




Memorandum

DATE: June 10, 2019

TO: Leon Page, County Counsel, County of Orange

FROM:  Christine Long, Administrative Manager II, CEO/Real Estate Services

SUBJECT: Project Name: Prado Dam
 Project No.: E01PD-46-995
 Orange County Flood Control District ("District") vs. 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

Please proceed to the Board of Supervisors to seek authority to file an action condemning the fee interest of that certain District Facility identified as Parcel 46-995. The Parcel is owned 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") and is required by the Orange County Flood Control District ("District") for the Prado Dam Project ("Project").

SUBJECT PROPERTY LOCATION

The street address associated with Parcel 46-995 is 16305 & 16395 Euclid Avenue, Chino, California, in the County of San Bernardino ("Parcel"). The total area of the Parcel to be acquired is approximately 15.48 acres. The land is zoned CR "Commercial Regional" and the General Plan designation is RC Commercial per the Chino Preserve Specific Plan. The Parcel is currently being used as a plant nursery and hay sales business.

ACQUISITION PROCEDURES

In conformance with Sections 7267.1 and 7267.2 of the California Government Code and Board of Supervisors Resolution 67-612, an appraisal was prepared by an independent MAI appraiser who valued the fee interest to be acquired. An offer based on said appraisal was made to the Owners. A written Appraisal Summary Statement disclosing the appraised value of the Parcel and summarizing the basis of that value was provided to the Owners at the same time.

Negotiations with the Owners 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, Real Estate staff received a written counter offer from the Owners at \$13,500,000. Staff requested a copy of the market data used by 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

Leon Page, County Counsel

RE: District vs. John and Andi Bos, as Trustees and Bos Legacy Limited Partnership

June 10, 2019

Page 2

responded that they would participate in mediation and on January 23, 2019, the parties attended a mediation and agreed, among other things, 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 timely acquisition of this Parcel in accordance with the Project, it is necessary to ask the Board of Supervisors to consider the adoption of a Resolution of Necessity to allow us to commence the condemnation process.

LEGAL REQUIREMENTS

Compliance with CEQA:

Find that Final Environmental Impact Report No. 583 was previously certified on November 28, 1989, and reflects the independent judgment of the Orange County Flood Control District as Lead Agency. Final Supplemental Environmental Impact Statement No. 583 was previously certified on December 19, 2001, and reflects the independent judgment of the Orange County Planning Commission as Lead Agency. Final Environmental Impact Report No. 583 and Final Environmental Impact Statement No. 583 adequately addressed the fully analyzed project environmental impacts for the Santa Ana River Mainstem Project, as well as the Prado Dam Project, which is a necessary and contemplated element of the whole Project. Both the Environmental Impact Report and the Environmental Impact Statement are complete and adequately satisfy the requirements of CEQA for the Santa Ana River Mainstem Project, which includes the Prado Dam Project.

- a. The circumstances of the Project are substantially the same as when Final Environmental Impact Report No. 583 and Final Environmental Impact Statement No. 583 were adopted, and, Final Environmental Impact Report No. 583 and Final Environmental Impact Statement No. 583 adequately addressed the effects of the proposed project. No substantial changes have been made in the project, no substantial changes have occurred in the circumstances under which the project is being undertaken, and no new information of substantial importance to the project which was not known or could not have been known when the prior Environmental Impact Report No. 583 and Final Environmental Impact Statement No. 583 were certified has become known in relation to this proposed condemnation action. Thus, no further CEQA review is required.
- b. Final Environmental Impact Report No. 583 and Final Environmental Impact Statement No. 583 are adequate to satisfy the requirements of CEQA for the proposed condemnation action.
- c. All mitigation measures are fully enforceable pursuant to CEQA Public Resources Code Section 21081.6(b) and have either been adopted as conditions, incorporated as part of the project design, or included in the procedures of the project implementation.

Because the requested action would merely accomplish a property acquisition through condemnation proceedings, in accordance with the CEQA Guidelines and the previously certified

Leon Page, County Counsel

RE: District vs. John and Andi Bos, as Trustees and Bos Legacy Limited Partnership

June 10, 2019

Page 3

CEQA documents for the project, which reflect the independent judgment of the Lead Agency, the proposed Project is recommended for approval.

General Plan (Government Code Section 65402): A conformity statement for the Project was requested from the City of Chino ("City") as required by the Code. The City responded on February 22, 2015 that the project is inconsistent with the City's General Plan.

Compliance with County's Hazardous Materials Assessment (HMA) Policy: A Hazardous Materials Assessment was initiated by the District and Environmental Resources. A memo and the report were received June 26, 2015, recommending that the District proceed with the acquisition, subject to review of a Transfer Disclosure Statement (TDS) from the Owners. The Owners have yet to provide the TDS. A new request to update the HMA and obtain a TDS has been requested.

CONDEMNATION RESOLUTION

The Condemnation Resolution should include language authorizing counsel to obtain an Order of Possession for the Parcel. County Counsel is also requested to seek Board authority to make a deposit of estimated just compensation of \$9,105,000, which will be paid from Fund 404-080-404-LS07-4100 Job No. ESP2063 and is based on the appraisal previously obtained.

RELOCATION ASSISTANCE

The District anticipates that the acquisition of this Parcel will displace onsite business tenants. The District has not yet assigned a Relocation Consultant to interview tenants and determine their eligibility for benefits, because no offer has been accepted. When a Relocation Company is assigned, the relocation consultant will explain the Relocation Assistance Program to the Owners and any tenants or occupants remaining onsite ("Claimants") within 60 days after the offer to purchase is accepted, as required by law. Please coordinate with the relocation consultant firm to insure that relocation benefits, if any, are provided to eligible Claimants upon obtaining an Order of Possession or at acquisition by settlement and/or by court order.

ATTACHMENTS

1. Agenda Staff Report Information Sheet for use in your submittal to the Board (hard copy and CD).
2. Property rights language, legal description and map, Location Map (hard copy and CD).
3. Litigation Guarantee No. G-2226-000076092, File No. 01180-199433, dated December 23, 2015 and supplements thereto, including the recorded encumbrances (on CD) for your use in preparing a defendant list. A copy of the completed Title Section of the Transaction Memorandum is attached which identifies those items "to be taken subject to" and those items "to be eliminated". Your review of the title matters supersedes this title review in the event additional items are recommended for elimination.

Leon Page, County Counsel

RE: District vs. John and Andi Bos, as Trustees and Bos Legacy Limited Partnership

June 10, 2019

Page 4

4. Property address, name of record owners and mailing address, and assessor parcel number of property (hard copy and CD).
5. Name of relocation consultant firm, address, and phone number for your use to insure that relocation assistance benefits are provided to eligible Claimants occupying the property at the time the action is filed and/or possession obtained, or acquisition is completed by settlement or court order (hard copy and CD).
6. Copy of Notice of Decision to Appraise letter (hard copy and CD).
7. Copy of Offer Letter (hard copy and CD).
8. Copy of Appraisal Summary Statement (hard copy), and Appraisal (on CD).

Leon Page, County Counsel
RE: District vs. John and Andi Bos, as Trustees and Bos Legacy Limited Partnership
June 10, 2019
Page 5

INSTRUCTIONS

Please obtain a certified copy of the latest Assessment Roll from San Bernardino County and submit it to the Clerk of the Board for the public hearing notice.

Please furnish this office with one copy of each of the following documents as they become available:

1. Summons & Complaint
2. Lis Pendens (initial draft for legal description review & recorded copy)
3. Order for Possession
4. Notice of Deposit of Probable Compensation
5. Summary of Basis for Appraisal Opinion

Please make all necessary services on the appropriate defendants. After the Lis Pendens records, notify CEO/Real Estate Services in order to order updates of the Litigation Guarantee for your use in identifying additional "Does" to be served for those items which may have recorded subsequent to the last supplement but prior to the Lis Pendens. You are requested to file this action as soon as possible. Any questions concerning this action should be directed to Alison Camara at (714) 647-3961.

At the conclusion of the action, if the Board authorizes its filing, please provide a copy of any and all stipulated, interlocutory and/or final judgments obtained, and the recorded Final Order of Condemnation, after which we will order the Title Policy.

Attachments

c: Project File

CONCUR:


Shane L. Silsby, Director
OC Public Works