



AGENCY: City Council
MEETING DATE: February 25, 2019
DEPARTMENT: City Manager
PRESENTED BY: Tabatha Miller
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AGENDA ITEM SUMMARY

TITLE:

Receive Report and Consider Adoption of a City Council Resolution Approving Property Transfer Agreement to Transfer 11.6-Acre Noyo Center Parcel to the Noyo Center for Marine Science Non-Profit and Authorizing City Manager to Execute Same

ISSUE:

At the January 22, 2018 City Council meeting, the Council considered the transfer of 11.6 acres, currently owned by the City on the former Georgia-Pacific Mill Site, to the Noyo Center for Marine Science non-profit (Noyo Center) for the future goal of building a Marine Science Facility. At that meeting the Council directed staff to draft the transfer documents to include a reversionary clause that would allow the City to take back possession of the property if significant progress towards building the Marine Science facility had not happened in 10 years and to revise the parcel boundary to better work within the existing site conditions. The survey needed to complete the boundary adjustment was finished last summer.

The terms of the reversionary clause have been the subject of some divergence between City staff and the Board of Directors. The divergence revolves around the form of the document to allow for this possible property reversion and how to provide the City and future Councils some flexibility if and when that should happen. The City Council's direction at the January 22 meeting was to provide the City some discretion if ten years had expired and the facility was not built or all funds raised. The Council didn't want an automatic reversion, if, for example, the Noyo Center was only a few dollars or just short of accomplishing the goal.

After some discussion between the parties the proposed property transfer agreement deed recommended by the City Attorney and staff is a Grant Deed with Power of Termination.

ANALYSIS:

Background

Since 2003, the Fort Bragg City Council has pursued an economic development initiative to establish a marine science and education facility as a cornerstone of future development on the former Georgia-Pacific mill site property. The City obtained a number of economic development grants that funded preparation of a feasibility study, a strategic planning process, and a Detailed Project Program for the Noyo Center for Marine Science. The City also obtained a Sustainable Communities Grant in 2010 for preparation of conceptual site plans for the Noyo Center facility.

Over time, the City helped to "spin off" the Noyo Center for Marine Science to an independent non-profit organization. In 2014, the Noyo Center non-profit was formed as a public benefit corporation and in early 2015, the IRS recognized its non-profit status.

The 11.6-acre Noyo Center parcel was purchased by the City of Fort Bragg in March 2011 with a grant from the State Coastal Conservancy. The grant was awarded to the City and the Fort Bragg

Redevelopment Agency and required repayment by the Redevelopment Agency. The purpose of the grant was to acquire the property in order “to develop, construct and operate” the Noyo Center for Marine Science. The Coastal Conservancy holds an “Irrevocable Offer to Dedicate Title in Fee and Declaration of Restrictive Covenants” (OTD) that imposes use restrictions on the parcel and requires Conservancy approval before the property is transferred. The Coastal Conservancy has expressed its “strong support” for the proposed property transfer.

The OTD executed by the City at the same time it purchased the property using the grant proceeds, allows the State of California to accept the offer and take back ownership of the property, if any of the covenants are violated. The covenants include:

1. The property must be used for open space, public access, passive recreation, and marine education and research.
2. If the City ceases to exist (i.e. dissolves) the State may accept the City’s irrevocable offer and reclaim the property.
3. The property cannot be used to secure any debt.
4. The property cannot be transferred without the written approval of the Conservancy.
5. The property cannot be the subject of mitigation or the threat of condemnation.
6. The covenants run with the property, meaning that the Noyo Center would take the property subject to the same covenants with the understanding that the State of California can accept the offer at any time and take back the property.

The purpose of the reversionary clause is to ensure that the property is sufficiently developed as envisioned by the City. An active marine education and research facility is the vision and a ten-year reversionary clause provides the Noyo Center a time limit to make measurable progress on that facility and to ensure that the land is ultimately used for that purpose. Without such a measurable requirement, a marine science education and research facility may never be developed, constructed and operated.

Mechanism for Transfer and Reversion

Based on the direction provided by City Council at the January 22, 2018 meeting, the City Attorney proposed using a Deed of Trust because it would require affirmative action by the City upon default or failure to make sufficient progress on the Marine Science facility. Under a Deed of Trust, a reversing transfer would not happen unless the foreclosure was initiated by the City. The Noyo Center Board and its Legal Counsel were opposed to the use of a Deed of Trust, which is typically used by Mortgage Companies or other financial lien holders as a way to foreclose or re-convey property when agreed to payments have not been made. The fact that this transaction does not involve funds was of concern.

The use of a Grant Deed with Power of Termination came as a suggestion from the Noyo Center Executive Director and the staff at the Conservancy, as an alternative to the Deed of Trust format. Unfortunately, the language in a Grant Deed with Power of Termination does not allow much flexibility because it must be clear and measurable to all parties when the property will revert ownership.

The Noyo Center has also proposed alternative language (in red) for the Grant Deed with Power of Termination drafted by the City Attorney.

Power of Termination: Subject to the provisions below, and pursuant to the provisions of Cal. Civil Code Sec. 885.010 through 885.070, title to all the Property shall revert to Grantor or the

then assignee of Grantor's rights hereunder upon the failure of Grantee to prepare new conceptual plans and raise at least \$3 million in funds ~~obtain final approval of land use entitlements from the City of Fort Bragg~~ for the construction of a marine sciences center building or buildings with a value of at least Five Million Dollars (\$5,000,000.00) by the date which is ten years from the recording date of this document in the records of Mendocino County.

Staff is agreeable to the proposed language modification above in red.

The Noyo Center has also offered to execute a similar Irrevocable Offer to Dedicate Title in Fee and Declaration of Restrictive Covenants, similar to the City's OTD, that would allow the City to accept back ownership only if:

1. The Noyo Center no longer exists as an organization;
2. The Noyo Center stops pursuing the development of a marine science center on the site; or
3. The Noyo Center violates any condition of the Conservancy's Irrevocable Offer to Dedicate Title in Fee and Declaration of Restrictive Covenants.

The first and third covenants would already be applicable by the terms of the City's OTD, which runs with the property and therefore, apply to the Noyo Center when the property is transferred to it. A separate Irrevocable Offer to Dedicate Title in Fee and Declaration of Restrictive Covenants executed by the Noyo Center could allow the City to take back the property if the Noyo Center ceases to exist or violates any of the OTD covenants that run with the property. This could provide the City an opportunity to repurpose the land before the State of California takes action under the City's OTD.

RECOMMENDED ACTION:

Staff recommends City Council adopt the Resolution approving the Property Transfer Agreement with the Grant Deed with Power of Termination as modified by the Noyo Center.

ALTERNATIVE ACTION(S):

1. Do not approve the Property Transfer.
2. Approve the Property Transfer without a reversion clause or power of termination.
3. Approve the Property Transfer with a modified reversion clause. For example, increase the number of years before it would be applicable from 10 to 15 or decrease the value of the marine science facility from \$5 million to \$2-3 million.
4. Approve use of a Noyo Center Irrevocable Offer to Dedicate Title in Fee to add terms that the City could invoke opposed to the State of California.
5. Provide alternative direction to staff regarding the Property Transfer.

FISCAL IMPACT:

N/A.

CONSISTENCY:

City Council Goals and Priorities:

GOAL 4.0: FOSTER A STRONG, RESILIENT AND PROSPEROUS LOCAL ECONOMY Objective 4.1: Ensure that Redevelopment of the Georgia-Pacific Mill Site Benefits the Community Strategies/Actions:

Continue to Support Development of Noyo Center For Marine Science (Economic Development Strategy 1.6). H 2016-21 City Council Ongoing

IMPLEMENTATION/TIMEFRAMES:

The property transfer can be processed within the next month, so long as a Coastal Development Permit is not required for a lot line adjustment. Whether a Coastal Development Permit is required will depend on whether the Noyo Center desires to acquire the modified parcel (as surveyed) or the existing parcel as presented to Council at the January 22, 2018 meeting.

ATTACHMENTS:

1. Resolution
2. Proposed Property Transfer Agreement
3. Proposed Property Transfer Map
4. Proposed Deed of Trust with Power of Termination
5. Irrevocable Offer to Dedicate Title in Fee and Declaration of Restrictive Covenants

NOTIFICATION: