



City of San Antonio

Agenda Memorandum

File Number: 14-2513

Agenda Item Number: 4A.

Agenda Date: 10/16/2014

In Control: City Council A Session

DEPARTMENT: Office of EastPoint & Real Estate

DEPARTMENT HEAD: Mike Etienne

COUNCIL DISTRICTS IMPACTED: City Wide

SUBJECT:

Contribution of \$5 million of Proposition 1 funds towards the acquisition of Crescent Hills and approval of agreements related to impervious cover credits and Cibolo Canyon.

SUMMARY:

This item will authorize the following agreements associated with the acquisition by the City of San Antonio (the "City") of a conservation easement across 1,521 acres of real property over the Edwards Aquifer Recharge Zone:

- A. An ordinance authorizing the acquisition of an aquifer-protection conservation easement over an approximately 1,521 acre tract of land located in Comal County and generally known as "Crescent Hills" for a contribution of \$5,000,000.00 of Proposition 1 funds through a Funding Agreement among the City, The Nature Conservancy ("TNC"), Bat Conservation International ("BCI") and Forestar (USA) Real Estate Group L.L.C ("Forestar"); and
- B. An ordinance authorizing the transfer of 86 impervious cover credits to Forestar through an Impervious Cover Credit Agreement; and
- C. An ordinance authorizing the Third Amendment to the Declaration of Restrictive Covenants associated with the Amended and Restated Agreement for Services in Lieu of Annexation between the City and Forestar to allow for the use of up to 43 impervious cover credits on Cibolo Canyon.

BACKGROUND INFORMATION:

In 2011, Bexar County negotiated the sale of 1,244 acres of land known as the "Dierks tract." This property was environmentally sensitive to the region and was determined to be essential to both protection of the endangered golden cheek warbler and the military missions of Camp Bullis. To broker the transaction, Bexar County worked with TNC and Forestar, a real estate development corporation, to secure the purchase of the Dierks tract through

funding provided by Forestar. As a result, the Dierks tract was conveyed to TNC and 97.5 impervious cover credits were transferred to Forestar for use in accordance with a variance process and monitoring requirements approved by the San Antonio Water System (“SAWS”).

City staff, TNC and BCI began meeting with representatives from 3009 Land Ltd (“3009 Land”) in December of 2013 to discuss a possible transaction that would result in the purchase from 3009 Land of approximately 1,500 acres of land known as Crescent Hills, located in Comal County. The meetings commenced as a result of interest from a private developer to purchase Crescent Hills and construct 4,500 homes as part of a dense single-family development plan. The property is environmentally sensitive due to its water features and wildlife inhabitants.

In an effort to finance the purchase of the property, the City entered into discussions with TNC and BCI, two entities whose interests in the property align with the City’s, regarding the possibility of developing a consortium to purchase and control the Crescent Hills property, protecting the Edwards Aquifer Recharge Zone, limiting its future development and protecting the property’s natural resources. Discussions among the parties resulted in the identification of possible funding sources, including Proposition 1 Edwards Aquifer Protection Program funds, conservation loans and private donations. If the property was acquired, the parties agreed that TNC would hold the underlying fee simple interest and maintain the property. The City of San Antonio would receive a conservation easement in exchange for the use of any Proposition 1 funds.

Following an appraisal of the Crescent Hills property and negotiations with 3009 Land, an agreement to sell the property to TNC for \$20.5 million was reached. The City agreed to seek the recommendation of the Conservation Advisory Board (CAB) and the approval of its City Council for a contribution of \$5 million in Proposition 1 funds toward the purchase in exchange for a conservation easement. TNC and BCI have actively been raising private donations to fund the remaining amount needed to purchase the property.

On August 27th, the Conservation Advisory Board recommended to City Council the expenditure of \$5 million in Proposition 1 funds to acquire the conservation easement across the Crescent Hills property. For its \$5 million Proposition 1 contribution, the City would receive a conservation easement across the entire 1,521 acres of the Crescent Hills property in perpetuity, in accordance with terms consistent with the City’s Edwards Aquifer Protection Program. The property would remain with TNC who would undertake all obligations to manage and maintain the land.

Due to Forestar’s previous participation in the acquisition of property for conservation purposes, the City and Forestar representatives commenced discussions on Forestar’s possible participation in acquiring Crescent Hills. Following extensive negotiations, the City and Forestar agreed upon the transfer of 86 Impervious Cover Credits (“ICCs”) in exchange for a \$5 million contribution to TNC to be used to acquire the Crescent Hills property.

In addition to the 86 ICCs, Forestar is seeking the ability to apply up to 43 ICCs to Cibolo Canyon, property which it owns and operates as a resort community that currently has an impervious cover restriction of 15% of its total acreage. To allow for the use of up to 43 ICCs at Cibolo Canyon, the current 15% restriction would have to be increased to not more than 16.5%, dependent upon how many ICCs Forestar actually uses at Cibolo Canyon. The use of ICCs at Cibolo Canyon will require approval and monitoring by SAWS. All other ICCs would be required to be used in the same fashion as those transferred through the Dierks transaction, most notably the use of ICCs must be coordinated through a variance process implemented by SAWS.

Because the 1,521 acre Crescent Hills property is in the City of San Antonio’s Extra-Territorial Jurisdiction, any development would have been subject to the City’s 15% impervious cover requirement. With the acquisition of this property for aquifer protection and conservation purposes, up to 228 acres will be protected. With the transfer of only 86 Impervious Cover Credit acres, these transactions will result in a net decrease of 142.15

acres which could be developed over the Edwards Aquifer Recharge Zone

ISSUE:

- A. Crescent Hills is a 1,521 acre tract of land located in Comal County. The property is environmentally sensitive due to its water features and wildlife inhabitants. Past efforts to develop the property into single-family and multi-family residences has spurred a community effort to protect the property from encroachment. The City is being asked to contribute \$5 million in Proposition 1 Edwards Aquifer Protection Program funds to the purchase of the property. In exchange the City will receive a conservation easement across the property in perpetuity for the purpose of protecting the quality of the Edwards Aquifer water.
- B. In exchange for a \$5 million contribution from Forestar, the City is being asked to transfer 86 ICCs to Forestar with up to 43 ICCs able to be utilized at Cibolo Canyon. Without the Forestar \$5 million contribution, this transaction would not be feasible.
- D. In order to accomplish this transaction and protect this sensitive tract of land over the Edwards Aquifer Recharge Zone, City staff is requesting the approval of an amendment to the Declaration of Restrictive Covenants associated with the Amended and Restated Agreement for Services in Lieu of Annexation between the City and Forestar to allow for the application of up to 43 ICCs on Cibolo Canyon. Without this amendment, Forestar would not contribute to the purchase of Crescent Hills.

ALTERNATIVES:

- A. An alternative would be to deny the contribution of Proposition 1 funding or defer the contribution until a later date. However, by not contributing to the acquisition of this property at this time, the property may be sold for development or the purchase price could increase. Without intervention from public entities and non-profit organizations, the Crescent Hills property is likely to be developed into single and multi-family residences. This type of development may have an adverse impact on the property's water features and wildlife inhabitants, including a likely negative impact on the quality of the Edwards Aquifer water.
- B. An alternative would be to not authorize the transfer of 86 ICCs to Forestar or allow up to 43 ICCs to be utilized at Cibolo Canyon. However, without either of these terms Forestar would not contribute \$5 million to the purchase of Crescent Hills, thus making the transaction financially infeasible.
- C. An alternative would be to not authorize an amendment to the Declaration of Restrictive Covenants associated with the Amended and Restated Agreement for Services in Lieu of Annexation between the City and Forestar to allow for the use of up to 43 ICCs at Cibolo Canyon. However, without this amendment, Forestar will not contribute \$5 million to the transaction.

FISCAL IMPACT:

- A. This is a one-time expenditure in the amount of \$5 million for real estate interests. It will be funded by the 1/8-cent sales and use tax in the Edwards Aquifer Protection (Proposition One) Sales Tax funds included in the Fiscal Year 2015-2020 Capital Budget.

These funds will contribute toward the purchase of the entire Crescent Hills property for the amount of

\$20.5 million. In addition to the City's contribution, TNC, BCI and Forestar have committed funds to cover the remaining costs of acquiring the property. Additionally, it is anticipated that Bexar County, the Edwards Aquifer Authority and the U.S. Army will contribute funds toward this purchase.

TNC will take fee-simple ownership of title at closing and the City will hold a conservation easement on the 1,521 acres. As part of the conditions of the easement, the City will monitor the property annually to ensure compliance with the Edwards Aquifer Protection Program.

- B. There is no fiscal impact.
- C. There is no fiscal impact.

RECOMMENDATION:

- A. Staff recommends approval of an ordinance authorizing the acquisition of an aquifer-protection conservation easement over an approximately 1,521 acre tract of land located in Comal County and generally known as "Crescent Hills" for a contribution of \$5 million of Proposition 1 Edwards Aquifer Protection Program funds through a Funding Agreement among the City, TNC, BCI and Forestar.
- B. Staff recommends the approval of an ordinance authorizing the transfer of 86 ICCs to Forestar through an Impervious Cover Credit Agreement.
- C. Staff recommends approval of an ordinance authorizing the Third Amendment to the Declaration of Restrictive Covenants associated with the Amended and Restated Agreement for Services in Lieu of Annexation between the City and Forestar to allow for the use by Forestar of up to 43 ICCs on Cibolo Canyon.