

DATE ISSUED: October 17, 2001 REPORT NO. 01-219

ATTENTION: Honorable Mayor and City Council
Agenda of October 23, 2001

SUBJECT: Deer Canyon Sewer Project

SUMMARY

Issue - Should the City Council authorize a condemnation action to acquire property rights (a permanent sewer line easement and a temporary construction easement) necessary for the construction of a portion of the Deer Canyon Sewer Project?

Manager's Recommendation - Authorize the condemnation action to obtain the necessary property rights.

Other Recommendations - None.

Fiscal Impact - The estimated cost real estate, title, escrow, litigation and miscellaneous is \$20,500. Funds are available from Developers Trust Fund - No. 63020 for the Deer Canyon Sewer Project.

BACKGROUND

This project provides for the construction of a portion of the Deer Canyon Sewer, being an 8-inch gravity flow sewer main located in a 20-foot-wide permanent easement right-of-way. An additional 25-foot-wide temporary construction easement adjacent to the permanent easement will be needed during construction. The Deer Canyon Sewer Project is required to provide acceptable sewer service for both existing and future residents of the eastern portion of Del Mar Mesa consistent with the Del Mar Mesa Specific Plan and Master Environmental Impact Report No. 95-0353. The particular portion of this project is a requirement of the approved sewer study that is an off-site condition of the Mesa Verde Estates Vesting Tentative Map No. 96-0625, Resource Protection Ordinance Permit No. 96-0625, and City Council Resolution R-290515. Acquisition of the property rights in question will allow the City to provide a safe and efficient sewer system to this area of the City.

The proposed location of Dear Canyon Sewer Project has been the subject of discussions between the City, community members and the affected property owners, as well as public hearings. Over the years, alternatives to the gravity sewer were analyzed. The Deer Canyon Sewer Project was identified and studied in the original 1997 Del Mar Mesa Specific Plan, and its associated Master Environmental Impact Report, certified in June of 1996. The Deer

Canyon Sewer Project is required by the approved sewer study that is an off-site condition of Mesa Verde Estates Vesting Tentative Map No. 96-0625. The proposed location of the sewer at issue here was approved by the Planning Commission in connection with Del Mar Mesa Road/Deer Canyon Sewer, Resource Protection Ordinance (RPO) Permit No. 99-0099, master sewer studies approved by the City Wastewater Department and is identified in the Amended Del Mar Mesa Specific Plan approved on June 27, 2000. The developer, Mesa Verde-Del Mar, L.P., has been unsuccessful in its attempt to acquire the remaining property rights and has requested the City to exercise its power of eminent domain to acquire the necessary permanent sewer easement and temporary construction easement. Copies of correspondence from the developer to the property owner have been submitted to the City Attorney's Office and the Property Department.

A final offer for the necessary property rights was made by the City to the property owner, Robert D. Barczewski, as Trustee under Declaration of Trust dated August 10, 1997 on July 30, 2001. That offer was not accepted. In its offer, the City expressed a willingness to meet with the property owner to discuss the offer. The owner has not contacted the City, though the City remains willing to continue negotiations. Condemnation is requested to insure that the necessary property rights can be acquired and construction can begin in a timely manner.

DISCUSSION

Eminent Domain law requires that any person subject to condemnation proceedings be given the opportunity to speak and be heard regarding the following questions to which the Council must address itself:

1. Does the public interest and necessity require the proposed project?

Yes. The public interest and necessity require the Deer Canyon Sewer Project. The Del Mar Mesa Specific Plan identifies Deer Canyon Sewer Project as an important sanitary sewer system for the Del Mar Mesa Sub Area within the Future Urbanizing Area. The sewer will be constructed as an 8-inch gravity flow sewer that will connect to the existing Carmel Valley Trunk Sewer in conformance with the Del Mar Mesa Specific Plan, the Master Environmental Impact Report No. 95-0353, RPO Permit No. 99-0099, and the other approvals referenced above in the Background section of this Report. As discussed in the Del Mar Mesa Specific Plan, the Deer Canyon Sewer Project is an integral part of the public utilities network for the area. The sewer is necessary to provide public sewer services to a portion of the City that has not had the benefit of a public sewer system. The Deer Canyon Sewer Project will provide a public sewer for existing residents, future residents of Mesa Verde Estates and other planned residential developments in the area. Without this project existing property owners would continue to rely on septic systems, and proposed projects would have to employ private sewer pump stations which are more susceptible to failure and sewage spills.

2. Is the proposed project planned or located in the manner that will be most compatible with the greatest public good and the least private injury?

Yes. Condemnation of the property for the Deer Canyon Sewer Project is consistent with the Del Mar Mesa Specific Plan, the Master Environmental Impact Report No. 95- 0353, Resource Protection Ordinance RPO Permit No. 99-0099, the sewer study required by Mesa Verde Estates Vesting Tentative Map No. 960625, and the above described approvals. The public benefits of this sewer system include a safer, more reliable wastewater disposal system and the abandonment of certain existing septic systems. The proposed location of the sewer has been the subject of numerous studies, community planning group meetings, City hearings and other community discussions, and it will result in the greatest public good and least private injury. Other alternatives to the proposed location of the sewer have been considered and rejected because of their greater environmental impacts and/or reliability issues. For example, an earlier proposal for a sewer pump station was rejected in order to avoid potential impacts to sensitive resources. Also, as opposed to a gravity flow system, a sewer pump station raises additional reliability, cost and maintenance concerns.

As noted in the resolution adopted by the Planning Commission in connection with RPO Permit 99-099, and the associated California Environmental Quality Act (“CEQA”) document, the Deer Canyon Sewer Project was designed to minimize impacts on sensitive habitats and other significant environmental resources. The proposed alignment is consistent with the Multiple Species Conservation Program. Design of the sewer project has also minimized private injury by following topographic contours and keeping the width of the permanent easement (20 feet) to the minimum needed to operate and maintain the sewer system.

3. Is the property sought to be acquired necessary for the proposed project?

Yes. The Property sought to be acquired is the minimum needed to provide the right-of-way required to construct the Deer Canyon Sewer Project. The Del Mar Mesa Specific Plan identifies the Deer Canyon Sewer Project as the sanitary sewer system for this area of the City. Acquisition of the property will allow the City to provide a safe, efficient sewer system for the community where none exists today. Construction of the sewer is an important element of providing adequate public utilities for both existing and future residents of Del Mar Mesa.

The City and others have considered a number of alternative locations for the Deer Canyon Sewer Project. As documented in RPO Permit No. 99-099, the associated CEQA document, and the additional approvals referenced above in the Background section of this Report, the proposed alignment of the Deer Canyon Sewer Project balances the interests of the environment, the community and the various property owners located along the proposed right-of-way. The property at issue here is necessary for the construction of the sewer.

4. Has the offer required by Section 7267.2 of the Government Code been made to the owner of record for the property sought to be acquired?

Yes. On July 30, 2001, the City communicated in writing an offer to acquire the sewer

easement rights over the subject property to the owner of record in accordance with Section 7267.2 of the Government Code. The offer was not accepted and the owner has not entered into any further negotiations to sell the required property rights.

ALTERNATIVE:

Do not authorize a condemnation action, and conduct further studies for the alignment of the needed pipeline. This alternative is not recommended because exhaustive alignment studies have been previously performed.

Respectfully submitted,

William T. Griffith Approved: Bruce A. Herring
Real Estate Assets Director Deputy City Manager

GRIFFITH/BLM