

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

December 3, 2024

FROM

**NOEL CASTILLO, Chief Flood Control Engineer, Flood Control District
TERRY W. THOMPSON, Director, Real Estate Services Department**

SUBJECT

Purchase and Sale Agreement for the Sale of Exempt Surplus Land in Rancho Cucamonga

RECOMMENDATION(S)

CONTINUED FROM TUESDAY, NOVEMBER 19, 2024, ITEM NO. 72

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

1. Find that approval of the Purchase and Sale Agreement and Escrow Instructions described in Recommendation No. 3 is an exempt project under the California Environmental Quality Act Guidelines pursuant to Title 14, Section 15312 of the California Code of Regulations, surplus property sales.
2. Adopt Resolution authorizing the sale of vacant land owned by the San Bernardino County Flood Control District, identified as approximately 1,252.21 acres within the Etiwanda Heights Neighborhood and Conservation Plan Area, in the City of Rancho Cucamonga, to Rancho Etiwanda, LLC, a California Limited Liability Company pursuant to Water Code Appendix section 43-6 and County Policy No. 12-17.
3. Approve the Purchase and Sale Agreement and Escrow Instructions with Rancho Etiwanda, LLC, a California Limited Liability Company to sell up to a total of approximately 1,252.21 acres of real property in Rancho Cucamonga, in phases to be determined, during a five-year Original Term and an optional five-year Extended Term, for a maximum Purchase Price of \$93,000,000, plus interest, plus the consideration noted in the agreement.
4. Authorize the Chair of the Board of Supervisors to execute the Purchase and Sale Agreement and Escrow Instructions with Rancho Etiwanda, LLC, a California Limited Liability Company upon approval of Recommendation Nos. 1 through 3.
5. Authorize the Chief Executive Officer of the San Bernardino County Flood Control District to execute grant deeds to convey the property identified in Recommendation No. 2, or portions thereof, to Rancho Etiwanda, LLC, a California Limited Liability Company at the time of the to-be-determined phases referenced in Recommendation No. 3.
6. Authorize the Director of the Real Estate Services Department to execute additional Escrow Instructions and any other non-binding 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.
Provide for the Safety, Health and Social Service Needs of County Residents.**

FINANCIAL IMPACT

Approval of this item will not result in the use of Discretionary General Funding (Net County Cost). The San Bernardino County Flood Control District (FCD) is funded by property taxes, fees, and

other local, state, and federal funding. FCD will receive revenue up to the amount of \$93,000,000, plus interest, accruing to certain payments for property conveyed as described in the Background Information section, and calculated as the average of the Secured Overnight Financing Rate, in effect on January 1, April 1, July 1, and October 1 each calendar year, plus 2%, compounded annually, plus the additional consideration noted in the Purchase and Sale Agreement and Escrow Instructions (PSA).

BACKGROUND INFORMATION

This item was continued by the Board of Supervisors from November 19, 2024 (Item No. 72) to today's date. The recommended action will authorize the sale of vacant land owned by the FCD, identified as approximately 1,252.21 acres within the Etiwanda Heights Neighborhood and Conservation Plan Area, in the City of Rancho Cucamonga (Property), to Rancho Etiwanda, LLC, a California Limited Liability Company (Buyer) pursuant to Water Code Appendix section 43-6 and County Policy No. 12-17. The PSA will also allow the Buyer to acquire the Property, in either a single transaction, or in multiple phases to be determined, during a five-year Original Term and an optional five-year Extended Term, for Total Consideration of \$93,000,000 plus interest, plus the additional potential profit participation consideration up to \$20,000,000 noted in the PSA and in the table below.

The Property was used historically by FCD to manage stormwater runoff from the San Gabriel Mountains flowing south into both the Day Creek and Deer Creek streams. Over the past four decades, improvements made by FCD, including the Day Creek and Deer Creek Debris Dam, spreading grounds, and channels, have rendered the Property unnecessary for flood management and surplus to FCD needs. Approximately 159 acres of the Property is subject to an open space easement that was approved by the Board of Supervisors (Board) on September 8, 1986 (Item No. 48) and granted to the County as mitigation for the Day Creek Water Project. The open space easement that is held by the County will remain on the Property if FCD sells the Property.

On February 24, 2009 (Item No. 63), by request of FCD, the Board declared an approximately 1,200-acre portion of the Property surplus. However, due to economic difficulties associated with the recession, the disposition process was unable to be completed and was placed on hold.

On November 9, 2020, the Etiwanda Heights Neighborhood and Conservation Plan Area, within which the Property is situated, was annexed into the City of Rancho Cucamonga (LAFCO 3241). Around this time period, the boundaries of the Property were refined, and the total area of the Property was determined to be approximately 1,253 acres.

On December 15, 2020 (Item No. 76), the Board adopted Resolution No. 2020-221, declaring that the Property is no longer necessary for the uses and purposes for which it was acquired and is surplus land pursuant to Government Code section 54221(b)(1). Thereafter, the Real Estate Services Department (RESA) released Notices of Availability (NOA) and proceeded with extended good faith negotiations, with a responder to the NOA, over a period of more than two years. However, no deal was able to be completed and the parties' ended negotiations.

On October 22, 2024 (Item No. 61), the Board adopted Resolution No. 2024-154 that rescinded Resolution No. 2020-221 and declared approximately 1,253 acres of the FCD-owned Property as no longer necessary for the uses and purposes for which it was acquired and is exempt surplus land pursuant to County Policy No. 12-17, Water Code Appendix section 43-6, and Government Code section 54221(f)(1)(N). Since Item No. 61 was approved by the Board, the San Bernardino County Surveyor prepared updated legal descriptions of three distinct areas of the Property, referenced as the South Area containing approximately 730.94 acres, the Central Area containing approximately 320.32 acres, and the North Area containing approximately 200.95 acres.

Therefore, the total area of the Property has been updated and defined as containing approximately 1,252.21 acres.

In September 2023, the County received an inquiry from Frontier Enterprises, now the Buyer, a residential homebuilder, expressing interest in a potential purchase of the Property. Thereafter, on behalf of FCD, RESD, with support and approval from the County Administrative Office, entered negotiations with the Buyer and the parties have developed the proposed PSA with the terms summarized below:

Term:	<p>Original Term. For the period commencing from the Effective Date of the PSA and expiring five years thereafter (unless the PSA is earlier terminated), the Buyer may acquire the Property in either a single acquisition for the entire Property, or in multiple acquisitions that total the entire Developable Property, as set forth in Section 5(b) of the PSA. The “Developable Property” is defined as the 730.94 acres of the South Area.</p> <p>Option for Extended Term. If Buyer has not acquired the entire Property or paid the Total Consideration, which is the Purchase Price plus interest, during the Original Term, Buyer shall have the option to extend the Original Term for five more years following the expiration of the Original Term (unless the PSA is earlier terminated). Therefore, the total possible term is ten years.</p>
Phased Acquisition:	<p>Buyer will acquire certain Target Parcels within the South Area of the Property.</p> <p>Within one year after the Effective Date of the PSA, Buyer shall submit a minimum of 60 acres of the Property that Buyer intends to acquire in the first phase for FCD’s review, provided that such portions shall consist of entire-acre parcels within the South Area along with the necessary entire-acre parcels, as required by Resource Agencies (e.g. California Department of Fish & Wildlife) as may be necessary to meet the required amount of mitigation land within the Central Area and North Area needed to develop the Target Parcels within the South Area..</p> <p>Similar to the first phase, Buyer shall submit the number of acres of the Property that Buyer intends to acquire in the second phase for FCD’s review, provided that such portions shall consist of entire-acre parcels within the South Area along with the necessary entire-acre parcels, as required by Resource Agencies (e.g. California Department of Fish & Wildlife) as may be necessary to meet the required amount of mitigation land within the Central Area and North Area needed to develop the Target Parcels within the South Area. The second phase parcels are the Property less the first phase parcels.</p> <p>Regardless of identification of the first phase and second phase parcels, Buyer may acquire all the Target Parcels in a single acquisition during the first phase or in multiple acquisitions that occur within the first phase and, if necessary, during the second phase.</p>
Consideration and Purchase Price Basis:	<p>Within 15 days after the Effective Date, Buyer shall submit an Original Deposit of \$2,500,000 to FCD. The entire Original Deposit shall immediately become non-refundable but shall be applicable to the Total Consideration, which is the Purchase Price plus interest.</p> <p>To exercise the Extended Term, Buyer shall submit an additional Extension Deposit of \$2,500,000.00 to FCD at least 10 days prior to the expiration of the Original Term. The entire Extension Deposit shall immediately become non-</p>

	<p>refundable but shall be applicable to the Total Consideration or the Target Parcel Acquisition Price due from BUYER on the Closing Date for the acquisition of the Final Target Parcels.</p> <p>The Purchase Price for the Property is \$93,000,000 which imputes a per-acre price of \$127,233 based on 730.94 developable acres in the South Area. The Property was appraised by Michael Frauenthal & Associates, Inc., which appraisal is dated March 12, 2024, and is on file with RESD (Appraisal). The Appraisal was based on market data as of February 28, 2024, and was based on a single acquisition of the entire Property.</p>
Interest:	<p>Beginning on the Effective Date, as applied to the Property in a single acquisition, or each Target Parcel in multiple acquisitions, the Purchase Price less the deposit(s) will bear interest at a rate defined as the average of the Secured Overnight Financing Rate, in effect on January 1, April 1, July 1, and October 1 each calendar year, plus 2% percent, compounded annually, which interest shall continue to accrue on the Target Parcel Acquisition Price until the occurrence of each Closing Date for the Target Parcel acquisitions at which point interest will be paid (with interest continuing to accrue for the remainder of then unacquired South Area of the Property).</p>
Target Parcel Acquisition Price:	<p>The acquisition price to be paid by Buyer at the time of each acquisition of Target Parcels is \$127,233 multiplied by two (totaling \$254,467) for each acre of Target Parcels acquired by Buyer. This total of \$254,467 includes an Accelerated Payment, which is an additional payment of \$127,233 per acre. In addition to the acquisition price, Buyer will pay accrued interest at the time of each acquisition, but only on \$127,233 per acre for the acquired Target Parcels.</p> <p>If Buyer has purchased at least 300 acres of Developable Property, but the Target Parcel Acquisition Price received, plus the deposit(s), plus any profit-sharing payments received (as described below), are less than the Purchase Price of \$93,000,000 plus interest, then Buyer shall pay FCD a differential payment to make up that deficit, in one lump amount at the time of the final Closing Date. If Buyer pays the full Purchase Price plus Interest, then all remaining developable and undevelopable Property shall be conveyed to Buyer.</p> <p>If the Buyer has not purchased at least 300 acres of Developable Property by the expiration of the Extended Term, then FCD shall retain all the unacquired Property. In this case, the acquisition price paid to FCD will be the \$254,467 that had been paid for each acre sold to date, plus interest that had been paid on \$127,233 for each acre sold to date, and any applicable Profit Sharing, as outlined below.</p> <p>If the Buyer does not purchase any acres within the first five-year Original Term, then FCD keeps the \$2,500,000 deposit and the Property.</p>
Profit Sharing:	<p>If the Buyer, after acquiring any Target Parcels, sells all or a portion of the Target Parcels to a third-party at any time prior to the Closing Date for the Final Target Parcels, then Buyer shall pay to FCD 50% of the pre-tax net profits from said sale, which shall be paid to FCD at the time the Target Parcels are sold to a third-party and shall be applied as part of the Purchase Price due from Buyer, provided that the Total Consideration has not been previously paid.</p>

	<p>Pre-tax net profits are defined as net revenues minus total costs paid for the land, hard and soft costs attributable to the parcel minus closing costs and 15% general and administrative costs.</p> <p>Additionally, if Buyer retains any of the Property, after acquiring any Target Parcels, and develops this land with apartments, then upon Buyer's receipt of a certificate of occupancy for the apartments, FCD will receive 20% of the per-acre principal, which is equal to \$25,447, for each acre of land developed in this manner. This profit sharing on apartment land shall also be applied as part of the Purchase Price due from Buyer if the Total Consideration has not been previously paid.</p>
Additional Profit Participation:	<p>Additionally, after Closing Date for the Final Target Parcels, FCD shall receive 10% of the net profit, defined as net revenues minus total costs paid for the land, hard and soft costs attributable to the parcel minus closing costs and 15% general and administrative cost, of any additional land sales from Buyer to third parties, or of any sales of finished housing units from Buyer to end-user home buyers. This "Additional Profit Participation" shall not exceed \$20,000,000 in payments from Buyer to Seller. This Additional Profit Participation shall remain in effect for 99 years from the effective date of the Agreement.</p>

*Please note that the capitalized terms in the above table are defined in the Agreement.

FCD reviewed this project and has determined that the project is exempt from the California Environmental Quality Act (CEQA) under CEQA Guidelines section 15312 which pertains to surplus government property sales.

PROCUREMENT

The Board may determine that any real property held by FCD is no longer necessary to be retained for the uses and purposes of FCD and enter into a direct sale of the Property pursuant to Water Code Appendix section 43-6 and County Policy No. 12-17. County Policy No. 12-17 requires the sale of FCD property at fair market value.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (John Tubbs II, Deputy County Counsel, and Scott Runyan, Principal Assistant County Counsel, 387-5455) on ~~November 27~~December 2, 2024; Flood Control District (Noel Castillo, Director, 387-7906) on November 15, 2024; Public Works (Arlene Chun, Engineering Manager, 387-8110) on September 27, 2024; and County Finance and Administration (Matthew Erickson, County Chief Financial Officer, 387-5423) on November 27, 2024.