

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

August 20, 2024

FROM

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

SUBJECT

Rescission of Original Easement Deed and Conveyance of New Easement Deed for Sewer Pipeline Purposes to the City of Fontana

RECOMMENDATION(S)

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

1. Adopt **Resolution No. 2024-132** to rescind an original Easement Deed to the City of Fontana for sewer pipeline purposes over a portion of San Bernardino County Flood Control District-owned property located within the Hawker Crawford Channel in the City of Fontana, totaling approximately 7,720 square feet (a portion of Assessor's Parcel Number 0226-075-62), which was executed only by the San Bernardino County Flood Control District, declare that the conveyance of a new Easement Deed to the City of Fontana, for the same easement area with non-substantive changes in the terms of the Easement Deed, is in the public interest, the new easement interest conveyed will not substantially conflict or interfere with the use of the property by the San Bernardino County Flood Control District, will have no impact nor interfere with regional flood control protection, and authorize the conveyance of the new Easement Deed to the City of Fontana in accordance with Water Code Appendix Section 43-6 and Government Code Section 25526.6 at no cost.
2. Approve the new Easement Deed to the City of Fontana for approximately 7,720 square feet of San Bernardino County Flood Control District-owned property located within the Hawker Crawford Channel in the City of Fontana (a portion of Assessor's Parcel Number 0226-075-62) for sewer pipeline purposes at no cost.
3. Authorize the Director of the Real Estate Services Department to execute any other documents necessary to complete the conveyance of the new Easement Deed, subject to County Counsel review.

(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 (District) is funded by property tax revenue, fee revenue, and other local, state, and federal funding. There is no cost to rescind the original Easement Deed and the new Easement Deed will be conveyed to the City of Fontana (City) at no cost.

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BACKGROUND INFORMATION

On August 10, 2021 (Item No. 38), the Board of Supervisors (Board) approved a Memorandum of Understanding (MOU) No. 21-610, for the realignment and improvement of Hawker Crawford Channel (Channel) for the development of the Narra Hills (formerly Monarch Hills) Project (Project), a planned community in the City. The MOU approved the fee conveyance of a 10.1-acre portion of District-owned property in the Channel area [Assessor's Parcel Number (APN) 0226-075-36] (Property) to EPC Holdings 823, LLC; EPC Holding 944, LLC; Roseville Investments, LLC; America Superior Land, LLC; and RMD Inland Investors, LLC (collectively, Landowner) in exchange for the Landowner's realignment and improvement of the Channel. On December 7, 2021 (Item No. 71), pursuant to Section 21 of the MOU, the Board approved the Assignment and Consent to Assignment in which Arroyo Capital II-6, LLC agreed to accept all of the Landowner's obligations, responsibilities, and duties under the MOU (Amendment No. 1 to MOU No. 21-610).

The improvements are located along the Project frontage and connect to an existing inlet structure north of Duncan Canyon Road. The Project is a planned residential community that consists of five privately gated residential neighborhoods, two private parks, a private recreation facility, pool, trails, and water quality basin. Adjacent properties consist of a mix of vacant land, low density single family residential properties, and natural areas. The Project site is surrounded by the San Bernardino National Forest and San Gabriel Mountains to the north, Interstate 15 is due south and southeast, and a community of single-family homes is located west of the Project site.

On June 14, 2022 (Item No. 93), the Board adopted Resolution No. 2022-101, finding that the proposed Joint Community Facilities Agreement (JCFA) with the City and the City Community Facilities District (CFD) No. 109 (Narra Hills) is beneficial to the District and county residents, and approved and authorized the execution of the following agreements for the realignment and improvement of the Channel in the City: 1) the JCFA with the City and CFD No. 109 (Narra Hills) Agreement No. 22-445; and 2) the Acquisition and Funding Agreement with LS-Fontana LLC and Arroyo Capital II-6, LLC, Agreement No. 22-446. The realignment and improvements are financed through the CFD pursuant to the JCFA and were constructed pursuant to the Acquisition and Funding Agreement with LS-Fontana LLC and Arroyo Capital II-6, LLC.

On September 27, 2022 (Item No. 77), the Board approved Amendment No. 1 to Acquisition and Funding Agreement No. 22-446 with LS-Fontana LLC and Arroyo Cap II-6, LLC, that corrects the name of Arroyo Cap II-6, LLC (from Arroyo Capital II-6, LLC to Arroyo Cap II-6, LLC), as well as Section 6.13 of the Acquisition and Funding Agreement to reflect that Arroyo Cap II-6, LLC retains the right under MOU No. 21-610 to receive the 10.1-acre portion of District-owned property in the Channel area (APN 0226-075-36) in exchange for the realignment and improvement of the Channel. The Board also authorized the Chair to execute the grant deed to convey said portion of APN 0226-075-36. Because the parties have since satisfied the conditions of the Acquisition and Funding Agreement, the District has taken title to the improvements.

Section 7(g) of the MOU states that the District will grant an easement to the City for sewer. The District determined that the conveyance of the easement, totaling approximately 7,720 square feet, to the City for the installation, operation, and maintenance of one public subterranean sewer pipeline and necessary surface appurtenances is in the public interest and will not substantially conflict nor interfere with regional flood protection. The consideration for the sewer easement is included in the value of the improvements provided by the Landowner and, therefore, will be conveyed at no additional cost.

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On May 9, 2023 (Item No. 62), the Board approved Resolution No. 2023-58 and the conveyance of an Easement Deed (Original Easement Deed) to the City for sewer pipeline purposes over District-owned property located in the City, APN 0226-075-62 (a portion of the former APN 0226-075-36, which was subdivided pursuant to the conveyance approved on September 27, 2022), as contemplated in the MOU. After the Board's approval of the easement and execution of the Original Easement Deed, but before the City executed it, the City requested additional non-substantive edits. The Original Easement Deed prohibits the City from parking vehicles within or obstructing the easement area, except temporarily for construction and/or maintenance of the sewer pipeline, as approved by the District in its sole discretion. The City and the District renegotiated this provision to provide that the District's approval for temporary closures shall be at District's sole discretion during any storm or emergency events but shall otherwise not be unreasonably withheld, which was incorporated into a new easement deed (New Easement Deed). The New Easement Deed does not change the easement area, location, or purpose. The City executed the New Easement Deed on February 14, 2024, and returned the Original Easement Deed, which was neither executed nor recorded by the City.

Additionally, approval of this item will authorize the Director of the Real Estate Services Department (RESA) to execute any other incidental documents as necessary to complete this transaction, subject to County Counsel review. The Director of RESA will not be authorized to execute any documents that would bind the District to any actions not contemplated by, or arising from, the transaction which is the subject of these recommendations.

The City, as Lead Agency for the Project under the California Environmental Quality Act (CEQA), adopted the Final Environmental Impact Report (EIR) (State Clearing House No. 2016101065) for the Project (City Resolution No. 2019-031) on February 26, 2019, certifying the Project EIR as adequate and complete. A Notice of Determination was filed with the Clerk of the Board of Supervisors and the Office of Planning and Research on February 28, 2019. The Board made Responsible Agency findings as part of its consideration and approval of MOU No. 21-610 on August 10, 2021 (Item No. 38). No challenges to such findings were timely filed.

PROCUREMENT

The District may convey the New Easement Deed to the City in accordance with Water Code Appendix Section 43-6 and Section 25526.6 of the Government Code.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Agnes Cheng, and Sophie A. Curtis, Deputies County Counsel, 387-5455) on August 2, 2024; Flood Control District (Grant Mann, Deputy Director, 387-7918) on June 12, 2024; Purchasing (Ariel Gill, Supervising Buyer, 387-2070) on June 12, 2024; Finance (Jessica Trillo, 387-4222, and Garrett Baker, 387-3077, Administrative Analysts) on August 1, 2024; and County Finance and Administration (Valerie Clay, Deputy Executive Officer, 387-5423) on August 5, 2024.

(NA: 501-6726)

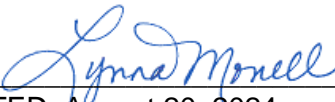
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Record of Action of the Board of Supervisors
San Bernardino County Flood Control District

APPROVED (CONSENT CALENDAR)

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

Lynna Monell, CLERK OF THE BOARD

BY  _____
DATED: August 20, 2024



cc: RESD - Thompson w/deed
 File - Flood Control Operations w/resolution w/deed
CCM 08/27/2024