

## Legislation Details (With Text)

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**On agenda:** 9/7/2021      **Final action:** 9/8/2021

**Title:** RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN PABLO APPROVING AND AUTHORIZING THE EXECUTION OF A SECOND AMENDMENT TO THE DISPOSITION AND DEVELOPMENT AGREEMENT WITH AMERICAN RECESS, LLC, AND THE MULHOLLAND DRIVE COMPANY, LLC, FOR THE SALE AND DEVELOPMENT OF THE SOUTHERNMOST PORTION OF THE PROPERTY LOCATED AT 2600 MORAGA ROAD, SAN PABLO, CALIFORNIA

**Sponsors:**

**Indexes:**

**Code sections:**

**Attachments:** 1. RES 2021-111 2nd Amendment to DDA Amer Recess - Mulholland 2600 Moraga Rd, 2. Exhibit 1 - 2600 Moraga 2nd Am to DDA, 3. Exhibit 2- Connection Fee Credit Agreement - 2600 Moraga Ave, 4. Exhibit 3 - Executed DDA

Date	Ver.	Action By	Action	Result
9/8/2021	1	City Council	adopted	Pass

**PREPARED BY:** JENNIFER KAUFFMAN

**DATE OF MEETING:** 09/07/21

**SUBJECT:**

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN PABLO APPROVING AND AUTHORIZING THE EXECUTION OF A SECOND AMENDMENT TO THE DISPOSITION AND DEVELOPMENT AGREEMENT WITH AMERICAN RECESS, LLC, AND THE MULHOLLAND DRIVE COMPANY, LLC, FOR THE SALE AND DEVELOPMENT OF THE SOUTHERNMOST PORTION OF THE PROPERTY LOCATED AT 2600 MORAGA ROAD, SAN PABLO, CALIFORNIA

**CITY MANAGER RECOMMENDATION**

Adopt Resolution

**COMPLIANCE STATEMENTS**

Economic Development and Diversification is a major policy goal under the FY 2021-22 Council Priority Workplan, effective March 15, 2021.

**CEQA Compliance Statement**

On June 7, 2021, the City Council conducted a public hearing and approved an initial study and Mitigated Negative Declaration for the proposed project at 2600 Moraga Road. There have been no substantial changes to the project, conditions or circumstances regarding this project that would require additional environmental review.

**BACKGROUND**

On December 9, 2019, City Council adopted Resolution 2019-167 declaring the 4.08-acre southern portion of City-owned property located at 2600 Moraga Road (the "Property") as surplus under the

requirements of Government Code section 54220.

Upon the City's determination that the Property is surplus land, the City offered the Property for sale or lease to certain public entities for a period of 60 days under the procedures set forth in Government Code Section 54220 et seq. and did not receive any interest.

On December 16, 2019, City Council under Closed Session authorized staff to begin negotiations with American Recess, LLC and Mulholland Drive Company, LLC (together the "Developer") for the disposition and development of the Property as a self-storage facility (the "Project").

On June 1, 2020, the City Council approved and authorized a Disposition and Development Agreement (the "DDA") providing for the sale and development of the Property. The purchase price for the Property was set at \$5,125,000; the current DDA is attached to this staff report (attached) and calls for the Developer to construct the Project on the Property within a certain time frame and according to a specific scope of development.

On May 11, 2021, the Planning Commission conducted a public hearing on the Initial Study and Mitigated Negative Declaration (IS-MND) under CEQA and recommended approving the General Plan Amendment, Rezoning, Conditional Use Permit and Design Review, which was subsequently approved by the City Council on June 7, 2021 contingent on the Zoning Ordinance being adopted (June 21, 2021) and becoming effective (July 21, 2021).

On June 10, 2021, the City Manager executed a first amendment to the DDA in his capacity authorized in the DDA, with the consent of the City Attorney, to approve minor, non-monetary amendments to the DDA that are necessary and appropriate for the disposition of the southern portion of 2600 Moraga Avenue and the development of the Project as contemplated in the DDA. The first amendment authorized one further 90-day extension of the Contingency Period beyond June 13, 2021 (to no later than September 11, 2021) solely with respect to obtaining the Entitlements, provided that the Developer increased the Deposit by an additional \$35,000 concurrently with the execution of this First Amendment.

During the contingency period, the Developer determined that the physical condition of the property will necessitate substantial additional costs for development due to unexpected findings at the property including, but not limited to: inadequate pipes for delivery of water to serve the new development with needed upgrades at a cost potentially in excess of \$1,000,000; and possible archaeological and cultural resources, necessitating further investigatory and potential remedial actions with attendant costs and time delays. Given the results of the Developer's investigations and to keep the project feasible, the Developer and the City negotiated three proposed amendments to the current DDA to be memorialized in a Second Amendment to the DDA:

- 1) Extension of the deadline to obtain the remaining entitlements by 45 days primarily from the Fire District (no later than October 26, 2021) provided the Developer increases the deposit by an additional \$35,000; and
- 2) Reduction in the purchase price by \$382,408.33; and
- 3) Authorization to execute a Connection Fee Credit Agreement to acknowledge the allocation of sewer credits for the Project from the West County Wastewater District in the amount of \$67,750.00.

These DDA amendments are not intended to be considered a subsidy triggering requirements such as prevailing wages, given that the sale price is still significantly above fair market value, but nonetheless, the Developer is releasing the City from any such claims.

The DDA contains provisions for the termination of the DDA by the City prior to the conveyance of title to the Property if the Developer is in default under the DDA or has not performed certain actions required by the DDA. After conveyance of the Property to the Developer, if development of the Project stalls due to the Developer's default, the DDA provides the City with an option to repurchase the Property.

### **FISCAL IMPACT**

The Second Amendment to the DDA provides for \$382,408.33 less than the original sale price, for a total sales price of \$4,674,841.67, which remains above the fair market value of the Property according to a 2016 appraisal and consistent with subsequent information regarding commercial property values in the City and site constraints due to seismic, archeological and water delivery/piping.