



Staff Report

December 30, 2020 Special City Council Meeting

Green Mountain Purchase and Sale Agreement Terms

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BACKGROUND: The City Council approved a purchase and sale agreement at the December 7, 2020 Regular City Council meeting for acquisition of approximately 115 acres surrounding Green Mountain. The purchase and sale agreement (PSA) included the acceptance of a donation of approximately 60 acres and purchase of approximately 55 acres for \$3.8 million (see Figure 1 below). According to the terms of the PSA, closing on the 60-acre donation is to be completed by December 31, 2020 and closing on the 55-acre purchase is to be completed by October 31, 2021.

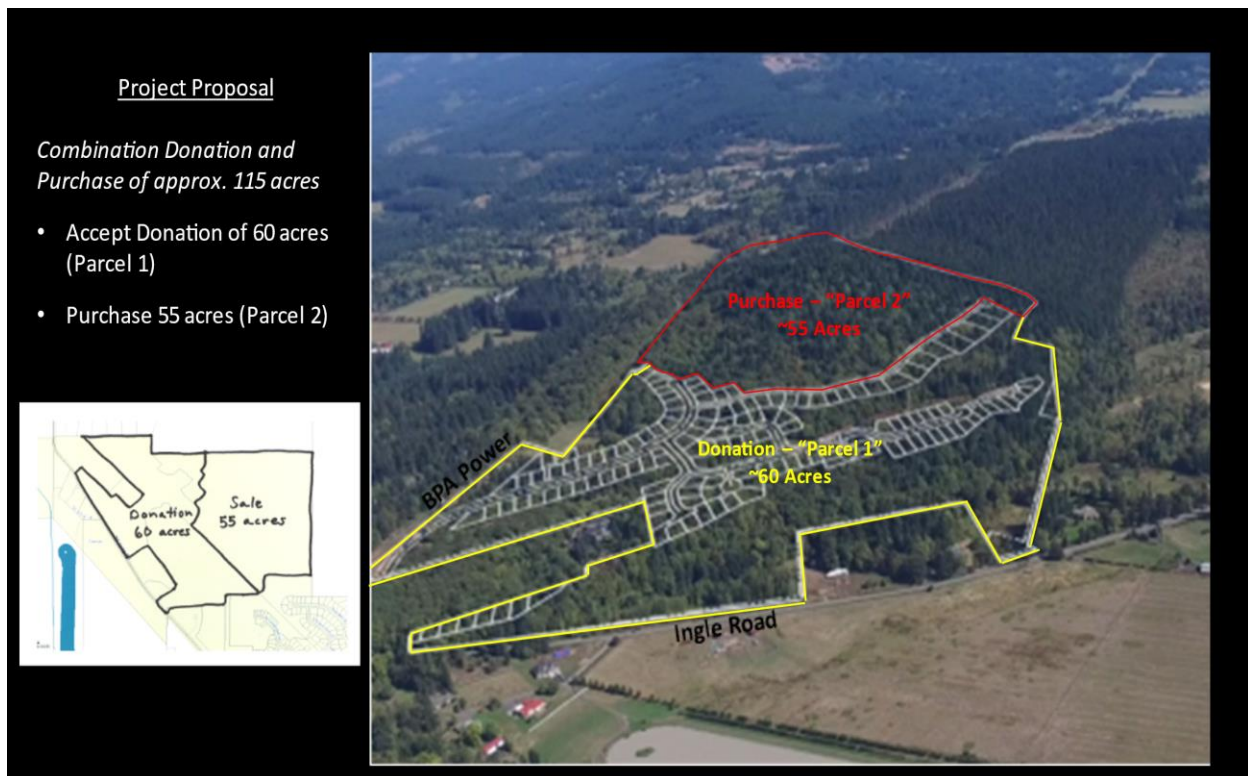


Figure 1: Green Mountain Area Acquisition

SUMMARY: Since the December 7th City Council Meeting, Staff has been working diligently with the Grantor to close on the 60-acre donation. The donors have very recently requested a change to the Bargain and Sale Deed, including the addition of a restrictive covenant (attached for reference) to facilitate the donation. The terms of the restrictive covenant apply to the donated 60-acres only, and in essence, would maximize the tax deduction to the donors. Should the purchase of the 55-acre "Parcel 2" proceed as envisioned, there would be no restrictions on that property.

The approved PSA requires the City to cooperate in the charitable tax donation process by signing documents reasonably requested by the donors. However, as written, the covenant would prohibit any future use of the property by the City except for "conservation purposes" as defined in Code of Federal Regulations (CFR) 1.170A-14 (excerpt attached for reference). Staff believes this is a change from what was originally included in the documents attached to the PSA and a change from what was presented to Council on December 7th. As originally presented, there were no restrictions on how the City could use the donated property. The addition of the restrictive covenant limits the City's ability to develop or use any portion of the 60-acre donation for public benefit beyond conservation, including such things as a Fire Station, as discussed on December 7th. It is noted the definition of "conservation purposes" does include such things as outdoor recreation, trails, general open space and scenic enjoyment – all things that are identified in the City's Parks, Recreation and Open Space Plan and the associated County-wide planning documents.

As discussed above, the terms of the PSA require the city to reasonably cooperate with executing documents associated with the tax deduction issue. It is staff's understanding that the terms of the perpetual restrictive covenant would maximize the taxable length of the Grantor's donation over a 15-year period. If there was no restrictive covenant, the grantor would receive a standard deduction measured out over five years. In summary, the city could take the position that as the donee, the city would only sign the standard IRS form specifically identified in the current PSA forms and not agree to any covenant. However, it would remain to be seen whether the donor would go through with the deal in its entirety (including the sale portion) without the maximum donation terms.

The decision point is how to proceed with closing and what to inform the Donors; accept the restrictive covenant as provided by the Donors, or, if it is critical that the property allow for potential other uses, to insist on removal of the covenant and broach that to the donors for their response and determine if this transaction will proceed to closing.

EQUITY CONSIDERATIONS:

What are the desired results and outcomes for this agenda item?

- Receive Council direction on how to proceed with closing and what to inform the Donor's regarding acceptance of the restrictive covenant.

What's the data? What does the data tell us?

- N/A

How have communities been engaged? Are there opportunities to expand engagement?

- N/A

Who will benefit from, or be burdened by this agenda item?

- Additional acreage will be added to the City's parks and open space network. This will benefit future generations and provide public access to approximately 115 acres on and around Green Mountain and connections to other publicly-owned land in the area.

What are the strategies to mitigate any unintended consequences?

- N/A

Does this agenda item have a differential impact on underserved populations, people living with disabilities, and/or communities of color? Please provide available data to illustrate this impact.

- N/A

Will this agenda item improve ADA accessibilities for people with disabilities?

- N/A

What potential hurdles exist in implementing this proposal (include both operational and political)?

- N/A

How will you ensure accountabilities, communicate, and evaluate results?

- N/A

How does this item support a comprehensive plan goal, policy or other adopted resolution?

- Though the addition of the restrictive covenant has come to staff's attention very late in the process, the 60-acre property donation with the restrictive covenant is still in alignment with the City's current Parks, Recreation and Open Space plan. The City's adopted Parks, Recreation and Open Space (PROS) Plan identifies the desire to include parks and open space around Green Mountain, including improving public access and potentially creating a viewpoint at the top of the mountain. The general area in question is also identified in other County-wide planning documents and efforts, including the Clark County PROS Plan and the Clark County Conservation Areas Acquisition Plan. The area is also adjacent to and in close proximity to other parks and

open space already owned by the City, County, Department of Natural Resources, and the Camas School District and will ultimately be a key location for the connections of the Vancouver Lake-to-Lacamas Lake Trail and trail connections to Camp Bonneville and the Lacamas Heritage Trail.

BUDGET IMPACT: As discussed on December 7th, if the transaction proceeds to closing, City funds to be used towards purchase of the property will likely come from the City's Real Estate Excise Tax Fund and/or a combination of general obligation bonds. Staff will be working to find all available grant opportunities that could retroactively be used towards the purchase of Parcel 2. Though grants are never guaranteed, staff believes the parcels have the amenities and are located in key areas that will increase the City's chances of success with grant applications.

RECOMMENDATION: Staff recommends accepting the revisions to the purchase and sale agreement, and specifically the Bargain and Sale Deed, which includes the proposed restrictive covenant.

Attachment – Code of Federal Regulations (CFR) 1.170A-14 – Excerpt

CFR 1.170A-14 Qualified conservation contributions. Subsection (a):

(a) Qualified conservation contributions. A deduction under section 170 is generally not allowed for a charitable contribution of any interest in property that consists of less than the donor's entire interest in the property other than certain transfers in trust (see § 1.170A-6 relating to charitable contributions in trust and § 1.170A-7 relating to contributions not in trust of partial interests in property). However, a deduction may be allowed under section 170(f)(3)(B)(iii) for the value of a qualified conservation contribution if the requirements of this section are met. A qualified conservation contribution is the contribution of a qualified real property interest to a qualified organization exclusively for conservation purposes. To be eligible for a deduction under this section, the conservation purpose must be protected in perpetuity.

CFR 1.170A-14 Qualified conservation contributions. Subsection (d):

(d) Conservation purposes -

(1) In general. For purposes of section 170(h) and this section, the term conservation purposes means -

- (i) The preservation of land areas for outdoor recreation by, or the education of, the general public, within the meaning of paragraph (d)(2) of this section,*
- (ii) The protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem, within the meaning of paragraph (d)(3) of this section,*
- (iii) The preservation of certain open space (including farmland and forest land) within the meaning of paragraph (d)(4) of this section, or*
- (iv) The preservation of a historically important land area or a certified historic structure, within the meaning of paragraph (d)(5) of this section.*

Attachment – Restrictive Covenant

EXHIBIT B TO BARGAIN AND SALE DEED RESTRICTIVE COVENANT

City of Camas, Washington, a Washington municipal corporation ("Grantee"), agrees to subject the real property described on Exhibit A to this deed (the "Property") to this Restrictive Covenant. The Property shall be used exclusively for conservation purposes, as such term is defined in 26 CFR Section 1.170A-14(d) ("Conservation Purposes"), by a qualified organization, as such term is defined in 26 CFR Section 1.170A-14(c). Any transfers of the Property or any portion thereof by Grantee (or by Grantee's successors in ownership of the Property) shall be performed pursuant to 26 CFR Section 1.170A-14(c)(2). Grantee shall not convey or transfer the Property unless Grantee, as a condition to such conveyance or transfer, requires that the transferee use the Property exclusively for Conservation Purposes. Any conveyance or transfer of the Property or any portion thereof by Grantee (or by Grantee's successors in ownership of the Property) shall be made only to an eligible donee, as such term is defined in 26 CFR Section 1.170A-14(c)(1). This Restrictive Covenant is not intended to limit any right of Grantee to use the Property for uses permitted under applicable zoning codes or ordinances, except to the extent that such uses are not for Conservation Purposes and violate or are inconsistent with the terms and provisions of 26 CFR Section 1.170A-14; nor is this Restrictive Covenant intended to limit Grantee's right to transfer or exchange the Property, except to the extent any such transfer or exchange violates or is inconsistent with (a) the terms and provisions of this Restrictive Covenant and (b) the terms and provisions of 26 CFR Section 1.170A-14 or any other applicable federal law or regulation.

This Restrictive Covenant shall (a) constitute a covenant running with title to the Property in perpetuity and (b) bind all future owners, tenants, lessees, and other occupants of the Property, and Grantor's successors and assigns. Grantee hereby agrees that any and all requirements of the laws of the State of Washington that must be satisfied in order for this Restrictive Covenant to constitute a deed restriction and a covenant running with the land shall be deemed to be satisfied in full. Each and every contract, deed or other instrument hereafter executed conveying the Property or any portion thereof shall be subject to the terms of this Restrictive Covenant.