

**Council Meeting: June 25, 2013****SUBJECT: 955 Stewart Drive Park-Land Dedication Requirements - INFORMATION ONLY****BACKGROUND**

On August 13, 2012, the Planning Commission approved the planning application submitted by the Irvine Company for 955 Stewart Drive. The approval was for a Special Development Permit for 186 residential rental units, Vesting Tentative Map and Mitigated Negative Declaration. The project had a number of conditions of approval including the possible dedication and improvement of approximately 0.62 acres of property for public park purposes. The proposed park property is adjacent to the new City owned 1.0 acre park located at 545 Santa Real Avenue (Attachment A).

The 955 Stewart Drive Project had four conditions of approval related to the park proposal. In summary the park related conditions of approval state the following:

- Establish payment options for the park in-lieu fees and land dedication;
- The land will be free of contamination or hazardous material or will be mitigated below levels of concern for unrestricted public use;
- The developer would provide environmental insurance or an alternative method of indemnification for any environmental issues including ground water contamination or toxic plume; and
- All park improvements would be completed prior to occupancy of the residential units.

The City has established park-land dedication standards (Attachment B), and prior to acceptance of any land for park purposes, staff needs to make a determination as to whether it meets these requirements. In general the requirements are that any property taken for park-land purposes shall be clean and clear of any encumbrances. The key specific requirements for the 955 Stewart Drive site are that “any hazardous materials or constituents of concern on the property are below current Environmental Screening Limits (ESL)” and “Proposal of remediation and/or clean up measures so that all contaminants or constituents of concern can be demonstrated to be below any applicable federal or state regulatory agencies respective ESL for non-restricted residential use.”

**ANALYSIS**

City Staff and consultants have worked with the Irvine Company over a number of months reviewing the results of the environmental testing and proposed mitigations for the proposed park site. The environmental testing and analysis process consisted of a review of soil contamination, groundwater contamination,

and soil vapor contamination. Below is a brief summary:

- Soil contamination exceeded ESL levels but included an acceptable mitigation strategy to reduce the contamination below the ESL.
- The groundwater contamination exceeded drinking water maximum contaminant level; however the City did not anticipate or propose use of groundwater for drinking purposes.
- The results for soil vapor contamination showed that the site exceeds the ESL for non-restricted residential use for both Naphthalene and Benzene. No mitigation was feasible.

Since the proposed park-land cannot meet the City standard for soil vapor contamination, staff has determined that it should not be accepted as a city park.

Per the conditions of approval the project required a total park fee of approximately \$3.0 million or 1.00 acre of land dedication. The proposed park dedication satisfied a contribution of 0.62 acres at an approximate value of \$2.0 million. An approximate \$1.0 million in-lieu payment contribution satisfied the additional 0.38 acres required. Since the proposed park land would not be accepted by the City, the Irvine Company will be required to satisfy their entire park dedication requirements by paying approximately \$3.0 million in park in-lieu fees.

The 0.62 acre parcel could accommodate up to 16 dwelling units (with the Green Building Incentive) in a building type similar to those previously approved. The additional units would require a Special Development Permit and Planning Commission review. They would also be subject to the park in-lieu fees in place when the application is deemed complete by the City, which would be approximately \$370,000.

All fees are estimated and the final amount will be determined at time of payment.

Reviewed by:

Kent Steffens, Director of Public Works

Prepared by: Manuel Pineda, Assistant Director/City Engineer of Public Works

Reviewed by:

Hanson Hom, Director of Community Development

Approved by:

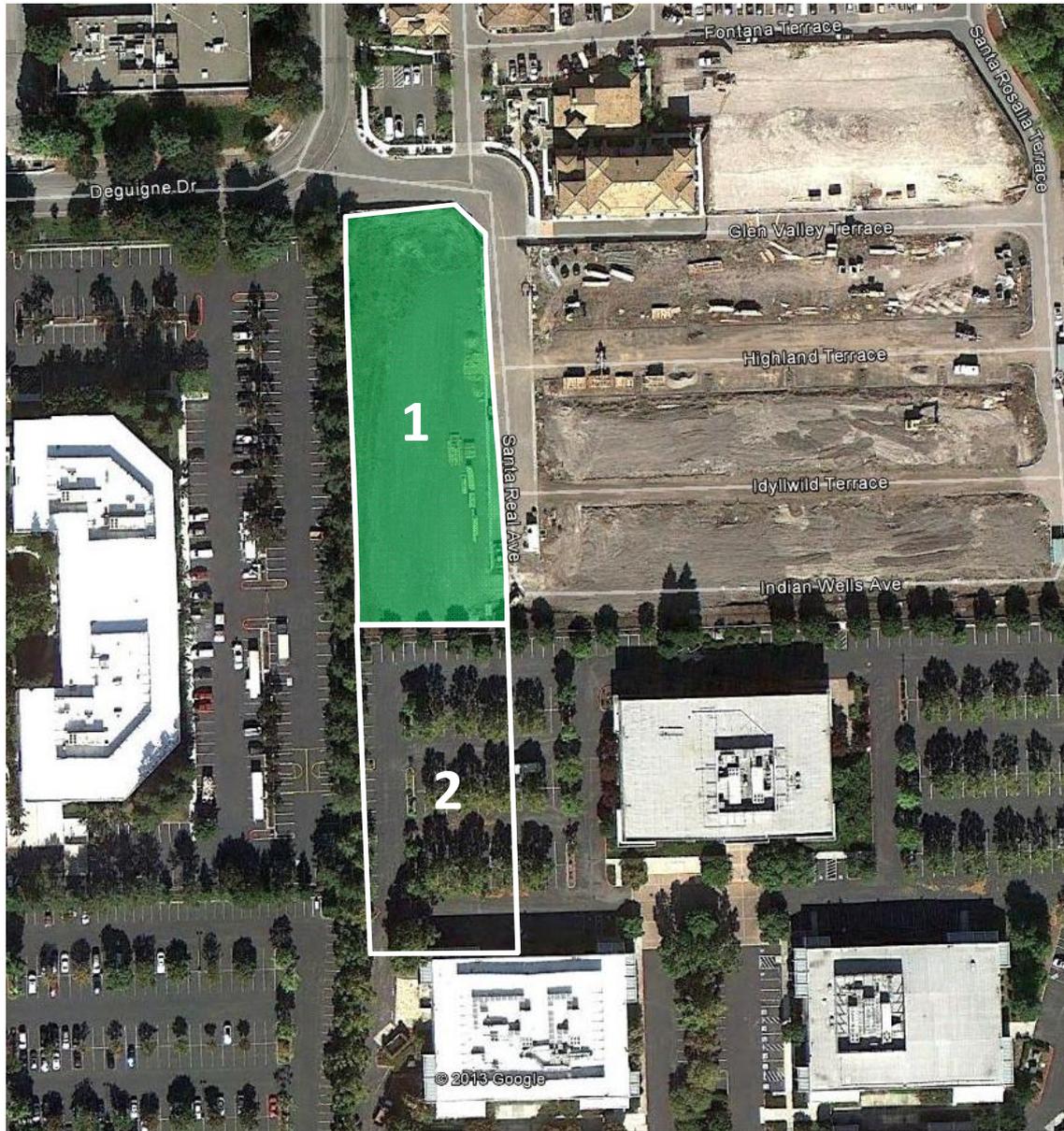
Gary M. Luebbbers, City Manager

## **ATTACHMENTS**

A. Location Map

B. Park-Land Dedication Standards

# Attachment A





## Park-land Dedication Standards

The following outlines the City's requirements for park-land dedication sites, if required as part of any land development project.

To maintain the health, welfare and safety of the general public, City would not accept the park-land until the following conditions are met:

1. The site shall be clean and clear of encumbrances. That is, the developer shall provide the City a written document certifying the park-land is clean and clear of encumbrances based upon the following criteria.
  - a. Property must be "Clean"
    - Both Phases I and II environmental reports would need to show that there are no hazardous material or constituents of concern on the property (qualitative).
    - As an alternative to the bullet item above, any hazardous materials or constituents of concern on the property are below current Environmental Screening Limits (ESL), or below Community Health Levels of Concern (quantitative).
    - "On-site Encapsulation" as a remedy is not acceptable by the City.
    - Averaging or blending samples is also not acceptable if there are "hot spots" above the ESLs or other standards.
    - Any open file case with any regulatory agency must be closed with "no restriction" on the site. Closure with covenants, or need for ongoing monitoring, or with any indication of hazardous materials or constituents of concern above ESL's is not acceptable.
  - b. Property must be "Clear"
    - Property should be free and clear of encumbrances of all kinds, including both physical and fiscal. Physically the land should have no buildings, structure, or utilities, above, at, or below ground. The exception would be well-documented utilities in appropriate easements, or other utilities or structures that meet the City's goals. In this case those physical encumbrances must also be clear of hazardous materials or constituents of concern, including the bedding and backfill material.

2. To satisfy item 1.a., the developer is responsible for the following items:
  - a. Submit Phases I and II environmental reports showing that there are no hazardous material or constituents of concern on the property. As an alternative, prepare and pay for a specific environmental testing analysis (the "Analysis"). The minimum requirements of the Analysis shall include, but not necessarily limited to the following items:
    - The Analysis must be for the park-land dedication site as a separate parcel, not part of a larger development. Testing should be done on an established grid system with statistically appropriate grid sizes for the proposed park site area.
    - Identification of any types of contaminants and constituents of concern within the proposed park site, including qualitative and quantitative measurements. Discrete samples must be used. Blending or averaging is not acceptable. Hot spots (above ESLs) must be removed.
    - Proposal of remediation and/or clean-up measures so that all contaminants or constituents of concern can be demonstrated to be below any applicable federal and state regulatory agency's respective Environmental Screening Limits (ESL) for non-restricted residential use. Those regulatory agencies may include and are not limited to: (the Regional Water Quality Control Board, the Bay Area Air Quality District, the State Department of Toxic Substance Control and the San Francisco Bay Refuge, etc.
    - Estimated costs for those remediation and/or clean-ups measures identified in bullet item above.
  - b. Submit the Analysis to the City for City's (or a third party selected by the City) peer review, paid for by developer.
  - c. Take and pay for all necessary removal/remedial actions as recommended by the Analysis and to the City's satisfaction.
  - d. Test the site, by the developer's environmental consultant, to confirm that the removal or remedial work actually resulted in the area having no contaminants above the ESLs, after any removal or remedial actions.
  - e. Provide a report, prepared by the developer's environmental consultant, stating that the site has been tested in a standard and relevant manner and that it is now suitable for unrestricted residential use (the "Report").
3. To satisfy item 1.b., the developer is responsible for the following items:
  - a. Remove all existing buildings, structure, or utilities, above, at, or below ground prior to the date of investigation in the Report.
  - b. Prepare and record a grant deed (or other instrument) with notarization for transferring the property to the City. The instrument should clearly state how the City is acquiring interest either as a fee, right-of-way or parkland dedication. The instrument should also specify the due diligence that the City relied upon in accepting the property as clean and clear.
  - c. Pay for all outstanding taxes and clear all outstanding liens as documented in the title report.
  - d. Coordinate and pay for the title insurance and escrow fees.

4. Other conditions as listed below:
  - a. There has been no activity on site since the time of the investigation in the Report that says that it is clean.
  - b. Any changes to property, use of the property, storage of material or equipment on the property or other activities that could impact the property, occurring after the date of investigation in the Report, are grounds to require additional investigation.
  - c. The site should be fenced to prevent access or illegal dumping commencing from the date of the Analysis, to the extent possible.
  - d. The site should have signs prohibiting dumping or trespassing with a phone number for information that goes to the City commencing from the date of the Analysis.
  - e. The developer is precluded from the determination of when and how the land will be developed as a park.
  - f. Where the developer is required to or agrees to improve the park land, all park land work must be done to City standards, subject to City inspection, and must be maintained by and at the cost to the developer for six months following initial acceptance by the City.