

HWD RESOLUTION NO. 2020-07

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

WHEREAS, for the public purposes set forth herein, the Hesperia Water District (District) is authorized to acquire property through the exercise of eminent domain pursuant to 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*; and

WHEREAS, "Project" for the purposes of this acquisition consists of the construction of 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 (the "Project"); and

WHEREAS, in order to carry out and make effective the principal purpose of the Project, it is necessary for the District to acquire the fee simple interest in a portion of certain privately-owned real property (vacant land) located at the Northwest Corner of Caliente Road and El Centro Road in the City of Hesperia, County of San Bernardino, California with Assessor's Parcel No. 3039-431-01 (the "Subject Property"), as more particularly described and depicted in Exhibits "A" and "B" which are incorporated by this reference; and

WHEREAS, on or about January 13, 2020, the District made a written offer to the record owners to acquire the Subject Property at an amount that was not less than the appraised fair market value, in compliance with *Government Code* Section 7267.2(a), and the owners of the Property have not responded to said offer as of the date of this Resolution; and

WHEREAS, on January 30, 2020, a Notice of Intent to Adopt a Resolution of Necessity ("Notice of Intent," a copy of which is attached hereto as Exhibit "C" and incorporated by this reference) was mailed to all persons whose names appear on the last equalized County Assessment Roll as having an ownership interest in the Property, and to the address appearing on said Roll and to other addresses, which Notice of Hearing advised said persons of their right to be heard on the matters referred to therein on the date and at the time and place stated therein; and

WHEREAS, the hearing set out in said Notice of Intent was held on February 18, 2020, at the time and place stated therein and all interested parties were given an opportunity to be heard on the following matters:

- (a) Whether the public interest and necessity require the Project;
- (b) Whether the Project is planned or located in a manner which is most compatible with the greatest public good and the least private injury;
- (c) Whether the Subject Property proposed to be acquired is necessary for the Project;
- (d) Whether the offer meeting the requirements of *Government Code* Section 7267.2 has been given; and

- (e) Whether the offer required by Section 7267.2 of the Government Code was made in the form and substance required by law.

WHEREAS, the staff report to the Board of the District regarding this matter is incorporated herein by this reference in its entirety; and, as a result of such hearing, the Board has determined that public health, safety, and welfare require the District to acquire the Subject Property for the stated purposes; and

WHEREAS, the Board, as a result of such hearing, has determined that the public health, safety, and welfare require the District to acquire the Subject Property for the stated purposes.

NOW THEREFORE, BE IT RESOLVED, THAT THE BOARD HEREBY DOES FIND, DETERMINE, AND DECLARE BASED UPON EVIDENCE PRESENTED TO IT AS FOLLOWS:

Section 1. The facts and conclusions referenced in this Resolution, and the findings made by the Board herein, are supported by substantial evidence contained in the record of this proceeding, including, but not limited to, the staff report. The staff report, in its entirety, is supportive of all of the findings made in this Resolution.

Section 2. The Subject Property consists of the fee simple interest in the real property located within the City of Hesperia, County of San Bernardino, State of California, Assessor's Parcel No. 3039-431-01, and more specifically described above and in Exhibits "A" and "B".

Section 3. The Board finds as follows:

- (a) 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. Existing development in the area that is currently operating on septic systems will be connected to the sewer.
- (b) The Project is planned and located in a manner which is most compatible with the greatest public good and the least private injury. The sewer line to be constructed cannot continue north underground along Caliente Road 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. Existing development in the area that is currently operating on septic systems will be connected to the sewer. The larger parcel of which the Subject Property is a part is vacant land. 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. The Project is consistent with the City's General Plan as it will facilitate commercial development in an area planned and zoned for that use.

- (c) The taking of the Subject Property as described above is necessary for the Project. The sewer line to be constructed cannot continue north underground along Caliente Road 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. 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.
- (d) The requirement of Government Code Section 7267.2 that a written offer to purchase the property be made has been met and the offer was made in the form and manner required by law. A written offer to purchase the Subject Property, based on an appraisal of the fair market value of the Subject Property, was made to the owners of the Subject Property on or about January 13, 2020.

Section 4.

The acquisition of the Interests 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, 37353, and 40404 of the California *Government Code*.

- Section 5. As to any portion of the Subject Property that is currently appropriated for a public use, the use for which the Subject Property is sought to be acquired as a more necessary public use and the City is empowered to take such Subject Property for a more necessary public use pursuant to Code of Civil Procedure Section 1240.610.
- Section 6. The CEQA Notice of Exemption was filed with the County on February 5, 2020. All obligations imposed by the California Environmental Quality Act have been complied with for the Project.
- Section 7. The Board hereby declares its intent to acquire the Subject Property in the City's name in accordance with the provisions of the law of the State of California and finds that all conditions, statutory requirements and prerequisites to the exercise of the power of eminent domain to acquire the Interests described herein have been complied with by the District.
- Section 8. The law firm of Aleshire & Wynder, LLP, is hereby authorized and directed to prepare, institute, and prosecute in the name of the District such proceedings, in the Court having proper jurisdiction thereof, as may be necessary for the acquisition of the Interests in portions of the Property in accordance with the provisions of the California Eminent Domain Law and the Constitution of California. Said counsel are also authorized and directed to obtain any necessary order of the Court granting the District the right of immediate possession and occupancy of the Property.

ADOPTED AND APPROVED at a regular meeting of the Water District of the City of Hesperia this 18th day of February, 2020 by the following vote:

Larry Bird, Chair

ATTEST:

Melinda Sayre, City Clerk