

RESOLUTION NUMBER R- 300516

ADOPTED ON JUN 13 2005

WHEREAS, an approximate 1.9 acre parcel, located in the Mid-City Community of City Heights Plan Area in the neighborhood of Fox Canyon (east of Euclid Avenue, west of Altadena Drive and south of University Avenue) has been offered for sale to the City of San Diego. The 1.9 acre parcel is adjacent to Auburn Creek and will provide an approximate 1.9 acre passive-use park, along with enhancements, in accordance with the Chollas Creek Enhancement Program; and

WHEREAS, due to the scarcity of undeveloped land, the Fox Canyon area is grossly park deficient. The ratio of parkland to population is 0.6 acres per 1,000 residents. This ratio is far below park standards established by the City of San Diego Park and Recreation Department which current approach three acres per 1,000 residents. The proposed park will provide a needed recreational outlet and will contribute to satisfying the population-based park acreage requirements set forth in the City of San Diego's Progress Guide and General Plan; and

WHEREAS, the Park and Recreation Department was successful in obtaining a \$2.4 million dollar California Urban Park Act 2001 competitive grant and therefore development of the park would be funded. The community has a vision of a series of parks, trails and interpretive facilities along Auburn Creek and Chollas Creek, and this proposed site will be the first in that chain of parks; and

WHEREAS, the Park and Recreation Department is working towards designing and permitting the proposed Fox Canyon Park by October 2005 in order to obtain the grant funds

from the State. To that end, Park and Recreation has developed conceptual plans and prepared technical reports regarding the likely environmental impacts of the park and has submitted those plans and reports to Development Services for review. The property is currently in escrow and that escrow will close as soon as the city funds the acquisition. Immediate funding would be from existing money in a City Park and Recreation account, with reimbursement after October 2005 via the State grant funds. State funding cannot be used for property obtained via condemnation; and

WHEREAS, delays in the acquisition of this property could cause the seller to seek another buyer and cancel the existing escrow. If the property is sold to a different buyer, that new owner may not agree to sell the property to the City. So, if the property is still sought in the future, the city would have to consider expending the time and expense necessary for condemnation proceedings, as well as not being able to utilize the State grant funds for the acquisition costs. Additionally, the price of land in San Diego is increasing at a rate of 10% per year - - meaning that an offer made six months from now would likely have to reflect an approximate \$23,000 increase on the current \$475,000 sales price; and

WHEREAS, CEQA guidelines section 15004 states that: "CEQA compliance should be completed prior to acquisition of a site for a public project". CEQA guidelines section 15005 indicates that "should" means that: "Public agencies are advised to follow this guidance in the absence of compelling, countervailing considerations". This Resolution sets forth factors that represent such compelling, countervailing considerations; and

WHEREAS, Guidelines section 15004(2) also indicates that agencies shall not undertake actions concerning the proposed public project that would have a significant adverse effect or limit the choice of alternatives or mitigation measures before completion of CEQA compliance;

for example, agencies shall not formally make a decision to proceed with the use of a site or otherwise take any action which gives impetus to a planned project in a manner that forecloses alternatives or mitigation measures. In terms of this action resulting in a significant effect or limiting the choice of alternatives or mitigation measures, this action merely transfers ownership of the property and does not result in any physical change to the environment. In terms of foreclosing mitigation measures or alternatives, this action does not affect the ability of City designers or decision makers to design the park in a certain way or add mitigation measures/conditions to the project to mitigate any impacts. Moreover, approval of the acquisition does not foreclose the ability of the City to choose a different park alternative by building the park in a different location. If a different site is selected, this proposed site could be sold by the City in its existing condition with the sales proceeds going toward reimbursing the Park and Recreation fund. In terms of "formally making a decision", CEQA was written with an appreciation for the fact that a city must have a use or purpose in mind to justify the purchase of land. The initial funding source for the acquisition is a Park and Recreation Fund which can likely be used only for park purposes. However, using this fund does not cross the threshold of formally making a decision to use a site, particularly since use of the site cannot occur until certain entitlements are granted in conjunction with CEQA compliance. If the funding source were considered to constitute a formal decision, then no agency would be allowed to take advantage of the "should" language provided in section 15004. While a generalized intent of CEQA includes looking at environmental impacts at the earliest point in the planning process, CEQA does include provisions for acquiring property without CEQA compliance. This situation, given the compelling, countervailing considerations, does seem to warrant taking

advantage of the provisions in section 15004 of the CEQA guidelines. Future CEQA compliance will occur prior to any formal decision to proceed with park development; and

WHEREAS, this action requests authorization for the expenditure of an amount not to exceed \$480,000, to allow the City to purchase the approximate 1.9 acre parcel. Funds in the amount of \$480,000 are available in CIP 295960, Fox Canyon Park, Mid-City Special Park Fees Fund No. 39094; NOW, THEREFORE,

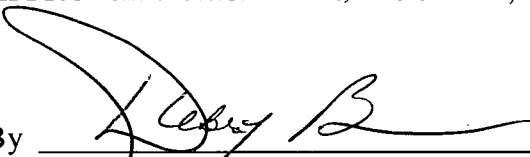
BE IT RESOVLED, by the Council of the City of San Diego, as follows:

1. That the City Manager, or his designee, is hereby authorized to acquire said property rights for the proposed Fox Canyon Park.

2. That the expenditure of \$480,000 from CIP 295960, Fox Canyon Park, Mid-City Special Park Fees Fund No. 39094, is authorized and approved.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By

  
\_\_\_\_\_  
Debra J. Bevier  
Deputy City Attorney

DJB:mm  
05/24/05  
Or.Dept:READ  
Aud.Cert:No. 2500944  
R-2005-1229  
MMS#2024

**The City of San Diego  
CERTIFICATE OF CITY AUDITOR AND COMPTROLLER**

**CERTIFICATE OF UNALLOTTED BALANCE**

ORIGINATING

AC 2500944  
DEPT. NO.: 446

I HEREBY CERTIFY that the money required for the allotment of funds for the purpose set forth in the foregoing resolution is available in the Treasury, or is anticipated to come into the Treasury, and is otherwise unallotted.

Amount: \$480,000.00 Fund: 39094

Purpose: Authorizing the expenditure of funds for the acquisition of property rights and related costs for Fox Canyon Park, CIP 295960.

Date: April 25, 2005

By: *Yeshe Bezumeh*  
AUDITOR AND COMPTROLLER'S DEPARTMENT

ACCOUNTING DATA										
ACCTG. LINE	CY PY	FUND	DEPT	ORG.	ACCOUNT	JOB ORDER	OPERATION ACCOUNT	BENF/ EQUIP	FACILITY	AMOUNT
001	0	30244	30244	105	4279	295960				\$480,000.00
TOTAL AMOUNT										\$480,000.00

FUND OVERRIDE

**CERTIFICATION OF UNENCUMBERED BALANCE**

I HEREBY CERTIFY that the indebtedness and obligation to be incurred by the contract or agreement authorized by the hereto attached resolution, can be incurred without the violation of any of the provisions of the Charter of the City of San Diego; and I do hereby further certify, in conformity with the requirements of the Charter of the City of San Diego, that sufficient moneys have been appropriated for the purpose of said contract, that sufficient moneys to meet the obligations of said contract are actually in the Treasury, or are anticipated to come into the Treasury, to the credit of the appropriation from which the same are to be drawn, and that the said money now actually in the Treasury, together with the moneys anticipated to come into the Treasury, to the credit of said appropriation, are otherwise unencumbered.

Not to Exceed: \_\_\_\_\_

Vendor: \_\_\_\_\_

Purpose: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_  
AUDITOR AND COMPTROLLER'S DEPARTMENT

ACCOUNTING DATA										
ACCTG. LINE	CY PY	FUND	DEPT	ORG.	ACCOUNT	JOB ORDER	OPERATION ACCOUNT	BENF/ EQUIP	FACILITY	AMOUNT
TOTAL AMOUNT										

APR 25 3 31 PM '05  
CITY ATTORNEY

AC-361 (REV 2-92)

FUND OVERRIDE

AC 2500944

*R* 300516 JUN 13 2005