



January 10, 2006

**SUBJECT:** Explore Locations for Community Gardens and Special Agreement with Sustainable Community Gardens

**REPORT IN BRIEF**

This report is provided in follow up to Report to Council No. 05-077 reviewed by City Council on March 22, 2005. That evening, Council received substantial public input and directed staff to further explore the possibility of an agreement with Sustainable Gardening Group (now Sustainable Community Gardens) for the development of community gardens on City property under the assumption that capital and operating costs will not be the City's responsibility, examine performance measures to determine the future success of community gardens and ensure that gardeners are notified of the term of the agreement (five years). Please see Attachment A, Draft Agreement for the Development, Operation and Maintenance of Community Gardens.

Council also directed staff to explore further with residents and affected neighborhoods three separate locations that were potential sites for community gardens. The locations were City-owned parcels between Mathilda Avenue and Charles Street; the John W. Christian Greenbelt near Manzano Way; and, a City-owned parcel along Charles Street north of 505 West Olive Avenue. Please see Attachments B, C and D vicinity and parcel maps of these sites. Staff has met with the community and gathered input regarding the three potential locations.

Regarding the potential site located along Charles Street north of W. Olive Avenue, Council noted that any use of this parcel for community gardens would be limited to a five-year period to ensure that the future use and alternate options of uses of this parcel would be reconsidered by City Council after the five-year period. This limitation was provided in consideration of fiscal constraints and the immediate need to reduce expenditures or increase revenues for existing City programs and services. The City fiscal climate remains of concern and the City Manager continues to examine options to close a Citywide structural imbalance. At the time of writing this report, the structural imbalance was approximately \$1,800,000 yearly. However, in November 2005, residents approved increases to the Business License Tax and the Occupancy Tax for Hotels/Motels. The added revenue from these sources will reduce the imbalance significantly but not eliminate the imbalance

Issued by the City Manager

entirely. More detailed information on this topic will become available as staff addresses this topic in the coming months.

One strategy to reduce the structural imbalance would consider liquidating some of the City-owned parcels throughout the City, including those along Charles St. to provide one-time resources or on-going revenue in the form of interest income. In this regard, the 505 W. Olive/Charles Street parcel was part of a larger parcel purchased approximately five years ago for \$70 per square foot. The 1.8 acre portion being considered for gardens was valued at approximately \$5,500,000 at that time. The current value and opportunity for sale is conservatively in the neighborhood of \$6,700,000.

Similarly, the parcels located between Mathilda Ave. and Charles St. could be considered for liquidation, development or other purposes. These parcels were purchased with an intention of consolidation and construction that would enhance efforts of developing the Sunnyvale downtown. While these parcels are too small and disconnected to provide a community gardens site, the current value and opportunity for sale is conservatively estimated at approximately \$3,000,000.

The City does not own the John W. Christian Greenbelt property but manages it through a revocable permit (P-3697) with the San Francisco Public Utilities Commission (SFPUC). Staff has contacted SFPUC to ascertain whether any adjustments or changes might be required to place community gardens at this location. On November 3, 2005, SFPUC provided a modification to the existing Use Permit P-3697 to specifically include the activities of community gardening. Please see Attachment E, staff correspondence with SFPUC regarding Use Permit P-3697.

Regardless of which site may be designated for Community Gardens, it is likely that the site will become the home for Community Gardens for a very long time to come. In efforts to note the potential for future change Council has designated a specific term for potential use of the 505 W. Olive site (five years maximum) and has directed that a termination clause be added to any proposed Agreement (180 days). However, the Gardens will become a special and successful addition to the community no matter where they are constructed. As such, any desire to relocate gardens once constructed, regardless of desirable city-wide outcomes, would be very disappointing for the gardeners and neighbors that welcome the view and activities of gardening.

Staff has met with leadership of Sustainable Community Gardens and developed a Draft Agreement for Development, Operation and Maintenance of Community Gardens in accordance with Council's Agreements with Outside Groups Policy. The agreement contains a requirement that SCG notify each gardener of the five-year term of the agreement and specify the actual

termination date within the garden plot assignment agreements. In follow up of Council's request for performance measurements, the proposed agreement contains a requirement for the group to provide yearly reports of gardener participation noting their residence by neighborhood, various age groups, hours of education instruction and the number of plots in use the previous year. This information will enable Council to determine the success of the community gardens in the coming years. Sustainable Community Gardens group strongly supports use of the Charles Street site north of 505 West Olive Avenue for community gardens and sees the John W. Christian Greenbelt site as an excellent location for a neighborhood garden site to serve Lakewood Village Neighborhood.

In light of current fiscal constraints that may determine the need to sell City properties and the opportunities costs previously identified for the parcels along Charles Street (Mathilda/Charles parcels \$3,000,000 and Charles/Olive parcel \$6,700,000) staff recommends that Council approve the Agreement essentially as expressed in Attachment A and designate an approximate 1.8 acre portion of the John W. Christian Greenbelt property identified in Attachment B for use by SCG for a five-year period beginning on January 1, 2006.

The Parks and Recreation Commission reviewed this report on December 14, 2005, and recommended that Council approve Alternatives 1 and 4. The motion passed unanimously 4-0, with Commissioner Chuck absent.

1. Approve an agreement with Sustainable Community Gardens for the development, operation and maintenance of community gardens consistent with Attachment A and authorize the City Manager to enter into the agreement on behalf of the City.
4. Designate the 1.8 acre City-owned parcel west of Charles Street and north of 505 West Olive Street as depicted in Attachment D for the exclusive use of community gardens to be developed, operated and maintained by Sustainable Community Gardens for a period of five-years with any extension of this use period only as approved by City Council.

Additionally, Commissioners recommended adding language to be placed into the draft proposed agreement (Attachment A) regarding the notice of the time span of the proposed agreement as follows:

Current statement in Attachment A, Draft Agreement page 3, paragraph 6:

GROUP shall inform all gardeners yearly, through special notice included in all Garden Plot Assignment Agreements, that the term of this Community Gardens Agreement is five (5) years and shall specify the

termination date of this Community Gardens Agreement as approved by City Council.

Commissioner's recommended statement for Attachment A, Draft Agreement page 3, paragraph 6; *Italicized* wording is recommended by Commissioners:

GROUP shall inform all gardeners yearly, through special notice included in all Garden Plot Assignment Agreements, that the term of this Community Gardens Agreement is five (5) years and shall specify the termination date of this Community Gardens Agreement as approved by City Council *as well as the possibility of termination by either party with 180 days notice.*

### **BACKGROUND**

On March 22, 2005, City Council reviewed Report to Council No. 05-077, Consideration of Community Gardens and Possible Locations. This report noted the positive aspects of community gardening, grants that had been approved and received in the amount of \$40,000 for developing community gardens from the Satterberg Foundation, a non-profit philanthropic organization and provided several possible locations that could be explored should Council determine to provide community gardening for Sunnyvale. Additionally, this report noted the positive relationship growing with a local gardening group, Sustainable Gardening (now Sustainable Community Gardens) and sought direction from Council for a potential special agreement for development, operation and maintenance of community gardens on City property in Sunnyvale.

Upon review of this report and significant public input, City Council directed staff to:

- Explore the possibility of an agreement with Sustainable Gardening (now Sustainable Community Gardens) for the development of community gardens on City property under the assumption that capital and operating costs will not be the City's responsibility.
- Examine possible performance measures such as participants by age groups (youth and seniors) and by location of residence to ensure service to a broad spectrum of the City.
- Ensure that gardeners are notified regarding the five-year term limit of the agreement and of the specific date that the agreement would terminate without additional Council action(s).
- Ensure that the agreement contains a termination clause that provides ample time and opportunities for gardeners to harvest planted crops if the City requires other use of the garden site and must terminate the agreement.

- Further explore with residents and the affected neighborhood the possible development of community gardens on a portion of the John W. Christian Greenbelt just west of Manzano Way.
- Further explore with residents and the affected neighborhood the possible development of community gardens on City-owned parcels between Mathilda Avenue and Charles Street, south of McKinley Avenue and north of Iowa Avenue.
- Further explore with residents and the affected neighborhood the possible development of community gardens on a 1.8 acre City-owned parcel on Charles Street north of 505 West Olive Avenue. Regarding this site, Council further directed that any use of this parcel for community gardens would be limited to a five-year period to ensure that the future use and alternate options of uses of this parcel would be reconsidered by City Council at that time.

This report describes that exploration and seeks Council action regarding the next steps for community gardens in Sunnyvale.

### **EXISTING POLICY**

#### **From the Open Space Sub-element:**

Goal A: Manage a comprehensive open space program that is responsive to public need, delivers high quality customer service and exemplifies the city's commitment to leadership in environmental affairs.

Policy A.1: Encourage active citizen involvement in the development and management of open space.

#### **Action Statements:**

A.1.a. Provide opportunities for public participation in planning the development and management of open space.

A.1.d. Investigate and pursue avenues for citizen involvement in the implementation of open space programs, such as landscape plantings and park beautification activities.

Goal B: Acquire and develop open space identified as high priority through land dedication or purchase.

Policy B.4: Identify revenue sources and increase revenues, where possible, which can be allocated to parks and open space operating budgets and capital improvements.

#### **Action Statements:**

B.4.c. Encourage contributions, grants and loans for open space acquisition and development through the community and other foundations, civic organizations, and individuals.

Goal C: Maintain a system of parks that assures all residents, workers and visitors access to recreational opportunities by providing neighborhood parks, athletic/play fields and special use facilities.

C.1.e. Consider acquisition or lease of sites to assure that accessible open space is maintained in each existing neighborhood and provided to any new neighborhoods.

Policy C.4: Provide, develop and maintain Special Use Parks and Facilities.

Action Statements:

C.4.c. Provide for a balance between general recreation uses and special interest uses in parks and facilities.

C.4.e. Consider the designation, development and management of an Orchard Heritage Park at the Community Center site consistent with an overall plan and in cooperation with the Sunnyvale Historical Society.

**DISCUSSION**

As noted above, Council requested that staff further explore several aspects of the topic of community gardens including a potential agreement to develop, operate and maintain gardens and three potential locations for community gardens in Sunnyvale. Staff provides this information as follows.

**Explore an Agreement with Sustainable Community Gardens**

Staff has pursued a written agreement with Sustainable Community Gardens (SCG) in accordance with Council's Agreements with Outside Groups Policy and consistent with direction received from City Council on March 22, 2005. SCG is a group of resident gardeners interested in organic, sustainable gardening to produce high-quality fruits, flowers and vegetables while educating the community of the positive aspects of this activity. Staff and representatives of SCG have met numerous times throughout the seven months time period and have completed a draft agreement for Council's review. Please see Attachment A, Draft Agreement between the City and Sustainable Community Gardens for the Development, Operation and Ongoing Maintenance of Community Gardens. Through this agreement, the City would provide:

- Exclusive use of a site for the purpose of community gardening;
- Free use of a park building for monthly meetings;
- Free referrals to Sustainable Community Gardens in future Recreation Activity Guides;
- Review and approval of community gardens design, layout and construction specifications;

- Review and approval of all policies, rules, regulations, etc. for the operations of the community gardens, including garden plot assignment practices;
- Disbursement of funds granted to the City for community gardens by the Satterburg Foundation for the development and construction of community gardens (Grant funds may not be used for operational expenses.); and,
- Access to utilities at the site.

Consistent with the draft agreement, Sustainable Community Gardens would provide:

- The design, build, operation and maintenance of community gardens at the Council approved location;
- Payments to the City to offset utility costs in the form of \$2,200 annually or direct payment to Finance, Utilities Division, for actual utility consumption at the site;
- Plans and design specifications for review by City;
- Non-profit community gardening services;
- Notice to gardeners of the five-year term of the agreement noting the specific date of termination;
- One copy of all garden plot assignment policies, by-laws, operating manuals, rules, regulations, etc. as approved by the Director of Parks and Recreation; and,
- A yearly report that notes the number of plots in use, total numbers of gardeners participating for the previous year, their age groups, neighborhoods of residence and the hours of educational instruction provided for the community.

The site would allow approximately 25% of the garden plots for Senior Center gardening (minimum of 15 plots) and 75% of available plots for the general community gardeners. Only residents, as primary gardeners, would be assigned garden plots. Non-resident gardeners, whether senior or not, would be allowed to assist resident gardeners but would not be assigned a garden plot.

Sustainable Community Gardens would comply with all laws and regulations including those related to growing only legal crops and would not grow marijuana (*Cannabis s.*) in any case. They would provide a year-end report including the number of plots in use, total number of participants, number of hours of educational instruction, and the numbers of resident, non-resident, senior, youth, and low-income residents served for the previous year. This information will be useful for City Council in determining the success of SCG in

serving the community through operation of the community gardens in the coming years.

### **Explore three locations for potential sites of community gardens**

On March 22, 2005, Council directed staff to explore, with neighbors and the affected community, three separate sites as possible alternatives for location of community gardens. The sites were:

1. City-owned parcels bounded by Mathilda Avenue to the east, Charles Street to the west, Iowa Avenue to the south and McKinley Street to the north.
2. The John W. Christian Greenbelt near Manzano Way.
3. City-owned parcel west of Charles Street and north of 505 West Olive Street.

### **John W. Christian Greenbelt near Manzano Way**

The eastern end of the John W. Christian Greenbelt near Manzano Way is a possible location for a community garden. Please see Attachment B, vicinity and parcel maps of this location. This area is far greater in size than the other parcels under consideration. A 1.8 acre portion of this parcel (similar in size to Charles and Olive location) would be reasonable for community gardens while retaining current transportation, recreation and leisure uses of the pathway. Although this location would provide a large number of residents of north Sunnyvale a garden easily accessible by walking or biking, it is not actually owned and under the complete control of the City. That is, this parcel is owned by the San Francisco Public Utilities Commission (SFPUC) and is a portion of the Hetch-Hetchy water system. As such, the City has developed and maintains a landscaped walking/bicycling path for public use under a special, revocable permit issued by the SFPUC (Permit P-3697).

A review of Attachment E, staff correspondence with SFPUC regarding Permit P-3697, notes that community gardening has been specifically included as an allowed use at this location.

Staff received mixed comments from attendees of public input meetings regarding this site. All attendees appreciated the concepts of community gardening, organic gardening and the positive social and recreational benefits of gardening. Some attendees expressed concern that the beautiful landscapes currently in place along the John W. Christian Greenbelt might be exchanged for community gardens that might not be as well-maintained. It was acknowledged that near neighbors included single-family home sites with existing gardening opportunities and numerous mobile home communities with an absence of opportunities to garden at present. Additional input as well as a summary of information from staff follows.



### Pros

- Ample space
- Large southern exposure—good for gardening
- Good size for a community garden
- Soil tests indicate quality soil for agricultural purposes
- Large numbers of mobile home and apartment residents with little room at home to garden
- Considerable numbers of low-income residents per capita
- Approved by SFPUC for community gardening purposes

### Cons

- Not centrally located
- Not ideal for seniors or community members outside the neighborhoods served by JWC Greenbelt
- This area is used by neighbors on holidays, especially each Fourth of July to view nearby fireworks displays of Great America theme park.
- Requires demolition of existing aesthetically pleasing landscapes
- San Francisco Public Utilities Commission uses do not generally allow planting of trees along this right of way. This could eliminate options of planting fruit trees for use in pruning and pest control classes. However, the SFPUC will review any and all planting plans once they are developed.

Of concern is the potential for third-party interruption of use of this site as the parcel is actually owned by the San Francisco Public Utilities Commission (SFPUC) and maintained by the City through a revocable permit. The parcel is the underground home of the large water transport pipelines for the Hetch-Hetchy water system that delivers drinking water to San Francisco and cities of the peninsula. Should the pipelines require repair or maintenance, use of the parcels could be interrupted causing disruption of gardening activities. Should alternate use of the land be required, SFPUC could terminate the permit that was issued to the City of Sunnyvale, thereby ending the gardening use of the area.

Representatives of SCG see this location as an excellent spot for a neighborhood garden that could serve the north end of Sunnyvale. However, they feel that because this site is not centrally located it would not be visited by many residents from other neighborhoods.

### **City-Owned Parcels between Mathilda and Charles**

Staff has examined the City-owned parcels located between Mathilda Avenue and Charles Street bordered by Iowa Avenue to the south and McKinley Avenue to the north. Please see Attachment C, vicinity and parcel maps of this location. A review of Attachment C indicates the lack of sufficient open space available for the use by community gardens at this location. The several parcels owned

by the City within this block contain small homes while other areas are vacant but are not connected to one another. Current value of these parcels is conservatively estimated at approximately \$3,000,000.

Staff shared the site descriptions and general overview of this location with those that attended public input meetings. Public comments were few and limited to a consensus that this would not be the best location for community gardens because of heavy traffic along Mathilda Avenue and the limited space available for gardens. Representatives of Sustainable Community Gardens shared the perspective that these parcels would not be a suitable location for community gardens. A summary of information and input follows.

#### Pros

- Centrally located
- Would help offset heavy development associated with downtown
- Large numbers of apartment residents with little room at home to garden
- Would help offset heavy development associated with downtown
- Would beautify vacant parcels that are unattractive at present
- Off-street parking is available at 505 W. Olive Avenue

#### Cons

- Small, disconnected parcels lack the size and shape suitable for community gardens
- Heavy traffic along Mathilda Avenue
- Value of land. The current value for these parcels is conservatively estimated at \$3,000,000. This is a relatively expensive price tag for community gardens, particularly when compared to other options for providing that service such as the John W. Christian greenbelt, which would essentially cost the City nothing.
- Opportunity Cost. Due the small size and shape of disconnected parcels, this City-owned land does not provide as many opportunities for alternative development as other sites under consideration, particularly the 505 W. Olive Ave/Charles St. location. Regardless of the City's financial situation, the Council may wish at a future time to further explore alternative uses for this site, including revenue generation through liquidation. But liquidation would not be possible throughout the duration of any time period agreed to for community gardening. The proposed agreement provides a five-year commitment to community gardens. The agreement does contain a clause that would allow the City to terminate the agreement with a 180-days' notice to SCG. Once established, however, community gardens will likely be very difficult to move even should that be deemed in the best public interest.

### **Charles Street north of 505 West Olive Avenue**

This 1.8 acre parcel along the west side of Charles Street and north of 505 West Olive Avenue is currently vacant. Please see Attachment D, vicinity and parcel maps of this location. Purchased at \$70 per square foot approximately five-years ago, this property is conservatively valued at \$6,700,000 at present. There are a few low quality trees scattered about the site and a row of mature higher-quality shade trees along the south border near the parking lots for 505 W. Olive Ave. Originally purchased to provide alternatives for expansion or relocation of City Hall, the parcel has occasionally been the site of illegal dumping of household and construction debris.

During public input meetings, neighbors and attendees perspective consistently favored this site for community gardens. Speakers expressed strong support for its central location. It was also acknowledged that near neighbors included single-family home sites with existing gardening opportunities along with numerous apartments nearby with an absence of opportunities to garden at present. Additionally, comments noted the aesthetic improvement for the neighborhood by establishment of gardens in place of a vacant lot. A summary of information and input as follows.

#### Pros

- Ample space of 1.8 acres
- Centrally located
- Abundant parking
- Quiet, pastoral street
- Large numbers of apartment residents with little room at home to garden
- Would help offset heavy development associated with downtown
- Would beautify a vacant parcel that is unattractive at present
- Soil tests indicate quality soil for agricultural purposes
- Through beautification and fencing, could protect area from further illegal dumping

#### Cons

- Value of land. The City paid \$70 per square foot for this property totaling some \$5,500,000 in expense. Current value for the 1.8 acre parcel is conservatively estimated at \$85.00 per square foot for a total estimated value of \$6,700,000. This is an expensive price tag for community gardens, particularly when compared to other options for providing that service such as the John W. Christian greenbelt, which would essentially cost the City nothing.
- Opportunity Cost. Due to its size and location, and the fact that the City owns this land, this site provides more opportunities and options for alternative development or revenue generation than any other site under

consideration. Originally purchased for future expansion of the Civic Center Campus, this site has also been considered as a possible housing site for seniors and a possible expansion site for the Library. Regardless of the City's financial situation, the Council may wish at a future time to further explore alternative uses for this site, including revenue generation through liquidation. But liquidation would not be possible throughout the duration of any time period agreed to for community gardening. The proposed agreement provides a five-year commitment to community gardens. The agreement does contain a clause that would allow the City to terminate the agreement with a 180-days' notice to SCG. Once established, however, community gardens will likely be very difficult to move even should that be deemed in the best public interest. This would be true at any site, but is a more critical factor here given the opportunities and options presented by this site.

### **FISCAL IMPACT**

There is no fiscal impact associated with approval of the agreement with Sustainable Community Gardens to develop and operate community gardens. Costs to develop and construct the community gardens would be funded through a previously approved grant proved by the Satterburg Foundation, a private philanthropic organization dedicated to supporting collaborative efforts resulting in positive community impact. Future operating costs would be provided by Sustainable Community Gardens. (Grant funds cannot be used for operating expenses.)

Two potential fiscal impacts could occur related to the Community Gardens.

1) An opportunity cost would be created should Council determine to place Community Gardens on City-owned parcels that currently are available for other uses including revenue generation through sale. This opportunity cost is estimated at \$3,000,000 for the Mathilda Ave./Charles St. parcels; and, \$6,700,000 for the parcel located on Charles St. north of 505 West Olive.

2) Should Council decide to site the Community Gardens at either of the Charles Street locations and then determine that it was necessary to use the parcel(s) for other means such as revenue generation it may be necessary and costly to relocate the community gardens to new site(s) after their construction.

### **CONCLUSION**

Public input has consistently and strongly supported the concept of community gardening in Sunnyvale. Gardeners would appreciate and support having opportunities for community gardening regardless of which site is selected.

Parcels located between Mathilda Avenue and Charles Street are small, some contain small homes and are disjointed. Therefore, they are not well suited as community gardens sites.

The Charles Street and W. Olive Avenue parcel would be well suited for community gardens but would limit City options such as expansion of City Hall, future library site, senior housing or revenue generation through sale of that parcel during the timeline of any agreement.

Placing community gardens at any location for a short time span (five-years or less) and then relocating them to an alternate site would be more expensive and difficult than placing community gardens at a site that does not require relocations.

The John W. Christian Greenbelt site near Manzano Way would be well suited to community gardens, but it is not owned and/or solely controlled by the City.

Some neighbors have expressed concerns regarding changes to existing landscapes of the John W. Christian Greenbelt site near Manzano Way should it be converted to community gardens.

Sustainable Community Gardens strongly prefers locating community gardens at the Charles Street and W. Olive Avenue site.

### **PUBLIC CONTACT**

Public presentations and opportunities for public input and near neighbor comments were provided at the following locations, times and dates:

- Lakewood Park – Lakewood Village Neighborhood Association meeting on Thursday evening August 11, 2005.
- Lakewood Park – Near Neighbors Meetings held Thursday August 25, 2005, at 1:30 p.m. and 7 p.m.; and, Saturday August 27, 2005, at 1:30 p.m.
- Washington Park – Near Neighbors Meetings held Wednesday August 24, 2005, at 1:30 p.m. and 7 p.m.; and, Saturday August 27, 2005, at 10:30 a.m.

Copies of this report have been provided to Josh Salans, President of Sustainable Community Gardens, the Satterberg Foundation, and the presidents of each Neighborhood Association. Notice of Commission and Council meetings regarding this report was also distributed to the “Friends of Parks and Recreation” mailing list (a list of organizations and individuals who have expressed an interest in Parks and Recreation issues).

Public contact was made through posting of the Parks and Recreation Commission and Council agendas on the City’s official notice bulletin board, posting of the agendas and report on the City’s web page, publication of the

Council agenda in the San Jose Mercury News, and the availability of the report in the City Clerk's office, Library, Parks and Recreation Administration, Community Center, and Senior Center.

### **ALTERNATIVES**

1. Approve an agreement with Sustainable Community Gardens for the development, operation and maintenance of community gardens consistent with Attachment A and authorize the City Manager to enter into the agreement on behalf of the City.
2. Designate an approximate 1.8 acre portion of the John W. Christian Greenbelt near Manzano Way as depicted in Attachment B for the exclusive use of community gardens to be developed, operated and maintained by Sustainable Community Gardens at essentially no cost to the City.
3. Designate City-owned parcels bounded by Mathilda Avenue to the east, Charles Street to the west, Iowa Avenue to the south and McKinley Street to the north as depicted in Attachment C for the exclusive use of community gardens to be developed, operated and maintained by Sustainable Community Gardens with a one-time opportunity cost to the City of \$3,000,000.
4. Designate the 1.8 acre City-owned parcel west of Charles Street and north of 505 West Olive Street as depicted in Attachment D for the exclusive use of community gardens to be developed, operated and maintained by Sustainable Community Gardens for a period of five-years with any extension of this use period only as approved by City Council and a one-time opportunity cost to the City of \$6,700,000.
5. Other options as determined by Council.

### **RECOMMENDATION**

The Parks and Recreation Commission reviewed this report on December 14, 2005, and recommended that Council approve Alternatives 1 and 4. The motion passed unanimously 4-0, with Commissioner Chuck absent.

1. Approve an agreement with Sustainable Community Gardens for the development, operation and maintenance of community gardens consistent with Attachment A and authorize the City Manager to enter into the agreement on behalf of the City.
4. Designate the 1.8 acre City-owned parcel west of Charles Street and north of 505 West Olive Street as depicted in Attachment D for the exclusive use of community gardens to be developed, operated and

maintained by Sustainable Community Gardens for a period of five-years with any extension of this use period only as approved by City Council.

Additionally, Commissioners recommended adding language to be placed into the draft proposed agreement (Attachment A) regarding the notice of the time span of the proposed Agreement as follows:

Current statement in Attachment A, Draft Agreement page 3, paragraph 6:

GROUP shall inform all gardeners yearly, through special notice included in all Garden Plot Assignment Agreements, that the term of this Community Gardens Agreement is five (5) years and shall specify the termination date of this Community Gardens Agreement as approved by City Council.

Commissioner's recommended statement for Attachment A, Draft Agreement page 3, paragraph 6; *Italicized* additional wording is recommended by Commissioners:

GROUP shall inform all gardeners yearly, through special notice included in all Garden Plot Assignment Agreements, that the term of this Community Gardens Agreement is five (5) years and shall specify the termination date of this Community Gardens Agreement as approved by City Council *as well as the possibility of termination by either party with 180 days notice.*

Note: Following Commission's review of the Draft Report to Council, Alternatives 2, 3 and 4 were modified to include the opportunity costs associated with each Alternative.

Staff recommends Alternatives 1 and 2.

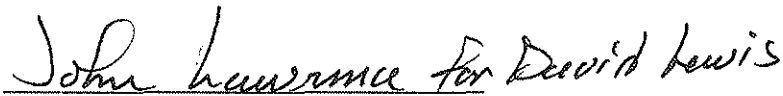
1. Approve an agreement with Sustainable Community Gardens for the development, operation and maintenance of community gardens consistent with Attachment A and authorize the City Manager to enter into the agreement on behalf of the City.
2. Designate an approximate 1.8 acre portion of the John W. Christian Greenbelt near Manzano Way as depicted in Attachment B for the exclusive use of community gardens to be developed, operated and maintained by Sustainable Community Gardens at essentially no cost to the City.

This action would support the community's strongly expressed desire for Community Gardens in Sunnyvale and provide the best possible site among those considered. While providing immediate opportunities for Community Gardening, it would allow the City flexibility in the long-term financial planning

with opportunities to develop or liquidate any City-owned parcel(s) that could improve the City's financial position. The proposed agreement would allow Sustainable Community Gardens to demonstrate that community gardens are viable in Sunnyvale and that residents have a long-term interest in this type of gardening.

Although use of this site for community gardens would present the need to eliminate existing lawn and shrub landscapes, Sustainable Community Gardens group has expressed a strong commitment to providing gardens that are well-maintained and aesthetically pleasing for passers by. The group includes many longtime gardeners and numerous members that should be well-able to meet this commitment.

Reviewed by:



David A. Lewis Director, Parks and Recreation

Prepared by: Curtis Black, Superintendent of Parks

Approved by:



Amy Chan  
City Manager

**Attachments**

- A. Draft Agreement for Development, Operation and Maintenance of Community Gardens
- B. Vicinity and parcel maps of John W. Christian Greenbelt near Manzano Way
- C. Vicinity and parcel maps of City-owned parcels between Mathilda Avenue and Charles Street
- D. Vicinity and parcel maps of parcel on Charles Street north of 505 West Olive Avenue
- E. Staff Correspondence with SFPUC regarding Permit P-3697



**ATTACHMENT A**

**Draft Agreement for Development, Operation and  
Maintenance of Community Gardens**

**DRAFT****AGREEMENT BETWEEN CITY OF SUNNYVALE AND SUSTAINABLE  
COMMUNITY GARDENS FOR THE DEVELOPMENT, OPERATION AND  
MAINTENANCE OF COMMUNITY GARDENS**

THIS AGREEMENT dated January 1, 2006 is by and between the CITY OF SUNNYVALE, a municipal corporation ("CITY"), and SUSTAINABLE COMMUNITY GARDENS ("GROUP"), a non profit corporation.

WHEREAS the City desires to support independent organizations providing services beneficial to the Community; and

WHEREAS GROUP wishes to provide non-profit community gardening services which are not otherwise offered to City residents or duplicated by the City of Sunnyvale; and

WHEREAS GROUP wishes to use (**location TBD**) for that purpose at limited cost to GROUP;

WHEREAS CITY's General Plan calls for the City to "provide, develop and maintain special use parks and facilities"; to "provide for a balance between general recreation uses and special interest uses in parks and facilities"; to "provide recreation facilities that will accommodate and meet the needs and interests of special population groups"; to "provide programming which meets the needs of families and changing family structures"; to "leverage available resources by pursuing co-funded and/or cooperative agreements for both expansion and maintenance of programs, facilities, and services in order to maximize benefits to the community"; to "foster and encourage partnerships with outside groups in order to address the community's diverse recreational needs"; and to "encourage active citizen involvement in development and provision of Parks and Recreation programs, facilities, and services"

NOW THEREFORE, in accordance with The City's "Relationships with Outside Groups Policy", the CITY OF SUNNYVALE and GROUP enter into this agreement.

**1. Obligations of CITY**

CITY shall provide GROUP exclusive use of (**location TBD**) for the purpose of community gardening. "Community Gardening" shall be defined as:

The group activity of growing and harvesting legal plants and produce, using organic gardening practices, at various location(s) in Sunnyvale intending to provide opportunities for: learning about various aspects of the natural world including organic food production and research; sharing a love of growing plants and caring for the environment; beautifying the community; meeting socially and

sharing common gardening interests; teaching students through hands-on gardening activities and workshops; and, providing gardening plots for residents who may not have space to garden on their personal property or knowledge of organic gardening practices.

CITY shall provide GROUP free use of space in a park building for meetings and educational purposes related to community gardening once monthly for a period not to exceed four hours per use. The location of said meetings shall be at the sole discretion of the CITY, subject to availability. GROUP may reserve said use up to six months in advance.

CITY shall provide a referral to GROUP in the Department of Parks and Recreation Activity Guide under the heading of "Special Interest".

CITY shall hold, disperse, and account for monies granted to the CITY by the Satterberg Foundation for the purpose of developing community gardens in Sunnyvale in accordance with accepted City financial practices and procedures.

CITY shall review and approve design and construction plans for community gardens prior to construction.

CITY shall review and approve any and all user fees to be paid by gardeners to GROUP.

CITY shall review and approve all by-laws, policy manuals, rules, regulations, processes and procedures GROUP uses in connection with assignment of garden plots, operation and maintenance of the Community Gardens.

CITY shall pay all water and electric bills associated with use of utilities by GROUP for community gardening at **(location TBD)**

## **2. Obligations of GROUP**

GROUP shall be responsible for all aspects of designing, building, operating and maintaining the community gardens located at **(location TBD)**

GROUP shall compensate CITY for irrigation costs by either:

- a) Paying CITY \$2,200 annually, which shall be due in equal installments of \$183.33 per month commencing with the first day of the first full month following the completion of the Community Gardens construction. This amount is due each year for exclusive use of **(location TBD)**. The monthly amount will be adjusted each year by the CITY, not to exceed the percentage change of the *(cost of water as approved by City Council)*. The new monthly amount will be in effect beginning on the first month following the GROUP's notification of the CITY approved fee increase. Or;

b) Providing a metered connection for water and paying the irrigation water costs directly to the City of Sunnyvale, Utilities Division.

GROUP shall not demolish any structure, grade facilities, or construct any amenity without first having obtained the approval of CITY, shall be required to apply for all appropriate permits and shall be responsible for paying all related fees.

GROUP shall maintain the approved location for the express purpose of Community Gardens.

GROUP shall assign approximately 25% of gardening plots for primary use by the Sunnyvale Senior Center Gardeners. For the purpose of this Agreement, Sunnyvale Senior Center Gardeners are those gardeners that are members of the Sunnyvale Senior Center and residents of the Sunnyvale. Non-resident Sunnyvale Senior Center members may assist primary gardeners but may not have a garden plot assigned for their primary use. In any case, a minimum of fifteen, (15) garden plots approximately 64 square feet in size each shall be reserved for the Sunnyvale Senior Center Gardeners.

Group shall assign approximately 75% of the gardening plots for primary use by Sunnyvale resident gardeners. Non-resident gardeners may assist resident gardeners but may not have a plot assigned to their primary use. At a minimum, forty garden plots approximately 64 square feet in size each, shall be reserved for use by resident gardeners.

GROUP shall not perform community gardening services for profit. However, this does not preclude the establishment of user fees to pay for costs incurred or anticipated by GROUP in association with operation and maintenance of the community gardens. Any fees charged for this purpose are subject to review and approval by the Director of Parks and Recreation.

GROUP shall inform all gardeners yearly, through special notice included in all Garden Plot Assignment Agreements, that the term of this Community Gardens Agreement is five (5) years and shall specify the termination date of this Community Gardens Agreement as approved by City Council.

GROUP shall provide City one copy of all by-laws, policy manuals, rules, regulations, processes and procedures it uses in connection with assignment of garden plots, operation and maintenance of the Community Gardens as approved by the Director of Parks and Recreation of the CITY.

GROUP shall assign primary responsibility for community garden plots to Sunnyvale residents only. Those living outside of Sunnyvale may assist resident gardeners but may not be assigned a garden plot.

GROUP shall recruit gardeners from among Sunnyvale residents whenever garden plots are available and no waiting list exists. Should Sunnyvale Senior Center Gardener's garden plot(s) become available, and no Sunnyvale Senior Center Gardener is on the waiting list to become a primary gardener, the plot(s) shall remain unused until a Sunnyvale Senior Center Gardener signs up for a garden plot assignment.

GROUP shall provide CITY two (2) keys to the gate of any fenced portion(s) of the Community Garden facility.

GROUP shall report participant numbers to CITY yearly on June 30 to include the number of garden plots in use, residents (including neighborhood of residence), non-residents, youths, seniors, low income and total number of gardeners and students, as well as the number of hours of educational instruction provided during the previous fiscal year.

GROUP shall provide the following services at no cost to the City:

- Provide garden plots in accordance with all associated plot assignment rules as approved by the Director of Parks and Recreation of CITY.
- Provide garden plots to Low Income Sunnyvale Residents in accordance with all associated plot assignment rules as approved by the Director of Parks and Recreation of CITY. Low Income residents will not have any higher priority in obtaining garden plots, but shall follow all approved plot assignment and distribution rules. For this purpose, "Low Income" shall be determined by using the income guidelines and definition of low income established by the Community Development Block Grant program (CDGB).
- Provide and teach organic gardening principles classes to ensure that each gardener that participates in gardening at the Community Gardens is knowledgeable of such practices.

GROUP shall resolve concerns and complaints in accordance with methods and/or policies as approved by the Director of Parks and Recreation of CITY.

GROUP shall remove any instructor or gardener that the CITY determines is not satisfactory for whatever reason.

GROUP shall access, spend, and account for monies granted by the Satterberg Foundation for the purpose of developing community gardens in Sunnyvale and establish a system of financial practices and procedures as approved by the CITY, Director of Finance.

**3. Conflicts of Interest**

No officer or employee of CITY shall have any interest, direct or indirect, in this Agreement or in the proceeds thereof. During the term of this Agreement GROUP shall not accept employment or an obligation which is inconsistent or incompatible with GROUP'S obligations under this Agreement.

**4. Compliance with Laws**

GROUP shall not discriminate against any gardener, visitor, employee or applicant for employment because of race, religion, creed, color, gender, age (persons 40 years of age or older), disability, national origin, or any other basis to the extent prohibited by federal, state or local law.

GROUP shall comply with all federal, state, county and city laws, statutes, ordinances, rules and regulations and the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting performance of the Agreement including, but not limited to, not growing any plant materials that are illegal to grow under state or federal law. In particular, the growing of *Cannabis sativa* (marijuana) is prohibited whether or not such activity may be lawful for medical purposes under relevant laws of the state of California. CITY shall have the right to enter, remove and confiscate plants of illegal species, including *Cannabis sativa*, without notice, and shall not be liable to the owner of such plants for any loss or damage sustained thereby.

**5. Indemnity**

GROUP agrees to indemnify and hold harmless CITY, its officers, agents, employees and volunteers from any and all claims, demands, actions, causes of action, losses, damages, liabilities, known or unknown, and all costs and expenses, including reasonable attorneys' fees in connection with any injury or damage to persons or property arising out of or in any way connected with the act, omission or negligence of GROUP, its members, officers, employees, agents, GROUP, subgroups or any officer, agent or employee thereof in relation to GROUP'S performance under this Agreement.

**6. Insurance**

GROUP shall and will, at own cost, take out and maintain without interruption during the life of this Agreement in such form and with a company or companies satisfactory to the CITY policies of the following types of insurance:

- (a) Comprehensive General Liability Policy, affording coverage for bodily and personal injury liability, including liability for death, and property damage, or a combination thereof, in an amount not less than One Million

Dollars (\$1,000,000) Claims Single Limit (CSL). Coverage shall be on an "occurrence" basis and not a "claims made" basis; provided, however, as follows:

- (1) CITY, its Officers, agents, employees, and volunteers shall be named as an additional insured in all insurance policies;
  - (2) A contractual liability endorsement shall be included in each insurance policy, extending coverage to include liability assumed under paragraph 5 above; and,
- (b) Worker's compensation insurance and employer's liability insurance for all employees of GROUP.
- (c) Certificates of proof of Insurance for above required policies shall be supplied each January and upon renewal, by agency that provides GROUP insurance(s) for Community Garden purposes.

**7. CITY OF SUNNYVALE Representative**

The Director for Parks and Recreation of CITY or such other person as may be designated by the Director shall represent CITY as the City Manager's authorized representative in all matters pertaining to the services to be rendered under this Agreement. All requirements of CITY pertaining to the services and materials to be rendered under this Agreement shall be coordinated through the CITY representative.

**8. GROUP Representative**

The President shall represent SUSTAINABLE COMMUNITY GARDENS in all matters pertaining to the services and materials to be rendered under this Agreement; all requirements of GROUP pertaining to the services or materials to be rendered under this Agreement shall be coordinated through the GROUP representative.

**9. Notices**

All notices required by this Agreement shall be in writing, and shall be personally delivered, sent by first class mail with postage prepaid, or by commercial courier, addressed as follows:

To CITY:                      City Manager  
   CITY OF SUNNYVALE  
   P. O. Box 3707  
   Sunnyvale, CA 94088-3707  
   (408) 730-7480

To GROUP: Josh Salans, President  
Sustainable Community Gardens  
752 South Mary Avenue  
Sunnyvale, CA 94087  
(408) 735-8166

Nothing in this provision shall be construed to prohibit communication by more expedient means, such as by telephone e-mail or facsimile transmission, to accomplish timely communication. However, to constitute effective notice, written confirmation of a telephone conversation or an original of a facsimile transmission or an e-mail must be sent by first class mail, by commercial carrier, or hand-delivered. Each party may change the address by written notice in accordance with this paragraph. Notices delivered personally shall be deemed communicated as of actual receipt; mailed notices shall be deemed communicated as of three days after mailing, unless such date is a date on which there is no mail service. In that event communication is deemed to occur on the next mail service day.

**10. Assignment**

Neither party shall assign or sublet any portion of this Agreement without the prior written consent of the other party.

**11. Duration of Agreement**

This Agreement shall continue from the date of execution for a period of five (5) years, unless otherwise terminated in accordance with section 12 below.

**12. Termination**

(a) If GROUP defaults in the performance of this Agreement, or materially breaches any of its provisions; CITY at its option may terminate this Agreement by giving written notice to GROUP.

(b) Without limitation to such rights or remedies as CITY shall otherwise have by law, either party shall have the right to terminate this Agreement for any reason upon one hundred eighty (180) days' written notice to the other party. If CITY terminates the Agreement; CITY shall endeavor to allow planted crop to mature to fruition allowing GROUP to harvest produce prior to termination of Agreement. If time is of the essence and harvest is not possible due to needs of CITY, CITY shall reimburse GROUP for expenses directly related to tree replacement and pre-harvest expenses for the year of termination where the termination occurs before the commencement of the harvest. As a condition to such reimbursement of expenses, GROUP shall furnish to CITY annually a financial audit of operations under this Agreement.



**13. Entire Agreement; Amendment**

This writing constitutes the entire agreement between the parties relating to the services to be performed or materials to be furnished hereunder. No modification of this Agreement shall be effective unless and until such modification is evidenced by writing signed by all parties.

**14. Miscellaneous**

Time shall be of the essence in this Agreement. Failure on the part of either party to enforce any provision of this Agreement shall not be construed as a waiver of the right to compel enforcement of such provision or any other provision. This Agreement shall be governed and construed in accordance with the laws the State of California.

IN WITNESS WHEREOF, the parties have executed this Agreement.

ATTEST:

CITY OF SUNNYVALE ("CITY")

\_\_\_\_\_  
City Clerk

By \_\_\_\_\_  
City Manager Date

APPROVED AS TO FORM:

GROUP

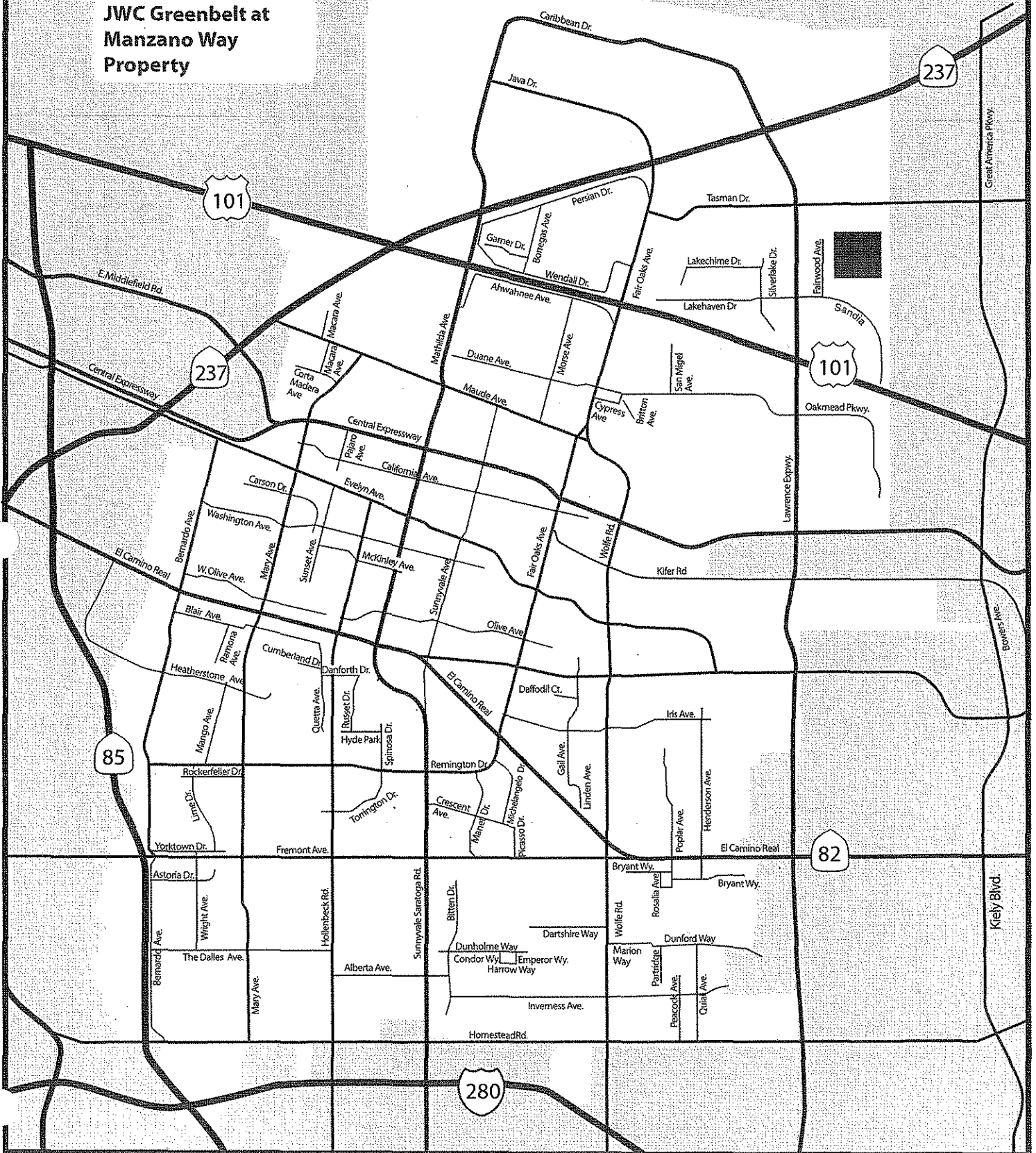
\_\_\_\_\_  
City Attorney

By \_\_\_\_\_  
Josh Salans  
President, GROUP Date

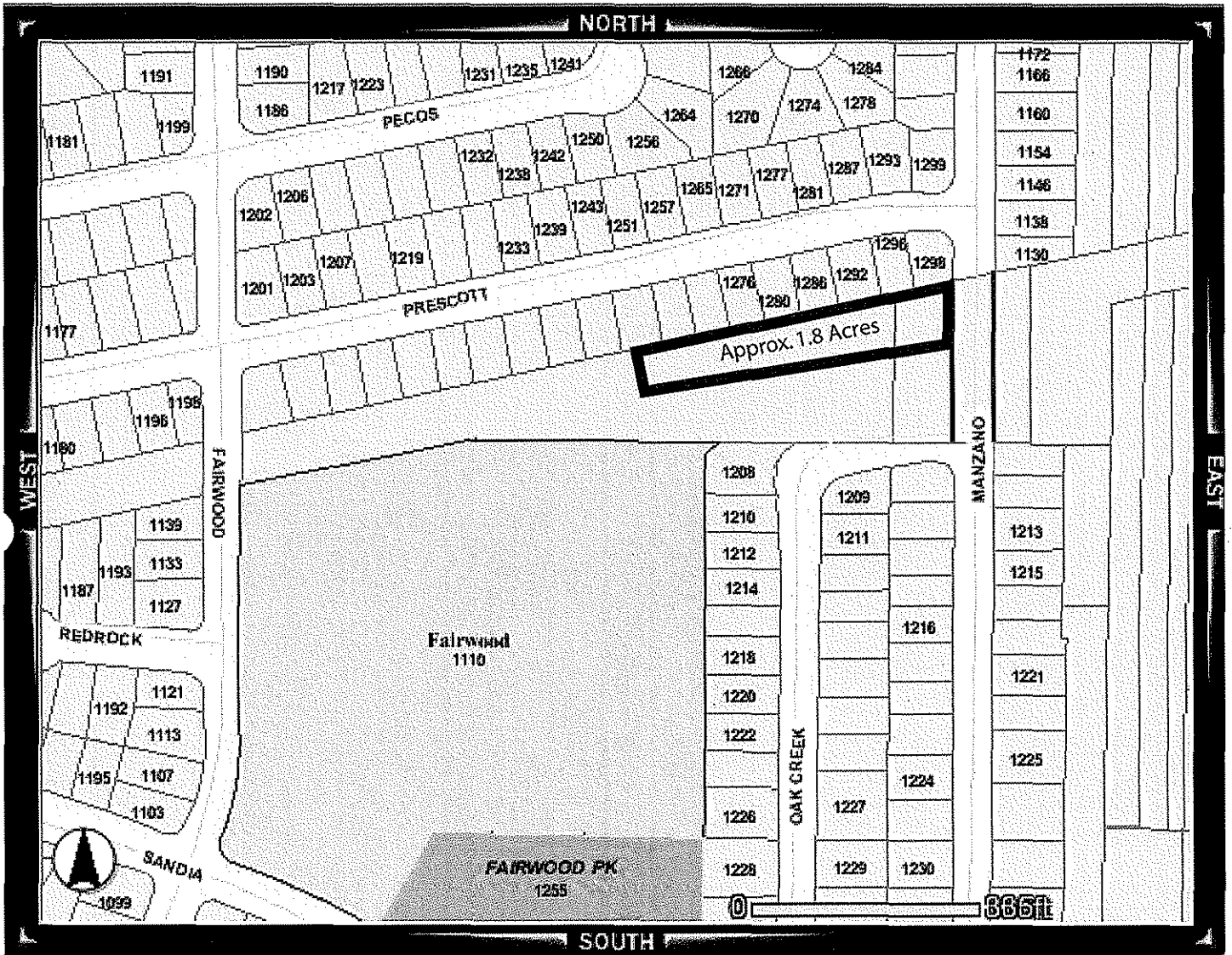
**ATTACHMENT B**

**Vicinity and parcel maps of John W. Christian Greenbelt  
near Manzano Way**

JWC Greenbelt at  
Manzano Way  
Property



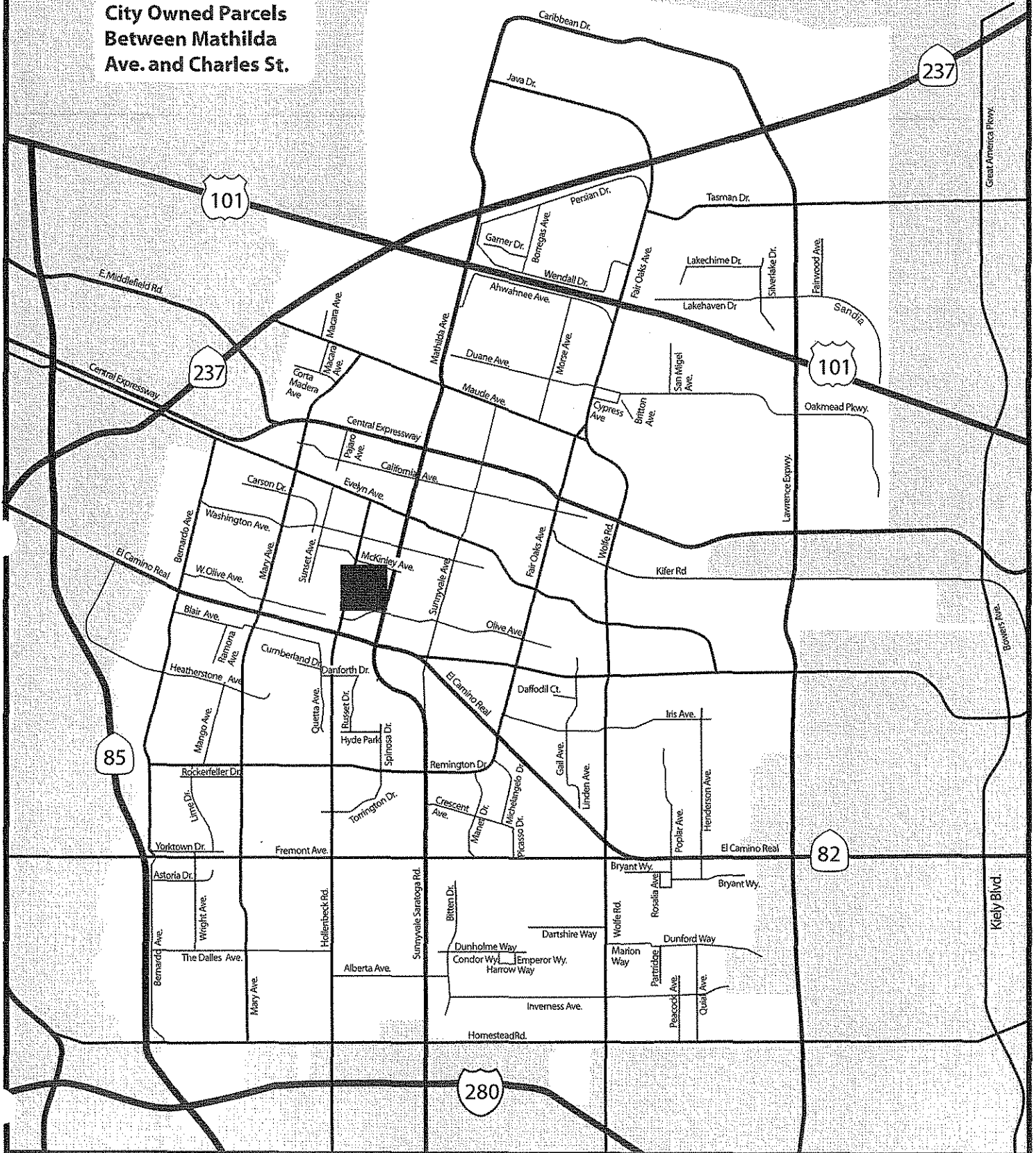
# JWC Greenbelt at Manzano Way Property



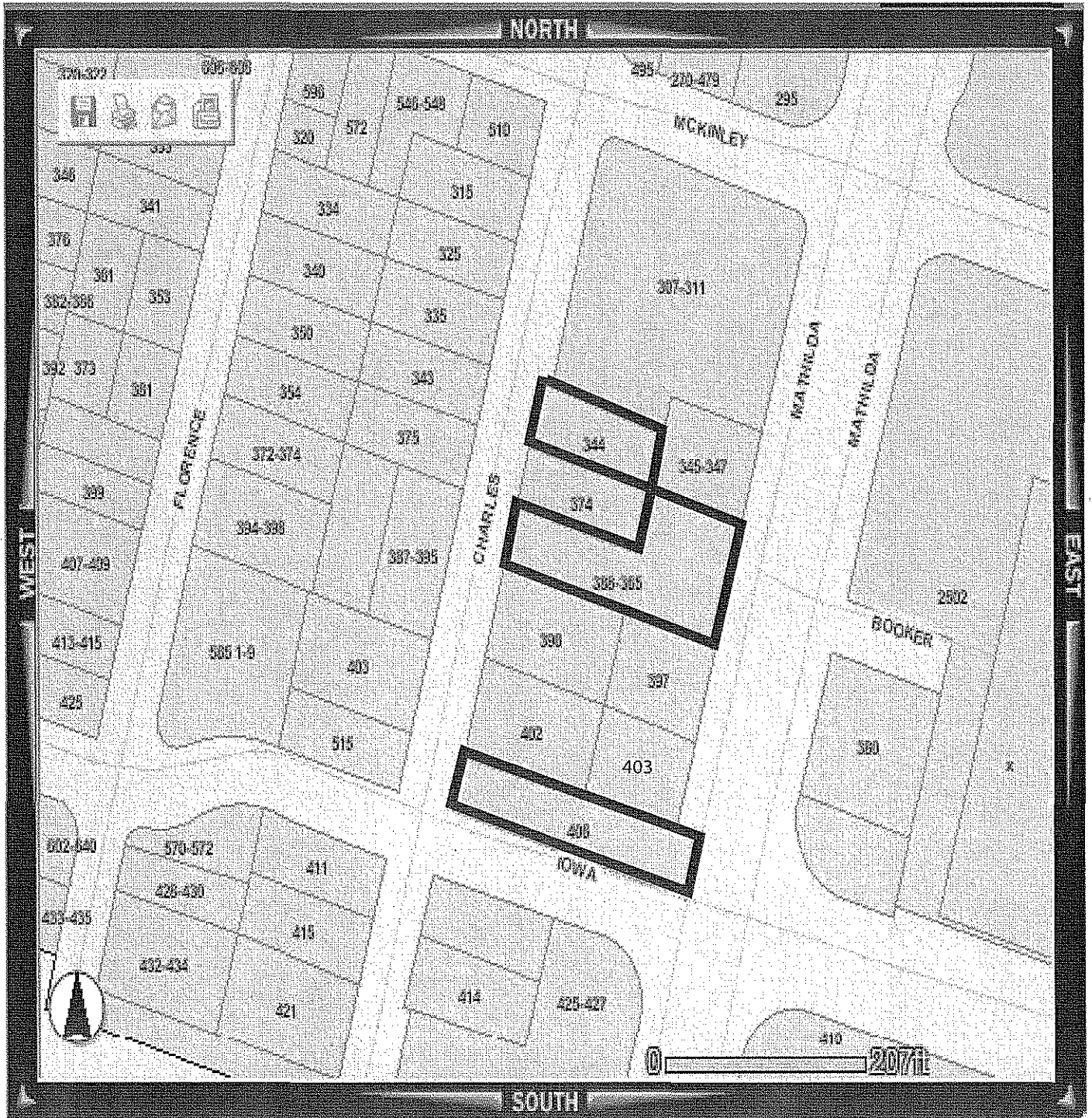
**ATTACHMENT C**

**Vicinity and parcel maps of City-owned parcels  
between Mathilda Avenue and Charles Street**

City Owned Parcels  
Between Mathilda  
Ave. and Charles St.



# City Owned Parcels Between Mathilda Avenue and Charles Street

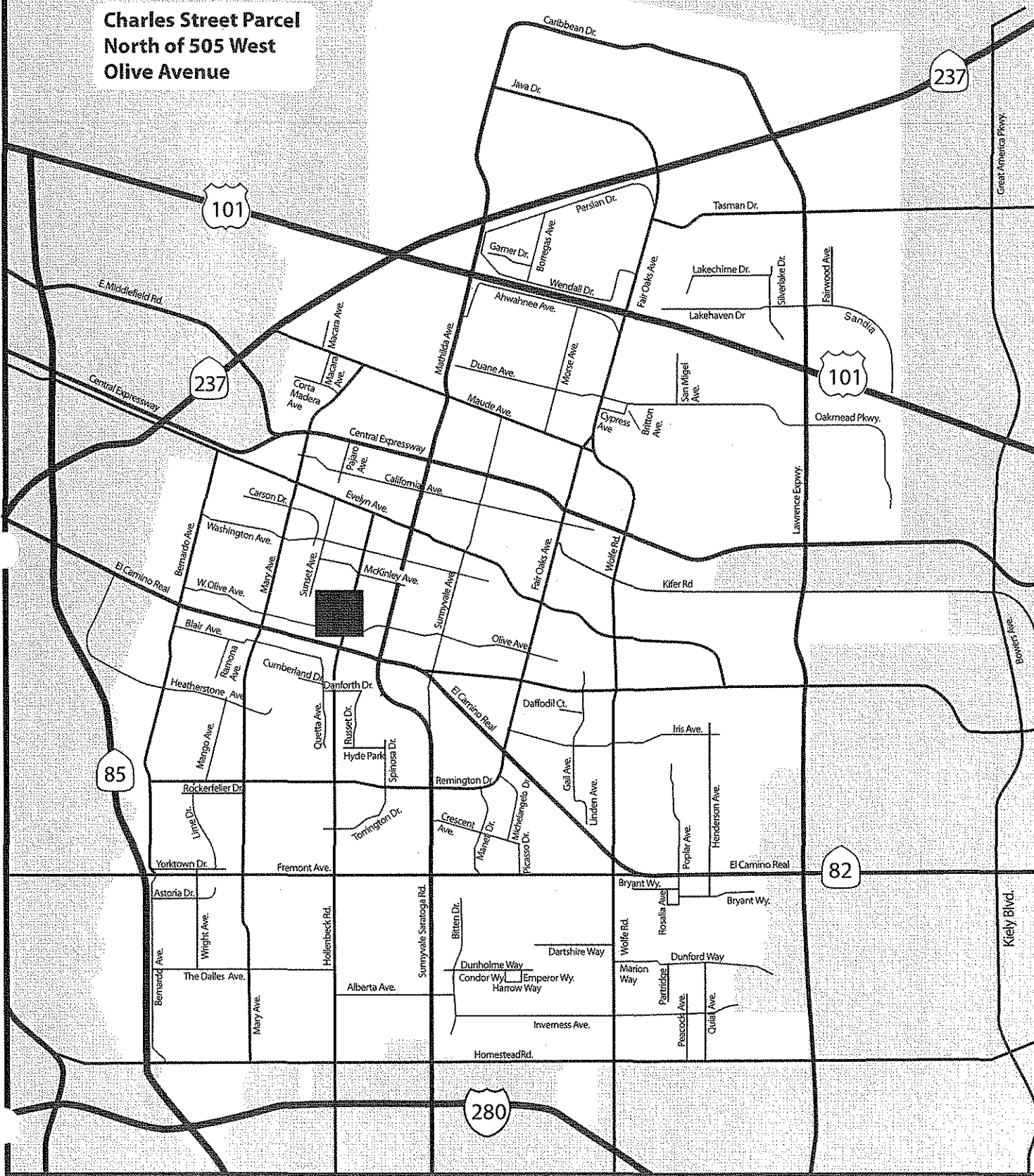


**ATTACHMENT D**

**Vicinity and parcel maps of parcel on Charles Street  
north of 505 West Olive Avenue**



Charles Street Parcel  
North of 505 West  
Olive Avenue



# Charles Street Parcel North of 505 West Olive Avenue

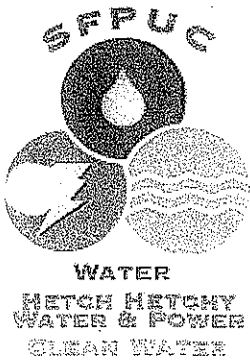


**ATTACHMENT E**

**Staff Correspondence with SFPUC regarding Permit P-3697**

## SAN FRANCISCO PUBLIC UTILITIES COMMISSION

Real Estate Services  
1155 Market St., 4th Floor, San Francisco, CA 94103 • Tel. (415) 487-5210 • Fax (415) 487-5200



November 3, 2005

Mr. Bob Merrill  
Administrative Analyst  
City of Sunnyvale Parks Division  
P.O. Box 3707  
Sunnyvale, Calif. 94088-3707

Re: Letter of September 23, 2005, Revocable Permit P-3697

Dear Mr. Merrill,

I am sorry for the delayed response to the above referenced letter. I did receive your follow up fax to this request on November 2, 2005 as well. Our staff is a bit taxed at the moment as we move forward with our pending Capital Improvement Projects.

As you may know the San Francisco Public Utilities Commission (SFPUC) has issued numerous permits to the City of Sunnyvale for use of our rights of way and it took a bit of time to track this particular one down and figure out exactly how it relates to some pending residential development the SFPUC is planning along Manzano Way. This particular permit with the City of Sunnyvale is actually covered by way of Permit P-3697 dated July 12, 1994, not P-3247 as indicated in your letter. Regardless, the language you provided as Attachment B under the heading, "Fairwood Section" is actually taken from the correct permit P-3697.

Please consider this letter as formal modification to Section 2 (a) to include "community garden" as an acceptable use under P-3697 provided: 1) a formal plan must be submitted for review and stamped approval prior to commencement of any work in the permit area 2) the area shown highlighted on the attached exhibit is no longer considered a portion of P-3697 as the SFPUC is in the process of selling what will be two subdivided residential lots in this area to private developers for residential use.

If we can be of further assistance please contact Mr. Chester Huie of my staff at (415) 487-5215.






Sincerely,

Garrett M. Dowd  
Director, Real Estate Services

cc: Chester Huie, RES  
Jane Herman, WS&TD

**Exhibit B**  
Permit (3697) to  
City of Sunnyvale

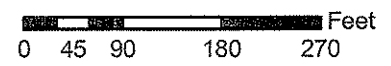
**Legend**

-  Area of Permit (3697)  
Covering Portions of SFPUC  
Parcel (No.)s 145, 155-B & 146
-  Area No Longer Covered  
by Permit (3697)
-  Pipelines
-  SFPUC Parcels/Right-of-Way
-  Tax Assessor Parcels



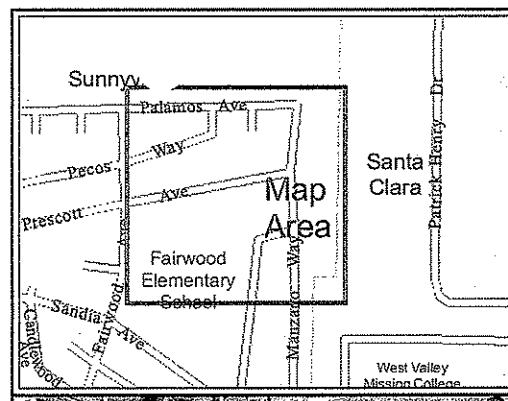
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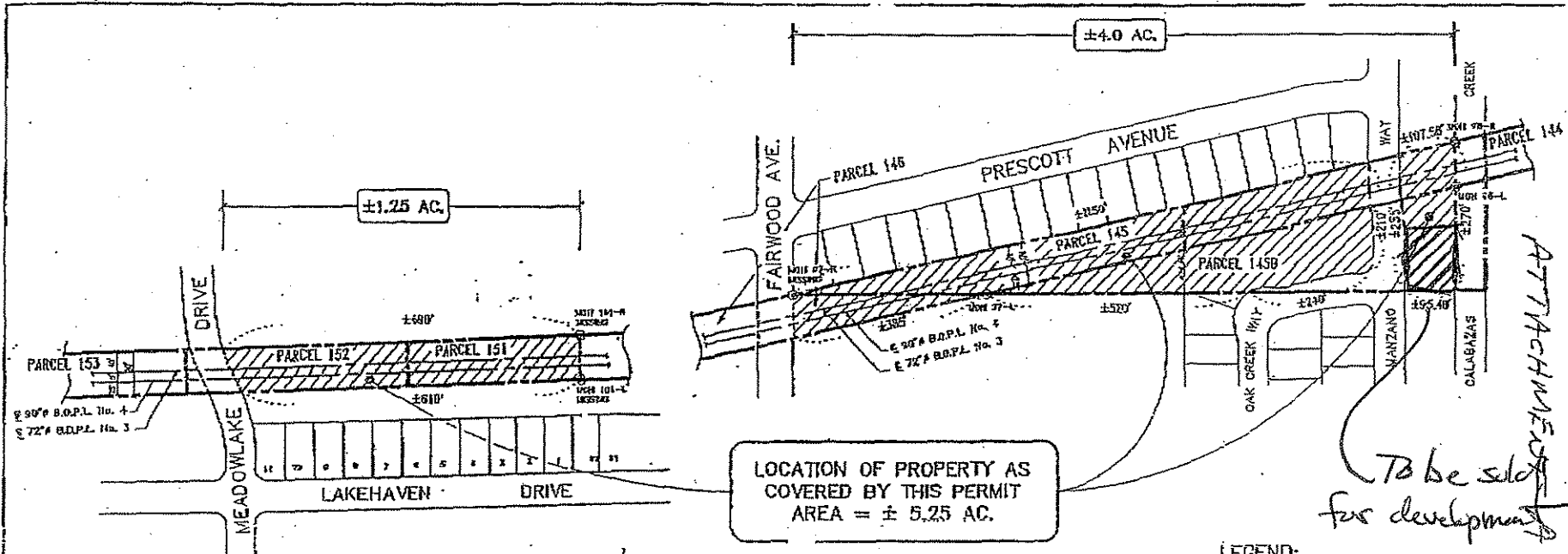
1 Inch = 175 feet



Date: 11-03-05

The City does not guarantee that the information is accurate or complete. The City provides this information on an "as is" basis and disclaims all warranties, express or implied, including but not limited to warranties of merchantability, fitness for a particular purpose and non-infringement. The City is not responsible for any damages arising from the use of data. Users should verify the information before making project commitments.

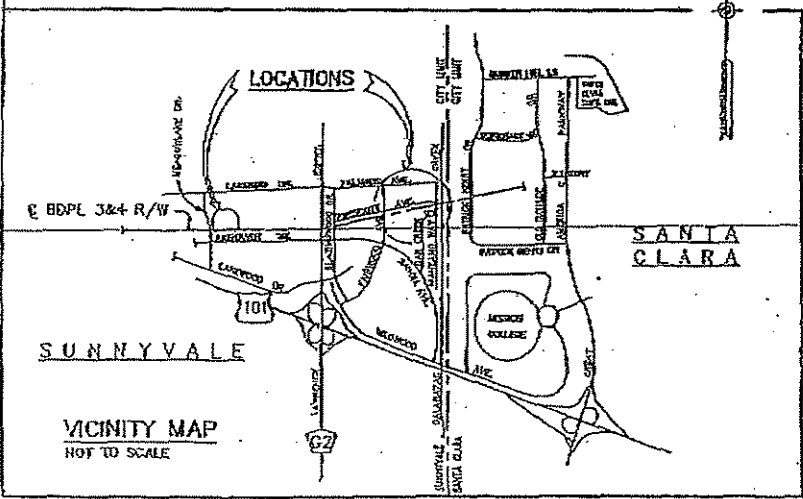




*To be sold for development*

**LEGEND:**

PERMIT AREA



NO.	DATE	DESCRIPTION	BY	APP'D
REVISIONS				
CAUTION: CHECK WITH TRACING TO SEE IF YOU HAVE LATEST REVISION				
CITY AND COUNTY OF SAN FRANCISCO				
PUBLIC UTILITIES COMMISSION				
SAN FRANCISCO WATER DEPARTMENT				
LAND USE PERMIT				
CITY OF SUNNYVALE				
LANDSCAPING, PEDESTRIAN AND BICYCLE PATH				
BDPL J & 4, POR. OF PARS. 145, 145B, 146, 151 & 152, SUNNYVALE S.C. 03				
REQUESTED BY	A. LUCAS	FOR	ASR	DATE
APPROVED BY		FOR	K.Y. CHAN	SCALE
APPROVED BY				DATE
MANAGER LAND ENGINEERING				C-1083



September 23, 2005

Mr. Garrett M. Dowd, Director  
Bureau of Commercial Land Management  
1155 Market St., 5<sup>th</sup> Floor  
San Francisco, CA 94103

Dear Mr. Dowd:

The City of Sunnyvale is considering use of a portion of the hetch-hetchy land for a possible community garden. This area is located on parcel #145 between Fairwood Avenue and Manzano Drive. (see Attachment A). According to permit #P-3247 issued in July 12, 1994 section 2(a) (see Attachment B) states "Permittee may enter and use the Permit Area for the sole purpose of constructing and maintaining a pedestrian and bicycle path with landscaping in accordance with plans and specifications as attached hereto as Exhibit C, including, without limitation, Section 3(a) hereof, and for no other purpose whatsoever".

A second permit for the hetchy-hetchy section east of Silverlake Drive, #P-3750, issued on November 8<sup>th</sup>, 1996 mentions the ability to use the right of way for community gardens (see Attachment C). Section 2(a) states "Permittee may enter and use the Permit area for the sole purpose of landscaping and/or community gardens purposes in strict accordance with Section 3(a) hereof, and for no other purpose whatsoever".

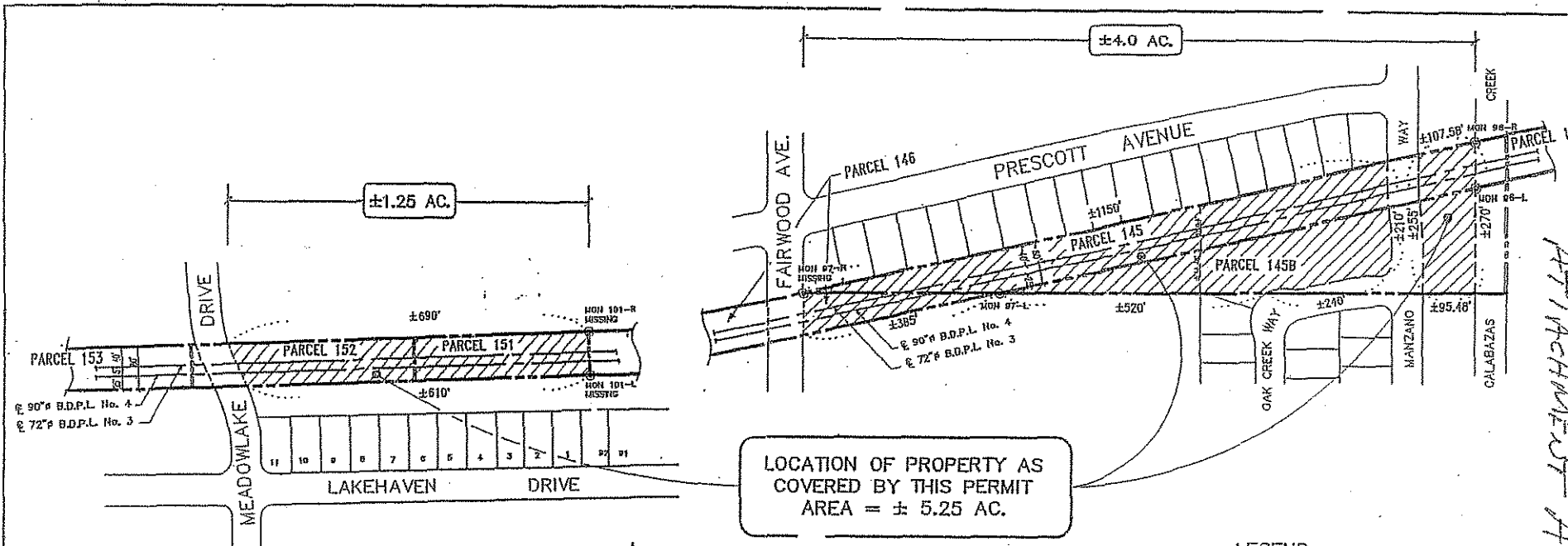
Please let me know if it would be possible to construct a community garden consisting of raised beds with organic material and managed with organic gardening practices on parcel 145 as permit P#3247 is currently stated. Thank you for your assistance.

Sincerely,

Bob Merrill  
Administrative Analyst  
City of Sunnyvale Parks Division

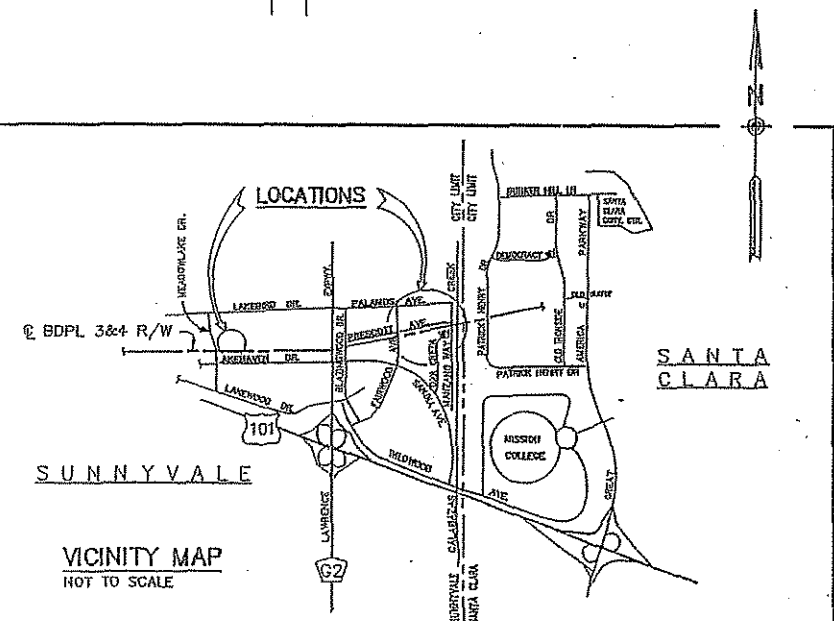
:rm

c: David Lewis, Director of Parks and Recreation  
Attachments



ATTACHMENT A

**LEGEND:**  
 PERMIT AREA



NO.	DATE	DESCRIPTION	BY	APP
<b>REVISIONS</b>				
CAUTION: CHECK WITH TRACING TO SEE IF YOU HAVE LATEST REVISION				
CITY AND COUNTY OF SAN FRANCISCO				
PUBLIC UTILITIES COMMISSION				
SAN FRANCISCO WATER DEPARTMENT				
<b>LAND USE PERMIT</b>				
<b>CITY OF SUNNYVALE</b>				
<b>LANDSCAPING, PEDESTRIAN AND BICYCLE PATH</b>				
BDPL 3 & 4, POR. OF PARS. 145, 145B, 146, 151 & 152, SUNNYVALE S.C.				
RECOMMENDED	BY	TITLE	DATE	
<i>[Signature]</i>	A. LUCAS	ASR	JUNE 1994	
APPROVED	TITLE	DATE	SCALE	
<i>[Signature]</i>		K.Y. Chen	1" = 200'	
APPROVED	<i>[Signature]</i>			DRAWING TITLE
	MANAGER, LAND ENGINEERING			C-1085



SAN FRANCISCO WATER DEPARTMENT  
REVOCABLE PERMIT

THIS REVOCABLE PERMIT dated for reference purposes only as of July 12, 1994, is made by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("City"), acting by and through its Public Utilities Commission, San Francisco Water Department ("SFWD"), and CITY OF SUNNYVALE, ("Permittee").

City and Permittee agree as follows:

1. License. City confers to Permittee a revocable, personal, non-exclusive and non-possessory right to enter upon and use that certain real property owned by City situated in the City of Sunnyvale, County of Santa Clara, State of California, more particularly described Exhibit A attached hereto (the "Permit Area"), for the limited purpose and subject to the terms, conditions and restrictions set forth below. The Permit Area is shown generally on Drawing No. C-1083-1 attached hereto as Exhibit B. This Permit gives Permittee a license only and is not intended to grant any real property interest or estate in the Permit Area.

2. Use of Permit Area.

(a) Permitted Acts. Permittee may enter and use the Permit Area for the sole purpose of constructing and maintaining a pedestrian and bicycle path with landscaping in accordance with plans and specifications as attached hereto as Exhibit C, including, without limitation, Section 3(a) hereof, and for no other purpose whatsoever.

(b) Subject to Right-of-Way. Permittee is aware that the Permit Area constitutes a portion of City's water pipeline right-of-way. Notwithstanding anything to the contrary in this Permit, any and all of Permittee's activities hereunder shall be subject and subordinate at all times to City's use of the Permit Area for such water transport and any other municipal purpose.

3. Installation of Facilities. Permittee may install certain facilities consisting of the construction of a pedestrian and bicycle path and installation of landscaping on the Permit Area only upon satisfaction of the following conditions, which are for the sole benefit of City:

(a) Approval of Plans and Specifications. Permittee shall construct/install within the permitted facilities in accordance with plans and specifications (including drawings) approved in advance and in writing by SFWD and attached hereto as Exhibit C. Any revisions

ACKNOWLEDGES AND AGREES THAT NEITHER CITY NOR ANY OF ITS AGENTS HAVE MADE, AND CITY HEREBY DISCLAIMS, ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, CONCERNING THE PRESENT OR FUTURE SUITABILITY OF THE PERMIT AREA FOR PERMITTEE'S INTENDED WORK OR FACILITIES, THE IMPACT OF ANY TERM OR CONDITION OF THE DEEDS ON PERMITTEE'S RIGHTS UNDER THIS PERMIT, OR THE ABILITY TO OBTAIN OR DELIVER, OR THE PROCEDURE FOR OBTAINING OR DELIVERING, ANY NECESSARY APPROVALS, PERMITS, CONSENTS OR NOTICES FROM OR TO THE GRANTOR UNDER THE DEEDS OR ANY OTHER PARTY WITH RESPECT TO ANY MATTERS CONTAINED IN THIS PERMIT.

2. Use of Permit Area.

(a) Permitted Acts. Permittee may enter and use the Permit Area for the sole purpose of landscaping and/or community garden purposes in strict accordance with Section 3(a) hereof, and for no other purpose whatsoever.

(b) Subject to City Uses. Permittee is aware that the Permit Area constitutes a portion of City's water pipeline delivery system. Notwithstanding anything to the contrary in this Permit, any and all of Permittee's activities hereunder shall be subject and subordinate at all times to City's use of the Permit Area for municipal and other purposes.

3. Installation of Facilities. Permittee may install certain facilities consisting of landscaping and/or a community garden on the Permit Area only upon satisfaction of the following conditions, which are for the sole benefit of City:

(a) Approval of Plans and Specifications. Permittee shall install the permitted facilities in accordance with plans and specifications (including drawings) approved in advance and in writing by PUC. The plans and specifications may be revised or amended only with prior approval of the General Manager of the PUC after PUC's Manager of Environmental and Regulatory Affairs has determined that no further environmental review is required by CEQA as a result of any such revision or amendment.

(b) Permits and Approvals. Before beginning any work in the Permit Area, Permittee shall obtain any and all permits, licenses and approvals (collectively, "approvals") of all regulatory agencies and other third parties that are required to commence and complete the permitted work. Promptly upon receipt of such approvals, Permittee shall deliver copies of them to PUC. Permittee recognizes and agrees that no approval by PUC for purposes of Permittee's work hereunder shall be deemed to constitute the approval of any federal, state or local regulatory authority with jurisdiction, and nothing herein shall limit Permittee's obligation to obtain all such regulatory approvals, at Permittee's sole cost.

(c) Exercise of Due Care. Permittee shall use, and shall cause its Agents (as defined below) to use, due care at all times to avoid any damage or harm to City's water pipelines or other