

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

February 8, 2022

FROM

BRENDON BIGGS, Chief Flood Control Engineer, Flood Control District

SUBJECT

Participation Agreement with AG Essential Housing 4, L.P. and Lennar Communities, Inc.

RECOMMENDATION(S)

Acting as the governing body of the San Bernardino County Flood Control District, approve **Participation Agreement No. 22-101** with AG Essential Housing 4, L.P. and Lennar Communities, Inc. for a term of three years from the date of last signature of the parties but may be extended for two additional one-year terms if agreed to in writing by all parties.
(Presenter: Brendon Biggs, Chief Flood Control Engineer, 387-7906)

COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES

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

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 taxes, fees, and other local, state, and federal funding. Participation Agreement (Agreement) requires AG Essential Housing 4, L.P. (Land Owner) and Lennar Communities, Inc. (Developer) to make a \$200,000 refundable good faith deposit to be applied towards the District's easement relocation costs associated with the development of Tentative Tract Map No. 20092 (TTM 20092) and all related District administrative costs. The District will be made whole for all associated transaction costs in accordance with paragraph 3.4 of the proposed Participation Agreement (Agreement). Sufficient appropriation and revenue have been included in the District's 2021-22 budget (1920002522-F02786).

BACKGROUND INFORMATION

Land Owner and Developer are requesting the District relocate certain access easements in order to complete the development of TTM 20092, referred to as El Rancho Verde, as part of the Lytle Creek Ranch Specific Plan (LCRSP). TTM 20092 will create six lots on a 188-acre site to facilitate a 776-lot residential subdivision in Neighborhood II of the LCRSP. The proposed TTM 20092 will also create one remainder lot and twelve letter lots for public open space, utilities, and infrastructure. Existing District access easements (Book 3829 Page 492 recorded January 11, 1956 and Book 5328 Page 129 recorded February 21, 1961) are incompatible with the proposed development and the Land Owner desires to exchange the current District easements with new, replacement access easements that will be compatible with its development and serve the District's access needs.

Pursuant to the proposed Agreement, the District will negotiate the quitclaim of its easements to

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the Land Owner in exchange for the Land Owner's: (1) Grant of new, equivalent, access easement rights to the District, (2) Payment to District of the fair market value for the difference in square footage of the District easements and the replacement easements, if any, and (3) Dedication of public streets as shown on TTM 20092 to the City of Rialto (City).

Following approval of the proposed Agreement, the Land Owner will deposit \$200,000 with the District to fund the difference in value between the existing and replacement easements and to reimburse the District for its administrative costs in processing the land transaction. The difference in value between the existing and replacement easements will be determined following an appraisal of fair market value in accordance with County Policy 12-17.

The proposed Agreement does not obligate the District to execute the proposed conveyance of District easements, which shall be accomplished in a future item brought before the Board of Supervisors (Board) for the Board's consideration, at its sole discretion. The proposed Agreement further clarifies that the Land Owner and the Developer assume all risk for any improvements constructed and/or costs incurred prior to the Board's consideration of the proposed conveyance and exchange of District easements. The Agreement requires the Developer to indemnify and hold the District and San Bernardino County harmless for any and all claims arising from the Agreement. The term of the Agreement is three years, and may be extended for two additional one-year terms if agreed to in writing by all parties.

The City, as Lead Agency for the TTM 20092 project under the California Environmental Quality Act (CEQA), adopted the Final Environmental Impact Report (EIR) (State Clearing House Number 2009061113) for the TTM 20092 (Resolution No. 5862) on July 13, 2010, certifying the EIR. A Notice of Determination was filed with the San Bernardino County Clerk of the Board of Supervisors and the State Office of Planning and Research on September 12, 2019. The District has a more limited approval and implementing authority related to the relocation of access easements, and, therefore, serves only as a Responsible Agency pursuant to CEQA.

The proposed Agreement makes clear that the Board will consider, at its sole discretion, the proposed exchange of easements in a future item brought before the Board for approval. At this time, District staff has reviewed the recommended approval of the Agreement pursuant to CEQA and has determined that it does not constitute a project and that no further CEQA action is required for this Agreement. As the Responsible Agency, the District will evaluate the City-adopted Project EIR to determine whether such EIR adequately analyzes the potential environmental impacts of the proposed access easement relocation and will make the relevant findings also in the future Board item under which the access easement relocation is to be considered by the Board for approval.

PROCUREMENT

Not applicable.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Sophie A. Akins, Deputy County Counsel, 387-5455) on January 11, 2022; Finance (Jessica Trillo, Administrative Analyst, 387-4222) on January 21, 2022; and County Finance and Administration (Paloma Hernandez-Barker, Deputy Executive Officer, 387-5423) on January 24, 2022.

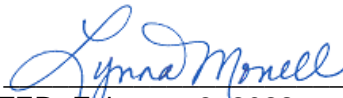
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Record of Action of the Board of Supervisors
San Bernardino County Flood Control District

APPROVED (CONSENT CALENDAR)

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

Lynna Monell, CLERK OF THE BOARD

BY 
DATED: February 8, 2022



cc: Flood - Drake w/agree
Contractor - C/O Flood w/agree
File - w/agree w/map
CCM 02/14/2022