

Memorandum

Date: November 9, 2020

To: Board of Directors
KPPCSD

From: Ann Danforth, General Counsel

Re: Preliminary Steps for Acquiring Pedestrian Paths

BACKGROUND

According to Contra Costa County officials, early Kensington developers created the pedestrian paths located within the District and offered those paths to the County. The County did not accept them. The County is willing to accept the dedicated paths if the District will agree to acquire them in turn from the County.

PROCEDURE

In preparing this memorandum, I have assumed that the dedications arose from a subdivision process similar to the one currently stipulated by California law. I have not seen the documents that created the dedications and would need to review them to confirm the governing law.

Before the Board decides whether to pursue acquisition of the paths, I recommend that it consider the following:

- The proposed use of the paths
- The current condition of the paths and the cost of improving them for safe use.
- The recurring maintenance costs
- The need to improve the paths to comply with applicable accessibility laws (this will largely depend on the proposed use of the paths) and the cost of such improvements
- The potential liability associated with acquiring the paths; State law provides for “recreational use” immunity, which does not apply to non-recreational paths.
- The cost involved in removing any encroachments from the path

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If the Board decides to pursue acquisition of some or all of the paths, I recommend the following steps:

1. Obtain copies of the documents that contain the offers of dedication. If the dedications were over land that ultimately became part of a lot that was sold to a third party, and the lot owner has been using the dedicated area as part of their private property, the dedication could be found to be abandoned, thus no longer available for acceptance.
2. If the offers of dedication were for fee interests (i.e., for the land itself rather than an easement over otherwise private property), the current owners would likely be difficult to locate. However, it would be less likely that an adjoining property owner has acquired any rights to them.
3. The District should verify that the existing paths are located within the areas offered to the County by the original developer. This would require a survey. The surveyor could also provide the District with legal descriptions of the property to be acquired.
4. If the paths are located with the dedicated right of way, and assuming that the paths remain available for dedication, the County could adopt a resolution authorizing the execution and recordation of a quitclaim deed conveying the property.
5. The Board would then adopt a resolution accepting the property and directing staff to record it. After this occurs, the District would own the paths.
6. District staff would record the deed in the Office of Official Records of Contra Costa County.

FISCAL IMPACT

Unknown