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PARK COMMISSIONERS

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CITY OF LOS ANGELES
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MAYOR

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MICHAEL A. SHULL
GENERAL MANAGER

August 14, 2014

Los Angeles City Council
City of Los Angeles
200 N. Spring Street, Room 395
Los Angeles, CA 90012

Attention: Holly L. Wolcott, Interim City Clerk

**RE: EAST WILMINGTON GREENBELT COMMUNITY CENTER – PRELIMINARY
AUTHORIZATION TO ACQUIRE REAL PROPERTY FOR EXPANSION, REMEDIATION,
AND DEVELOPMENT**

Dear Honorable Members:

At its meeting of August 13, 2014, the Board of Recreation and Park Commissioners (Board) adopted Report of the General Manager No. 14-219 (attached), thereby requesting that the Los Angeles City Council (Council) concur with the Board's action to authorize staff to negotiate with Union Pacific Railroad Company (UPR), the owner of the subject property, and thereby acknowledge that there is some possibility that acquisition of the property could impact the City's Council-controlled General Fund due to potential liability associated with contamination on the property, as more fully described in the Report.

If you have any questions concerning this matter, please contact Senior Management Analyst II, Cid Macaraeg, Planning, Construction and Maintenance Branch at (213) 202-2608.

Very truly yours,

BOARD OF RECREATION AND
PARK COMMISSIONERS

LATONYA D. DEAN
Commission Executive Assistant

Enclosures

cc: Cid Macaraeg, Planning, Construction, and Maintenance Branch (w/o enclosure)

BY _____
DEPUTY
M.V.
CITY CLERK

2014 AUG 14 PM 1:17

RECEIVED
CITY CLERK'S OFFICE

APPROVED
AUG 13 2014

REPORT OF GENERAL MANAGER

NO. 14-219

DATE August 13, 2014

BOARD OF RECREATION
& PARK COMMISSIONERS

C.D. 15

BOARD OF RECREATION AND PARK COMMISSIONERS

SUBJECT: EAST WILMINGTON GREENBELT COMMUNITY CENTER – PRELIMINARY AUTHORIZATION TO ACQUIRE REAL PROPERTY FOR EXPANSION, REMEDIATION, AND DEVELOPMENT

R. Adams	_____	V. Israel	_____
*R. Barajas	<u>CAD</u>	K. Regan	_____
H. Fujita	_____	N. Williams	_____

for

[Signature]
General Manager

Approved _____ Disapproved _____ Withdrawn _____

RECOMMENDATIONS:

That the Board:

1. Authorize Department of Recreation and Parks (RAP) staff to seek assistance from the Department of General Services (GSD), the Office of the City Attorney, and the Bureau of Engineering (BOE) in commencing negotiations for the expansion of the existing community center through the potential acquisition of the property totaling approximately 2.43 acres located at 845 North Sanford Avenue, Wilmington, California, bearing Assessor's Parcel Nos. 7425-011-803 and 7425-011-805:
2. Request the City Council to concur with the Board's action to authorize staff to negotiate with Union Pacific Railroad Company (UPR), the owner of the subject property, and thereby acknowledge that there is some possibility that acquisition of the property could impact the City's General Fund due to potential liability associated with contamination on the property, as more fully described in the Summary of this Report;
3. Authorize staff to seek the assistance of the Bureau of Engineering and other City or government agencies (as needed), to assess the environmental condition of the subject property, determine the required remediation process and expense to clean up the contamination thereon, and recommend ways to reduce City liability for such contamination ;

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4. Direct staff to commence an environmental analysis of the proposed project on the property under the California Environmental Quality Act (CEQA), and
5. Direct staff to report to the Board on the results of these activities, make further recommendations on the terms of any agreement to purchase, and obtain the Board's final approval before committing to purchase the property.

SUMMARY:

The Property

Wilmington is a neighborhood in South Los Angeles covering 9.14 square miles. It has a heavy concentration of industry and the third largest oil field in the United States. For the last several years, RAP has been developing an area known as the East Wilmington Greenbelt into community recreational use (see Exhibit A). On the northern end of the Greenbelt is the East Wilmington Greenbelt Park located at 1359 L Street. It contains grassy areas, a playground, and picnic benches. On the southern end of the Greenbelt is the East Wilmington Greenbelt Community Center located at 918 North Sanford Avenue. The Center opened in 2006 and consists of a 9,800 square foot building with a basketball court, multi-purpose room, office, a storage area, and restrooms. The Center has 25 parking spaces. The community has indicated that additional outdoor play area and parking are needed. With the support of former Councilmember Janice Hahn (District 15), RAP has pursued the subject property as a potential site to expand the existing community center and provide the additional amenities desired.

The subject property measures approximately 2.43 acres and is owned by UPR. It is located at 845 North Sanford Avenue and bears Assessor's Parcel Numbers 7425-011-803 and -805. This property was formerly used as a railroad yard and is currently vacant open space (see Exhibit B).

Funding To Acquire The Property

The funding to acquire the subject property has been approved, with \$3,000,000.00 in State Proposition 40 Urban Park Grant funds, and \$1,000,000.00 in City Proposition K "L.A. for Kids" program funds. Additionally, there are \$1,067,000.00 in City Capital Improvement Expenditure Program Funds and \$1,245,000.00 in City Recreational Sites and Facilities Funds for a total of \$6,312,000.00. Under the current budget prepared by the BOE, there are additional soft costs to be absorbed by City totaling \$675,000.00. Thirty thousand (\$30,000.00) of this total cost is to be absorbed by RAP. The balance is to be absorbed by the BOE and the Bureau of Contract Administration (BCA). The grand total that is available to this project is \$6,987,000.00 (See Exhibit C). The approved funding provides for the expansion of the existing community center through the acquisition, remediation, and development of the subject property with recreational improvements

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that include sports fields, sports lighting, bleachers, picnic table, landscaping and a small parking lot within a secure, fenced setting (Project).

Prior Efforts To Acquire The Property

The Board of Recreation and Park Commissioners (Board) efforts to acquire the subject property has a long history dating back to 2006.

On August 9, 2006, the Board, through Board Report No. 06-223 gave preliminary approval to enter negotiations with UPR to acquire the property. Initially, UPR wanted to sell the property to the City for \$1,200,000.00. However, during the City's due diligence investigation, it was discovered that the property had significant soil and groundwater contamination that required remediation. In partial recognition of the need for environmental clean-up of the property, UPR agreed to sell it to the City for a nominal fee of \$100.00.

On June 4, 2008, the Board, through Board Report No. 08-164, approved execution of a Purchase and Sale Agreement (PSA) with UPR for the subject property. However, during negotiations the parties reached an impasse regarding liability, indemnification, additional environmental testing, and information on the past use and present condition of the property. UPR insisted that City: (i) accept the property in its "As Is" condition; (ii) accept all liability for and indemnify UPR against all losses and liabilities related to the condition of the property; and (iii) not seek any records that UPR may have on environmental testing of the property.

On June 18, 2008, the Board, through Board Report No. 08-189, directed staff to continue negotiations with UPR with the condition that the acquisition would not expose RAP to any current or future liabilities that exceeded the approximate \$5,400,000.00 budgeted for the Project at that time. Staff continued negotiations with UPR, however, the impasse remained. On August 20, 2008, the Board, through Board Report No. 08-229, rescinded its approval of the acquisition, given UPR's unwillingness to modify any terms of the proposed transaction.

On September 2, 2008, pursuant to Charter Section 245, Councilmember Janice Hahn (Fifteenth Council District) introduced a motion for Council to assert jurisdiction over the Board's action of August 20, 2008 and to veto the Board's approval of Board Report No. 08-229. The Councilmember introduced this motion because she strongly supported acquisition of the subject property and disagreed with the Board's decision. Council's action on this motion resulted in the matter being remanded back to the Board. The Board having the authority it originally held to take action in the matter, authorized staff negotiations with UPR to continue. These negotiations culminated in the Board's October 3, 2008 approval of two (2) Donation Agreements between UPR and City for the property, through Board Report No. 08-276.

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The Donation Agreements superseded the prior PSA as the conveyance agreement between UPR and City for the property. The first Donation Agreement sets forth the conveyance terms for an area of the property, 25-feet wide along its northern border. This area has two underground petroleum pipelines and above ground equipment that UPR leases to Kinder Morgan, an energy company. UPR required that it retain an easement over this area and continue to receive revenue from the pipeline use. The second Donation Agreement set forth the conveyance terms for the remainder of the property. Under the two Donation Agreements, the City agreed to accept the entire property in its "As Is" condition and agreed to indemnify UPR from all liability for any known or potential contamination of the entire property. These Agreements stipulate a 240-day escrow period in order for the City to complete its due diligence efforts. Escrow opened on March 31, 2009. During the escrow period, City staff determined that it could not satisfy all the obligations of the two Donation Agreements. Consequently, on October 21, 2009, the Board, through Board Report No. 09-272, approved termination of the two Agreements.

On September 25, 2012, Councilmember Joe Buscaino, the new Councilmember for the Fifteenth Council District introduced a motion requesting the Board to reconsider acquisition of the subject property and authorize staff to re-open negotiations with UPR for this purpose. This motion was adopted by City Council on October 19, 2012. Attachment E includes all the past Board Reports and Motions associated with the proposed acquisition.

Grant Requirements/Deadlines and Project Completion

As indicated above, there is \$6,987,000.00 available to fund this Project. Of this amount, the three million dollars (\$3,000,000.00) in Proposition 40 State funds originally had a grant deadline of June 30, 2010. In 2012, the State granted the City's request to extend the completion date of the Project to June 30, 2015. However, since the City has not completed acquisition of the property at this time, it is unlikely that it can meet this deadline. There are ongoing efforts to request a second extension for a Project completion date of 2018. Staff will keep the Board informed of the progress of this effort.

City staff has completed a conceptual design for the subject property, with said design complying with the scope requirements of both the Proposition 40 and Proposition K "LA for Kids Program" funding (See Exhibit D). This design is proposed to be awarded as a design build project to expedite the Project's development. The design will be on-going throughout the early stages of development and will be concurrent with the remedial action plan (described below) for the contamination on the property.

Environmental Remediation of the Property

The City has conducted preliminary soils testing, as well as a detailed Initial Site Investigation to determine the types and extent of contamination, and therefore, has a general knowledge of the

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current conditions and contaminants on the property. City staff has met with and had informal consultation with the State Department of Toxic Substances Control (DTSC). A Remedial Action Plan (Plan) has been drafted and DTSC has given that Plan conceptual approval. No remedial work can occur until DTSC grants final approval of the Plan which will not occur until after City acquires the property. As indicated, the property has significant soil contamination, including widespread, high concentrations of arsenic and moderate amounts of lead, heavy hydrocarbons and Poly Chlorinated Bihenyls (PCB). The proposed Plan consists of excavating the upper six (6) feet of soil, removing it from the site, and treating the remaining soil with a cement-like substance that will harden and permanently bind metals in place. Then, the excavated area will be capped with a two-foot replacement layer of clean soil. It was estimated that this work would cost approximately \$2,500,000.00.

It is also known that the groundwater is contaminated with gasoline-related hydrocarbons such as benzene. Off-site sources of contamination are also possible. Under the proposed Plan, DTSC would require groundwater sampling plus a feasibility and pilot study of the proposed remedial methods. The draft Plan includes five (5) years of groundwater monitoring. It was estimated that this would cost approximately \$1,000,000.00.

It is the opinion of City staff that the Plan being considered for the subject property is sufficient to remediate it to park use standards. It is also believed that the environmental risk associated with acquisition and development of this property can be reduced to acceptable levels through: (i) City entering a Bona Fide Prospective Purchaser Agreement with DTSC which will shield City from most DTSC-imposed enforcement orders, fines and penalties as long as City complies with the described Plan; (ii) City entering a Voluntary Cleanup Agreement with DTSC for monitoring of City compliance with the Plan and DTSC issuance of a no-further-action letter (or similar document) upon completion of the Plan and (iii) City's potential purchase of limited liability insurance coverage that protects the City from third party injury and property damage resulting from pollutants emanating from the property.

Liability for the Property

There are several options for dealing with liability associated with the active pipelines on the subject property. First, the area of the property which contains the pipeline (Pipeline Property) could be carved out of the property and ownership remains with UPR. This process could take 6-9 months and initiating the application with the Planning Department would require the cooperation of UPR. The advantage of this option is that liability for damages related to the pipeline would remain with UPR as owner of the Pipeline Property. Under this option, the City would still demand to be indemnified by UPR for any damages relating to the pipelines. Second, the entirety of the property could be transferred to the City, with UPR retaining an easement to maintain the pipelines and related equipment. Under this option, the City, as owner of the property, would be exposed to some

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liability for damages related to the pipelines. Of course the City would demand an appropriate indemnity from UPR. Third, the City could take ownership of the entirety of the property and: (i) receive no indemnity from UPR as concerns pipeline-related damages, or worse (ii) give an indemnity to UPR for its pipeline-related damages. Neither of these last two scenarios are deemed advisable by staff.

Compliance with CEQA

Any future decision by the Board to approve the Project, including acquisition of the subject property, would be accompanied by the adoption of an appropriate CEQA document. In 2009, City staff had prepared a draft Mitigated Negative Declaration (MND) for release to public agencies and others for the required thirty (30) day public review and comment period. The MND was not released due to the City's termination of the escrow for the Donation Agreements. In directing staff to reopen negotiations with UPR, the Board will also be directing staff to prepare an updated environmental analysis of the Project. The decision of the Board to direct staff to take these actions does not require a CEQA clearance as such decision will not result in direct or indirect physical changes to the environment, and is therefore not a "Project" as defined in the State CEQA Guidelines (Section 15378 (b)(5) California Code of Regulations).

City Council Concurrence with Proposed Acquisition of the Property

Under the City Charter, the Board has the authority to acquire property for park purposes with funds under its control. As indicated above, City staff believes that, in spite of the known contamination, the site can be sufficiently remediated to allow for park use. However, there is still a possibility that the City could be found liable for damage or injury caused by the condition of the Property. Such liability could impact the City's General Fund. As such, and since City Council controls the General Fund, it is recommended that the Board seek City Council's concurrence in the actions taken as set forth herein.

FISCAL IMPACT STATEMENT:

As indicated above, there is approximately \$6,987,000.00 available for the expansion of the existing community center through the acquisition, remediation, and development of the subject property. Therefore, there will be no immediate impact to RAP's General Fund.

This report was prepared by Cid Macaraeg, Sr. Management Analyst II, Real Estate Section, Planning, Construction, and Maintenance Branch.

Exhibit A

East Wilmington Greenbelt Park
APN: 7425-023-804
Board Report: 03-46

Wilmington Veterans Park
APN: 7425-015-900
Board Report: 05-133

East Wilmington Greenbelt Park
APN: 7425-023-804
Board Report: 03-46

Name Unknown
APN: 7425-023-910, No BR.

Name Unknown
APN: 7425-032-900
Board Report: 03-46

E. Wilmington Community Center
APN: 7425-036-900 (7425-036-800)
Board Report: 03-46

845 N. Sanford Avenue
APN: 7425-011-803, 7425-011-805
Board Report: 08-276

Exhibit B

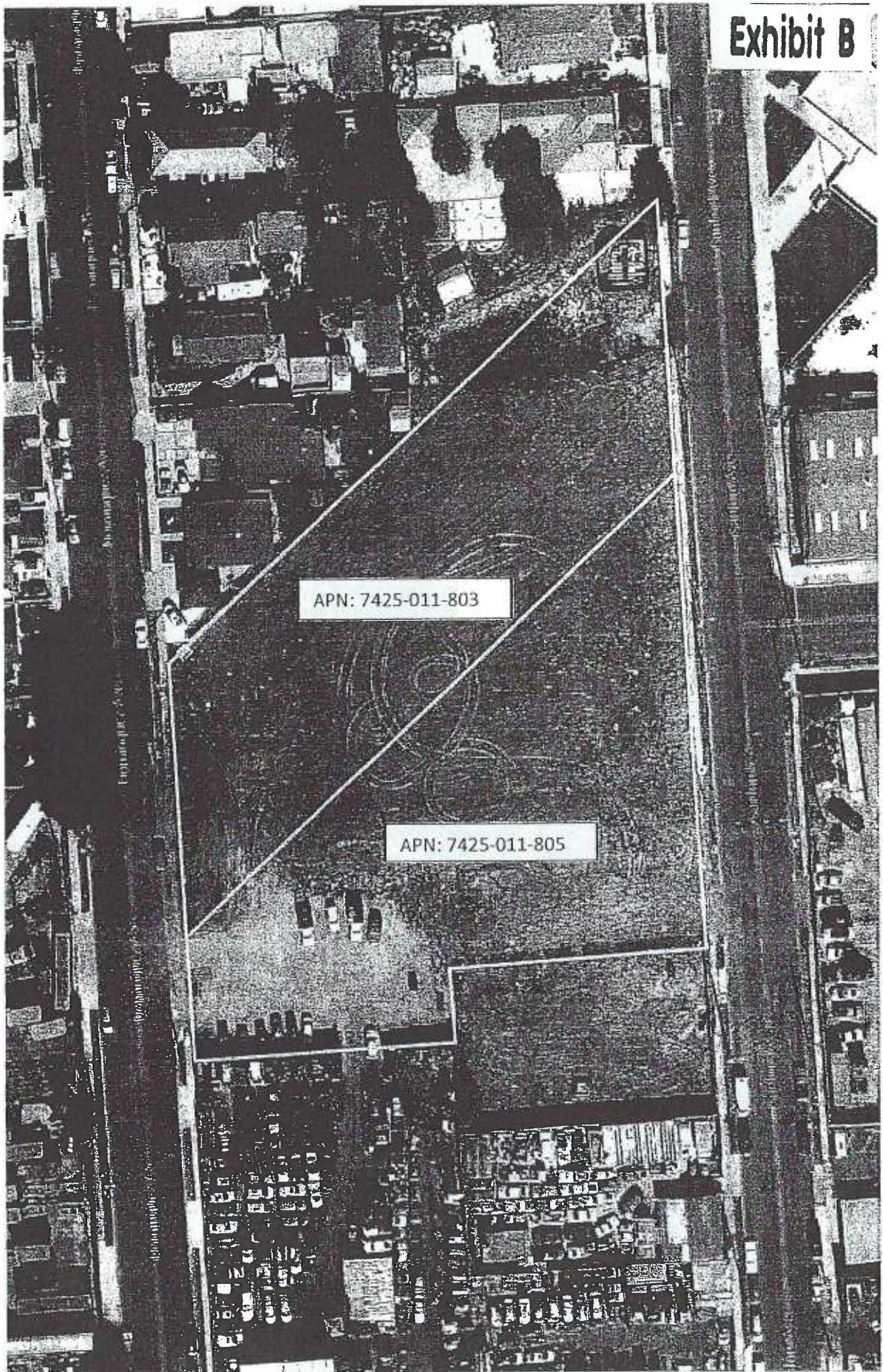


Exhibit C

PROJECT TITLE 7/1/2014
 East Wilmington Expansion Scope: Soccer Field, Bleachers Two Play Areas, Basketball Courts and Parking

Activity Company Name Work Order Phase Revised Budget

Project Management E170443A				
Project Mngmt.	BOE		PM	\$ 165,000 City BOE
PM Consultant	Harris & Associates		PM	
RAP Grants Admin/Act	Rec and Parks		Admin	\$ 90,000 Prop 40

Other Direct Costs E170443B				
Survey (BOE)	BOE		Design/Constr	\$ 25,000 Prop 40
Survey (Consultant)			Design/Constr	\$ 25,000 Prop 40
Environmental (RAP)	BOE		Design/Constr	\$ 20,000 City RAP Staff
Environmental (Consultant)			Design/Constr	\$ 50,000 Prop 40
Archaeology (Consultant)			Design/Constr	
Geotech (BOE)	BOE		Design/Constr	\$ 60,000 Prop 40
Geotech (Consultant)			Design/Constr	\$ 60,000 Prop 40
B&S PC/Permit	Building & Safety		Design	\$ 75,000 Prop 40
Public Works Permit Fees	Public Works		Fees	\$ 10,000 Prop 40
DTSC review & monitoring	Haz Mat		Fees	\$ 25,000 Prop K
DTSC review & monitoring	Haz Mat		Fees	\$ 30,000 Site & Facility
DTSC review & monitoring	Haz Mat		Fees	\$ 30,000 Site & Facility
Planning Fees	Planning Dept.		Design	
Arts Fee	Cultural Affairs		Design	\$ 52,000 Prop 40
Quality & Standards	BOE		Bid & Award	\$ 5,000 Prop 40
Printing	GSD, Cont. Graphics, etc.		Bid & Award	\$ 5,000 Prop 40
Advertising	Local Newspapers		Bid & Award	\$ 900 Prop 40

Design E170443D				
Consultant			Design	
RAP In-House	RAP		Design	City RAP Staff

Construction E170443F				
Contractor	Haz Mat		Constr	\$ 1,000,000 CIP
	Haz Mat			\$ 700,000 Prop K
	Haz Mat			\$ 200,000 Site & Facility
	Haz Mat			\$ 100,000 Prop 40
	Ground Water Contamination Remediation			\$ 1,000,000 Site & Facility
	Grading			\$ 500,000 Prop 40
	Parking Construction			\$ 30,000 Prop K
	Parking Construction			\$ 2,000 Site & Facility
	Restroom			\$ 270,000 Prop 40
	Restroom Masonry			\$ 180,000 Not Funded
	Soccer Field Play Areas			\$ 1,200,000 Prop 40
	2 - Basketball Court			\$ 120,000 Prop 40
Contingency 10%	Non HAZ	Constr		\$ 213,000 Prop 40
Contingency 10%	HAZ+ Parking	Constr		\$ 245,000 Prop K
	HAZ+ Parking	Constr		\$ 42,000 CIP
	HAZ+ Parking	Constr		\$ 16,000 Not Funded
Constr. Mgmt	BOE	Constr		\$ 240,000 City BOE
BCA - Inspection	Bureau of Con. Admin.	Constr		\$ 240,000 City BCA
GSD Construct. Forces	GSD	Constr		
Bureau of Street Lighting	BSL	Constr		
Bureau of Street Services	BSS	Constr		
Dept. of Transportation	DOT	Constr		
Information Tech. Agency	ITA	Constr		\$ 10,000 Prop 40
Utilities	DWP, Gas, Phone, etc.	Constr		\$ 100,000 Prop 40

Land Acquisition E170443I				
Real Estate (BOE)		Land Acq		\$ -
Real Estate (RAP)		Land Acq		\$ 10,000 City RAP Staff
General Services		Land Acq		\$ 10,000 Prop 40
Site Assessment		Land Acq		\$ 11,000 Prop 40
Purchase Costs		Land Acq		\$ 100 Prop 40

TOTAL PROJECT COST \$7,171,000
 TOTAL FUNDING \$6,987,000
 SHORT FALL \$184,000

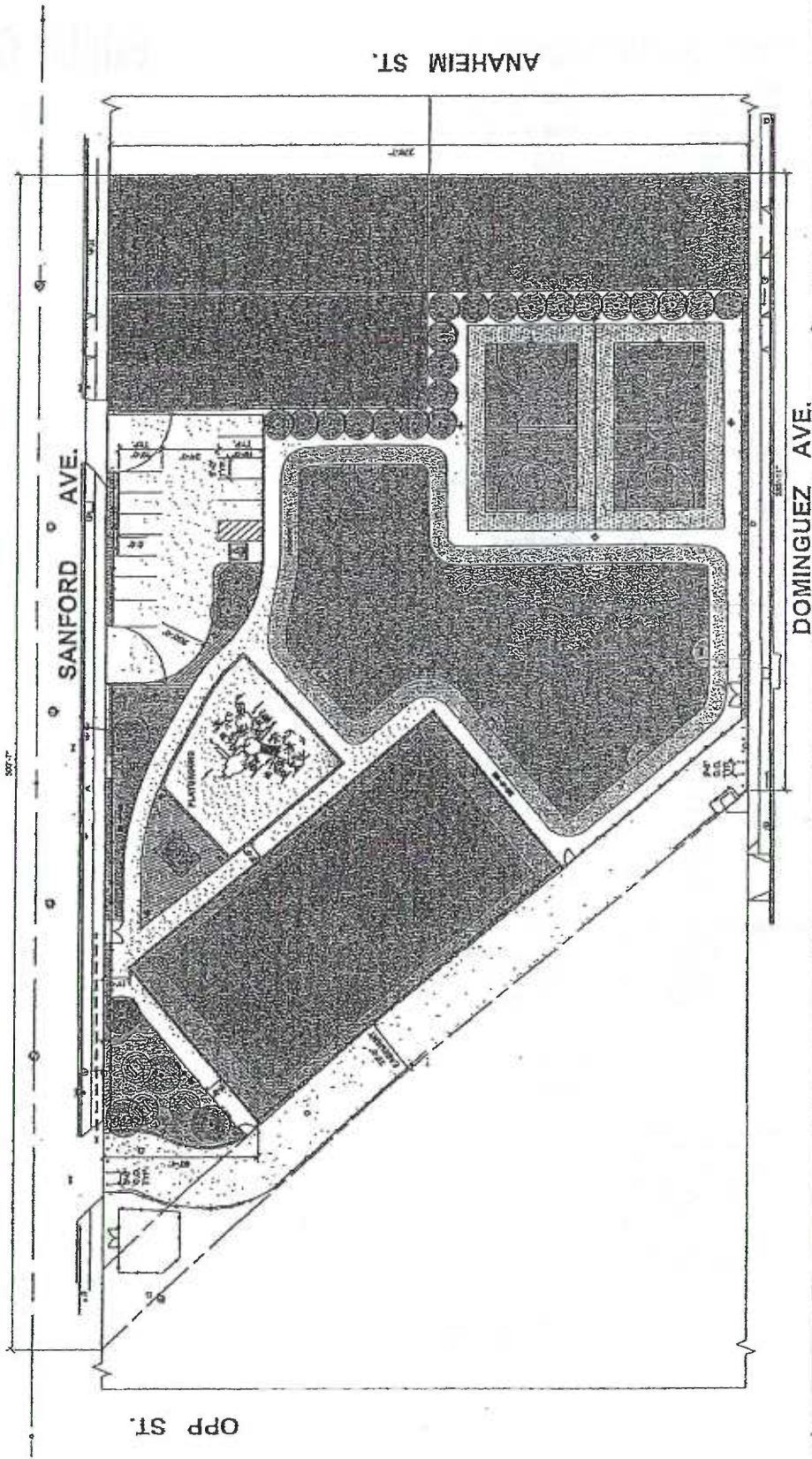
	TOTAL FUNDING	Total Funding Allocated
Proposition K Competitive Grant =	\$1,000,000	\$1,000,000.00
Proposition 40 Urban Park Grant =	\$3,000,000	\$3,000,000.00
Capital Improvement Expenditure Program Fund =	\$1,067,000	\$1,067,000.00
Recreational Sites and Facilities Fund =	\$1,245,000	\$1,242,900.00
		\$6,309,900.00
City RAP In Kind	\$30,000	\$30,000.00
City BOE In Kind	\$405,000	\$405,000.00
City BCA In Kind	\$240,000	\$240,000.00

NOTE: Prop 40 cap on Soft Costs (25% = \$750,000) All Soft Cost
 Soft costs allocated to Prop 40: \$457,900.00
 \$722,900.00

Insurance Haz Mat Land Acq \$157,872
 CASH FLOW

APPROVED BY:

Project Manager _____	Date _____
Program Manager _____	Date _____
Revision Date _____	



E. WILMINGTON GREENBELT PARK

CONCEPTUAL PLAN 2

10-24-2012
A.A.



0 10 20 40
SCALE: 1" = 20'



CITY OF LOS ANGELES
DEPT. OF RECREATION AND PARKS


FOR INFORMATION ONLY

CITY OF LOS ANGELES
DEPARTMENT OF RECREATION AND PARKS

October 24, 2012

TO: BOARD OF RECREATION AND PARKS COMMISSIONERS

FROM:


JON KIRK MURKI
General Manager

SUBJECT: EAST WILMINGTON GREENBELT COMMUNITY CENTER UPDATE

BACKGROUND:

On August 9, 2006, the Board of Recreation and Park Commissioners (Board), through Board Report No. 06-223, gave preliminary approval to enter negotiations with Union Pacific Railroad Company (UP) to acquire property located at 845 North Sanford Avenue (APN 7425-011-803 & 804). The property measures approximately 2.43 acres and was intended to be developed with recreational improvements which included sports fields, sports lighting, bleachers, picnic tables, landscaping and a small parking lot within a secure, fenced setting.

Initially, the UP wanted to sell the property to the City for \$1,200,000. During the course of the City's due diligence investigation, it was discovered that the property had significant soils and groundwater contamination that needed to be cleaned up. In partial recognition of the need for environmental cleanup, the UP agreed to sell the property to the City for \$100. On June 4, 2008, the Board, through Board Report No. 08-164, approved the execution of a Purchase and Sale Agreement. During negotiations, Department of Recreation and Parks (Department) staff and UP reached an impasse regarding liability, indemnification, additional environmental testing and information on the past use and present condition of the site. It became apparent that the issues faced by Department staff were of a nature not typically experienced in park acquisitions; therefore, further direction from the Board was sought.

On June 18, 2008, the Board, through Board Report No. 08-189, directed Department staff to continue with negotiations with UP. The Board insisted the Purchase and Sale Agreement for the subject property not expose the Department to any current or future liabilities that exceed the approximate \$5,400,000 budgeted for this project. Staff continued negotiations with UP, however, the impasse remained.

Board of Recreation and Park Commissioners

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On July 9, 2008, staff presented another informational report to the Board and the Board considered the acquisition in closed session at its meeting on July 23, 2008, in accordance with Government Code Section 54956.8.

On August 20, 2008, the Board, through Board Report No. 08-229, adopted staff recommendation to rescind its approval of the acquisition, given UP's unwillingness to modify any terms of the proposed transaction.

Councilmember Hahn of the Fifteenth District strongly supported the acquisition and disagreed with the Board's decision. In September 2, 2008, pursuant to Charter Section 245, the Councilmember introduced a motion for Council to assert jurisdiction over the Board's action on August 20, 2008 and to veto the Board's approval of Board Report No. 08-229 (See attached motion from Council File (CF) No. 08-2276). The motion to assert jurisdiction was adopted on September 9, 2008, and the matter was referred to the Arts, Parks, Health and Aging Committee. The full Council adopted the motion on September 23, 2008 (See attached report from City Clerk obtained from CF No. 08-2276).

Council's action resulted in the matter being remanded back to the Board. The Board having the authority it originally held to take action in the matter, authorized negotiations with UP to continue. These negotiations culminated in the Board's approval of two (2) donation agreements on October 3, 2008, through Board Report No. 08-276.

The donation agreements superseded the prior Purchase and Sale Agreement. One donation agreement involves a segment 25-feet wide along the northern border of the property. The segment has two underground petroleum pipelines and above ground equipment that UP leases to another firm. UP will retain an easement over this segment and continue receiving revenue from the third-party use. The other donation agreement concerns the rest of the adjacent UP site. Under the two donation agreements, the City agreed to accept the properties in their "As Is" condition and agreed to indemnify UP from all liability regarding any known or potential contamination of the property. The agreements stipulated a 240-day escrow period in order for the City to finalize all of its due diligence efforts. Escrow opened on March 31, 2009. During this escrow period, City staff determined that it could not satisfy all the obligations of the two donation agreements. On October 21, 2009, the Board, through Board Report No. 09-272, approved the termination of the two donation agreements.

At that time, the issues facing staff included: 1) Project Funding Shortfall of \$1,900,000; 2) Grant Requirements/Deadlines; 3) Environmental Remediation; 4) Compliance with the California Environmental Quality Act (CEQA); 5) Encroachment by adjacent property; 6) Indemnification and Liability.

Project Funding Shortfall of \$1.9 million

There is a total of \$5,367,530 from Proposition 40, Proposition K, and Capital Improvement Expenditure Program available for the project. As indicated previously, there is soil and groundwater contamination which must be removed and cleaned up. It is estimated that this will cost approximately \$3,500,000. The Project Manager for the Department of Public Work, Bureau of Engineering estimates that remediation and development costs will total nearly \$7,310,000. There is a projected shortfall of \$1,900,000 for the project. In 2009, there were no identified sources of funds to cover this.

Grant Requirements/Deadlines

In 2009, the Proposition 40 grants had a completion deadline of June 30, 2010. The deadline requires that the recreation project be complete, open to the public and all accounting documentation submitted to the State. Due to the delays in the acquisition, staff could not complete the requirements within the deadlines.

Environmental Remediation

As indicated above, the site has significant soil contamination, including widespread, high concentrations of arsenic and moderate amounts of lead, heavy hydrocarbons and Poly Chlorinated Biphenyls (PCB). Remediation will involve excavating the upper six (6) feet of soil, removing from the site, and treating the remaining soil with a cement-like substance that will harden and permanently bind metals in place. Then the site is capped with a two-foot replacement layer of clean soil. It is estimated that this will cost an additional \$2,500,000.

It is also known that the groundwater is contaminated with gasoline-related hydrocarbons such as benzene. Off-site sources of contamination are also possible. The State Department of Toxic Substances Control (DTSC) would require groundwater sampling plus a feasibility and pilot study of the proposed remedial methods. DTSC and City staffs were in the process of drafting an action plan that included five (5) years of groundwater monitoring. It is estimated that this will cost an additional \$1,000,000.

Compliance with CEQA

In 2009, City staff prepared a draft Mitigated Negative Declaration (MND) for release to public agencies and others for the required thirty (30) day public review and comment. This document was not released due to the termination of the donation agreements.

Encroachment by Adjacent Property

There are privately owned parcels extending from the southern border of the UP site to Anaheim Street which are used as a vehicle repair business and a storage/scrap yard. In 2009, it was discovered the firm operating this business had expanded its storage operations onto the UP site, completely occupying one of the parcels. The City tried to include terms in the donation agreement whereby UP would have the encroachments removed before the end of the escrow but UP refused. We have been informed that since the donation agreement was terminated, UP has since sold the parcel to the operating firm, consequently, reducing the amount of land it intends to sell to the City.

Indemnification and Liability

A condition of the donation agreement required that the City accept the property being donated in an "As Is" condition and that the City indemnify UP from all liability stemming from the prior use of the property. This condition has been opposed by the City Attorney who has advised against accepting this condition. The advice of the City Attorney is partially based on the uncertainty as to the true extent of the past and ongoing contamination, the encroachment on the property, the pending litigation affecting property and unknown variables. Further, the City Attorney has consistently advised against accepting liability from property owners. Should this acquisition have been completed with a condition whereby the City indemnifying UP as negotiated, this would have been unprecedented.

SUMMARY:

On October 21, 2009, the Board approved Board Report No. 09-272, which authorized staff to give notice to UP and Chicago Title Company, the escrow holder of the agreements, that the City elected to terminate the Donation Agreements and the related escrow concerning the acquisition of property owned by UP. Under this same Report, staff was also authorized to request assistance from other City entities, including the City Attorney and the Department of Public Works, Bureau of Engineering, in drafting, renegotiating and executing successor Donation Agreements and Escrow Instructions. It should be noted that on October 23, 2009, pursuant to Charter Section 245, the City Council adopted a motion to waive its review of the actions taken by the Board at its October 21, 2009 meeting.

On September 25, 2012, The Office of Councilmember Joe Buscaino, the new Councilman for Council District 15, introduced a motion to have the City Council request the Board to reconsider the East Wilmington Greenbelt project and authorize staff to re-enter negotiations to acquire this property from UP. This motion was referred to the Arts, Parks, Health and Aging Committee and review of this matter was waived by the committee on October 11, 2012. The motion was heard and adopted at full City Council on October 19, 2012 (See attached motion under CF No. 12-1531).

It has come to the attention of City Staff that UP is still interested in donating the property to the City for the creation of recreational improvements. There have also been developments concerning the issues faced by City staff in 2009 that may make the acquisition more acceptable to the Board today. These developments are as follows:

Project Funding Shortfall of \$1,900,000

At this time, the Bureau of Engineering is in the process of revising the budget for this project in light of the various developments surrounding the acquisition. It has been estimated that there should be enough funds available to complete the clean-up and development of the site into a sportsfield facility. The final revised budget will be presented to the Board for consideration as they become available.

Grant Requirements/Deadlines

As indicated above, the Proposition 40 grant required completion of the project by June 30, 2010. Subsequent to the Board's action on October 2009, the State granted an extension whereby the new project completion date is June 30, 2015. Under the State guidelines, the actual construction project must be completed no later than January 2015. City staff estimates that should the City obtain possession of the property by May 2013, the project can be completed by December 2014.

Environmental Remediation

At this time, the environmental remediation requirements remain the same. Both soil and groundwater clean-up is still required. Based on revisions to original cost estimates and other budget savings which BOE will determine, there may be some cost savings from original estimate of \$3,500,000 to do this work. This will help in the funding shortfall. Additional information can be provided when the Bureau of Engineering completes its revised budget.

Compliance with CEQA

The previous draft MND envisioned certain improvements to be built on the property. Due to the decision of UP to sell the parcel encroached upon by its adjacent neighbor, the footprint available for development has been reduced. The reduction in scope will have to be addressed in a new draft MND. Upon completion, the revised MND will have to be released to public agencies and others for the required thirty (30) day public review and comment. Upon the completion of this process, the MND will be presented to the Board for adoption.

Encroachment by Adjacent Property

As stated above, UP had decided to sell the parcel encroached upon by its adjacent neighbor, thereby reducing the available footprint available for development. As already indicated above, City staff will redesign the proposed project to fit the new footprint. As of the writing of this Informational Report, the Department has been informed that there could be a further encroachment by the same adjacent neighbor. Staff is currently investigating and will inform the Board of further developments.

Indemnification and Liability

Through the efforts of the City Administrative Officer and its Risk Management Division, the City has been presented with the option of purchasing limited liability insurance coverage. According to the Risk Manager, the insurance coverage protects the City from third party injury and property damage resulting from pollutants emanating from the property. The City can purchase a policy that gives it a \$5,000,000 limit at a cost of \$113,646 or a \$10,000,000 limit at a cost of \$157,872. This covers the City for a five (5) year period. The premiums described here cover this time period. Coverage for a ten (10) year period can also be purchased at a higher rate should the City decide to do so. According to the City Administrative Officer, there are sufficient funds in the City's Pipeline Franchise Fee Account (Fund No. 697/14/140200) to pay for these premiums. The City Attorney's Office recommends the Department seek instead to have UP fully indemnify the City.

Based on the developments on the issues described above and authority previously granted by the Board through its action on October 21, 2009, there is sufficient information to reconsider the acquisition of the East Wilmington Community Center site as requested by Council District Fifteen (15). Therefore, in accordance with recommendation No. 2 of Board Report No. 09-272 approved by the Board on October 21, 2009, Staff will begin new discussions with UP and continue its due diligence work for consideration of the acquisition of the UP property. Should there be sufficient progress to complete successor donation agreements and/or a purchase and sale agreement, these will be presented to the Board for final approval.

This report was prepared by Cid Macaraeg, Sr. Management Analyst II, Planning, Construction and Maintenance Branch.

APPROVED
AUG 09 2006

REPORT OF GENERAL MANAGER

NO. 06-223

DATE August 9, 2006

BOARD OF RECREATION
and PARK COMMISSIONERS

C.D. 15

BOARD OF RECREATION AND PARK COMMISSIONERS

SUBJECT: EAST WILMINGTON GREENBELT COMMUNITY CENTER – ACQUISITION
FOR EXPANSION

J. Combs	_____	J. Kolb	_____
H. Fujita	_____	F. Mok	_____
S. Huntley	_____	K. Rogan	_____
B. Jensen	_____	Shull	_____

AS APPROVED

for P.H.S.

Robert H. Jensen (Pa)
General Manager

Approved _____ Disapproved _____ Withdrawn _____

RECOMMENDATION:

That the Board:

1. Authorize staff to assist the Office of Council District Fifteen, the Department of General Services, the Office of the City Attorney and the Bureau of Engineering in negotiating the acquisition of property with the tentative address of 845 N. Sanford Avenue in the community of Wilmington, said property being owned by Union Pacific Railroad;
2. Approve the filing of a Certificate of Compliance and any other documents needed in order to separate legally, for Union Pacific's retention, the property segment containing an underground pipeline and an above-ground, GATX valve manifold and pump station or alternatively, to propose granting an easement of this segment to Union Pacific, provided that the resulting risk of liability is acceptable to the City's Risk Manager;
3. Authorize staff to assist the Bureau of Engineering and the Environmental Affairs Department in identifying and obtaining funds to implement the remediation of soil contaminates disclosed in the Phase II assessment; and,
4. Direct staff to report to the Board on the results of these activities and make further recommendations on the terms of the Purchase and Sale Agreement before committing to acquire the property.

REPORT OF GENERAL MANAGER

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NO. 06-223

SUMMARY:

For several years the Department has been developing, for community recreational use, property in an area known as the East Wilmington Greenbelt. Toward the northern end of the Greenbelt is Wilmington Veterans Park, which will be expanded by the adjacent vacant lot on the west that was recently acquired (Watson Avenue acquisition, Board Report No. 05-133). A temporary Certificate of Occupancy was issued on June 28, 2006, for the new East Wilmington Greenbelt Community Center at 918 N. Sanford Avenue. The 9,800 square-foot building has a basketball court, a multi-purpose room, an office and storage area, and restrooms. There are also 25 parking spaces. However, the site is not large enough to accommodate an additional outdoor play area.

The Council Office wants to expand the Community Center by providing two sports fields and more parking. They have requested that the Department acquire vacant property located across Sanford Avenue from the Center; the property is owned by Union Pacific Railroad (two parcels, APN 7425-011-803 and -804, totaling 2.43 acres). The address of this second site is tentatively listed as 845 N. Sanford Avenue. The City has been approved for \$3,000,000 from the Proposition 40 "Urban Parks" program of which \$2,910,000 will be available for the site's acquisition and development and 3% is set aside for administrative costs. An additional \$150,000 each is available from the Proposition 40 2/3 Per Capita and the Proposition 40 1/3 Per Capita Roberti-Z'berg-Harris programs. Finally, \$1,000,000 has been ~~approved from~~ the Proposition K "L. A. for Kids" program, Year 11, for site development only. The ~~current~~ funding for acquisition and development totals \$4,210,000.

included in

Union Pacific has agreed to a sales price of \$1,450,000, which is supported by the Class "C" estimate of value prepared by the Asset Management Division of General Services. As a result of preliminary negotiations, it appears that there are two main issues: environmental remediation and Union Pacific's intent to keep control of the area containing three underground pipelines and an adjoining above ground GATX valve manifold and pump station. The pipeline extends along all of the northern edge of parcel 7425-011-803. Pending future Board approval, the resolution of these two issues will be incorporated into the proposed Purchase and Sale Agreement or PSA (Union Pacific folder No. 1794-76).

Environmental Remediation

Correspondence dated June 15, 2006, from the City's Geotechnical Engineering Division summarized the findings of the Phase II site assessment. Most of the two parcels have lead and arsenic in concentrations higher than levels generally judged to require action. The likely source is the past use of strong lubricants and pesticides, a common practice at industrial sites in previous decades. One remediation method, encapsulation, seems the most effective relative to costs and the intended use of the site. This method consists of fixing an impermeable cap on top of the

REPORT OF GENERAL MANAGER

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NO. 06-223

contaminated soil and then importing clean soil to place on top, compacted to a depth of two to three feet. Doing so will provide for drainage and the installation of an irrigation system for the site; the cap will keep water from causing the contaminants to migrate. The cost of this remediation is estimated at \$1,000,000 to \$1,500,000 and includes the new soil. The estimate does not include building a retaining wall that will likely be needed because of the resulting elevation of the ground. Estimates for the retaining wall range from \$750,000 to \$1,500,000.

The design for the site will include prefabricated restrooms totaling 600 square feet. Otherwise, kids and others playing at the site would need to cross Sanford Avenue to use restrooms at the Community Center. By choosing a modified restroom design, the Bureau of Engineering will be better able to accomplish the methane remediation needed in order to place a restroom near the two new fields. (Methane remediation is typically required for structures since they allow the gas to concentrate and not dissipate below "actionable" levels. Methane remediation can include a methane barrier, venting and if required, active monitoring of methane levels.)

Various aspects of the remediation may require certification by a City geotechnical engineer, approval from the Grading Division of Building and Safety and notification to the state Department of Toxic Substances Control. The Environmental Affairs Department will seek grant funding from various "brownfield" programs. The Phase II assessment was funded by the Environmental Protection Agency, which approved the sampling techniques.

The draft PSA states that the sale of the property is predicated on the City's accepting the site "as it is" with full knowledge of its past use as a railroad right-of-way. Union Pacific has received the Phase II assessment and will be asked to reduce the sales price or otherwise contribute to the required remediation.

Pipeline Segment

Along the northern edge of Parcel No. 7425-011-803, there are three underground pipelines licensed by Union Pacific for use by the firm of Kinder Morgan Energy Partners. There is also an attached, above-ground GATX valve manifold and pump station. This equipment is part of a system conveying gasoline from the Los Angeles harbor to a terminal in Carson.

Union Pacific wishes to continue the revenue stream obtained from Kinder Morgan. In an earlier version of the PSA, the City was to acquire the entire parcel and grant Union Pacific an easement. However, the indemnification and liability provisions in the PSA were judged too onerous by both the City Attorney's Real Property and Environment Division and the Department's Risk Manager. There was, moreover, the separate liability involved with the third-party agreement with Kinder Morgan. Instead, it was proposed that the legal description of the parcel be modified to separate a segment of approximately 370 by 25 feet along the northern edge and create a new legal parcel by

REPORT OF GENERAL MANAGER

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subdivision. Union Pacific would retain fee title to this segment, which is approximately 9,010 square feet or 0.21 acre and eight percent of the total acreage of both parcels. The most recent draft of the PSA follows this scenario; the revised liability wording is more favorable to the City.

In order for the lot split to occur, the City Planning Department must approve a "Certificate of Compliance" because the pipeline segment has a narrow, non-conforming width. There is also the matter of the new segment's development and upkeep. Union Pacific does not want the public to have access to the segment but wants it fenced and gated. They also want the City to enter into a "beautification lease" whereby the City develops and maintains the segment; the lease has no provision for reimbursing the City. It will cost an additional \$200,000 if the City is to develop the new segment.

While these outstanding issues are significant, City staff involved with the project wish to proceed with the negotiations. The site has the potential to greatly expand the public's enjoyment of the adjacent East Wilmington Greenbelt Community Center. Staff also recognizes that much of the other vacant or readily available property in this industrialized area is likely to need some level of remediation.

The applicability of the California Environmental Quality Act will be addressed the next time the acquisition is presented to the Board. Therefore, no final approval to acquire the site is given by the action now being recommended to the Board.

The Office of Council District Fifteen, the Assistant General Manager of Operations East and the Superintendent of Pacific Region concur with staff's recommendations.

FISCAL IMPACT STATEMENT:

As of now, the sales price is \$1,450,000 with associated escrow and title fees of \$8,000. Remediation is estimated to cost over \$1,000,000. The retaining wall could total an additional \$1,000,000. Developing two sports fields with fencing and security lighting, adjacent restrooms and a parking area is estimated to cost \$3,000,000. Obtaining an American Land Title Association or ALTA survey, required by Union Pacific, has cost \$9,500 since the City did not have the relevant expertise. (ALTA surveys adhere to standards used nation-wide and are often used for commercial-property transactions involving parties from out of state.) The application to the City Planning Department for a Certificate of Compliance will cost \$740.

The funds currently approved for the site's acquisition and development total \$4,210,000. This sum consists of the following sources: Proposition 40 "Urban Parks" program \$2,910,000 (a \$3,000,000 award less 3% administrative costs), \$150,000 each from the Proposition 40 2/3 Per Capita and the Proposition 40 1/3 Per Capita Roberti-Z' Berg-Harris programs and \$1,000,000 from Proposition K,

REPORT OF GENERAL MANAGER

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Year 11(for site development only). Given these estimates of costs and available funding, the potential shortfall for the proposed acquisition, remediation and development of the site ranges from \$2,000,000 to \$3,000,000.

Report prepared by Joan Reitzel, Senior Management Analyst in Real Estate and Asset Management.

APPROVED

JUN 04 2008

REPORT OF GENERAL MANAGER

NO. 08-164

DATE June 4, 2008

BOARD OF RECREATION and PARK COMMISSIONERS

C.D. 15

BOARD OF RECREATION AND PARK COMMISSIONERS

SUBJECT: EAST WILMINGTON GREENBELT COMMUNITY CENTER - ACQUISITION FOR EXPANSION

R. Adams	_____	J. Kolb	_____
H. Fujita	_____	F. Mok	_____
S. Huntley	_____	K. Regan	_____
V. Israel	_____	M. Shull	<i>at pass</i>

K. W. Regan (for JKM)
General Manager

Approved _____ Disapproved _____ Withdrawn _____

RECOMMENDATION:

That the Board:

1. Adopt the Resolution, on file in the Board Office, 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 having Assessor Parcel Numbers of 7425-011-803 and -804 (also collectively known as UP Folder No. 1794-76);
2. Authorize the Board President and Secretary to execute a Purchase and Sale Agreement (PSA) in accordance with the terms outlined in the Summary of this report;
3. Authorize the Board Secretary, upon the successful close of escrow, to accept the Grant Deed to the parcels, which are to be set apart and dedicated as park property in perpetuity;
4. Authorize the Board Secretary to express appreciation to UP on behalf of the Board for the donation of this acreage for public recreational use;
5. Direct staff to assist the Bureau of Engineering, Environmental Affairs and other entities with site remediation;

REPORT OF GENERAL MANAGER

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6. Authorize staff to assist the Bureau of Engineering with site development in accordance with previously approved funding (Report No. 06-223); and,
7. Authorize staff to seek additional grant funding in order to add amenities to the initial plans for site development.

SUMMARY:

On August 9, 2006, the Board gave preliminary approval to the acquisition of 2.43 acres of vacant land with the tentative address of 845 North Sanford Avenue in the community of Wilmington (Report No. 06-223). This land is across Sanford Avenue from a new Department community center consisting of a 9,800 square-foot building having a basketball court, multi-purpose room, an office, storage area and restrooms. There is also a small parking lot. The existing site is not large enough for an outdoor play area, hence the need for the proposed expansion to the vacant land. If acquired, it will be developed with two sports fields and associated amenities, including security lighting and fencing, a play area, small parking lot and a modular restroom.

Since obtaining the Board's initial approval, City staff negotiated with UP the terms of a Purchase and Sale Agreement (PSA). The agreed-upon sales price was \$1.2 million until several issues arose that required further study and resolution. One such issue was UP's intent to keep control of a 25-foot wide segment along the northern edge of the property that contains underground pipes with an attached, above-ground pump station and valve manifold. The equipment is part of a system conveying gasoline from the Los Angeles harbor to a terminal in Carson. UP wanted to continue the revenue stream provided by the use of the pipeline segment by the firm of Kinder Morgan Energy Partners. This plan became problematic because of UP's insistence on liability terms that both the City Attorney and City Risk Management found onerous.

A second issue was the extent and cost of the proposed environmental remediation. The City's Geotechnical Engineering Division oversaw both an initial and expanded Phase II site assessment and communicated the results to UP. The recommended remediation method involves both fixation and encapsulation because the combination seems the most effective for the City's intended use. The site will be excavated to a depth of six feet and a pre-determined amount of contaminated soil removed. The rest of the excavated soil will be "fixed" with a cement-like mixture to prevent the soil from contaminating ground water and also to form an impermeable cap. Over this will be placed clean soil, compacted to a depth of two feet. The top layer will provide for drainage and an irrigation system; the cap will prevent surface water from causing underground contaminants to migrate. The cost of the remediation plan is now estimated at \$2.5 million. The Environmental Affairs Department has obtained a \$200,000 grant from the federal Environmental Protection

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Agency (EPA) for use at the site provided that escrow closes before June 30, 2008. City staff will work to meet this deadline if the Board approves the acquisition. If the deadline cannot be met, City staff will reapply for funding in the next EPA grant cycle.

Recently and perhaps in recognition of the environmental disclosures, UP agreed to donate the property to the City; therefore, the acquisition costs consist of a \$100 token purchase price plus escrow and title-report fees of less than \$25,000. This sum is available in Fund No. 205, Department No. 89, Account No. WV03 (Proposition 40, Urban Parks). The project manager from the Bureau of Engineering (BOE) estimates that site development, including design costs, will total approximately \$2.9 million. The available funding from Proposition 40 is \$3.2 million. There is also \$1 million from the competitive Proposition K program (\$100,000 for Fiscal Year 09/10 and \$900,000 for Fiscal Year 10/11) and \$1 million from the City's Capital Improvement Expenditure Program, to be appropriated by Public Works.

With the EPA funding, the total amount available for this project is \$5.4 million, which is the anticipated cost of site remediation and design/development. The BOE project manager believes that the City can meet the Proposition 40 grant-liquidation deadline of June 30, 2010. By then, the new amenities must be ready for public use with all required documentation submitted to the State. On May 29, 2008, the "L.A. for Kids" Steering Committee recommended that the project proceed and that BOE begin design activity upon the opening of escrow.

The revised PSA will contain a provision for an access easement to UP for the pipeline segment and above-ground equipment. Other provisions are technical, such as escrow instructions and the inclusion of an American Land Title Association survey. As for liability, UP has agreed to provide a statement that they do not know of any legal impediment to the City's acquiring the property, such as the potential for future litigation. The revised PSA will also have wording to confirm the acceptable limits of the City's liability.

Departmental environmental staff has determined that the proposed project consists of the acquisition of vacant land in order to preserve it as open space for park purposes and to provide for outdoor recreation as an adjunct to the East Wilmington Greenbelt Community Center, located at 918 North Sanford Avenue. The project is exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Article III, Section 1, Class 11 (3, 6) and Class 25 (5) of the City CEQA Guidelines.

The Office of Council District Fifteen, the Assistant General Manager of Operations East and the Superintendent of Pacific Region concur with staff's recommendations.

REPORT OF GENERAL MANAGER

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FISCAL IMPACT STATEMENT:

Adequate funding has been identified for the acquisition and remediation of this property and for recreational design and development. Therefore, there is no immediate, anticipated impact to the Department's General Fund. Once the recreational amenities are completed, Region staff estimates that annual site operation and maintenance will cost approximately \$90,000. Should the acquisition be successful, a budget request will be submitted for this sum in the future.

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

APPROVED
JUN 18 2008

REPORT OF GENERAL MANAGER

NO. 08-189

DATE June 18, 2008

BOARD OF RECREATION
and PARK COMMISSIONERS

C.D. 15

BOARD OF RECREATION AND PARK COMMISSIONERS

SUBJECT: EAST WILMINGTON GREENBELT COMMUNITY CENTER - DIRECTION TO STAFF ON WHETHER TO PROCEED WITH THE ACQUISITION FOR EXPANSION

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

[Handwritten Signature]
General Manager

Approved _____ Disapproved _____ Withdrawn _____

With direction to staff - see attached

RECOMMENDATION:

That the Board direct staff with respect to continuing or ceasing activity intended to acquire, remediate and develop two adjacent parcels totaling 2.43 acres and owned by Union Pacific (UP) Railroad as described in Resolution No. 10237, adopted by the Board at its meeting of June 4, 2008 (Report No. 08-164).

SUMMARY:

On June 4, 2008, the Board gave final approval to acquire two vacant parcels (APNs 7425-011-803 and -804, UP folder 1794-76) in the community of Wilmington, across Sanford Avenue from the Department's new community center. At the time of seeking this approval, Department and other City staff had concluded that a mutually acceptable Purchase and Sale Agreement (PSA) could soon be executed. Staff also thought that the City had estimated accurately the tasks and costs of the site's environmental remediation, given the expectation that the final terms of the PSA would reflect a minimally acceptable, limited level of future liability for the site. Subsequent communications with UP's real estate staff on certain terms of the PSA indicate that further disclosure to the Board is warranted with further direction sought concerning the acquisition. The issues and UP's positions are outlined below. UP indicated on June 10, 2008, that these positions are final. They continue to agree to donate the two parcels, totaling 2.43 acres, for the nominal sum of \$100. For this reason, the most recent versions of the PSA have been titled a "Donation Agreement".

REPORT OF GENERAL MANAGER

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NO. 08-189

Environmental Remediation/Liability

Board Report No. 08-164 states that the City's Geotechnical Division had recommended a course of action for soil remediation that was estimated to cost \$2.5 million. The report also described the actions to be taken in response to discovering arsenic, lead and other contamination. The latest Donation Agreement states that in the past the site, besides being a railroad right-of-way, has had an electric substation, two oil wells and three above-ground, petroleum storage tanks. In the course of the Phase II assessments performed on behalf of the City, there were two samplings of groundwater close to the area of underground fuel pipes; these pipes extend along the northern border of the northernmost parcel. The samplings disclosed the presence of volatile organic compounds, including the carcinogen benzene. Accordingly, the City added a provision to the Donation Agreement indicating that UP was to bear liability connected to groundwater contamination. UP has refused.

There may be further groundwater contamination away from these two samplings, for instance, the presence of a contaminated groundwater plume. City geotechnical staff estimates that a complete groundwater study will cost approximately \$30,000. If required by regulatory agencies, the installation and monitoring of wells to obtain further data will cost approximately \$200,000 over an expected two-year period with the costs of groundwater remediation ranging from \$500,000 to \$1,000,000. This combined total of \$730,000 to \$1,230,000 is in addition to the \$2.5 million already identified and allocated for soil remediation. The City's current plan does not include any remediation of the area called the "pipeline segment" because at the time of estimating activity/costs, it was thought that UP would retain ownership of the segment and that it would be fenced off from the public. This is no longer the plan because of the difficulty in processing a "lot split".

UP is unwilling to accept any environmental or other liability for their property, including the pipeline segment. This refusal puts the City in a difficult position since UP has not provided documentation that might relate to the site's past or current legal status or use. UP requires the City to give it a full release regarding any and all conditions or liability from the past extending into the future and to be indemnified and defended from all risks and costs relating in any way to the entire property.

Easement for the Pipeline Segment

A condition of the acquisition is that UP will retain a perpetual easement over a segment, 25 feet wide, that contains the underground pipelines and the attached, above-ground manifold valve and pump station. UP will then continue their current arrangement with the firms of Kinder Morgan and Phillips Petroleum on the use of this equipment and will continue collecting revenue. If UP is granted an easement, the City needs to have terms ensuring that the future use of the segment by any third party adheres to applicable regulations. The City should also require periodic submittal of State Fire Marshall inspections, etc. The City needs protection if it becomes the fee owner of the segment since UP insists that the City accept full liability for any future activity or condition.

REPORT OF GENERAL MANAGER

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NO. 08-189

It is unclear to what extent the City would have effective use of the surface of the pipeline segment or easement, which occupies about a tenth of the total UP site. The transfer document specifically focused on the segment forms a separate Donation Agreement, recently developed by UP and labeled "2504-65". Most of the terms match those in the original Donation Agreement, which is labeled "1794-76" and concerns the rest of the UP property; however, there are severe restrictions on the City's future use of the easement's surface.

Article 1 (a, b) of Donation Agreement No. 2504-65 states that in addition to leaving the pipeline easement unencumbered by structures, the City cannot "make any improvement" to the easement "without the prior written approval of Seller, its successors and assigns" as well as the approval of the two private firms having a license agreement or lease with UP and their "successors and assigns". The City is not to "interfere in any manner with the rights" of these two firms contained in their agreement/lease with UP. Finally, the City is forbidden to fence off the easement, including the above-ground valve manifold and pump station; this prohibition will leave the equipment vulnerable to vandalism and accidental damage from the general public.

A literal interpretation of these terms would keep the City from initially landscaping the surface of the easement for passive public use unless the City obtains written approval from all three entities. Taken together, these sections have the potential for creating onerous operational requirements for the City at the same time that the City is to retain all liability for any future condition of the easement.

Non-Disclosure or Submittal of Documents

Some time ago, the City Attorney requested that UP send documentation concerning any complaints or lawsuits, hazardous materials, leases and other agreements, etc., pertaining to the property's past use and present condition. There was no response from UP. In May 2008 the City first learned about the existence of two current agreements affecting the pipeline segment; one is with Phillips Petroleum, and the other is with Kinder Morgan. UP has declined to make these documents available to the City. UP has also been most concerned about the City's not disclosing to a third party environmental information gained from the Phase II assessments; for example, UP did not want the City to voluntarily seek to cooperate with the California Department of Toxic Substances Control on the development of a remediation action plan.

UP stated in a separate document on June 10, 2008, that they do not know of any legal impediment to the City's acquiring the property, including any relevant court actions. However, the City Attorney learned of Case No. BC 319170 filed in Los Angeles Superior Court in May 2006 in which UP is the plaintiff and the firms of Santa Fe Pacific Pipelines and Kinder Morgan are the defendants. The summary refers to an "ongoing dispute concerning Union Pacific's production of documents...concerning environmental contamination and/or clean-up on or adjacent to Union Pacific's (or its predecessor's) right-of-way." Attached to the summary are three lists of sites covered by the case. Several of those in Los Angeles seem unrelated to the Wilmington property, but it is not possible to determine the location of all the City citations. This case seems ongoing and

REPORT OF GENERAL MANAGER

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related to a continuing, multi-year dispute between Kinder Morgan and UP on fees due UP for the use of pipelines beneath its property in California and elsewhere.

The City wanted escrow instructions to contain a provision regarding documentary disclosure, especially since the City is supposed to accept all current and future liability for the entire site. UP did not agree to the City's escrow provision but did agree to a very limited amount of disclosure. They are willing to disclose relevant real estate records kept in their Omaha, Nebraska, office and associated with certain physical "mile posts"; however, records citing the two Wilmington parcels that also cite other UP property need not be disclosed or made available to the City. Furthermore, UP declined to make an independent investigation of relevant documents or circumstances but instead will restrict its "representations and warranties" to those currently known to the Omaha real-estate liaison involved with the Donation Agreements.

The City's acquisition, remediation and development of the UP property would greatly enhance the public's use of the Department's new community center; that site is not large enough for outdoor sports. The preliminary design for the UP property includes two sports fields and another play area, security lighting, modular restrooms and a small parking lot. The direction being sought from the Board through this report is whether these advantages are outweighed by the potential liability and costs contained in the two Donation Agreements that UP considers to be final and non-negotiable.

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

FISCAL IMPACT STATEMENT:

There is uncertainty regarding the City's total, potential liability resulting from this project, given UP's terms in the two Donation Agreements and unwillingness to provide assurance that there are no legal issues involving the site. Moreover, there are not sufficient funds to add the \$730,000 - \$1,230,000 cost of groundwater testing and remediation to the total sum of \$5.5 million available for the project, which is to fund soil remediation and site development outside the pipeline segment. The \$5.5 million includes \$200,000 in remediation funds from the federal Environmental Protection Agency (EPA) that may be lost if not renewed in their next grant cycle; such an action did occur on another Department project. (The current EPA award is conditioned upon escrow closing by June 30, 2008).

There is a total of \$3.3 million available from Proposition 40. The grant deadline for the \$3 million in competitive "Urban Park" funding is June 30, 2010, while the deadline for the \$150,000 each in discretionary "per capita" and "Roberti Z-Berg Harris" funding is June 30, 2011. The planned amenities funded through these programs must be completed and ready for public use by the deadline. The project manager from the Bureau of Engineering indicates that if escrow does not close by September 2008, there will be insufficient time to meet the earlier grant deadline. The state is agreeable to the City's applying to relocate the project to a nearby site that will serve the same Wilmington community; however, staff has been unable to identify a substitute site large enough to

REPORT OF GENERAL MANAGER

PG. 5

NO. 08-189

accommodate the two sports fields, which are a requirement of the "Urban Park" grant. If the City does not acquire the UP property, the \$3 million in competitive Proposition 40 funds will be lost. The remaining \$300,000 in Proposition 40 funds can be used for another project at the discretion of Council District Fifteen. Even if the City does acquire the UP property, the need to test and monitor for groundwater contamination may delay the start of site development and hinder its progress so that the project could not be completed by the 2010 close-out deadline for the "Urban Park" grant.

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

EXCERPT FROM THE MINUTES OF THE SPECIAL MEETING
BOARD OF RECREATION AND PARK COMMISSIONERS
JUNE 18, 2008

08-189:

EAST WILMINGTON GREENBELT COMMUNITY CENTER – DIRECTION TO STAFF
ON WHETHER TO PROCEED WITH THE ACQUISITION FOR EXPANSION

President Barry Sanders instructed staff to continue negotiations with Union Pacific Railroad (UAP) and 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.

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.

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 _____

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.

REPORT OF GENERAL MANAGER

PG. 2

NO. 08-229

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.

REPORT OF GENERAL MANAGER

PG. 3

NO. 08-229

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.

REPORT OF GENERAL MANAGER

PG. 4

NO. 08-229

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.

REPORT OF GENERAL MANAGER

PG. 5

NO. 08-229

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

REPORT OF GENERAL MANAGER

PG. 6

NO. 08-229

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.

REPORT OF GENERAL MANAGER

PG. 7

NO. 08-229

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.

CITY OF LOS ANGELES
CALIFORNIA

KAREN E. KALFAYAN
City Clerk



ANTONIO R. VILLARAIGOSA
MAYOR

Office of the
CITY CLERK
Council and Public Services
Room 395, City Hall
Los Angeles, CA 90012
General Information - (213) 978-1133
Fax: (213) 978-1040

CLAUDIA M. DUNN
Chief, Council and Public Services Division
www.cityclerk.lacounty.org

When making inquiries
relative to this matter,
please refer to the Council
File No.

08-2276

CD 15

September 30, 2008

Councilmember Hahn
Councilmember Cardenas
City Attorney
City Administrative Officer
Chief Legislative Analyst
Department of Recreation and Parks
Board of Recreation and Park Commissioners

RE: VETO THE BOARD OF RECREATION AND PARK COMMISSIONERS' ACTION ON AUGUST 20, 2008 TO APPROVE REPORT NO. 08-229 RECOMMENDING THAT THE BOARD RESCIND RESOLUTION NO. 10237 AUTHORIZING STAFF TO COMPLETE ACQUISITION OF PROPERTY BEING DONATED BY UNION PACIFIC RAILROAD TO BE USED FOR INCREASED OUTDOOR SPACE FOR THE WILMINGTON COMMUNITY

At the meeting of the Council held September 23, 2008, the following action was taken:

Attached report adopted	<u> X </u>
Attached motion (-) adopted	<u> </u>
Attached resolution adopted	<u> </u>
FORTHWITH	<u> X </u>
Mayor concurred	<u> </u>
To the Mayor FORTHWITH	<u> </u>
Motion adopted to approve communication recommendation(s)	<u> </u>
Motion adopted to approve committee report recommendation(s)	<u> </u>

City Clerk
OS

31

File No. 08-2276

TO THE COUNCIL OF THE
CITY OF LOS ANGELES

Your

ARTS, PARKS, HEALTH AND AGING

Committee

reports as follows:

ARTS, PARKS, HEALTH AND AGING COMMITTEE REPORT relative to the acquisition of property being donated by Union Pacific Railroad to be used for increased outdoor space for the Wilmington community.

Recommendation for Council action, pursuant to Motion (Hahn – Cardenas):

VETO the Board of Recreation and Park Commissioners' action on August 20, 2008 to approve Report No. 08-229 recommending that the Board rescind Resolution No. 10237 authorizing staff to complete acquisition of property being donated by Union Pacific Railroad to be used for increased outdoor space for the Wilmington community.

Fiscal Impact Statement: Neither the City Administrative Officer nor the Chief Legislative Analyst has completed a financial analysis of this report.

Community Impact Statement: None submitted.

TIME LIMIT FILE – SEPTEMBER 30, 2008

(LAST DAY FOR COUNCIL ACTION – SEPTEMBER 23, 2008)

[On September 9, 2008, Council adopted Motion (Hahn – Cardenas) asserting jurisdiction over the August 20, 2008 action of the Board of Recreation and Park Commissioners, pursuant to City Charter Section 245.]

SUMMARY

On September 9, 2008, Council adopted Motion (Hahn – Cardenas) asserting jurisdiction over the August 20, 2008 action of the Board of Recreation and Park Commissioners (Board), pursuant to City Charter Section 245, vetoing the August 20, 2008 Board action, and referring the matter to the Arts, Parks, Health and Aging Committee (APHA) for further consideration.

At its September 17, 2008 meeting, the APHA Committee considered the Board reports and Board Resolution relative to authorizing staff to complete acquisition of property being donated by Union Pacific Railroad to be used for increased outdoor space for the Wilmington community. On August 20, 2008, the Board had rescinded the adoption of their Resolution authorizing staff to complete acquisition of the property being donated by Union Pacific Railroad. At the APHA Committee meeting, representatives of the Department of Recreation and Parks provided background information and an updated status on the project and responded to related questions by Committee members. After providing an opportunity for public comment, the Committee moved to veto the August 20, 2008 action of the Board of Recreation and Park Commissioners to approve Report No. 08-229 recommending that the Board rescind the adoption of Resolution No. 10237 authorizing staff to complete acquisition of the property being

donated by Union Pacific Railroad. This matter is now submitted to Council for its consideration.

Respectfully submitted,

ARTS, PARKS, HEALTH AND AGING COMMITTEE

MEMBER	VOTE
LABONGE:	YES
PERRY:	ABSENT
HAHN:	YES

ep
CD 15
09/17/08
#082276.doc

Two handwritten signatures in black ink. The top signature is a cursive name that appears to be 'D. Labonge'. The bottom signature is a cursive name that appears to be 'J. Hahn'.

RAT
ADOPTED

SEP 23 2008

LOS ANGELES CITY COUNCIL

FORTHWITH

Not Official Until Council Acts

APPROVED

REPORT OF GENERAL MANAGER

OCT 3 2008

NO. 08-276

DATE October 3, 2008

~~BOARD OF RECREATION
and PARK COMMISSIONERS~~

C.D. 15

BOARD OF RECREATION AND PARK COMMISSIONERS

SUBJECT: EAST WILMINGTON GREENBELT COMMUNITY CENTER - ACQUISITION OF PROPERTY FOR EXPANSION AND DESIGN BUILD PROCESS FOR DEVELOPMENT

R. Adams	_____	J. Kolb	_____
H. Fujita	_____	F. Mok	_____
S. Huntley	_____	K. Regan	_____
V. Israel	_____	*M. Shull	<u>True facts</u>

[Signature]
General Manager

Approved _____ Disapproved _____ Withdrawn _____

RECOMMENDATION:

That the Board:

1. Authorize the execution of two Donation Agreements, Nos. 1794-76 and 2504-65, substantially in the form on file in the Board Office; and,
2. Authorize the General Manager to implement a Design Build Process, in consultation with the City Attorney, for the development of the parcels upon execution of the Donation Agreements.

SUMMARY:

Since mid-2005, the City has been negotiating with Union Pacific (UP) for the acquisition of two adjacent, vacant parcels across Sanford Avenue from the new East Wilmington Greenbelt Community Center. The parcels total 2.43 acres and have the address of 845 North Sanford Avenue. The Assessor Parcel Nos. are 7425-011-803 and -804. The Community Center's site is too small for sports fields or an outdoor play area, a situation that could be remedied by acquiring the UP property.

REPORT OF GENERAL MANAGER

PG 2

NO. 08-276

On August 9, 2006, the Board gave preliminary approval to the acquisition (Report No. 06-223). Subsequently, and perhaps in recognition of the need for environmental remediation, UP agreed to donate the property for \$100. There were to be two Donation Agreements. Agreement No. 2504-65 involves a segment of 25-feet wide that extends along the northern border of the property; the segment has underground petroleum pipelines and above-ground equipment. UP will retain an easement over this segment and continue receiving revenue from its use by other firms. The second Agreement, No. 1794-76, concerns the rest of the adjacent UP property.

In mid-2008 after a conference call with UP, it seemed that there was enough agreement so that the acquisition could proceed. Staff sought final approval from the Board, which was obtained on June 4, 2008, by the adoption of Resolution No. 10237 (Board Report No. 08-164). Subsequently, the City's negotiating team found that an impasse developed regarding liability, indemnification and access to information on the past use and present condition of the site. This status was presented to the Board on June 18, 2008, in Board Report No. 08-189 and in an Informational Board Report on July 9, 2008. On July 23, 2008, the Board considered the acquisition in closed session in accordance with Government Code Section 54956.8. On August 20, 2008, the Board rescinded its approval, given UP's unwillingness to modify the terms of the Donation Agreements (Board Report No. 08-229).

Throughout the negotiations, the Councilmember for the Fifteenth District has strongly supported the acquisition. On September 2, 2008, the Councilmember introduced a motion pursuant to Charter Section 245 for Council to assert jurisdiction over the Board's action rescinding its prior approval to acquire the property and upon assuming jurisdiction, veto the Board's action. The motion to assert jurisdiction was adopted on September 9, 2008, and the matter was referred to the Arts, Parks, Health and Aging Committee of the Council. Two days later the City's negotiating team had a conference call with UP, during which certain additional terms were agreed upon. Based on the terms agreed upon during the conference call, the City resubmitted revisions to the Donation Agreements. UP has not yet responded. Council vetoed the Board's action rescinding approval to acquire the property on September 23, 2008 (Council File No. 08-2276).

Due to the action taken by Council, the original approval of the resolution to acquire the parcels remains. Since the terms of the Donation Agreements have changed, as is more specifically described below in this report, staff now recommends that the Board approve the Donation Agreements substantially in the form on file in the Board Office. Doing so will result in acquisition of the property, subject to the terms contained in the Agreements, upon close of escrow.

One of the City's proposed revisions involves UP's disclosing information about the site. The disclosure would aid the City in determining whether to accept unconditional liability and to indemnify UP from any present or future legal action. The revisions also include an extended escrow, up to nine months, in order to allow the City to complete certain environmental tasks before accepting title to the property. For example, during escrow the City seeks to work with regulatory

REPORT OF GENERAL MANAGER

PG 3

NO. 08-276

agencies on a soil remediation plan and a groundwater testing/remediation plan. The City also seeks the ability, upon obtaining written permission from UP and its lessee, to fence and thereby restrict public access to the above-ground petroleum equipment or to the pipeline segment as a whole. On September 30, 2008, Department staff met with project staff of the Bureau of Engineering (BOE) and the Environmental Affairs Department (EAD) in order to reconfigure the scope and time line for site development. The intent is to meet a Proposition 40 "Urban Parks" deadline of March 31, 2010. By then, the amenities proposed in the grant application must be completed, with the site open to the public and all documentation filed with the State. Unless the City obtains legislative relief from this deadline, it cannot be extended.

The in-house meeting produced several action items. Since the proposed modular restrooms are not required under the Proposition 40 grant, their construction will be postponed. The security lighting and parking lot can be reconfigured for simpler installation. The drafting of remediation documents will begin soon after escrow opens. Staff also plans to present a Mitigated Negative Declaration to the Board in January 2009.

The most significant project change is to consult with the City Attorney to initiate the appropriate process for a design/build contract rather than to have the project's design completed by BOE with a bid/award process for construction. Staff plans to award a contract to a design/build team in January 2009. The tactic is expected to save over three months in development time and is not expected to increase total costs. With these revisions, project staff expects to meet the current Proposition 40 deadline.

BOE staff believes the development project, including soil remediation, to be fully funded. EAD plans to apply for a \$200,000 grant from the federal Environmental Protection Agency to offset costs of groundwater remediation. Soil remediation must precede site development, but BOE geotechnical staff believes that groundwater testing and remediation will not interfere with construction at the site. Groundwater remediation, if any, will be accomplished over a longer period in order to enable the City to identify any subsequent funding that may be needed. Omitting the modular restrooms may result in savings to apply to the remediation.

In addition to the Office of Council District Fifteen, the Assistant General Manager of Operations West and the Superintendent of Pacific Region concur with staff's recommendations.

FISCAL IMPACT STATEMENT:

The potential risks of the City's assuming total liability for the site and indemnifying UP were included in Board reports cited at the beginning of the Summary. Staff has restructured the site development and believes that the City can meet the current Proposition 40 deadline. If not the City will be required to repay whatever grant funds were spent up to the total award of \$3,300,000.

REPORT OF GENERAL MANAGER

PG 4

NO. 08-276

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

APPROVED

OCT 21 2009

REPORT OF GENERAL MANAGER

NO. 09-272

DATE October 21, 2009

BOARD OF RECREATION
and PARK COMMISSIONERS

C.D. 15

BOARD OF RECREATION AND PARK COMMISSIONERS

SUBJECT: EAST WILMINGTON GREENBELT COMMUNITY CENTER - TERMINATION OF TWO REAL PROPERTY DONATION AGREEMENTS WITH UNION PACIFIC RAILROAD COMPANY AND REOPENING OF ESCROW FOR THE CENTER'S EXPANSION

R. Adams	_____	J. Kolb	_____
H. Fujita	_____	F. Mok	_____
S. Huntley	_____	K. Regan	_____
V. Israel	_____	*M. Shull	<u>RAJ</u>

[Signature]
General Manager

Approved _____

Disapproved _____

Withdrawn _____

RECOMMENDATION:

That the Board:

1. Authorize staff to give notice to Union Pacific Railroad Company (UP) and the Escrow Holder, which is Chicago Title Company, that the City is electing to terminate Donation Agreements Nos. 1794-76 and 2504-65 and the related escrow concerning the acquisition of property owned by UP, Assessor Parcel Numbers (APN) 7425-011-803 and 7425-011-804;
2. Authorize staff to request the assistance of other City entities, including the City Attorney, the City's negotiator, and the Bureau of Engineering, in drafting, renegotiating and executing successor Donation Agreements and Escrow Instructions;
3. Authorize staff to request the assistance of the State and other City entities in gaining approval for a two-tier Remedial Action Plan with Phase I, involving initial soil remediation, to be implemented upon the close of escrow and to reflect the City's intent to leave the site fenced and temporarily closed to public use and Phase II, involving the completion of this remediation plus groundwater treatment/monitoring, to be implemented upon receipt of full project funding; and,

REPORT OF GENERAL MANAGER

PG. 2

NO. 096272

4. Authorize staff to work with the "L. A. for Kids" Steering Committee to secure an extension of the grant deadlines from the Proposition 40 State administrators and also to consider whether continued project delays warrant a request to rescind the Proposition K grant award.

SUMMARY:

Background:

Four years ago, the City began negotiating with UP to acquire property having the address of 845 North Sanford Avenue, totaling 2.43 acres. The APNs are 7425-011-803 and 7425-011-804. The new East Wilmington Greenbelt Community Center, across Sanford from the UP site, is too small for sports fields or an outdoor play area. The City can provide them by acquiring and developing the UP site.

As specified in the Proposition 40 Urban Park grant, the proposed recreational development includes both a ball field and a soccer field. Also planned are sports-field lighting, bleachers, picnic tables, landscaping and a small parking lot within a secure, fenced setting. While not specified in the grant, the Department may in the future wish to add a small, modular restroom so that the public does not have to cross Sanford and use the restrooms in the Community Center.

On August 9, 2006, the Board gave preliminary approval to enter into negotiations with UP (Report No. 06-223). On June 4, 2008, the Board President and Secretary were authorized to execute a Purchase and Sale Agreement (Report No. 08-164, Resolution No. 10237). The purchase price had been \$1.2 million but in partial recognition of the need for environmental cleanup, UP agreed to sell the two parcels to the City for \$100.

The City project team had recommended the Board's approval based on recent communication with UP; however, the team soon found that an impasse developed regarding liability, indemnification, further environmental testing and information on the past use and present condition of the site. Staff presented this impasse to the Board on June 18, 2008 (Report No. 08-189) and on July 9, 2008, in a follow-up, Informational Report. On July 23, 2008, the Board considered the acquisition in closed session in accordance with Government Code Section 54956.8. On August 20, 2008, the Board rescinded its approval, given UP's unwillingness to modify any terms of the transaction (Report No. 08-229).

The Councilmember for the Fifteenth District strongly supports the acquisition. On September 2, 2008, pursuant to Charter Section 245, the Councilmember introduced a motion for Council to assert jurisdiction over the Board's rescission and then to veto it. The motion to assert jurisdiction was adopted on September 9, 2008, and the matter was referred to the Arts, Parks, Health and Aging Committee. Council vetoed the Board's rescission on September 23, 2008 (Council File No. 08-2276).

REPORT OF GENERAL MANAGER

PG. 3

NO. 09-272

This action reinstated the Board's adoption of the Resolution approving the acquisition. Attempts to negotiate with UP continued. The City project team simplified the design for site development so that even with the acquisition delays, the construction schedule met grant deadlines. The team also planned for a "design/build" contract in place of the customary "bid/award" project delivery method. On October 3, 2008, the Board approved staff's recommendation that the acquisition proceed with the new strategy (Report No. 08-276).

Transaction Status and City's Election to Terminate:

Transaction terms are in two executed Donation Agreements, which superseded the Purchase and Sale Agreement. Donation Agreement No. 2504-65 (City Contract No. 115263) involves a segment 25-feet wide along the northern border of the property; the segment has two underground petroleum pipelines and above-ground equipment that UP leases to another firm. UP will retain an easement over this segment and continue receiving revenue from the third-party use. The other Donation Agreement, No. 1794-76 (City Contract No. 115262), concerns the rest of the adjacent UP site. Escrow opened on March 31, 2009.

Escrow is supposed to close within 240 days or by November 25, 2009; however, Article 5, Sections 4-6 of both Agreements permits the City to terminate them without penalty within 210 days of opening escrow. This is the "feasibility review period". The City may determine that it is not feasible to comply with terms in the Agreements involving environmental remediation and funding or other development issues. If it exercises the option to terminate, the City must deliver written notice to UP by October 26, 2009 (Section 12.9 of both Agreements).

If the City does not exercise the option by the 210-day deadline, the City is obligated to fulfill all the terms of the Agreements by the closing date of escrow or seek UP's permission to extend the date. Given the difficulty the project team has encountered in prior negotiations, it seems best to protect the City's interests by giving notice to UP disapproving of matters set forth in the City's feasibility review. The notice would state to UP and the Escrow Holder that the City has elected to terminate the Agreements. Staff also seeks Board authorization to negotiate successor Agreements with new, extended deadlines. In the meantime, there are the following issues to resolve.

Issue: Project Funding Shortfall and Grant Requirements/Deadlines

The available project funding is as follows: \$3 million in the Proposition 40 Urban Park program, \$150,000 each in discretionary Proposition 40 Per Capita and Roberti-Z'berg-Harris (RZH) grants, \$1 million from the fifth competitive cycle under Proposition K and \$1,067,530 from the Capital Improvement Expenditure Program (Council File No. 07-2877-S3). These sources total \$5,367,530. The Project Manager from the Bureau of Engineering estimates that remediation and development costs will be nearly \$7,310,000. The sum includes \$2.5 million for soil and \$1 million for groundwater cleanup. The project shortfall is at least \$1.9 million and will increase if costs for environmental remediation exceed the estimates.

REPORT OF GENERAL MANAGER

PG. 4

NO. 09-272

Even with adequate funding, there are timing issues because of continuing delays with site acquisition. Based on the most recent completion schedule, the project will not meet the current Proposition 40 Urban Park grant deadline of June 30, 2010. The deadline requires that the recreation project be completed, open to the public and all accounting documentation submitted to the State by March 31, 2010. Even without further delays, the earliest date for completing construction will be mid-August 2012. This time line requires a 2½ year extension of the Urban Park deadline. An extension of 1½ years is needed for the Proposition 40 Per Capita and RZH grants.

Proposition 40 State administrators advised the Department that they cannot approve a multi-year extension but must act on a year-to-year basis. An initial extension would have to be requested and approved in the fiscal year that the grant is scheduled to liquidate, which for the Urban Park grant, began July 2009. A similar request will be needed during the fiscal year beginning July 2010 for the Per Capita and RZH grants. Discussions with the State on grant policy will continue.

If sufficient grant extensions are approved but because of lack of funds, the recreational project is not completed by the new deadline, all expended Urban Park funds will have to be returned to the State. Therefore, staff requests that the Board consider an acquisition-only project, with the Department temporarily "land banking" and securing the site. Doing so means that the Department will forfeit the \$3 million in Urban Park funds. By contrast, the \$300,000 in Per Capita and RZH funds will not be forfeited. Either the project scope can be modified or the funds reallocated to another project.

As for the Proposition K award of \$1 million, the funds cannot be used for acquisition but only for site development. With the funding shortfall and other uncertainties, it is possible that the grant should be rescinded some time before 2011 with any funds already spent to be reimbursed. The City could reapply for funding in a future competitive cycle.

Acquiring the UP site, phasing in environmental remediation and delaying recreational development will resolve issues related to the current funding shortfall and grant deadlines. The Community Center can be expanded and developed onto the newly acquired property as funding becomes available. However, UP may be unwilling to accommodate a plan that would change terms in the Donation Agreements on environmental remediation. These current Donation Agreements specify that before closing escrow, the City must have approval from UP and public regulators for all required environmental remediation and must demonstrate the ability to fund this work. In the past, UP has insisted on these and other terms intended to guarantee, after escrow closes, that they do not have any future liability for the site.

Issue: Environmental Remediation

The UP site is a brownfield. The former railroad right-of-way once had an electrical substation, two oil wells and three above-ground, petroleum storage tanks. Two functioning, underground pipelines remain along the northern border, which is the reason UP wants an easement (Donation Agreement

REPORT OF GENERAL MANAGER

PG. 5

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2504-65). Previous Board Reports noted that environmental studies of the rest of the site have disclosed significant soil contamination, including widespread, high concentrations of arsenic and moderate amounts of lead, heavy hydrocarbons and PCBs. Remediation of the metals will require some disposal at a hazardous landfill, but the site's size and the estimated remediation costs have caused City geotechnical staff to propose an in-place plan called "fixation and capping". The plan involves excavating the upper six feet of soil, removing from the site the most contaminated portion of this soil and treating the rest with a cement-like substance that will harden and permanently bind the metals in place. Then the site is capped with a two-foot replacement layer of clean soil.

City geotechnical and environmental staff have received preliminary, informal approval of this plan from the State Department of Toxic Substances Control (DTSC). The plan is expected to cost \$2.5 million and does not include groundwater cleanup. Other work such as drainage improvements, final grading and installation of a retaining wall will become part of site development and be included in those costs.

A groundwater assessment was completed after October 2008, when staff last reported to the Board on the project. The groundwater is contaminated with gasoline-related hydrocarbons such as benzene. Off-site sources are possible. One source is suggested by the fact that contaminants were found in the southwestern part of the UP site near a privately owned, vehicle storage/scrap yard. The highest concentrations were found near the functioning, underground pipelines at the northern end of the site. If the City pursues the acquisition, UP should be asked to require their lessee, before the close of escrow, to conduct pressure and other tests to assess the physical integrity of the pipelines. Given staff's past experience, UP is unlikely to grant the request.

DTSC may require more groundwater sampling plus a feasibility and then a pilot study of proposed remedial methods. DTSC and City staffs are drafting an action plan that includes five years of groundwater monitoring, which seems an adequate period given the City's current data. City staff estimates that total costs of this groundwater plan may be \$1 million.

Soil remediation must precede site development. Groundwater remediation and monitoring can begin before site development and co-exist with it and with public use of the site. Staff can use recessed wells and piping and locate a small, fenced treatment unit to one side. The current estimate of \$3.5 million for implementing soil and groundwater plans could increase 20-25% if the DTSC requires additional study or tasks. The agency may do so since the storage/scrap yard has encroached onto the UP site, preventing its complete environmental characterization. The added costs could range from \$700,000 to \$900,000.

Because of the overall funding shortfall and the fact the DTSC has not yet approved a formal, complete remediation plan, staff recommend first seeking approval for a modified plan. It would include securing the site and initially not providing for public use. The lesser remediation can be funded by the nearly \$900,000 remaining from the allocation from the Capital Improvement Expenditure Program.

REPORT OF GENERAL MANAGER

PG. 6

NO. 09-272

Status: Compliance with the California Environmental Quality Act (CEQA)

Department staff recently reviewed an expanded Initial Study of the proposed project. The Study includes both environmental remediation, including results of the recent studies, and recreational site development. Staff determined that there may be some significant impacts that could be reduced or eliminated through mitigation. Therefore, staff revised initial CEQA findings and prepared a Mitigated Negative Declaration (MND). The draft MND is ready for release to public agencies and others for the required 30-day period for public review and comment. Depending on the number and nature of the comments received, staff will need an additional four to six weeks to prepare responses and the final MND. It will support implementing the complete project if this is the City's course of action.

The MND is based on current negotiations with DTSC. Once they approve a Remedial Action Plan and a Voluntary Cleanup Agreement, staff may need to revise the MND. If any revisions resulting from newly required tasks add to the environmental impacts, the revised MND may need to be recirculated for another 30-day period. This review has to be completed before DTSC gives approval for the City to proceed with the Remedial Action Plan. At that time, staff will request that the Board adopt the final MND.

Issue: The Impact of Encroachments on Remediation and Site Development

The privately owned parcels extending from the southern border of the UP site to Anaheim Street are used as a vehicle repair business and a storage/scrap yard. Over the years, the firm has expanded its storage operation onto the UP site, completely occupying one lot of parcel 7425-011-804; vehicles are scattered on two other lots of the parcel. The main encroachments occupy approximately 6.6% of the parcel, and UP is aware of them. The City tried to include in the Donation Agreement for parcel APN 7425-011-804, a condition whereby UP would have the encroachments removed before the close of escrow. UP refused.

It is unknown if or how easily after the close of escrow the City could legally have the firm relocate the encroaching vehicles and scrap parts onto its own property. Resolving the situation could take months. There is also the potential contamination of this area, which was excluded from previous assessments because of lack of access. That situation could increase the current estimate of \$3.5 million for soil and groundwater remediation.

As for interfering with the conceptual plan for developing this area, staff conclude that the encroachments will affect, but not prevent, the construction of a Little League ball field. Until the area is cleared and if needed, cleaned up, the outfield must be shortened. The encroachments will also interfere with the installation of some sports-field lighting. These two features are required under the Proposition 40 Urban Park grant.

REPORT OF GENERAL MANAGER

PG. 7

NO. 09-272

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

FISCAL IMPACT STATEMENT:

The budget shortfall for the project, including current remediation costs and site development, is estimated at \$1,950,000. If DTSC requires work in addition to that already proposed in initial briefings, the shortfall could increase to \$2.8 million. The increased estimate includes some costs for cleaning up the area under encroachment but does not include the removal of the vehicles and scrap since staff has no basis for assessing these costs.

There is also uncertainty about obtaining a sufficient extension of the current deadline for the Proposition 40 Urban Park grant. Staff recommends that, at present, the City not use these funds because of being unable to meet the requirement to have a completed project, ready for public recreational use, by the current deadline. If this situation occurs, the City will have to repay whatever grant funds were spent. There is a similar project-completion requirement for the \$1 million in the Proposition K grant although program guidelines make the deadline more flexible.

This report was prepared by Joan Reitzel, Senior Management Analyst in Real Estate and Asset Management, Planning and Construction Division, with the assistance of project personnel from the Department's Grants Administration and from the Bureau of Engineering.

09-2595

OCT 23 2009

MOTION

SPECIAL 2

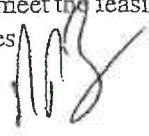
Four years ago, the City began negotiating with the Union Pacific Railroad Company (UP) to acquire property at 845 North Sanford Avenue, totaling 2.43 acres to develop an outdoor space for the East Wilmington Greenbelt Community Center. The Community Center is located across the street from the UP site, but is too small for sports fields or an outdoor play area. The proposed recreational development includes both a ball field and a soccer field, including sports-field lighting, bleachers, picnic tables, landscaping and a small parking lot within a secure, fenced setting. The Department of Recreation and Parks (DRP) may also consider, for a future project, adding a modular restroom so that the public does not have to cross the street to use the restrooms in the Community Center.

On August 9, 2006, the Board of Recreation and Parks Commissioners (Board) gave preliminary approval to enter into negotiations with UP and on June 4, 2008, they authorized the execution of a Purchase and Sale Agreement. UP agreed to sell the two parcels to the City for \$100 due to the need for extensive environmental cleanup at the site. However, an impasse developed regarding liability, indemnification, further environmental testing and information on the present condition of the site. Due to the difficulty of the negotiations and UP's unwillingness to modify any terms of the transaction, the Board rescinded its approval in August 2008. However, in September 2008 the Council introduced Motion (Hahn - Cardenas) to assert jurisdiction over the Board action pursuant to Charter Section 245 and the City Council vetoed the Board's rescission (C.F. No. 08-2276). This action reinstated the Board's adoption of the Resolution approving the acquisition.

DRP continued negotiations and executed two Donation Agreements that superseded the Purchase and Sale Agreement. One Donation Agreement is for a portion of the property that UP will retain an easement over in order to continue leasing it to another firm. The second Donation Agreement is for the rest of the UP site. Escrow opened on March 31, 2009 and is expected to close on November 25, 2009.

The Donation Agreements allow the City to terminate them without penalty during the feasibility review period. During the feasibility review period, the City can determine whether or not it is feasible to comply with the terms in the Agreements relative to environmental remediation and funding or other development issues. If the City does not provide UP written notice by the end of the feasibility review period, which is October 26, 2009, the City will be obligated to fulfill all terms of the Agreements. DRP and the Bureau of Engineering have determined that the City cannot meet the obligations in the Agreements because there is insufficient funds to complete the environmental remediation and development of the site. The cost to cleanup and develop the site is approximately \$7.3 million and currently there is only \$5.4 million available.

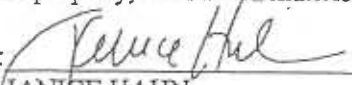
At the October 21, 2009 Board meeting, the Board approved recommendations to: 1) terminate the existing Donation Agreements and related escrow for the acquisition of the property located on Sanford; 2) authorize staff to draft and execute successor Donation Agreements and Escrow Instructions with new extended deadlines for the property; 3) authorize staff to devise a two-tier remediation plan; and 4) authorize staff to work with the State to obtain an extension on the State Grant funds currently allocated to the project. This will protect the City's best interests, provide the City additional time to identify funds for the shortfall, devise a development plan that fits within the available budget, and meet all funding deadlines and obligations of the Agreements. It is necessary to expedite the approval to terminate the existing Donation Agreements and related escrow in order to meet the feasibility review period deadline of October 26, 2009 and not incur any additional liabilities



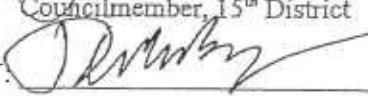
I THEREFORE MOVE that the Council determine, as provided in Section 54954.2(b)(2) of the Government Code, and pursuant to **Rule 23** of the Rules of the City Council, that there is a need to take immediate action on this matter AND that the need for action came to the attention of the City Council subsequent to the posting of the agenda for today' s Council meeting.

I FURTHER MOVE that pursuant to Charter Section 245(b), the Council hereby RESOLVE to waive its review of the actions taken by the Board of Recreation and Parks Commissioners at the Board meeting on October 21, 2009, relative to the termination of two Donation Agreements and escrow with the Union Pacific Railroad Company for the acquisition of the property near the East Wilmington Greenbelt Recreation Center, authorization to draft and execute successor Donation Agreements and Escrow Instructions with extended deadlines for this property, and related matters.

PRESENTED BY:


JANICE HAHN
Councilmember, 15th District

SECONDED BY:



October 23, 2009

RECEIVED
CITY OF WILMINGTON
OCT 23 2009
CITY CLERK'S OFFICE

MOTION

CG 2 5 20

Since 2006, the City has been working to acquire a property at 845 North Sanford Avenue in Wilmington from Union Pacific Railroad (UP) for the purpose of having the Department of Recreation and Parks (RAP) develop a sports field adjacent to the East Wilmington Greenbelt Community Center. This project has gone through a lot of obstacles, including obtaining information about environmental remediation, negotiation of the donation of the land, obtaining funding to pay for clean-up and construction, and fulfilling all the obligations set forth by UP in order to complete the donation agreement. Unfortunately, the City has been unable to address the one remaining legal issue that involves indemnity of the City by UP in order to take on the acquisition of this property. Given that the source of money obtained for this project primarily involves Prop. 40 and Prop. K funding, it is imperative that the City act quickly to provide direction to RAP to move forward on this project in order to avoid the risk of losing this funding and jeopardizing the project.

This area of Wilmington is in desperate need of additional park space, and would greatly benefit from the proposed sports field. In order to address legal concerns pertaining to the City being subject to unforeseen costs involving additional clean up or contamination that may occur after the acquisition of the property, the City will procure a \$10 million Environmental Pollution Insurance policy covering all pollution related claims filed against the property for the next ten years. Coverage excludes known pollutants during the remediation phase.

In light of this new information, it would be appropriate for the Board of Recreation and Parks Commissioners to reconsider this project and request staff to re-enter negotiations with UP to acquire this parcel, which UP has offered to donate for no cost.

I THEREFORE MOVE that the Council request the Board of Recreation and Parks Commissioners to reconsider the East Wilmington Greenbelt project at an upcoming Board meeting and authorize staff to re-enter into negotiations to acquire this property from Union Pacific Railroad.

Presented By



JOE BUSCAINO

Councilmember, 15th District

Seconded By

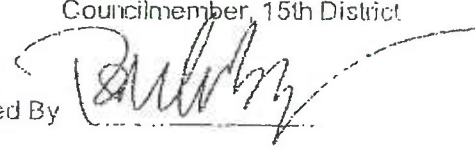


Exhibit A

East Wilmington Greenbelt Park
APN: 7425-023-804
Board Report: 03-46

Wilmington Veterans Park
APN: 7425-015-900
Board Report: 05-133

East Wilmington Greenbelt Park
APN: 7425-023-804
Board Report: 03-46

Name Unknown
APN: 7425-023-910. No BR.

Name Unknown
APN: 7425-032-900
Board Report: 03-46

E. Wilmington Community Center
APN: 7425-036-900 (7425-036-800)
Board Report: 03-46

845 N. Sanford Avenue
APN: 7425-011-803, 7425-011-805
Board Report: 08-276

Exhibit C

PROJECT TITLE

7/1/2014

East Wilmington Expansion Scope: Soccer Field, Bleachers Two Play Areas, Basketball Courts and Parking

Activity	Company Name	Work Order	Phase	Revised Budget
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Project Management E170443A				
Project Mgmt.	BOE		PM	\$ 165,000 City BOE
PM Consultant	Harris & Associates		PM	
RAP Grants Admin/Act	Rec and Parks		Admin	\$ 60,000 Prop 40

Other Direct Costs E170443B				
Survey (BOE)	BOE		Design/Constr	\$ 25,000 Prop 40
Survey (Consultant)			Design/Constr	\$ 25,000 Prop 40
Environmental (RAP)	BOE		Design/Constr	\$ 20,000 City RAP Staff
Environmental (Consultant)			Design/Constr	\$ 50,000 Prop 40
Archaeology (Consultant)			Design/Constr	
Geotech (BOE)	BOE		Design/Constr	\$ 60,000 Prop 40
Geotech (Consultant)			Design/Constr	\$ 60,000 Prop 40
B&S PC/Permit	Buildng & Safety		Design	\$ 75,000 Prop 40
PubSc Works Permits Fees	PubSc Works		Fees	\$ 10,000 Prop 40
DTSC review & monitoring	Haz Mat		Fees	\$ 25,000 CIP
DTSC review & monitoring	Haz Mat		Fees	\$ 25,000 Prop K
DTSC review & monitoring	Haz Mat		Fees	\$ 30,000 Site & Facility
Planning Fees	Planning Dept.		Design	
Arts Fee	Cultural Affairs		Design	\$ 52,000 Prop 40
Quality & Standards	BOE		Bid & Award	\$ 5,000 Prop 40
Printing	GSD, Cont. Graphics, etc.		Bid & Award	\$ 5,000 Prop 40
Advertising	Local Newspapers		Bid & Award	\$ 900 Prop 40

Design E170443D				
Consultant			Design	
RAP In-House	RAP		Design	City RAP Staff

Construction E170443F				
Contractor	Haz Mat		Constr	\$ 1,000,000 CIP
	Haz Mat			\$ 700,000 Prop K
	Haz Mat			\$ 200,000 Site & Facility
	Haz Mat			\$ 100,000 Prop 40
	Ground Water Contamination Remediation			\$ 1,000,000 Site & Facility
	Grading			\$ 500,000 Prop 40
	Parking Construction			\$ 30,000 Prop K
	Parking Construction			\$ 2,000 Site & Facility
	Restroom			\$ 270,000 Prop 40
	Restroom Masonry			\$ 180,000 Not Funded
	Soccer Field Play Areas			\$ 1,209,000 Prop 40
	2 - Basketball Court			\$ 120,000 Prop 40
Contingency 10%	Non HAZ	Constr		\$ 213,000 Prop 40
Contingency 10%	HAZ+ Parking	Constr		\$ 245,000 Prop K
	HAZ+ Parking	Constr		\$ 42,000 CIP
	HAZ+ Parking	Constr		\$ 18,000 Not Funded
Constr. Mgmt.	BOE	Constr		\$ 240,000 City BOE
BCA - Inspection	Bureau of Con. Admin.	Constr		\$ 240,000 City BCA
GSD Construct. Forces	GSD	Constr		
Bureau of Street Lighting	BSL	Constr		
Bureau of Street Services	BSS	Constr		
Dept. of Transportation	DOT	Constr		
Information Tech. Agency	ITA	Constr		\$ 10,000 Prop 40
Utilities	DWP, Gas, Phone, etc.	Constr		\$ 100,000 Prop 40

Land Acquisition E170443L				
Real Estate (BOE)			Land Acq	\$ -
Real Estate (RAP)			Land Acq	\$ 10,000 City RAP Staff
General Services			Land Acq	\$ 10,000 Prop 40
Site Assessment			Land Acq	\$ 11,000 Prop 40
Purchase Costs			Land Acq	\$ 100 Prop 40

TOTAL PROJECT COST \$7,171,000

TOTAL FUNDING \$6,987,000

SHORT FALL \$184,000

	TOTAL FUNDING	Total Funding Allocated
Proposition K Competitive Grant =	\$1,000,000	\$1,000,000.00
Proposition 40 Urban Park Grant =	\$3,000,000	\$3,000,000.00
Capital Improvement Expenditure Program Fund =	\$1,067,000	\$1,067,000.00
Recreational Sites and Facilities Fund =	\$1,245,000	\$1,242,000.00
		\$6,309,000.00

City RAP In Kind	\$30,000	\$30,000.00
City BOE In Kind	\$405,000	\$405,000.00
City BCA In Kind	\$240,000	\$240,000.00

SHORT FALL

NOTE: Prop 40 cap on Soft Costs (25% = \$750,000) All Soft Cost Soft costs allocated to Prop 40: \$457,900.00 \$722,900.00

Insurance Haz Mat Land Acq \$157,872
CASH FLOW

APPROVED BY:	
Project Manager _____	Date _____
Program Manager _____	Date _____
Revision Date _____	

FOR INFORMATION ONLY

CITY OF LOS ANGELES
DEPARTMENT OF RECREATION AND PARKS

October 24, 2012

TO: BOARD OF RECREATION AND PARKS COMMISSIONERS
FROM: 
JON KIRK MURKI
General Manager
SUBJECT: EAST WILMINGTON GREENBELT COMMUNITY CENTER UPDATE

BACKGROUND:

On August 9, 2006, the Board of Recreation and Park Commissioners (Board), through Board Report No. 06-223, gave preliminary approval to enter negotiations with Union Pacific Railroad Company (UP) to acquire property located at 845 North Sanford Avenue (APN 7425-011-803 & 804). The property measures approximately 2.43 acres and was intended to be developed with recreational improvements which included sports fields, sports lighting, bleachers, picnic tables, landscaping and a small parking lot within a secure, fenced setting.

Initially, the UP wanted to sell the property to the City for \$1,200,000. During the course of the City's due diligence investigation, it was discovered that the property had significant soils and groundwater contamination that needed to be cleaned up. In partial recognition of the need for environmental cleanup, the UP agreed to sell the property to the City for \$100. On June 4, 2008, the Board, through Board Report No. 08-164, approved the execution of a Purchase and Sale Agreement. During negotiations, Department of Recreation and Parks (Department) staff and UP reached an impasse regarding liability, indemnification, additional environmental testing and information on the past use and present condition of the site. It became apparent that the issues faced by Department staff were of a nature not typically experienced in park acquisitions; therefore, further direction from the Board was sought.

On June 18, 2008, the Board, through Board Report No. 08-189, directed Department staff to continue with negotiations with UP. The Board insisted the Purchase and Sale Agreement for the subject property not expose the Department to any current or future liabilities that exceed the approximate \$5,400,000 budgeted for this project. Staff continued negotiations with UP, however, the impasse remained.

Project Funding Shortfall of \$1.9 million

There is a total of \$5,367,530 from Proposition 40, Proposition K, and Capital Improvement Expenditure Program available for the project. As indicated previously, there is soil and groundwater contamination which must be removed and cleaned up. It is estimated that this will cost approximately \$3,500,000. The Project Manager for the Department of Public Work, Bureau of Engineering estimates that remediation and development costs will total nearly \$7,310,000. There is a projected shortfall of \$1,900,000 for the project. In 2009, there were no identified sources of funds to cover this.

Grant Requirements/Deadlines

In 2009, the Proposition 40 grants had a completion deadline of June 30, 2010. The deadline requires that the recreation project be complete, open to the public and all accounting documentation submitted to the State. Due to the delays in the acquisition, staff could not complete the requirements within the deadlines.

Environmental Remediation

As indicated above, the site has significant soil contamination, including widespread, high concentrations of arsenic and moderate amounts of lead, heavy hydrocarbons and Poly Chlorinated Biphenyls (PCB). Remediation will involve excavating the upper six (6) feet of soil, removing from the site, and treating the remaining soil with a cement-like substance that will harden and permanently bind metals in place. Then the site is capped with a two-foot replacement layer of clean soil. It is estimated that this will cost an additional \$2,500,000.

It is also known that the groundwater is contaminated with gasoline-related hydrocarbons such as benzene. Off-site sources of contamination are also possible. The State Department of Toxic Substances Control (DTSC) would require groundwater sampling plus a feasibility and pilot study of the proposed remedial methods. DTSC and City staffs were in the process of drafting an action plan that included five (5) years of groundwater monitoring. It is estimated that this will cost an additional \$1,000,000.

Compliance with CEQA

In 2009, City staff prepared a draft Mitigated Negative Declaration (MND) for release to public agencies and others for the required thirty (30) day public review and comment. This document was not released due to the termination of the donation agreements.

It has come to the attention of City Staff that UP is still interested in donating the property to the City for the creation of recreational improvements. There have also been developments concerning the issues faced by City staff in 2009 that may make the acquisition more acceptable to the Board today. These developments are as follows:

Project Funding Shortfall of \$1,900,000

At this time, the Bureau of Engineering is in the process of revising the budget for this project in light of the various developments surrounding the acquisition. It has been estimated that there should be enough funds available to complete the clean-up and development of the site into a sportsfield facility. The final revised budget will be presented to the Board for consideration as they become available.

Grant Requirements/Deadlines

As indicated above, the Proposition 40 grant required completion of the project by June 30, 2010. Subsequent to the Board's action on October 2009, the State granted an extension whereby the new project completion date is June 30, 2015. Under the State guidelines, the actual construction project must be completed no later than January 2015. City staff estimates that should the City obtain possession of the property by May 2013, the project can be completed by December 2014.

Environmental Remediation

At this time, the environmental remediation requirements remain the same. Both soil and groundwater clean-up is still required. Based on revisions to original cost estimates and other budget savings which BOE will determine, there may be some cost savings from original estimate of \$3,500,000 to do this work. This will help in the funding shortfall. Additional information can be provided when the Bureau of Engineering completes its revised budget.

Compliance with CEQA

The previous draft MND envisioned certain improvements to be built on the property. Due to the decision of UP to sell the parcel encroached upon by its adjacent neighbor, the footprint available for development has been reduced. The reduction in scope will have to be addressed in a new draft MND. Upon completion, the revised MND will have to be released to public agencies and others for the required thirty (30) day public review and comment. Upon the completion of this process, the MND will be presented to the Board for adoption.

APPROVED
AUG 09 2006

REPORT OF GENERAL MANAGER

NO. 06-223

DATE August 9, 2006

BOARD OF RECREATION
and PARK COMMISSIONERS

C.D. 15

BOARD OF RECREATION AND PARK COMMISSIONERS

SUBJECT: EAST WILMINGTON GREENBELT COMMUNITY CENTER - ACQUISITION
FOR EXPANSION

J. Combs _____
H. Fujita _____
S. Huntley _____
B. Jensen _____

J. Kolb _____
F. Mok _____
Regan _____
Shull _____

Due for M.S.

Robert H. Jensen (Pa)
General Manager

Approved *AS amended*

Disapproved _____

Withdrawn _____

RECOMMENDATION:

That the Board:

1. Authorize staff to assist the Office of Council District Fifteen, the Department of General Services, the Office of the City Attorney and the Bureau of Engineering in negotiating the acquisition of property with the tentative address of 845 N. Sanford Avenue in the community of Wilmington, said property being owned by Union Pacific Railroad;
2. Approve the filing of a Certificate of Compliance and any other documents needed in order to separate legally, for Union Pacific's retention, the property segment containing an underground pipeline and an above-ground, GATX valve manifold and pump station or alternatively, to propose granting an easement of this segment to Union Pacific, provided that the resulting risk of liability is acceptable to the City's Risk Manager;
3. Authorize staff to assist the Bureau of Engineering and the Environmental Affairs Department in identifying and obtaining funds to implement the remediation of soil contaminates disclosed in the Phase II assessment; and,
4. Direct staff to report to the Board on the results of these activities and make further recommendations on the terms of the Purchase and Sale Agreement before committing to acquire the property.

REPORT OF GENERAL MANAGER

PG. 3

NO. 06-223

contaminated soil and then importing clean soil to place on top, compacted to a depth of two to three feet. Doing so will provide for drainage and the installation of an irrigation system for the site; the cap will keep water from causing the contaminants to migrate. The cost of this remediation is estimated at \$1,000,000 to \$1,500,000 and includes the new soil. The estimate does not include building a retaining wall that will likely be needed because of the resulting elevation of the ground. Estimates for the retaining wall range from \$750,000 to \$1,500,000.

The design for the site will include prefabricated restrooms totaling 600 square feet. Otherwise, kids and others playing at the site would need to cross Sanford Avenue to use restrooms at the Community Center. By choosing a modified restroom design, the Bureau of Engineering will be better able to accomplish the methane remediation needed in order to place a restroom near the two new fields. (Methane remediation is typically required for structures since they allow the gas to concentrate and not dissipate below "actionable" levels. Methane remediation can include a methane barrier, venting and if required, active monitoring of methane levels.)

Various aspects of the remediation may require certification by a City geotechnical engineer, approval from the Grading Division of Building and Safety and notification to the state Department of Toxic Substances Control. The Environmental Affairs Department will seek grant funding from various "brownfield" programs. The Phase II assessment was funded by the Environmental Protection Agency, which approved the sampling techniques.

The draft PSA states that the sale of the property is predicated on the City's accepting the site "as it is" with full knowledge of its past use as a railroad right-of-way. Union Pacific has received the Phase II assessment and will be asked to reduce the sales price or otherwise contribute to the required remediation.

Pipeline Segment

Along the northern edge of Parcel No. 7425-011-803, there are three underground pipelines licensed by Union Pacific for use by the firm of Kinder Morgan Energy Partners. There is also an attached, above-ground GATX valve manifold and pump station. This equipment is part of a system conveying gasoline from the Los Angeles harbor to a terminal in Carson.

Union Pacific wishes to continue the revenue stream obtained from Kinder Morgan. In an earlier version of the PSA, the City was to acquire the entire parcel and grant Union Pacific an easement. However, the indemnification and liability provisions in the PSA were judged too onerous by both the City Attorney's Real Property and Environment Division and the Department's Risk Manager. There was, moreover, the separate liability involved with the third-party agreement with Kinder Morgan. Instead, it was proposed that the legal description of the parcel be modified to separate a segment of approximately 370 by 25 feet along the northern edge and create a new legal parcel by

REPORT OF GENERAL MANAGER

PG. 5

NO. 06-223

Year 11(for site development only). Given these estimates of costs and available funding, the potential shortfall for the proposed acquisition, remediation and development of the site ranges from \$2,000,000 to \$3,000,000.

Report prepared by Joan Reitzel, Senior Management Analyst in Real Estate and Asset Management.

APPROVED
JUN 04 2008

REPORT OF GENERAL MANAGER

NO. 08-164

DATE June 4, 2008

BOARD OF RECREATION
and PARK COMMISSIONERS

C.D. 15

BOARD OF RECREATION AND PARK COMMISSIONERS

SUBJECT: EAST WILMINGTON GREENBELT COMMUNITY CENTER - ACQUISITION
FOR EXPANSION

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

K. Regan
General Manager

Approved _____ Disapproved _____ Withdrawn _____

RECOMMENDATION:

That the Board:

1. Adopt the Resolution, on file in the Board Office, 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 having Assessor Parcel Numbers of 7425-011-803 and -804 (also collectively known as UP Folder No. 1794-76);
2. Authorize the Board President and Secretary to execute a Purchase and Sale Agreement (PSA) in accordance with the terms outlined in the Summary of this report;
3. Authorize the Board Secretary, upon the successful close of escrow, to accept the Grant Deed to the parcels, which are to be set apart and dedicated as park property in perpetuity;
4. Authorize the Board Secretary to express appreciation to UP on behalf of the Board for the donation of this acreage for public recreational use;
5. Direct staff to assist the Bureau of Engineering, Environmental Affairs and other entities with site remediation;

REPORT OF GENERAL MANAGER

PG. 3 NO. 08-164

Agency (EPA) for use at the site provided that escrow closes before June 30, 2008. City staff will work to meet this deadline if the Board approves the acquisition. If the deadline cannot be met, City staff will reapply for funding in the next EPA grant cycle.

Recently and perhaps in recognition of the environmental disclosures, UP agreed to donate the property to the City; therefore, the acquisition costs consist of a \$100 token purchase price plus escrow and title-report fees of less than \$25,000. This sum is available in Fund No. 205, Department No. 89, Account No. WV03 (Proposition 40, Urban Parks). The project manager from the Bureau of Engineering (BOE) estimates that site development, including design costs, will total approximately \$2.9 million. The available funding from Proposition 40 is \$3.2 million. There is also \$1 million from the competitive Proposition K program (\$100,000 for Fiscal Year 09/10 and \$900,000 for Fiscal Year 10/11) and \$1 million from the City's Capital Improvement Expenditure Program, to be appropriated by Public Works.

With the EPA funding, the total amount available for this project is \$5.4 million, which is the anticipated cost of site remediation and design/development. The BOE project manager believes that the City can meet the Proposition 40 grant-liquidation deadline of June 30, 2010. By then, the new amenities must be ready for public use with all required documentation submitted to the State. On May 29, 2008, the "L.A. for Kids" Steering Committee recommended that the project proceed and that BOE begin design activity upon the opening of escrow.

The revised PSA will contain a provision for an access easement to UP for the pipeline segment and above-ground equipment. Other provisions are technical, such as escrow instructions and the inclusion of an American Land Title Association survey. As for liability, UP has agreed to provide a statement that they do not know of any legal impediment to the City's acquiring the property, such as the potential for future litigation. The revised PSA will also have wording to confirm the acceptable limits of the City's liability.

Departmental environmental staff has determined that the proposed project consists of the acquisition of vacant land in order to preserve it as open space for park purposes and to provide for outdoor recreation as an adjunct to the East Wilmington Greenbelt Community Center, located at 918 North Sanford Avenue. The project is exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Article III, Section 1, Class 11 (3, 6) and Class 25 (5) of the City CEQA Guidelines.

The Office of Council District Fifteen, the Assistant General Manager of Operations East and the Superintendent of Pacific Region concur with staff's recommendations.

APPROVED
JUN 18 2008

REPORT OF GENERAL MANAGER

NO. 08-189

DATE June 18, 2008

BOARD OF RECREATION
and PARK COMMISSIONERS

C.D. 15

BOARD OF RECREATION AND PARK COMMISSIONERS

SUBJECT: EAST WILMINGTON GREENBELT COMMUNITY CENTER - DIRECTION TO STAFF ON WHETHER TO PROCEED WITH THE ACQUISITION FOR EXPANSION

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

with direction to staff - see attached. (6/18/08)

[Signature]
General Manager

Approved _____ Disapproved _____ Withdrawn _____

RECOMMENDATION:

That the Board direct staff with respect to continuing or ceasing activity intended to acquire, remediate and develop two adjacent parcels totaling 2.43 acres and owned by Union Pacific (UP) Railroad as described in Resolution No. 10237, adopted by the Board at its meeting of June 4, 2008 (Report No. 08-164).

SUMMARY:

On June 4, 2008, the Board gave final approval to acquire two vacant parcels (APNs 7425-011-803 and -804, UP folder 1794-76) in the community of Wilmington, across Sanford Avenue from the Department's new community center. At the time of seeking this approval, Department and other City staff had concluded that a mutually acceptable Purchase and Sale Agreement (PSA) could soon be executed. Staff also thought that the City had estimated accurately the tasks and costs of the site's environmental remediation, given the expectation that the final terms of the PSA would reflect a minimally acceptable, limited level of future liability for the site. Subsequent communications with UP's real estate staff on certain terms of the PSA indicate that further disclosure to the Board is warranted with further direction sought concerning the acquisition. The issues and UP's positions are outlined below. UP indicated on June 10, 2008, that these positions are final. They continue to agree to donate the two parcels, totaling 2.43 acres, for the nominal sum of \$100. For this reason, the most recent versions of the PSA have been titled a "Donation Agreement".

REPORT OF GENERAL MANAGER

PG. 3

NO. 08-189

It is unclear to what extent the City would have effective use of the surface of the pipeline segment or easement, which occupies about a tenth of the total UP site. The transfer document specifically focused on the segment forms a separate Donation Agreement, recently developed by UP and labeled "2504-65". Most of the terms match those in the original Donation Agreement, which is labeled "1794-76" and concerns the rest of the UP property; however, there are severe restrictions on the City's future use of the easement's surface.

Article 1 (a, b) of Donation Agreement No. 2504-65 states that in addition to leaving the pipeline easement unencumbered by structures, the City cannot "make any improvement" to the easement "without the prior written approval of Seller, its successors and assigns" as well as the approval of the two private firms having a license agreement or lease with UP and their "successors and assigns". The City is not to "interfere in any manner with the rights" of these two firms contained in their agreement/lease with UP. Finally, the City is forbidden to fence off the easement, including the above-ground valve manifold and pump station; this prohibition will leave the equipment vulnerable to vandalism and accidental damage from the general public.

A literal interpretation of these terms would keep the City from initially landscaping the surface of the easement for passive public use unless the City obtains written approval from all three entities. Taken together, these sections have the potential for creating onerous operational requirements for the City at the same time that the City is to retain all liability for any future condition of the easement.

Non-Disclosure or Submittal of Documents

Some time ago, the City Attorney requested that UP send documentation concerning any complaints or lawsuits, hazardous materials, leases and other agreements, etc., pertaining to the property's past use and present condition. There was no response from UP. In May 2008 the City first learned about the existence of two current agreements affecting the pipeline segment; one is with Phillips Petroleum, and the other is with Kinder Morgan. UP has declined to make these documents available to the City. UP has also been most concerned about the City's not disclosing to a third party environmental information gained from the Phase II assessments; for example, UP did not want the City to voluntarily seek to cooperate with the California Department of Toxic Substances Control on the development of a remediation action plan.

UP stated in a separate document on June 10, 2008, that they do not know of any legal impediment to the City's acquiring the property, including any relevant court actions. However, the City Attorney learned of Case No. BC 319170 filed in Los Angeles Superior Court in May 2006 in which UP is the plaintiff and the firms of Santa Fe Pacific Pipelines and Kinder Morgan are the defendants. The summary refers to an "ongoing dispute concerning Union Pacific's production of documents...concerning environmental contamination and/or clean-up on or adjacent to Union Pacific's (or its predecessor's) right-of-way." Attached to the summary are three lists of sites covered by the case. Several of those in Los Angeles seem unrelated to the Wilmington property, but it is not possible to determine the location of all the City citations. This case seems ongoing and

REPORT OF GENERAL MANAGER

PG. 5 NO. 08-189

accommodate the two sports fields, which are a requirement of the "Urban Park" grant. If the City does not acquire the UP property, the \$3 million in competitive Proposition 40 funds will be lost. The remaining \$300,000 in Proposition 40 funds can be used for another project at the discretion of Council District Fifteen. Even if the City does acquire the UP property, the need to test and monitor for groundwater contamination may delay the start of site development and hinder its progress so that the project could not be completed by the 2010 close-out deadline for the "Urban Park" grant.

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

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 <i>for M.S.</i>

[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.

REPORT OF GENERAL MANAGER

PG. 3

NO. 08-229

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.

REPORT OF GENERAL MANAGER

PG. 5

NO. 08-229

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

REPORT OF GENERAL MANAGER

PG. 7

NO. 08-229

FISCAL IMPACT STATEMENT:

The potential cost of groundwater remediation may exceed the recent estimate of \$1 million. 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.

APPROVED

REPORT OF GENERAL MANAGER

OCT 3 2008

NO. 08-276

DATE October 3, 2008

BOARD OF RECREATION
and PARK COMMISSIONERS

C.D. 15

BOARD OF RECREATION AND PARK COMMISSIONERS

SUBJECT: EAST WILMINGTON GREENBELT COMMUNITY CENTER - ACQUISITION OF PROPERTY FOR EXPANSION AND DESIGN BUILD PROCESS FOR DEVELOPMENT

R. Adams	_____	J. Kolb	_____
H. Fujita	_____	F. Mak	_____
S. Huntley	_____	K. Regan	_____
V. Israel	_____	*M. Shull	<u>Three fields</u>

[Signature]
General Manager

Approved _____

Disapproved _____

Withdrawn _____

RECOMMENDATION:

That the Board:

1. Authorize the execution of two Donation Agreements, Nos. 1794-76 and 2504-65, substantially in the form on file in the Board Office; and,
2. Authorize the General Manager to implement a Design Build Process, in consultation with the City Attorney, for the development of the parcels upon execution of the Donation Agreements.

SUMMARY:

Since mid-2005, the City has been negotiating with Union Pacific (UP) for the acquisition of two adjacent, vacant parcels across Sanford Avenue from the new East Wilmington Greenbelt Community Center. The parcels total 2.43 acres and have the address of 845 North Sanford Avenue. The Assessor Parcel Nos. are 7425-011-803 and -804. The Community Center's site is too small for sports fields or an outdoor play area, a situation that could be remedied by acquiring the UP property.

REPORT OF GENERAL MANAGER

PG 3

NO. 08-276

agencies on a soil remediation plan and a groundwater testing/remediation plan. The City also seeks the ability, upon obtaining written permission from UP and its lessee, to fence and thereby restrict public access to the above-ground petroleum equipment or to the pipeline segment as a whole.

On September 30, 2008, Department staff met with project staff of the Bureau of Engineering (BOE) and the Environmental Affairs Department (EAD) in order to reconfigure the scope and time line for site development. The intent is to meet a Proposition 40 "Urban Parks" deadline of March 31, 2010. By then, the amenities proposed in the grant application must be completed, with the site open to the public and all documentation filed with the State. Unless the City obtains legislative relief from this deadline, it cannot be extended.

The in-house meeting produced several action items. Since the proposed modular restrooms are not required under the Proposition 40 grant, their construction will be postponed. The security lighting and parking lot can be reconfigured for simpler installation. The drafting of remediation documents will begin soon after escrow opens. Staff also plans to present a Mitigated Negative Declaration to the Board in January 2009.

The most significant project change is to consult with the City Attorney to initiate the appropriate process for a design/build contract rather than to have the project's design completed by BOE with a bid/award process for construction. Staff plans to award a contract to a design/build team in January 2009. The tactic is expected to save over three months in development time and is not expected to increase total costs. With these revisions, project staff expects to meet the current Proposition 40 deadline.

BOE staff believes the development project, including soil remediation, to be fully funded. EAD plans to apply for a \$200,000 grant from the federal Environmental Protection Agency to offset costs of groundwater remediation. Soil remediation must precede site development, but BOE geotechnical staff believes that groundwater testing and remediation will not interfere with construction at the site. Groundwater remediation, if any, will be accomplished over a longer period in order to enable the City to identify any subsequent funding that may be needed. Omitting the modular restrooms may result in savings to apply to the remediation.

In addition to the Office of Council District Fifteen, the Assistant General Manager of Operations West and the Superintendent of Pacific Region concur with staff's recommendations.

FISCAL IMPACT STATEMENT:

The potential risks of the City's assuming total liability for the site and indemnifying UP were included in Board reports cited at the beginning of the Summary. Staff has restructured the site development and believes that the City can meet the current Proposition 40 deadline. If not the City will be required to repay whatever grant funds were spent up to the total award of \$3,300,000.

APPROVED
OCT 21 2009

REPORT OF GENERAL MANAGER

NO. 09-272

DATE October 21, 2009

BOARD OF RECREATION
and PARK COMMISSIONERS

C.D. 15

BOARD OF RECREATION AND PARK COMMISSIONERS

SUBJECT: EAST WILMINGTON GREENBELT COMMUNITY CENTER - TERMINATION
OF TWO REAL PROPERTY DONATION AGREEMENTS WITH UNION
PACIFIC RAILROAD COMPANY AND REOPENING OF ESCROW FOR THE
CENTER'S EXPANSION

R. Adams	_____	J. Kolb	_____
H. Fujita	_____	F. Mok	_____
S. Huntley	_____	K. Regan	_____
V. Israel	_____	*M. Shull	<u>RAH</u>

[Signature]
General Manager

Approved _____

Disapproved _____

Withdrawn _____

RECOMMENDATION:

That the Board:

1. Authorize staff to give notice to Union Pacific Railroad Company (UP) and the Escrow Holder, which is Chicago Title Company, that the City is electing to terminate Donation Agreements Nos. 1794-76 and 2504-65 and the related escrow concerning the acquisition of property owned by UP, Assessor Parcel Numbers (APN) 7425-011-803 and 7425-011-804;
2. Authorize staff to request the assistance of other City entities, including the City Attorney, the City's negotiator, and the Bureau of Engineering, in drafting, renegotiating and executing successor Donation Agreements and Escrow Instructions;
3. Authorize staff to request the assistance of the State and other City entities in gaining approval for a two-tier Remedial Action Plan with Phase I, involving initial soil remediation, to be implemented upon the close of escrow and to reflect the City's intent to leave the site fenced and temporarily closed to public use and Phase II, involving the completion of this remediation plus groundwater treatment/monitoring, to be implemented upon receipt of full project funding; and,

REPORT OF GENERAL MANAGER

PG. 3 NO. 09-272

This action reinstated the Board's adoption of the Resolution approving the acquisition. Attempts to negotiate with UP continued. The City project team simplified the design for site development so that even with the acquisition delays, the construction schedule met grant deadlines. The team also planned for a "design/build" contract in place of the customary "bid/award" project delivery method. On October 3, 2008, the Board approved staff's recommendation that the acquisition proceed with the new strategy (Report No. 08-276).

Transaction Status and City's Election to Terminate:

Transaction terms are in two executed Donation Agreements, which superseded the Purchase and Sale Agreement. Donation Agreement No. 2504-65 (City Contract No. 115263) involves a segment 25-feet wide along the northern border of the property; the segment has two underground petroleum pipelines and above-ground equipment that UP leases to another firm. UP will retain an easement over this segment and continue receiving revenue from the third-party use. The other Donation Agreement, No. 1794-76 (City Contract No. 115262), concerns the rest of the adjacent UP site. Escrow opened on March 31, 2009.

Escrow is supposed to close within 240 days or by November 25, 2009; however, Article 5, Sections 4-6 of both Agreements permits the City to terminate them without penalty within 210 days of opening escrow. This is the "feasibility review period". The City may determine that it is not feasible to comply with terms in the Agreements involving environmental remediation and funding or other development issues. If it exercises the option to terminate, the City must deliver written notice to UP by October 26, 2009 (Section 12.9 of both Agreements).

If the City does not exercise the option by the 210-day deadline, the City is obligated to fulfill all the terms of the Agreements by the closing date of escrow or seek UP's permission to extend the date. Given the difficulty the project team has encountered in prior negotiations, it seems best to protect the City's interests by giving notice to UP disapproving of matters set forth in the City's feasibility review. The notice would state to UP and the Escrow Holder that the City has elected to terminate the Agreements. Staff also seeks Board authorization to negotiate successor Agreements with new, extended deadlines. In the meantime, there are the following issues to resolve.

Issue: Project Funding Shortfall and Grant Requirements/Deadlines

The available project funding is as follows: \$3 million in the Proposition 40 Urban Park program, \$150,000 each in discretionary Proposition 40 Per Capita and Roberti-Z'berg-Harris (RZH) grants, \$1 million from the fifth competitive cycle under Proposition K, and \$1,067,530 from the Capital Improvement Expenditure Program (Council File No. 07-2877-S3). These sources total \$5,367,530. The Project Manager from the Bureau of Engineering estimates that remediation and development costs will be nearly \$7,310,000. The sum includes \$2.5 million for soil and \$1 million for groundwater cleanup. The project shortfall is at least \$1.9 million and will increase if costs for environmental remediation exceed the estimates.

REPORT OF GENERAL MANAGER

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2504-65). Previous Board Reports noted that environmental studies of the rest of the site have disclosed significant soil contamination, including widespread, high concentrations of arsenic and moderate amounts of lead, heavy hydrocarbons and PCBs. Remediation of the metals will require some disposal at a hazardous landfill, but the site's size and the estimated remediation costs have caused City geotechnical staff to propose an in-place plan called "fixation and capping". The plan involves excavating the upper six feet of soil, removing from the site the most contaminated portion of this soil and treating the rest with a cement-like substance that will harden and permanently bind the metals in place. Then the site is capped with a two-foot replacement layer of clean soil.

City geotechnical and environmental staff have received preliminary, informal approval of this plan from the State Department of Toxic Substances Control (DTSC). The plan is expected to cost \$2.5 million and does not include groundwater cleanup. Other work such as drainage improvements, final grading and installation of a retaining wall will become part of site development and be included in those costs.

A groundwater assessment was completed after October 2008, when staff last reported to the Board on the project. The groundwater is contaminated with gasoline-related hydrocarbons such as benzene. Off-site sources are possible. One source is suggested by the fact that contaminants were found in the southwestern part of the UP site near a privately owned, vehicle storage/scrap yard. The highest concentrations were found near the functioning, underground pipelines at the northern end of the site. If the City pursues the acquisition, UP should be asked to require their lessee, before the close of escrow, to conduct pressure and other tests to assess the physical integrity of the pipelines. Given staff's past experience, UP is unlikely to grant the request.

DTSC may require more groundwater sampling plus a feasibility and then a pilot study of proposed remedial methods. DTSC and City staffs are drafting an action plan that includes five years of groundwater monitoring, which seems an adequate period given the City's current data. City staff estimates that total costs of this groundwater plan may be \$1 million.

Soil remediation must precede site development. Groundwater remediation and monitoring can begin before site development and co-exist with it and with public use of the site. Staff can use recessed wells and piping and locate a small, fenced treatment unit to one side. The current estimate of \$3.5 million for implementing soil and groundwater plans could increase 20-25% if the DTSC requires additional study or tasks. The agency may do so since the storage/scrap yard has encroached onto the UP site, preventing its complete environmental characterization. The added costs could range from \$700,000 to \$900,000.

Because of the overall funding shortfall and the fact the DTSC has not yet approved a formal, complete remediation plan, staff recommend first seeking approval for a modified plan. It would include securing the site and initially not providing for public use. The lesser remediation can be funded by the nearly \$900,000 remaining from the allocation from the Capital Improvement Expenditure Program.

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

FISCAL IMPACT STATEMENT:

The budget shortfall for the project, including current remediation costs and site development, is estimated at \$1,950,000. If DTSC requires work in addition to that already proposed in initial briefings, the shortfall could increase to \$2.8 million. The increased estimate includes some costs for cleaning up the area under encroachment but does not include the removal of the vehicles and scrap since staff has no basis for assessing these costs.

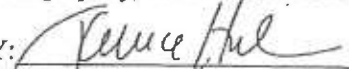
There is also uncertainty about obtaining a sufficient extension of the current deadline for the Proposition 40 Urban Park grant. Staff recommends that, at present, the City not use these funds because of being unable to meet the requirement to have a completed project, ready for public recreational use, by the current deadline. If this situation occurs, the City will have to repay whatever grant funds were spent. There is a similar project-completion requirement for the \$1 million in the Proposition K grant although program guidelines make the deadline more flexible.

This report was prepared by Joan Reitzel, Senior Management Analyst in Real Estate and Asset Management, Planning and Construction Division, with the assistance of project personnel from the Department's Grants Administration and from the Bureau of Engineering.

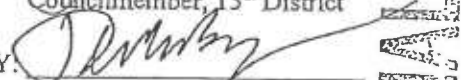
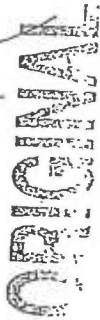
I THEREFORE MOVE that the Council determine, as provided in Section 54954.2(b)(2) of the Government Code, and pursuant to Rule 23 of the Rules of the City Council, that there is a need to take immediate action on this matter AND that the need for action came to the attention of the City Council subsequent to the posting of the agenda for today's Council meeting.

IFURTHER MOVE that pursuant to Charter Section 245(b), the Council hereby RESOLVE to waive its review of the actions taken by the Board of Recreation and Parks Commissioners at the Board meeting on October 21, 2009, relative to the termination of two Donation Agreements and escrow with the Union Pacific Railroad Company for the acquisition of the property near the East Wilmington Greenbelt Recreation Center, authorization to draft and execute successor Donation Agreements and Escrow Instructions with extended deadlines for this property, and related matters.

PRESENTED BY:


JANICE HAHN
Councilmember, 15th District

SECONDED BY:

October 23, 2009