


CITY COUNCIL ACTION REQUEST

Department(s): Office of Economic Development and Environmental Services	CEQA: Determination of Consistency with the San José/Santa Clara Water Pollution Control Plant Master Plan Final EIR (Resolution No. 76858), File No. PP20-006	Coordination: City Attorney's Office, City Manager's Office, Environmental Services Department	Dept. Approval: /s/ Kim Walesh /s/ Kerrie Romanow
Council District(s): District 4			CMO Approval: 

SUBJECT: DECLARE POND A-18 AS SURPLUS PROPERTY

RECOMMENDATION:

Adopt a resolution declaring the City's Pond A-18 property (Assessor's Parcel Numbers 015-32-042 and 015-32-043) as exempt surplus land under Cal. Gov. Code §54221 as the land is surplus to the needs of the City.

BASIS FOR RECOMMENDATION:

Initial discussions between the City of San José and Valley Water regarding the transfer of Pond A-18 began in 2015 when the City was notified of Valley Water's interest in acquiring the property. In October 2015, preliminary terms for a Memorandum of Understanding (MOU) were approved by TPAC and City Council. City staff were directed to per the October 20, 2015 Council meeting to enter discussions with Valley Water regarding the Shoreline Levee Project and the transfer of Pond A-18. During the October 2, 2017 Transportation & Environment Committee meeting, Staff included a memo to update the committee on the status of the transfer. Valley Water indicated it cannot begin negotiations on the transfer of real estate until the USACE issues a "take letter" for the property, meaning that the property has been identified by the USACE as critical to the construction of the project.

In May 2019, City staff were notified of Valley Water's interest in potentially acquiring Pond A-18 to support the South San Francisco Bay Shoreline Project. The U.S. Army Corps of Engineers (USACE), Valley Water, and the State Coastal Conservancy have received funding from the Federal government to identify and improve flood infrastructures along the South San Francisco Bay Shoreline. In planning and determining phases for the South San Francisco Bay Shoreline Project, the three organizations have identified Pond A-18 as a property in "Economic Impact Area 11" (Exhibit A) that are necessary components to completing Phase 1 of their flood infrastructure improvement project. The San José Santa Clara Regional Wastewater Facility, owned by the cities of San José and Santa Clara, manages the Pond-A18 property. The City of San José acts as a representative on behalf of the Regional Wastewater Facility (RWF).

The intended use of Pond A-18 in cooperation of this project shall be for wetlands and environmental mitigation. City staff has had several meetings with the U.S. Army Corps of Engineers, Valley Water, the Water Board, and the State Coastal Conservancy in October 2019 and December 2019 to discuss and better understand the impacts that the Shoreline Project will have on the area and the cost impacts to the City. Staff indicated that the City is committed to working with Valley Water and other stakeholders to see the Shoreline Project completed on time but will need to understand better the overall impacts this project will have on the City before proceeding.

Per Council and TPAC's direction in 2015 and 2017, negotiations for the transfer of Pond A-18 must include:

1. Need for coordination and concurrence of the City of Santa Clara, as co-owner of the RWF.
2. Confirmation that the value of the shoreline levee to the RWF is equivalent to fair market value of the proposed property.
3. Transfer of property to the Valley Water to be triggered upon award of the design contract by U.S. Army Corps of Engineers. However, if construction was unable to commence by January 1, 2021, Valley Water would need to pay the RWF the fair market value of Pond A18.
4. Inclusion of provisions that the levee crossing of Artesian Slough would not interfere with the RWF's current operation and preserve the RWF's current ability to discharge into the Bay as permitted under the National Pollutant Discharge Elimination System permit.
5. If construction of the levee required investment in capital or operational costs to RWF sooner than otherwise expected, the Shoreline Levee Project would equitably share the burden of those costs.
6. Consideration of the RWF's capital expenditures for the repair of both gate structures on the pond that have occurred as a result of the delays on the levee project.
7. Finalization of the levee alignment and confirmation that any costs associated with a change in alignment will be borne by the Shoreline Levee Project.
8. Resolution of the RWF's Waste Discharge Requirement for the management of water quality in Pond A18. This regulatory obligation should not be the RWF's after the property is transferred, but the Water Board has indicated that this is not an automatic action that happens concurrent to title transfer.

On December 20, 2019, as an effort to avoid any potential future delays to the project and to comply with California's Surplus Land Act (Cal. Gov. Code §54220 et seq.), City staff issued letters to notify appropriate parties of the City's intention to declare Pond A-18 as surplus to the needs of the City and allow them the opportunity to notify the City of their interest in acquiring the property. Under Cal Gov. Code §54221(f)(1)(D), a local agency that transfers land to another government local agency for that agency's use is "exempt surplus land". Here, if the property were to be transferred to another government agency, such as Valley Water, for its governmental use, "exempt surplus land" would be the proper designation required to transfer the land.

Climate Smart San Jose: The recommendation in this memo has no effect on Climate Smart San José energy, water, or mobility goals.

Commission Recommendation/Input: No commission recommendation or input is associated with this action.

COST AND FUNDING SOURCE:

This resolution has no fiscal impact. Declaring Pond A-18 as surplus could facilitate a future sale of the property to Valley Water in conjunction with the South San Francisco Bay Shoreline Project and would generate several million dollars in one-time revenue to the RWF. This resolution would not authorize any such sale of the property.

FOR QUESTIONS CONTACT: Nanci Klein, Assistant Director, Office of Economic Development, at (408) 535-8184 or Jennifer Brown, Sustainability & Compliance Manager, Environmental Services, at (408) 975-2594.

Exhibit A

South San Francisco Bay Shoreline Project Economic Impact Area 11 Real Estate Interests on San Jose – Santa Clara Regional Wastewater Facility Lands Required for Reach 4 and 5 Construction



GIS themes are for illustration and general analysis purposes only and are not accurate to surveying or engineering standards. Information is not guaranteed to be accurate, current, or complete and use of this information is your responsibility.



Aerial View of Subject Property



Assessor's Parcel Map of Subject Property

