

**REPORT/RECOMMENDATION TO THE BOARD OF SUPERVISORS
OF THE SAN BERNARDINO COUNTY FLOOD CONTROL DISTRICT
AND RECORD OF ACTION**

January 27, 2026

FROM

NOEL CASTILLO, Chief Flood Control Engineer, Flood Control District

TERRY W. THOMPSON, Director, Real Estate Services Department

SUBJECT

Resolution to Declare San Bernardino County Flood Control District Property Exempt Surplus Land and Amendment to First Amended and Restated Purchase and Sale Agreement and Joint Escrow Instructions and Amendment to Habitat Mitigation Reimbursement Agreement with the City of Highland

RECOMMENDATION(S)

Acting as the governing body of the San Bernardino County Flood Control District:

1. Adopt **Resolution No. 2026-15**:
 - a. Declaring vacant land owned by the San Bernardino County Flood Control District, identified as the North Parcel which is approximately 8.61 acres in the City of Highland, is no longer necessary for the uses and purposes for which it was acquired and is exempt surplus land, in accordance with County Policy 12-17, Water Code Appendix Section 43-6, and Government Code section 54221(f)(1)(N).
 - b. Determining that none of the characteristics listed under Government Code section 54221(f)(2) apply to the land identified in Recommendation No. 1.a.
 - c. Finding the disposition of the land identified in Recommendation No. 1.a. will generate revenue, which will directly further the express purpose of the San Bernardino County Flood Control District's work or operations, including the development, maintenance, and operation of the San Bernardino County Flood Control District's flood control and water conservation improvements, as provided in Government Code section 54221(f)(1)(N).
 - d. Directing the Clerk of the Board of Supervisors to certify the adoption of this Resolution and directing the Real Estate Services Department to send a copy of this Resolution to the State of California Department of Housing and Community Development in accordance with Sections 104(c) and 400(e) of the Surplus Land Act Guidelines.
2. Approve **Amendment No. 1** to First Amended and Restated Purchase and Sale **Agreement and Joint Escrow Instructions No. 20-21** with the City of Highland that extends the North Parcel closing date from January 27, 2026, to July 27, 2027, adds an extension fee to be paid by the City of Highland to the San Bernardino County Flood Control District in the lump sum amount of \$50,000, which increases the total contract amount from \$4,500,00 to \$4,550,000, changes the responsibility for the completion of the berm removal work from the San Bernardino County Flood Control District to the City of Highland, and adds a reimbursement obligation by the San Bernardino County Flood Control District to the City of Highland for the berm removal work in an amount not to exceed \$835,000.
3. Approve **Amendment No. 1 to Habitat Mitigation Reimbursement Agreement No. 20-22** with the City of Highland that extends the completion due date for habitat mitigation work to be completed by the City of Highland from January 27, 2026 to July 27, 2027.

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4. Authorize the Flood Control Engineer to approve on behalf of San Bernardino County Flood Control District a detailed scope of work submitted by the City of Highland in order for the City of Highland to receive reimbursement from the San Bernardino County Flood Control District for costs incurred by the City of Highland for the berm removal work pursuant to the First Amended and Restated Purchase and Sale Agreement and Joint Escrow Instructions.
(Presenter: Terry W. Thompson, Director, 387-5000)

COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES

Create, Maintain and Grow Employment Opportunities and Economic Value in the County.

Operate in a Fiscally-Responsible and Business-Like Manner.

FINANCIAL IMPACT

Approval of this item will not result in the use of Discretionary General Funding (Net County Cost). The Flood Control District (FCD) will receive revenue of \$50,000 as consideration for Amendment No. 1 to the First Amended and Restated Purchase and Sale Agreement and Joint Escrow Instructions. In addition, FCD will receive revenue for Zone 2 (1920002522) in the amount of \$2,000,000 for the sale of FCD's 8.61-acre North Parcel (Property) being conveyed to the City of Highland (City). FCD will reimburse the City: 1) an amount not to exceed \$1,500,000 for the City's costs associated with habitat mitigation work (Habitat Mitigation Work) for the sensitive San Bernardino Kangaroo Rat (SBKR) habitat necessitated by the berm removal under the Habitat Mitigation Reimbursement Agreement; and 2) the City's berm removal costs incurred during the removal period up to \$835,000 pursuant to the First Amended and Restated Purchase and Sale Agreement and Joint Escrow Instructions due to the removal obligation being changed from FCD to the City. The City will assume responsibility for payment of all escrow and title fees incurred for this transaction. Once conveyed to the City, FCD will not be responsible for any ongoing maintenance and liability associated with the Property. While FCD will receive \$2,050,000 in sale and extension revenue, FCD may reimburse the City up to \$2,335,000 in Habitat Mitigation Work and berm removal costs, all funded within FCD resources. Sufficient appropriations are available within Flood Control District Zone 2 to cover the potential reimbursement obligations and sufficient appropriation will be included in future recommended budgets.

BACKGROUND INFORMATION

On January 28, 2020 (Item No. 60), the Board of Supervisors (Board) approved the First Amended and Restated Purchase and Sale Agreement and Joint Escrow Instructions, Contract No. 20-21, between FCD and the City amending the property sale of 20.19 acres of property from FCD to the City for \$4,500,000, into two separate transactions to: 1) sell FCD's 11.58-acre South Parcel property in fee for \$2,500,000 and to close escrow on or before February 28, 2020, and 2) sell the Property in fee for \$2,000,000 and to close escrow upon the removal of certain berms, which are raised mounds of earth used to control water flow or provide protection, and related mitigation of impacted SBKR habitat, but in no event beyond five years; and 3) to amend certain other terms and conditions of the original Purchase and Sale Agreement, Contract Number 18-17. The Board also approved the Habitat Mitigation Reimbursement Agreement, Contract No. 20-22, authorizing the City to perform the mitigation for SBKR habitat as necessitated for FCD's berm removal on the Property, as well as

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authorized FCD to reimburse the City up to, but not exceeding, \$1,500,000 for the cost to perform the related habitat mitigation.

According to the First Amended and Restated Purchase and Sale Agreement and Joint Escrow Instructions, once the City completes the required “Habitat Mitigation Work”, which includes the City’s acquisition of real property for dedication of habitat to mitigate the loss of existing habitat on the Property, under the Habitat Mitigation Reimbursement Agreement, then City is obligated to complete the berm removal work under the First Amended and Restated Purchase and Sale Agreement and Joint Escrow Instructions. In 2020, escrow closed on FCD’s 11.58-acre South Parcel. Escrow has not closed on the Property.

The First Amended and Restated Purchase and Sale Agreement and Joint Escrow Instructions remain in effect for the sale of the Property (i.e., the remaining approximately 8.61 acres) to the City for \$2,000,000. The sale will proceed following the City’s completion of any necessary SBKR mitigation and the City’s subsequent removal of the existing berm. Under the terms of this agreement, escrow was to close no later than January 27, 2025. Likewise, under the Habitat Mitigation Reimbursement Agreement, the City had until January 27, 2025, to complete its work. After the parties entered into the agreements, the COVID-19 pandemic occurred. By letter dated October 21, 2024, the City advised FCD that the COVID-19 pandemic was unexpected, impacted their ability to perform under this Agreement, and extended by 12 months the completion date in the Habitat Mitigation Reimbursement Agreement and the close of escrow date in the First Amended and Restated Purchase and Sale Agreement and Joint Escrow Instructions.

On November 19, 2024 (Item No. 64), the Board acknowledged and did not dispute the position taken by the City in their letter dated October 21, 2024. Additionally, the Board waived the requirement in Section 6.9 of the Habitat Mitigation Reimbursement Agreement that the City provide the FCD with notice of the delay within 30 days of the occurrence. Lastly, the Board approved FCD’s 12-month force majeure delay, also caused by the COVID-19 pandemic, pursuant to Section 4.10(b)(4) of the First Amended and Restated Purchase and Sale Agreement and Joint Escrow Instructions for FCD to complete the “Seller Work”. Per the Habitat Mitigation Reimbursement Agreement, the City must complete “Habitat Mitigation Work” before FDC begins “Seller Work” or ground disturbance activities on the Property. The new due date for the City to complete their work under the Habitat Mitigation Reimbursement Agreement was reset to January 27, 2026.

Since the prior Board action, the City advised FCD, by letter dated September 10, 2025, that the City’s habitat mitigation work remains incomplete and again requested an additional extension of time to complete the work under the First Amended and Restated Purchase and Sale Agreement and Joint Escrow Instructions. The parties then negotiated Amendment No. 1 to the First Amended and Restated Purchase and Sale Agreement and Joint Escrow Instructions, as well as Amendment No. 1 to Habitat Mitigation Reimbursement Agreement.

Amendment No. 1 to First Amended and Restated Purchase and Sale Agreement and Joint Escrow Instructions extends the closing due date for the sale of the Property from January 27, 2026 to July 27, 2027, for consideration of \$50,000 to be paid to FCD by the City. In addition, instead of FCD performing at FCD’s cost the berm removal work on the Property before the

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close of escrow, the City shall now perform this work subject to reimbursement by FCD in an amount not to exceed \$835,000, which is FCD's estimated cost to perform the removal work. Therefore, there is no net effect to the contract value due to changing the removal work from FCD to the City.

Amendment No. 1 to Habitat Mitigation Reimbursement Agreement extends the Mitigation Work Completion Deadline for the City to complete its Habitat Mitigation Work from January 27, 2026, to July 27, 2027.

If the City: (a) does not finish the Habitat Mitigation Work by the Mitigation Work Completion Deadline of July 27, 2027; or (b) if the City completes the Habitat Mitigation Work but does not finish the berm removal work by July 27, 2027, then in either case, the City has the option to: (i) close escrow on the Property without the berm removal work as a closing condition; or (ii) terminate the First Amended and Restated Purchase and Sale Agreement without further obligations under the agreement. In both cases, FCD shall be responsible for reimbursing the City an amount not to exceed \$1,500,000 for the City's costs associated with Habitat Mitigation Work incurred during the term of the Habitat Mitigation Reimbursement Agreement and the City's berm removal work costs incurred up to closing date or termination date in an amount not to exceed \$835,000 pursuant to the First Amended and Restated Purchase and Sale Agreement and Joint Escrow Instructions.

The Surplus Land Act (Government Code sections 54220-54234) aims to make "surplus land" that is no longer needed for government purposes available for building affordable homes. Pursuant to the Surplus Land Act, land must be declared either "surplus land" or "exempt surplus land," as supported by written findings, before a local agency may take any action to dispose of it consistent with an agency's policies or procedures. A local agency that determines that property is exempt from the Surplus Land Act shall support such a determination with written findings and shall provide a copy of the written determination to the State Department of Housing and Community Development (HCD) at least 30 days prior to disposition.

Delegation of authority to the Flood Control Engineer is requested to allow timely technical review and approval of the City of Highland's detailed berm removal scope of work. The berm removal involves specialized flood control activities that must comply with Flood Control District design standards, safety requirements, and environmental permit conditions. The delegated authority is limited to approving the scope of work for technical compliance only and does not authorize any increase to the Board-approved reimbursement cap of \$835,000 or any expansion of the approved scope.

The recommended action will adopt the Resolution that declares the Property as no longer necessary for the uses and purposes for which it was acquired and is exempt surplus land pursuant to County Policy 12-17, Water Code Appendix Section 43-6, and Government Code section 54221(f)(1)(N). The Resolution also determines that none of the characteristics listed under Government Code section 54221(f)(2) apply to the Property and finds the disposition of the Property will generate revenue, which will directly further the express purpose of FCD's work or operations, including the development, maintenance, and operation of FCD's flood control and water conservation improvements. The Resolution directs the Clerk of the Board of Supervisors to certify the adoption of the Resolution and send a copy of the Resolution to HCD.

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PROCUREMENT

Not applicable.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Agnes Cheng, Deputy County Counsel, and Scott Runyan, Principal Assistant County Counsel, 387-5455) on January 22, 2026; Flood Control District (Mervat Mikhail, Deputy Director, 387-7916) on January 21, 2026; Purchasing (Ariel Gill, Supervising Buyer, 387-2070) on January 22, 2026; and County Finance and Administration (Kathleen Gonzalez, 387-5412, and Eduardo Mora, 387-4376, Administrative Analysts) on January 21, 2026.

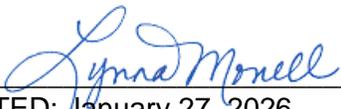
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Record of Action of the Board of Supervisors
San Bernardino County Flood Control District

APPROVED (CONSENT CALENDAR)

Moved: Curt Hagman Seconded: Joe Baca, Jr.
Ayes: Jesse Armendarez, Dawn Rowe, Curt Hagman, Joe Baca, Jr.
Absent: Col. Paul Cook (Ret.)

Lynna Monell, CLERK OF THE BOARD

BY 
DATED: January 27, 2026



cc: RESD - Thompson w/agree
 Contractor - c/o RESD w/agree
 File - w/agree
CCM 01/30/2026