

RESOLUTION NO. 2010-175

Adopted by the Sacramento City Council

April 1, 2010

PROVIDING POLICY DIRECTION FOR THE CURTIS PARK VILLAGE PROJECT (P04-109) RELATING TO THE NEIGHBORHOOD PARK AND DETENTION BASIN AND THE AMENDMENT TO THE 1995 REMEDIAL ACTION PLAN

BACKGROUND

- A. The Curtis Park Village Development Project (P04-109) consists of the planned development of approximately 72 acres with commercial, retail, and office space (259,000 sq. ft.), single family residences (189 units), three multi-family housing communities (338 units), and a 6.8± net acre neighborhood park/detention basin.
- B. The Project is located on the site of the former railyard and operations center for the Western Pacific Railroad and is contaminated with hazardous waste from the railyard era. Remediation of the site is occurring under a Remedial Action Plan (RAP) approved by the California Department of Toxic Substances Control (DTSC) in 1995. The 1995 RAP approved excavation and off-site disposal of the contaminated soil and clean-up levels suitable for restricted use development.
- C. The 1995 RAP clean-up levels did not coincide with the City's planned future land use for the site at that time. Due to the City's concern, Chapter 395 Statutes 1999 (SB 120 Ortiz) was enacted to prohibit DTSC from determining response action on the site to be complete until (1) the City has completed its land use planning process for the site (i.e., has adopted a General Plan amendment and rezoned the site) and (2) all response actions necessary to conform to that land use plan are complete. Upon approval, the Curtis Park Village Development Project will be the City's land use plan for the site for purposes of SB 120.
- D. The Project applicant has encountered additional volumes of contaminated soil on the Project site that necessitates an amendment to the 1995 RAP to allow for one or more alternative remedies. One of the remedies the Project applicant wishes to pursue is on-site encapsulation of contaminated soil under the park-portion of the proposed park/detention basin parcel.
- E. Because the Project entitlements were under review at the same time that the amendment to the 1995 RAP was being contemplated, the City and DTSC agreed to include in the Project Environmental Impact Report (EIR) the environmental analysis of both the Project and the amendment to the 1995 RAP, with the City as Lead Agency and DTSC as a Responsible Agency. Therefore, the EIR analyzes the impacts and health risks of all potential remedies contemplated for inclusion in the amendment to the RAP, including encapsulating contaminated soil under the park-portion of the proposed park/detention basin parcel.

- F. On April 1, 2010, the City Council conducted a public hearing and received and considered evidence concerning the Curtis Park Village Development Project and certified the EIR for the Project, but deferred action on the Project entitlements.
- G. The EIR certification will allow the Project applicant to proceed with its request to DTSC to amend the 1995 RAP prior to final approval of the Project entitlements (the SB 120 land use plan) which may result in approval of encapsulation of contaminated soil under the park-portion of the proposed park/detention basin parcel. The City is concerned that, unless properly conditioned, approval of that remedy may be inconsistent with what the City ultimately approves for the Project, including the park master plan as well as the detention basin plan, resulting in the amendment to the 1995 RAP being inconsistent with the Project approvals and the SB 120 land use plan. This concern is based on the following:
1. Neither DTSC nor the City will allow contaminated soil to be placed in a detention basin drainage area, to avoid creating groundwater contamination and potential contamination leaks into the public combined sewer system. Careful design of the park and detention basin and appurtenances is needed to insure that contaminated soil is properly encased to prevent storm water drainage, and to prevent existing contaminated groundwater from entering into the detention basin and into the public combined sewer system.
 2. DTSC typically requires only a relatively small amount of clean soil (1 to 2 feet) above the cap for protection from ultraviolet light damage. That amount of soil would be insufficient to allow for subsequent development of a neighborhood park due to the additional soil needed for installation of park amenities, including but not limited to underground irrigation and park landscaping. The depth of additional soil above the cap that will be needed for park development is unknown at this time because the park master plan (as well as the detention basin plan) has not been prepared or approved. In addition, the City requires neighborhood parks to have the same elevation as the surrounding parcels, which will limit the amount of contaminated soil that can be encapsulated under the park-portion of the proposed park/detention basin parcel. Development of the park master plan (as well as the detention basin plan), in accordance with the City's park development process, is the responsibility of the Project applicant and implementation of those plans is specified in the project's proposed subdivision map conditions.
- H. The City Council wishes to ensure that DTSC is aware of the proposed conditions of approval of the Project entitlements relating to the park site and detention basin, so that DTSC can take these conditions into consideration as it reviews and takes action on the requested 1995 RAP amendment, to ensure that its approval conforms to what is anticipated to be the SB 120 land use plan for the Project site.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

Section 1. Staff is directed to transmit to DTSC the proposed conditions of approval of the Curtis Park Village Development Project subdivision maps regarding development of the neighborhood park and detention basin, as set out in Exhibit A, so that DTSC is aware of the City's requirements prior to its approval of the RAP amendment.

Section 2. Exhibit A is a part of this Resolution.

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Exhibit A - Proposed Map Conditions for Curtis Park Village Project Related to the Neighborhood Park and Detention Basin

Adopted by the City of Sacramento City Council on April 1, 2010 by the following vote:

Ayes: Councilmembers Cohn, Fong, Hammond, McCarty, Pannell, Sheedy, Tretheway, Waters, and Mayor Johnson.

Noes: None.

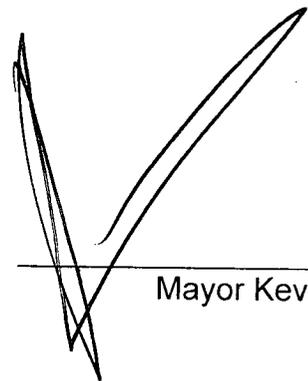
Abstain: None.

Absent: None.

Attest:

for

Shirley Concolino, City Clerk



Mayor Kevin Johnson

Exhibit A: Proposed Map Conditions for Curtis Park Village Project Related to the Neighborhood Park and Detention Basin

Department of Utilities (DOU) Dedications and Ownerships

1. The applicant shall dedicate an IOD for drainage easement or a drainage easement over Lot O (Detention Basin), the proposed detention basin. The dedication shall be to the satisfaction of the City Attorney and the DOU pursuant to City Standards. The dedication shall be at no cost to the City, and shall be free and clear of all encumbrances and liens, provided that applicant shall not be required to remove encumbrances of record that will not interfere with the use or uses for which the easement is being dedicated and that are approved as title exceptions by the City, which approval shall not be unreasonably withheld. Lot O shall be sized to accommodate the detention volume per the approved drainage study, service roads, ramps, drainage structures and all appurtenances.
2. The applicant also shall dedicate an IOD for a Recreation Easement or a recreation easement over Lot O that meets the requirements specified in the Parks and Recreation Department's Condition 8 of the Tentative Map.
3. The applicant shall dedicate a Drainage Access and Maintenance Easement over the storm drain inlet and outlet structures and associated appurtenances to be located in Lot O to the satisfaction of the DOU pursuant to City Standards. The dedication shall be at no cost to the City, and shall be free and clear of all encumbrances and liens, provided that applicant shall not be required to remove encumbrances of record that will not interfere with the use or uses for which the easement is being dedicated and that are approved as title exceptions by the City, which approval shall not be unreasonably withheld.

Annexation and Agreements

4. The applicant shall execute a recordable agreement, in a form acceptable to DOU and the City Attorney, to indemnify, defend and hold harmless the City against any and all claims, actions, penalties, fines, costs (including but not limited to any costs of investigation and/or remediation, and reasonable attorney fees) or other liabilities of any kind arising if any hazardous substance or other contaminant arising anywhere on the project site enters the City's Combined Sewer System or water system (collectively the "Environmental Claims"), but only to the extent that the Environmental Claims are covered under the applicant's environmental insurance policy. If the applicant is unable to obtain an insurance endorsement to protect the City from liability for further remediation or investigation of hazardous substances, then the applicant's liability for such costs is not limited. Applicant's compliance with the Parks and Recreation Department's Condition 9 in the Tentative Subdivision Map, which requires the applicant shall name the City as an additional insured under the applicant's environmental insurance policy, shall apply to satisfy this condition.

Hazardous Material Clean-up Standards

5. Applicant shall perform all hazardous material clean-up and remediation as required by the DTSC for the design and construction of the underground utilities and the detention basin in accordance with standards that comply with all requirements of the Department of Toxic Substances Control's (DTSC) approved Remedial Design Implementation Plan (RDIP). The applicant shall provide written letters from DTSC for the approval of the RDIP and verification that the remediation has been completed.
6. Applicant shall provide an operation and maintenance manual, prepared by a licensed professional expert in the field of hazardous remediation, identifying, maintenance protocol personal protective equipment and training requirements for the operation, trenching and maintenance of underground pipes and appurtenances, streets and detention basin.

Studies

7. The applicant shall submit the drainage study and the proposed conceptual drainage plan (alignment, size, type and material of pipes, joints, type of manholes, etc.) and the proposed conceptual detention basin plan (showing location, size and depth, proximity and clearances to cap areas, type and thickness of seepage control, clearances to ground water, etc.) to DTSC prior to DTSC's approval of the RDIP.

Department of Parks and Recreation Park Planning and Development Services (PPDS)

8. **Park Dedication – Irrevocable Offer of Dedication for a Recreation Easement:** Pursuant to Sacramento City Code Chapter 16.64 (Parkland Dedication), the Applicant shall provide on City's form an irrevocable offer of dedication (IOD) for an exclusive recreation easement on the park site identified on the Tentative Subdivision Map as Lot C (comprising 5.5± net acres) and the detention basin site identified as Lot O (comprising 1.3± net acres). Lot O is intended to contain the proposed detention basin.

At the time of delivery of IOD for a Recreation Easement, the Applicant shall also:

- a. Provide to City a title report demonstrating that it holds full and clear title, including all interests necessary for maintenance and access, to Lots C and O;
- b. Provide written proof acceptable to City that it has completed all actions necessary to ensure that Lots C and O are free and clear of any wetland mitigation, endangered or threatened animal or plant species, sensitive habitat or other development restrictions (mitigation measures) that would unreasonably interfere with or prevent the intended park use. The Applicant shall be solely responsible, and at its sole cost, for any required mitigation costs or measures associated with Lots C and O;
- c. Provide written proof acceptable to City that Applicant is fully and solely responsible for maintenance of the cap system, annual reporting, and all other requirements or actions as specified by the State Department of Toxic Substances

Control by deed restriction or order, and shall remain fully and solely responsible for these obligations after City records acceptance of the IOD for the Recreation Easement.

- d. For Lot C, provide written certification from the State Department of Toxic Substances Control (DTSC) or other documentation issued by DTSC which is acceptable to City that either (i) the remediation of hazardous substances has been completed at the site, or (ii) the disposal of hazardous substances at the site underneath an impervious cap and clean fill material over the cap has been completed in accordance with the DTSC approved Remedial Action Plan and Remedial Design Implementation Plan (RDIP); that the DTSC deed restrictions have been recorded, and that DTSC has confirmed in writing or as set out in the deed restrictions that the DTSC's land use controls and/or land use specific remediation approaches approved or required for Lot C will allow for the development and continued use of Lot C as a public park consistent with the approved Park Master Plan. For Lot O, provide written certification from DTSC or other documentation issued by DTSC which is acceptable to City that the remediation of hazardous substances has been completed at the site to allow for unrestricted uses, and that an impervious liner has been installed to prevent intrusion of contaminated groundwater into the site.

9. **Agreement:** At the time of delivery of IOD for the Recreation Easement for Lots C and O, the Applicant shall enter into an agreement with the City under which Applicant shall:

- a. Indemnify, defend, and hold harmless the City in the event (i) any further remediation or investigation of hazardous substances is required in the future due to the hazardous substances that were permitted by DTSC to remain at the site, (ii) the obligation of the Applicant to own, maintain and repair the impervious cap on Lot C, and (iii) any claims alleging personal injury or damages due to the presence of hazardous substances on Lot C that may be filed against City; and
- b. Name the City as an additional insured on Applicant's pollution and public liability insurance policy, and such policy shall have a minimum ten year term and be in an amount not less than \$5 million per occurrence.
- c. The applicant's obligations to indemnify the City for claims caused by or arising from hazardous substances shall be limited to the coverages under the Applicant's pollution insurance policy. If Applicant is unable to obtain an insurance endorsement to protect the City from liability for further remediation or investigation of hazardous substances, then the Applicant's liability for such costs is not limited.

10. **Joint Use Park-Drainage Facility:** The Applicant shall provide an exhibit to show the location of the facility and the limit of the 100-year flood plain within Lot O. The net acreage of the facility and the area surrounding the facility shall be noted on the exhibit. The exhibit shall be subject to the review and approval of the Departments of Utilities and Parks and Recreation, PPDS. The area within the 100-year flood plain and all other detention related facilities, including any access easement, shall not count towards meeting the project's parkland dedication requirement.

11. **Grading Plan:** Applicant shall provide to Departments of Utilities and Parks and Recreation, PPDS, a grading plan for the detention basin proposed for Lot O. The grading plan shall identify the depth of excavation and the location and type of the liner. The grading plan shall be subject to approval by both departments.
12. **Park Site Net Acreage:** Lots C and O and the net acreage eligible for parkland dedication credit shall be shown on the first final map. Lot C shall be labeled as a Park and Lot O labeled as Detention Basin. The net acreage eligible for the parkland dedication requirements pursuant to Sacramento City Code Chapter 16.64 (Parkland Dedication) shall be determined and approved by City Park Planning and Development Services (PPDS). Those portions of Lot C and/or Lot O that are subject to 100-year flood, access easements, or contain detention related infrastructure shall not count towards meeting the project's parkland dedication requirement. The irrevocable offer for an exclusive recreation easement for public purposes shall be noted on Lots C and O on the final map.
13. **Park Master Plan:** For lots C and O, the Applicant shall prepare a Neighborhood Park Master Plan. The Park Master Plan shall be prepared to the satisfaction of the Park Planning and Development Services Division (PPDS) of the Department of Parks and Recreation and shall be submitted for review and shall be approved by the PPDS, Parks and Recreation Commission, and City Council, prior to approval of the first final map. Within Lot C, the adopted Park Master Plan shall be used to determine and shall specify the required "clean" soil depth (over and above the State Department of Toxic Substances Control (DTSC) required soil depth over the capped contaminated soils which are permitted to remain on site) needed for the development, maintenance, and use of the park consistent with the approved Park Master Plan. The required "clean" soil depth within Lot C shall take into account all park improvements, including but not limited to, landscape planting and irrigation installation, maintenance activities, and tree and other plant root needs to avoid impacting the cap as determined by City's arborist. The Park Master Plan shall be completed and adopted by the City and submitted by the Applicant to DTSC for its review as part of and prior to the Applicant's submittal to DTSC's for its final approval of the Remedial Design Implementation Plan (RDIP). The Applicant shall be solely responsible for completion of the remediation work under the approved RDIP and for development of the park to ensure that the cap will not be compromised by the City's subsequent park development and maintenance activities which are consistent with the Park Master Plan.

The park shall be designed to neighborhood park standards, as outlined in Table 18 of the City of Sacramento Parks and Recreation Master Plan 2005-2010. The park amenities may include but not be limited to a tot lot, an adventure area, unlighted sports fields or sports courts, and/or group picnic areas; and basic design elements such as landscaping, irrigation, turf, shade and ornamental trees, site furnishing, and shade structures. Shade structures and play equipment will have subsurface footings and shade trees are typically deep rooted. Other subsurface improvements will include, but not be limited to irrigation piping and storm drains. Park design shall comply with Crime Prevention through Environmental Design (CPTED) principles. The finished park grades shall be level with the surrounding streets and shall not contain berms or raised elevations without prior PPDS approval.

14. **Improvements**: Unless already satisfied with the final Parcel Map, the Applicant shall construct the following public improvements:
- a. Development of the park improvements and the detention basin, prior to and as a condition of City's acceptance of the IOD for Lots C and O.
 - b. Full street improvements for Lot C and for Lot O (if applicable) including but not limited to curbs, gutters, accessible ramps, street paving, streetlights, and sidewalks; and improved surface drainage through the site.
 - c. A concrete sidewalk and vertical curb along all street frontages that open onto Lot C. The sidewalk shall be contiguous to the curb (attached) for neighborhood parks unless otherwise approved by PPDS. If permitted as part of the approved Park Master Plan, a low rise retaining wall may be constructed at the back of the sidewalk to allow for the finished park grade across Lot C to not exceed a 10% slope.
 - d. A twelve inch (12") storm drain stub and six inch (6") sanitary sewer stub to the back of the sidewalk at Lot C or as sized and located per approved park master plan for future service. Number of stubs and locations are to be approved by PPDS. Storm Drain and Sewer stubs are to be marked with a 3' high, white 4" x 4" post indicating stub or service location.
 - e. One water tap for irrigation, one water tap for domestic water, and electrical and telephone service to Lot C, or as sized and located per approved park master plan. The irrigation water tap shall be 4 inches for parkland 4 acres and over, and 2-1/2 inches for parkland less than 4 acres; and the domestic water tap shall be 1 inch. Water taps and telephone and electrical services shall be marked with a 3' high, white 4" x 4" post indicating stub or service location.
 - f. A ten-foot (10') wide driveway into Lot C at a location approved by PPDS. The driveway shall not enter park from Road A. The driveway is to provide future maintenance access to the park.
 - g. The Applicant shall rough grade Lot C as required by City Code to provide positive drainage as approved by PPDS.
15. **Design Coordination for PUE's and Facilities**: If a 12.5 foot public utility easement (PUE) for underground facilities and appurtenances currently exists or is required to be dedicated adjacent to a public street right-of-way contiguous to Lot C and Lot O (if applicable), the Applicant shall coordinate with PPDS and SMUD regarding the location of appurtenances within the PUE to minimize visual obstruction in relation to the park(s) and to best accommodate future park improvements. The Applicant shall facilitate a meeting(s) with SMUD and PPDS prior to SMUD's facilities coordinating meeting for the project. The Applicant shall submit a site plan and electronic file showing the location of all utilities on the park site to the PPDS for review and approval.

16. **Site Plan:** The Applicant shall submit a site plan and electronic file showing the location of all utilities on Lots C and O to the PPDS and DOU for review and approval. The Applicant shall: (1) design and install grading and drainage improvements reflective of the approved Park Master Plan; and (2) deliver as-built drawings of said grading and drainage to PPDS and DOU –all to the satisfaction of PPDS and DOU.
17. **Turnkey Park Development:** The Applicant shall enter into City's Reimbursement / Credit Agreement (collectively called "Turnkey Park Agreement") to construct the park and detention basin improvements on Lots C and O to the satisfaction of PPDS and DOU. All costs necessary to develop the park in conformance with the adopted Park Master Plan shall be the sole responsibility of the Applicant.

The Turnkey Agreement shall address:

- a. Maintenance of Lots C and O until the time that the City records acceptance of the IOD for the Recreation Easement and accepts the improvements to be constructed under the Turnkey Agreement;
- b. The preparation and approval of the design and improvement plans consistent with the approved Park Master Plan;
- c. Time for completion of the park and detention basin improvements (or of each phase if the improvements will not be completed in one phase) as a function of build-out of the Tentative Subdivision Map or issuance of building permits;
- d. Any credits to be awarded to the Applicant against the City's Park Development Impact Fee (PIF) that would be payable as a condition of issuance of building permits for the dwelling units to be constructed in the Tentative Subdivision Map. Applicant shall not receive credit for costs associated with construction of the detention basin, inlet and outlet structures, associated drainage appurtenances and basic landscaping costs typically associated with detention basin construction. Park construction costs are expected to be higher than average due to the presence of capped hazardous materials on site, and credits against the PIF will not be granted to cover these additional costs;
- e. Maintenance of all park improvements, to be accepted into a park maintenance financing district for a minimum of one year unless the City agrees to accept park maintenance into the district at an earlier date. The one-year maintenance period shall begin following the issuance by the City of a notice of completion for the improvements in accordance with the terms of the Turnkey Agreement.
- f. Provision of as-built drawings of the completed park.

ADVISORY NOTES

1. As per City Code, qualified parkland must be "a typical acre of the subdivision, with a slope less than ten (10) percent, and located in other than an area on which building is excluded because of flooding, public rights-of-way, easements, or other restrictions". Acreage within an existing or proposed drainage area, access easement, public right-

of-way, or areas with 10% and greater slopes shall not receive parkland dedication credit. Quimby parkland credit can be granted only to "buildable acres".

2. Because the park project is located above a remediation site, the Applicant shall be required to provide written certification, or other documentation which is acceptable to City, from the State Department of Toxic Substances Control (DTSC) that remediation of the dedicated lots and easements has been completed in accordance with the DTSC approved Remedial Action Plan and Remedial Design Implementation Plan, that the DTSC deed restrictions, DTSC land use controls, or land use specific remediation approaches will allow for the proposed park and public access use.
3. The Applicant shall be responsible for maintenance (weed abatement) of Lots C and O conveyed as an IOD for Recreation Easement until the time that the City records acceptance of the IOD for Recreation Easement.