



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 5, 2019  
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, 560-1011  
Public Works Scott D. McGolpin, Director of Public Works, 568-3010  
Contact Info: Skip Grey, Assistant Director, General Services, 568-3083  
Thomas D. Fayram, Deputy Public Works Director, 568-3436  
**SUBJECT:** Lower Mission Creek – Reaches 2B-Phase II and 3 (N. Scott Vincent Irrevocable Trust and Reginald E. Drew, Jr) for partial fee acquisition, permanent and temporary easements, First Supervisorial District (APNs: . 037-245-004 & 037-245-017)

**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 A) for the acquisition of permanent and temporary easements in the real property located at 325 Chapala Street, Santa Barbara (“325 Chapala Property”), which is owned by N. Scott Vincent, Trustee of the 2018 N. Scott Vincent Irrevocable Trust, N. Scott Vincent, Trustee of the 2018 James B. Vincent Irrevocable Trust and N. Scott Vincent, Trustee of the 2018 John J. Vincent Irrevocable Trust (collectively “N. Scott Vincent Irrevocable Trust”), for the Lower Mission Creek Project (First Supervisorial District);
- b) Approve, adopt and authorize the Chair to execute the attached Resolution of Necessity (Attachment B) for acquisition of a partial fee interest and permanent and temporary easements in the real property located at 315 Chapala Street, Santa Barbara, (“315 Chapala Property”) (together, with the 325 Chapala Property, the “Properties”), which is owned by Reginald E. Drew, Jr, for the Lower Mission Creek Project (First Supervisorial District);
- c) 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

values for the 325 Chapala and 315 Chapala Property interests, estimated at \$491,400.00 (\$97,400 for APN 037-245-004 and \$394,000 for APN 037-245-017), plus related costs and fees, in order to acquire these interests;

- d) Approve Budget Revision Request (BJE 0006667) to transfer appropriations of \$383,643 in the Public Works South Coast Flood Zone from Capital Assets Infrastructure to Capital Assets Land for purchase of a permanent easement needed for the Lower Mission Creek Project; and
- e) 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 Resolutions of Necessity are required to facilitate the acquisition of the partial fee interest and permanent and temporary easements in the Properties owned by N. Scott Vincent Irrevocable Trust and Reginald E. Drew, Jr (collectively the “Owners”), for the Lower Mission Creek Project – Reaches 2B-Phase II and 3 (the “Project”). It is in the public interest and necessary to acquire a portion of fee interest and temporary and permanent easements in these properties 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 Resolutions of Necessity (Attachments A & B) are necessary for the Project. Construction is scheduled for this Reach upon acquisition of possession. Upon adoption of these Resolutions, 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 C.

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.

### **Acquisition**

#### **037-245-004**

After environmental review was completed in the EIS/EIR, Staff considered acquiring only permanent and temporary easements from properties as the preferred alternative in lieu of fee acquisitions in order to minimize potential impacts to the neighborhood, foster cooperation and to realize potential cost savings. A state-certified real estate appraiser retained by County determined that the fair market value of the permanent and temporary construction easements necessary to be acquired for the Project totaled \$97,400, and the Owner was sent a written offer and appraisal summary reflecting this amount.

#### **037-245-017**

As mentioned above, easements were the preferred alternative; 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 D), it has become apparent that the partial fee interest in the rear portion of 315 Chapala Street (APN 037-245-017) is beneficial for the future operation and maintenance of the overall Mission Creek Project.

Therefore, a State-licensed real estate appraiser initially retained to determine the fair market value for two proposed permanent easements and one temporary construction easement was requested to complete a new appraisal for the fair market value of the partial fee interest for the rear portion of APN

037–245–017 as well as Permanent Access Easement and Temporary Construction Easement in the Property. A revised appraisal was completed for partial fee acquisition and permanent and temporary easements in the real property and the amount of \$394,000 was determined to be the fair market value of these real property interests required for the Project. An updated written offer was thereafter sent to the Owner.

### **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 Owners 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 Owners on any unresolved matters, and it is still possible that agreements 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 agreements 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 Properties and address any other issues raised in the litigation. A Notice of Opportunity to be Heard at this Departmental Hearing was sent to the Owners 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 real property interests are 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 real property interests are 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.

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.

### **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 Properties is \$491,400. Costs for these acquisitions were included in the adopted FY 2019-20 budget in the Water Resources Division of the Public Works Department as shown on page D-305 in the budget book. Approving Budget Request Revision (BJE 0006667 – Attachment F) will transfer appropriations from Capital Assets Infrastructure to Capital Assets Land to allow the District to properly capitalize the land portion of the acquisition to Line Item 8100 (Land).

Lower Mission Creek – Reaches 2B-Phase II and 3 (N. Scott Vincent Irrevocable Trust and Reginald E. Drew, Jr) for partial fee acquisition, permanent and temporary easements (APNs: . 037-245-004 & 037-245-017), First Supervisorial District  
Agenda Date: November 5, 2019  
Page 6

The Lower Mission Creek Flood Control and Restoration Project is included in the Five-Year Capital Improvement Program for Fiscal Year 2019-2024 on page D-137. No General Fund monies will be utilized for this project.

**Staffing Impacts:** N/A

**Special Instructions:**

After Board action, please distribute as follows:

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

**Attachments:**

- (A) Resolution of Necessity 037-245-004 (325 Chapala Street Santa Barbara)
- (B) Resolution of Necessity 037-245-017 (315 Chapala Street Santa Barbara)
- (C) Map of Lower Mission Creek Flood Control and Restoration Project
- (D) Map of Reaches 2, 3, 4 & 5
- (E) Notice of Determination
- (F) Budget Request Revision BJE 0006667