



BOARD OF SUPERVISORS
AGENDA LETTER

Clerk of the Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101
(805) 568-2240

Agenda Number:

Department Name: Flood Control/General Services
Department No.: 054/063
For Agenda Of: January 9, 2018
Placement: Departmental
Estimated Tme: 30 minutes
Continued Item: No
If Yes, date from:
Vote Required: 4/5

TO: Board of Directors, Flood Control and Water Conservation District
FROM: Department Director Scott McGolpin, Director of Public Works, 568-3010
Janette Pell, Director of General Services, 560-1011
Contact Info: Tom Fayram, Deputy Director – Water Resources, 568-3435
Skip Grey, Assistant Director of General Services, 568-3083
SUBJECT: Lower Mission Creek – Reaches 2B-Phase II and 3 (De La Vina Holdings, LLC) Fee Acquisitions, Second Supervisorial District (APN: . 037-245-018)

County Counsel Concurrence

As to form: Yes

Auditor-Controller Concurrence

As to form: Yes

Recommended Actions:

That the Board of Directors:

- a) Approve and authorize the Chair to adopt the attached Resolution of Necessity ([Attachment 1](#)) to facilitate the acquisition of the fee interest in the real property for Reach 2B-Phase II and Reach 3 – the Lower Mission Creek Project on the property located at 324 De La Vina Street, Santa Barbara, (“Property”), which is owned by De La Vina Holdings, LLC., (Second Supervisorial District); and
- b) Authorize the Director of Public Works, or designee, to deposit with the Santa Barbara Superior Court a sum equal to the Parcel’s appraised fair market value, estimated at \$1,660,000, plus related costs and fees, in order to acquire the Property; and.
- c) Find that pursuant to the California Environmental Quality Act (CEQA) Section 15162, no new effects will occur and no new mitigation measures would be required as a result of the approval of the recommended action and therefore pursuant to CEQA Section 15162, the recommended actions are

within the scope of the project covered by the Environmental Impact Statement/Environmental Impact Report (EIS/EIR) for the Lower Mission Creek Flood Control Project as well as the Findings and Statement of Overriding Considerations accepted by the Board of Directors as a Responsible Agency on May 10, 2011, and no new environmental document is required. The findings, statement of Overriding, EIS/EIR and associated information can be found at:

<http://santabarbara.legistar.com/LegislationDetail.aspx?ID=874496&GUID=D14C4C9B-DEDF-48CB-AB30-D52A228FB5A2>

Summary Text:

The Resolution of Necessity is required to facilitate the acquisition of fee interest in the Property owned by De La Vina Holdings, LLC (“Owner”), for the Lower Mission Creek Project – Reaches 2B-Phase II and 3 (the “Project”). It is in the public interest and necessary to acquire the entire fee interest in the real property to construct and complete these sections (“Reaches”) of the Project and to ultimately complete the overall Lower Mission Creek Project which will reduce flood risk in the downtown area of the City of Santa Barbara. Proceeding under eminent domain authority is necessary at this time to meet the Reaches project schedule. Construction is scheduled for late spring / early summer of 2018. Upon adoption of this Resolution, County Counsel and Special Legal Counsel shall commence with the necessary condemnation proceedings in Superior Court.

Background:

The Lower Mission Creek Flood Control Project is a federal U.S. Army Corps of Engineers (Corps) project that has been under study and development since the 1960’s. The Corps completed a feasibility study in 2000. The County and City of Santa Barbara are constructing the Project in sections (Reaches) as funding becomes available. As a locally funded project, the District is responsible for the right-of-way acquisition associated with the Lower Mission Creek Flood Control Project. This includes negotiating for acquiring fee interest in real property, permanent and temporary easements required to facilitate the construction of the improvements. Acquisition of the necessary property rights is required prior to access and commencement of any construction of the flood control improvements related to the Project.

The following Reaches for this project have been completed:

- UPRR Culvert – 2009
- Reach 1A, Phase 1 – 2011
- Reach 1A, Phase 2 – 2016
- Reach 1B - 2016
- Reach 2A – 2017
- Reach 2B, Phase 1- 2012

A map showing Reaches 1 through 7 of the Lower Mission Creek Project that includes City of Santa Barbara Bridges is attached as Attachment 2.

On March 2, 2010, the Board of Directors authorized the negotiation for the purchase of fee simple interest of several private parcels and acquisition of both permanent and temporary construction

easements for all phases of the Project. Since that time, County staff has been working with City of Santa Barbara and private owners to facilitate construction of various Reaches.

The acquisition of property by the Flood Control District (fee and easements) associated with the Lower Mission Creek Improvement Project was found to be in compliance with the City of Santa Barbara's adopted General Plan in 2007 and again in 2012, as required by California Government Code Section 65402. CEQA and Government Code § 65402 requirements have been met for the Project, as set forth in the EIS/EIR for the Lower Mission Creek Flood Control Project, approved by the Board of Directors on May 10, 2011.

Temporary Entry Permit

In September of 2017, a Temporary Entry Permit (TEP) was presented to the Owner requesting access on the vacant lot to trim and remove trees which included clearing vegetation that has the potential for birds to establish nests above and along the banks of the Lower Mission Creek pertaining to Reaches 2B Phase II and 3.

In October 2017, the Owner was again, contacted regarding access to the vacant parcel. The Owner declined to grant access indicating they needed time to look at the information and documents that had been sent to them in order to make an informed decision before allowing Flood Control to access the vacant lot and remove vegetation above and along the Lower Mission Creek Banks within their parcel.

Acquisition

Initially, staff considered acquiring only permanent and temporary easements, however upon a review of the entire Mission Creek Project, including the overall operation and maintenance of Reaches 2B, 3, 4 and portion of 5, (Attachment 3), it has become apparent that the vacant parcel provides a strategic location that is beneficial for the current and future operation and maintenance of the overall Mission Creek Project in this area.

Therefore, the local appraiser that was initially determining the fair market value for the easements was requested to complete an appraisal for the fair market value of the fee interest in the real property. In November 2017, a final appraisal was completed for fee interests in the amount of \$1,660,000, was determined to be the fair market value of the Property.

An offer letter dated November 21, 2017, offering the determined fair market value of the Property was sent to the Owner. The offer assumed the Property was free and clear of all hazardous materials and contamination. The letter indicated in the event the Property contains hazardous materials and soil contamination, the fair market value of the Property may be affected. Thus, the offer presented to the Owner is contingent upon acceptable soil conditions of the Property and the absence of toxic or hazardous substances and any other kind of soil or water contamination as determined by local, state and federal regulatory agencies having jurisdiction over such matters.

Phase II Environmental Site Assessment

With the appraiser being required to determine the fair market value of the fee interest in the parcel, an inquiry was made about the soil and groundwater contamination in and on the Property. Only

having a Phase I environmental review (reviewing the historical uses of the Property) completed, the fair market value of the parcel, by the appraiser, was based on the absence of soil or groundwater contamination. Therefore, a Phase II environmental review is necessary to sample the soil and water at the site to determine the presence of such contamination and further evaluate how it will impact the fair market value of the Property.

In December 2017, the Owner was again contacted indicating Flood Control wish to gain access to their Property to do vegetation removal and testing and no construction would be occurring. Access was not granted.

Resolution

Flood Control is required to commence and complete construction within a very specific, seasonal time frame. Discussions with the Owner will continue in order to resolve any concerns; however, these matters may not be resolved in time to meet the construction schedule. County staff will continue to work with the Owner on any unresolved matters, and it is still possible that agreement may not be reached prior to completion of the condemnation proceedings.

Despite the periods of negotiations and discussions that have occurred and will continue, the parties may not be able to come to an agreement. If agreement cannot be reached, approval of the Resolution of Necessity is the first step in the condemnation process, which will allow the Courts to determine just compensation for the property rights to be acquired and settle any unresolved issues. A Notice of Opportunity to be Heard at this Departmental Hearing was sent to the Owner in accordance with Section 1245.235 of the Code of Civil Procedure.

Fiscal and Facilities Impacts:

The total appraised value for the Property is \$1,660,000. Costs for this land acquisition were included in the adopted FY 2017-18 budget in the Water Resources Division of the Public Works Department as shown on page D-325 in the budget book. The Lower Mission Creek Flood Control and Restoration Project is included in the Five-Year Capital Improvement Program for Fiscal Year 2017-2022 on page D-152. No General Fund monies will be utilized for this project.

Special Instructions:

After Board action, please distribute as follows:

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| (1) Original Resolution & Minute Order | Clerk of the Board |
| (2) Copy of Resolution & Minute Order | Flood Control, Water Resources
Attn: Christina Lopez |
| (3) Certified Copy of the Resolution and
copy of the Resolution & Minute Order | General Services, Real Property Division
Attn: James Cleary |

Attachments:

- (1) Resolution of Necessity
- (2) Map of Lower Mission Creek Flood Control and Restoration Project
- (3) Map of Reaches 2, 3, 4 & 5