




Murrieta
City Council Agenda Report

To: Mayor and City Council

From: James E. Kinley, Director of Public Works/City Engineer 

Date: November 18, 2003

Subject: APPROVE A RESOLUTION OF NECESSITY FOR THE ACQUISITION OF CERTAIN PROPERTY BY EMINENT DOMAIN FOR PUBLIC RIGHT OF WAY FOR MASTER PLANNED LINE "E" FLOOD CONTROL PROJECT LOCATED AT THE SOUTHWEST CORNER OF IVY STREET AND WASHINGTON AVENUE, ASSESSOR'S PARCEL NUMBER 906-080-001 (RIGHT OF WAY ACQUISITION PARCELS NUMBERED. 7130-4A & 7130-4B).

RECOMMENDATION

Approve Resolution Number _____, a Resolution of Necessity for the acquisition of Certain Property by Eminent Domain located at the southwest corner of Ivy Street and Washington Avenue, Assessor's Parcel Number 906-080-001 (Right of Way Acquisition Parcels Numbered 7130-4A and 7130-4B).

BACKGROUND

The City of Murrieta and the Riverside County Flood Control District and Water Conservation District plan to construct the Master Planned Line "E" Storm Drain Project in Ivy Street, in Washington Avenue Southerly of Ivy Street and on the Southerly portion of properties lying Southerly of Ivy Street to the Murrieta Creek Channel. The Line "E" drainage facilities are part of the larger "Murrieta Creek Area Master Drainage Plan" which was adopted by the RCFC in March 1986 and updated in 1993. The alignment was approved by the City Council September 7, 1999. It will be necessary to acquire right of way from private property owners for this project to be constructed.

City submitted an offer on August 13, 2003 to acquire the property from the Gordon and Virginia House Trust for \$17,948.00. The value was established by an appraisal obtained by the Agency dated July 11, 2003 by Robert Shea Perdue Real Estate Appraisal. The City received a counter offer in the amount of \$90,00,00 which was withdrawn on September, 2003. Although negotiations will continue, the substantial disparity between the appraised value and the House Trust's perception of the property's value, it is unlikely that there will be an agreement in the near future; hence, it is now appropriate to begin acquisition through eminent domain proceedings.



RESOLUTION OF NECESSITY:

Prior to consideration to adopt a Resolution of Necessity for the Acquisition by Eminent Domain of the subject property, the Agency is required to make the following statutory findings:

1. Whether or not the public interest and necessity requires the project;
2. Whether or not the project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury;
3. Whether or not the interest in real property sought to be acquired is necessary for the Project; and
4. Whether or not the offer required by Government Code Section 7267.2 has been made to the owner or owners of record to be acquired.

The following is in response to the above-required findings:

1. **Public Interest:** Staff considers acquisition of the subject property to serve the public interest to be consistent with the objectives of the Master Planned Line "E" and the Murrieta Creek Area Master Drainage Plan.
2. **Greatest Good/Least Private Injury:** As guided by the Master Planned Line "E" adopted by the City Council which considered several alternatives presented by The "Murrieta Line "E" Steering Committee the Staff and the Riverside County Flood Control and Water Conservation District concluded that the accepted alignment was the least damaging to the property owners involved. The alignment through the House Trust's property is the Southerly portion of the property and minimizes the impact to the property.
3. **Necessity to Acquire:** In the existing condition, property west of I-215 extending south through Old Town Murrieta is subject to periodic flooding and Ivy Street floods annually requiring substantial removal of debris. The construction of Line "E" will mitigate this situation..
4. **Offer Made in Conformance with Government Code Section 7267.2:** As indicated in the Background section, the City did conduct an appraisal from a qualified firm in an effort to establish a fair market value in accordance with statutory requirements and an offer pursuant to Government Code Section 7267.2 was made to the Gordon and Virginia House Trust on August 13, 2003.

Approval of the Resolution requires a 4/5ths vote by the Council and the following actions would occur as a result of the approval:



1. Negotiations would continue to occur if progress is being made. In addition, a lawsuit would be filed and the appraised value of the property would be deposited with the court to allow issuance of an order giving immediate possession of the property (as defined by statute) to the City.

Ultimately, the Court would determine the fair market value of the property.

BUDGET IMPACT _____

Funds for this property acquisition are established in Project Account Number 042-0050-08202.000, P200.

ATTACHMENT

EXHIBITS:

- Exhibit A: Resolution No. _____
- Exhibit B: Legal Description
- Exhibit C: Plat Map
- Exhibit D: Vicinity Map

LAW OFFICES OF
HARPER & BURNS LLP
A LIMITED LIABILITY PARTNERSHIP INCLUDING A PROFESSIONAL CORPORATION

ALAN R. BURNS
JOHN R. HARPER*

453 S. GLASSELL STREET
ORANGE, CALIFORNIA 92866

RIVERSIDE / SAN BERNARDINO CO.
(909) 674-0698

OF COUNSEL
JUDI A. CURTIN*
MICHAEL MONTGOMERY*

(714) 771-7728
FAX (714) 744-3350

*A PROFESSIONAL CORPORATION

November 6, 2003

Mr. Gordon House, Trustee
Gordon and Virginia House Trust
Post Office Box 118
Murrieta, California 92564

RE: Notice of Public Hearing for the Adoption of a Resolution of Necessity to Acquire Property for the Construction the Line "E" Storm Drain Project

Dear Mr. House:

PLEASE TAKE NOTICE that on Tuesday, November 18, 2003, at 7:00 p.m. or soon thereafter as the matter may be heard, in the City Council Chambers located at 26442 Beckman Court, Murrieta, California, the Murrieta City Council will conduct a public hearing concerning the potential adoption of a Resolution of Necessity, to acquire through eminent domain, property which you own for the construction of the Line "E" Storm Drain Project. A copy of the draft Resolution of Necessity, including a description of the property, accompanies this letter.

You have the right to appear at the hearing and provide testimony. The purpose of this hearing is not to determine the fair market value of the property, but rather to determine whether the property is necessary to be taken by eminent domain and to make the findings in the accompanying resolution.

Whether or not the resolution is adopted, the City will continue to attempt to reach an amicable agreement with you concerning the price for the acquisition of the property. As you are aware from the appraisal summary which has been provide to you, the fair market value of the property is affected by the fact that it lies in the area which would be required to be dedicated at no cost to the City upon future development of the property.

If you have questions or comments, or wish to continue discussion concerning the acquisition price, please feel free to contact Eugene Diepholz, City Civil Engineer, at (909) 461-2489.

Very truly yours,

HARPER & BURNS LLP

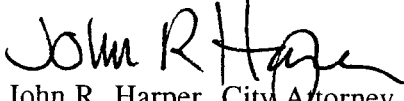

John R. Harper, City Attorney

EXHIBIT A

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MURRIETA, RIVERSIDE COUNTY, CALIFORNIA, DESCRIBING A CERTAIN PROJECT; MAKING A STATEMENT OF THE PUBLIC USE FOR WHICH CERTAIN PROPERTIES ARE TO BE TAKEN AND REFERENCE TO STATUTORY AUTHORITY TO ACQUIRE SAID PROPERTY BY EMINENT DOMAIN; DESCRIBING THE GENERAL LOCATION AND EXTENT OF SAID PROPERTY TO BE TAKEN; DECLARING FINDINGS AND DETERMINATIONS ON THE PUBLIC INTEREST AND NECESSITY FOR SAID PROPERTY; AUTHORIZING AND DIRECTING EMINENT DOMAIN PROCEEDINGS TO BE COMMENCED IN SUPERIOR COURT TO ACQUIRE SAID PROPERTY INCLUDING APPLICATION FOR POSSESSION OF SAID PROPERTY PRIOR TO JUDGMENT; AND MAKING OTHER DETERMINATIONS.

WHEREAS, the City of Murrieta is a public entity organized and existing pursuant to the laws of the State of California; and

WHEREAS, the City of Murrieta intends to undertake a certain project for public purposes; and

WHEREAS, in order to accomplish said project, the City Council believes that it is necessary to acquire by eminent domain certain property, hereinafter collectively called "Subject Property"; and

WHEREAS, pursuant to Section 1245.235 of the Code of Civil Procedure, the City Council has fixed a time and place for the public hearing on the matters referred to in Section 1240.030 of the Code of Civil Procedure; and

WHEREAS, the City Council has given each person who owns or claims a right in said Subject Property proposed to be acquired by eminent domain and whose name and address appears on the last Equalized County Assessment Roll noticed, a reasonable opportunity to be heard in the time, form and manner required by Section 1245.235 of the Code of Civil Procedure; and

WHEREAS, the City of Murrieta has complied with the requirements of Government Code Section 7267.2 in making a fair market value offer to acquire Subject Property; and

WHEREAS, at said public hearing, the City Council did hear and consider all testimony, written and oral, to the matters referred to in Section 1240.030 of the Code of Civil Procedure:

NOW, THEREFORE, CITY OF MURRIETA DOES HEREBY RESOLVE, DETERMINE AND ORDER AS FOLLOWS:

SECTION 1. That the above recitals are true and correct.

SECTION 2. That said Subject Property be taken by eminent domain is for a public use, to-wit: Construction of the Line "E" Storm Drain Project

SECTION 3. That the City of Murrieta is authorized and empowered to commence eminent domain proceedings to acquire said Subject Property pursuant to the eminent domain law, being Title 7, part III of the Code of Civil Procedure and Government Code Section 37350.5

SECTION 4. That a description of the general location and extent of said Subject Property to be taken by eminent domain is set forth on Exhibit "A" attached hereto and made a part hereof.

SECTION 5. That this City Council does hereby further find, determine and declare as follows:

- (a) That the public interest and necessity requires the Project;
- (b) That said Project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury; and
- (c) That said Subject Property sought to be acquired is necessary for said Project.

SECTION 6. That Harper & Burns LLP, attorneys for the City of Murrieta, are hereby authorized and directed to commence an action in the Superior Court of the State of California, for the County of Riverside, in the name and on the behalf of the City of Murrieta, against those persons who appear on record or who are known to have a claim or interest in said Subject Property described in Exhibit "A", for the purpose of acquiring said Subject Property by eminent domain for the public use described herein and to make application of possession of said Subject Property prior to Judgment.

SECTION 7. That the officers of the City of Murrieta are hereby authorized and directed to withdraw necessary sums to deposit with the Superior Court as the probable compensation that will be awarded in the eminent domain proceedings to acquire said Subject Property described in Exhibit "A"

SECTION 8. That the officers of the City of Murrieta are hereby authorized and directed to take any appropriate action consistent with the purposes of this Resolution.

PASSED, APPROVED AND ADOPTED this _____ day of _____, 2003, by the following vote:

AYES:
NOES:
ABSENT:
ABSTENTIONS:

Mayor

Attest:

City Clerk of the City of Murrieta

State of California)
County of Riverside)

I, A.Kay Vinson, City Clerk of the City of Murrieta, do hereby certify that the foregoing Resolution was adopted by the City Council of the City of Murrieta, California, at a regular meeting thereof held on _____, by the following vote of the City Council:

AYES:
NOES:
ABSENT:
ABSTAIN:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of Murrieta, California this _____ day of _____, 2003


City Clerk of the City of Murrieta

**MURRIETA LINE "E"
PARCEL 7130-4A**

Being a portion of Parcel 1 as shown on Parcel Map Book 11, Page 31. records of Riverside County, California. located in the City of Murrieta, County of Riverside, California, described as follows:

Parcel 7130-4A as shown on Record of Survey Book 114, Pages 78 and 79. records of Riverside County, California.





DAVID L. STONE

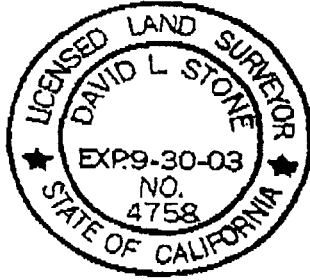
Land Surveyor No. 4758
Signed For: Riverside County Flood Control
and Water Conservation District

Date: 10/14/2003

**MURRIETA LINE "E"
PARCEL 7130-4B**

Being a portion of Parcel 1 as shown on Parcel Map Book 11, Page 31, records of Riverside County, California, located in the City of Murrieta, County of Riverside, California, described as follows:

Parcel 7130-4B as shown on Record of Survey Book 114, Pages 78 and 79, records of Riverside County, California.





DAVID L. STONE

Land Surveyor No. 4758
Signed For: Riverside County Flood Control
and Water Conservation District

Date: 10/14/2003

EXHIBIT C

- [B] FLUSH. PER P.M. 26/79
- FD. 1" I.P. W/L.S. 3698 T/
- [C] FLUSH. PER P.M. 49/6

SOL AND WATER CONSERVATION DISTRICT

R 2002

SET 3/4" I.P.
W/R.C.F.C. & W.C.D. TAG
FLUSH
PER RIV. CO. I.B. 65/96

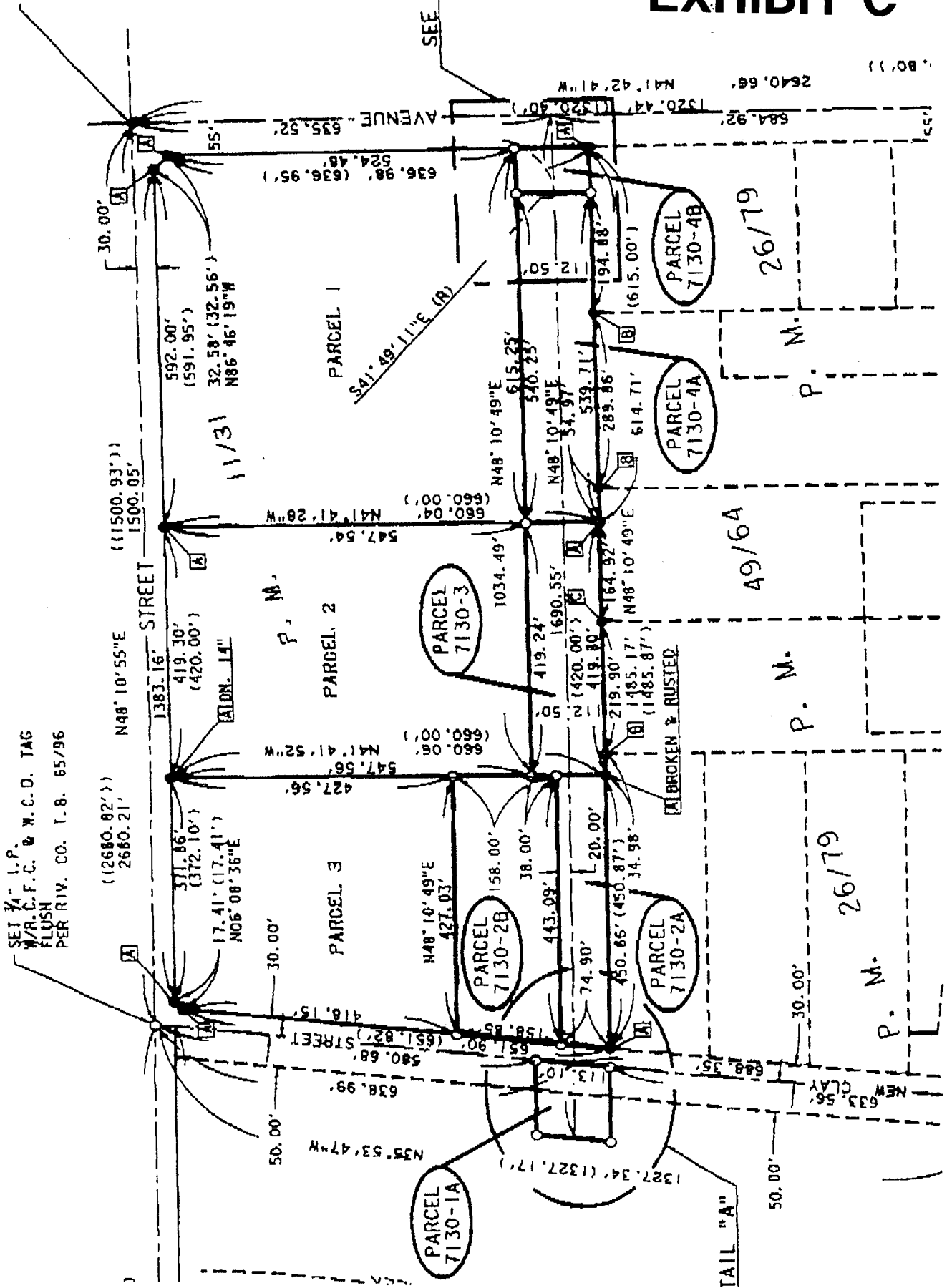


EXHIBIT D

LINE E

