



# CITY OF SANTA BARBARA

## FINANCE COMMITTEE AGENDA REPORT

**AGENDA DATE:** July 2, 2013

**TO:** Finance Committee Members

**FROM:** Administration Division, Finance Department

**SUBJECT:** Funding Of Final Judgment in Ruben Barajas, et, al. v. City of Santa Barbara (SBSC Case No. 1383054)

**RECOMMENDATION:** That the Finance Committee:

- A. Consider options for funding a Superior Court judgment recently entered in connection with Barajas v. City; and
- B. Develop a recommendation for City Council consideration from the funding options presented by staff.

### **DISCUSSION:**

The City recently received jury verdict relating to an inverse condemnation case. Inverse condemnation is a constitutional principle which requires the payment of "just compensation" when the property rights of a third party are adversely impacted by the actions of a public entity. In the present case, the Court ruled that the actions of the City's decision to abandon a small portion of Ealand Place resulted in an impact on private property rights of two of the property owners on this portion of Ealand Place. A jury determined that the City owes the plaintiffs damages resulting from the action of abandoning the street, as well as attorney's fees and legal costs required to obtain the judgment. The damages awarded total \$311,500 and attorney fees and costs awarded are \$325,046.22, for a total amount of \$636,546.22. The judgment awarded to the Plaintiffs by the jury was consistent with the amount of damages supported by the City trial witnesses. Consequently, the City Attorney's office believes the damages award to be appropriate.

However, this award does not fall into the types of liability exposures typically covered by the City's self-insurance program or by the City's excess insurance for liability claims. As such, reserves are not available that have been specifically set aside for this type of award. Since this claim relates to streets maintenance, it is considered a general governmental claim and, as a result, should not be charged to a City restricted fund or enterprise fund. As such, staff has identified a few options that are available for funding this claim, each of which is discussed below.

### Streets Fund

The decision to abandon Ealand Place was a public interest cost-benefit analysis made to avoid much known higher costs which would have resulted if the City was forced to repair and then permanently maintain this portion of Ealand Place to City public streets standards in the future. It was based primarily on the fact that this portion of Ealand Place now only provides access only to one existing home and one vacant lot, (vacant as a result of the 2008 Tea Fire) and on the fact that Ealand Place is located on a very active and unrepairable landslide. As a result, the most appropriate funding source for this claim would be the Streets Fund, since this fund will realize savings from not having to maintain the abandoned portion of Ealand Place.

The Streets Fund receives revenues from various sources, including Measure A, half of the utility users taxes collected from utility companies, and gas taxes. Currently, the Streets Fund does not have sufficient reserves to pay for this abandonment, and its Fiscal Year 2014 revenues have already been programmed. As a result, if the charge were made to the Streets Fund, it would require deferring some streets work, or creating a negative fund balance at the end of Fiscal Year 2014.

### General Fund Reserves

The General Fund has approximately \$22 million in reserves in connection with Council-adopted reserve policies. These reserves are not 100% funded, but each year, pursuant to the same reserves policies, 50% of the year-end surplus is used to either reduce the shortfall or otherwise prevent an increase in the gap since reserve requirements go up as the budget increases each year.

### One-Time Funds Received in Fiscal Year 2013

The City's General Fund has received unbudgeted, one-time, revenues in Fiscal Year 2013 totaling approximately \$4 million. Staff will be coming to Council in Fiscal Year 2014 with capital and other one-time projects that may be good candidates for funding from the one-time funds. One possible option is to allocate a portion of those one-time monies to cover the cost of this abandonment.

### Self-Insurance Fund

The Self-Insurance Trust Fund provides a funding source that covers a variety of exposures to loss or damage. The types of coverage include workers' compensation; general liability; automobile liability; property, to name a few. The Risk Management Division charges each operating program a "premium" to cover the typical exposures to loss resulting from daily operations.

The Self-Insurance Fund does not collect a premium for some types of legal liability exposures to loss relating to municipal operations, including inverse condemnation. As a result, the Self-Insurance Fund annual budget does not accumulate assets in its operating accounts or its reserves specifically to pay awards or settlements resulting from these types of exposures.

However, the Self-Insurance does have monies that have been accumulated, pursuant to the bi-annual actuarial study, to pay for outstanding general liability and workers compensation claims. As of the current date, the Self-Insurance Fund has almost \$6 million in assets. Therefore, these monies could be used to cover the cost of this abandonment. If these funds are indeed used, it would be appropriate to increase premiums charged to the General Fund or Streets Fund over time to recover these monies since ultimately the Self-Insurance Fund will have to make up the loss of those funds.

**PREPARED BY:** Mark W. Howard, Risk Manager

**SUBMITTED BY:** Robert Samario, Finance Director

**APPROVED BY:** City Administrator's Office