



**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: November 17, 2020
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: General Services Janette D. Pell, Director of General Services, 805-560-1011
Public Works Scott D. McGolpin, Director of Public Works, 805-568-3010
Contact Info: Skip Grey, Assistant Director, General Services, 805-568-3083
Thomas D. Fayram, Deputy Public Works Director, 805-568-3436

SUBJECT: Resolution of Necessity: Temporary Construction Easement for the Lower Mission Creek
APN: 037-245-017 – (Reginald E. Drew, Jr), First Supervisorial District (#003784)

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 for the acquisition of a temporary construction easement in the real property located at 315 Chapala Street, Santa Barbara (APN 037-245-017) (“Property”), which is owned by Reginald E. Drew, Jr, for the Lower Mission Creek Project (First Supervisorial District);
- b) Authorize the Director of Public Works, or designee, to execute any documents and to expend funds for deposit with the State Treasurer’s Office in a sum equal to the appraised fair market value for the Property interest, estimated at \$10,125 for APN 037-245-017, plus related costs and fees, in order to acquire the interest;
- 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 (Attachment 3) on these basis. 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 a temporary construction easement in the Property owned by Reginald E. Drew, Jr (“Owner”), for the Lower Mission Creek Project (the “Project”). It is in the public interest and necessary to acquire a temporary construction easement in the 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 the Lower Mission Creek Project upon acquisition of 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 and fee title acquisition associated with the Lower Mission Creek Flood Control Project. This includes negotiating for acquisition of real property interests 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 the City of Santa Barbara and private owners to facilitate construction of various Reaches.

The acquisition of the real property interests by the Flood Control District associated with the Lower Mission Creek Improvement Project were 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.

On November 5, 2019, the Board of Directors adopted a Resolution of Necessity (Resolution No. 19-287) to acquire a partial fee acquisition, together with permanent and temporary construction easements in 315 Chapala Street, Santa Barbara, for the Project.

On or about December 9, 2019, an eminent domain action to acquire these property rights was filed in the Santa Barbara Superior Court entitled County of Santa Barbara Flood Control and Water Conservation District vs. Reginald Drew Jr, et alia, Case No. 19CV06497. Shortly thereafter, the probable amount of compensation for the acquisition of the interests sought was deposited with the California State Treasurer's Condemnation Fund.

That eminent domain action is still pending, however, the calendar term of the temporary construction easement (April 1, 2020 to December 31, 2020) previously adopted by your Board in Resolution No. 19-287, will expire before the Flood Control District is able to commence construction of this Project segment.

General Services, the agent for the Flood Control District, has been unable to obtain possession of the property interests described in the pending eminent domain action due to the closure of the Santa Barbara Superior Court. The Superior Court was closed from March 17, 2020 to late May 2020 as a result of the public health measures taken during the emerging Covid-19 pandemic. The Court was closed under authority of the California Supreme Court and the Santa Barbara Superior Court administration.

The District's Motion for Possession scheduled for hearing on April 15, 2020, did not occur. On reopening in late May 2020, the Superior Court re-set the District's motion hearing to July 15, 2020, and continued the hearing to October 27, 2020, where the District Motion for Prejudgment Possession was granted.

The current Resolution of Necessity being considered by your Board seeks to secure a nine (9) month temporary construction easement that will permit the use of the required area on the Subject Property when construction is commenced. Under the circumstances of exigent COVID-19 pandemic and the Court closure, the District's legal counsel in the pending matter sought a voluntary extension of the nine (9) month temporary construction easement term from the property owner. As set forth below, that request was rejected.

Resolution

The District's request to the property owner to reach a voluntary agreement to restate the duration of the nine (9) month period of temporary construction easement was rejected. The property owner's legal counsel indicated the District should proceed through the proper due process procedure afforded to property owners under the Code of Civil Procedure and the State and Federal Constitutions.

Flood Control is required to commence and complete construction of the Project within a very specific, seasonal time frame. Despite the periods of negotiations and discussions that have occurred between the District's legal counsel and property owner's legal counsel, the parties have not been able to come to an agreement regarding restating the nine (9) month period of temporary construction easement.

As a result, approval of the proposed Resolution of Necessity is required, which will allow the Court to determine and address any 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 and the Owner's Counsel.

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. It also must describe the general location and extent of the Property being taken. The Property is described above and is being acquired for a temporary construction easement.

As stated herein, the real property interest 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 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 real property interest 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 Owners.

Therefore, a Resolution of Necessity is being proposed for the District to obtain a Temporary Construction Easement for a period of nine months, terminating after nine consecutive months or upon the filing a “Notice of Completion” or otherwise in writing by the District, if earlier.

The Resolution of Necessity must be adopted by a vote of four-fifths (4/5) of all the members of the Board of Directors of the District.

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.

Fiscal and Facilities Impacts:

The total appraised value for the Temporary Construction Easement is \$10,125. Costs for this easement acquisition was included in the adopted FY 2020-21 budget in the Water Resources Division of the Public Works Department as shown on page D-332 in the budget book. No General Fund monies will be utilized for this project.

This project is also included in the Capital Improvement Program.

Staffing Impacts: N/A

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 Resolutions & Minute Order | Flood Control, Water Resources
Attn: Christina Lopez |
| (3) Three (3) Certified Copies of the Resolution
and copy of the Resolution & Minute Order | General Services, Real Property Division
Attn: James Cleary |

Attachments:

1. Resolution of Necessity 037-245-017 (315 Chapala Street Santa Barbara)
2. Map of Lower Mission Creek Flood Control and Restoration Project
3. Notice of Determination