

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

October 22, 2024

FROM

NOEL CASTILLO, Chief Flood Control Engineer, Flood Control District

TERRY W. THOMPSON, Director, Real Estate Services Department

SUBJECT

Facilities Transfer Agreement with Yuhaaviatam of San Manuel Nation for Relinquishment of Easements and Transfer of Ownership and Maintenance Responsibilities for Drainage Facilities at Sand Creek Basin and Channel in San Bernardino

RECOMMENDATION(S)

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

1. Find that approval of the relinquishment of San Bernardino County Flood Control District's easements and the transfer of ownership and maintenance and operational responsibilities for the drainage facilities thereon, comprising a portion of the Sand Creek Basin and Channel in San Bernardino, to Yuhaaviatam of San Manuel Nation is an exempt project under the California Environmental Quality Act Guidelines Section 15312(b)(3) (surplus property sales) and Section 15061(b)(3) (Common Sense Exemption).
2. Adopt a **Resolution No. 24-157** declaring that San Bernardino County Flood Control District's easements totaling approximately 28.75 acres over portions of Yuhaaviatam of San Manuel Nation-owned real property and the drainage facilities thereon, comprising a portion of the Sand Creek Basin and Channel in San Bernardino, are no longer necessary to be retained for the uses and purposes of San Bernardino County Flood Control District due to Yuhaaviatam of San Manuel Nation's assumption of future maintenance and operational responsibilities for the drainage facilities, and that relinquishing the easements and transferring ownership of the drainage facilities to Yuhaaviatam of San Manuel Nation will not interfere with flood control operations in the region and is in the public interest, in accordance with Water Code Appendix Section 43-6 and County Policy 12-17.
3. Approve non-financial Facilities Transfer **Agreement No. 24-1028** with Yuhaaviatam of San Manuel Nation to relinquish San Bernardino County Flood Control District's easements totaling approximately 28.75 acres over portions of Yuhaaviatam of San Manuel Nation-owned real property (Assessor's Parcel Numbers 0285-121-04-0000, 0285-121-14-0000, 0285-121-30-0000, 0285-121-33-0000, 0285-121-34-0000, 0285-153-14-0000 and 0285-153-15-0000) by Quitclaim, and transfer ownership of the drainage facilities thereon by bill of sale in consideration of Yuhaaviatam of San Manuel Nation's assumption of future maintenance and operational responsibilities for the drainage facilities, for a term commencing upon execution until terminated by mutual agreement.
4. Approve the Quitclaim to relinquish the easements referenced in Recommendation No. 3 and authorize the Chair of the Board of Supervisors to execute the Quitclaim.
5. Approve the Bill of Sale to transfer ownership of the drainage facilities located on the easement areas under the easements referenced in Recommendation No. 3 and authorize the Chair of the Board of Supervisors to execute the Bill of Sale.

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6. Authorize the Director of the Real Estate Services Department to execute any other non-substantive documents necessary to complete this transaction, subject to County Counsel review.
7. Direct the Real Estate Services Department to file the Notice of Exemption in accordance with the California Environmental Quality Act.
(Presenter: Terry W. Thompson, Director, 387-5000)

COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES

Ensure Development of a Well-Planned, Balanced, and Sustainable County.

Pursue County Goals and Objectives by Working with Other Agencies and Stakeholders.

FINANCIAL IMPACT

Approval of this item will not result in the use of Discretionary General Funding (Net County Cost). The proposed relinquishment of San Bernardino County (County) Flood Control District's (FCD) easements and transfer of ownership of the drainage facilities thereon to Yuhaaviatam of San Manuel Nation (San Manuel) will be at no cost or revenue to FCD. Instead, San Manuel will assume all future maintenance and operational responsibilities for the drainage facilities on the relinquished easement areas at its cost. This transfer relieves FCD of ongoing financial obligations related to the upkeep and management of the drainage facilities, resulting in anticipated long-term cost savings. No additional funding or expenditure is required from FCD as a result of this transaction.

BACKGROUND INFORMATION

FCD manages and maintains essential drainage improvements for the Sand Creek Basin and Channel, which consists of a basin, an improved channel, and associated facilities located north of the City of San Bernardino, adjacent to the northernmost portion of Victoria Boulevard and North of San Manuel Boulevard. These improvements provide flood control and water management to the area, ensuring the safety and well-being of the local community. A portion of the drainage facilities is situated on real property owned by San Manuel over which San Manuel previously granted easements (Easements) to FCD, as identified in Recommendation No. 3.

San Manuel expressed an interest in taking over the maintenance and operation of the drainage facilities located on its property (Drainage Facilities), subject to FCD transferring ownership of the Drainage Facilities to San Manuel and relinquishing the Easements. San Manuel would then be responsible for the future maintenance and operation of the Drainage Facilities at its cost. This transfer would include the relinquishment of the Easements by a quitclaim deed from FCD, the transfer of ownership of the Drainage Facilities by a bill of sale, and San Manuel's obligation to maintain and operate the Drainage Facilities under the Facilities Transfer Agreement (FTA).

FCD has reviewed San Manuel's request and determined that the Easements are no longer necessary to be retained for the uses and purposes of FCD due to San Manuel's assumption of future maintenance and operational responsibilities for the Drainage Facilities pursuant to the FTA, and that relinquishing the Easements and transferring ownership of the Drainage Facilities to San Manuel will not interfere with flood control operations in the region and is in the public interest.

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FCD and the Real Estate Services Department (RES D) have determined San Manuel's assumption of maintenance and operational responsibilities for the Drainage Facilities will result in anticipated savings to FCD that will exceed the fair market value of the Easements and the Drainage Facilities, and as such the relinquishment of the Easements and the transfer of the ownership of the Drainage Facilities to San Manuel will be at no cost to San Manuel.

The FTA contains the following non-standard terms:

1. The term of the FTA continues until terminated by mutual agreement of the parties.
 - County Policy 11-04 does not permit indefinite term contracts unless approved by the Board of Supervisors (Board).
 - Potential Impact: There is no end date to the FTA and FCD is indefinitely bound to its terms and conditions.
2. FCD will indemnify, defend and hold San Manuel harmless for claims arising out of FCD's breach of the FTA.
 - FCD's standard contract does not include any indemnification or defense by FCD of the other party. In addition, FCD waives any right to assert governmental immunities against San Manuel. While San Manuel waives any right to assert tribal sovereign immunity against FCD, its waiver is limited in time to the earlier to occur of two years after a claim arose, one year after a claim is discovered, or one year after the earlier termination of the FTA.
 - Potential Impact: By agreeing to indemnify San Manuel and waiving the protection of sovereign immunity, claims that may otherwise be barred against FCD, time limited, or expense limited, could be brought and FCD would be responsible to defend and reimburse San Manuel for costs, expenses, and damages, which could exceed the expected savings of relinquishing the Easements and transferring the Drainage Facilities. FCD's ability to make claims against San Manuel is limited, which could leave FCD without a sufficient remedy for any time-barred claims.

FCD recommends approval of the FTA, including non-standard terms, as relinquishing the Easements will relieve FCD of ongoing financial obligations related to the upkeep and management of the Drainage Facilities, while obligating San Manuel to maintain them.

The proposed action will also allow the Director of RESD to execute any other incidental documents as necessary to complete this transaction that do not substantively modify the FTA, subject to County Counsel review. The Director of RESD will not be authorized to execute any documents that would bind FCD to any actions not contemplated by, or arising from, the transaction which is the subject of these recommendations.

In compliance with the California Environmental Quality Act (CEQA), FCD's Environmental Management Division staff reviewed the proposed relinquishment of the Easements to San Manuel and transfer of ownership and maintenance and operational responsibilities for the Drainage Facilities and determined that the project qualifies for a Class 12 Categorical Exemption under CEQA Guidelines Section 15312(b)(3), which pertains to surplus government property sales. This exemption is applicable as the use of the Easements has not changed since the time each was acquired by FCD. Furthermore, the relinquishment of the Easements is exempt under CEQA's common-sense exemption, set forth in Section 15061(b)(3) of the

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CEQA Guidelines, which applies when it can be determined with certainty that the activity will have no significant effect on the environment.

PROCUREMENT

FCD may relinquish the Easements and transfer the ownership and maintenance and operational responsibilities for the Drainage Facilities to San Manuel in accordance with Water Code Appendix Section 43-6 and County Policy 12-17.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Agnes Cheng, and Sophie A. Curtis, Deputies County Counsel, 387-5455) on October 3, 2024; Risk Management (Whitney Fields, Director, 386-8623) on October 4, 2024; Flood Control District (Grant Mann, Deputy Director, 387-7918) on September 11, 2024; Purchasing (Ariel Gill, Supervising Buyer, 387-2070) on September 12, 2024; Finance (Jessica Trillo, 387-4222, and Garrett Baker, 387-3077, Administrative Analysts) on October 4, 2024; and County Finance and Administration (Valerie Clay, Deputy Executive Officer, 387-5423) on October 7, 2024.

(JAG: 677-8210)

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

APPROVED (CONSENT CALENDAR)

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

Lynna Monell, CLERK OF THE BOARD

BY 
DATED: October 22, 2024



cc: Flood - Thompson w/agree
Contractor - c/o Flood w/agree
File - w/agree
MBA 10/28/2024