

**DATE:** February 16, 2010  
**STAFF:** John Stokes

**AGENDA ITEM SUMMARY**  
FORT COLLINS CITY COUNCIL

**25**

**SUBJECT**

Resolution 2010-012 Authorizing the Acquisition of Certain Lands for Water Storage and Natural Area.

**EXECUTIVE SUMMARY**

In 2009, staff negotiated an agreement with Jay Stoner to acquire 128-acres of land and reservoir storage near the southwest corner of Harmony and I-25 for a price of \$5.8 million (see attached map). The land is part of the so-called Riverwalk project – a development proposed for the area. The contract with Stoner was terminated in late fall of 2009. A new contract has been drafted with a successor to Stoner, the Turnkey Company.

The City wishes to acquire the 128 acres for the primary purpose of water storage. About 80 acres of the 128 acres will be used for storing approximately 1,500 acre feet of water. Under the terms of the City's proposed contract with Turnkey Company, the Company will remove material from the site to create additional storage capacity prior to closing the transaction.

A secondary purpose of the acquisition will be to conserve an open space amenity along I-25 near the Harmony intersection. Dry land around the reservoir will be restored and managed by the Natural Areas Program to enhance habitat and recreational opportunities.

The agreement with Turnkey calls for the City and Turnkey to work closely together on the design of the reservoir to achieve the primary objective of water storage, while simultaneously building an amenity that is as aesthetically pleasing as possible.

**BACKGROUND / DISCUSSION**

Late last summer, Council approved going forward with an effort to acquire a water storage reservoir on the south half of Riverwalk. The reservoir would achieve the City's primary objective of managing its return flow obligations, while also helping to support aesthetic, natural area, recreation, and development considerations at this critical gateway. Through the fall, staff worked with the Seller in an attempt to acquire the 128-acre property and up to 2,000 acre feet of water storage. The total cost of the acquisition was \$5.8 million.

The site is attractive to the City because it works well for certain water management responsibilities (see below); and, it also augments the City's efforts to help conserve lands on the I-25 corridor that lie between major intersections. In this case, the 128 acres adjoins a City-owned natural area to the south, Eagle View. To the north of Harmony lies Arapaho Bend Natural Area. In the future, these properties are planned to be linked by trail.

A need for water storage capacity below the City's water reclamation facilities has been recognized and planned for a number of years. The purpose of the storage capacity primarily is to help the City meet certain water management objectives and obligations related to the storage and release of the City's reusable effluent as prescribed by City water rights decrees, and potentially to help enhance flows in the river through Fort Collins. The proposed acquisition is advantageously located below the City's Drake Water Reclamation Facility (DWRF) and its primary function would be to help manage water supplies and reusable effluent in the vicinity of DWRF.

The project is somewhat unusual for several reasons. First, the reservoir is not yet fully constructed. Although a reservoir lining already is in place, a considerable amount of material needs to be removed from the reservoir area to increase the amount of storage to the required volume. Therefore, a purchase agreement must rely on the Seller to complete a major improvement to the reservoir in advance of closing on the purchase of the reservoir and surrounding land. Second, there are some challenging engineering and floodplain issues at this site (on both the north and south portions). As staff conducted due diligence and increased its familiarity with the complexities of the site, staff also began to be concerned that the Seller would not be able to complete a project of this magnitude. Ultimately,

the original Seller asked the City to terminate its purchase agreement in November and staff concurred that termination was in the best interest of the City.

A forthcoming change in the ownership status of Riverwalk portends a more favorable environment for pursuing water storage at this site. Turnkey Company has informed the City that it plans to acquire Riverwalk in the near future. Turnkey is bringing a major equity partner to the table and appears, therefore, to have the financial and technical wherewithal to complete the Rivewalk storage project. In fact, recent meetings with Turnkey and its representatives have been well staffed by Turnkey.

Turnkey has indicated to staff that a partnership on the reservoir site is critical to its plans for the overall Riverwalk site, partly due to financial considerations, but also because it wants to be in a collaborative, working relationship with the City. In addition to efforts related to the purchase agreement, Turnkey is working closely with the City's planning department on a potential recreation related facility to be developed on the northwest corner of the Riverwalk, a portion of the overall site that is already zoned for development (unlike the majority of Riverwalk which currently is zoned T "transition").

In recent conversations with staff, Turnkey has indicated that it is willing to accept a number of new conditions that staff believes are necessary to enter a new transaction. A major change would be the construction of a smaller reservoir of 1,500 acre feet. The smaller size would meet the City's storage needs and lower the price from \$5.8 million to \$4.425 million.

Aside from the size of the reservoir and the price, other key differences from the original contract are (or will be):

- a. The time periods allowed for completion of construction and closing will be longer;
- b. The Seller will be reserving a drainage easement across the south parcel to benefit the north parcel;
- c. The contract will include more technical details about the standards to which the water storage will be constructed, including regulatory requirements, how the parties will collaborate on construction, and how the south parcel and north parcel will work together in terms of drainage, now and in the future. At the time this AIS was written, the precise terms were still being worked out.

Turnkey will benefit from the arrangement with the City in two ways: first from the proceeds of the sale itself, and secondly, because it will be able to use excavated material from the site to help fill ponds and gravel pits on the property it owns to the north. This will make the property more readily developable and/or marketable. This should also help the City achieve its development and gateway objectives at the Harmony and I-25 interchange.

In spite of the benefits associated with acquiring the Riverwalk site, there are significant challenges to the completion of the project. For example, various floodplain and engineering issues are out of the control of the City or Turnkey. The Federal Emergency Management Agency (FEMA) ultimately will determine if the site development plan submitted by Turnkey for all of Riverwalk, including the storage site, will meet its strict regulatory requirements. However, staff and Turnkey are optimistic that the project will be successful.

## **FINANCIAL IMPACT**

Funding for the proposed \$4.425 million acquisition will be derived from two sources: \$4.1 million from Water Utility capital funds; and, \$300,000 from the Natural Areas fund. The \$300,000 from the Natural Areas fund previously was appropriated for the purpose of land conservation. Future expenses associated with the acquisition will include operational costs associated with reservoir operation and maintenance and restoration of dry land surrounding the reservoir. Reservoir operations will be undertaken by the Utilities department and are expected to be in the range of \$10,000 to \$20,000 annually. The Natural Areas program will conduct initial restoration of the approximately 50 acres of dry land, which is expected to cost in the neighborhood of \$150,000 to \$200,000. Maintenance of this land will be folded into the Natural Area Program's annual operating budget and is expected to cost approximately \$10,000 to \$15,000 annually.

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**SUSTAINABILITY: ECONOMIC, ENVIRONMENTAL AND SOCIAL IMPACTS**

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This project addresses the triple bottom line positively in several ways:

1. The storage reservoir helps the City meet return flow requirements to the Poudre River (environment).
2. The land will be managed as a scenic amenity on the I-25 corridor and provide recreation trail connections to the north and south (environment and wellness).
3. Fill dirt from the project will help make the property to the north developable, thus contributing to the City's economic base (economic).

Staff does not perceive any significant negative triple bottom line impacts. It could be argued, however, that the project too significantly affects the floodplain or that the site is not well suited for development. Nevertheless, staff believes that the tangible benefits of improving the properties to meet various public and private purposes while also legitimately addressing the floodplain and other issues, such as habitat restoration, outweigh any negative implications.

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**STAFF RECOMMENDATION**

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Staff recommends adoption of the Resolution.

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**ATTACHMENTS**

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1. Location map

Harmony Road

**Attachment 1**  
Parcel Location Map  
Water Storage and Natural Area Acquisition

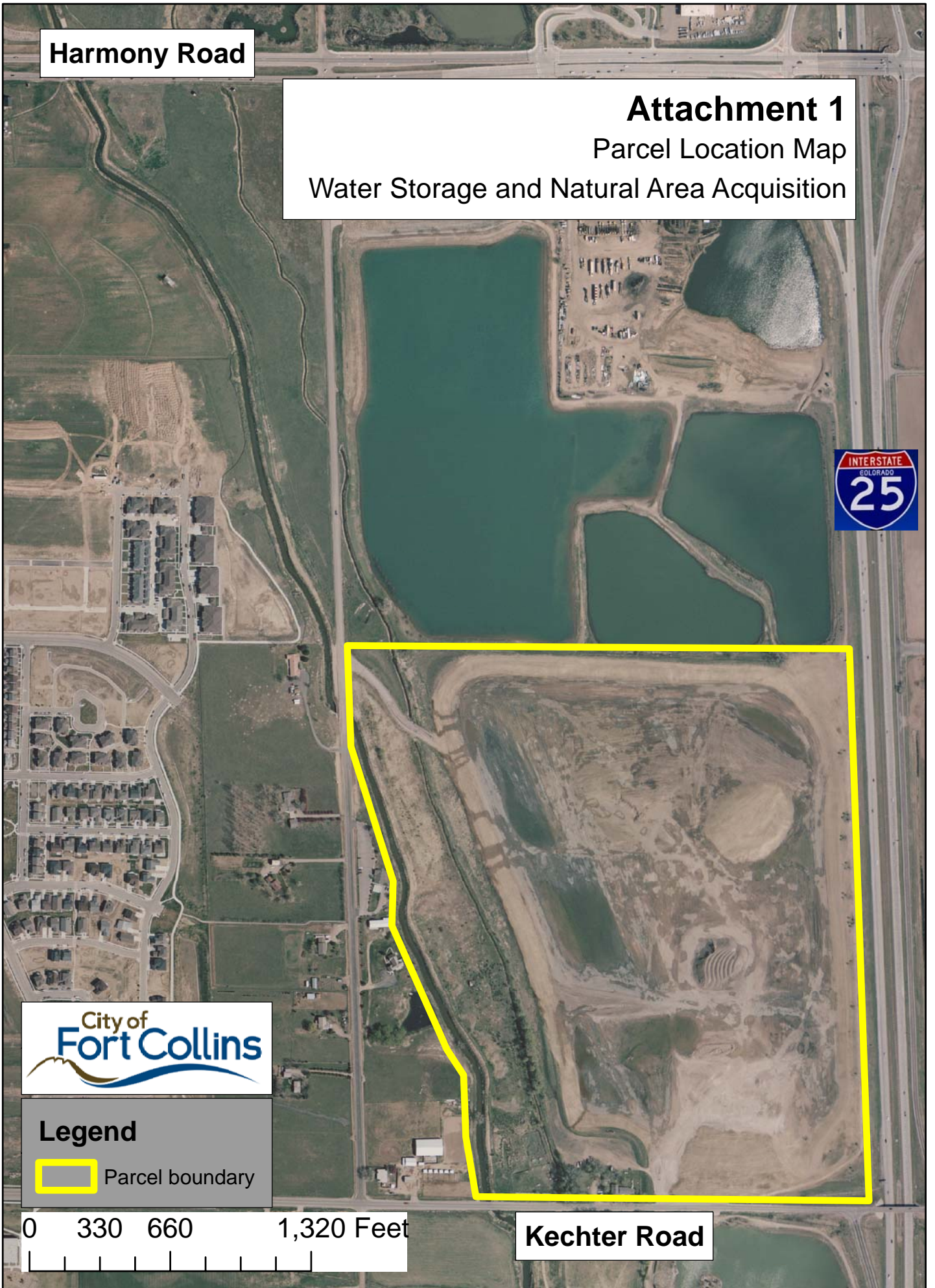


**Legend**

 Parcel boundary

0 330 660 1,320 Feet

Kechter Road



RESOLUTION 2010-012  
OF THE COUNCIL OF THE CITY OF FORT COLLINS  
AUTHORIZING THE ACQUISITION OF CERTAIN LANDS FOR  
WATER STORAGE AND NATURAL AREA

WHEREAS, Stoner and Company (“Stoner”) is the owner of approximately 128 acres of land located at 4308 East County Road 36, Fort Collins, Larimer County, Colorado, as more particularly described on Exhibit “A”, attached and incorporated herein by this reference (the “Property”); and

WHEREAS, the City wishes to purchase the Property for the primary purpose of gravel pit water storage and also to preserve an open space amenity along the Interstate 25 corridor; and

WHEREAS, on July 30, 2009, the City and Stoner entered into an Agreement of Purchase and Sale of Real Property(the “Stoner Agreement”), for purchase of the Property, which purchase was approved by the City Council on August 18, 2009, pursuant to Resolution 2009-081; and

WHEREAS, On October 19, 2009, Stoner notified the City of its desire to terminate the Stoner Agreement, and on November 2, 2009, by mutual agreement, the Stoner Agreement was terminated; and

WHEREAS, a company known as Turnkey has now approached the City indicating that it intends to acquire the Property, and wishes to work with the City on developing the gravel pit water storage that the City originally wished to acquire; and

WHEREAS City staff has been working with Turnkey on drafting a new agreement (the “Turnkey Agreement”); and

WHEREAS, a copy of the Turnkey Agreement is on file in the office of the City Clerk; and

WHEREAS, under the terms of the Turnkey Agreement, a company affiliated with Turnkey known as Riverwalk Fort Collins, LLC would acquire the Property from Stoner, and then increase the water storage on the Property to approximately 1,500 acre feet in accordance with specifications to be provided by the City; and

WHEREAS, upon satisfactory completion of the work, including compliance with all regulatory requirements, the City would purchase the Property for \$4,425,000; and

WHEREAS, Riverwalk Fort Collins, LLC intends to retain a permanent drainage easement across the Property; and

WHEREAS, the cost of the Property would be divided between the Utilities and Natural Areas funds with Utilities paying \$4,125,000 of the purchase price and Natural Areas paying the remaining \$300,000; and



WHEREAS, the funds necessary for acquisition of the Property have been appropriated and are available for expenditure for that purpose; and

WHEREAS, based on an evaluation of the market value of the Property and the existing water storage, and of the cost to construct additional storage on the Property, City staff believes the proposed price for the Property is fair and reasonable, and recommends that the City Council approve the proposed acquisition; and

WHEREAS, the City Council has determined that the purchase price is fair and reasonable and that the acquisition of the Property is in the best interests of the City.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FORT COLLINS that the City Council hereby approves the acquisition of the Property, consisting of approximately 128 acres of land as described on Exhibit "A", for an amount not to exceed \$4,425,000, in accordance with the terms and conditions contained in the Agreement, together with such additional terms and conditions as the City Manager, in consultation with the City Attorney, deems necessary and appropriate to protect the interests of the City or to effectuate the purposes of this Resolution, including, but not limited to, any necessary changes to the legal description of the Property, so long as such changes do not materially increase the size or change the character of the Property.

Passed and adopted at a regular meeting of the Council of the City of Fort Collins this 16th day of February A.D. 2010.

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Mayor

ATTEST:

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City Clerk

**EXHIBIT A**

**Legal Description**

PARCEL A

A PARCEL OF LAND SITUATE IN THE SOUTHWEST QUARTER OF SECTION 3, TOWNSHIP 6 NORTH, RANGE 68 WEST OF THE 6TH P.M.; COUNTY OF LARIMER, STATE OF COLORADO; BEING THE SAME TRACT OF LAND AS DESCRIBED IN THE WARRANTY DEED RECORDED AUGUST 29, 2005 AT RECEPTION NO. 2005-0072387; AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE WEST QUARTER CORNER OF SAID SECTION 3, AND CONSIDERING THE WEST LINE OF THE NORTHWEST QUARTER OF SAID SECTION 3 TO HAVE AN ASSUMED BEARING OF N 01°44'18" W (NORTH END OF SAID LINE BEING MARKED BY AN ILLEGIBLE 3-1/4" ALUMINUM CAP IN MONUMENT BOX, AND SOUTH END OF SAID LINE BEING MARKED BY A 2-1/2" ALUMINUM CAP STAMPED LS 33193 IN MONUMENT BOX), WITH ALL OTHER BEARINGS RELATIVE THERETO;

THENCE S 87°52'12" E, 2,388.22 FEET TO A POINT ON THE WESTERLY RIGHT OF WAY LINE OF INTERSTATE 25;  
THENCE ALONG SAID RIGHT OF WAY LINE THE FOLLOWING FOUR (4) COURSES:  
1. S 02°02'35" E, 2,339.03 FEET;  
2. 135.78 FEET ALONG THE ARC OF A NON-TANGENT CURVE TO THE RIGHT, HAVING A RADIUS OF 11,295.00 FEET, A CENTRAL ANGLE OF 00°41'19", AND A CHORD WHICH BEARS S 01°43'14" E, 135.77 FEET;  
3. THENCE S 84°55'54" W, 574.56 FEET;  
4. THENCE S 00°55'24" W, 30.00 FEET TO A POINT ON THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 3;  
THENCE ALONG SAID SOUTH LINE, N 89°04'36" W, 1,274.18 FEET;  
THENCE N 09°16'32" W, 324.41 FEET;  
THENCE N 01°46'32" W, 289.41 FEET;  
THENCE N 32°46'32" W, 144.50 FEET;  
THENCE N 23°39'02" W, 631.96 FEET;  
THENCE N 01°50'02" E, 208.47 FEET;  
THENCE N 17°13'48" W, 746.06 FEET;  
THENCE N 46°09'32" W, 10.66 FEET TO A POINT ON THE WEST LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 3;  
THENCE ALONG SAID WEST LINE, N 01°49'14" W, 384.29 FEET TO THE POINT OF BEGINNING.