



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Kim Walesh

**SUBJECT: ACTIONS RELATED TO TRANSFER  
OF COYOTE VALLEY PROPERTY  
TO THE CITY**

**DATE:** February 13, 2020

Approved

Date

2/14/2020

**COUNCIL DISTRICT: 2**

## **RECOMMENDATION**

Adopt a resolution authorizing the City Manager to:

- (a) Complete negotiation of the terms of the transfer of approximately 14.5 acres of property in the Coyote Valley to the City;
- (b) Negotiate and execute an amendment to the Coyote Valley Master Transfer and Conservation Agreement among the Peninsula Open Space Authority, the City and the Santa Clara Valley Open Space Authority to revise provisions related to the transfer of approximately 14.5 acres of property in the Coyote Valley to the City; and
- (c) Take various actions to effectuate the transfer, including without limitation, execution of the documents related to the transfer.

## **OUTCOME**

The transfer of approximately 14.5 acres of property, known as the "Weyhe Property", adheres to the Council's direction on November 6, 2019 preserving 937 acres of land in North Coyote Valley. The City, the Peninsula Open Space Trust, and the Santa Clara Valley Open Space Authority worked collaboratively to purchase 937 acres of land in North Coyote Valley.

## **BACKGROUND**

On November 6, 2019, the City Council took several actions to preserve 937 acres of land in North Coyote Valley. The City partnered with the Santa Clara Valley Open Space Authority (OSA) and the Peninsula Open Space Trust (POST) to purchase the land collectively committing approximately \$97 million pursuant to the Coyote Valley Master Transfer and Conservation Agreement ("Master Agreement") among the parties. The City's contribution was funded by

general obligation bonds issued pursuant to Measure T for environmental protection purposes, including the acquisition of property in Coyote Valley for preventing flooding and water quality contamination. On November 21, 2019, the City completed the purchase of the property owned by various Brandenburg entities (Brandenburg East and Brandenburg West) and the property owned by the Sobrato organization (Sobrato North) and property owned by POST known as Fisher Flats. Per the terms of the Master Agreement, the City transferred the Sobrato North property and the Brandenburg West Property to POST and granted a conservation easement over the Brandenburg East and Fisher Flats properties to OSA.

The Brandenburg entities held an option to purchase property adjacent to the Brandenburg Property consisting of approximately 16 acres known as the Weyhe Property. As part of the acquisition of the Brandenburg property, the option to purchase the Weyhe Property was assigned to POST. The Master Agreement contemplates the possible transfer of approximately 14.5 acres of the Weyhe Property to the City and the remaining 1.66 acre portion to OSA. The details of the transaction specified that the City would need to undertake appropriate diligence activities to understand the environmental conditions on site. The transfer of land does not require a further expenditure of funds on the City's part for the acquisition of the property. Exhibit 1 identifies the 16.1 acres of the Weyhe Property and identifies the 1.66 acre portion of land that will be transferred to OSA (Weyhe West) as well as the 14.5 acre portion of land proposed to be transferred to the City (Weyhe East). Per the Master Agreement, in the event that the City accepts the Weyhe East Property, the Conservation Easement will be amended to include the Weyhe East Property.

The Weyhe Property has one vacant house that is not in good condition. The owners of the Weyhe Property have entered into a license agreement with a goat herding company that expires on June 30, 2021. The license agreement is subject to termination on 60 days' notice in the event that the property is sold or the option to purchase is exercised.

The Master Agreement, as amended by the First Amendment, provides that the City and the OSA are to notify POST of their willingness to accept their respective portions of the Weyhe Property no later than February 20, 2020. POST has agreed to extend that deadline to February - 25, 2020. The OSA Board authorized acceptance of its portion of the Weyhe Property on February 13, 2020.

## **ANALYSIS**

POST retained an environmental consultant to perform environmental due diligence on the Weyhe property to determine if there are any environmental conditions that would preclude purchase of the property or require mitigation. The due diligence included a Phase I Environmental Site Assessment that identified potential concerns due to an agricultural history, agricultural and drinking water wells, a transformer, structures that may have flaking lead-based paint, and a possible former drug lab. In addition, the Phase I discovered that soil that was imported as fill to raise the grade of the property numerous times in the past 10-years, including



import of over 3,600 tons of soil in late 2019. None of the imported soil had been tested prior to acceptance leading to concerns that it might be contaminated. A Phase II Subsurface Investigation was performed to investigate these concerns.

The Phase II included comprehensive shallow soil sampling and testing. All the results were below hazardous waste levels. A few locations contained the pesticide dieldrin and lead slightly above residential environmental screening levels, but below commercial/industrial screening levels. The concentrations of dieldrin and lead do not necessitate remediation for the proposed open space site use. As an additional precaution, areas where there are limited levels of elevated dieldrin and lead can be fenced and restricted, or capped with clean soil. In general, uses of the site are not anticipated to require soil disturbance, thus limiting any potential need for remediation. Prior to site redevelopment, further study will be performed to ensure the site is safe for future users.

#### Demolition

As previously discussed, there is one existing vacant house on the property. The property would require significant and expensive upgrades to meet current building standards. Staff recommends that the house be demolished and estimates the cost of demolition to be \$75,000. Demolition of the house will ensure that the structure does not become a public safety concern. Demolition of the structure is also consistent with the conservation and environmental values intended for the purchase and transfer of the property. The costs associated with the demolition of the property will be paid from remaining Measure T funds.

#### License Agreement

As noted above, the current owners of the Weyhe Property have entered into a license agreement with a business that maintains live stock (goats) on the Weyhe Property. The license extends through June 30, 2021, and includes a provision stating that the Licensor may terminate this Agreement upon sixty (60) days' prior written notice to the Licensee at any time if the property is sold or the option is exercised. The City and OSA are working with POST to require the termination of the license prior to the transfer of the Weyhe Property to the City and OSA. City staff has also engaged AWS, a firm with expertise in relocation services evaluate the license agreement. Should any relocation payment be appropriate, the relocation amount would be less than the City Manager's signing authority.

#### Transfer of the Weyhe Property and Conservation Easement

POST currently holds the Option on the Weyhe Property. The Master Agreement specifies that POST would acquire the Weyhe Property and then convey by grant deed the 14.5 acres to the City. Upon completion of the transfer, the City and OSA is to record an amendment to the Conservation Easement to include the City's portion of the Weyhe Property in the Conservation Easement. POST now requests that the Master Agreement be amended to provide that the current owners transfer the 14.5 acres directly to the City, eliminating POST from this portion of

the transaction. POST shall still be responsible for facilitating the transfer of the Weyhe Property to the City and payment of the acquisition price for the Weyhe Property and all closing costs associated with the transfer, except for the cost of title insurance for the property transferred to the City.

### **CONCLUSION**

Staff recommends proceeding with the transfer of the 14.5 acres of the Weyhe Property as outlined in the Master Agreement. Soil testing for contamination due to past agricultural history and the presence of imported soil used as fill showed elevated levels of the pesticide dieldrin and lead in portions of the site slightly above residential standards, however the levels are well below hazardous waste concentrations and do not necessitate remediation for the proposed open space use. As a precaution, mitigation measures such as restricting public access to certain areas or placing a cap over the soil can be implemented to eliminate potential public exposure, if necessary.

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

If the City Council authorizes the transfer of the 14.5 acre Weyhe Property to the City, staff will proceed with accomplishing the transaction. In addition, the City will proceed with the demolition of the vacant structure on the property and will proceed with payment of any appropriate relocation benefit to the Licensee on the Weyhe Property.

### **CLIMATE SMART SAN JOSE**

The recommendation in this memo aligns with one or more Climate Smart San José energy, water, or mobility goals. The project would facilitate transit options other than single-occupancy, gas-powered vehicles as a residential project in downtown.

### **PUBLIC OUTREACH**

Posting of this memorandum on the City's website adheres to the City's public outreach policies. The potential transfer of the 14.5 acres of Weyhe property was discussed in the November 6, 2019 memorandum to the City Council posted to the City's agenda webpage.

### **COORDINATION**

This memorandum was coordinated with the City Attorney's Office, the Department of Public Works, the City Manager's Budget Office, and the Environmental Services Department.



**COMMISSION RECOMMENDATION/INPUT**

No commission recommendation or input is associated with this action.

**COST SUMMARY/IMPLICATIONS**

As described above, the transfer of the Weyhe Property does not require funds from the City. The anticipated cost of demolition of an existing house on site is \$75,000. Any funds, if any, required for relocation payments to the Licensee on the property would be below the City Manager's signature authority. Funds for associated costs would be allocated from Measure T funding.

**BUDGET REFERENCE**

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

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

**CEQA**

Categorically Exempt, File No. 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, at (408) 535-8182.

Attachment

ATTACHMENT

