

City of Hesperia

STAFF REPORT



DATE: February 18, 2020

TO: Chair and Board Members, Hesperia Water District

FROM: Nils Bentsen, General Manager

BY: Rod Yahnke, Economic Development Manager
Michael Thornton, City Engineer

SUBJECT: Ranchero Sewer Lift Station – HWD Resolution No. 2020-07 - A Resolution of the Hesperian Water District, Declaring that Public Interest and Necessity Require Acquisition of Fee Simple Interest in a Portion of the Property Known as Assessor's Parcel No. 3039-431-01

RECOMMENDED ACTION

It is recommended that the Hesperia Water District conduct a public hearing and upon accepting public testimony, adopt a Resolution of Necessity, HWD Resolution No. 2020-07 entitled:

A RESOLUTION OF THE HESPERIA WATER DISTRICT OF THE CITY OF HESPERIA, CALIFORNIA, DECLARING THAT PUBLIC INTEREST AND NECESSITY REQUIRE ACQUISITION OF FEE SIMPLE INTEREST IN A PORTION OF THE PROPERTY KNOWN AS ASSESSOR'S PARCEL NO. 3039-431-01

BACKGROUND

The Hesperia Water District (the "District") is in the process of constructing a sewer line from the existing sewer system located near the intersection of Caliente Road and Mesquite Street to the existing sewer systems located in both Caliente Road and Mariposa Road north of Ranchero Road in order to foster and facilitate development in the vicinity of the Ranchero Road interchange on Interstate 15 (the "Project"). Although the reconstruction of the interchange was completed five years ago, the cost of construction of a sewer line serving the area has effectively deterred development. The District has been able to acquire all property interests required for the construction of the Project except for the site of a needed lift station on Assessor's Parcel No. 3039-431-01. The property in question is part of a 41.5-acre vacant parcel (the "Larger Parcel") which has multiple owners and is subject to a judgment lien. The divided ownership of the property coupled with the relatively low fair market value of the part to be taken (the "Subject Property") is likely the reason for the lack of response from the property owners and the judgment lien holder to the District's offer to purchase the subject property. Therefore, the exercise of eminent domain is necessary in order for the Project to be completed.

The legal description and a map of the Subject Property, comprising 17,519 SF or approximately 0.40 acres, are attached to the Resolution of Necessity as Exhibits A and B.

The District retained the services of an independent real estate appraiser, who formed an opinion regarding the fair market value of the Subject Property. Attachment 2 hereto is a summary of the basis for the appraisal of the Subject Property. Based on the appraised fair market value, the District made a written offer to purchase the Subject Property to the owners of the Larger Parcel and the holder of the judgment lien pursuant to *Government Code §7267.2* in

January 2020. None of the property owners, nor the holder of the judgment lien, responded to the offer letter.

At this time, District staff is recommending the use of eminent domain to acquire the Subject Property. Prior to commencing the eminent domain process, the District is required to formally adopt a Resolution of Necessity identifying the project for which the Subject Property is being acquired and the reasons the Subject Property is necessary for the project. The hearing on this matter is scheduled for February 18, 2020.

While staff is recommending commencing the eminent domain process to acquire the Subject Property for the Project, if contact can be made with the property owners and/or the judgment lien holder, negotiations will be undertaken. Ultimately, if negotiations do not occur or are unsuccessful, acquisition of the Subject Property through eminent domain will require the District to pay just compensation for the Subject Property, as determined by the court.

RESOLUTION OF NECESSITY

A hearing must be conducted to determine whether the District should proceed with an eminent domain action to acquire the Subject Property and to establish if the following four basic criteria are met:

1. The public interest and necessity require the Project.
2. The Project is planned and located in the manner that will be most compatible with the greatest public good and the least private injury.
3. The Subject Property sought to be acquired is necessary for the Project.
4. An offer meeting the requirements of Section 7267.2 of the *Government Code* has been made to the owners of record.

Under the Eminent Domain Law, this hearing is not referred to as a “public hearing” and no published notice is required. Other than compliance with the Brown Act, the only notice required is the notice by mail to the owners of record, sent at least 15 days prior to the District’s consideration of the resolution. That notice was sent on January 30, 2020.

A resolution of necessity must be approved by two-thirds of the membership of the District. Therefore, four “yes” votes are required to adopt the resolution.

ISSUES/ANALYSIS

As stated above, the Subject Property to be acquired for the Project consists of the fee simple interest in a portion of the Larger Parcel located within the City of Hesperia, County of San Bernardino, State of California, designated as Assessor's Parcel Nos. 3039-431-01 and more specifically described in Exhibit “A” and depicted in Exhibit “B” of the Resolution of Necessity attached hereto as Attachment 4 and Attachment 5.

The public interest, convenience, and necessity require the Project. The Project consists of the construction of a sewer line along both Caliente Road and Mariposa Road. The Mariposa Road sewer will extend under Interstate 15 and connect with the Caliente Road system. Thereafter, flow will proceed north along Caliente Road to the proposed lift station. It cannot continue north underground due to the Union Pacific Railroad (UPRR) crossing. The District has successfully obtained permission from UPRR to place a force main on the bridge over the tracks. To convey flow over the tracks, a lift station is required. After crossing over the UPRR crossing, flow will continue north along Caliente Road to the existing sewer system located near the intersection of

Caliente Road and Mesquite Street. The lift station is located as close to the UPRR right-of-way as possible to ensure construction will not impact rail operations. With project completion, sewer service will be available to the Ranchero Road interchange commercial area for development. An exhibit showing the project limits and service area is attached as Attachment 3.

The Ranchero Road interchange will be a magnet for freeway commercial development in light of the increasing traffic on the freeway together with Ranchero Road developments and improvements. However, any such development would have to be connected to sanitary sewer service and the existing system is dry and cannot provide service. Although three projects have been completed in the service area using septic systems – Starbucks, 76 Gas and Chevron gas – more extensive development requires sewer service. The cost of the sewer system has deterred development of the remaining properties located at or near the interchange. Upon completion of the sewer system, the existing developments currently using septic systems will be connected to the sewer system and the septic systems will be abandoned. The District has acquired most of the property needed for the sewer project, but has been unable to engage the property owners and the judgment lien holder in negotiations regarding the lift station site. As discussed above, the lift station is an essential part of the project.

In addition, the Project is planned and located in a manner that will be the most compatible with the greatest public good and the least private injury. The vast majority of the project is located within public right-of-way with the only exception being the lift station site. That site is only 0.40 acres in size. The lift station site was selected to maximize area service; service laterals can only connect to gravity sewer portions of the system, they cannot connect to force mains. Project design includes gravity sewers to the maximum extent possible.

Furthermore, as discussed above, the taking of the Subject Property as described is necessary for the Project because the Project cannot provide service without the lift station that will be located on the Subject Property.

The acquisition of the Subject Property is authorized by Section 19 of Article 1 of the California Constitution, Section 1230.010 *et seq.* of the California Code of Civil Procedure, and Sections 37350, 37350.5, and 40404 of the California Government Code.

Moreover, the offer required by Government Code Section 7267.2 has been made to the owners of record of the Larger Parcel, by way of letters dated and mailed in January 2020. Two of the property owners signed certified mail receipts indicating they received the offer. However, none of the persons to whom the offer was addressed have responded to the offer itself.

The CEQA Notice of Exemption was filed with the County on February 5, 2020. All requirements and obligations imposed by the California Environmental Quality Act have been met for the Project.

The Project is consistent with the general plan and all prerequisites to adopting a Resolution of Necessity, and for commencing an eminent domain action to acquire the Property for the Project have been met.

FISCAL IMPACT

Costs to acquire the Subject Property are valued at \$19,300 by Riggs and Riggs, Inc. There is sufficient funding included in the fiscal year 2019-20 Capital Improvement Program Budget in C.O. 9021.

ALTERNATIVES

Provide alternative direction to staff.

ATTACHMENTS

1. HWD Resolution No. 2020-07
2. Summary of the basis for the appraisal
3. I-15 Sewer Improvement Project
4. Exhibit A – Legal Description of Subject Property
5. Exhibit B – Plat of Subject Property
6. Exhibit C – Notice of Intent to Adopt Resolution of Necessity