



MEMORANDUM

EUGENE WATER & ELECTRIC BOARD

Rely on us.

TO: Commissioners Simpson, Brown, Helgeson, Manning and Mital
FROM: Steve Newcomb, Environmental Services Manager
Kevin Biersdorff, Principal Project Manager
Jeannine Parisi, Community & Local Gov't Outreach Coordinator
DATE: October 25, 2013
SUBJECT: Resolution No. 1324 - Riverfront Property Declaration of Surplus
OBJECTIVE: Board Action – Resolution No. 1324

Issue

EWEB is developing a process to enlist a master developer for purchase and redevelopment of the riverfront property. Concurrent with the solicitation, management and our consultants recommend that the City's first right to acquire EWEB surplus property be resolved to reduce uncertainty about the property's future development potential.

Background

City Code Section 2.196 requires that property held by the utility, but no longer needed for utility purposes, be declared surplus prior to disposal. Once surplus is declared, and city officials are notified, the City Manager is allowed thirty days to indicate interest and commence negotiating purchase for municipal purposes. The negotiation and transfer must occur within five years of notification.

"Eugene Water & Electric Board – Disposition of Real Property. The board may dispose of real property not needed for utility purposes in accordance with state law. In the event the board of its designee determines that real property is not needed for utility purposes, it shall afford the city the opportunity to obtain the property for municipal purposes by notifying the city manager of its availability. If the city desires to obtain the property, the city manager shall request negotiation within thirty (30) days of the notification. As soon as possible after negotiation, the city manager and the board's general manager shall negotiate an agreement to compensate the board for the property transferred in accordance with agreed criteria. Any agreed transfer to the city and compensation to the board shall be completed within five (5) years from the date of notification. The board may dispose of the property by such means and terms as it deems appropriate if the city manager fails to request negotiations within thirty

(30) day of notification of availability or if the property transfer is not completed within five (5) years of that notification."

Note that the provision allows City acquisition "for municipal purposes." Presumably, those purposes would be documented and made known to meet the intent of the law. On the other hand, if the City were interested in the property for other than municipal purposes, e.g., resale, then they should waive their rights under EC 2.196 and simply seek to purchase the property along with other potential buyers.

Furthermore, EWEB Real Property Policies SD14, last revised July 5, 2005, states:

"3. Property Disposal – The Board may declare any real property surplus. The decision to declare a parcel surplus will be based on current and future utility needs, land use and environmental considerations. The Board may direct staff to dispose of any properties declared surplus. Any properties disposed shall be disposed in accordance with applicable ordinances, statutes, laws and other Board policies."

On March 19, 2012 the City Manager and EWEB General Manager executed a Memorandum of Understanding (MOU) outlining the expected actions of each organization to facilitate implementation of the riverfront master plan. Germane to the Declaration of Surplus is an agreement that,

"1. City approval of the land use applications . . . will specifically identify those portions of the Riverfront Property that are planned and regulated to serve municipal purposes. Exhibit A, attached hereto, shows the general area that will likely be proposed for a public park as part of the Riverfront Property redevelopment. In order to release some of the Riverfront Property from real or perceived encumbrances that could impede the redevelopment process, the City intends to release its EC 2.196 right of first refusal to all portions of the site not identified for public park space in the City's final land use approvals. This release of the City's 2.196 right will be provided to EWEB in writing immediately following a City approval of EWEB's applications and EWEB's written notice to the City that EWEB desires to sell that property."

and,

"3. The City and EWEB agree to collaborate on the development of the Downtown Riverfront public park/open space and seek strategies for its long-term maintenance that will meet the objectives of the Riverfront Master Plan as approved by Council. Among other strategies to be considered are: phased development of the park/open space area, EWEB's retention of limited property interests, City acquisition of limited property interests such as public access easement, or creation of a maintenance fund.

At the October 1 meeting, management shared a map outlining an approximately 16 acre subset of the riverfront property that is readily available for horizontal development. In the memo, it was recommended that the Board be prepared to declare this area surplus at the next meeting, noting that additional land could be later added to a subsequent declaration depending on developer responses to the RFI/Q. The memo also explained that management would engage with the City Manager on the proposed Declaration of Surplus to ensure there have been changes since the MOU was signed and that he would be comfortable releasing those portions described.

Discussion

In deference to the MOU and potential city interest, the proposed declaration exempted the property adjacent to the river that is defined as public open space per the newly adopted code. Management preferred to defer discussions about how this property would be developed and maintained over time until a master developer was on board and could participate in creating viable solutions. However, in subsequent conversations with City staff, it appears there is a difference in opinion about the sequencing proposed and that the City wants more certainty about future park ownership before releasing its interest in any portions of the property that EWEB plans to declare surplus for development. It appears that a negotiated transfer of the riparian park area to the City is the preferred outcome from the City's perspective.

The City Manager and General Manager have discussed an approach to expedite resolution to the park/open space issue so that EWEB can move forward on a formal declaration of surplus on the balance of the property. Our intent is to clarify concerns and identify acceptable ownership models for the park area that support our common goals for riparian enhancement, development of amenities, maintenance, management and public accessibility of the bike path and open space within a timeline that does not jeopardize the developer solicitation process. General principles guiding these discussions would include the following concepts:

- Property transfer from EWEB to the City would include recorded covenants, deed restrictions, and/or other legally binding mechanisms that manage future uses of the park/open space (e.g., no overnight use, general recreation and public access, etc.).
- EWEB would retain through recorded covenants and deed restrictions existing easements and future easements for planned utility needs.
- Transfer price for the park/open space will be at fair market value or some other reasonable proxy or consideration between the City and EWEB. EWEB is willing to entertain concepts where proceeds from the sale of the park/open space property could be set aside in a separate fund dedicated to maintenance of this property during the transition and development of the riverfront.
- That the City commits to developing the open/park space per the adopted land use code and design guidelines within a set timeframe and stage improvements in coordination with EWEB and its development partner(s).

- The City, EWEB and EWEB's master developer would work collaboratively to finalize details on the final boundaries for the park/open space area with the area being consistent with the MOU, land use code and master plan, but recognizing final minor adjustments that may be necessary to finalize lot lines and boundaries once final details of development, infrastructure (e.g. streets) and open/park space come together
- That the City agrees its interest in surplus EWEB riverfront property is satisfied through the transfer of the open space and that any additional riverfront property open space is limited to what is required by the adopted code to be developed for public benefit as expressed in the master plan (e.g. on-site storm water mgmt, boardwalks, public plazas).
- Incorporation of a 'reversion' clause that makes both parties accountable to uphold commitments and timelines to develop and maintain the park/open space and riverfront infrastructure improvements. Conceptually, the reversion clause would be at the original transfer price less payments or cost of improvements made by either party.
- That the City would pursue commitment of other public funds to support necessary infrastructure improvements to provide improved access to the riverfront and to support development of the riverfront consistent with the master plan concept and adopted land use code and design guidelines.

The riverfront park is a critical amenity to the success of the overall master plan concept. If negotiations for property transfer do not result in a mutually agreeable outcome, nothing in the land use code or any other agreements would prevent EWEB from retaining ownership of the property.

TBL Assessment

None. The Declaration of Surplus and solicitation of a master developer would occur within the context of the newly adopted code which encourages compact and green urban redevelopment adjacent to the city's core.

Recommendation

Since Declaration of Surplus is not de facto "notification of availability," staff recommends the Board proceed with Declaration of Surplus as shown on Exhibit A and direct the General Manager to provide the attendant notification to the City Manager at the appropriate time but no more than 90 days from Board action. This period of up to 90 days is intended to provide EWEB and the City to discuss and develop terms and conditions for the possible transfer of the open/park space. Please note that the area proposed for declaration in Exhibit A was expanded to include the Steam Plant as well. The Board's action would signal readiness to move forward but does not start the 30-day window for City response. This clock starts at the time of formal notification from the General Manager to the City Manager.

Management further recommends delaying release of the RFI/Q until January 1, 2014 with responses due back by March 3 to avoid a critical solicitation process occurring over the winter holidays. Staff

and consultants will continue to reach out to potential developers concurrent with resolution of the open space ownership and funding commitment issues. Management will keep the Board informed of progress in this regard and alert Commissioners if additional delays or other concerns arise.

Requested Board Action

1. Declaration of Surplus for real property as approximately shown in Exhibit A.
2. Approval for General Manager to provide notification to City Manager within the next 90 days to start the "30-day clock."
3. Authorize General Manager to commence negotiations with the City Manager on transfer of the open/park space that is consistent with the general principles outlines above.

PROPOSED AREA FOR DECLARATION OF SURPLUS
NOVEMBER 2013
17.25 AC

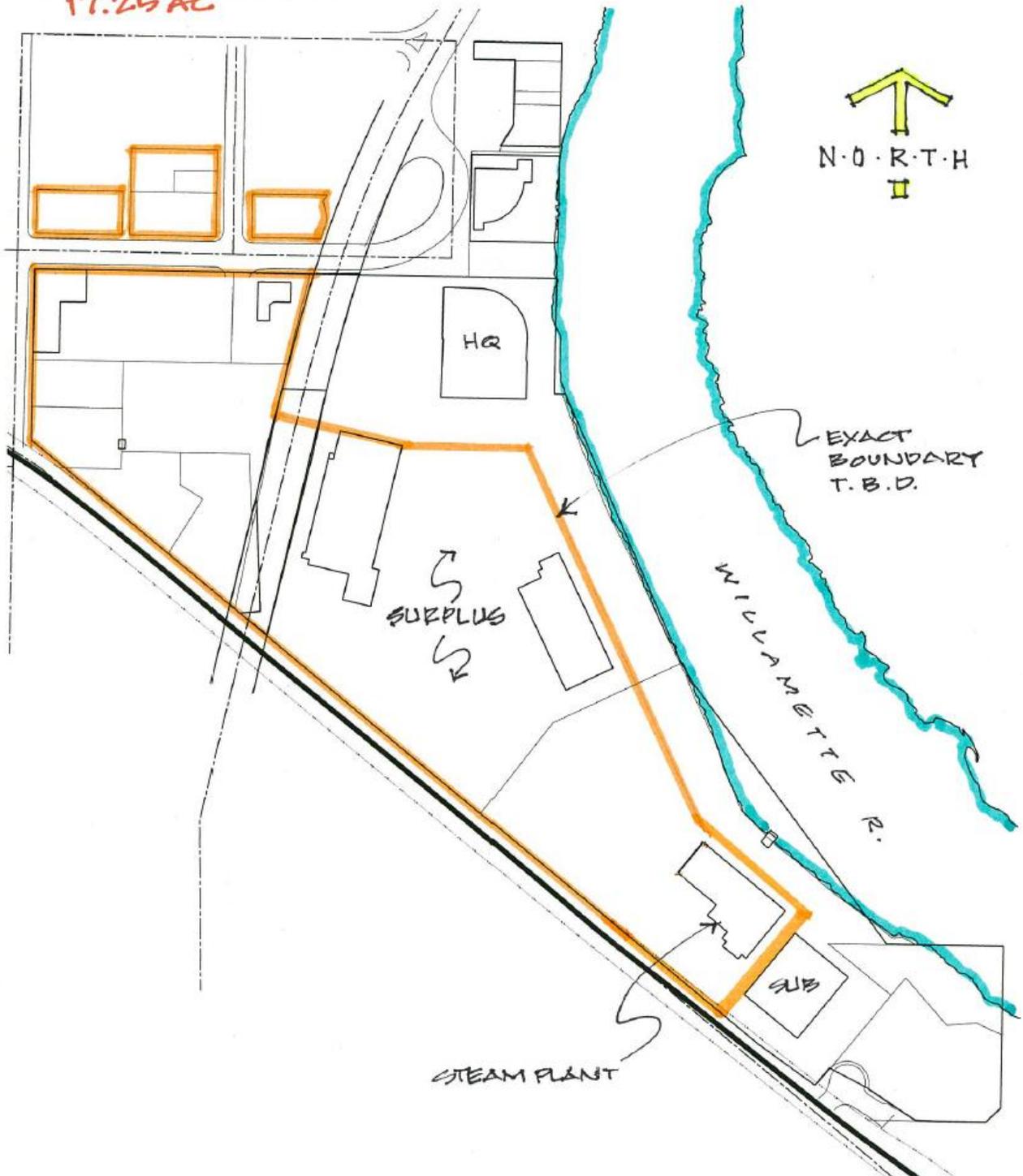


Exhibit A

**RESOLUTION 1324
NOVEMBER 2013**

**RESOLUTION DECLARING SURPLUS
FOR CERTAIN REAL PROPERTY NO LONGER NEEDED FOR UTILITY PURPOSES
EUGENE WATER & ELECTRIC BOARD**

WHEREAS, EWEB holds title to approximately 27 acres of riverfront property in the name of the City of Eugene, for the use and benefit of Eugene Water & Electric Board;

WHEREAS, approximately 17 acres represented in Exhibit A are no longer needed for utility purposes;

WHEREAS, Eugene Code, Section 2.195 provides:

"The Water Board [EWEB] shall have entire control of the water and electric utilities of the city, and all property connected therewith";

WHEREAS, The EWEB Board of Commissioners, the Eugene Planning Commission and Eugene City Council have endorsed a master plan for redevelopment of the property -- along with the corresponding land use changes -- for the transition of the site to a mixed use development together with specific property to be set aside for publicly accessible open space.

NOW, THEREFORE, BE IT RESOLVED by the Eugene Water & Electric Board that:

- (i) The Board does hereby declare surplus the area represented in Exhibit A-- the exact boundaries of which shall be determined at a later date, and
- (ii) Instructs the General Manager to notify the City Manager of the opportunity to obtain the property for municipal purposes as provided by Eugene Code 2.196 not later than ninety (90) days from the execution of this resolution.

Adopted at a meeting of the Eugene Water & Electric Board on November 5, 2013.

THE CITY OF EUGENE, OREGON
Acting by and through the
EUGENE WATER & ELECTRIC BOARD

President

I, TARYN M. JOHNSON the duly appointed, qualified and acting Assistant Secretary of the Eugene Water & Electric Board, do hereby certify that the above is a true and exact copy of the Resolution adopted by the Board at its November 5, 2013 Regular Board Meeting.

Assistant Secretary