



AGENDA STAFF REPORT

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Agenda Number: A
File ID: 0110.06

Section Name: PUBLIC HEARINGS
Project ID: SW0004

MEETING DATE: January 28, 2025

SUBJECT: Conduct Public Hearing to Consider Adoption of Resolution No. 2025-03, A Resolution of Necessity to Commence an Eminent Domain Proceeding to Acquire 5.781 Acres of Vacant Land, Located in the Unincorporated Area of Thousand Palms in Riverside County, California, Portions of APNs 651-130-057, 651-140-013, 651-140-014, 651-140-015, and 651-140-016

TO: BOARD OF DIRECTORS

FROM: ENGINEERING/RIGHT OF WAY, CARRIE OLIPHANT

GENERAL MANAGER RECOMMENDATION:

RECOMMENDATION:

Staff recommends that the Board of Directors conduct a public hearing and approve the following actions:

1. Adopt Resolution No. 2025-03, entitled A Resolution of Necessity of the Board of Directors of the Coachella Valley Water District ("CVWD") for the Acquisition by Eminent Domain of a Fee Interest within Certain Real Property located in the Unincorporated Area of Thousand Palms in Riverside County California, and identified as portions of Assessor Parcel Nos. 651-130-057, 651-140-013, 651-140-014, 651-140-015, and 651-140-016, for the Thousand Palms Flood Control Project ("Project").
2. Authorize Legal Counsel to commence an eminent domain proceeding to acquire portions of Assessor Parcel Nos. 651-130-057, 651-140-013, 651-140-014, 651-140-015, and 651-140-016 (collectively, the "Subject Property") for the Thousand Palms Flood Control Project.
3. Authorize the General Manager to execute any and all documents in the name of the Coachella Valley Water District needed to commence and process an eminent domain proceeding to acquire portions of Assessor Parcel Nos. 651-130-057, 651-140-013, 651-140-014, 651-140-015, and 651-140-016 for the Thousand Palms Flood Control Project.
4. Authorize the following expenditures, for a total cost of \$122,700:
 - Appraisal amount to be deposited with the State - \$104,700

- Title costs - \$7,000
- Contingency - \$11,000

BUDGET IMPACT:

The total cost of this request is \$122,700. The Project (SW0004) is included in the Stormwater Fund Fiscal 2024-25 Capital Improvement Budget in the amount of \$1,000,000. The Project is within budget; therefore, a budget amendment is not necessary.

PROCUREMENT METHOD:

☒ N/A

If other, please explain: .

BACKGROUND

1. Project Description:

This Project will accept the stormwater flows from the Thousand Palms Watershed generally located on the northern and eastern margins of the community of Thousand Palms between Rio Del Sol Road and Washington Street. The Project would connect to existing stormwater conveyance facilities at the Classic Club Golf Course and the Del Webb/Sun City residential development.

This Project is a key component in stormwater management for the communities north of Interstate 10, which include Thousand Palms and portions of the City of Indio. The Project (in conjunction with the North Indio Flood Control Project, the North Cathedral City Flood Control Project, and the recent East Side Dike improvements) ultimately contributes to flood protection to over 10,000 acres of land from flood hazards emanating from over three major watersheds that drain over 448 square miles of mountain terrain.

2. Property Description.

The Subject Property has been identified as properties needed for the Project. The Subject Property is 5.781 acres of vacant land located in the Unincorporated Area of Thousand Palms, Riverside County, California. It is located south of Ramon Road, east of Vista de Oro within portions of section 21, township 4 south, range 6 east of San Bernardino Meridian. The proposed take is fee title to the Subject Property.

The Subject Property is owned by Peter Tynberg and Nan Tynberg, husband and wife as Joint Tenants an undivided 20% interest; Frank Faraone, an unmarried man an undivided 10% interest; Peter and Nan Tynberg, husband and wife as joint tenants, as to an undivided 70% interest (the "Owners").

3. Offer to Purchase the Subject Property.

Section 7267.2 of the Government Code provides that "Prior to adopting a resolution of necessity pursuant to Section 1245.230 of the Code of Civil Procedure and initiating negotiations for the acquisition of real property, the public entity shall establish an amount that it believes to be just compensation therefor, and shall make an offer to the owner or owners of record to acquire the property for the full amount so established, unless the owner cannot be located with reasonable diligence." CVWD served the Owners with a notice of CVWD's decision to appraise the Subject Property. The following appraisals and offers of just compensation have been made to the Owners pursuant to Government Code section 7267.2 for the full value established by the appraisals:

- March 2, 2023, appraisal establishing the fair market value of the Owner's whole parcels was completed and offer made on March 21, 2023.
- August 14, 2023, fair market value was set by a revised appraisal which included the valuation of those portions of the whole parcels that will be removed from the conservation area upon completion of the Project. A revised offer was provided to the Owners on August 21, 2023.

¹ If the project for which the property is needed has been determined by the public entity to be an emergency project, which project is necessary either to protect or preserve health, safety, welfare, or property, the requirements of Section 7267.2 of the Government Code need not be a prerequisite to the adoption of an authorizing resolution at the time. However, in those cases the provisions of Section 7267.2 of the Government Code shall be implemented by the public entity within a reasonable time thereafter but in any event, not later than 90 days after adoption of the resolution of necessity.

- A best and final offer to purchase the Owner's whole parcels was provided on October 3, 2023.
- September 6, 2024, appraisal establishing the fair market value of those portions of the parcels pursuant to revised legal descriptions was completed with an offer made on October 17, 2024.

Since making the offers, the Owners, through their legal counsel, have rejected the offers. Though they appraised the whole parcels, they have not pursued their own appraisal on the revised property descriptions of the September 6, 2024, appraisal, pursuant to Code of Civil Procedure Section 1263.025. Through numerous and frequent communications with the Owners and Owners' representatives, CVWD has negotiated with the Owners, and representatives of the Owners, and has made reasonable efforts to acquire the Subject Property expeditiously by negotiations. However, to date, staff has not been able to negotiate an agreement for the purchase of the Subject Property.

CVWD is at a point where it needs to move forward with the Project to protect the public's health and safety. The Subject Property is needed to construct the Project, which will contribute to flood protection to over 10,000 acres of land from flood hazards emanating from over three major watersheds that drain over 448 square miles of mountain terrain.

Since CVWD has not been able to reach an agreement with the Owners and does not anticipate reaching such an agreement with the Owners in the time necessary to complete the Project in a timely manner, it is necessary to initiate eminent domain proceedings to acquire the Subject Property.

4. Resolution of Necessity.

A public entity may not commence an eminent domain proceeding until its governing body has adopted a resolution of necessity that meets the requirements of the Eminent Domain Code. Section 1245.230 of the Code of Civil Procedure requires the resolution of necessity to contain a general statement of the public use for which the property is to be taken and a reference to the statute that authorizes the public entity to acquire the property by eminent domain. The Subject Property is required to construct a portion of the flood control improvements for the conveyance of floodwaters through the designed conveyance system.

The resolution of necessity is also required to include a description of the general location and extent of the property to be taken, with sufficient detail for reasonable identification. The Subject Property is located south of Ramon Road, east of Vista de Oro in the Unincorporated Area of Thousand Palms in Riverside County, within portions of section 21, township 4 south, range 6 east of San Bernardino Meridian. See attached Exhibits "A" and Exhibit "B," which are the legal descriptions and plat depiction of the Subject Property.

As part of the public hearing, the governing body of the public entity is required to find and determine each of the following: (1) The public interest and necessity require the proposed project; (2) The proposed project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury; (3) The property described in the resolution is necessary for the proposed project; and (4) That either the offer required by Section 7267.2 of the Government Code has been made to the owner or owners of record, or the offer has not been made because the owner cannot be located with reasonable diligence.¹

In this case, the elements for adopting the resolution of necessity have been established. First, the public interest and necessity require the proposed Project. The Subject Property is essential for constructing critical flood control facilities designed to protect the region from flood flows originating from watersheds covering over 100 square miles. The Project provides significant economic and environmental benefits while safeguarding public health and safety.

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Second, the proposed project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury. CVWD analyzed other nearby properties for the construction of the necessary improvements. After investigating other alternatives, it was determined that use of the Subject Property provides the greatest benefit for the Public Good since it is vacant and most parcels are currently without access.

Third, the property described in the resolution is necessary for the proposed Project. The Subject Property is necessary for the Project for the construction of a portion of the flood control improvements.

Finally, an offer required by Section 7267.2 of the Government Code has been made to the owners of record. On March 21, 2023, an offer of just compensation for the entirety of the Owners' parcels was made to the Owners. On August 21, 2023, a revised offer of just compensation for the entirety of the Owners' parcels was made to the Owners. A best and final offer for the entirety of the Owners' parcels was made on October 3, 2023. Pursuant to revised legal descriptions, a new offer was made on October 17, 2024. All offers of just compensation were based upon independent appraisals and the offers were for the full Fair Market Value as determined by these independent appraisals. CVWD attempted to negotiate amicable settlements in good faith and will continue to do so throughout the eminent domain process to acquire the property through negotiations with the Owners.

Additionally, in accordance with state law, CVWD offered up to \$5,000 to the Owners to reimburse them for the cost to have their own appraisal prepared. The Owners accepted this reimbursement offer with respect to the entirety of their parcels. To date, the Owners have not pursued an updated independent appraisal for the portions of the parcels CVWD now seeks pursuant to the revised legal descriptions.

The timing of this resolution will balance the need to give the Owners as much time as possible to reach an agreement, while at the same time allowing enough time for CVWD to go through the process to obtain possession in time to avoid delays to project.

5. Hearings and Required Findings.

At the conclusion of the public hearing, staff will recommend that the Board adopt the attached Resolution of Necessity to commence an eminent domain proceeding to acquire the Subject Property. The Resolution of Necessity may only be adopted after the governing body has given each party with an interest in the affected property or their representatives a reasonable opportunity to appear and be heard on the following matters:

1. The public interest and necessity require the proposed project.
2. 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. The real property to be acquired is necessary for the project.
4. An offer of just compensation has been made to the property owner.

The record owners must be afforded an opportunity to appear at the hearing and lodge objections.

A notice of this hearing was sent by first class mail to the Owners. The notice included a statement of the Board's intent to consider the adoption of resolutions, the right of the property owners to appear and be heard on these issues, and that failure to file a written request to appear would result in a waiver of the right to appear and be heard. CVWD scheduled this hearing and mailed the required notice to the Owners on December 19, 2024.

Finding 1: Public Interest and Necessity Require the Project

The Thousand Palms Flood Control Project is regionally significant and will provide economic and public benefits, particularly by the reduction of flooding over more than 2,800 acres of land, protecting over 9,500 residents and businesses. Implementation of this Project will allow for containment of a 100-year storm flow and provide adequate stormwater mitigation for the Thousand Palms area.

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The Final Initial Study/Mitigated Negative Declaration for the Thousand Palms Flood Control Project analyzed the construction and operation of a 5.74-mile flood control conveyance system in order to address the flooding risk in the community (certified December 20, 2022). The Project is designed with four reaches that include a combination of levees, channels, culverts, and a sediment basin.

This Project is needed to manage the stormwater runoff that is carried by the alluvial fans to nearby and adjacent properties, and to maintain the environmental integrity of the area. This Project involves four reaches that collect the flows from Indio Hills, from east of Rio Del Sol Road, connecting to an existing storm water conveyance system within Classic Club, to Washington Street where it will tie into existing stormwater conveyance facilities within Del Webb/Sun City.

This Project will provide the following public benefits:

- Manage the uncontrolled stormwater that currently covers the nearby communities & vacant land;
- Increase economic sustainability of the region;
- Remove FEMA insurance requirements for residents in the area;
- Improve public safety;
- Minimize road closures to ease emergency response;
- Minimize traffic disruption and accessibility issues; and
- Decrease the financial burden on landowners.

Finding 2: The Project is Planned or Located in a Manner Most Compatible with Greatest Public Good and Least Private Injury

A thorough analysis was conducted to find the best alignment for the Thousand Palms Flood Control Project. Environmental analyses and findings indicate the chosen alignment uniquely satisfies engineering, public health, and environmental issues and is the most compatible with the greatest public good and least private injury.

To minimize private injury, a thorough analysis regarding the need for the property and the interest sought was conducted. Efforts during the process included public and private meetings where individuals and businesses could obtain information about the proposed project and offer feedback about the project and potential impacts and CVWD could assess the best possible location for the Project.

CVWD provided numerous opportunities for public review and comment on the Project and engaged in extensive outreach regarding the Project's potential impacts by way of public review and comment, as well as noticed and agendized public meetings.

Compliance with the California Environmental Quality Act ("CEQA") has been satisfied [pursuant to CEQA Public Resources Code §§21000 et seq. and CEQA Guidelines §§15000 et seq.]. Specifically, the Final Initial Study/Mitigated Negative Declaration was certified by CVWD's Board of Director's on December 13, 2022.

Finding 3: The Real Property to be Acquired is Necessary for the Project

The property interest sought below has been analyzed to determine if a feasible design alternative exists that would alleviate the need for the interest. As indicated above, the Owners of the interest were invited to meet with Project staff and provide input to address any concerns the Owners may have with the Project in the manner proposed and the necessity of the acquisition. In the end, staff recommends the following interests in real property are necessary for the Project.

Resolution of Necessity No. 2025-03 – Owners: Peter Tynberg and Nan Tynberg, husband and wife as Joint Tenants an undivided 20% interest; Frank Faraone, an unmarried man an undivided 10% interest; Peter and Nan Tynberg, husband and wife as joint tenants, as to an undivided 70% interest; APNs 651-130-057, 651-140-013, 651-140-014, 651-140-015, and 651-140-016

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The affected property is located in the Unincorporated Area of Thousand Palms in Riverside County, California, and identified as portions of Assessor Parcel Nos. 651-130-057, 651-140-013, 651-140-014, 651-140-015, and 651-140-016.

According to property legal descriptions, the total site size of the area to be acquired is 5.781 acres and is located on the south side of Ramon Road, west of Vista de Oro in the Unincorporated Area of Thousand Palms in Riverside County, California. The Subject Property is vacant land and is located within Flood Zone AO. Flood insurance is mandatory within Zone AO. The parcels have access from reserved undeveloped street right of way. The parcels are zoned R-1 One Family Dwellings which allows for single-family residential, and agriculture uses. The General Plan land use designation of R-R, rural residential, which has a minimum lot size of 5 acres.

CVWD seeks to acquire a fee interest in the Subject Property. An offer of just compensation for the property interest sought to be acquired was made to the record owners on October 17, 2024. Since the Subject Property is vacant, no relocation of businesses or residents will be necessary. There are no improvements within the Subject Property that will be impacted by the Project.

CVWD now seeks a resolution of necessity for the purpose of acquiring the property interests necessary for the Project.

The legal descriptions and plat maps of the property rights sought to be acquired are attached as exhibits to Resolution of Necessity No. 2025-03.

The Notice of Hearing was mailed to Peter Tynberg and Nan Tynberg, Frank Faraone, and Peter and Nan Tynberg on December 19, 2024.

Finding 4: Offers of Just Compensation Have Been Made to the Property Owners

A litigation guarantee was obtained from Stewart Title Company to confirm and identify the parties with an interest in the affected property. CVWD then served the affected property owners and other interested parties as appropriate, with a notice of CVWD's decision to appraise the property.

CVWD had the real property interests appraised by the real estate appraisal firm of Thomas M. Pike, Jr. to establish the fair market value of the property interest CVWD is seeking to acquire.

An offer of just compensation was made to the property owners to purchase the property interest and, based on the approved appraisal, as required by Section 7267.2 of the California Government Code. However, CVWD will acquire the fee interest from the property owners through eminent domain, to ensure the property will be available to meet the time frames associated with the Project.

PRIOR BOARD ACTION:

- April 27, 2024 – Additional environmental / permitting services
- September 26, 2023 – Finalization of construction plans to phase the project
- December 13, 2022 – Board certification of the Final Environmental Impact Report, Adoption of the Mitigation Monitoring and Reporting Plan, Findings of Facts, Statement of Overriding Considerations and authorization to file a Notice of Determination for the Thousand Palms Flood Control Project
- August 14, 2018 – Additional Environmental Study Services
- May 24, 2016 – Consultant services for sediment transport study
- June 12, 2012 – Design and environmental services consultant contract

DISTRICT STRATEGIC PLAN GOAL(S)/OBJECTIVES(S):

N/A

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ENVIRONMENTAL IMPACT:

X Yes, attachments included:

Environmental Impact Report - Notice of Determination

PUBLIC NOTICE REQUIRED

Notices were mailed to impacted customers.

LEGAL REVIEW

Best Best & Krieger

ATTACHMENTS

Att 1 - Map

Att 2 - Resolution of Necessity

Att 3 - Exhibits "A" and "B"

Att 4 - Appraisal Summaries

Att 5 - Notice of Determination (CEQA)

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