

# ***FOX CANYON AND WIGHTMAN STREET: A TALE OF TWO CITY PARKS IN EXTREMIS***

## ***SUMMARY***

The City of San Diego's plans to build a park in Fox Canyon were used successfully to obtain a State grant of \$2,363,000 to cover a substantial portion of the cost of construction. After the grant was received more planning time was spent to redesign the park to include a road. Legal difficulties over the environmental statement and differences of understanding with the property owners led the city to terminate efforts to build a park in the canyon. In the meantime, in order to settle another legal action against the city, the City of San Diego obtained land near Fox Canyon on Wightman Street. They cleared the property of several buildings and started the planning process for a park on that property. This process involved design planning, community meetings, and a hydrological survey. The Grand Jury received information that the current plan is to submit an application to the state for a re-scope of the Fox Canyon grant to Wightman, but it is doubtful that the state will approve this. Some city officials seem opposed to building a park in Fox Canyon because of their perception that the tract is not suitable for a park. Other officials oppose the park because of either the inclusion or exclusion of a road. There has also been prolonged confusion in dealings with the owners. In the long run and after considerable expenditures from the General Fund, the city could lose the grant totally and the neighborhood could end up with neither park.

## ***PURPOSE***

To inform the public of these two park proposals; to recommend that the city establish a clear line of policy with respect to the Fox Canyon park and that the city find some way to get around difficulties of its own making.

## ***PROCEDURES***

The Grand Jury examined various park proposals and the City Attorney's Interim Report No. 14 of February 27, 2007, titled The Ontario Avenue Connection and Fox Canyon Park [<http://www.sandiego.gov/cityattorney/reports/pdf/interimreport14.pdf>] and its 108 appendices. We interviewed personnel from the Park and Recreation Department, the Real Estate Assets Department, Community groups, the Crossroads Redevelopment Project Area Committee and representatives of the property owners. Members of the Grand Jury also attended public presentations on the Wightman Street Park conducted by Park and Recreation staff for community residents. We also visited both park sites on two occasions.

## ***DISCUSSION***

On January 15, 2004, the San Diego City Council approved a proposal to be sent to the State of California for a grant to fund partially the construction of a park in Fox Canyon. The canyon contains 2.7 acres of undeveloped space and is in an area covered by the Crossroads Redevelopment Area. The area, just south of University Avenue, and east of Euclid Ave., has a fairly high population density and virtually no parks. According to the city's calculations based on population, this area is short 22 acres of park space. In a letter to former City Manager Michael Uberuaga on April 29, 2002, City Councilmember Jim Madaffer stated:

“I have been working for some time with Park and Recreation Staff and Community leaders to come up with a plan for a system of parks in the Fox Canyon neighborhood of City Heights. City Heights as a whole is so park deficient, and it is one of my goals to add park space here, improving the quality of life for the people who live there.

“There is a parcel located at the end of Ontario Avenue which I believe is a wonderful place for a park. It is near several multi-family housing units, and the many children need a clean, safe place to play. Right now, they play in the filthy, graffiti-ridden drainage ditch that runs through the neighborhood.” (City Attorney Interim Report Exhibit #9, MO 2-04-17).

This proposal was enthusiastically supported by the City Council and by the neighborhood association. On November 1, 2004, the city was notified by the state that the application had been approved and that the city had been granted \$2,363,000 for a park. The rules covering the grant program called for “matching funds” which led the city to put in \$930,000 of its own money.

Shortly after this, the city began to redesign the park in the application to include a road, the “Ontario Avenue extension.” The City Heights local community group objected to the road; the Fox Canyon group supported a road. One councilmember strongly supported the road and was heard to say on a television newscast: “Look, I’m the councilmember—this park, this road—it starts right here.” (City Attorney Interim Report #14, p. 56) He blamed the park staff for not putting the road into the original proposal. While it is true that completing the Ontario Avenue connection had been discussed off and on since the late 90’s with respect to easing traffic congestion in the neighborhood and possibly allowing for additional low to moderate income housing, the grant application did not, in fact, include a road. A busy road (est. 2,000 cars per day) would have taken up park space and made it riskier for children to get to the park. The grant proposal without a road was passed by the city council.

In the end a local citizen associated with the Friends of Fox Canyon group filed a lawsuit against the city because the original environmental document submitted to the state did not cover the environmental impact of a road. The city agreed to settle out of court and rejected the environmental document. In the meantime, however, the city determined, contrary to expectations, that the owners were not willing to sell the city their land. One

stipulation of the grant was that the state's grant money could not be used for work on property taken by eminent domain. By late 2006 the city had actually given up on a park in Fox Canyon, though the officials dealing with the local community groups in public meetings have not stated clearly that the City Council in the Fall of 2006 had removed all funds from the budget for a park in Fox Canyon.

In the meantime, trouble arose over another piece of property in the neighborhood on Wightman Street. Water drainage issues led a property owner to sue the city. This was settled out of court in part by the city acquiring the property for \$3,200,000. The city decided to ask for a re-scope, i.e., a transfer of the funds, of the Fox Canyon park grant to the Wightman Street property, and proceeded to work on the property. A temporary construction fence was erected, and several derelict buildings were demolished and removed. A hydrological survey was conducted to determine how the area could be used for a park while avoiding flooding, and park designs were developed and considered with community groups. The city plans to have a park design to submit to the State in the spring of 2008 along with a request for a re-scope of their Fox Canyon Park grant to the Wightman Street property. On February 27, 2007, the city council moved funds out of the Fox Canyon park budget into a budget slot for the Wightman Street Park in the hope of a re-scope and in response to recommendations contained in the City Attorney's Interim Report #14. The original grant has an expiration date of 2010; if the re-scope is denied, the city could lose the grant altogether.

However, careful examination of the conditions of the original grant and the highly competitive nature of the grant program cast grave doubt on whether the state will accept a re-scope. The city did apply for a re-scope, but the state denied that request on July 10, 2007, on the basis that detailed plans for a park on Wightman Street had not been submitted

It is unlikely that the State will grant a re-scope to Wightman for several reasons. For one, the grant program is highly competitive and gives much weight to public support and input. There is a formal Fox Canyon Park neighborhood group that has been urging the development of a park in Fox Canyon for years; they seem to have been the major force behind getting the grant proposal approved by the city council. But the Wightman property simply fell into the city's hands, and meetings with local residents were begun in order to plan a park. In other words, from the state's point of view, with Fox the horse was before the cart, but with Wightman the reverse was true.

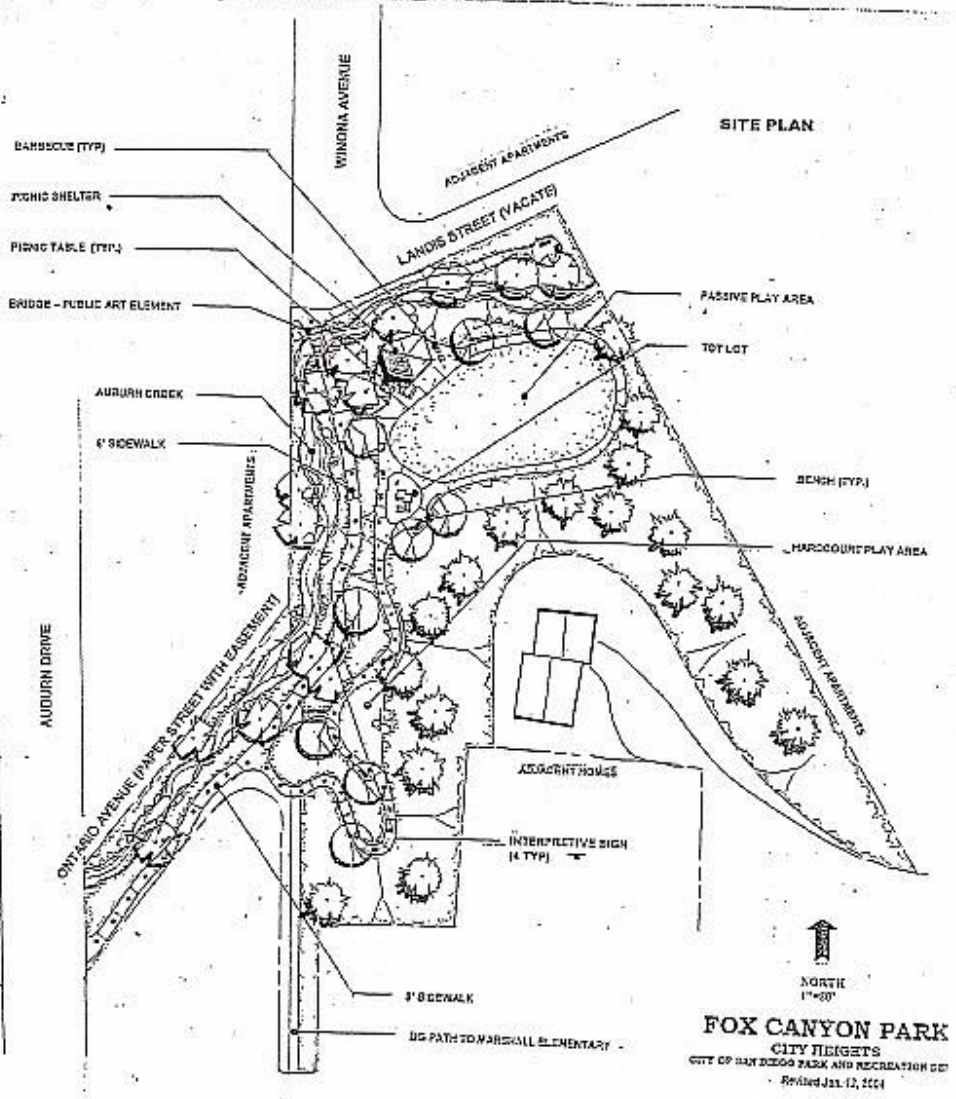
In addition the 0.9-acre Wightman property is just a third the size of the proposed Fox Canyon Park. If a re-scope were granted, the grant would have to be reduced in size. And, the Wightman property is hydrologically challenged. As a result of the hydrological survey conducted by the Park and Recreation Department, some parts of the property will not be built on, in order to avoid any flood damage. Why would the state fund a park that floods periodically?

There has been considerable confusion in the evidence over the various parcels and their sizes. The original Fox Canyon park proposal stated that the area of the park would be

2.7 acres. This would require purchasing parcels from two separate owners; 1.7 acres of Parcel A and 1 acre from another parcel (Parcel B). After the discussion about putting a road in the park, the 1-acre of Parcel B was largely dedicated to the Ontario Avenue extension. When the road was abandoned, all talk of purchasing that acre disappeared from the record. In the meantime there is a lot of imprecision in the evidence over the acreages involved. Official records show the entire Parcel A consists of 3.34 acres; the owners dispute this. The original park proposal suggested 1.7 acres of Parcel A would be purchased; other evidence gives other estimates of 1.55 acres, 1.83 acres, and 1.9 acres. The terrain is unmarked and rough, and the parcel is not divided (“split” in real estate terms), so it was difficult for us to see how much the park would occupy Parcel A.

In order to clarify the current conditions of the Fox Canyon park site, and to orient readers to the plat, we present here a diagram of the proposed park and some recent views of the open space in the canyon.

Plan view of the proposed Fox Canyon Park



This view is taken at some elevation facing NW





This view is looking into the park from the end of Winona Ave. towards the SSW



This view is along the eastern side of the canyon looking NE with the foot of Winona Av. again visible in the upper left





This illustrates graffiti on a retaining wall for a subsidiary creek bed that runs along the eastern edge of Parcel A



Here is a view of the center of the lowland area on the park portion of Parcel A





This photo shows the Chollas Creek bed looking NE along the northern edge of Parcel A



This shows a canyon wall on Parcel A





This shows another canyon wall on Parcel A



Here we see a view of Parcel B looking SW from an elevated spot on Parcel A





This shows the western edge of Parcel A looking N to the foot of Winona Ave



We conclude the tour with a view of the Wightman parcel looking N from Wightman Street



If the city were to acquire just a part of Parcel A, the parcel would have to be formally split. The cost of a split *per se* is relatively modest, but it would require that the purchaser perform any required mitigation. The creek bed and the sewer line would need extensive repairs, access would have to be created, and steps would be required to preserve the habitat of the several endangered species that make the canyon their home. City officials estimate that these measures would cost in excess of \$300,000. If the city were to create a park on the land, a rezoning from residential to park would have to be made; some of our evidence suggests this could take 6-9 months. A decision would have to be made about a road: since a road exists on the city map of the tract (a “paper road”), regular development procedures and rules would ordinarily require the new owner to create a real road. The city can exempt itself from this requirement, but this step also would require some time.



The history of the attempted purchase of the Fox Canyon tract is both informative and mysterious. The current owners bought Parcel A in 2001 for \$510,000. The entire tract consists of 3.34 acres of land; some portions are developed with housing. The county assessment at the time of purchase shows all of the land in Parcel A as having a value of \$236,185. The park land is 57%-65% of the whole parcel; thus the land would seem to have had an assessed value of approximately \$134,153+ at the time of purchase. Our investigation revealed that, following some correspondence among City officials and staff, a purchase price was established in the range of \$340,000--\$425,000. READ made an offer on April 5, 2005, to the owners of Parcel A of \$475,000; the owners did not respond. The city council budgeted \$800,000 to purchase the property necessary for the park. The original park staff budget allocated \$400,000 for the purchase of the land. The READ's next offer to the owners was \$52,000, based on the assumption that the land could not be profitably developed because of the cost of the necessary mitigation plus a road (required of any developer). In addition READ indicated that they did not think it was a very good location for a park. However, during the interval when all of this was milling about in the city, the owners received three offers of \$1-2 million for the property. The buyers dropped their offers to buy when they learned that the City was interested in building a park on the land and/or when they learned of the cost of mitigation. The owners of Parcel A have offered to sell the area the city wants for a park for somewhat less than the budgeted \$800,000.

These gigantic variations in values are difficult to understand. Moreover, it would seem that different parts of the city are working against each other. One sector wants a park in Fox Canyon, another doesn't. One group thinks the property is worth \$800,000, another \$52,000. One faction wants a road (and maybe no park), but an opposing faction wants a park and no road. The same official was at first very glad about the grant with no mention of a road and publicly praised the Park and Recreation Department for its fine work on the proposal; some time later he was an ardent proponent of the road and denigrated the Parks Department for not including it in the original proposal. There have been no serious sit down negotiations with the owners of Parcel A—just exchanges of wildly variant offers between parties with no acceptances. It is extremely difficult to understand why the city could not come to one clear policy on the proposed park before ever submitting a proposal to the state.

Meanwhile, the clock is running and the grant expires in 2010 if not used by then. Using it by then would mean a park would have to be built in Fox Canyon and bills presented to the state by that deadline. What are the chances now of that happening in time? There is no talk in the city of reviving Fox Canyon Park, and purchasing the property, rezoning it from residential to park, repairing the creek bed, and training the local residents to perform the park construction (part of the grant proposal) all would seem to reduce to slim the chances of beating the deadline. But slim is not none. It is time for the city to stop internal inconsistency, and either build Fox Canyon Park per the original grant proposal with the State grant money or state clearly that they no longer want to use the grant for a park in Fox Canyon. This would free the land of any entanglements so the owners could dispose of it as they see fit. This course of action would mean that the city would be putting all of its eggs in the re-scope to Wightman Street tract. However,

Wightman Street Park would need little in the way of mitigation. It is much smaller so that a simple park could be built there with the city's money, or with funds from the Crossroads Redevelopment Area such as tax increment funds or Development Impact Fees. Otherwise the neighborhood will be left with no park, the city will be left with no grant money, and with hefty bills for all the designing and redesigning

## ***FACTS AND FINDINGS***

***Fact:*** The Fox Canyon area south of University Avenue is short 22 acres of park space.

***Finding:*** The proposed Fox Canyon Park and Wightman Street Park would contribute greatly to a park-starved neighborhood.

***Fact:*** The State of California has provided a grant of \$2.3 million to build a park in Fox Canyon.

***Finding:*** The City of San Diego has good preliminary plans to build a park in Fox Canyon.

***Fact:*** The city owns the property for the proposed Wightman Street Park.

***Finding:*** Tax increment funds and/or Development Impact Fees could be used to pay for a simple park at Wightman Street.

***Finding:*** The proposed park appears to be the best use of the vacant land in Fox Canyon.

## ***RECOMMENDATIONS***

**The 2007/2008 San Diego County Grand Jury recommends that the Mayor and City Council of the City of San Diego:**

- 08-60:** Immediately bring the different departments of the City involved in this matter together to come to decision, prior to losing the opportunity to use State grant monies whether to purchase the Fox Canyon park tract and begin constructing a park there or return the state grant funds and disencumber the properties.
- 08-61:** If the decision is to not construct a park on the Fox Canyon tract, bring these same departments of the City together to evaluate whether funds are available and should be used to construct a park at Wightman Street
- 08-62:** Decide whether to build a road in Fox Canyon.

## ***REQUIREMENTS AND INSTRUCTIONS***

The California Penal Code §933(c) requires any public agency which the Grand Jury has reviewed, and about which it has issued a final report, to comment to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the agency. Such comment shall be made *no later than 90 days* after the Grand Jury publishes its report (filed with the Clerk of the Court); except that in the case of a report containing findings and recommendations pertaining to a department or agency headed by an elected County official (e.g. District Attorney, Sheriff, etc.), such comment shall be made *within 60 days* to the Presiding Judge with an information copy sent to the Board of Supervisors.

Furthermore, California Penal Code §933.05(a), (b), (c), details, as follows, the manner in which such comment(s) are to be made:

- (a) As to each grand jury finding, the responding person or entity shall indicate one of the following:
  - (1) The respondent agrees with the finding
  - (2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefore.
- (b) As to each grand jury recommendation, the responding person or entity shall report one of the following actions:
  - (1) The recommendation has been implemented, with a summary regarding the implemented action.
  - (2) The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.
  - (3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This time frame shall not exceed six months from the date of publication of the grand jury report.
  - (4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefore.
- (c) If a finding or recommendation of the grand jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the Board of Supervisors shall respond if requested by the grand jury, but the response of the Board of Supervisors shall address only those budgetary or personnel matters over which it has some decision making authority. The response of the elected agency or department head shall address all aspects of the findings or recommendations affecting his or her agency or department.

Comments to the Presiding Judge of the Superior Court in compliance with the Penal Code §933.05 are required from the:

<b><u>Responding Agency</u></b>	<b><u>Recommendations</u></b>	<b><u>Date</u></b>
<b>Mayor, City of San Diego</b>	<b>08-60 through 08-62</b>	<b>8/12/08</b>
<b>City Council, City of San Diego</b>	<b>08-60 through 08-62</b>	<b>8/12/08</b>