



## CITY OF MOUNTAIN VIEW

### MEMORANDUM

City Attorney's Office, and Community Development,  
Community Services, and Public Works Departments

**DATE:** March 15, 2017

**TO:** Parks and Recreation Commission

**FROM:** Eric Anderson, Associate Planner  
Randal Tsuda, Community Development Director  
J.P. de la Montaigne, Community Services Director  
Michael A. Fuller, Public Works Director  
Jannie L. Quinn, City Attorney

**SUBJECT: Park Land Dedication Alternatives to Fee Title—Recommendation to City Council**

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### RECOMMENDATION

Provide a recommendation to the City Council on the following:

1. Should Chapter 41 of the City Code be amended to allow park land dedication alternatives to fee title dedication, such as dedication of an easement?
2. Should the City Council consider these alternatives for a proposed public park over a private structured parking garage at 660 Mariposa Avenue to satisfy a portion of the 1696-1758 Villa Street development's park land dedication requirement?

### BACKGROUND

#### **Development Proposal**

On December 8, 2015, the City Council authorized the processing of a rezoning application for a proposed 240-unit apartment building at 1696-1758 Villa Street, a mostly vacant site located near the corner of Chiquita Avenue. The applicant is Prometheus Real Estate Group, developers of several large apartment projects in the City (including "Madera" on West Evelyn Avenue, and 100 Moffett Boulevard, under construction at the corner of Central Expressway).

Prometheus has offered to provide a public park, up to approximately 0.8 acre, at an existing Prometheus apartment complex located at 660 Mariposa Avenue to satisfy a portion of the Villa Street development's park land dedication requirement. 660 Mariposa Avenue is approximately one-half mile from their development site on Villa Street. The land proposed for the park is currently occupied by the neighboring apartment building's carports and uncovered parking. The parking would be replaced by structured underground parking, and the new public park would be constructed on top of the parking structure, at grade (see Attachment 1 – 660 Mariposa Avenue Park Proposal).

### **Park Land Dedication Requirements**

The City's park land dedication requirements found in Chapter 41 of the City Code are based on a State law known as the Quimby Act. The law allows a city to require the dedication of land or payment of fees for a park or recreational purposes in order to mitigate the impact of the development, specifically the need for additional park space to accommodate the growth in the population. The City Code sets requirements for new residential developments to provide park land (or fees in lieu thereof) to ensure the availability and quality of the City's public parks and includes detailed requirements for the quantity of land or fees required, based on the size and type of a given development. For projects larger than 50 dwelling units, it is within the City Council's discretion to require land, in-lieu fees, or both.

In accordance with State law, the City requires the dedication of park land in "fee title" (not to be confused with "in-lieu fees"), meaning the property owner must transfer ownership of the property to the City.

There are, however, lesser property rights than ownership, which could provide opportunities for the City to develop additional public parks. For example:

- A property owner could retain fee title ownership, but grant certain specific rights to the City for use of the property. In this case, Prometheus could continue to own the property and grant an easement to the City for use as a park, or the City could own the property and grant an easement to Prometheus for their parking garage.
- Through a vertical subdivision of property rights, the City could own airspace above the land, while Prometheus owns the subterranean space. Vertical subdivision is often used for condominiums and air rights above existing structures.

Note that the purpose of this meeting is not to determine the means of dedication, only whether the City should consider alternatives to fee title ownership to satisfy the requirement for park land dedication. The above information is provided for reference, and is not intended to be a complete analysis of types of conveyance.

## **Recent Meetings**

The City Council recently provided direction related to park land dedication.

On **September 8, 2015**, the City Council adopted amendments to Chapter 41 of the City Code, including the following:

- Development shall be allowed to use the total land area, including dedicated park land, to calculate their maximum density.
- Affordable units shall be exempted from park land dedication requirements.
- Various strategies to streamline and improve the effectiveness of park acquisition.

On **December 13, 2016**, the City Council held a Study Session to review preliminary plans for a proposed development at 2850 California Street (the old Safeway site east of San Antonio Road). The zoning for that site requires a publicly accessible open space. However, the developer is unable to dedicate the land as a park in “fee,” since the developer is entering into a long-term lease and the land will continue to be owned by another party. At the meeting, the developer and City Council agreed that the developer may provide 100 percent of their park land dedication requirement as in-lieu fees. They will also develop a publicly accessible open space.

## **ANALYSIS**

### **Alternatives to Park Land Dedication in Fee Title**

Over the last 10 years, the City has added 2,175 net new housing units (approximately 4,800 people), and has acquired 3.85 net new acres of park land; a ratio of 0.8 acre per thousand people. Approximately 2,400 net new units, containing approximately 5,300 people, are approved and under construction, along with 4.88 acres of new public parks; a ratio of 0.9 acres per thousand.\*

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\* The Code was recently amended to increase the City’s opportunities to acquire park land, and these data do not necessarily reflect those new opportunities.

Multiple factors constrain the City's acquisition of additional park land. One major factor is the limited amount of private property available for sale. In addition, even acquiring the minimal amount of land needed for a mini-park generally requires the acquisition of two or more contiguous properties from willing sellers. Another constraint is that most properties where parks are needed are currently occupied by housing. If the City acquires a residential property for a park, the amount of housing in the community is reduced.

Consequently, the City could consider alternatives to requiring dedication of park land in fee title to increase the opportunities for public parks. The proposal for 660 Mariposa Avenue provides an opportunity to discuss whether or not the City wishes to pursue any of these alternatives. As an initial matter, the City has only accepted park land dedication in fee title. Allowing an alternative would require the development of policies and modifications to the City Code.

There are advantages and disadvantages to be considered in analyzing this issue. In addition to providing more opportunities for public parks, the City could use the dedication process to negotiate terms that may be beneficial to the City. For example, a property owner may be required to provide maintenance (landscape upkeep and repair) for a park that is not dedicated in fee title, which could reduce some of the City's long-term costs.

New parks constructed on top of private structures would necessitate an alternative to fee title dedication. This would further increase opportunities for new parks, since property owners could continue to use land for private purposes and a public park at the same time. However, this would also add uncertainty to the future of the park. Maintenance and repair of the private structure would need to be guaranteed, even if the owner of the structure files bankruptcy or is otherwise unable to pay. The City could be called upon to negotiate with the private property owner should an issue arise, and is not required to do so when it owns the property outright. Lastly, there would be uncertainty about what would happen to the park if the associated structure reaches the end of its life, and the property owner wants to redevelop the property.

Alternatives to fee title ownership and new parks on private structures limit flexibility in how the land is used and how the park would be programmed. For example, it could affect the types of trees that can be planted, the types of structures that could be built, and access by Police vehicles.

Public open spaces other than parks under fee title land ownership would not be unique to Mountain View. Very dense places, like San Francisco, require publicly accessible green spaces on roofs of some new development. However, staff has asked

six other local cities whether they accept public park land other than in “fee title” and none do.

Since the City has not previously considered alternatives to fee ownership, staff would need to develop new agreements, policies, and Code requirements. Developing these could be done in conjunction with review of the Prometheus Villa Street project, but it would delay their approval and would require significant staff resources.

### *Question 1*

Should Chapter 41 of the City Code be amended to allow park land dedication alternatives to fee title dedication, such as dedication of an easement?

Summary of pros:

- Increases the availability of sites to those that are not for sale or have existing uses.
- May be able to negotiate for reduced maintenance costs or other benefits.

Summary of cons:

- Would create long-term uncertainty about the park, such as regarding negotiations, maintenance, and redevelopment.
- Could limit how the park can be programmed, improved, or patrolled.
- Would incur staff time to develop policies and agreements.

### **660 Mariposa Avenue Site**

If the City is interested in pursuing alternatives to park land dedication in fee, the specific aspects of the proposal at 660 Mariposa Avenue needs consideration.

In terms of the park land, this project has three potential outcomes:

1. Prometheus’ proposal would construct the 660 Mariposa Avenue park to offset a portion of the Villa Street project’s park land dedication requirements. The developer would also need to pay a portion of their requirement as in-lieu fees.
2. The City could require a park on the Villa Street site. This would reduce the number of units that can be built there unless the City is willing to allow

additional building height. The required park would be approximately 0.8 to 1.3 acres (out of a total project site of 3.3 acres), depending on the number of market-rate units approved at the site. Prometheus could provide a smaller park and pay a portion of the in-lieu fees.

3. The City could ask for all the park land dedication as in-lieu fees. This approach would provide the simplest process for Prometheus, and would maximize the developable area on the Villa Street site. No new park land would be acquired from Prometheus, but the City could use the funds to acquire park land elsewhere, renovate existing parks, or otherwise program the fees for Citywide park or recreational needs.

#### *Park Location*

Attachment 2 shows a map of the area around 660 Mariposa Avenue and 1696-1758 Villa Street. The 660 Mariposa Avenue park would be located on a site spanning from Chiquita Avenue to Mariposa Avenue. The site is a little less than halfway from Latham Street to El Camino Real along Mariposa Avenue, and almost at the end of the Chiquita Avenue cul-de-sac.

The proposed park would be approximately 850' from the park at Castro Elementary School, 1,750' from Mariposa Park, and 1,900' from Eagle Park (across Shoreline Boulevard). The park would be in a good location to serve new population on El Camino Real.

If a park is constructed on the Villa Street site, it would be located approximately 900' from Mariposa Park, 1,300' from the Senior Center, and 2,000' from Rengstorff Park. The park would be in a good location to serve the population at the site, as well as the Avalon Apartments next door.

#### *Park Design*

Attachment 1 shows a rough design of the park proposal. The park itself would be up to approximately 0.8 acre. The maximum dimensions across the park would be approximately 160'. This is slightly larger in total area, but approximately the same maximum dimensions as Mercy-Bush Park.

The Mariposa Avenue park frontage would be limited to about 15' width, due to the need for an access ramp for the garage along the frontage (see picture). The ramp would not require any above-grade structures (other than fencing or walls to prevent

falls), but it would be approximately 50' deep and 20' to 25' wide. Behind the garage entrance, the park would be 35' wide.



**660 Mariposa Avenue Park Frontage**

The Chiquita Avenue entrance would be near the end of a cul-de-sac. On this side, the park frontage would be about 55' wide.

The small frontages are not an ideal configuration for a park, especially on the Mariposa Avenue side, which is the through street. Limited visibility could increase the risk of illicit activity, though additional lighting, surveillance cameras, and other safety features could help address this concern. The small frontages also make it harder for neighborhood residents to know there is a park there, especially if they are driving by, though signage may mitigate this to a certain extent. Lastly, the small frontages reduce the number of surrounding properties that can benefit from views of the green space.

The proposed park may include a trail through the block. This trail would shorten pedestrian and bicycle access from Chiquita Avenue properties to El Camino Real. In addition, it would create a connection between Mariposa Avenue and Chiquita Avenue, that would be a low-stress alternative to Latham Street.

## *Question 2*

Should the City Council consider alternatives to fee title dedication for a proposed public park over a private structured parking garage at 660 Mariposa Avenue to satisfy a portion of the 1696–1758 Villa Street development’s park land dedication requirement?

Summary of pros for the park at 660 Mariposa Avenue (cons are expressed as pros for the other options):

- Opportunity for more units at the Villa Street site (without increasing height).
- Close to new housing on El Camino Real.
- New connection through block.

Summary of pros for the park at 1696-1758 Villa Street:

- More programming and landscaping options than the Mariposa Avenue site.
- Greater frontage and visibility than the Mariposa Avenue site.
- Close to new housing at the Villa Street site.

Summary of pros for the payment of in-lieu fees:

- Opportunity for more units at the Villa Street site (without increasing height).
- Most certainty for the developer.
- Flexibility for City in how funds are spent.

## *Guidance for Future Proposals*

If the City Council supports amending the City Code to allow alternatives to dedication of park land in fee title, but does not support 660 Mariposa Avenue as a park location, the City Council could schedule the Code amendments for a future goal setting. Alternatively, the City can postpone adoption of the Chapter 41 amendments for a more suitable proposal. This would ensure the Code amendments and related procedures to fit a real situation, which may be better than guessing what that situation might be. Based on direction from the Parks and Recreation Commission (PRC), Environmental



Planning Commission (EPC), and City Council, staff can develop guidelines to determine “suitable” proposals. Possible guidelines could include:

- Park area must be in excess of required open space on-site (public or private).
- The park must be within one mile of the proposed development (if off-site), per Table 41.3 of the City Code.
- The park should have a minimum of 0.5 acre.
- The park should have a minimum public street frontage of 50’.
- The park should be consistent with an identified priority in the Parks and Open Space Plan.

### **NEXT STEPS**

These questions will also be discussed by the EPC, tentatively scheduled for March 1, 2017.

The PRC’s and EPC’s recommendations on these questions will be forwarded to the City Council for discussion, tentatively scheduled for March 21, 2017. If the City Council supports amending Chapter 41 of the City Code to allow alternatives to dedication of park land in fee, staff would begin work on the amended language and associated policies, and would return to the PRC for a final recommendation prior to approval by the City Council.

### **CONCLUSION**

Staff is seeking a recommendation from the PRC to the City Council on the following questions:

1. Should Chapter 41 of the City Code be amended to allow park land dedication alternatives to fee title dedication, such as dedication of an easement?
2. Should the City Council consider these alternatives for a proposed public park over a private structured parking garage at 660 Mariposa Avenue to satisfy a portion of the 1696-1758 Villa Street development’s park land dedication requirement?

## **PUBLIC NOTICING**

Agenda posting. Residents and property owners within 300' of both 660 Mariposa Avenue and 1696-1758 Villa Street, and other interested stakeholders were notified.

EA/3/CDD  
899-03-15-17M-E

Attachments: 1. 660 Mariposa Avenue Park Proposal  
2. Area Map