

**Council Meeting: March 18, 2008****SUBJECT: Dedicated Park Land in East Sunnyvale ITR Neighborhood****REPORT IN BRIEF**

On February 27, 2006, the City Council approved a 242-unit townhouse development at the corner of Duane Avenue and DeGuigne Drive, on a portion of the rezoned East Sunnyvale Industrial to Residential (ITR) study area (AMD site). As part of the proposed project, the applicant offered an approximately 1-acre parcel of land, adjacent to the future townhouses, to be utilized by the City as a park. At the time of project approval, the City accepted a 14-month time period to determine if it would accept the 1-acre park or would accept park-in-lieu fees instead. Staff is recommending that the City accept the fees in-lieu of dedication, to be utilized for future park land acquisition and improvements to serve the ITR planning area as these will better meet the community's park needs.

**BACKGROUND**

When the site for the 1-acre park was first offered, it was to be incorporated into a larger 5-acre park to be assembled as more ITR land was converted to residential use on adjacent lots. The proponents of the ITR study provided the City with a conceptual plan for a 5-acre centralized neighborhood park that would be accessed by a number of linear parks or landscaped walkways that led to the park from around the ITR neighborhood.

The entire 160-acre ITR study area was not adopted by Council. Instead, Council adopted a modified/reduced 64-acre ITR area and in doing so eliminated two of the four industrial lots (adjacent to the offered 1-acre park) from the ITR General Plan amendment. These adjacent lots could have helped make up the remainder of the conceptual 5-acre park, but the opportunity to assemble a 5-acre park, in a configuration that would support playing fields and courts, no longer exists unless industrial land is purchased instead of dedicated as part of a residential development. A contingency site plan for 20 additional townhouses on the park site was approved by Council in case the offer for the park land was declined.

The previously mentioned conceptual park plan was not adopted as part of the ITR General Plan Amendment action. Instead, the Council directed staff to prepare a land plan for the newly adopted 80-acre ITR area that would determine appropriate future park space, future public street locations,

locations for some neighborhood-serving commercial space and a program for neighborhood pedestrian amenities.

### **EXISTING POLICY**

The following goals and policies from the open Space and Recreation Sub-Element pertain to this analysis:

#### **GOAL 2.2A. OPEN SPACE**

The City strives to provide and maintain adequate and balanced open space and recreation facilities for the benefit of maintaining a healthy community based on community needs and the ability of the city to finance, construct, maintain, and operate these facilities now and in the future.

**Policy 2.2.A.8.** Support the acquisition or joint use through agreements with partners of suitable sites to enhance Sunnyvale's open spaces and recreation facilities based on community need and through such strategies as development of easements and right-of-ways for open space use, conversion of sites to open space from developed use of land, and landbanking.

**Policy 2.2.A.9.** Refrain from engaging in the development of open space and/or recreational facilities without prior assurance that ongoing maintenance needs will be addressed.

### **DISCUSSION**

#### **Identified Park Deficiency**

Although the new ITR area is located near two outdoor recreation areas, the greater neighborhood including the residential area north of Duane Avenue has already been identified as a "gap" area lacking open space and recreational services. The East Sunnyvale ITR area is near the 14.52-acre Fair Oaks Park on Fair Oaks Avenue. Fair Oaks Park includes playing fields, a skate board park, a community building and a playground. There is also a 5.61-acre open playing field maintained by the City for use as a public open space at San Miguel School which is located north of the study area in the San Miguel neighborhood. However, as indicated in the 2006 Open Space and Recreation Sub-Element, the adopted 64-acre ITR area is outside all park service areas (both park and school fields). Therefore, the new ITR neighborhood which could include approximately 1,600 new housing units will be lacking in local accessible open space and would put additional strain on an area that has been identified as falling short of open space for existing residents.

For comparison the City has a 1-acre park at Victory Village on Fair Oaks Avenue at Arques Avenue and a .69-acre park at Cannery Park at California Avenue and Pajaro Court.

If the park is not accepted, park in-lieu fees would be paid. If the 1-acre park area is used for townhouses, the project would result in a total of 262 units with an estimated park fee of \$2,079,968. The fees can be used for park space in or serving the residents of the development as directed by Council, but in a manner to also meet the need for larger active space.

	<b>Number of Dwelling Units</b>	<b>Park Dedication Required</b>	<b>Potential Park Area</b>	<b>In-Lieu Fee</b>
<b>Without park</b>	262	.59 acres	0 acres	\$2,079,968
<b>With park</b>	242	.54 acres	1 acre	\$0

Preparation of ITR Land Plan

As part of the ITR adoption, the Council directed staff to prepare a land plan to analyze the need for and the appropriate locations for pedestrian amenities, open space, and (potentially) neighborhood commercial areas. Staff has applied for a \$160,000 Caltrans Transportation Planning Grant for the land plan. The City’s required \$41,000 match for the grant would come out of the “Sense of Place” fee that has been charged to developers in the ITR area to achieve neighborhood pedestrian enhancements. The matching portion has already been collected. Staff will know the status of the grant in summer 2008. However, a determination on acceptance of the 1-acre park is required prior by April 2008. If the one-acre “pocket park” is not accepted, as part of the upcoming land plan, it will be important to identify areas and ideas to provide some landscaping relief for the new, relatively densely designed neighborhood.

Hazardous Soils Conditions

The condition of the soil was considered when determining whether to accept the offered 1-acre park. The East Sunnyvale ITR Environmental Impact Report stated that the development site in general (including the proposed park area) had elevated levels of the pesticide dieldrin above the residential preliminary remediation goal (PRG) and direct exposure Environmental Screening Level (ESL). The concentrations were limited to the southern property boundary (includes south portion of proposed park), in the upper two to three feet of soil. Also, elevated levels of halogenated volatile organic compounds (HVOC) including TCE and cis-1,2 DCE were discovered that exceeded the California Primary Maximum Contaminant Levels (MCL). The off-site source for the HVOCs in ground water at this site is due to releases in the areas designated by the Regional Water Quality Control Board (RWQCB) as the Stewart Drive Operable Unit (SDOU), and investigation and cleanup of ground water contamination in this area is ongoing.

The developer has met the requirements of the RWQCB. Two feet of clean dirt has been brought in recently to cover the park site. The hazardous materials issues thus far associated with the site were in regards to the potential for

escaping soil and water vapors that might concentrate in new structures covering the affected soils. Mitigations were taken to protect the new dwelling units from vapors collecting inside the units. These issues are not associated with an open air area like a park.

#### Potential Future Liability

Although the developer has accommodated the identified mitigation measures from the East Sunnyvale ITR EIR and the site is presumed to be acceptable by the RWQCB, this does not prevent other agencies from identifying the site as part of a future clean up area under their separate regulation. Once the City takes title to the park area, the City would become liable for issues related to contamination and become responsible for some or all of any required clean up that may be identified in the future even if the City sells it in the future. It should be noted that there will always be some level of risk associated with owning land in a former industrial area and former agricultural area throughout the City, and it needs to be determined when the need to acquire land outweighs the possible risk of a future liability.

There are some options the City could look into in regards to providing liability protection. The City could ask the developer to indemnify the City indefinitely. The City could also explore pollution liability coverage that would last the length of any clean up efforts.

#### Future Disposal of Unused Park Land

If the City accepts the park land and determines at a future date that it does not want a park at that site, the City could develop the land or sell it. In order to sell the land there are required procedures. The City would be required to offer the property first to non-profit groups such as affordable housing groups and then, after a request for offers, allow for a 60-day period for all interested parties to negotiate in good faith. The City may ask for fair market value and is not required to sell the property for less money. If this process fails to identify a buyer from special groups, the City can then dispose of the property in any manner it chooses.

It should be noted, however, that once the City accepts the 1-acre, landscaped park area from the developer, there will be a community expectation that the park will remain and potentially be developed further or expanded. This expectation will be particularly strong from new residents in the ITR area. This expectation/momentum from the community would need to be managed if the City sells the land in the future for some other use.

### **FISCAL IMPACT**

Accepting the park will result in long-term park maintenance costs of approximately \$16,200 per year. Declining the park will result in the developer paying approximately \$2,079,968 that can be utilized to meet park and recreation needs for the general neighborhood, but cannot be used for routine park maintenance.

### **PUBLIC CONTACT**

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, in the Council Chambers lobby, in the Office of the City Clerk, at the Library, Senior Center, Community Center and Department of Public Safety; posting the agenda and report on the City's Web site; and making the report available at the Library and the Office of the City Clerk. Owners of property in the original East Sunnyvale ITR study area were also noticed.

### **ALTERNATIVES**

The Council has two alternatives:

1. Accept the 1-acre dedicated park land.
2. Decline the offer for park land and accept park in-lieu fees.

### **RECOMMENDATION**

Staff recommends Alternative 2.

Staff finds that the 1-acre park would not meet the City's identified needs for active park space. Although the offered 1-acre park would provide a unique small, passive neighborhood open space and gateway, the City has identified a greater citywide need for larger, active, multi-purpose open space and playing fields. Although the project developer has offered to landscape the park, in the long run, the funds the City would use to maintain the small park could be better utilized to assemble and maintain a larger field or sports center to meet citywide needs. A park with baseball fields and larger playing fields would require 5-6 acres at a minimum. As previously stated, the opportunity to assemble a large regularly shaped park of this size in the subject location from dedicated residential land is no longer available due to the reduced ITR rezoning area. In order to assemble the full park in the originally planned location the City would need to purchase a large portion of park land from adjacent industrial land owners.

Staff recommends that the City decline the offer for the park and allow the developer to construct additional townhouses at the site as approved as an alternative by the original Special Development Permit. The project meets

required open space standards without the park. The City would collect over \$2,000,000 in park in-lieu fees to be used to meet park and open space needs for the ITR area and the greater San Miguel area. From the entire new ITR area the City can expect a minimum of \$12.7 million in park in-lieu fees. Any new park expenditures can be in line with findings from the Park of the Future study currently underway by the Parks and Recreation Department and with the land plan to be completed for the new ITR area. This could be assembled by requiring park land dedication from other developers in the new ITR area, purchasing land in another area near the ITR site (none currently identified) or purchasing adjacent industrial land for park purposes. Five acres of residential land purchased for parks will cost approximately \$20 million in today's dollars (\$96 per s.f. for residential land).

Staff believes that accepting this small park will be only marginal in meeting open space need and that accepting this 1-acre park area is not imperative, worth the risk of future liability in this case, and will not meet the community's need for active-use open space that a larger neighborhood park site would provide.

In order to assure that the City will be able to secure adequate park area to meet the City's needs, staff recommends that Council direct staff to conduct early discussions between the City and the two remaining land owners in the ITR area in order to increase the chances of acquiring adequate park area in the future and to determine potential liabilities associated with those properties based on past uses. Staff anticipates that issues/liabilities associated with past use of these lands would be the same as for the proposed 1-acre park but that more land may be able to be assembled to better meet the City's open space needs.

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### **Attachments**

- A. Map of proposed park area and adopted ITR area

