

DATE ISSUED: June 15, 2005

REPORT NO. 05-113

ATTENTION: Honorable Mayor and City Council
Docket of June 21, 2005

SUBJECT: Condemnation of Property for the Carmel Valley Trunk Sewer Project

SUMMARY

Issue – Should the City Council authorize a condemnation action to acquire property rights necessary for the Carmel Valley Trunk Sewer Project?

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

Other Recommendations – None

Fiscal Impact – The estimated costs of condemnation include: Value of the property rights to be acquired: Land \$185,375; title, litigation and miscellaneous expenses \$185,375. Total \$370,750. Funds for the condemnation are available in Developers Trust Fund – No. 421279 for Carmel Valley Trunk Sewer.

BACKGROUND

This project provides for the construction of the Carmel Valley Trunk Sewer project which consists of approximately 2.6 miles of 30” sewer main and appurtenant facilities which are needed to replace the existing 18” trunk sewer and provide capacity for new development in the communities of Black Mountain Ranch, Pacific Highlands Ranch, Torrey Highlands, Del Mar Mesa and Rancho Penasquitos. The Carmel Valley Trunk Sewer is a critical facility that is needed to address failing pipe in the existing system and provide capacity for new development. The project will help to avoid the risk of a major sewage spill into sensitive habitat in McGonigle Canyon, Penasquitos Lagoon and the Pacific Ocean.

On January 3, 2004, the City Council certified and approved the Mitigated Negative Declaration for the project identified as Project No. 6147 SCH No. 2003081166 (“Project MND.”) The

Project MND is attached hereto as Exhibit “A” and incorporated herein by this reference. Page 3 of the Initial Study included therein describes the three alternatives evaluated prior to selecting the preferred alignment of the project. The alternatives include: (Alternative 1) replacing and upsizing the existing trunk sewer; (Alternative 2) construction of a parallel trunk sewer; and (Alternative 3) re-aligning the trunk sewer along Black Mountain (Carmel Valley) Road.

It should be noted that Alternative 3 would require the construction of six new pump stations with force mains and the acquisition of property to accommodate these structures. While it was considered desirable to move the trunk sewer out of the canyon, a redirection of flow project is considered feasible when the cost of the project does not exceed by 35 percent the cost if the project remained in the environmentally sensitive land. In this case, the cost of removing the trunk sewer from the canyon (estimated at approximately 59 million dollars) greatly exceeded the estimated cost of 18 to 21 million dollars to implement the alternatives retaining the pipeline in the canyon. As a result, the proposed gravity sewer alignment was determined to be the preferred alignment that will minimize impacts to environmentally sensitive areas.

The property rights required are an offsite condition of the Carmel Valley Trunk Sewer Project. The developer, Western Pacific Housing, entered into an agreement with the City on November 3, 2003 whereby City engaged the Developer to design and construct the Carmel Valley Trunk Sewer as a Capital Improvement Program project. The developer has been unsuccessful in its attempt to acquire these property rights and has requested the City to exercise its power of eminent domain to acquire the necessary property rights.

A final offer for the necessary property rights has been made to the property owner. The offer has not been accepted. Although negotiations will continue with this owner, condemnation is requested to insure acquiring the necessary property rights for the public benefit.

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. Approval of this eminent domain action serves the public interest and is necessary because the Carmel Valley Trunk Sewer is an integral part of the public sewer system serving both existing residents and new development in the communities of Black Mountain Ranch, Pacific Highlands Ranch, Torrey Highlands, Del Mar Mesa and Rancho Penasquitos.

The Carmel Valley Trunk Sewer project will provide a 30” sewer main and appurtenant facilities which are needed to replace the existing defective 18” reinforced plastic mortar sewer pipe that is currently failing. The project facilities are needed to provide public sewer facilities and protect the public interest by replacing failing facilities to help avoid the possibility of a catastrophic sewer environmentally sensitive areas.

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 Carmel Valley Trunk Sewer is in substantial conformance with the applicable community plan for the areas served by the project. The project site is located in McGonigle Canyon within the City's MHPA in the Torrey Highlands and Pacific Highlands Ranch community planning areas. As previously stated, a total of three alternative project alignments were considered, including the possibility of removing the sewer pipeline from the canyon which proved to be cost prohibitive and would require construction of six new pump stations with force mains and the acquisition of property to accommodate the proposed alignment, and thus, result in greater private injury than the preferred alignment. Prior to proposing the current alignment, the Developer met with individual private property owners in an attempt to address issues impacting private property to the extent feasible.

The current canyon alignment for the proposed gravity sewer line was adjusted to reduce impacts to wetlands and the environment by following portions of the existing dirt access road, shoring trenches where feasible, maximizing the buffer from the creek and wetland habitat, locating the pipeline crossing and access road with the planned crossing from Pacific Highlands Ranch access to a sewer lateral, mitigation area and detention basin, avoiding impacts to existing sycamores, and using jack and boring for portions of the construction. The result is a project which minimizes impacts to wetland and upland communities.

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 and easements required to construct the Carmel Valley Trunk Sewer. The resultant project will correct existing deficiencies in the public sewer system and provide public sewer service to new development in the surrounding communities.

ALTERNATIVE

Do not authorize a condemnation action to acquire property rights necessary for the Carmel Valley Trunk Sewer Project and instruct staff to seek alternative locations for the project.

Respectfully submitted,

William T. Griffith
Real Estate Assets Director

Approved: Bruce A. Herring
Deputy City Manager