

**DATE:** June 16, 2008

**TO:** Members, Board of Supervisors, as Governing Board of the Orange County Flood Control District

**FROM:** Director, OC Public Works

**SUBJECT:** June 24, 2008 Board Meeting  
Agenda Item No. 101

Public Hearing on the Proposed Adoption of a Resolution of Necessity for Condemnation of Real Property for the Santa Ana River Mainstem Project

All Districts

**Synopsis:**

On behalf of the Orange County Flood Control District (District), Orange County Counsel has scheduled a hearing to request the Orange County Board of Supervisors, acting in its capacity as the governing Board of the District (Board), to take public comment and consider adoption of a proposed Resolution of Necessity for the filing of a condemnation action to acquire fee simple title to the real property described below (the Subject Property) for the Santa Ana River Mainstem Project (Project). The Project is necessary to protect the safety, health and welfare of residents and properties in Orange County from the devastating effects of major storm events, including a 190-year storm event.

Acquisition of the Subject Property is required for the Project in order to carry out the Project's flood control purposes. Specifically, the Subject Property is needed to allow construction of bank protection within the portion of the Project designated as "Reach 9" (between Weir Canyon Road in the County of Orange and the Riverside County-Orange County boundary), to protect State Route 91 from flooding, erosion and undermining, and to accommodate increased water flow and discharges along that portion of the Santa Ana River resulting from the upstream raising of the Prado Dam's spillway and embankment and the increased capacity of the Dam's outlet works. It is also necessary to acquire the Subject Property for the Project because the Subject Property will be subject to greater inundation as a result of the Prado Dam's increased-capacity outlet works and increased releases.

**A. Specific Real Property to be Condemned and Acquired:**

County Counsel and the Orange County Public Works Department request your Board to consider for adoption the proposed Resolution of Necessity (provided as an attachment to the ASR) to authorize and direct County Counsel and/or special litigation counsel (previously approved by your Board for purposes of representing the District on the Project) to file and pursue proceedings to condemn the following real property (the Subject

Property), which is owned as a matter of record title by Idella Hamilton and Bertacco Ulises, and which is defined and described as follows:

Project Parcel R3104, which is Orange County Assessor's Parcel No. 085-071-29, and which is legally described as:

That certain parcel in the Unincorporated Territory of the County of Orange, State of California, described in that certain "Tax Deed to Purchaser of Tax-Defaulted Property" recorded July 1, 1996 as Instrument No. 19960333874 of Official Records in the Office of the County Recorder of said Orange County.

The Subject Property consists of a total of 6,447 square feet located in an unincorporated area of the County of Orange. The great majority of the Subject Property is situated within the banks of the Santa Ana River, adjacent to the Green River Golf Course, and is submerged during most of the year.

**B. Mailing of Notice of Hearing and Intention to Owners of Record of the Subject Property:**

On May 29, 2008, as shown by the Declaration of Mailing on file with the Clerk of the Board, in compliance with Code of Civil Procedure section 1245.235, the Clerk of the Board mailed to the record owners of the Subject Property, as they are shown on the last equalized assessor's roll (together with a courtesy copy sent to an attorney who has represented Bertacco Ulises in discussions with the District), a Notice of Intention notifying them of the June 24, 2008 hearing, of the Board's intention to consider the adoption of the Resolution of Necessity to acquire and condemn the Subject Property, and of the owners' right to appear and be heard on the issues described therein.

**C. Required Findings and Analysis of Facts Supporting Such Findings:**

As a prerequisite to the Board's adoption of the Resolution of Necessity, at the close of the public hearing, the California eminent domain law (Code of Civil Procedure sections 1245.220 and 1245.230, et seq.) requires the Board to make the findings described below. District staff of the Orange County Public Works Department has analyzed the Project and its objectives, as well as the particular acquisition proposed, with those required findings and legal requirements in mind. Staff hereby recommends to the Board that it make each and all of the findings, and staff provides the following analysis and support for these findings:

**1. The public interest and necessity require the Project**

The existing Prado Dam (Dam) was built in 1941 for flood protection purposes, and is located near the confluence of State Routes 71 and 91. The Dam is operated by the U.S. Army Corps of Engineers (Corps). Because of increased urbanization both upstream and downstream of the Dam, accumulation of sedimentation, and environmental factors, the flood control protection of the Dam has been significantly diminished over the past 60 years. The Corps considers this situation along the Santa Ana River, to constitute "the worst flood threat west of the Mississippi River," with probable devastating impacts to residents and property, and resulting significant loss of lives, and personal and economic injury, should a significant flood event occur.

Given these conditions, the Corps developed the Santa Ana River Mainstem (SAR) Project, as generally described in the Corps' 1988 Phase II General Design Memorandum and Final Supplemental Environmental Impact Statement, which includes construction of Reach 9 (the area of the Project located between Weir Canyon Road in the County of Orange and the Riverside County-Orange County boundary), and the raising of the Dam's spillway and embankment and constructing new higher capacity outlet works.

In order to cooperate with the Corps and to carry out the Project, in 1989 your Board approved the SAR Project Local Cooperation Agreement (LCA) between the U.S. Army (Army), the District, and the flood control districts of Orange, Riverside and San Bernardino counties. The LCA, among other things, requires the District to acquire real property rights for construction of flood protection structures (e.g., dikes, bank protection, and floodwalls). Unless all property rights (including the Subject Property) are acquired by the District in the areas where such construction is necessary, the Project may not be completed or may not be entirely effective. And if the Project is not completed, then the risks and perils identified by the Corps, as described above, may impact Orange County residents and properties. Thus, the Project is necessary to protect the health, safety and welfare of the residents of the County of Orange.

**2. The Project is planned or located in the manner that will be most compatible with the greatest public good and least private injury**

Given the location of the Santa Ana River, and given the fact that the Dam embankment, spillway, and reservoir already exist, there is no cost effective alternative to the Project, in order to provide the desired level of flood protection and to achieve the public benefits and protection described above. Prior to 1989, the Corps conducted significant analysis over several years to determine Project requirements and potential impacts to address the serious flood threat discussed above, while mitigating environmental and other impacts and minimizing private injury as feasible. Since 1990, the Corps and the District have conducted additional studies to determine if construction of bank protection improvements is feasible, on a technical, economic and environmental basis. Based on these studies, the District has determined that it is necessary to acquire the fee interest in the Subject Property. There is no feasible or cost-effective alternative to the Project that would reduce impacts on those private properties affected by the Project.

**3. The Subject Property is necessary for the Project**

If the Subject Property is not acquired, the Project could not proceed as planned, which in turn would result in inadequate flood protection downstream of the Prado Dam, potential flooding of or damage to State Route 91, and property damage, injury and loss of life suffered by those downstream in Orange County. Specifically, it is necessary that the District acquire fee title to the Subject Property for the following essential flood control purposes: acquisition of the Subject Property is necessary to allow construction of bank protection along Reach 9. Only then will such bank protection improvements be able to protect State Route 91 from flooding, erosion and undermining. And only then will that area of the Santa Ana River be able to accommodate increased water flow and discharges resulting from the upstream raising of the Prado Dam's spillway and embankment and the increased capacity of the Dam's outlet works. It is also necessary

to acquire the Subject Property for the Project because the Subject Property will itself be subject to greater inundation as a result of the increased capacity of, and releases from, the Prado Dam's increased-capacity outlet works.

**4. The offer required by California Government Code section 7267.2 was made to the owners of record of the Subject Property**

In conformance with Sections 7267.1 and 7267.2 of the California Government Code and Board of Supervisors Resolution 67-612, an appraisal has been prepared covering the Subject Property. An offer, based on said appraisal, has been made to the owners of the Subject Property, and a written statement, showing the appraised value of the Subject Property and summarizing the basis of the value, has been delivered to those owners.

After the offer was made to the owners, from late 2006 through 2007 District staff made efforts to communicate with the owners and to discuss or negotiate a voluntary sale. However, those efforts did not lead to any progress. District staff then sent a letter to the owners of the Subject Property on February 21, 2008 renewing the District's offer to acquire the property for \$4,000. That letter requested a response from the owners as to their willingness to sell the Subject Property by March 6, 2008. On March 14, 2008, District staff received a letter from an attorney named Richard Hundley, stating that he represents only Bertacco Ulises and not the other owner of the Subject Property, Idella Hamilton. Mr. Hundley indicated that they believed the District's offer to be inadequate and informed the District of their intent to obtain their own appraisal of the Subject Property in order to determine their view of fair market value. But nothing further has been heard from him or from either of the owners directly. In fact, Idella Hamilton has never responded to any of the District staff's offer letters or other correspondence in any way.

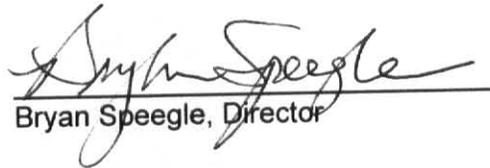
The Project schedule has reached the point where it is necessary to obtain possession of the Subject Property within approximately the next 9 to 12 months in order to meet construction schedules for Reach 9, depending on and subject to federal funding for the Army Corps of Engineers' construction purposes. In turn, construction of Reach 9 impacts the schedule for other required construction phases or aspects of the Project. As a result, and in light of the lack of progress in negotiating a voluntary sale, the District has asked County Counsel to seek a determination by your Board as to whether it is necessary to acquire the Property through condemnation.

**D. Recommended Actions:**

Accordingly, we respectfully recommend that your Board, acting in the capacity as the governing Board of the District, at the conclusion of the public hearing noticed by the Clerk of the Board, adopt, by at least a two-thirds vote of the Board, the proposed Resolution of Necessity:

1. Making the required Findings described above and stated therein;

2. Directing County Counsel and/or previously approved special litigation counsel to institute eminent domain proceedings to condemn and acquire fee simple title to the Subject Property; and
3. Authorizing the Auditor-Controller to encumber and disburse funds as described in the Resolution.

  
Bryan Speegle, Director

cc: Thomas G. Mauk, CEO  
Alisa Drakodaidis, Deputy CEO, OC Infrastructure  
Jeffrey M. Richard, Supervising Deputy County Counsel  
Ignacio G. Ochoa, P.E., Director OC Road & Flood/Chief Engineer  
Nadeem Majaj, P.E., Assistant Director OC Road & Flood/Chief Engineer  
Kevin Onuma, P.E., Manager, Flood Control Division  
Lance Natsuhara, P.E., Manager, Santa Ana River Project  
Carolee Condon, Manager, Real Estate Services