Sale Agreement and Escrow Instructions between SI 5 LLC (i.e. a Sobrato entity) as Seller, the City as Buyer, and POST for the purchase of approximately 100 acres of real property located in the Coyote Valley (the "Sobrato North Property") for a purchase price of \$21,500,000 paid by post, with no monetary contribution by the City ("Sobrato PSA").
- (c) Approve the Coyote Valley Master Transfer and Conservation Agreement ("MTA") by and among POST, the City, and the Santa Clara Valley Open Space Authority ("OSA"), specifying:
  - (1) The rights and obligations of the parties related to the acquisition of the Brandenburg and Sobrato North Properties;
  - (2) The City's transfer of approximately 276 acres of the Brandenburg Property (the "Brandenburg West Property") to POST;
  - (3) The City's transfer of the Sobrato North Property to POST; POST's transfer of approximately 30 acres of property in the Coyote Valley known as "Fisher Flats" to the City (purchase price) at a cost to City in the amount of \$5,860,000 (funded with Measure T bond proceeds);
  - (4) The possible future transfer of approximately 14.5 acres of property in the Coyote Valley known as the "Weyhe East Property" by POST to the City (provided POST acquires the

- property under an option being assigned to it by the Brandenburg entities) with no monetary contribution by the City; and
- (5) Various obligations related to the termination of existing agreements and entitlements associated with the Brandenburg and Sobrato North Properties that should no longer be in effect (such as the Bailey Extension Cooperation Agreement, Development Agreement for the Coyote Valley Research Park and related agreements and permits for that defunct development) and the dissolution of Community Facilities District No. 9 (Bailey/Highway 101) and Community Facilities District No. 5A (North Coyote Valley Facilities).
- (d) Adopt a resolution authorizing the City Manager to:
    - (1) Execute the Conservation Easement in favor of OSA over the real property in Coyote Valley that will remain under City ownership in the form attached as an exhibit to the Master Transfer and Conservation Easement and negotiate and approve the Interim Maintenance and Operation Plan for the property covered by such easement; and
    - (2) Take various other actions related to the purchase of the Brandenburg and Sobrato Properties as contemplated by the Brandenburg PSA and Sobrato PSA, and take other actions related to the transactions contemplated by the Coyote Valley Master Transfer Conservation Agreement, ("MTA"), including without limitation, executing deed acceptance certificates.
  - (e) Adopt a resolution:
    - (1) Approving the report setting forth the facts justifying the summary vacation of the offer of dedication of Arroyo de Fuego Court ("Offer of Dedication");
    - (2) Summarily vacating the Offer of Dedication; and
    - (3) Directing the City Clerk to record a certified copy of the resolution of vacation with the Office of the Recorder, County of Santa Clara.
  - (f) Adopt a resolution directing and authorizing various actions related to Community Facilities District No. 9 (Bailey/Highway 101).
  - (g) Approve an ordinance dissolving Community Facilities District No. 9 (Bailey/Highway 101) and authorizing other actions related to its dissolution, including retirement of the City Advance that will result in a payment to the Building and Structure Construction Tax Fund in the amount of approximately \$5 million.
  - (h) Adopt an ordinance repealing Ordinance No. 26420 levying special taxes within Community Facilities District No. 5A (North Coyote Valley Facilities).
  - (i) Approve an ordinance dissolving Community Facilities District No. 5A (North Coyote Valley Facilities) and authorizing other actions related to its dissolution.

## **OUTCOME**

The City Council's approval of the recommended actions offers the opportunity to create an unparalleled natural urban preserve. This can provide public access to open space and trails, green infrastructure supporting flood attenuation and aquifer recharge, protection of habitat to support rare and endangered species, preservation of a critical wildlife linkage between the Diablo and Santa Cruz Mountain Ranges necessary to maintain regional biodiversity, agricultural



preservation, and opportunities for wetland and riparian restoration amongst other environmental benefits consistent with City Policies including the City's Climate Smart Plan.

Preservation of open space in North Coyote Valley will require the reallocation of most or all of the 35,000 campus/industrial jobs planned within North Coyote according to the City's General Plan (GP2040). Approximately 15% of land within San Jose is intended to accommodate employment uses. Of this, approximately 4% is for heavy or light industrial uses. In protecting North Coyote Valley for open space purposes, it is likely that a portion of the heavy or light industrial jobs that could have been located in Coyote Valley will not be accommodated elsewhere within the City, due to the small amount of heavy and light industrial land remaining and limited opportunities for densification of this use.

## **BACKGROUND**

Coyote Valley is located near the southern boundary of San José, just to the north of Morgan Hill. It is generally bounded by Tulare Hill to the north, Highway 101 to the east, Morgan Hill to the south, and the Santa Cruz Mountains to the west.

### ***Land Use Planning***

The Coyote Valley area consists of three different and distinct planning subareas covering over 7,000 acres of mostly undeveloped land: North Coyote Valley Employment Lands Growth Area (1,700 acres); Mid-Coyote Valley Urban Reserve (2,000 acres); and the South Coyote Valley Greenbelt (3,600 acres) as shown in Attachment A. Of the three sub-areas, all of the North Coyote Valley, approximately 16% of Mid-Coyote Valley, and about 20% of the South Coyote Valley were annexed into San José. The remainder of the land in Coyote Valley is under the jurisdiction of the County of Santa Clara.

Land use planning in Coyote Valley has been an important issue for over half a century. Development plans for this area have evolved since the 1960s. For 35 years, North Coyote Valley has been designated in City land use plans for campus/industrial uses. Mid-Coyote Valley has been designated as an Urban Reserve for future mixed-use development, only to be opened to development after key infrastructure had been implemented. South Coyote Valley has been designated as a permanent greenbelt buffer between San Jose and Morgan Hill.

### ***Environmental Implications***

Decades of scientific research has identified the Coyote Valley as a top priority for regional conservation efforts. It provides a remarkable combination of biodiversity, farmland, and water resources. It is the last intact valley floor connection between the Santa Cruz Mountains and the Diablo Range and connects over 1.13 million acres of habitat. This connectivity is vital to sustain the biodiversity of the Santa Cruz Mountains.

Coyote Valley is home to the Laguna Seca, historically a 1,000+ acre freshwater wetland. Much of the Laguna Seca was drained and burned in the early twentieth century to allow for agriculture and development. Despite being reduced to roughly 10% of its historic size, this wetland still exists on the Brandenburg property and is the largest remaining freshwater wetland in Santa Clara County.

Draining the Laguna Seca and Coyote Valley created Fisher Creek, which now flows into Coyote Creek and exacerbates flood risk in downstream San Jose. The Laguna Seca is the largest drinking water aquifer recharge area in Santa Clara County, recharging the aquifer that serves San Jose with clean drinking water. However, incomplete hydrologic modifications to the landscape in preparation for abandoned development plans have created a situation where storm water is largely cut off from the Laguna Seca basin and instead diverted into Coyote Creek, further exacerbating downstream flooding downstream in San Jose and limiting aquifer recharge.

***Measure T – The Disaster Preparedness, Public Safety and Infrastructure Bond***

Last year the City Council voted to place Measure T – the Disaster Preparedness, Public Safety and Infrastructure Bond — on the ballot for the November 2018 election. On September 11, 2018, the Council reviewed and approved an [Allocation Plan](#) for the proposed Measure T Bond Measure, and on November 6, 2018 voters approved Measure T with over 70% of the vote. Measure T authorized the City to issue up to \$650 million in General Obligation Bonds for the purpose of acquiring property for and constructing improvements in order to improve emergency and disaster response, repair deteriorating bridges vulnerable to earthquakes, repave streets and potholes in the worst condition, and prevent flooding and water contamination including the acquisition of land in Coyote Valley for these purposes and also repair critical infrastructure. The Allocation Plan for the Measure T bonds includes \$50 million for environmental protection projects that involve water supply, flood control, open space and environmental protection of lands such as Coyote Valley.

On January 22, 2019, the City Council held a study session on the history and future of Coyote Valley. The City Council received information on the environmental resources uniquely located in Coyote Valley along with information detailing the revenue and job potential of North Coyote Valley. After the study session at the direction of the Council, Staff began an exploration of a partnership with the Peninsula Open Space Trust (POST), the Open Space Authority (OSA) for the acquisition of property in the Coyote Valley owned by the Brandenburg Family and the Sobrato Organization for the objectives consistent with Measure T and that could result in the preservation of approximately 937 acres for conservation purposes in North Coyote Valley.

On July 25, 2019, pursuant to Resolution No. 79194, the City issued its first series of general obligation bonds authorized under Measure T with up to \$50 million issued as taxable bonds and allocated by the City Council for the acquisition of land in the Coyote Valley for preventing flooding and water contamination.



## **ANALYSIS**

### ***Impact on Job Production and Coordination with the GP2040 Four-Year Review***

The Envision San José 2040 General Plan establishes direction for future growth in Coyote Valley through Major Strategies, goals, and policies. In the General Plan, North Coyote Valley is currently designated as an Employment Lands Growth Area and is planned for 35,000 new jobs to accommodate long-term growth. North Coyote Valley is an integral component of the Focused Growth, Regional Employment Center, and Fiscally Strong City Major Strategies, since it serves as the second largest Employment Lands Area in San José and represents 16% of the City's total employment lands.

Removing all or a portion of the job capacity in North Coyote Valley will be a major policy shift for the Envision San Jose 2040 General Plan. North Coyote Valley provides significant opportunities for industrial and manufacturing uses, which have unique requirements and play a unique role providing good employment opportunities for workers that do not have a college education. The Envision San Jose 2040 Task Force will be exploring the long-term future of North and Mid- Coyote Valley as part of the General Plan 4-Year Review process, including reallocation of some or all planned job growth in Coyote Valley. It is possible that only a portion of the jobs, can be expected to be reallocated elsewhere in the City due to the relatively small amount of heavy and light industrial land remaining in San Jose. The General Plan Four-Year Review process is anticipated to be completed in fall 2020.

### ***Importance of Coyote Valley to the Natural Environment***

The City and many state, regional, and local agencies such as the Open Space Authority, POST, the Santa Clara Valley Habitat Agency, the California Wildlife Conservation Board, the California State Coastal Conservancy, and the Silicon Valley Water District recognize the value of the Coyote Valley to the natural environment. Coyote Valley presents a unique opportunity for investment that benefits the natural and urban environment. Coyote Valley is also important to the agricultural community and is a continuation of Santa Clara Valley's heritage of agriculture known as the "Valley of Hearts Delight."

Coyote Valley is home to many rare and endangered species, including the jewelflower, bay checkerspot butterfly, western burrowing owl, tiger salamander, tricolored blackbird, red-legged frog, and Swainson's hawk. It is a bird hot-spot and an important stop on the Pacific Flyway, with 224 species of birds documented to date, over a quarter of total species documented in the lower 48-states. Coyote Valley currently provides additional benefits to San Jose, and opportunities to improve these services. Open space in Coyote Valley acts as a sponge and detains water. Conservation provides opportunities to expand on this benefit.

Coyote Valley remains a secure source of drinking water. Increased storm water retention in Coyote Valley could be accomplished through wetland and creek restoration and modifying the Fisher Dam to maximize water storage in the basin. This would increase the amount of water



percolating into the aquifer, and protect and support the Coyote Valley groundwater basin's ability to recharge San José's northern aquifer.

***Measure T Bond Funding and Opportunity for Public/Private Partnership***

San José voters approved Measure T, authorizing the City to issue \$650 million in General Obligation Bonds for infrastructure projects. The Council-adopted Allocation Plan includes \$50 million for environmental protection projects and explicitly contemplated the acquisition of land assets in North Coyote Valley. This funding presents a rare opportunity to support regionally critical conservation objectives, protect and bolster vital green infrastructure services provided to San José, build climate resilience, and create a model for a new type of greenbelt on San Jose's southern boundary.

City staff have been working with representatives of POST and OSA to secure three properties, totaling 937 acres owned by the Brandenburg family and the Sobrato Organization. The properties include the Brandenburg property, roughly 572 acres, the Sobrato North property, roughly 100 acres, the Sobrato South property, roughly 235 acres.

This public private partnership reflected by the City, POST, and the OSA is positioned to leverage significant outside resources to complete the investment in these properties after acquisition and to secure additional property in Coyote Valley. POST has committed to an \$80,000,000 acquisition campaign to purchase priority property in the North and Mid Coyote Valley areas in addition to the City's Measure T contributions. The OSA anticipates leading a \$92,000,000 to \$123,000,000 campaign consisting of a 10-year management outlook, restoration and floodplain management including restored and expanded wetlands and other habitats, public access provision, and wildlife connectivity infrastructure such as culverts and land bridges. Much of this investment will come from state and federal regulatory agencies. The City's contribution of Measure T funds in the property acquisitions would be viewed as "local match" dollars and make applications for state and federal funding for this next phase of work led by the OSA more competitive.

***Summary of Proposed Transaction***

As outlined in the Recommendation section of this memorandum, staff recommends that the City Council take multiple actions associated with the proposed transaction. Table 1 below provides a summary of the financial contributions from each party of the proposed transaction, followed by additional details of the properties and main deal components.

*Table 1. Financial Contributions to Proposed Transaction*

**City contribution totaling \$45,901,200, which includes:**

- \$32,441,200 toward the purchase of the Brandenburg Property
- \$5,860,000 for the purchase of Fisher Flats (adjacent to the Brandenburg Property)
- \$7,600,000 to redeem the CFD 9 Bonds as described below



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**POST/OSA contribution totaling \$49,970,000, which includes:**

- \$4,660,000 toward the purchase of the Brandenburg Property
- \$2,410,000 for the purchase of the Weyhe Property (surrounded by the Brandenburg Property)
- \$21,500,000 for the purchase of the Sobrato North Property
- \$16,000,000 for the purchase of the Sobrato South Property
- ~\$5,500,000 to the City to retire the City Advance (related to the CFD described below)

Brandenburg Property

As noted above, staff proposes that the City contribute \$32,441,200 and POST/OSA contribute \$4,660,000 toward the purchase of the Brandenburg Property, for a total purchase price of \$37,500,000, less a credit of \$398,800 for relocation and demolition costs. Staff proposes that the City retain ownership of a roughly 296-acre portion of the Brandenburg Property situated east of Santa Teresa Boulevard. The 249 acres west of Santa Teresa is to be deeded to POST with ultimate transfer to the OSA to facilitate management of the Fisher Dam, wetland and other habitat restoration and management, and enhance natural flood protection and aquifer recharge. Staff also proposes that the City deed roughly 27 acres of the northerly portion of the Brandenburg Property to POST, with ultimate transfer to the OSA, to support the management of water related infrastructure associated with the Fisher Dam and Fisher Dam Basin 2. OSA ownership of portions of the property will facilitate infrastructure investment from multiple State and Federal sources, including for habitat restoration, floodplain management, species protection, and wildlife linkage infrastructure.

Also noted above, POST will contribute \$2,410,000 for the purchase of the Weyhe Property. The Weyhe Property contains roughly 16.1 acres and is surrounded on three sides by the Brandenburg Property. The Brandenburgs hold an option to purchase the Weyhe Property and have coordinated with the Weyhe family to assign the Weyhe Option to POST. POST will complete the purchase of the Weyhe Property and deed a roughly 14.5-acre portion to the City. POST will retain a 1.66-acre portion of the property associated with the Fisher Dam, which it will deed to the OSA. The Weyhe Property will be purchased by POST at the time that the City purchases the Brandenburg and Sobrato North properties. The City will then need to undertake appropriate diligence activities. In addition, one occupied residential property exists on the Weyhe Property and will likely require relocation and demolition activities as recommended for the residential properties on the Brandenburg Property. Staff will return to the City Council for consideration of the anticipated activities.

In a previous transaction POST purchased Fisher Flats, a 30-acre property that is adjacent to the Brandenburg Property and Monterey Highway. As noted above, staff proposes that the City purchase Fisher Flats for \$5,860,000. The portions of the Brandenburg property to be transferred to POST/OSA are not developable and are best suited to natural flood protection. The properties including Weyhe and Fisher Flats in combination with the Brandenburg property comprise

roughly 296 acres of developable land and retain the value for the property as described in the property appraisal.

The City's purchase of the Brandenburg Property includes Staff providing a "1033 letter" to the seller which the seller can use to attempt to obtain more time to reinvest the sales proceeds in like-kind property and defer tax on the capital gain. The letter provides that if the Brandenburg Property was not acquired in a voluntary transaction, City staff would recommend that the Council consider adopting a resolution of necessity for condemnation.

#### Sobrato North Property

Staff proposes that the City purchase the roughly 100-acre property with the \$21,500,000 contribution from POST. The property will be immediately transferred to POST. The Agreement requires Staff to provide a 1033 letter to the Seller, SI5 LLC.

#### Sobrato South Property

The Sobrato Organization will sell directly to POST the approximately 235-acre Sobrato South Property. The City is not involved in the transaction for the Sobrato South Property and (and City Staff will not provide a 1033 letter for the property.

#### Property Appraisals

The three properties (Brandenburg, Sobrato North, and Sobrato South Properties) were appraised by Carneghi-Nakasako & Associates in January 2019. The total appraised value for the three properties is approximately \$68,840,000, exclusive of outstanding bond principal and loan payments associated with various CFDs. Costs outstanding for bonds, and loans associated with CFDs are approximately \$21 million.

#### Existing Uses

The properties are active with farming and grazing operations. Uses include hay farming and cattle grazing. Both existing uses are intended to continue into the future and be managed by OSA once the properties are transferred. Until early August 2019, the Brandenburg Property was leased by two residential tenants. There is one additional residence (currently vacant) located on the Brandenburg property. The Brandenburg Property also had two month-to-month commercial tenants that previously vacated the property.

#### Relocation and Demolition of Residences

The City retained the services of AWS Relocation Specialists and determined that the residential uses are eligible for relocation benefits in the amount of \$124,400 each, or \$248,800 collectively. City staff determined that the homes would require significant and expensive upgrades to meet current building standards. Staff recommends that the homes be demolished and estimates the



cost of demolition to be \$150,000. Demolition of the homes will ensure that the structures do not become a concern related to public safety. Demolition of the homes is also consistent with the conservation and environmental values intended for the purchase of the property. The Brandenburgs agreed to provide a credit in the amount of \$398,800 to address relocation and demolition costs. Though staff do not anticipate any additional costs arising from relocation and demolition activities, such costs would be the responsibility of the City.

#### Environmental Assessments

The City completed Phase I environmental assessments for the Brandenburg and Sobrato North Properties. Based on the information obtained from Phase I studies, including the existence of arsenic and lead contaminants from prior agricultural uses, further investigations were performed related to soil and groundwater contamination. These reports concluded that contaminants found on the property did not reach levels that require remediation. Areas where there are limited levels of elevated contaminants can be fenced and restricted. In general, uses on the sites are not anticipated to require soil disturbance, thus limiting potential remediation associated with soil disturbance. Future uses will be evaluated in light of any contaminants that may be present. The two Purchase and Sale Agreements each include a Remediation Covenant in which the City agrees, for the benefit of the Sellers, to comply with any court order or order of a government entity requiring the City to remediate hazardous materials not released by the sellers.

#### ***Actions Related to Community Facility Districts in North Coyote Valley***

Community Facilities District No. 9. To facilitate the acquisition of the Brandenburg and Sobrato North properties, staff recommends that the City Council take various actions related to Community Facilities District No. 9 (Bailey/Highway 101) ("CFD 9") in order to dissolve this district. The property within CFD 9 consists of the Brandenburg and Sobrato North properties.

In 2002, the City Council conducted proceedings under and pursuant to the City Charter and Chapter 14.27 of Title 14 of the City's Municipal Code, which incorporates and modifies by reference the Mello-Roos Community Facilities Act of 1982, as amended, Chapter 2.5 of Part 1 of Division 2 of Title 5 of the California Government Code (together "the Act") to finance certain public improvements, authorize the levy of special taxes upon land within CFD 9, and issue bonds secured by taxes as described in Resolution Nos. 71363 and 71364.

CFD 9 was formed in order to facilitate development of the real property within the district by Coyote Valley Research Park, LLC ("CVRP"). The facilities financed by CFD 9 and other funds consisted of the design, acquisition, and construction of the Bailey Avenue Extension Project; which included the Bailey Avenue bridge over Coyote Creek, a connection ramp with traffic signals from Bailey Avenue to Monterey Road, the relocation of a portion of the Coyote Creek Trail, an overcrossing over Highway 101 including on-ramps, off-ramps, and all appurtenances; roadway improvements from Bailey Avenue to Malech Road, as well as other improvements (the "Facilities") and the refunding of assessment district bonds previously issued by the City.



On January 31, 2003 the City issued its \$13,560,000 Community Facilities District No. 9 Special Tax Bonds, Series 2003 ("CFD 9 Bonds") of which approximately \$8,600,000 remain outstanding. In order to provide additional funding for the Facilities, the City advanced approximately \$5 million from the Building and Structure Construction Tax Fund to CVRP ("City Advance") pursuant to the First Amended and Restated Bailey Extension Cooperation Agreement, dated July 17, 2003 ("Cooperation Agreement"). Interest on the City Advance is calculated at the interest rate on the CFD 9 Bonds. As of June 30, 2019, the total amount owed on the City Advance was \$13,361,226.72. OSA has agreed to pay the City \$5 million of the roughly \$5.5 million toward the City Advance the City proposes to waive the remaining \$500,000 advance amount, and the outstanding interest amount.

Repayment of the CFD 9 Bonds and the City Advance is secured by the Notice of Special Tax Lien for CFD 9 recorded against the Brandenburg Property and the Sobrato North Property on December 19, 2002. The Notice of Special Tax Lien identifies these two components of the special taxes levied within CFD 9 pursuant to the Rate and Method of Apportionment of Special Tax: An Annual Special Tax has been levied to secure repayment of the CFD 9 bonds, and a City Advance Special Tax levied to secure repayment of the City's Advance, which was payable upon the issuance of the first building permit within the district.

As the Brandenburg Property and the Sobrato North Property will not be developed, and will instead be held as open space, staff recommends that the City Council take the following actions related to CFD 9 as outlined in the resolution related to CFD 9 and the ordinance dissolving CFD 9 that are posted to the webpage for this meeting:

- Direct the Director of Finance to redeem the outstanding CFD 9 Bonds using funds held by the fiscal agent for the CFD 9 Bonds and Measure T bond funds following the closing of the acquisition of the Brandenburg Property and Sobrato North Property
- Accept the payment of approximately \$5 million by OSA as payment in full of the City Advance
- Approve the ordinance dissolving CFD 9
- Direct the recordation of the addendum to the Notice of Special Tax Lien to reflect the cessation of the special taxes within CFD 9 following the redemption of the CFD 9 Bonds and OSA's payment of \$5 million into the escrow for such payment
- Direct the recordation of the addendum of the Notice of Special Tax Lien to reflect the dissolution of CFD 9 once the ordinance dissolving CFD 9 becomes operative

#### Community Facilities District No. 5A and 5B

Another district that the City seeks to dissolve is Community Facilities District No. 5A (North Coyote Valley Facilities) ("CFD 5A") and remove the associated CFD 5A special tax lien.



On June 19, 2001 the City Council conducted proceedings to establish Community Facilities District No. 5A (North Coyote Valley Facilities) ("CFD 5A"), also pursuant to "the Act", as a cost-sharing mechanism for the financing of certain public improvements, as described in Resolution No. 70316.

The proposed facilities to be financed by CFD 5A included the design, acquisition, and construction of a flood control detention facility along with associated channel improvements north of Bailey Avenue, a fire station including equipment along Bailey Avenue, and the acquisition of lands, easements, and right-of-ways necessary for the facilities. A contingent special tax on property was to have been payable upon development, unless the property owner enters into an agreement to construct the improvements, as indicated in the Notice of Special Tax Lien and CFD 5A report. The Brandenburg and Sobrato North properties are the site of all contemplated CFD 5A facilities. Because these properties are being designated as open space and the facilities will not be completed, staff recommends that this cost-sharing mechanism be terminated in order to facilitate the acquisition of the Brandenburg Property and the Sobrato North Property.

Along with the establishment of CFD. 5A, the City established CFD. 5B to impose a special tax for landscape maintenance, litter, trail and special payment and other maintenance. The district was expected to collect funds annually. No special taxes have been collected as development has not occurred and the associated development permits have expired. CFD No. 5B includes more properties than the Brandenburg and Sobrato properties, thus CFD No. 5B will remain in place.

In order to dissolve CFD 5A, staff recommends that the City Council take the following actions as outlined in the ordinances related to CFD 5A posted on the agenda webpage for this meeting:

- Adopt an ordinance repealing Ordinance No. 26420 levying special taxes within Community Facilities District No. 5A (North Coyote Valley Facilities) which will become operative upon the acquisition of the Brandenburg Property and the Sobrato Property;
- Approve an ordinance dissolving Community Facilities District No. 5A which will become operative no sooner than the date of the acquisition of the Brandenburg Property and the Sobrato Property; and
- Direct the recordation of the addendum of the Notice of Special Tax Lien to reflect the cessation of the special tax and dissolution of CFD 5A once the ordinance dissolving CFD 5A becomes operative.

### ***Summary of Legal Agreements***

There is a total of five legal agreements associated with staff's recommendation and the above proposed transaction to which the City of San Jose is a party. These include:

1. Purchase and Sale Agreement for the Brandenburg Property
2. Purchase and Sale Agreement for the Sobrato North Property

3. Master Agreement with POST and OSA
4. Conservation Easement with POST and OSA
5. Interim Management Plan

These five agreements are available to view in their entirety along with this memorandum. The main business terms are listed below:

Purchase and Sale Agreement for the Brandenburg Property

- The agreement gives the City the right to acquire the land for the purchase price of \$37,500,000, less a \$398,800 credit for estimated costs of demolishing three vacated houses and for relocation costs payable to the former tenants.
- POST will pay \$4,660,000 of the purchase price; the remainder is to be paid by the City from Measure T bond funds in the amount of \$32,441,200.
- POST is also party to this agreement, and can perform (purchase the property) if the City does not. The agreement provides POST with an assignment of the existing option to purchase the Weyhe Property.
- The agreement requires an initial deposit of \$1,875,000, which may be retained by the Seller as liquidated damages if the City defaults.
- This agreement requires that City staff shall provide a 1033 Letter to Brandenburg at the closing which, subject to applicable federal tax law, may give Brandenburg more time to reinvest the sales proceed and defer payment of tax on gains.
- The closing is conditioned upon, among other things, the concurrent purchase by the City, using POST funds, of the Sobrato North property, described below.

Purchase and Sale Agreement for the Sobrato North Property

- This agreement gives the City the right, concurrently with acquiring the Brandenburg Property, to acquire land from a Sobrato entity for \$21,500,000, all of which is being paid by Post under the Master Transfer Agreement discussed below. This agreement also requires City staff to deliver a 1033 letter to the Seller.
- The Agreement requires an initial \$1,075,000 deposit, also paid by POST, per the Master Transfer Agreement.
- The Sobrato North Property is to be conveyed by the City to POST pursuant to the Master Transfer Agreement, discussed below.

Master Transfer Agreement with POST and OSA

- Under this agreement, the City agrees to purchase approximately 29.92 acres of land adjacent to the Brandenburg Property, referred to as Fisher Flats from POST for \$5,860,000 of Measure T funds; convey a portion of the Brandenburg Property, generally west of Fisher Creek, to POST; convey Sobrato North to POST; and record a



Conservation Easement on the property retained by the City (i.e., Fisher Flats and the eastern portion of the Brandenburg Property retained by the City).

- This agreement also provides that POST must use good faith efforts to acquire the Weyhe property under the Weyhe option, and then POST must convey part of the Weyhe Property to the City, if requested by the City, at which point the Conservation Easement is to be amended to include that portion of the Weyhe Property. Transfer of the Weyhe Property would require future Council action as the City will conduct due diligence including Phase I and additional soil investigations if necessary. The Weyhe Property includes a house occupied with a month-to-month renter and relocation and demolition costs similar to those described above are anticipated.
- The agreement also requires OSA to pay approximately \$5 million to the City to repay the City advance as described above.
- This agreement also provides that POST and OSA will indemnify the City for any existing hazardous materials issues for Sobrato North or Brandenburg (but, Post, OSA and City (and the Sellers) are not aware of any such issues). The indemnity is limited to those properties because they will be conveyed by the City to POST under the MTA. (The City will retain the liability for Brandenburg East and Fisher Flats because the City will be a long-term owner, and again there do not appear to be any hazardous material issues.)

#### Conservation Easement with POST and OSA

- The Conservation Easement applies to all land acquired and retained by the City including (Fisher Flats, Brandenburg east, and if acquired, a portion of the Weyhe property), and continues in perpetuity, as required by conservation easement statutes.
- The Conservation Easement protects the conservation values of the property. The primary conservation values are water resources, and wildlife habitat and connectivity. Secondary conservation values are scenic resources, low intensity/passive recreation and environmental education values, agricultural resources, and cultural resources.
- The agreement prohibits development and preserves the open space nature of the land for flood control purposes and other conservation purposes. It includes a baseline description of the current condition of the land.
- The Conservation Easement permits the continued operation of the Municipal Water System (consisting of three wells and related infrastructure) on the conservation property as currently operated, and permits the systems to be leased or sold, subject to the Conservation Easement restrictions. The existing wells can be replaced on the conservation property but replacement well sites require reasonable approval of the OSA and an analysis of groundwater sustainability. Replacement wells must be sited at least 500 feet from existing wells, as such it is likely the City may need to find replacement well sites on other property in the future. Easement restrictions prohibit expansion of service outside of the existing service area except for water emergencies (fire suppression, and water conservation measures for drinking water).

- The Conservation Easement also permits that the City may operate and maintain existing public roads and side walk infrastructure and water infrastructure and a related access road.
- The Conservation Easement contemplates that certain activities may occur on the property, subject to the Management Plan, described below, including agricultural uses, public access, signage, and low intensity passive recreation and educational uses, but expressly prohibits activities except as may be later approved by the City in the final Management Plan.
- The Conservation Easement contemplates both an initial Interim Maintenance and Operations Plan and, later, a final Management Plan which will require the City Council, POST, and OSA approval, and which will replace the Interim Maintenance and Operations Plan.

#### Interim Management Plan

- As noted above, the Interim Maintenance and Operations Plan ("IMOP") is intended to preserve the status quo until a Final Management Plan is approved by the City Council, and contemplates City of San Jose support for removal of illegal dumping and assistance with resolution of any potential encampments. It does not contemplate any improvements other than security fencing and limited signage to be approved by the City.
- The IMOP requires the City to demolish the existing homes on the Brandenburg Property at the City's cost.

The City is not party to the South Property; however, both Brandenburg and Sobrato North's purchase will be contingent upon Sobrato committing to sell to POST the Sobrato South property. Below are the main business terms of that transaction.

#### Purchase and Sale Agreement for the Sobrato South Property

- POST is entering into an additional purchase agreement with a different Sobrato entity to acquire property, Sobrato South, adjacent to the Conservation Property for \$16,000,000. The closing of the City's purchase of the Brandenburg Property and the Sobrato North Property are conditioned upon POST and Sobrato entering into a non-contingent purchase agreement for the sale of the Sobrato South property to POST. The timing of Sobrato South closing will be no later than May, 2022, which will accommodate provision of State funding from the California Wildlife Conservation Board and the California State Coastal Conservancy.
- Post is investing \$16,000,000 in the Sobrato South Property.
- OSA investment includes \$5,000,000 provided for retirement of the City Advance obligation. The full cost of the City Advance is \$5,500,000 and the City proposes to waive the remaining \$500,000.



- The total POST investment will include: \$4,660,000 contribution toward the purchase of the Brandenburg Property; \$21,500,000 for the Sobrato North Property; \$16,000,000 for the Sobrato South property, \$2,410,000 for the Weyhe property.

### ***Vacation of Arroyo De Fuego Court at Bailey Avenue***

The vacation of Arroyo De Fuego Court on Bailey Avenue is a component of the City's acquisition and subsequent transfer of the portion of the Brandenburg Property to be conveyed to POST/OSA.

Pursuant to Government Code Section 66477.2, when a subdivider dedicates a public street on a subdivision map that is rejected by the public agency, the offer remains open and it may be terminated and abandoned in the same manner as prescribed for the summary vacation of streets. Pursuant to Section 8331 of the California Streets and Highways Code, the City Council may summarily vacate a street if for a period of five consecutive years, the street has been impassable for vehicular travel, and no public money was expended for maintenance on the street during such period.

The Offer of Dedication was rejected by the City with the recordation of the parcel map on October 28, 2004 in Book 777 of Maps at Pages 20 thru 22 of Official Records, Office of the Recorder, County of Santa Clara, and the City has not accepted the Offer of Dedication to date. The Offer of Dedication area has been impassable for vehicular travel for a period of five consecutive years, and no public money has been expended for maintenance of the area during that time.

According to the property report and grant deed recorded on April 19, 2019, Jackson Lee Brandenburg Separate Property Trust and Taylor Ann Brandenburg Separate Property Trust hold fee title to the area to be vacated.

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

Should the City Council approve the proposed transaction as described above, staff from the City, POST and OSA will work with the property owners to close the transaction by November 26, 2019. Related future actions include:

- **Weyhe Property.** Upon close of escrow on the Brandenburg property, POST will receive an assignment of the Option Agreement to purchase the Weyhe property. POST must then provide notice to purchase the property by December 2, 2019, and, pending the completion of due diligence and subsequent agreement to accept fee title, POST must purchase the property by February 15, 2020. POST will transfer a 14.5-acre portion of the property to the City upon such closing if the City approves its own due diligence and confirms by January 15, 2020 that it desires to acquire title to such portion. In this case, staff will return to the City Council with a recommendation to accept the Weyhe Property. Staff will also provide

recommendations related to any necessary tenant relocation and demolition of an existing residential unit on the Weyhe property.

- **OSA to lead the effort to develop a permanent Management Plan for the City property.** The Management Plan will be developed concurrently with the OSA's Coyote Valley Master Planning process. The Management Plan will apply to the City's lands subject to the Conservation Easement and will be developed in coordination with City staff and other area stakeholders. The Management Plan must be approved by the City Council before going into effect. The Management Plan will be designed to maximize flood attenuation and drinking water protection benefits, and will include provision of public access.
- **The City, POST and OSA to initiate the water evaluation efforts outlined in the Conservation Easement within 12 months of Council approval.**

### **PUBLIC OUTREACH**

The City Council conducted a Study Session on January 22, 2019 on the topic of Coyote Valley preservation. Many interested parties gave testimony on the potential preservation of Coyote Valley at the Study Session. This memorandum will be posted in accordance with the City's public notice policies.

### **COORDINATION**

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

### **COMMISSION RECOMMENDATION**

The potential preservation of Coyote Valley has not been agendaized for Commission review.

### **COST SUMMARY/IMPLICATIONS**

As described above, all City costs to facilitate the recommended transaction in the amount of \$46.3 million will be provided by Measure T funding. Costs necessary for interim maintenance of the City-owned property, such as removal of illegal dumping, will be paid within existing resources.

In addition, to retire the City Advance related to CFD 9, OSA will deposit approximately \$5 million out of the \$5.5 million into escrow, and the City proposes to waive the remaining



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\$500,000 in addition to the interest amount. Upon closing, this \$5 million will be received into the Building and Structure Construction Tax Fund, which initially contributed funding to the Bailey Avenue extension project in 2003. Actions will be included in the 2019-2020 Mid-Year Budget Review, scheduled for City Council approval on February 11, 2019, to recognize this revenue after the transaction has closed and the City is in receipt of the funding.

### **BUDGET REFERENCE**

The table below identifies the fund and appropriations included in the 2019-2020 Adopted Capital Budget to fund the agreement recommended as part of this memorandum.

Fund #	Appn #	Appn. Name	Total Appn	Amt. for Agreement	2019-2020 Adopted Capital Budget Page	Last Budget Action (Date, Ord. No.)
498	414X	Measure T – Environmental Protection Projects	\$50,000,000	\$46,300,000	III-35	6/18/19, Ord. No. 30286

### **CEQA**

Categorically Exempt, File ER19-064, CEQA Guidelines 15307 Actions by Regulatory Agencies for Protection of Natural Resources and 15308 Actions by Regulatory Agencies for Protection of the Environment.

/s/

KIM WALES

Deputy City Manager

Director of Economic Development

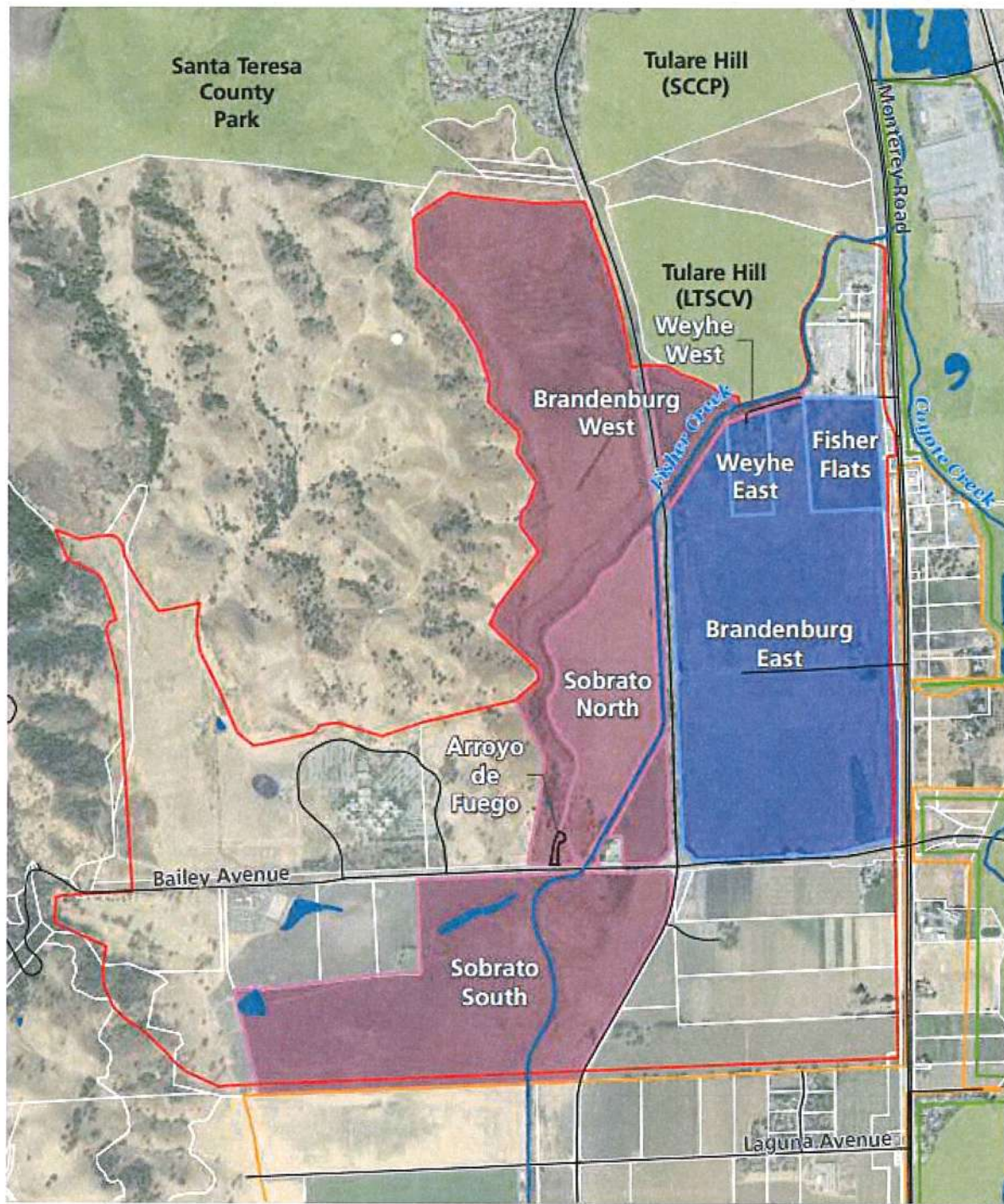
For questions, please contact Nanci Klein, Assistant Director of Economic Development, at (408) 535-8184.

Attachments:

Attachment A: Property Identification

Attachment B: Arroyo De Fuego Court

# Attachment A



North Coyote Acquisition Structure

- POST Fee-owned, Planned Transfer to SCVOSA
- City of San Jose Fee-owned, SCVOSA Easement
- South Coyote Valley
- North Coyote Valley
- Mid Coyote Valley

Map date: 10/28/2019  
Sources: ESRI, POST, CPAD, NWI,  
Santa Clara County

0 0.25 0.5 Miles



# Attachment B

