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Title: HEARING to consider a resolution of public use and necessity for acquisition of permanent utility easements and/or temporary construction easements from the following APNs: 581-030-02s owned by Rodric H. and Kimberly K. Lichti; 580-040-07 owned by Earleen Leshar; and 580-040-08 owned by Earleen Leshar as to an undivided 72% and the estate of Velda D. Leshar as to an undivided 28%; and 581-020-05s owned by Lilli Herold and Linda E. Cheney, as trustees of the "Lilli Herold Living Trust"

1. ***RESOLUTION - That the public interest and necessity require and authorize eminent domain for acquisition of permanent utility easements and/or temporary construction easements from real property: APNs 581-030-02s; 580-040-07 and 580-040-08; and 581-020-05s, located in the County of Fresno. (Requires 5 affirmative votes)

Sponsors: Department of Public Utilities

Indexes:

Code sections:

Attachments: 1. Table 1.pdf, 2. Resolution - RON.pdf, 3. RON Hearing - FINAL - 2015-04-30.pdf

Date	Ver.	Action By	Action	Result
4/30/2015	1	City Council	continued	Pass

REPORT TO THE CITY COUNCIL

April 30, 2015

FROM: THOMAS C. ESQUEDA, Director
Department of Public Utilities

BY: MICHAEL CARBAJAL, Division Manager
Department of Public Utilities - Water Division

SUBJECT

HEARING to consider a resolution of public use and necessity for acquisition of permanent utility easements and/or temporary construction easements from the following APNs: 581-030-02s owned by Rodric H. and Kimberly K. Lichti; 580-040-07 owned by Earleen Leshar; and 580-040-08 owned by Earleen Leshar as to an undivided 72% and the estate of Velda D. Leshar as to an undivided 28%; and 581-020-05s owned by Lilli Herold and Linda E. Cheney, as trustees of the "Lilli Herold Living Trust"

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property: APNs 581-030-02s; 580-040-07 and 580-040-08; and 581-020-05s, located in the County of Fresno. (Requires 5 affirmative votes)

RECOMMENDATIONS

Staff recommends that the City Council:

1. Conduct a public hearing to consider a resolution of public use and necessity for acquisition of permanent utility easements (PE) and/or temporary construction easements (TCE) as described above.
2. Adopt the attached Resolution which states that the public use and necessity require the permanent utility easements and/or temporary construction easements, and authorizes eminent domain action as provided by the California Code of Civil Procedure.

EXECUTIVE SUMMARY

The Department of Public Utilities, Water Division, is finalizing the design of the Friant-Kern Raw Water Pipeline to deliver raw water from the Friant-Kern Canal to the Northeast Surface Water Treatment Facility (NESWTF). The proposed alignment traverses private property in the most direct manner possible resulting in lower project costs and minimal impacts to the least number of property owners. With bidding scheduled to begin in Summer 2015, and negotiations between these property owners at a stand-still, acquisition of easements by condemnation is now necessary.

Some acquisitions have already been made from surrounding property owners to accommodate the project needs. The acquisitions described below will provide the necessary permanent and temporary construction easements for the pipeline. It is necessary to commence the eminent domain action now so that possession of the required easements can be obtained and secured prior to project bidding. Staff recommends Council adopt the recommended Resolution of Public Use and Necessity which authorizes the City Attorney to initiate an eminent domain action and obtain an order of possession of the property. It requires five votes for approval and is subject to veto by the Mayor.

BACKGROUND

Presently, the City's contract with the United States Bureau of Reclamation (USBR) for Central Valley Project (CVP) surface water, travels nearly 55 miles in open canals from Friant Dam (Millerton Lake) to the NESWTF. The proposed Project consists of the construction and operation of a 5.6-mile underground raw water pipeline. The new pipeline reroutes the CVP water directly to the NESWTF and will eliminate nearly 47 miles from the conveyance distance. The Project will enclose the water conveyance system and greatly reduce the threat to water quality, in otherwise exposed canals, by contamination from environmental debris, and accidental or malicious acts. The pipeline will be constructed across numerous properties in unincorporated Fresno County and connected to the existing one-mile long segment of pipeline constructed by a 2007 project.

Each of the acquisitions was appraised by independent, professional real estate appraiser Pete S. Cooper, MAI. The value of purchasing or relocating landscaping, fencing, paving, and other improvements were part of the offers to owners. Each property owner was given a written offer which included the value of the permanent and/or temporary construction easement, as applicable. Each owner was advised of its right to obtain an independent appraisal at the City's cost, up to \$5,000.

Staff has met with the owners or their representatives to explain the project and acquisition process further. A summary of each negotiation is included below, and details regarding the appraised value, size and type of easement for each parcel is provided in the attached Table 1.

Parcel 1 - Lichti

City has spoken with the Lichtis many times over the past 13 months regarding the City's offer to purchase easements and rent temporary construction easements for the Project. The Lichtis have obtained a second appraisal, and the second appraisal does not take issue with the City's *As Is Fair Market Value*, however the Lichtis maintain there is an additional diminution value of \$10,200 due to a surface level access road on the easement over the pipeline, and they remain firm on this point. There does not appear to be any opposition to the Project, compensation is the only matter in question. The City's offer includes 100% valuation for portion of easement with road, and City has cited concerns with premise and calculation of the diminution of value. The Lichtis have not hired legal counsel to City's knowledge. The appraisal summary and offer documents have been sent to the Lichtis, along with follow-up contacts by telephone, e-mail, and fax. The Lichtis have not accepted the City's offer.

Parcel 2 - Leshner

City has spoken with the Leshers and/or their legal counsel many times over the past 14 months regarding the City's offer to purchase permanent and temporary construction easements. The Leshers have obtained a second appraisal and retained legal counsel to advise them. The Leshers have rejected the City's offer. The difference in appraisal values between the City and the Leshers is approximately \$67,715 for permanent easements and \$5,140/yr. for the temporary construction easement. Based on a review of the Leshner's appraisal by the City's appraiser, concern was expressed regarding the age, type, and locations of "comparables" used for the valuation. Concern was also expressed regarding the Leshner's use of a 75% of value for "non-roadway" portions of the subsurface easement, compared to the City appraiser's use of 50%.

Parcel 3 - Herold

City has spoken with Ms. Cheney, on behalf of Lilli Herold, many times over the past 13 months regarding the City's offer to rent a temporary construction easement for the Project. Ms. Cheney has not obtained a second appraisal, and has not retained legal counsel. She has expressed concern over the liability language in the City's rental agreement, specifically a lack of indemnification from the City in the event of worker injury/accident. Ms. Cheney has spoken with the City Attorney's Office regarding suitable language, and this matter has been resolved, however the Agreement remains unsigned. There does not appear to be any opposition to the Project.

Pursuant to the California Code of Civil Procedure, notices were sent to the property owners appearing on the current tax assessment roll and to other representatives of the owners with whom staff has communicated. The property owners were invited to appear at the hearing and were asked to contact staff if they wished to speak at the hearing.

It is recommended that the Council adopt the attached Resolution of Public Use and Necessity with consideration of the following:

1. The public interest and necessity require the proposed project.

The raw water pipeline is needed to deliver better quality water to the NESWTF. The pipeline provides a more reliable source of water to treat for potable water use.

2. The proposed project is planned in a manner that will be most compatible with the greatest public good and the least private injury.

The pipeline will be located primarily on private property and away from houses and traffic thus reducing the concern of safety to the general public. Several alternative alignments were evaluated during design and the proposed alignment was selected to best minimize impacts.

3. The property is necessary for the proposed project.

The rural nature of this pipeline alignment makes it very difficult to follow existing roads and would result in much higher overall project costs. The proposed alignment traverses private property in the most direct manner possible resulting in lower project costs and minimal impacts to the least number of property owners.

4. An offer to purchase the required utility easement has been made pursuant to Section 7267.2 of the Government Code.

A written offer of the appraised fair market value has been delivered to each owner of affected property pursuant to the requirements of the California Government Code.

ENVIRONMENTAL FINDINGS

An initial study and Mitigated Negative Declaration was prepared and adopted on June 14, 2012 for this project. A Notice of Determination was subsequently filed with the Fresno County Clerk's Office on June 19, 2012. The City of Fresno Raw Water Pipeline Project Initial Study was done in August of 2011, and analyzed both the proposed and alternative pipeline alignments. This approval is to implement that project.

An analysis has been performed pursuant to CEQA Guidelines §15162 to determine whether subsequent environmental review is required for the project. Based upon this analysis the following findings are made to support the determination that no subsequent environmental review is required:

1. No substantial changes are proposed in the project which will require major revisions of the previous Negative Declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects. In this case there are no changes to the project.
2. No substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous Mitigated Negative Declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects. In this case, the proposed pipeline alignment has not changed.
3. There is no new information, which was not known and could not have been known at the time

of the previous Mitigated Negative Declaration that the project will have significant effect not discussed in the Mitigated Negative Declaration.

Based upon these findings, it has been determined that no further environmental documentation is required for this project.

The City has also been working with several Federal agencies to meet the requirements of the National Environmental Policy Act (NEPA). Work is ongoing with the United States Fish and Wildlife Service and the Army Corp of Engineers to approve the Biological Opinion (BO) and the effect of this Project has on endangered plants and wildlife. When the USFWS approves the BO and endangered species mitigations, they will then be submitted to the US Bureau of Reclamation for their review and acceptance. Once accepted, the USBR will issue a Finding of No Significant Impact (FONSI) and give authorization for the City to begin construction on the Friant-Kern Canal Project.

In a parallel effort, the City has been working with several State regulatory agencies to secure necessary permits and mitigation measures. This includes working with the California Department of Fish and Wildlife (CDFW) to gain approval of their 2081 Permit (Incidental Take Permit), and protected species mitigations.

LOCAL PREFERENCE

Local preference was not considered because this action does not include a bid or an award of a City construction contract.

FISCAL IMPACT

Approving this Resolution of Necessity will not impact the General Fund. Appropriations for the ultimate acquisition of these easements are included in Water Division's FY2015 Capital Improvement Program budget within the 2010 Water Revenue Bonds A-1 Fund (40118). Project construction is expected to start in Fall 2015. This project is located in the County of Fresno.

Attachments:

Table 1
Resolution of Public Use and Necessity