

**SANTA BARBARA COUNTY
BOARD AGENDA LETTER**



Clerk of the Board of Supervisors
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Agenda Number:
Prepared on: 8/31/05
Department Name: County Counsel
Department No.: 013
Agenda Date: 9/13/05
Placement: Administrative
Estimate Time: N/A
Continued Item: NO
If Yes, date from:

TO: Board of Supervisors and Board of Directors of the Laguna County Sanitation District

FROM: Shane Stark, County Counsel
Phillip M. Demery, Public Works Director

STAFF CONTACT: Alan Seltzer, Chief Assistant County Counsel
568-2950

SUBJECT: Memorandum of Understanding Regarding Approval and Acquisition of Orcutt Community Plan Regional Retention Basin "B," Bradley-Solomon Trunk Line Extension, and Multi-Use trail, Orcutt Community Plan Key Site 8, Fourth Supervisorial District

Recommendation(s):

That the Board of Supervisors and the Board of Directors of the Laguna County Sanitation District ("LCSD") set a hearing on the Departmental Agenda for September 20, 2005 (.5 hour) to approve the Memorandum of Understanding ("MOU") between the County, the LCSD, Thomas California Investments, LP ("Thomas California"), and Wellmack, LLC ("Wellmack") providing for approval and a protocol for acquisition of the Regional Retention Basin "B," Bradley-Solomon Trunk Line Extension, and Class I bike path/multi-use trail, Orcutt Community Plan Key Site 8, Fourth Supervisorial District.

1. Approve the MOU;
2. Accept the Addendum to 95-EIR-01 for the Regional Retention Basin "B," Bradley-Solomon Trunk Line Extension, and Class I bike path/multi-use trail projects ("Projects") found in MOU Exhibit 3.
3. Adopt the findings of approval, including CEQA findings, for the Projects as found in MOU Attachments A to Exhibits 1 and 2;
4. Approve the Projects as set forth in MOU Exhibits 1 and 2 subject to the conditions included in MOU Attachments B to Exhibits 1 and 2.

Alignment with Board Strategic Plan:

The recommendation is primarily aligned with Goal No. 1, "An Efficient Government Able to Anticipate and Respond Effectively to the Needs of the Community," and Goal No. 2, "A Safe and Healthy Community in Which to Live, Work, and Visit."

Executive Summary and Discussion:

This is the companion agenda item to the Resolutions of Necessity regarding acquisition of infrastructure required by the Orcutt Community Plan pursuant to Cooperative Agreements for the Regional Retention Basin "B," Bradley-Solomon Trunk Line Extension, and Multi-Use trail on that portion of Orcutt Community Plan Key Site 8 owned by Thomas California Investments (also known as the Worsley property).

The OCP requires the County to construct and maintain a regional retention basin system for the purpose of accommodating both increased storm water flows associated with new development and flows from existing private basins. The OCP identifies a series of regional retention basins along the Orcutt Creek corridor, including Regional Retention Basin "B." The intended purpose of Basin "B" is to receive drainage from surrounding and upstream residential developments in southeast Orcutt. In addition to Basin "B", the OCP requires the County to construct and maintain a regional Class I bike path/multi-use trail system along the Orcutt Creek corridor. The OCP locates a section of the Class I bike path/multi-use trail on a portion of the Worsley portion on Key Site 8. Finally, buildout of the OCP in southeast Orcutt requires the extension of sewage transmission lines into the area for the purpose of serving new development. The OCP identifies the Bradley/Solomon Sewer Trunk Line Extension as the sewage transmission facility that will serve residential developments located along Orcutt Creek in southeast Orcutt.

On March 1, 2000, the County Planning Commission approved a residential subdivision consisting of 118 lots (112 units), known as Jensen's Crossing/Cobblestone Creek, TM 14,429 and Development Plan 97-DP-018. The project was approved on Key Site 5 under the OCP. Key Site 5 is located approximately 3,000 feet upstream of Key Site 8 along Orcutt Creek. Conditions of the Jensen's Crossing/Cobblestone Creek approval require the developer to purchase capacity in and connect to the planned Basin "B," and to connect to the planned Bradley/Solomon Sewer Trunk Line Extension.

In order to facilitate recordation of a final map for Jensen's Crossing/Cobblestone Creek, Wellmack entered into two Cooperative Agreements (the "Cooperative Agreements") with the County, whereby Wellmack agreed to fund acquisition of the necessary interests in land for Basin "B," the Bradley-Solomon Trunk Line Extension, and the Class I bike path/multi-use trail, and build both Basin "B" and the Bradley/Solomon Extension. The first agreement, entitled "Cooperative Agreement Regarding Regional Retention Basin "B", established a funding mechanism for acquiring the permanent and temporary easements needed on the Worsley property for construction of Basin "B" and acquire the bike path/multi-use trail. The agreement also ensured that Wellmack would complete or have completed all work necessary for construction and dedication of Basin "B" to the County. Similarly, the second agreement, entitled "Cooperative Agreement Regarding Bradley/Solomon Sewer Trunk Line Extension," established a funding mechanism for acquiring the permanent and temporary easements over several parcels held in separate private ownership (including the Worsley property) necessary for construction of the Bradley/Solomon Extension. In addition, the agreement ensured that Wellmack would complete or have completed all work necessary for construction and dedication of the sewer line improvements to LCSD. The two Cooperative Agreements were approved and adopted by the County Board of Supervisors on December 2, 2003.

After adoption of the Cooperative Agreements, on May 28, 2004, Thomas California filed suit against the County, LCSD and Wellmack, in the Superior Court of Santa Barbara County (SBSC Case No. 01157798), challenging the adequacy of environmental review undertaken pursuant to CEQA in connection with the Cooperative Agreements. In response to the litigation, the parties initiated a series of settlement discussions

to determine if an agreement could be reached capable of resolving all outstanding issues regarding future use of the Worsley property, not just those issues specifically pled and raised as a result of SBSC Case No. 01157798. The discussions focused on modifications to the proposed size of Basin "B", and its relocation on the Worsley property. The discussions also focused on realignment of the proposed Bradley/Solomon Extension, as applied to the Worsley property, for purposes of utilizing an existing private easement and sewer line in place on the Worsley property. The parties' settlement discussions culminated in the preparation of final plans for Redesignated Basin "B," Class I bike path/multi-use trail, and realigned sewer extension projects.

The MOU to be presented for Board approval would (1) eliminate the pending litigation; (2) eliminate the potential for future litigation or delayed implementation of the Redesignated Basin "B" Project and/or the Sewer Realignment Project; (3) eliminate the potential for future litigation regarding the County's right to acquire through eminent domain those portions of the Worsley property necessary for the Redesignated Basin "B" Project and/or the Sewer Realignment Project; (4) have approved the Redesignated Basin "B" Project; (5) have approved the Sewer Realignment Project; (6) provide a protocol for acquiring the land and interests necessary for construction and dedication of the Redesignated Basin "B" Project; (7) provide a protocol for acquiring an easement in gross that is adequate for purposes of the Sewer Realignment Project; and (8) provide a protocol, that reserves the County's police power, for County initiation and processing of a proposed change in the land use designation applicable to the portion of the Worsley property not acquired by the County for the Redesignated Basin "B" Project.

A staff report with the MOU and an explanation of its key terms will be provided before the September 20 Board hearing.

Mandates and Service Levels: There are no changes to service levels with this action.

Fiscal and Facilities Impacts: The costs of acquisition of the Regional Retention Basin "B," Bradley-Solomon Trunk Line Extension, and Multi-Use trail on Orcutt Community Plan Key Site 8 is being paid by Wellmack under the terms of the Cooperative Agreements.,

Special Instructions: The Clerk should retain the original MOU in the Board's file and return a certified copy of the MOU and Minute Order to County Counsel, attention Alan Seltzer.

Concurrence: General Services