

**REPORT/RECOMMENDATION TO THE BOARD OF SUPERVISORS
OF SAN BERNARDINO COUNTY
AND RECORD OF ACTION**

November 15, 2022

FROM

TERRY W. THOMPSON, Director, Real Estate Services Department

SUBJECT

Amendment to the Purchase and Sale Agreement with Watson Land Company for County Surplus Property

RECOMMENDATION(S)

1. Approve **Amendment No. 12** to the Purchase and Sale Agreement and Escrow Instructions for Auction Sales, **Contract No. 14-429**, with Watson Land Company that waives, releases, and discharges San Bernardino County from any requirement to remove the United States Department of Agriculture Deed Restriction, establishes that escrow shall close no later than December 15, 2022, confirms Watson Land Company acknowledges and accepts the property with the Deed Restriction, and adds release and indemnification provisions in favor of San Bernardino County from any damage relating to the Deed Restriction or any Grant Award Agreement, all concerning a 14.81-acre portion of the 60.65 acres of land sold to Watson Land Company, situated west of Hellman Avenue in the City of Chino.
2. Authorize the Chairman of the Board of Supervisors to execute the following documents:
 - a. Amendment No. 12 to the Purchase and Sale Agreement and Escrow Instructions for Auction Sales, Contract No. 14-429, with Watson Land Company; and
 - b. Grant Deed to convey the 14.81-acre property to Watson Land Company.
3. Authorize the Director of the Real Estate Services Department to execute any other subsequent documents and take any actions necessary to complete this transaction, subject to County Counsel review.

(Presenter: Terry W. Thompson, Director, 387-5252)

COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES

Operate in a Fiscally-Responsible and Business-Like Manner.

Ensure Development of a Well-Planned, Balanced, and Sustainable County.

Pursue County Goals and Objectives by Working with Other Agencies and Stakeholders.

FINANCIAL IMPACT

This Amendment will not result in the use of Discretionary General Funding (Net County Cost). There is no cost associated with executing this Amendment and San Bernardino County (County) will receive revenue in the amount of \$2,835,000, to be deposited in the Chino Agricultural Preserve Special Revenue Fund (7801132734), from the sale of the 14.81 acres to Watson Land Company (Watson) at the close of escrow. In April 2016, the County closed escrow on the sale of the 45.84 acres of the 60.65-acre transaction and received \$12,500,000 in revenue; upon the close of escrow for this 14.81-acre portion of the sale, the County will have received total revenue of \$15,335,000 for the 60.65 acres sold to Watson.

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At the initial opening of escrow for the entire 60.65 acres, Watson deposited a \$1,533,500 good faith deposit into escrow. This deposit is now applicable to the purchase price for the 14.81 acres of land.

Approximately 55.87 acres of this 60.65-acre County-owned property being sold to Watson was purchased by the County using Grant funds under the California Wildlife, Coastal and Parkland Conservation Act of 1988 (Proposition 70). The remaining 4.78 acres was purchased with a Grant from the United States Department of Agriculture (USDA) in the amount of \$100,000. The revenue from the sale to Watson can only be used for Proposition 70-related purposes, such as the acquisition of replacement property and for improvements to, and ongoing expenses associated with, other County-owned properties encumbered with Proposition 70 deed restrictions or conservation easements.

BACKGROUND INFORMATION

Amendment No. 12 (Amendment) to the Purchase and Sale Agreement and Escrow Instructions for Auction Sales, Contract No. 14-429 (Contract) between the County and Watson, waives, releases, and discharges the County from any requirement to remove the USDA Deed Restriction; establishes that escrow shall close no later than December 15, 2022; confirms that Watson acknowledges and accepts the 14.81 acres with the USDA Deed Restriction; and adds release and indemnification provisions in favor of the County from any damage relating to the USDA Deed Restriction or any grant award agreement.

Real Estate Services Department (RESD) began working with the USDA to affect the relocation of the USDA Deed Restriction immediately following the passage of the 2014 Farm Bill, which provides for the relocation of its deed restrictions under the condition that the existing property is no longer conducive to agricultural development.

Throughout the 1990s, the County acquired 366.55 acres of dairy properties in the cities of Chino and Ontario with a \$20 million Proposition 70 grant for the purposes of funding the “acquisition, development, rehabilitation, protection, or restoration of park, wildlife, coastal and natural lands in California, including lands supporting unique or endangered plants or animals”. Approximately 165.30 acres are located in the City of Chino and approximately 201.25 acres are located in the City of Ontario. Of the 60.65 acres located in Chino, 4.78 acres were purchased partially with a \$100,000 grant from the USDA. Acceptance of the grant required the recipient to record a deed restriction over the property to restrict its use to agricultural purposes into perpetuity.

On December 17, 2013 (Item No. 64), the Board of Supervisors (Board) adopted Resolution No. 2013-241 to declare the 165.30 acres of County-owned dairy properties in Chino surplus and authorized holding a public auction to sell 60.65 acres [Assessor Parcel Numbers (APNs) 0218-301-01, 05, 06, 07, 12, 14, 15, 22, 25, 26 and 1055-081-01 and 02] of this land. On June 24, 2014 (Item No. 74), the Board approved the highest bid received at the auction held on March 19, 2014, from Watson to purchase 60.65 acres of property for \$15,335,000. Subsequently, escrow was opened. The close of escrow was contingent on the County’s removal of deed restrictions over various portions of the property.

The Contract with Watson allowed the Director of the RESD to execute one amendment to extend escrow. On June 24, 2015, the County and Watson executed the first amendment to extend escrow six months, from July 7, 2015 to January 6, 2016, to allow the County additional time to remove the deed restrictions. On December 15, 2015 (Item No. 49), the Board

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approved a second amendment to the Contract to extend the close of escrow from January 7, 2016 to March 17, 2016, to give RESD additional time to remove the deed restrictions.

The removal of the USDA Deed Restriction has proven to be a lengthy process, and Watson needed to move forward with the construction of Hellman Avenue as part of their conditions of development imposed by the City of Chino. As a result, on March 1, 2016 (Item No. 50), the Board approved a third amendment to the Contract to extend the close of escrow for 45.84 acres (APNs 0218-301-01, 05, 06, 07 12, 14, 15, 22, 25, 26) of the 60.65 acres, located east of Hellman Avenue from March 17, 2016 to April 12, 2016, and provide \$12,500,000 in proceeds to the County upon the close of escrow. The amendment also extended escrow an additional six months from March 18, 2016 to August 31, 2016, for the remaining 14.81 acres (now referenced as APN 1054-491-01), located west of Hellman Avenue which is encumbered with the USDA Deed Restriction to provide the County additional time to work with the USDA. The amendment also authorized the Director of RESD to execute a fourth amendment to extend escrow an additional six months for the sale of the 14.81 acres, if necessary. On April 4, 2016, escrow closed on the 45.84 acres and the County received proceeds from the sale in the amount of \$12,500,000.

Between August 9, 2016 and January 29, 2019, the Contract was extended six times by Amendment Nos 4-9, three of which were directly approved by the Board and three of which were executed by the RESD Director through Board delegated authority, extending the escrow from August 31, 2016 to February 13, 2020. All of these amendments were for the purpose of removing the USDA Deed Restriction. During this period, the USDA required the easement be conveyed to a third-party conservation group for long-term stewardship.

On June 25, 2019 (Item No. 44), the Board approved the Real Estate Consultant Agreement with Rivers & Lands Conservancy (RLC) to provide consulting services associated with the dedication and long-term stewardship of the USDA Deed Restriction that will be relocated to another County-owned property in Chino under the guidance and requirements established by the USDA.

Discussion with the USDA continued and efforts to remove the USDA Deed Restriction are ongoing, so on January 28, 2020 (Item No. 43), the Board approved the tenth amendment to the Contract, extending the close of escrow from February 14, 2020 to August 13, 2020, on the remaining 14.81-acre portion of the 60.65 acres, and providing authority to the RESD Director to execute an escrow extension for an additional six months through February 13, 2021. That escrow extension was subsequently executed.

On February 9, 2021 (Item No. 51), the Board approved an eleventh amendment to the Contract to extend the close of escrow from February 14, 2021, to a date not later than 30 days after the removal of the USDA Deed Restriction, but in no event beyond December 31, 2022. In addition, this transaction remains exempt from the Surplus Land Act requirements so long as escrow closes, and the disposition is complete by December 31, 2022. Since this prior Board action, RESD has continued to work diligently with RLC and USDA towards removal and relocation of the USDA Deed Restriction.

However, as the 2022 calendar year-end approached, it became apparent that the USDA Deed Restriction would be unable to be removed with enough time to close escrow by December 31, 2022, and Watson expressed to RESD that, in its sole determination, it must close the escrow as quickly as possible and acquire the property subject to the USDA Deed Restriction. Watson

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has also asserted its opinion that the USDA Deed Restriction is unenforceable. County staff have expressed no position and has made no representations on Watson's position regarding the USDA Deed Restriction. As provided below, County staff intend to continue to work with the USDA and RLC during and after the close of escrow to record a new USDA Deed Restriction at a different site.

Watson desires to proceed forward with the close of escrow and waive any and all conditions associated with the removal of the USDA Deed Restriction. Watson also acknowledges and agrees to accept the Property with the USDA Deed Restriction and take on all risks and liabilities associated with the County taking no action with respect to the USDA Deed Restriction.

Approval of Amendment No. 12 to the Contract waives, releases, and discharges County from any requirement to remove the USDA Deed Restriction, establishes that escrow shall close no later than December 15, 2022, confirms Watson acknowledges and accepts the 14.81 acres with the USDA Deed Restriction, and adds release and indemnification provisions in favor of the County from any damages relating to the USDA Deed Restriction or any Grant Award Agreement.

RESA staff has briefed USDA staff on the parties' intentions to close the escrow and will continue to work with the USDA and RLC during and after the close of escrow, to record a new USDA Deed Restriction at a different site.

PROCUREMENT

On December 17, 2013 (Item No. 64), the Board declared the property surplus and authorized its sale by public auction pursuant to Government Code sections 25526 and 25363.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Scott Runyan, Principal Assistant County Counsel, 387-5455) on October 31, 2022; Purchasing (Bruce Cole, Supervising Buyer, 387-2148) on October 26, 2022; Finance (Penelope Chang, Administrative Analyst, 387-4886) on October 31, 2022; and County Finance and Administration (Diana Atkeson, Deputy Executive Officer, 387-4376) on October 31, 2022.

(BJO: 659-4676)

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Record of Action of the Board of Supervisors
San Bernardino County

APPROVED (CONSENT CALENDAR)

Moved: Joe Baca, Jr. Seconded: Janice Rutherford
Ayes: Col. Paul Cook (Ret.), Janice Rutherford, Curt Hagman, Joe Baca, Jr.
Absent: Dawn Rowe

Lynna Monell, CLERK OF THE BOARD

BY



DATED: November 15, 2022



cc: RESD - Thompson w/agree
Contractor - C/O RESD w/agree
File - w/agree
CCM 11/23/2022