

Item 22.1

NORTHWEST PRESERVATION

Goal 4. Enhance El Paso's Quality of Life through Recreational, Cultural and Educational Environments

Presentation Overview:

- Background & Work Efforts
- Location
- Preservation Cost
- Funding Options & Recommendation
- Preservation Options & Recommendation
- Next Steps

Background

- May 4th, 2019: Special election approved by voters to “preserve in its natural state, for all time, the 1,107 acres owned by the City of El Paso and referred to as “Tax Increment Reinvestment Zone Number Twelve,” which includes the “Lost Dog Trail,” and to prohibit, for all time any private development and any major public roadways on said 1,107 acres.”

- May 14th, 2019: City Council unanimously approves “An ordinance of the electorate of the City of El Paso adopted by operation of law pursuant to the initiative authority of Section 3.11 of the El Paso City Charter, preserving in its natural state, for all time, the approximately 1,106.93 acres owned by the City of El Paso and referred to as “Tax Increment Reinvestment Zone Number Twelve,” which includes the “Lost Dog Trail,” and prohibiting, for all time, any private development and any major public roadways on said acres.”

Background

- May 14th, 2019: City Council unanimously approves a motion to "authorize the City Manager to direct City staff to work with stakeholders which include the Open Space Advisory Board, El Paso Public Service Board, and City of El Paso staff, Proposition A petition submitter representatives, and legal staff from the City for the purpose of determining preservation costs, as well as identify optimal funding sources for the permanent preservation of the 1,107 acres owned by the City of El Paso, which is referred to as "Tax Increment Reinvestment Zone Number Twelve," which includes the "Lost Dog Trail." Staff will report to Council within 90 days with recommendations for moving forward, which includes at least three courses of action with pros and cons for each course of action."

- June 4th, 2019: Cross-functional team convened to include staff from Economic & International Development, Planning & Inspections, City Attorney's Office, El Paso Water Utility, Capital Improvements, Parks and Recreation, Office of Budget & Management, and City Comptroller. Team meets weekly to review and develop options as directed by City Council.

Background

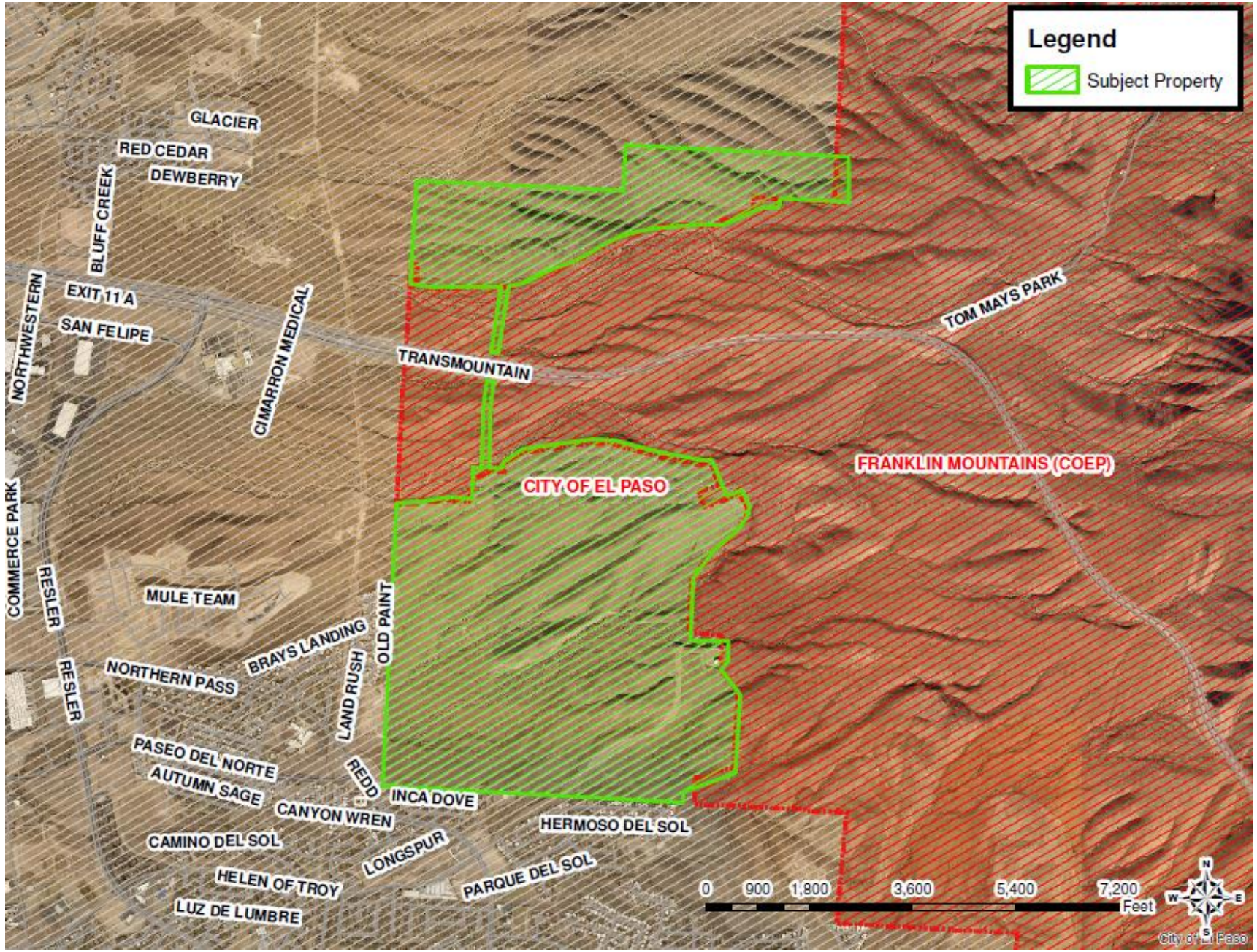
- June 10th – 21st, 2019: Meet with Frontera Land Alliance, Franklin Mountain State Park, City Park Parks & Recreation, and El Paso Water Utility to explore preservation strategies, including pros and cons of each.
- June 24th, 2019: Meet with stakeholder group representatives, including petitioner and Open Space Advisory Board representatives: Rick and Sharon Bonart, Don Baumgardt, and Dr. Rebecca Escamilla to discuss preservation strategies and associated costs.
- July 10th, 2019: El Paso Water Utility Public Service Board meets and unanimously approves a motion to state its position that: "1) the land which is managed and controlled by the Board and contained within the Northwest TIRZ 12 should be preserved as "Open Space/Dual Purpose" land in accordance with the City of El Paso Ordinance 016668, establishing the Municipal Drainage Utility System (MDUS), and as previously recommended by the Open Space Advisory Board at its meeting of May 23, 2018; and 2) the Board should be compensated from the MDUS funds for the fair market value of the TIRZ 12 land in accordance with the bond covenants established in the City of El Paso Bond Ordinances adopted on October 30, 2018 and March 19, 2019…"

Background

- July 15th, 2019: Second meeting with stakeholder group representatives, including petitioner and Open Space Advisory Board representatives: Rick and Sharon Bonart, Don Baumgardt, and Rebecca Escamilla to discuss preservation strategies and associated costs.
- July 17th, 2019: Meeting with OSAB for the purpose of presenting courses of action and obtaining feedback from the Board on the each course of action to be forwarded to the City Council on July 23rd, 2019 for its consideration in determining next steps to achieve the May 4th voter approved initiative.
- July 23rd, 2019: City Council meeting to consider preservation costs, optimal funding sources, and at least three courses of action, including pros and cons of each, to achieve the May 4th voter approved initiative.

Location

- Approximately 1,000 acres of land located in Northwest El Paso, abutting the Franklin Mountain State Park.
- Land is owned by the City of El Paso but held in trust and controlled by the El Paso Water Utility.
- In 2012, as part of a compromise, 658 acres of land were transferred to the Franklin Mountain State Park, while the remaining approximate 1,000 acres were rezoned to SmartCode for the purpose of future planned, contiguous development.



Preservation Cost

- **What is the preservation cost of the Northwest land?**

  The preservation cost of the approximate 1,000 acres of land included in the approved ballot initiative is approximately $11.3 million.

- **How is the preservation cost determined?**

  The preservation cost is determined by City of El Paso Water & Sewer Bond Ordinances approved on October 30, 2018 and March 19, 2019 which require that the System (i.e. the City of El Paso Water and Sewer System and associated property) be compensated **fair market value** for System land required to be set aside for Open Space Purposes “at the request, initiative, petition or action of, a third party.”

Preservation Cost

- **Why were these bond covenants put into place?**

  The Water Utility, as trustee of its land assets, has a fiduciary responsibility to ensure that its ratepayers are adequately compensated for System assets. The bond covenants ensure its ratepayers and the System is compensated for current or future land assets set aside as Open Space.

- **Why must the Water Utility be compensated for the land?**

  El Paso Water Utility is partly dependent on assets of the System to generate revenue to pay its infrastructure costs and debt service on bonds. **Land is a significant asset of the System.** Removal of land assets without receiving fair market value can: 1) raise concerns in the marketplace, which can lead to higher costs for ratepayers when bonds are being issued; and 2) impair the ability of the Water Utility to adequately cover infrastructure costs and debt service on bonds without increased rates.

Preservation Cost

- **How was the fair market value of the land determined?**

  The fair market value of $11.3 million is based on a December 2017 appraisal of the land **after** removing the development value of SmartCode and the potential for associated development incentives and instead assuming conventional zoning.

  Prior to removing the development value of SmartCode and the potential for associated development incentives, the land was valued at $24.0 million by the same appraisal. In other words, had the land been put out to bid, it may have been sold for $24.0 million.

  The decision to instead value the land as if it were conventionally zoned, at less than half the appraised value, ensures the System is adequately, but fairly, compensated for this asset.

Funding Options

- **What funding sources cannot be used?**

  To protect the taxpayers, the approved Bond Ordinances stipulate that the General Fund **cannot** be used to compensate the System for land set aside for Open Space Purposes by a third party.

- **What funding sources remain?**

  1. The Water Utility's 10% Dual Purpose Stormwater/Open Space Fund to be used for "Green Projects" which include land acquisitions that have the dual purposes of stormwater management and preservation of the City's open spaces in their natural state.
     - Expected year-end fund balance: approximately $8.5 million, excluding reservations for ongoing negotiations
     - Expected annual revenue: approximately $2.5 million annually

Funding Recommendation

- **Use the Water Utility's 10% Dual Purpose Stormwater / Open Space Fund to compensate the System fair market value for the Northwest Land and leave the land in the El Paso Water Utility inventory for the continued dual purpose use as a: 1) natural stormwater management system and 2) a preserved natural open space amenity.**
  - Consistent with the July 10th, 2019 motion made by the El Paso Water Utility Public Service Board; and
  - Consistent with a previous recommendation made by the Open Space Advisory Board on May 23rd, 2018 in which the Board unanimously recommended use of this fund, along with use of the Quality of Life Bond dollars set aside for open space acquisitions, to achieve preservation of the Northwest land.
  - Note, however, the Board unanimously approved a conflicting recommendation at its July 17th, 2019 meeting, stating the Dual Purpose Fund is not appropriate for use in preservation of this land.

Funding Recommendation: Strengths

1. Uses an existing fund resulting in **no additional cost to ratepayers or taxpayers**;
2. May be financed over a 5-year period, allowing for the funding of other Dual Purpose Stormwater Management / Open Space projects throughout the City during this same 5-year period;
3. Does not require use of the Quality of Life Bond dollars set aside for open space acquisitions, allowing for other acquisition projects throughout the City with the remaining fund balance;
4. Ordinance No. 016668, which authorizes the fund requires that land purchased using this fund remain in the Municipal Utility Drainage System, adding an **additional layer of protection** to ensure preservation of the Northwest land; and
5. Remains under control and management of the El Paso Water Utility, ensuring continued public access and local control of land, minimal annual maintenance costs, and identifiable management staff.

Preservation Options

1. Dual Purpose Stormwater Management / Open Space Fund
2. Transfer of Land to State Park
3. Management Partnership with State Park
4. City Parkland Dedication
5. Conservation Covenant
6. Conservation Easement
7. Removal of TIRZ 12 and Rezone to Natural Open Space

Preservation Options

Critical Consideration in the Analysis of Preservation Options	Analysis
1. Achieves perpetual preservation in accordance with voter approved initiative	All preservation options are **in addition to** the May 14th ordinance passed and approved by City Council which requires that the Northwest land be perpetually preserved in its natural state.
2. Compensates the System in accordance with approved Bond Covenants	The EPWU's Dual Purpose Fund is the only existing funding source that can be used to compensate the System full fair market value for the land. There are two preservation options that would not allow for use of the Dual Purpose Fund, rendering these options unviable.
3. Eliminate any additional cost to the taxpayer and/or ratepayer	With the exception of the recommended preservation option, **all other preservation options include additional costs** to the taxpayer and/or ratepayer.

Preservation Recommendation

Use the 10% Dual Purpose Stormwater / Open Space Fund to compensate the System fair market value for the Northwest Land and leave the land in the El Paso Water Utility inventory for continued dual purpose use as a: 1) natural stormwater management system and 2) a preserved natural open space amenity.

- Recommendation is consistent with El Paso Water Utility Public Service Board motion made on July 10th, 2019.

STRENGTHS:

1. Existing identifiable funding source
2. No additional cost to taxpayer or ratepayer
3. Added protection to achieve preservation
4. Public access maintained
5. City control maintained
6. Continued maintenance at little to no cost
7. Identifiable management staff
8. Historic precedent: 650+ dual purpose acres acquired using this fund
9. Dollars remain in both 10% fund and QoL Bond fund for other open space acquisitions and projects elsewhere

Preservation Option: State Park Transfer

DESCRIPTION: Transfer of ownership from the City of El Paso to the Texas Parks and Wildlife Department for inclusion in the Franklin Mountain State Park.

STRENGTHS:

- Historic precedent
- Experience managing open space
- Expands park / contiguous boundary
- Public access maintained
- User pay model contributes to maintenance funding

CONSIDERATIONS:

- **EPWU Dual Purpose Fund may not be used under this scenario**
- May require increased funding from State Legislature
- Requires Texas Parks and Wildlife Department Commission approval
- Limited operational staff
- User pay model requires payment for park/trail usage

Preservation Option: State Park MOU

DESCRIPTION: Land remains in the EPWU inventory and EPWU enters into an agreement such as an MOU with the Franklin Mountain State Park for day-to-day management of the land.

STRENGTHS:

- EPWU Dual Purpose Fund may be used under this scenario
- Requires regional director approval
- Experience managing open space
- Expands park / contiguous boundary
- Public access maintained
- User pay model contributes to maintenance funding

CONSIDERATIONS:

- May require increased funding for maintenance / management
- Limited operational staff
- User pay model requires payment for park/trail usage
- City regulations cannot be enforced by TPWD staff – EPWU management would still be required

Preservation Option: City Parkland Dedication

DESCRIPTION: Land is transferred to City inventory and dedicated as a City Park.

STRENGTHS:

- Requires voter referendum
- Increases City parkland significantly
- Public access maintained
- City control retained
- Identifiable City staff for management and maintenance
- Active day-to-day maintenance

CONSIDERATIONS:

- **EPWU Dual Purpose Fund may not be used under this scenario**
- Unidentified annual maintenance funding source
- Must follow City regulations
- Limited experience managing open space
- May require additional staff

Preservation Option: Conservation Covenant

DESCRIPTION: Land remains in the EPWU inventory and EPWU places deed restrictions on the land that defines the limitations, conditions or restrictions on use of the land. Depending on language of covenants, a committee may be responsible for governance.

STRENGTHS:

- EPWU Dual Purpose Fund may be used under this scenario
- Recorded property restrictions
- Committee governance
- Public access maintained
- Continued maintenance by EPWU

CONSIDERATIONS:

- Limited local prior experience in drafting and managing
- May require consultant and/or real estate attorney
- No day-to-day management of covenant
- Difficult to react to unforeseen circumstances

Preservation Option: Conservation Easement

DESCRIPTION: Land remains in the EPWU inventory and EPWU enters into an easement agreement with a land trust to place limitations, conditions or restrictions on use of the land. Typically used by private property owners, rather than governments, who do not have the ability to ensure their land will be preserved after death.

STRENGTHS:

- EPWU Dual Purpose Fund may be used under this scenario
- Recorded property restrictions
- Public access maintained
- Continued maintenance by EPWU

Note: This option was recommended by the Stakeholder group and the Open Space Advisory Board at its July 17th, 2019 meeting.

CONSIDERATIONS:

- Limited Local Prior Experience in Drafting Easement Agreement
- May require consultant and/or real estate attorney
- Non-profit governance
- Unknown stewardship and management costs
- No day-to-day management of easement
- Difficult to react to unforeseen circumstances
- **Eliminates rights of future voters**

Preservation Option: Removal of TIRZ 12 and Rezone to Natural Open Space

DESCRIPTION: On July 17th, 2019, the Open Space Advisory Board recommended that TIRZ 12 be removed and that the Northwest land be rezoned to Natural Open Space. The stakeholder group also identified both options as additional preservation options.

STRENGTHS:

- Does not impact the ordinance approved by Council calling for perpetual preservation of the Northwest land.

CONSIDERATIONS:

- Neither of these options achieves perpetual preservation as required by the voters.

Recommendation

Use the 10% Dual Purpose Stormwater / Open Space Fund to compensate the System fair market value for the Northwest Land and leave the land in the El Paso Water Utility inventory for continued dual purpose use as a: 1) natural stormwater management system and 2) a preserved natural open space amenity.