



PUBLIC WORKS DEPARTMENT

CITY HALL
10300 TORRE AVENUE • CUPERTINO, CA 95014-3255
TELEPHONE: (408) 777-3354 • FAX: (408) 777-3333
CUPERTINO.ORG

CITY COUNCIL STAFF REPORT

Meeting: July 7, 2020

Subject

Adopt a resolution approving the purchase of the Lawrence-Mitty property, located along the westerly right-of-way of Lawrence Expressway between Calvert Drive and Bollinger Road (APNs 375-21-001 and 375-22-001), from the County of Santa Clara, in the amount of \$2,690,000, and authorizing the City Manager to execute all necessary documents and take all necessary steps to complete the acquisition of the property.

Recommended Action

Adopt Resolution No. 20-____, approving the purchase of the Lawrence-Mitty property, located along the westerly right-of-way of Lawrence Expressway between Calvert Drive and Bollinger Road (APNs 375-21-001 and 375-22-001), from the County of Santa Clara, in the amount of \$2,690,000, and authorizing the City Manager to execute all necessary documents and take all necessary steps to complete the acquisition of the property.

Lawrence-Mitty Property

The Lawrence-Mitty property includes several acres of land along Lawrence Expressway near Mitty Avenue ("Lawrence-Mitty"). Lawrence-Mitty is owned by Santa Clara County and is operated by its Roads and Airports Department. Current use of property is for materials storage and construction staging.

Lawrence-Mitty is made up of 2 parcels (APNs 375-21-001 and 375-22-001), which together total about 7.83 gross acres. The site is generally narrow and linear. The Saratoga Creek channel runs through the site on the western side, reducing the developable area of the site by about 1.9 acres. The eastern side of the site fronts on Lawrence Expressway. The County may propose to expand the expressway in the future, which could reduce the developable area of the site by another 0.78 acres. There is a recorded access restriction to the site from Lawrence Expressway. A Vicinity Map of the property has been provided in Attachment B for reference.

The site is within the jurisdiction, city limits, and urban service area of the City of San Jose. Its western edge abuts the City of Cupertino.

A reach of the San Tomas Aquino-Saratoga Creek Trail is on the south portion of Lawrence-Mitty. There is a 2002 Joint Use Agreement between the City and the County that permits the City to operate and maintain the trail over a 30-year term.

Timeline of City Interest in Lawrence-Mitty

The City has been pursuing the proposed acquisition of Lawrence-Mitty since at least 2007. Some of the key activities are as follows:

- May 2019 to June 2020 - Negotiations continued with the County and reached conclusion in June 2020. These negotiations led to the following major deal points:
 - 1) A purchase price for Lawrence-Mitty established at \$2,690,000, the last appraised value of the property.
 - 2) Establishing the ability to gain access to the property from Lawrence Expressway for construction and maintenance vehicles (no public access is permitted to the site from Lawrence Expressway).
 - 3) Removal of County-owned materials and debris from the site (the berm along the top of the creek bank would not be removed by the County).

City staff worked with the County to draft a purchase and sale agreement (Attachment C) that incorporates these terms. City staff anticipates that County staff will recommend approval of the sale to the County Board of Supervisors.

- November 2019 - Lawrence-Mitty is located within San Jose city limits and is covered by San Jose's General Plan. Accordingly, as required by Government Code Section 65402(b), the City sent a letter to San Jose requesting that it prepare a report regarding the consistency of Cupertino's proposed purchase with San Jose's General Plan. San Jose was provided more than the 40-day response window required by law. Cupertino received no response, therefore by state law the proposed purchase is deemed in conformity with San Jose's General Plan.
- June 21, 2019 - Council met in closed session and provided direction to staff regarding price and terms of payment to guide the City's negotiation with the County for purchase of Lawrence-Mitty.
- March 2019 – County prepared an appraisal of Lawrence-Mitty for \$2.69 million.
- April 2017 – City hosted Lawrence-Mitty open house to provide the community an opportunity to tour the site, learn about opportunities and challenges, ask questions, and provide feedback on proposed acquisition for park purposes.
- April 25, 2017 – City Planning Commission reviewed the acquisition of Lawrence-Mitty with the five-year Capital Improvements Program (CIP) and found it to be in conformity with the City's General Plan.

- Fiscal Year (FY) 2015-2016 – City set aside funding, as reflected in the CIP, for acquisition and development of Lawrence-Mitty; funding was part of Apple Park Development Agreement.
- 2007 – City pre-zoned Lawrence-Mitty to Pre-PR (Parks & Recreation); Cupertino shows the property as Parks and Open Space on its land use map.

Discussion

As explained above, it is anticipated that the County Staff will recommend approval of the sale of Lawrence-Mitty per the terms reflected in the Purchase and Sale Agreement (Attachment C).

If Council agrees to proceed with the purchase of this property, County Staff would present to their Board of Supervisors the agreement for their approval. If the County agrees to move forward with the sale, the City would be provided a 30-day due diligence period to, among other things, ensure all agreed upon requirements under the agreement have been addressed, as well as to fully evaluate any title policy issues and to ensure the sale can be properly insured.

At this time, staff is requesting that Council approve the purchase of Lawrence-Mitty, and authorize the City Manager to execute all necessary documentation and take all necessary steps to complete the purchase of the property.

Sustainability Impact

Chapter 3 (Measure C-G-1) of the Cupertino Climate Action Plan (CAP) contains measures to expand Green Infrastructure, Open Space and the Urban Forest throughout the City. Purchase of the Lawrence-Mitty property is consistent with this measure.

CEQA

The proposed acquisition of Lawrence-Mitty is identified in the City's 2019 Parks and Recreation System Master Plan, for which an Initial Study/Mitigated Negative Declaration was adopted. As the Master Plan explains, once project-level information is developed for improvements proposed to be implemented under the opportunities identified in the Master Plan, the City will review the project under CEQA and determine the appropriate level of environmental review.

The proposed acquisition of Lawrence-Mitty is exempt pursuant to CEQA Guidelines section 15316 (Class 16), which exempts acquisition of land in order to establish a park where the land is in a natural condition and the management plan for the proposed park has not been prepared. Lawrence-Mitty is undeveloped. While the City has long-anticipated that Lawrence-Mitty will be used for park and open space purposes, the City has not yet identified or approved any particular designs or improvements for the property. In the FY 2019, the City identified preparation of a Lawrence-Mitty Park Master Plan as a new future project. The purpose of the future project is to determine the

best use for the site. At such time that a specific development and management plan is proposed that will change the property from its current natural condition, the City will review the project under CEQA.

The proposed acquisition is also exempt pursuant to CEQA Guidelines section 15061(b)(3), the "common sense" exemption. The City's acquisition of Lawrence-Mitty will not have a significant effect on the environment because the City's purchase will in the immediate term only result in an ownership change and cessation of the County's existing staging activities on the site.

Fiscal Impact

In December of 2013 a development agreement between the City and Apple Inc. was approved by City Council. The development agreement included a provision for parkland contribution of \$8,270,994. The use of these funds is restricted for the acquisition of a 1.1 acre of land and costs associated with improvements, the purchase of park equipment, and to provide maintenance and capital replacement for 20 years. The City budgeted funds for the purchase and improvement of Lawrence-Mitty as part of the FY 2015-16 Capital Improvement Plan. These dollars are currently budgeted in FY 2019-20 and in FY2020-21 as part of the year-end carryover process. This process takes unspent budgeted dollars for projects that have not yet been completed and carries over the authority to spend those dollars into the next fiscal year. Actual expenditure year to date are approximately \$92,000 with an additional \$12,180 in encumbered funds for the preparation of an ALTA study. The purchase price is \$2,690,000, and all associated transfer fees (including title insurance premium) will be funded from the Development In-lieu Fee account.

Prepared by: Chad Mosley, Assistant Director of Public Works

Reviewed by: Roger Lee, Director of Public Works

Approved for Submission by: Dianne Thompson, Assistant City Manager

Attachments:

A – Draft Resolution

B – Vicinity Map of Lawrence-Mitty Property

C – Draft Purchase and Sale Agreement