

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
ACTION AGENDA SUMMARY

DEPT: Planning & Community Development Af

BOARD AGENDA # *D-1

Urgent

Routine

AGENDA DATE January 14, 2014

CEO Concurs with Recommendation YES NO
(Information Attached)

4/5 Vote Required YES NO

SUBJECT:

Approval to Transfer the Title of a .23 Acre Parcel (APN: 022-029-030 - 7624 Monterey Avenue in the Ceres, CA area) to the Monterey Park Tract Community Services District for Use in Providing the District with a Safe Drinking Water System

STAFF RECOMMENDATIONS:

Authorize the Chairman of the Stanislaus County Board of Supervisors to transfer title of the subject property to the Monterey Park Tract Community Services District (District) and to enter into a Purchase and Sale Agreement, pursuant to California Government Code Section 25365.

FISCAL IMPACT:

The Planning and Community Development Department is in receipt of the District's \$1 purchase payment. The sale/transfer of the subject property will eliminate future maintenance costs associated with the property.

BOARD ACTION AS FOLLOWS:

No. 2014-22

On motion of Supervisor Withrow, Seconded by Supervisor Monteith
and approved by the following vote,

Ayes: Supervisors: O'Brien, Chiesa, Withrow, Monteith, and Chairman De Martini

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

- 1) Approved as recommended
- 2) Denied
- 3) Approved as amended
- 4) Other:

MOTION:

ATTEST: Christine Ferraro
CHRISTINE FERRARO TALLMAN, Clerk

DISCUSSION

The .23 acre parcel (APN: 022-029-030 – 7624 Monterey Avenue) was conveyed to Stanislaus County in February of 2005 by a "Trustee's Deed Upon Sale". The parcel had been the subject of a \$40,000 deferred loan, for housing rehabilitation activities, issued in 1995 by Stanislaus County. The house was not covered by insurance when it burned down in 2001 and the owner was unable to secure a loan to re-build the house. Ultimately, the property owner filed for bankruptcy in 2002 and Stanislaus County acquired the vacant parcel through foreclosure in 2005.

It was staff's understanding that the former Stanislaus County Redevelopment Agency (RDA) was the original lending agency of the housing rehabilitation loan provided to the property owner in 1995. However, in 2013 staff found records that indicate that the property rehabilitation assistance that led to the acquisition of the property was actually funded by the use of County Community Development Block Grant (CDBG) funds and not RDA funds.

On September 2009, the former RDA provided the District with \$40,000 in match funds for a Water Supply Study that was concluded in 2011 delineating the options for providing safe drinking water. The study provided for two primary alternatives: 1) water well head treatment; and, 2) connection to the City of Ceres' municipal water delivery system. The District determined that the most effective and feasible option was connection to the City of Ceres municipal water delivery system. Under this option, the study found that the District would need the subject property as a site for a water storage tank needed to receive City water.

Also in September 2009, under the same resolution authorizing the approval of match funds for the Water Supply Study, the RDA authorized the Agency's Executive Director to transfer the Agency-owned parcel to the District for development of a well site and to enter into any agreements needed to allow the District use of the Agency's parcel for use in the development of a water delivery system.

On June 1, 2011, the RDA entered into a twenty-four (24) month option agreement with the District for use of the parcel, located within the District's boundaries, for drilling of a test well and production well, as a possible alternative of a water delivery system, needed to provide safe drinking water to the District. This option granted the District the exclusive right to purchase the parcel from the RDA for the purpose of providing a water delivery system to the District. The total purchase price of the parcel was one dollar and was conditioned to have ownership revert back to the RDA at any time the parcel no longer served the District for the purpose of providing a water delivery system. This option agreement was allowed to expire on June 1, 2013, once it was determined that the property was not an asset of the RDA and the Successor Agency (SA) of the former RDA had no authority to transfer the property.

Due to the fact that the RDA has always affirmed ownership of the subject property, the property has been recognized by the State Department of Finance (DOF) to be an asset of the SA. County staff, acting as staff to the SA, notified the DOF in August 2013 of the ownership misunderstanding and has not received any response. In November 2013 the California State Controller's Office (SCO) conducted a review of RDA asset transfers. The ownership misunderstanding was brought to the attention of the SCO staff conducting the review. Since the property was never held in title by the RDA, the SCO did not consider it an asset needing to be included in the review.

With the recent findings that the subject property is ultimately owned by Stanislaus County and not an asset of the SA, and the fact that the option agreement has expired, the Board of Supervisors has the discretion and authority under California Government Code Section 25365 to transfer title of the property.

The District will use the subject property for the purpose of developing a safe drinking water delivery system. If the District ceases to use the property for this purpose, the property will revert back to the County.

POLICY ISSUES

Approval of this request supports the Board of Supervisors priorities for promoting A Safe Community, A Healthy Community, A Well-Planned Infrastructure System, and Effective Partnerships by assisting the District in providing the Monterey Park Tract Community with a safe drinking water system.

STAFFING IMPACT

Planning and Community Development department staff, along with staff from County Counsel, prepared the Purchase and Sale Agreement and Grant Deed for the transfer of title of this property.

CONTACT PERSON:

Angela Freitas, Planning & Community Development Director
Telephone: (209) 525-6330

ATTACHMENTS

1. Purchase and Sale Agreement
2. Grant Deed

PURCHASE AND SALE AGREEMENT

This Purchase and Sale Agreement (The "Agreement") is made and entered into this 14th day of January, 2014, by and between the COUNTY OF STANISLAUS, a political corporation (hereafter "County" or "Seller") and the MONTEREY PARK TRACT COMMUNITY SERVICES DISTRICT, (hereafter "District" or "Purchaser").

RECITALS

WHEREAS, Seller is the owner of real property located in the County of Stanislaus, commonly known as 7624 Monterey Avenue, Ceres CA 95307 and known as Assessor's Parcel Number 022-029-030, and more particularly described in Exhibit "A" attached hereto (hereafter the "Property"); and

WHEREAS, in 1995 Seller assisted the prior owner of the Property with a \$40,000 loan for housing rehabilitation received from the State of California; and

WHEREAS, in 2001 the residence was destroyed by fire, and the property was subsequently conveyed to Stanislaus County in 2005 via a "Trustee's Deed Upon Sale"; and

WHEREAS, subsequent to the County's acquisition, the Property was mistakenly listed as an asset of the Former RDA:

WHEREAS, in 2009 the former RDA entered into an Option Agreement No. 1 with the Monterey Park Tract Community Services District (District) for use in development of a District water supply system; and

WHEREAS, in 2011 a water supply study, subsidized by the former RDA, concluded that the Property was a viable option for use as a site for the development of a District water supply system; and

WHEREAS, in 2011 pursuant to the water supply study's conclusions, the former RDA entered and the District into Option Agreement No. 2 extending the option term to June 1, 2013; and

WHEREAS, in 2012 it was determined that the Property had been incorrectly identified as an asset of the former RDA; and

WHEREAS, District has a need to develop a safe drinking water delivery system and the Property is an appropriate site for the system; and

WHEREAS, Seller wishes to transfer the Property to the District solely for the development of a District water supply system; and

WHEREAS, Seller declares the Property as surplus property and Seller desires to sell the Property on terms and conditions in this Agreement; and

WHEREAS, District desires to purchase the Property upon the terms and conditions stated in this Agreement.

NOW, THEREFORE, the parties hereto mutually agree as follows:

SECTION 1. RECITALS:

The foregoing recitals are hereby incorporated and are part of this Agreement.

SECTION 2. PURCHASE AND SALE:

For good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Seller agrees to sell and Purchaser agrees to purchase the Property under the terms and conditions of this Agreement.

SECTION 3. PURCHASE PRICE:

The full purchase price for the Property shall be \$1.00.

SECTION 4. PAYMENT:

Purchaser shall pay the entire Purchase Price to Seller through Stanislaus County's Department of Planning and Community Development.

SECTION 5. CONVEYANCE OF TITLE:

- a. Seller agrees to convey and grant to Purchaser, and Purchaser agrees to accept, subject to the conditions set forth herein, title to the property by Grant Deed.
- b. This conveyance is expressly conditioned such that the Property may be used for water supply system purposes only. If the property ceases to be used for water supply system purposes, the Property will revert back to the Seller; unless Seller otherwise agrees in writing, which consent shall be effective upon recording.

SECTION 6. SELLER'S REPRESENTATIONS:

Seller represents to Purchaser that:

(i) Seller owns the Property free and clear of all liens, leases, claims, encumbrances and encroachments not disclosed by the public record. Except as disclosed herein, Seller has no knowledge of any unrecorded or undisclosed legal or equitable interest in the Property owned or claimed by anyone other than Seller.

(ii) Seller offers no warranty or assurance for any underlying interests that may exist within the adjoining right-of-way. Acquisition of said underlying interests, if any exist, shall be the responsibility of the Purchaser.

(iii) No litigation, and no governmental, administrative, or regulatory act or proceeding is pending or, to the best of Seller's knowledge, proposed, threatened, or anticipated with respect to the Seller, or with respect to any other matter affecting the Property or its condition.

(iv) To the best of Seller's knowledge, Seller has received no written notice of any hazardous materials located on, under or about the Property.

(v) To the best of Seller's knowledge, Seller has received no written notice of any currently outstanding violations of any federal, state, county or municipal law, ordinance, order, regulation, or requirement involving or affecting the Property.

(vi) Prior to Closing, Seller shall, at its sole cost and expense, and subject to Purchaser's reasonable satisfaction, maintain the Property in good repair and in the same condition as of the date of this Agreement, reasonable wear and tear excepted.

SECTION 7. RELEASE:

From and after Closing, Purchaser hereby waives, releases, remises, acquits, and forever discharges Seller, its officers, employees, and agents, and their respective heirs, successors and assigns, of and from any and all suits, actions, causes of action, legal or administrative proceedings, claims, demands, actual damages, punitive damages, losses, costs, liabilities, interest, attorney's fees, and expenses of whatever kind and nature, in law or in equity, known or unknown, which Purchaser ever had, now has, hereafter can, shall or may acquire or possess, arising out of or in any way connected with, (1) Seller's use, maintenance, ownership and operation of the Property prior to Closing, or (2) the condition, status, suitability, quality, nature, contamination or environmental state of the Property.

It is the intention of this Section that any and all responsibilities and obligations of Seller, and any and all rights or claims of Purchaser, its successors and assigns and affiliated entities, arising by virtue of the physical or environmental condition of the Property as well as the effect of zoning and any land use and environmental laws, regulations and ordinances affecting the Property and its use are by this release provision declared null and void and of no present or future effect to such parties. Purchaser agrees to waive the benefits of section 1542 of the California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

SECTION 8. INDEMNITY:

Purchaser shall, to the maximum extent permitted by law save, defend, indemnify and hold harmless Seller, its officials, employees and agents and their respective heirs, successors and assigns (collectively the "Indemnified Parties") from and against any and all suits, actions, legal or administrative proceedings, claims, demands, actual damages, fines, penalties, punitive damages, losses, costs, liabilities, interest, attorney's fees, including but not limited to any such

fees and expenses incurred in enforcing this indemnity provision, resulting from, arising out of or in any way connected with injury to or the death of any persons (including, without limitation any Indemnified Party) or physical damage to property of any kind wherever located and by whomever owned (including, without limitation any Indemnified Party) arising out of or in any way connected with Seller's ownership or use of the Property.

SECTION 9. “AS IS”:

Purchaser acknowledges and agrees that the Property is to be sold and conveyed to, and accepted by Purchaser, in an “as is” condition with all faults. Purchaser has investigated and has knowledge of operative or proposed governmental laws and regulations, including but not limited to, zoning, environmental and land use laws and regulations, to which the Property is or may be subject and accepts the Property solely upon the basis of its review and determination of the applicability and effect of such laws and regulations. Purchaser acknowledges that they are entering into this Agreement on the basis of Purchaser's own investigation and knowledge as to (1) the prior uses of the Property, (2) the physical and environmental conditions of the Property, including soils and other subsurface conditions, (3) the utilities, zoning, maps, permits, engineering data and laws, regulations and ordinances affecting the suitability of the Property for intended uses. Purchaser expressly assumes the risk that adverse physical and environmental conditions may not have been revealed by Purchaser's own investigation. Purchaser further acknowledges that Seller, its agents and employees have made no representations or warranty of any kind in connection with any matter relating to the condition, fitness, suitability, readiness or zoning of the Property upon which Purchaser has relied directly or indirectly for any purpose. Purchaser hereby waives, releases, remises, acquits and forever discharges Seller, Seller's employees, agents and officials of and from any claims, actions, causes of action, demands, rights, damages, costs, expenses or compensation whatsoever, direct or indirect, known or unknown, foreseen or unforeseen, which Purchaser now has or which may arise in the future on the account of or in any way growing out of or connected with the physical condition of the Property or any law or regulation applicable thereto.

SECTION 10. SURVIVAL OF PROVISIONS:

Purchaser acknowledges, understands and agrees that the provisions of Sections 7 (Release), Section 8 (Indemnity) and Section 9 (“As-Is”) herein shall survive the completion of this Agreement or any termination of this Agreement.

SECTION 11. CONDITIONS TO PURCHASER'S PERFORMANCE:

Purchaser's obligation to perform under this Agreement is subject to the following condition:

(a) Seller's representations and warranties in this Agreement being correct as of the date of this Agreement and at completion of this Agreement.

SECTION 12. CONDITIONS TO SELLER'S PERFORMANCE:

Seller's obligation to perform under this Agreement is subject to the following conditions:

(a) Purchaser's representations and warranties in this Agreement being correct as of the date of this Agreement.

(b) Purchaser's performance of all of the obligations which it is required to perform pursuant to this Agreement.

SECTION 13. SELLER'S COVENANTS:

Commencing with the full execution of this Agreement by both parties and until Close of Escrow:

(a) Seller shall not permit any liens, encumbrances, or easements to be placed on the property, other than the Approved Exceptions, nor shall Seller enter into any agreement regarding the sale, rental, management, repair, improvement, or any other matter affecting the Property that would be binding on Purchaser or the Property after the Close of escrow without the prior written consent of Purchaser.

(b) Seller shall not permit any act of waste or act that would tend to diminish the value of the property for any reason, except that caused by ordinary wear and tear.

SECTION 14. PURCHASER'S REPRESENTATIONS AND WARRANTIES:

Purchaser represents and warrants as follows:

(a) Purchaser has full power and authority to enter into and perform this Agreement. The execution, delivery and performance of this Agreement by Purchaser have been duly authorized by all necessary actions on the part of Purchaser, and all required consents or approvals of Purchaser have been duly obtained. This Agreement is a legal, valid and binding obligation of Purchaser, enforceable against Purchaser in accordance with its terms.

(b) The documents executed and delivered, or to be executed and delivered, pursuant to this Agreement, have been executed and delivered by persons who are duly authorized to execute and deliver the same for and on behalf of Purchaser.

(c) Purchaser acknowledges and agrees that it has not relied upon any representations by Seller with respect to (1) the condition of the Property or (2) the suitability of the Property, including physical condition, access, zoning, environmental matters, permits, utilities, code compliance, or any other matter affecting the Property or any use intended of the property by Purchaser. Purchaser acknowledges, understands and agrees it is Purchaser's obligation and responsibility to satisfy itself concerning these issues. Purchaser further acknowledges that the execution of this Agreement in no way limits the discretion of Seller in the permit and approval process in connection with development, rehabilitation and use of the Property by Purchaser.

(d) Purchaser will utilize the Property for the benefit of the public.

SECTION 15. ENTIRE AGREEMENT:

This Agreement and the documents referenced herein contain the entire agreement between the parties to this Agreement and shall not be modified in any manner except by an instrument in writing executed by the parties or their respective successors in interest.

SECTION 16. AMENDMENTS:

This Agreement, including any exhibits hereto, shall not be amended or changed except in writing, signed by the parties. Any amendment or addendum to this Agreement shall expressly refer to this Agreement.

SECTION 17. NO ASSIGNMENT:

Purchaser shall not have the right to assign this Agreement or any of its rights or interests under this Agreement to any party without the prior written consent of Seller, which consent may be withheld in Seller's sole discretion. Any unauthorized assignment shall be void.

SECTION 18. WAIVER(S):

No breach of any provision of this Agreement can be waived unless in writing. Waiver of any one breach of a provision hereof shall not be deemed a waiver of any other breach of the same or any other provision or covenant in this Agreement, including the time for performance of any such provision. An extension of time for performance of any obligation or act shall not be deemed an extension of time for performance of any other obligation or act.

The exercise by a party of any remedy provided in this Agreement or at law shall not prevent the exercise by that party of any other remedy provided in this Agreement or at law.

SECTION 19. BROKERS:

Purchaser and Seller each represents to the other that no realtor or broker has been retained, consulted or involved in connection with or negotiating this transaction. Each party agrees to defend, indemnify, and hold harmless the other party from any claims, expenses, costs, or liabilities arising in connection with a breach of that party's representations in this section.

SECTION 20. SUCCESSORS:

Subject to the terms of Section 17, Prohibiting Purchaser's Assignment, this Agreement shall inure to the benefit of and shall be binding upon the parties to this Agreement and their respective heirs, successors and assigns.

SECTION 21. DISCRETION RETAINED BY SELLER:

Seller's execution of this Agreement in no way limits the discretion of Seller in the exercise of its municipal functions, including but limited to its police powers and its authority in land use regulation, entitlements, and the permit and approval process in connection with the development, use and rehabilitation of the Property.

SECTION 22. APPROVAL:

Purchaser acknowledges, understands and agrees that this Agreement is subject to the approval by the County Board of Supervisors and this Agreement shall have no force or effect unless and until such approval by the County's Board of Supervisors is obtained.

SECTION 23. GOVERNING LAW:

This Agreement shall be interpreted under and be governed by the laws of the State of California.

SECTION 24. NOTICES:

All notices permitted or required to be given under this Agreement or which either Seller or Purchaser desires to serve upon the other shall be in writing and shall be deemed duly given and effective (a) on actual delivery if delivery is by personal delivery, or (b) five (5) days after delivery in the United States Mail if delivery is by postage prepaid, to respective addresses as set forth below or to any other address as may be designated by a party:

SELLER:

By Personal Delivery

County of Stanislaus
Attn: Director of Planning and
Community Development
1010 10th Street, Suite 3400
Modesto, CA 95354

By Mail

Department of Planning and
Community Development
Attn: Director
1010 10th Street, Suite 3400
Modesto, CA 95354

PURCHASER:

By Personal Delivery

Monterey Park Tract Community Services
District
Attn: Board President
7711 Monterey Ave.
Ceres, CA 95307

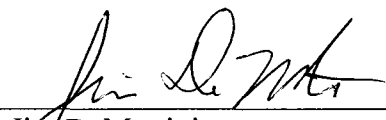
By Mail

Monterey Park Tract Community Services
District
Attn: Board President
PO BOX 1301
Ceres, CA 95307

SIGNATURES ON FOLLOWING PAGE


IN WITNESS WHEREOF, the County of Stanislaus, a political corporation, has authorized the execution of this Agreement by its Board of Supervisors and attestation by its Clerk of the Board, by Resolution No. 2014-22. Adopted by the County of Stanislaus on the 14th Day of January, 2014, and Purchaser has caused this Agreement to be duly executed.

COUNTY OF STANISLAUS

By: 
Jim DeMartini
Chairman of the Board of Supervisors

“Seller”

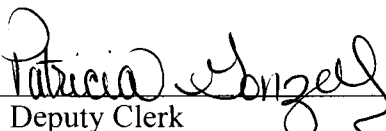
**MONTEREY PARK TRACT
COMMUNITY SERVICES DISTRICT**

By: 
Francisco Diaz
Monterey Park Tract Community Services
District Board President


“Purchaser”

ATTEST:

Christine Ferraro Tallman
Clerk of the Board of Supervisors of the
County of Stanislaus, State of California

By: 
Patricia Gonzalez
Deputy Clerk

APPROVED AS TO CONTENT:

By: 
Angela Freitas, Director
Planning and Community Development

APPROVED AS TO FORM:

John P. Doering
County Counsel


By: 
Thomas E. Boze
Deputy County Counsel

EXHIBIT "A"

Property Description

Lot 54, of Monterey Park Tract, as per map filed on April 16, 1941 in Volume 14 of Maps, at Page 15, Stanislaus County Records.

APN: 022-029-030



Stanislaus, County Recorder
Lee Lundrigan Co Recorder Office
DOC- 2014-0003173-00

Thursday, JAN 16, 2014 15:59:33
Rcpt # 0003478507

OMK/R2/1-3

NO FEE
RECORDING REQUESTED BY:
BOARD OF SUPERVISORS

RETURN TO:
STANISLAUS COUNTY
PLANNING AND COMMUNITY
DEVELOPMENT
ATT: DIRECTOR

GRANT DEED

The undersigned grantor(s) declare(s)
Documentary transfer tax is \$ 0

- computed on full value of property conveyed, or
- computed on full value less value of liens or encumbrances remaining at time of sale,
- Unincorporated area

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

On the condition that the Property shall be used for water supply system purposes only, and if the Property ceases to be used for water supply system purposes, the Property will revert back to the Grantor; unless Grantor otherwise agrees in writing, which consent shall be effective upon recording.

The COUNTY OF STANISLAUS, a political subdivision of the State of California does

hereby GRANT(S) to;

MONTEREY PARK TRACT COMMUNITY SERVICES DISTRICT

all of its right, title, and interest in the real property situated in an unincorporated area of Stanislaus County, California, described as follows:

SEE ATTACHED EXHIBIT "A" ATTACHED HERETO AND INCORPORATED HEREN BY THIS REFERENCE

Executed on January 14, 2014, at Modesto, California

(Sign)
JIM DEMARTINI
Chairman of the Board of Supervisors

County of Stanislaus.

EXHIBIT "A"

Property Description

Lot 54, of Monterey Park Tract, as per map filed on April 16, 1941 in Volume 14 of Maps, at Page 15, Stanislaus County Records.

APN: 022-029-030

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California)

County of Stanislaus)

On January 14, 2014 before me, Christine Michele Smith, Notary Public, personally appeared Jim Demartini, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/~~she~~/they executed the same in his/~~her~~/their authorized capacity(ies), and that by his/~~her~~/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the state of California that the foregoing paragraph is true and correct.



WITNESS my hand and official seal.

Christine Michele Smith
Signature of Notary

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and prevent fraudulent reattachment of this form to another document.

DESCRIPTION OF ATTACHED DOCUMENT

Title or Type of Document: Grant Deed
Subject: Annexation for Monterey Park Tract Community Service District
Located at: Lot 54 of Monterey Park Tract
Date of Document: January 14, 2014
Number of Pages in words: 2
Signer(s) Other Than Named Above: _____

CAPACITY(IES) CLAIMED BY SIGNER(S)

Signer's Name: _____

- Individual(s)
 Corporate Officer
Title(s): _____
 Partner(s) - Limited General
 Attorney-In-Fact
 Trustee(s)
 Guardian/Conservator
 Other: _____

RIGHT THUMB

SIGNER IS REPRESENTING:

1/1/08

Signer's Name: _____

- Individual(s)
 Corporate Officer
Title(s): _____
 Partner(s) - Limited General
 Attorney-In-Fact
 Trustee(s)
 Guardian/Conservator
 Other: _____

RIGHT THUMB

SIGNER IS REPRESENTING:

