



Memorandum

DATE: August 7, 2019

TO: Members, Board of Supervisors, as Governing Board of the Orange County Flood Control District

FROM: Shane L. Silsby, Director, OC Public Works *Shane L. Silsby*

SUBJECT: Public Hearing on the Proposed Adoption of a Resolution of Necessity for Condemnation of Real Property Interests for the Prado Dam Project; All Districts (Board of Supervisors' Meeting Date: September 10, 2019)

Synopsis:

This September 10, 2019 agenda item pertains to a request by Orange County Counsel, on behalf of staff of the Orange County Flood Control District ("District"), that the Orange County Board of Supervisors ("Board"), acting in its capacity as the governing Board of the District, consider for adoption a proposed Resolution of Necessity ("Resolution"), after the duly noticed public hearing and full consideration, authorizing the filing of a condemnation action to acquire real property interests described with particularity below (the "Subject Property Interests") for the Prado Dam Project ("Project"). The Project is necessary to protect the safety, health and welfare of residents and properties in Orange County from the devastating effects of major storms, including a 190-year storm event. Acquisition of the Subject Property Interests is required for the Project in order to carry out the Project's flood control purposes.

A. Specific Real Property Interests to be Condemned and Acquired:

County Counsel and the OC Public Works Department request your Board to consider for adoption the proposed Resolution (provided as an attachment to the ASR) to authorize and direct County Counsel and/or special litigation counsel, Murphy & Evertz (previously approved by your Board for purposes of representing the District on the Project), to file and pursue proceedings to condemn and acquire the Subject Property Interests, which pertain to and affect real property that is owned as a matter of record title by John Bos and Andi Bos, Trustees of the Bos Grandchildren's Trust dated May 31, 2002 and Bos Legacy Limited Partnership, a California limited partnership ("Owners"), which real property is located at 16305 & 16395 Euclid Avenue in Chino, CA 91708, and which Subject Property Interests are described as follows:

Fee simple title to real property that is legally described and depicted by Exhibits A and B attached to the proposed Resolution, which fee simple area is referred to by the District as Project Parcel No. 46-995, and which covers San Bernardino County Assessor's Parcel No. 1056-281-02, 1056-281-03 and 1056-281-04 (the "Subject Property Interests").

B. Mailing of Notice of Hearing and Intention to Owners of Record of the Subject Property Interests:

As shown by the Declaration of Mailing that will be on file with the Clerk of the Board prior to the public hearing on this matter, in compliance with Code of Civil Procedure section 1245.235, the Clerk of the Board mailed to Owners a Notice of Intention notifying them of the hearing of the Board's intention to consider the adoption of the Resolution, and of Owners' right to appear and be heard on the issues described therein.

C. Required Findings and Analysis of Facts Supporting Such Findings:

As a prerequisite to the Board's adoption of the Resolution, at the close of the public hearing, the California eminent domain law (Code of Civil Procedure sections 1245.220 and 1245.230, et seq.) requires the Board to make the findings described below. District staff of the OC Public Works Department has analyzed the Project and its objectives, as well as the particular acquisitions proposed, with those required findings and legal requirements in mind. Staff hereby recommends to the Board that it make each and all of the findings, and staff provides the following analysis and support for these findings:

1. The public interest and necessity require the Project.

The existing Prado Dam ("Dam") was built in 1941 for flood protection purposes, and is located near the confluence of State Routes 71 and 91. The Dam is operated by the U.S. Army Corps of Engineers ("Corps"). Because of increased urbanization both upstream and downstream of the Dam, accumulation of sedimentation, and environmental factors, the flood control protection of the Dam has significantly diminished over the past 75 years. The Corps considers this situation along the Santa Ana River to constitute "the worst flood threat west of the Mississippi River," with probable devastating impacts to residents and property, resulting in a risk of significant loss of life and personal and economic injury, should a significant flood event occur.

Given these conditions, the Corps developed the Santa Ana River Mainstem ("SAR") Project, as generally described in the Corps' 1988 Phase II General Design Memorandum ("GDM") and Final Supplemental Environmental Impact Statement, which includes construction of Reach 9 (the area of the Project located between Weir Canyon Road in the County of Orange and the Riverside County-Orange County boundary), the raising of the Dam's spillway and embankment and constructing new higher capacity outlet works. Additionally, the Corps developed the Limited Reevaluation Report ("LRR") in 2001 for the purpose of introducing SAR Project modifications following the 1988 GDM, which specifically included three components, the Norco Bluffs (Component A), Prado Basin (Component B), and Reach 9 (Component C). The LRR also served as a basis for the development of the Project Cooperation Agreement ("PCA") between the Corps and the District.

In order to cooperate with the Corps and to carry out the Project, in 1989 your Board approved the SAR Project Local Cooperation Agreement ("LCA") between the Corps, the District, and the flood control districts of Riverside and San Bernardino counties, as well as the PCA in 2003. Both the LCA and PCA

require the District to acquire real property rights for inundation and construction of flood protection structures (E.G., dikes, bank protection, and floodwalls), if the Project is to be completed. Unless all property rights (including the Subject Property Interests) are acquired by the District in the areas subject to inundation, the Project may not be completed or may not be entirely effective. If the Project is not completed, the risks and perils identified by the Corps, as described above, may impact Orange County residents and properties. Thus, the Project is necessary to protect the health, safety and welfare of the residents of the County of Orange.

2. The Project is planned or located in the manner that will be most compatible with the greatest public good and least private injury.

Given the location of the Santa Ana River, and given the fact that the Dam embankment, spillway, and reservoir already exist, there is no cost-effective alternative to the Project in order to provide the desired level of flood protection and to achieve the public benefits and protection described above. Prior to 1989, the Corps conducted significant analysis over several years to determine Project requirements and potential impacts to address the serious flood threat discussed above, while mitigating environmental and other impacts and minimizing private injury, as feasible. Based on these studies, the District has determined that it is necessary to acquire the Subject Property Interests. There is no feasible or cost-effective alternative to the Project that would reduce impacts on those private properties affected by the Project.

3. The Subject Property Interests are necessary for the Project.

If the Subject Property Interests are not acquired, the Project could not proceed as planned, which in turn would result in inadequate flood protection downstream of the Prado Dam, potential flooding of, or damage to State Route 91, and a significant risk of property damage, injury and loss of life suffered by those downstream in Orange County. Per the Corps' Optimal Schedule, the Corps plans to award the construction of the Project's spillway in 2021. It is necessary to acquire the Subject Property Interests so that the Corps can proceed with construction of the Project. If that schedule is not met, vital Project funding may be lost or delayed, thus exposing the citizens of Orange County to a prolonged risk of property damage and personal injury from a major storm event. It is necessary to obtain the Subject Property Interests in order to prevent and mitigate such risks.

4. The offer required by California Government Code section 7267.2 was made to the owner of record of the Subject Property Interests.

In conformance with Sections 7267.1 and 7267.2 of the California Government Code and Board of Supervisors Resolution 67-612, an appraisal has been prepared covering the Subject Property Interests. An offer based on said appraisal has been made to the Owners, and a written statement showing the appraised value of the Subject Property Interests and summarizing the basis of the value has been delivered to the Owners.

Negotiations with the owner initially commenced on July 6, 2017. Shortly thereafter, CEO Real Estate received written notification that the Owners had retained an attorney and would be hiring an appraiser to review and assess the District's offer. On March 21, 2018, CEO Real Estate staff received a written

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counter offer from the Owners at \$13,500,000. Staff requested a copy of the market data used by the Owner's appraiser, in order to consider their counter offer. The Owners refused to provide such data, but indicated that they would consider a counter offer from the District.

Staff requested assistance of outside counsel who reached out to the Owners to inquire if they would be interested in attending mediation with the District. On July 10, 2018, the Owners responded that they would participate in mediation, and on January 23, 2019, the parties attended a mediation and agreed to exchange appraisal reports and return to a second mediation. On April 23, 2019, the second mediation was held but the parties were unable to reach agreement. Negotiations will continue, however, in order to proceed with orderly acquisition for the Project, it is necessary to request a condemnation action at this time.

D. Recommended Actions:

Accordingly, we respectfully recommend that your Board, acting in the capacity as the governing Board of the District, at the conclusion of the public hearing noticed by the Clerk of the Board, adopt, by at least a two-thirds vote of the Board, the proposed Resolution of Necessity and take the following actions:

1. Make the required Findings described above and stated therein;
2. Direct County Counsel and/or previously approved special litigation counsel, Murphy & Evertz, to institute eminent domain proceedings to condemn and acquire the Subject Property Interests and
3. Authorize the Auditor-Controller to encumber and disburse funds as described in the proposed Resolution.

Should you have further questions, please contact Khalid Bazmi, County Engineer, at (714) 667-3213.

Attachments: Exhibit A – Legal Description
 Exhibit B – Map

Cc: Frank Kim, Chief Executive Officer
 Rebecca S. Leeds, Senior Deputy County Counsel
 Khalid Bazmi, Assistant Public Works Director/County Engineer
 Nardy Khan, Deputy Director, OC Infrastructure Programs
 James Tyler, Manager, OC Infrastructure Programs/Flood Programs
 Christine Long, Manager, County Executive Office/Real Estate Services

EXHIBIT A
LEGAL DESCRIPTION

May 6, 1991

Santa Ana River - Prado
Facility No.: E01PD

Parcel No. 46-995
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All of A.P. 1056-281-02,
1056-281-03 & 1056-281-04
San Bernardino County
Contract Area I

All of Lots 20, 21, 34, 35 and 39, in Section 31, Township 2 South, Range 7 West, San Bernardino Base and Meridian, in the County of San Bernardino, State of California, according to Map of Subdivision of part of the Rancho Santa Ana Del Chino, as per Plat recorded in Book 6 of Maps, Page 15, Records of said County.

EXCEPTING therefrom that portion thereof described as follows:

That portion of Lots 20, 21, 35 and of fractional Lots 34 and 39 in Section 31, Township 2 South, Range 7 West, San Bernardino Base and Meridian, as said Lots are shown on a Map of Subdivision of part of Rancho Santa Ana Del Chino, said portions being more particularly described as follows:

Beginning at a point on intersection of East line of said fractional Lots 34 and 39, with center line of Pine Avenue, 60 feet wide, distant along said center line N.72°56'22"E., 1013.72 feet from an iron bolt marking intersection of center line of said Pine Avenue with center line of Euclid Avenue, 200 feet wide; thence along said center line S.72°56'22"W., 801.82 feet to a point, said point being distant along said center line, N.72°56'22"E., 211.90 feet from said iron bolt; thence N.53°27'30"E., 107.49 feet; thence N.17°31'10"E., 110.35 feet; thence N.41°21'10"E., 152.39 feet; thence N.24°20'00"E., 110.98 feet; thence N.0°32'10"W., 165.30 feet; thence N.10°22'20"W., 89.60 feet; thence N.20°05'50"E., 333.26 feet; thence N.44°03'30"E., 287.37 feet; thence N.1°02'30"W., 148.61 feet; thence N.42°12'30"E., 112.78 feet; thence N.74°56'50"E., 142.04 feet to a point in the East line of said Lot 21, said point being distant along said East line S.0°18'20"W., 92.10 feet from a 2 inch iron pipe marking Northeast corner of said Lot 21; thence along East line of said Lot 21 and of Lots 20, 35 and of fractional Lots 34 and 39, S.0°18'20"W., 1191.45 feet to the point of beginning.

ALSO EXCEPTING that portion of Lots 39, 34 and 35, as granted to the State of California for highway purposes by Instrument No. 57, recorded April 15, 1949 in Book 2388, Page 244, Official Records, described as follows:

Parcel No. 46-995

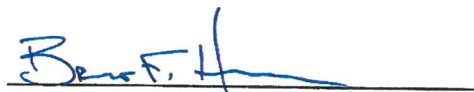
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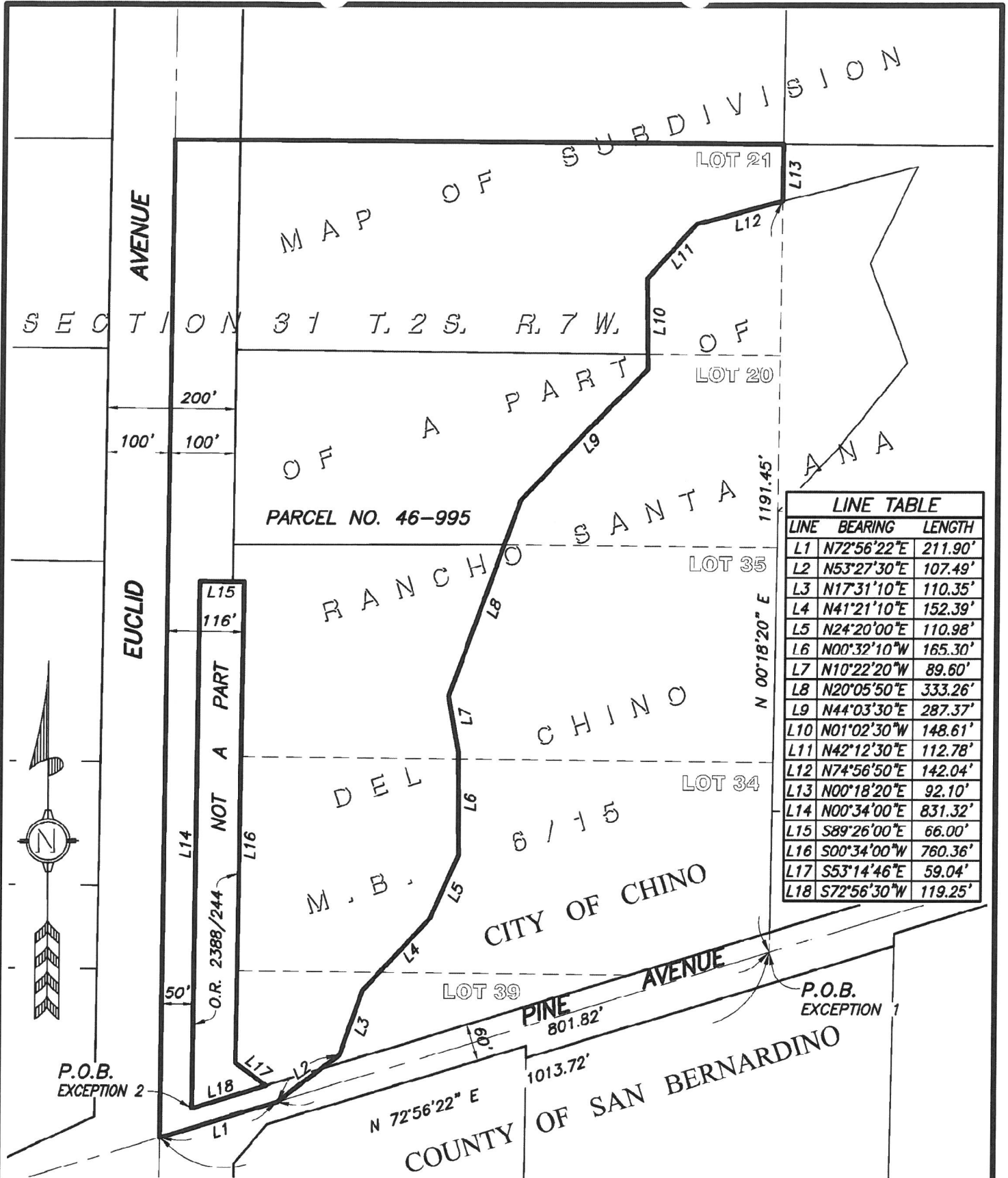
Beginning at the intersection of the Northerly line of Pine Avenue, 60 feet wide, and a line drawn parallel with and distant Easterly 50 feet, measured at right angles, from the center line of Euclid Avenue; thence, along said parallel line, N.0°34'E., 831.32 feet; thence S.89°26'E., 66 feet; thence S.0°34'W., 760.36 feet; thence S.53°14'46"E., 59.04 feet to a point in the said Northerly line of Pine Avenue; thence along the said Northerly line, S.72°56'30"W., 119.25 feet to the point of beginning.

"Certified to be the true and correct legal description as disclosed by the public records of San Bernardino County".

Hunsaker and Associates
Riverside/San Bernardino, Inc.




Bruce F. Hunsaker, L.S. 5921
My License Expires: 12-31-92



OC PUBLIC WORKS
OC SURVEY

RIGHT - OF - WAY

ROW ID # 2000-119

SCALE : 1" = 200'

EXHIBIT "B"

SHEET 1 OF 1

PROJECT : PRADO BASIN BOS PARCEL (PARCEL NO. 46-995)