



**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: July 17, 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, First 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, adopt and authorize the Chair to execute the attached Resolution of Necessity (Attachment 1) for the acquisition of the fee interest in the real property for Reach 2B-Phase II and Reach 3 – the Lower Mission Creek Project located at 324 De La Vina Street, Santa Barbara, (“Property”), which is owned by De La Vina Holdings, LLC, (First 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 \$1,700,000, plus related costs and fees, in order to acquire the Property; and.

- c) After considering the Environmental Impact Statement/Environmental Impact Report (EIS/EIR) for the Lower Mission Creek Flood Control Project and the discussion included herein, find that pursuant to the California Environmental Quality Act (CEQA) Section 15162 no substantial changes are proposed, and there are no substantial changes in circumstances or new information of substantial importance regarding significant impacts or feasibility of mitigation measures and alternatives, and therefore, pursuant to CEQA Section 15162, the recommended actions are within the scope of the project covered by the 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; and approve and direct staff to file the Notice of Determination on these bases. The findings, statement of overriding consideration, 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 the 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.

The public interest and necessity require the Project; the Project has been planned and located in a manner that will be most compatible with the greatest public good and the least private injury, and the Property described in the attached Resolution of Necessity (Attachment 1) is necessary for the Project. Construction is scheduled for this reach upon acquisition of Property possession. Upon adoption of this Resolution, County Counsel and Special Legal Counsel shall commence with the necessary condemnation proceedings in the 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 real property 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 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.

Acquisition

After environmental review was completed in the EIS/EIR, Staff initially considered acquiring only permanent and temporary easements from the Property as the preferred alternative in order to minimize potential impacts to the neighborhood, foster cooperation and to realize potential cost savings; however upon a review of the entire Mission Creek Project, including the construction, access, staging and overall operation and maintenance of Reaches 2B, 3, 4 and portion of 5, (Attachment 3), it has become apparent that the Property (a vacant parcel) provides a strategic location that is beneficial for the current and future construction, access, staging and operation and maintenance of the overall Mission Creek Project. Further, the Property has been identified as a planned habitat expansion zone in the EIR/EIS upon the remediation of any soil contamination.

Therefore, a State licensed real estate appraiser initially retained to determine the fair market value for the proposed easements was requested to complete a new appraisal for the fair market value of the fee interest of the Property. A revised appraisal was completed for fee interests in the amount of \$1,700,000, which has been determined to be the fair market value of the Property.

The Owner was sent a written offer and appraisal summary on March 8, 2018, which was not less than the amount of the written appraisal of the fair market value of the Property obtained by the District from a State licensed real estate appraiser.

The Property Owner has not responded to the written offer sent March 8, 2018.

Resolution

Flood Control is required to commence and complete construction of the Reach 2B – Phase II and Reach 3 within a very specific, seasonal time frame. Discussions with the Owner will continue in an attempt to resolve any concerns; however, these matters may not be successful in time to meet the construction limitations. County staff will continue to work with the Owner on any unresolved matters, and it is still possible that agreement may 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 Court to determine just compensation to be paid for the Property and address any other issues raised in the litigation. 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.

The Resolution of Necessity must contain a general statement of the public use for which the Property is to be taken and a reference to the statute that authorizes the District to acquire the Property by eminent domain.

As stated herein, the Property is being acquired for the Project as generally described in the above sections. The District is authorized to acquire property under the provisions of the California Constitution, and provisions set forth in the California Government Code, Code of Civil Procedure, Water Code and the Santa Barbara Flood Control and Water Conservation District Act set forth in California Water Code Appendix Section 74-1, et seq.

The Resolution of Necessity must describe the general location and extent of the Property being taken. The Property is described above and is being acquired in fee.

The Resolution of Necessity must declare that the District has found and determined the following:

- (1) The public interest and necessity require the proposed project;
- (2) The proposed project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury;
- (3) The property described in the resolution is necessary for the proposed project.
- (4) That either the offer required by Section 7267.2 of Government Code has been made to the owner or owners of record, or the offer has not been made because the owner cannot be located with reasonable diligence.

As set forth in the narrative of this Board Letter together with supporting Lower Mission Creek Project documents concurrently and previously considered by the District's Board of Directors, each of the required findings can be factually supported.

Public interest and necessity require the Project. It has been planned and located in a manner that will be most compatible with the greatest public good and least private injury and the Property is necessary for the Project. Furthermore, a written offer containing a summary of the basis of the real estate appraisal valuation has been made to the Owner.

The Resolution of Necessity must be adopted by a vote of two-thirds (2/3) of all the members of the Board of Directors of the District.

Continuation Request

The Property Owner submitted the attached request (Attachment 5) to postpone the hearing to consider the Resolution of Necessity. Flood Control staff recommends against continuing the matter as it may negatively impact the project timeline, which depends on seasonal access to the project area.

CEQA Findings

As stated in Recommended Action c), no new environmental document is required pursuant to California Environmental Quality Act (CEQA) Guidelines Section 15162. CEQA Guidelines Section 15162 sets forth the considerations for determining when a subsequent EIR or negative declaration must be prepared, as follows: (a) when substantial changes are proposed in the project which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; (b) when substantial changes occur with respect to the circumstances under which the project is being undertaken which will require major revisions to the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or (c) when new information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the negative declaration was adopted shows new or more severe impacts or different mitigation measures or alternatives.

Here, no substantial changes are proposed in the project because Flood Control proposes to undertake the same activities on the parcel as those analyzed in the EIS/EIR. In addition, no substantial change has, or is anticipated to occur, with respect to the circumstances under which the project is being undertaken. There have been no substantial changes to site conditions since the site was analyzed under the EIR/EIR. Finally, no new information of importance, which was not known and could not have been known at the time the previous EIS/EIR was certified has become available.

In summary, because none of the conditions in State CEQA Guidelines Section 15162 have occurred with respect to the project, no subsequent EIR or negative declaration is required for the proposed action.

Impacts:

The total appraised value for the Property is \$1,700,000. Costs for this land acquisition were included in the adopted FY 2018-19 budget in the Water Resources Division of the Public Works Department as shown on page D-309 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
- (4) Notice of Determination
- (5) Request for Postponement of the July 17, 2018 Hearing

