

DATE ISSUED: March 11, 2004 REPORT NO. 04-055

ATTENTION: Natural Resources and Culture Committee
Agenda of March 17, 2004

SUBJECT: Workshop: Early Transfer Conveyance for the Naval Training Center Boat Channel

REFERENCE: Manager's Report No. 00-104
Natural Resources and Culture Committee Meeting of July 31, 2002

SUMMARY

Issue - Should the City Manager, or designee, be authorized to submit a request to the Navy for conveyance of the NTC boat channel under an Early Transfer Authority?

Manager's Recommendation - The City Manager, or designee, should be authorized to submit a request to the Navy for conveyance of the NTC boat channel under an Early Transfer Authority.

Fiscal Impact - None with this action.

BACKGROUND

In 1993, the Federal Base Closure and Realignment Commission (BRAC) recommended closure of the Naval Training Center (NTC) in San Diego. The City of San Diego was designated as the Local Redevelopment Authority for the reuse of NTC. The NTC Reuse Plan adopted by the City Council in October 1998 was produced over a two-year period, from July 1994 to September 1996.

In accordance with the Defense Base Closure and Realignment Act of 1990, and the Department of Defense regulations, the City of San Diego prepared the Naval Training Center Redevelopment Plan, which was approved and adopted by the City Council in April 1997. A draft EIS/EIR on the Reuse Plan was prepared with the Navy and the City as joint lead agencies

and a Record of Decision was signed by the Deputy Assistant Secretary of the Navy in March 1999. The approved Reuse Plan is the basis of the City's contract with the Navy for the long-term reuse of NTC.

NTC was conveyed to the City of San Diego through an Economic Development Conveyance and two Public Benefit Conveyances.

Economic Development Conveyance (EDC)

The majority of the property, approximately 279 acres, was transferred as a No-cost Economic Development Conveyance, which enabled the City to obtain the property from the Federal government at no cost, eliminating the need for lengthy negotiations on the reuse value of the property. All of the EDC parcels have been conveyed to the City except for the southern portion of the boat channel between the two proposed hotel sites.

Public Benefit Conveyances (PBC)

Parks: In November 1999, the National Park Service sponsored the Park and Recreation Department's application for a Public Benefit Conveyance of 100.4 acres of NTC for recreational reuse under the Federal Lands to Parks Program. This included both upland and submerged lands. In accordance with the requirements of the Federal Lands to Parks Program, the property must be used for public park and recreational use in perpetuity. In September 2001, the City received approximately 49 acres designated for the NTC Park and waterfront esplanade. The northern two-thirds of the boat channel is the only remaining part of the Park PBC yet to be conveyed.

Metropolitan Wastewater Laboratory: In September 1999, the Department of Health and Human Services sponsored a PBC application on behalf of the Metropolitan Wastewater Department (MWWD). In January 2001, the MWWD received approximately eight acres on the Camp Nimitz side of NTC for the construction of an ocean monitoring laboratory, including a boat dock to be constructed in the boat channel adjacent to the facility. MWWD staff moved into the building in February 2004. On the same parcel of property, San Diego State University, in partnership with the U. S. Geological Survey, is negotiating the terms of a lease with the City for the construction of an environmental monitoring laboratory.

The City's Memorandum of Agreement with the Navy stipulates that no development will occur within 15 feet of the top of the bank that may result in the sloughing of soil or other materials into the channel, which has delayed the construction of the boat dock. In addition, proposed improvements to the storm drain outfalls in the boat channel will be postponed until remediation issues are resolved. All other improvements to the storm drains, including the water quality measures, are being constructed in accordance with the approved plans and permits.

DISCUSSION

The boat channel is the only area of NTC that remains to be conveyed. The delay has been due to continuing discussions between the Regional Water Quality Control Board (RWQCB) and the Navy over the level of environmental remediation that is required.

In 1999 the Navy issued a Draft Remedial Investigation Report for the boat channel (RI Report) based on the results of their study of the environmental conditions in the boat channel. According to the RI Report, the area of ecological concern comprised roughly 4% of the boat channel. Contaminants found were similar to those found in other areas of San Diego Bay, and any remediation (such as by dredging) would harm the eel grass and the benthic community of the channel. The report concluded that no further action was required. Before accepting the RI Report, the RWQCB requested that the Navy use the protocols and standards for testing and remediation developed by RWQCB for the shipyards along San Diego Bay. The Navy and RWQCB engaged in a series of written exchanges as to the applicability to the boat channel of the RWQCB standards for the shipyards.

In November 2003, the Navy distributed the Final Remedial Investigation Report which concluded that the northern section of the boat channel contains areas of ecological concern and potential areas of ecological concern, which should be carried forward to the feasibility study. No further study was recommended for the southern section. The RWQCB has not yet provided comments on the Final RI Report.

In order to expedite the conveyance of the boat channel, staff is requesting authorization to request from the Navy an Early Transfer of the boat channel to the City. Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), prior to conveying federal property, the Federal government is required to grant a covenant indicating that all remedial action necessary to protect human health and the environment has been taken with respect to any hazardous substances. However, CERCLA also has a provision, commonly known as "Early Transfer Authority" which authorizes the Governor to defer the covenant warranty requirement and determine that the property is suitable for Early Transfer prior to completion of the remedial action if certain findings are made. The request for Early Transfer does not commit the City to accepting an Early Transfer. It allows the City and the Navy to commence negotiating the terms of a proposed Early Transfer.

The Navy would prepare a "Finding of Suitability for Early Transfer" (FOSET) to document the assessment and evaluation of the environmental condition of the property and to determine the property's suitability for deed transfer. The evaluation would include identification of hazardous substances and contamination; environmental impacts anticipated from the intended use; and adequacy of intended actions, including institutional controls, to assure that the proposed use is consistent with the protection of human health and the environment.

Should an Early Transfer request be authorized, a series of agreements would be negotiated to protect the City's interests and reduce the City's risks. These include an Environmental Services Cooperative Agreement (ESCA) between the Navy and the City whereby the City would agree to do the cleanup pursuant to State and Federal laws and regulations, and the Navy would fund the cleanup. The ESCA would also establish the Navy's "retained conditions" which would protect the City in the event of any unknown conditions, cost overruns related to the quantity of cleanup or toxicity of contaminants being remediated, cost of insurance provisions, and cost of long term monitoring.

Although the City would receive contaminated property from the Navy, the City would have assurances under CERCLA that the Navy would always retain the responsibility and liability associated with contamination in the boat channel. In addition to the CERCLA assurances, the Navy would provide funding for Pollution Legal Liability and Cleanup Cost Cap Insurance policies.

A Consent Agreement between the City and the RWQCB would be negotiated to establish the City's responsibilities for clean-up, environmental closure and long term stewardship. The Consent Agreement would provide for the process of investigation, analysis and remediation to a level acceptable to the RWQCB. The Navy would enter into a similar agreement with the RWQCB.

The benefits to the City of an Early Transfer conveyance are that the City would have control of the clean up and complete the cleanup of the boat channel sooner through a private sector contractor. A lump sum payment for the clean up would be provided to the City by the Navy. The City would receive statutory protections in the agreements with the Navy. The Navy would be responsible for retained conditions, and environmental insurance would be funded through the proceeds.

By submitting a request for an Early Transfer, the City is not committed to accepting the boat channel through an Early Transfer; it merely allows the City to commence negotiations with the Navy over the terms of a proposed Early Transfer.

ALTERNATIVE

Do not authorize the City Manager, or designee to submit a request to the Navy for conveyance of the NTC boat channel under an Early Transfer Authority.

Respectfully submitted,

Hank Cunningham
Community & Economic Development Director
Redevelopment Agency Assistant Executive Director

Approved: Bruce Herring
Deputy City Manager

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