

APPROVED

REPORT OF GENERAL MANAGER

AUG 20 2008

NO. 08-229

DATE August 20, 2008

**BOARD OF RECREATION
and PARK COMMISSIONERS**

C.D. 15

BOARD OF RECREATION AND PARK COMMISSIONERS

**SUBJECT: EAST WILMINGTON GREENBELT COMMUNITY CENTER – RESCISSION
OF APPROVAL OF AN ACQUISITION FOR EXPANSION**

R. Adams _____	J. Kolb _____
H. Fujita _____	F. Mok _____
S. Huntley _____	K. Regan _____
V. Israel _____	*M. Shull _____

HS for M.S.

[Signature]
General Manager

Approved _____

Disapproved _____

Withdrawn _____

RECOMMENDATION:

That the Board:

1. Rescind the adoption on June 4, 2008, of Resolution No. 10237 authorizing staff, in accordance with Charter Section 594 (a), to seek assistance from the Department of General Services and the Office of the City Attorney to complete the acquisition of two adjacent parcels totaling 2.43 acres and owned by Union Pacific (UP) Railroad, the parcels being located across Sanford Avenue from the new East Wilmington Greenbelt Community Center; and
2. Authorize staff to request the Department of General Services to communicate to UP that the City will not be acquiring the property under the current terms of the Donation Agreements.

SUMMARY:

The Office of Council District Fifteen initiated and still strongly supports the acquisition of the two vacant parcels, a project that has involved Department staff since the fall of 2003. Early in the negotiations, UP submitted a Purchase and Sale Agreement (PSA) to the City with an initial purchase price of \$1,450,000; UP later reduced this sum to \$1,200,000. The Department then secured initial funding for site acquisition and development. On August 9, 2006, the Board gave preliminary approval to the acquisition of the two vacant parcels, which have the tentative address of 845 North Sanford Avenue (Report No. 06-223). The Assessor Parcel Numbers are 7425-011-803 and -804; the property is known to UP as Real Estate Folder No. 1794-76.

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After the Board's initial approval, geotechnical staff in the Bureau of Engineering (BOE) worked with the Environmental Affairs Department to conduct a further Phase II assessment. The results were given to UP. Perhaps in recognition of the need for remediation, UP agreed to donate the site for the nominal sum of \$100. By mid-2008, it seemed possible to agree on other terms of the acquisition, especially after a conference call involving the Councilmember, Department staff and UP. Accordingly, staff sought final approval from the Board, which was obtained on June 4, 2008, by the adoption of Resolution No. 10237 (Report No. 08-164).

Soon afterward, UP indicated that their understanding of the negotiations differed from the City's understanding. On June 10, 2008, UP rejected the revisions to the two Donation Agreements, successors to the PSA, that the City had submitted the previous day. The revisions focused on liability, indemnification and the City's need for UP to supply documents and other information concerning the site. UP also stated that their terms were nonnegotiable. Staff presented this information to the Board on June 18, 2008, and requested further direction (Report No. 08-189). The Board President instructed staff "to seek an agreement that will not present any current or future liabilities that will cause the Department to exceed the approximate 5.4 million dollars budgeted for this project." The President added that "Board Report 08-164, which directed staff to proceed with the acquisition of property for the expansion of the East Wilmington Greenbelt Community Center, is continued and is on file, but subject to the changes and instructions on negotiations as communicated by the Board."

On June 25, 2008, the City again submitted revisions to the Donation Agreements. UP rejected the revisions the same day, again stating that their terms were nonnegotiable. On July 3, 2008, UP repeated their rejection of the City's revised terms and restated their unwillingness to negotiate. On July 9, 2008, this status was presented to the Board in an informational report. On July 23, 2008, the Board met in closed session with their negotiating team under authority of Government Code Section 54956.8. In addition to Department staff, representatives were present from the Real Property and Environment Division of the City Attorney's Office, the Asset Management Division of General Services and Council District Fifteen. There was no action taken. The report now under consideration resulted from the Council Office's request that the Board take another, final action.

For reference, staff has outlined the perceived advantages and disadvantages of acquiring the property given the current terms of the transaction.

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PRO's

Increased Outdoor Space for the Wilmington Community

The acquisition of 2.43 acres would allow the development of two sports fields and a children's play area, among other amenities. This active recreational use would supplement the indoor activity being programmed at the new Community Center across the street. That site is too small for outdoor recreation. Like many other areas within the City, the Wilmington community is underserved with respect to recreation and open space.

Donation of Property

UP will donate the two parcels for \$100.

Availability of Grant and Other Funding

Nearly \$5.4 million is available for the acquisition, soil remediation and site development. (An additional sum of \$200,000 in a Brownfield Grant from the federal Environmental Protection Agency (EPA) is no longer available for this project since escrow did not close by June 30, 2008.)

CON's

Environmental

Besides being a railroad right-of-way, there had previously been on the UP site an electrical substation, two oil wells and three above-ground, petroleum storage tanks. UP recently acknowledged these historical uses in the Donation Agreements. City geotechnical staff estimates that soil remediation will cost \$2.5 million. This sum does not include funding for groundwater testing to expand upon the two samplings included in the second Phase II assessment. The samplings disclosed the presence of volatile organic compounds, including the carcinogen benzene. The cost of comprehensive groundwater testing and remediation is estimated to range from \$730,000 to \$1,230,000 based on geotechnical staff's experience with comparable sites. Since the BOE project manager thinks site development will cost \$2.9 million, the added groundwater activity could create a potential shortfall of \$1 million. UP is unwilling to contribute to this cost or to accept any liability for the contamination. The shortfall may increase depending on the actual conditions encountered after the groundwater work begins. For example, there may be contaminated seepage from an adjacent property.

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In granting the City the two Right-of-Entry Permits needed for the initial and expanded Phase II assessments, UP stated that their permission was required before the City disclosed the results to a third party. In February 2008, they denied the City's request to consult on a remediation action plan with the California Department of Toxic Substances Control (DTSC). UP stated that their internal review of the environmental reports did not indicate a need for outside consultation. UP's refusal has hindered City staff in accurately estimating the scope and costs of the remedial work needed to satisfy the DTSC and EPA. The City has also been hindered from assessing, before accepting title to the site, its liability exposure to these agencies and other parties.

Liability/Indemnification and Documentation

UP has rejected the City's proposed revisions to the Donation Agreements three times. In doing so, UP insists on liability, indemnification and other terms that were unacceptable to the City when they were first proposed in July 2005. UP's terms require the City to assume all responsibility for remediation. Moreover, the City is to give UP a full and complete release and to accept all liability stemming from the site's past and current use or from any condition discovered in the future. The City is to indemnify UP from all risks or costs related to the property and to defend UP against any legal action resulting from the site's contamination, regardless of the source. The firm is unwilling to provide the documentation and information, requested to be sent before or as part of any escrow, that would aid the City in evaluating the type and extent of any potential liability. In effect, UP has "stonewalled" the City.

Pipeline Segment and Agreements with Third Parties

From the start of negotiations, UP has required the City to grant them an easement 25 feet wide over underground fuel pipes that are connected to an above-ground valve manifold and pump. The easement would cover ten percent of the site, extending along the northern edge. UP has a contractual relationship with Philips Petroleum and Kinder Morgan concerning their use of this equipment. UP is unwilling to provide copies of the agreements with the two firms yet wants the City to assume future liability for this usage. UP is also involved in a longstanding lawsuit with one of the firms over their payments for the use of petroleum equipment on UP property.

OTHER ISSUES

Funding and Grant Requirements/Deadline

Nearly \$5.4 million has been identified for the project. This sum seems adequate for soil remediation and site development. No funding source has been identified for the \$1 million that may be needed with respect to groundwater contamination. The \$5.4 million comes from various sources, discussed next, and includes the Proposition 40 and Proposition K programs.

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There are complications with the largest single source of funding, which is the \$3 million from the Proposition 40 "Urban Parks" Program. This sum is allocated for both acquisition and development. The deadline for having the development completed with the site open to the public and all documentation submitted to the State is March 31, 2010. The deadline cannot be extended.

If the City acquires the site, there will need to be significant remediation before it is ready for development. The preparatory work may delay construction so that the site is only partly developed by the grant deadline. The amenities required by the grant include two sports fields with lighting and bleachers, a play and a picnic area and fencing. The BOE project manager estimates that it will take at least 21 months to design the project, remediate the soil and construct the amenities. This estimate is based on a compressed and overlapping schedule for the various tasks. Geotechnical staff believes that further testing and analysis related to groundwater contamination can be accommodated within the BOE time line to completion; however, the placement of equipment needed for groundwater monitoring might interfere with site development. Nor does the time line include tasks needed to report grant activity to the State by March 31, 2010.

As a result, staff concludes that there is no longer sufficient time to meet the State's deadline for use of these Proposition 40 funds. For example, acquiring the site by October 2008 would leave only 18 months for remediation, development and reporting to the State. If the required amenities are not fully developed by the deadline, the City must reimburse the State for any of the grant funds spent on the project. To date, \$9,500 has been spent, which is the sum owed the State if the City cancels the acquisition at this time.

There is the potential to "save" the remainder of the approved funding, a total of \$2,372,168, even if the City does not acquire the property. The \$1 million in Proposition K funds can be reprogrammed to a different project although it would not necessarily be in the same Council District. The situation is similar if Public Works reappropriates the \$1 million from the Citywide Capital Improvement Expenditure Program. The \$300,000 in Proposition 40 discretionary funds can be used by the Council Office for another project. The \$72,168 from a federal grant administered by the Department can be used for another project within the Wilmington area. (The funding source is the Housing and Urban Development/Economic Development Initiative.)

Fiduciary Responsibility to the Greater Los Angeles Community

The Board is the primary entity empowered by the City Charter to authorize the acquisition and dedication of park land. The Board acts on behalf of the entire City. Staff feels obligated to inform the Board when a project's cumulative problems seem to outweigh the benefits. With respect to this site, there is the lack of funding for assessing and mitigating any groundwater contamination. Of greater concern over the long term are the unknown costs associated with assuming unconditional liability and indemnifying UP. There are also unknown costs associated with the pipeline easement and its use by UP and other third parties. Taken together, these future costs could become

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burdensome to the City.

Even if the City declines, at present, to acquire the property because of UP's "all or nothing" stance, UP's position may change as they seek to identify another buyer. At some future date UP may be more willing to negotiate. If so, the City may be able to acquire the site on less onerous terms with respect to liability and indemnification. UP may also be willing to provide the documentation that will allow the City to make a more informed business decision.

City's Commitment to the Harbor Community

In addition to the Council Office, staff of six other City entities have worked on this project. Recreation and Parks has been involved for nearly five years. If the project lapses, staff will research a replacement site so that patrons of the new Community Center can enjoy outdoor, active recreation. The Department and BOE have also been involved with other projects intended to benefit the residents of Wilmington and San Pedro. Nine current and recently completed projects can be briefly described as follows:

1. Bandini Canyon – construction of a nature trail with interpretive signage and a tot lot.
2. Banning Park, including the Recreation Center and Residence Museum – improvements to walkways, gardens and sports fields.
3. Bogdanovich Recreation Center – replacement of walkways and various improvements to the building.
4. Drum Barracks Civil War Museum – continuation of interior restoration with improved exhibits.
5. Gaffey Street "Field of Dreams" – construction of a field house with restrooms.
6. Ken Malloy Harbor Regional Park – construction of a Universal Access Playground and replacement of restrooms.
7. Lake Machado – improvements to habitat and watershed management.
8. Peck Park – improvements to existing trails and construction of others to facilitate public use.
9. San Pedro Welcome Park – development of newly acquired land with signage and streetscape improvements to mark the community's northern boundary.

The Assistant General Manager of Operations East and the Superintendent of Pacific Region concur with staff's recommendations.

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FISCAL IMPACT STATEMENT:

The potential cost of groundwater remediation may exceed the recent estimate of \$1million. It is unknown what the future impact to the City's and the Department's General Fund would be of assuming liability for UP and for indemnifying them in perpetuity with respect to the historic and current condition of the site. There is also potential liability for the City resulting from the pipeline easement and the continued association with UP and through them, with other firms. If the City cancels the acquisition at this time, \$9,500 will be owed the State because of prior expenditures from the Proposition 40 "Urban Parks" grant.

This report was prepared by Joan Reitzel, Senior Management Analyst in Real Estate and Asset Management, Planning and Development Division.