



# CITY OF SANTA BARBARA

## COUNCIL AGENDA REPORT

**AGENDA DATE:** July 12, 2016

**TO:** Mayor and Councilmembers

**FROM:** Creeks Division, Parks and Recreation Department  
Engineering Division, Public Works Department

**SUBJECT:** Contract For Construction Of Arroyo Burro Creek Restoration Project  
At Barger Canyon

**RECOMMENDATION:** That Council:

- A. Accept the bid protest of Shaw Contracting, Inc., and reject the apparent low bid from Peter Lapidus Construction of \$598,434.50 for the Arroyo Burro Creek Restoration Project at Barger Canyon – Civil Contract, Bid No. 3828, as non-responsive due to their listing of an unregistered subcontractor;
- B. Award a contract with Shaw Contracting, Inc., in their low bid amount of \$627,675.50 for the Arroyo Burro Creek Restoration Project at Barger Canyon – Civil Contract, Bid No. 3828; and authorize the Public Works Director to execute the contract and approve expenditures up to \$62,768.00 to cover any cost increases that may result from contract change orders for extra work and differences between estimated bid quantities and actual quantities measured for payment;
- C. Reject the apparent low bid from Acacia Environmental of \$236,504.00 for the Arroyo Burro Creek Restoration Project at Barger Canyon – Landscaping Contract, Bid No. 3829, as non-responsive due to their failure to submit a complete bid;
- D. Award a contract with Recon Environmental in their low bid amount of \$274,849.25 for the Arroyo Burro Creek Restoration Project at Barger Canyon – Landscaping Contract, Bid No. 3829; and authorize the Public Works Director to execute the contract and approve expenditures up to \$27,485.00 to cover any cost increases that may result from contract change orders for extra work and differences between estimated bid quantities and actual quantities measured for payment;
- E. Authorize the Public Works Director to execute a contract with Questa Engineering Corporation in the amount of \$47,800.00 for construction support services, and approve expenditures of up to \$4,780.00 for extra services of Questa Engineering Corporation that may result from necessary changes in the scope of work; and

- F. Transfer \$305,428 from available Creeks Operating Fund reserves to the Creeks Capital Fund and appropriate for the Upper Arroyo Creek Restoration Project to cover additional costs of construction.

### **EXECUTIVE SUMMARY:**

Five bids were received for the Civil Contract of the Arroyo Burro Restoration at Barger Canyon Project (Project). Staff recommends Council accept the bid protest of Shaw Contracting, Inc., (Shaw), reject the apparent low bid from Peter Lapidus Construction (Lapidus), and authorize the Public Works Director to enter into a contract with Shaw.

Three bids were received for the Landscaping Contract of the Project; the apparent low bidder was Acacia Environmental (Acacia). Staff recommends that Council reject the apparent low bid for the landscape portion of the Project, and enter into a contract with Recon Environmental (Recon).

Staff also recommends that Council authorize the Public Works Director to enter into a contract with Questa Engineering Corporation (Questa) for engineering services during construction of both the civil and landscaping contracts.

### **DISCUSSION:**

#### Project Description

The Arroyo Burro Watershed in Barger Canyon is currently in a degraded state due to past channel modifications, agricultural development, and poor land management. The site was historically a coast live oak woodland with a well-established riparian zone dominated by willows, sycamores, and oaks. The Project is on a City-owned 14.19-acre parcel and adjacent one acre City-owned conservation easement (see Attachment). The total Project work area will be 4.95 acres. The Project will restore 2,200 linear feet of creek habitat.

Artificial hard structures, such as pipe and wire revetment, sheet metal baffle walls, concrete drainage ditches, and grouted rip rap in the creek, will be removed, and 1,000 linear feet of creek banks will be re-graded to create less erosive slopes. The lower 600 feet of the creek channel will be widened to provide more natural meanders and a braided section of channel. This will increase the width of the riparian zone, reduce channel slopes, increase storm flow infiltration, and improve water quality conditions downstream. An upland seasonal wetland will be constructed to capture storm runoff from the upslope properties. This depression will provide increased habitat diversity onsite through the creation of a wetland habitat, and provide additional capture, infiltration, and treatment of storm water runoff. Large rock, cobble, and gravel will be imported to the site to rebuild portions of the stream channel and reduce future channel incision.

The Project will require five months to complete. To eliminate the need for water diversion, construction will take place during the dry season, (July to November) when no water is present in the channel. Newly graded areas will be stabilized and restored through the installation of erosion control blankets, straw wattles, mulch, and native seeding and planting. Native riparian trees and shrubs will be installed during the rainy season to limit the need for supplemental irrigation. The Project will improve water quality within Arroyo Burro by decreasing erosion and slowing, infiltrating, and filtering creek flows. The Project will improve wildlife diversity and habitat availability at the site through the removal of invasive non-native weeds and the creation and planting of diverse native vegetation communities including riparian, wetland, oak woodland, and chaparral.

Civil Contract Bids

A total of five bids were received for the subject work, ranging as follows:

	<b>BIDDER</b>	<b>BID AMOUNT</b>
1.	Peter Lapidus Construction Carpinteria, CA	\$598,434.50
2.	Shaw Contracting Carpinteria, CA	\$627,675.50
3.	Granite Construction Santa Barbara, CA	\$681,725.00
4.	Innovative Construction Solutions Santa Ana, CA	\$743,298.00
5.	Bosco Constructors Chatsworth, CA	\$833,080.00*

*\*corrected bid total*

The apparent low bid of \$598,434.50, submitted by Lapidus has been determined to be non-responsive, due to its listing of an unregistered subcontractor. Per Section A1 of the Specifications, "No contractor or subcontractor may be listed on a bid proposal for a public works project unless registered with the Department of Industrial Relations." Based on this irregularity, staff recommends that Council reject Lapidus' bid.

The next apparent low bid of \$627,675.50, submitted by Shaw, is responsive to and meets the requirements of the bid specifications. The change order funding recommendation of \$62,768, or ten percent, is typical for this type of work and size of project.

### Bid Protest

On May 31, 2016, five bids were received for the Civil Contract of the Project, and Lapidus was the apparent low bidder. On June 1, 2016, Shaw, the second apparent low bidder, filed a bid protest asserting that Lapidus listed a subcontractor that was not registered with the Department of Industrial Relations (DIR) and, therefore, Lapidus' bid should be rejected as non-responsive. In response to Shaw's protest, Lapidus argued in a letter dated June 1, 2016 that under Public Contract Code section 4107, he could terminate a subcontractor for failing to be registered with the DIR. On June 6, 2016, Lapidus notified the City that he erroneously listed A-1 Tree Service (A-1) as a subcontractor due to a clerical error and that he intended to remove the company as a listed subcontractor. On June 6, 2016, A-1 notified Lapidus that they accepted replacement as a subcontractor. Lapidus thus offered two inconsistent statements to support its request for relief from the consequences of listing an unregistered subcontractor.

On June 20, 2014, Senate Bill 854 (Stat. 2014, Chap. 28) was enacted, bringing several changes to the laws governing how the DIR monitors compliance with prevailing wage requirements on public works projects. As of March 1, 2015, no contractor or subcontractor may be listed on a bid proposal for a public works project unless registered with the DIR pursuant to Labor Code Section 1725.5. This registration requirement makes it easier for DIR to monitor compliance with prevailing wage requirements.

Labor Code section 1771.1(c) states that an inadvertent error in listing a subcontractor who is not registered pursuant to Section 1725.5 in a bid proposal shall not be grounds for filing a bid protest or grounds for considering the bid nonresponsive, provided that any of the following apply: 1) The subcontractor is registered prior to the bid opening; 2) Within 24 hours after the bid opening, the subcontractor is registered and has paid the penalty registration fee; or, 3) The subcontractor is replaced by another registered subcontractor pursuant to Section 4107 of the Public Contract Code. A-1 was not registered prior to the bid opening or within 24 hours. Further, Section 4107 of the Public Contract Code only applies to bids after they have been accepted.

Public Contract Code section 4107.5 states that the prime contractor, as a condition to assert a claim of inadvertent clerical error in the listing of a subcontractor, shall within two working days after the time of the prime bid opening by the awarding authority give written notice to the awarding authority and copies of that notice to both the subcontractor he or she claims to have listed in error and the intended subcontractor who had bid to the prime contractor prior to bid opening. Lapidus' claim of inadvertent clerical error was given on June 6, 2016, past the time allowed by the Public Contract Code. Moreover, Lapidus initially did not claim "inadvertent" error; instead, Lapidus claimed that it had grounds to substitute the unregistered subcontractor under Public Contract Code section 4107. Section 4107, however, applies only after a bid has been accepted.

Since A-1 was not registered and Lapidus did not respond in a timely manner claiming an inadvertent clerical error, Staff has determined the bid is non-responsive. Therefore, Staff recommends that Council reject Lapidus' bid and award the contract to Shaw.

#### Landscaping Contract Bids

A total of three bids were received for the subject work, ranging as follows:

	<b>BIDDER</b>	<b>BID AMOUNT</b>
1.	Acacia Environmental Santa Barbara, CA	\$236,504.00
2.	Recon Environmental San Diego, CA	\$274,849.25
3.	Wilson Environmental Santa Barbara, CA	\$426,038.25*

*\*corrected bid total*

The apparent low bid of \$236,504.00, submitted by Acacia, has been determined to be non-responsive due to its failure to specify mechanical tree spade equipment, as required on the Materials and Equipment bid submittal form. In the specifications, Acacia did not propose to use a mechanical tree spade during construction, thereby giving Acacia a material advantage over the other bidders. The use of mechanical tree spade equipment is important because it helps assure survival of the trees. In addition, it is more costly than what Acacia proposed, and thereby helped to create the apparent financial advantage in Acacia's bid. Based on this irregularity, staff recommends that Council reject Acacia's apparent low bid.

The next apparent low bid of \$274,849.25, submitted by Recon Environmental, is an acceptable bid that is responsive to and meets the requirements of the bid specifications. The change order funding recommendation of \$27,485, or ten percent, is typical for this type of work and size of project.

#### Construction Phase Contract Services

Staff recommends that Council authorize the Public Works Director to execute a contract with Questa in the amount of \$47,800 for design support during construction and \$4,780 in change order funding. Questa was the design consultant on the Project and is experienced in this type of work.

Community Outreach

Public Works staff will coordinate with the contractor to perform the standard public notification for the construction Project. Prior to construction, Creeks Division staff will also send out letters to the neighborhood surrounding the Project site. The letters will provide information about the construction schedule and any associated information.

Funding

This Project is funded by Measure B. The Fiscal Year 2017 Creeks Capital Fund budget includes \$784,930 of available appropriations for the Upper Arroyo Burro Restoration Project. With the recommended transfer of \$305,428 from Creeks Operating Fund reserves to the Creeks Capital Fund for appropriation to the Upper Arroyo Burro Restoration Project, there will be sufficient funds to cover the construction contract funding as well as \$45,000 for construction management and inspection by City staff.

The following summarizes the construction expenditures recommended in this report:

**CONSTRUCTION CONTRACT FUNDING SUMMARY**

	<b>Basic Contract</b>	<b>Change Funds</b>	<b>Total</b>
Civil Contract	\$627,675.50	\$62,768.00	\$690,443.50
Landscape Contract	274,849.25	27,485.00	302,334.25
Consultant Contract	47,800.00	4,780.00	52,580.00
<b>TOTAL RECOMMENDED CONTRACT AUTHORIZATION</b>			<b>\$1,045,357.75</b>
Construction Management/Inspection (by City Staff)			45,000.00
<b>TOTAL CONSTRUCTION COST</b>			<b>\$1,090,357.75</b>

The following summarizes all Project design costs, construction contract funding, and other Project costs:

**ESTIMATED TOTAL PROJECT COST**

*\*Cents have been rounded to the nearest dollar in this table.*

Design (by Contract)	\$134,323
City Engineering Staff Costs	20,000
<b>Design Subtotal</b>	<b>\$154,323</b>
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Civil Construction Contract	\$627,676
Civil Contract Change Order Allowance	62,768
Landscaping Construction Contract	274,849
Landscaping Contract Change Order Allowance	27,485
<b>Subtotal</b>	<b>\$992,778</b>
<hr/>	
Design Support Services (by Contract)	\$52,580
Construction Management/Inspection (by City Staff)	45,000
<b>Subtotal</b>	<b>\$97,580</b>
<b>Construction Subtotal</b>	<b>\$1,090,358</b>
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<b>TOTAL PROJECT COST</b>	<b>\$1,244,681</b>

**SUSTAINABILITY IMPACT:**

The purpose of the Project is to restore historic conditions to this portion of Arroyo Burro, which will improve water quality and wildlife habitat conditions in the watershed.

All correspondence and bid materials are available for public review in the City Clerk's Office and are also in the Council reading file.

**ATTACHMENT:** Project Location Map

**PREPARED BY:** John Ewasiuk, Principal Civil Engineer/AG/sk  
 Cameron Benson, Creeks Division Manager

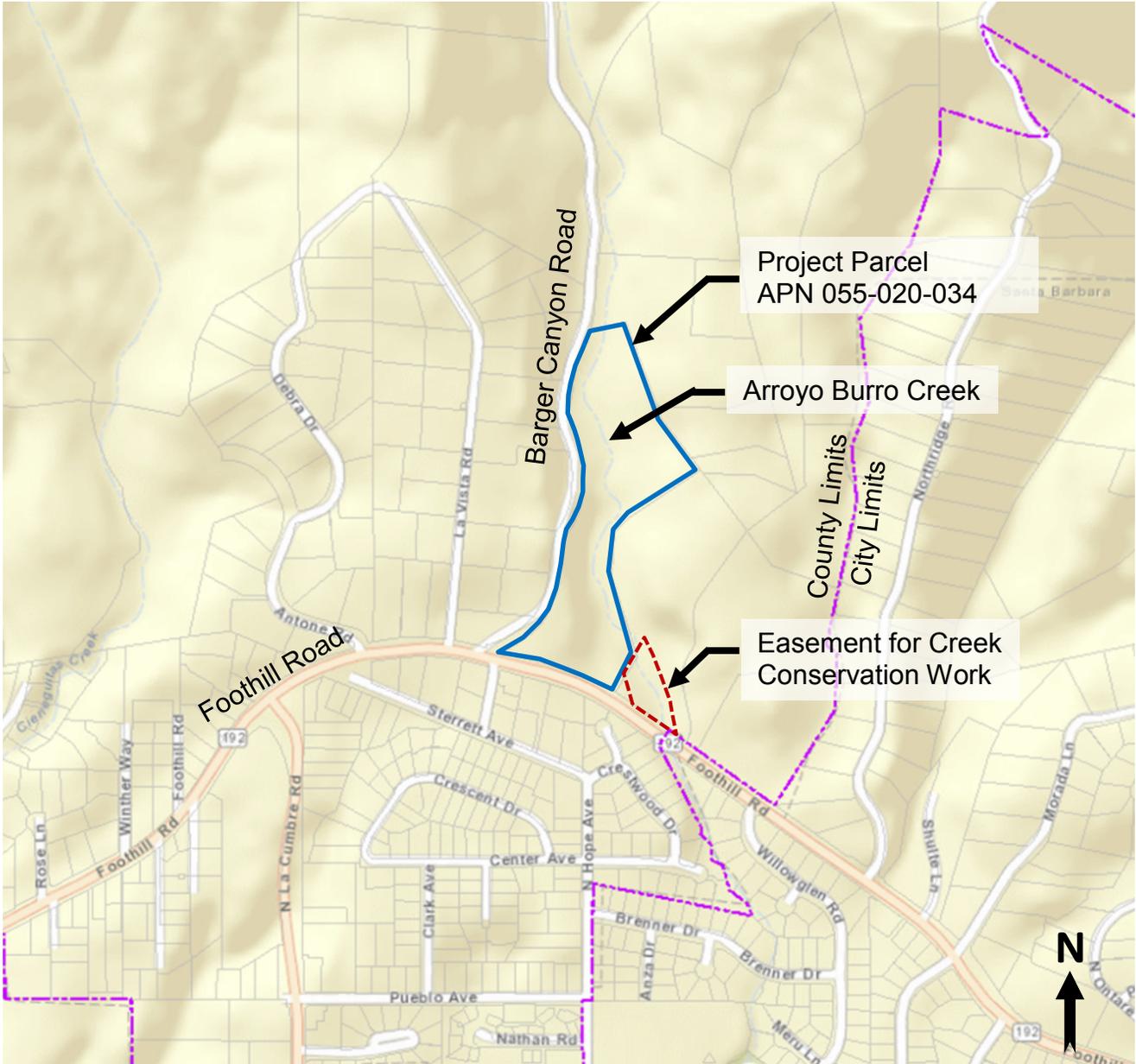
**SUBMITTED BY:** Rebecca J. Bjork, Public Works Director  
 Jill E. Zachary, Parks and Recreation Director

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



# City of Santa Barbara

## Arroyo Burro Creek Restoration at Barger Canyon



Project Map



**PARKS AND RECREATION DEPARTMENT**

# **UPPER ARROYO BURRO RESTORATION AT BARGER CANYON**

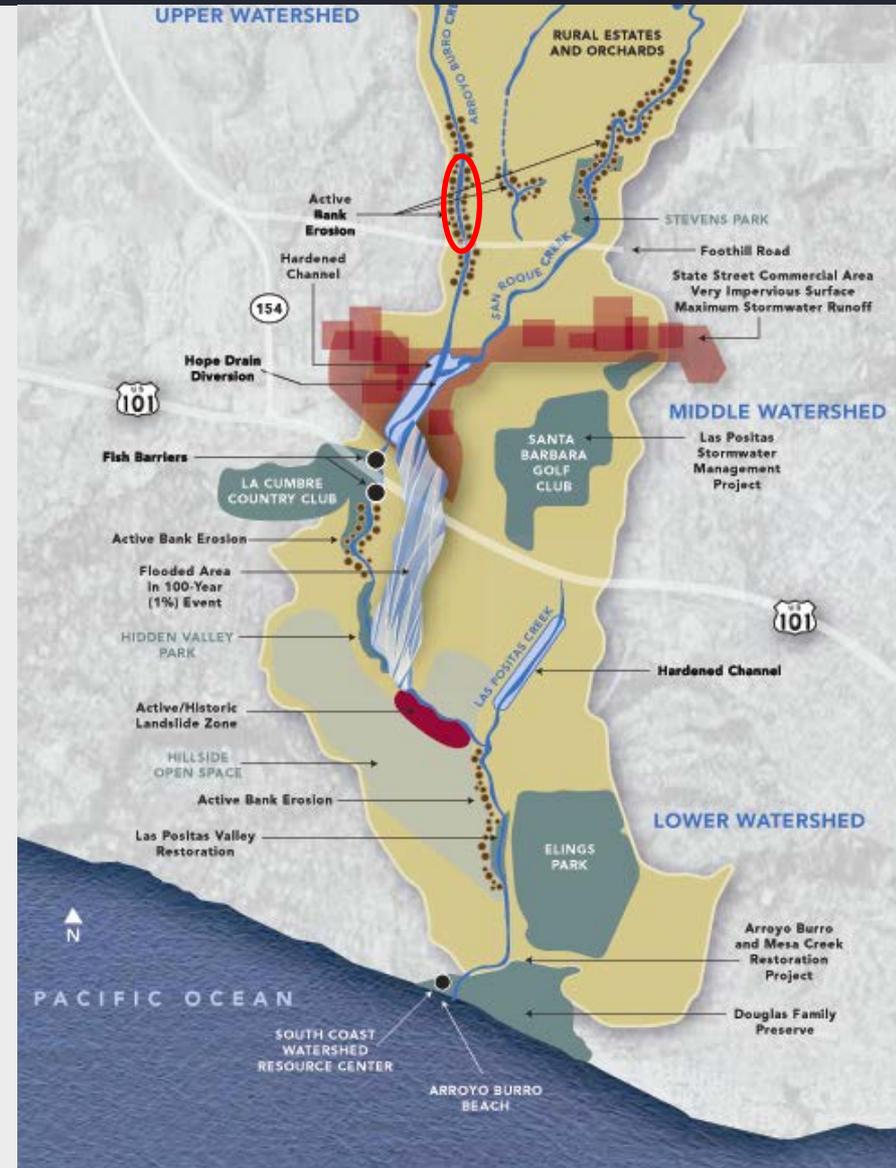
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City Council  
July 12, 2016

# Barger Canyon

## Project Location

- Arroyo Burro Watershed
- Upper mainstem of Arroyo Burro
- Creeks Division purchased the parcel in 2013



# Barger Canyon

## Project Location

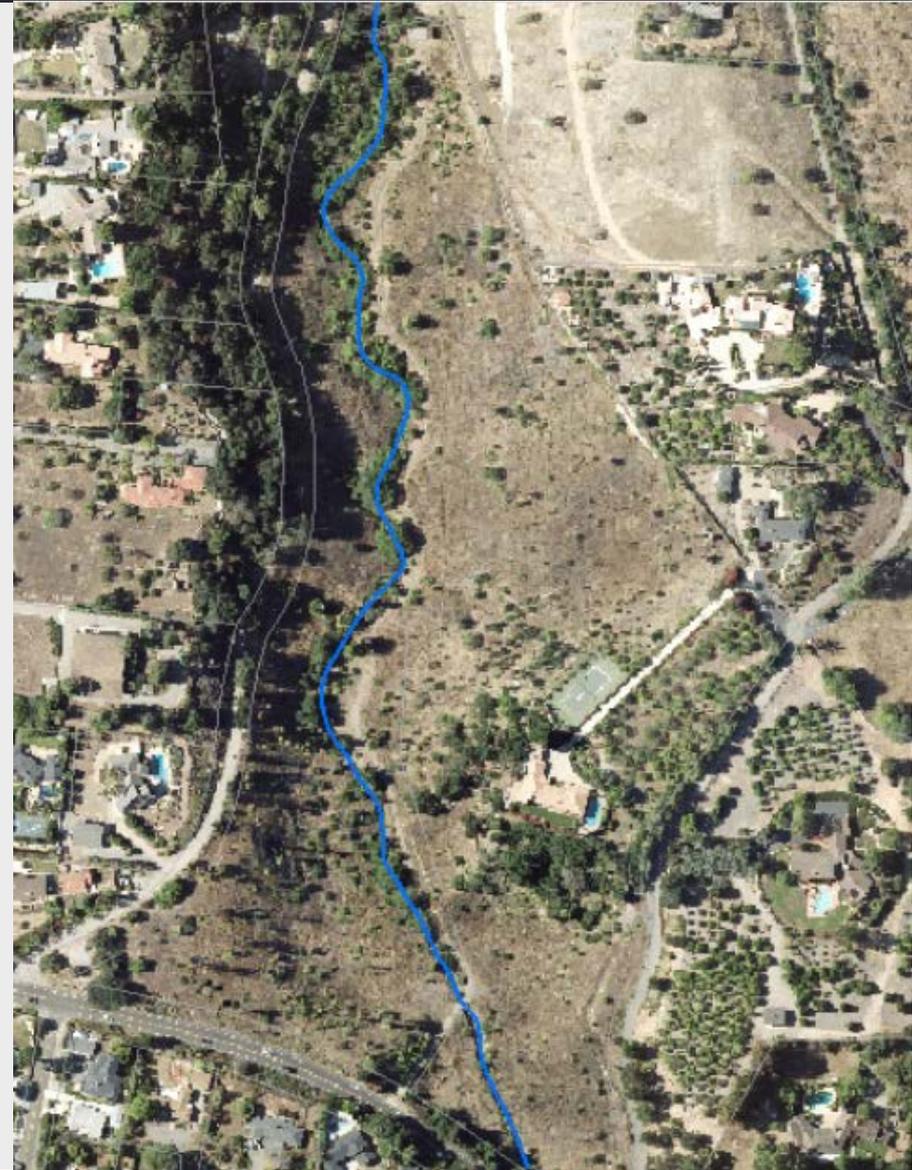
- City Owned Parcel - 14 acres
- Conservation Easement - 1 acre



# Barger Canyon

## Existing Conditions

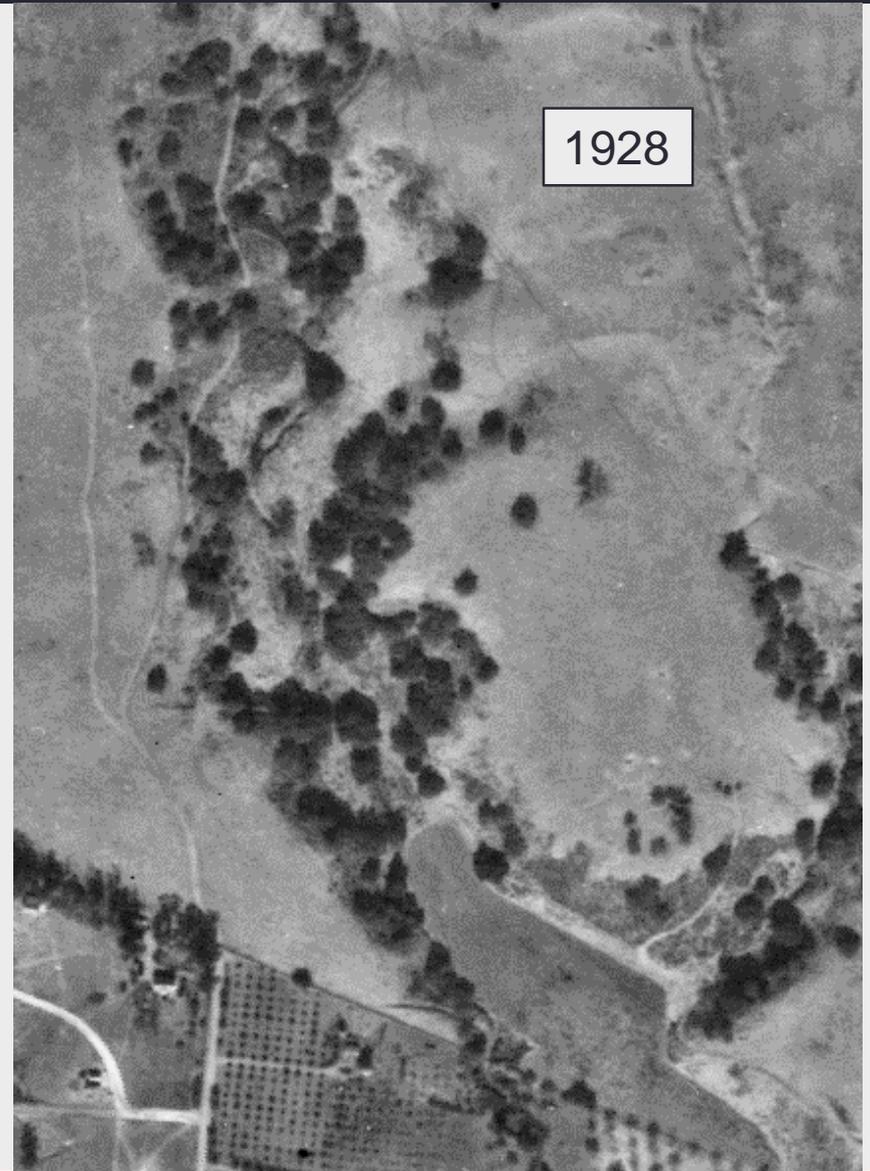
- Reduced riparian zone
- Incised channel with steep eroding banks
- Lower portion of the channel has been straightened
- Bank hardening and manmade structures
- Vegetation is a mix of native and non-native species



# Barger Canyon

## Historic Conditions

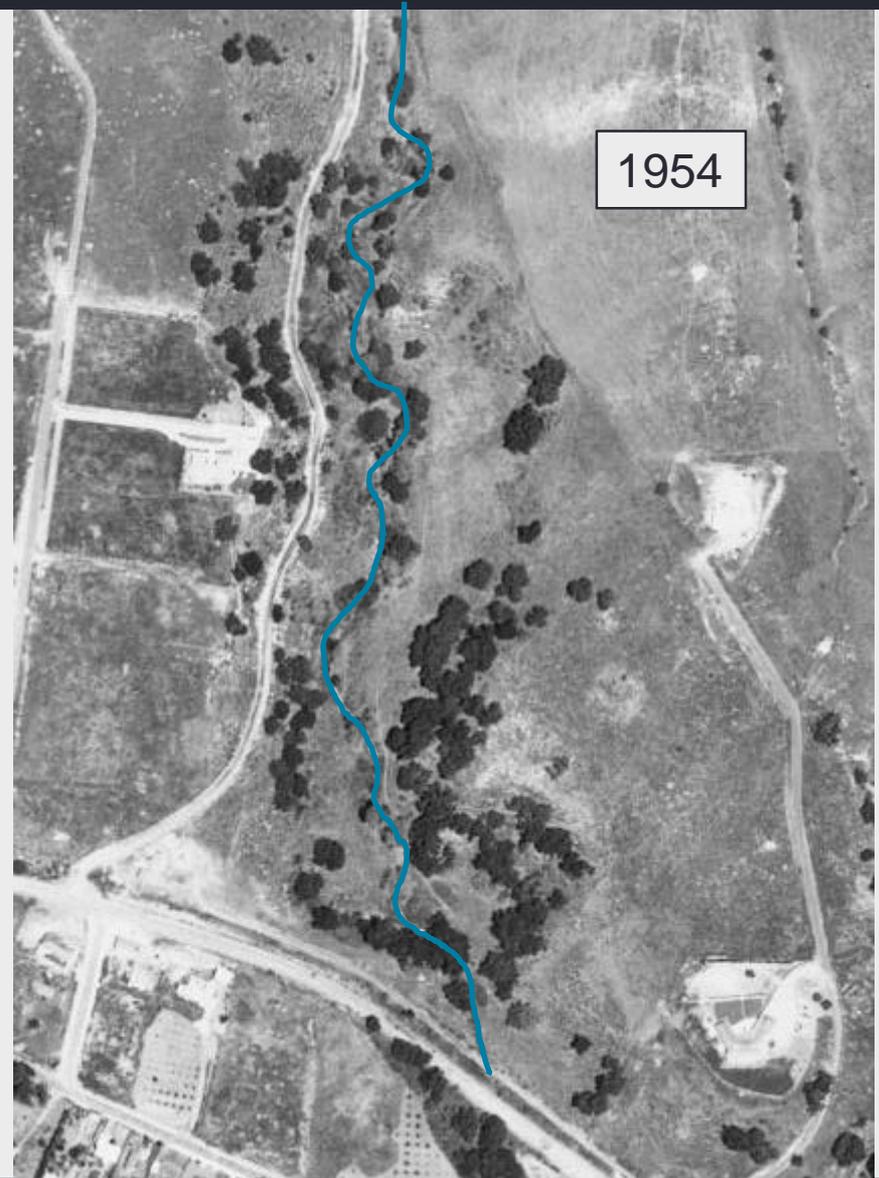
- Likely grazed
- Greater number of mature trees from the present



# Barger Canyon

## Historic Conditions

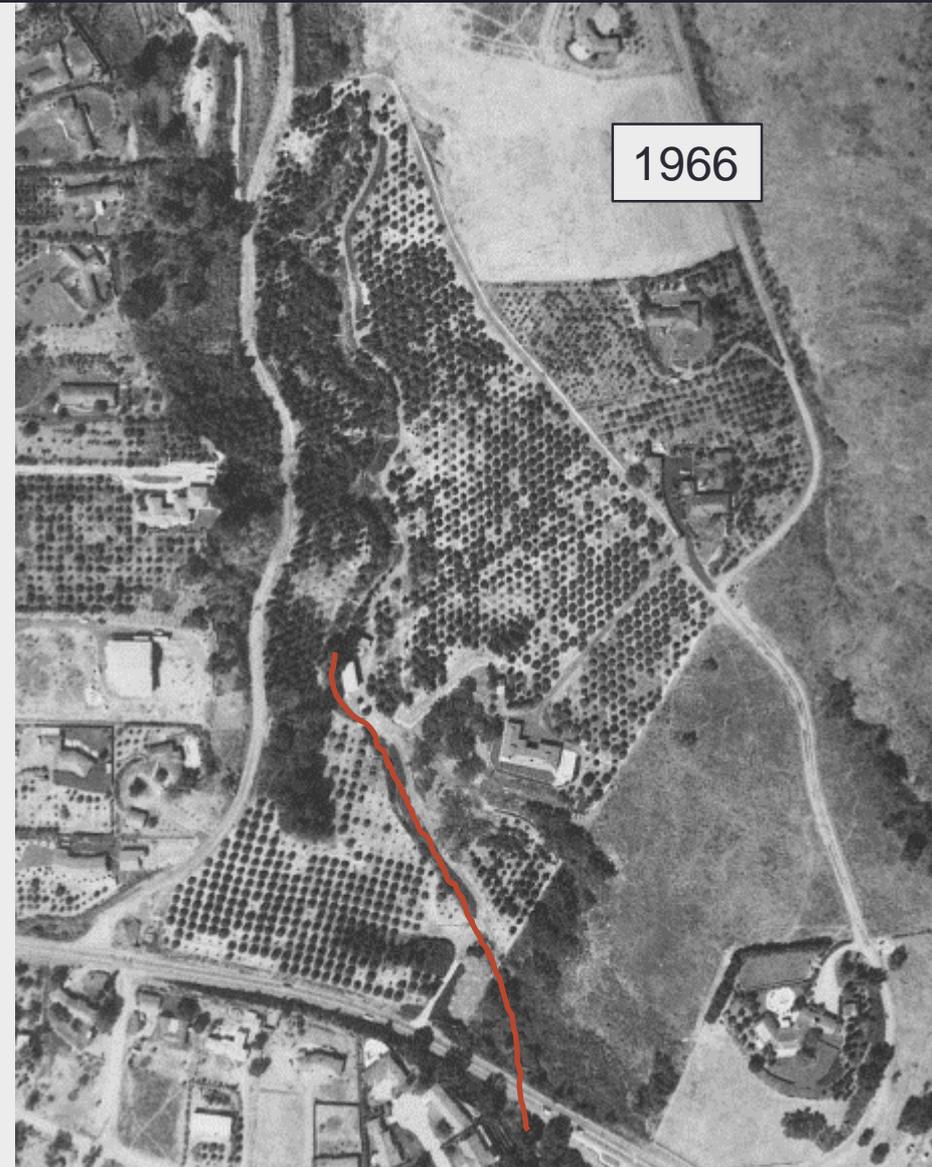
- Barger Canyon Road
- Hwy 192 / Foothill Road
- Loss of some riparian trees
- Creek meander still present



# Barger Canyon

## Historic Conditions

- Converted to an orchard
- Riparian zone removed or reduced
- Lower portion of the channel has been straightened
- Anthropogenic structures including 1 house, 7 bridges, and a road on the east bank



# Barger Canyon

## Recent Conditions

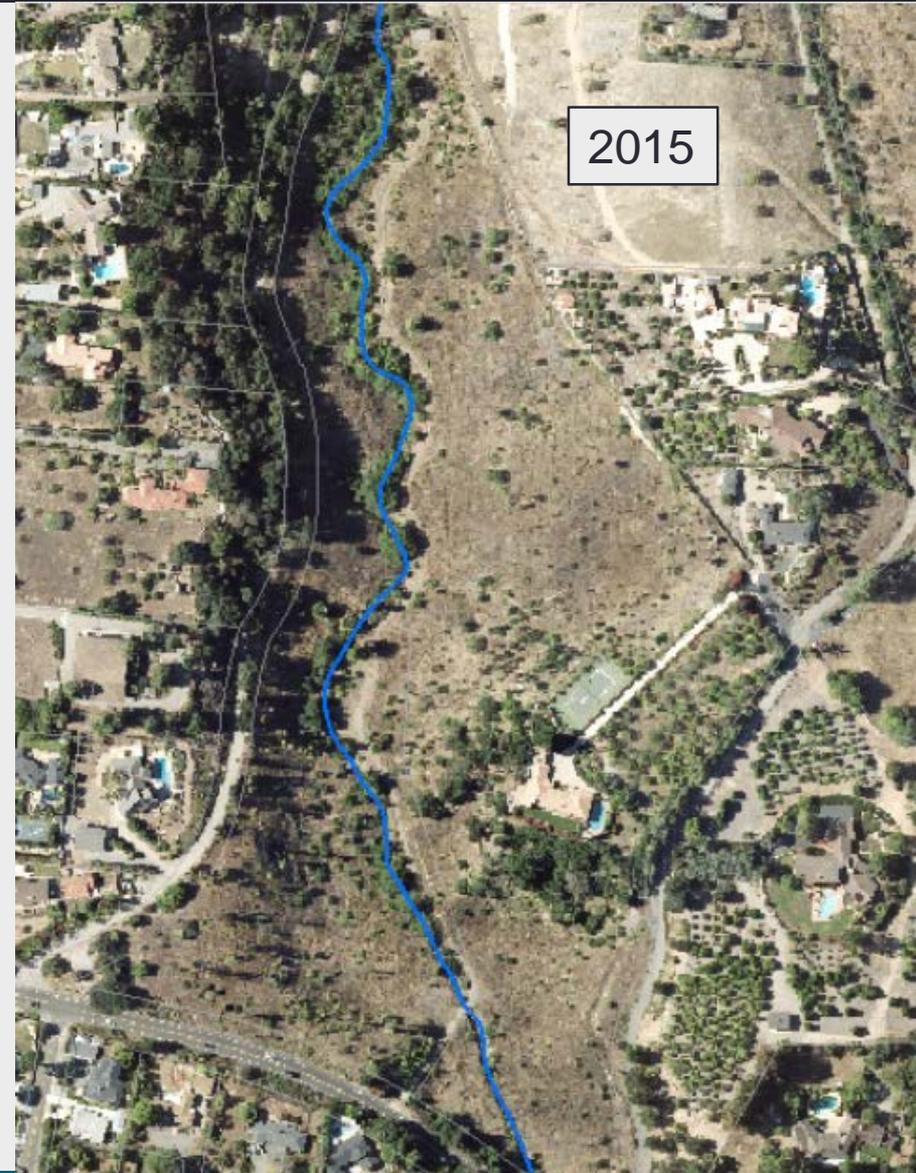
- Orchard removed in 2006
- Jesusita fire in 2009



# Barger Canyon

## Restoration Project Goals

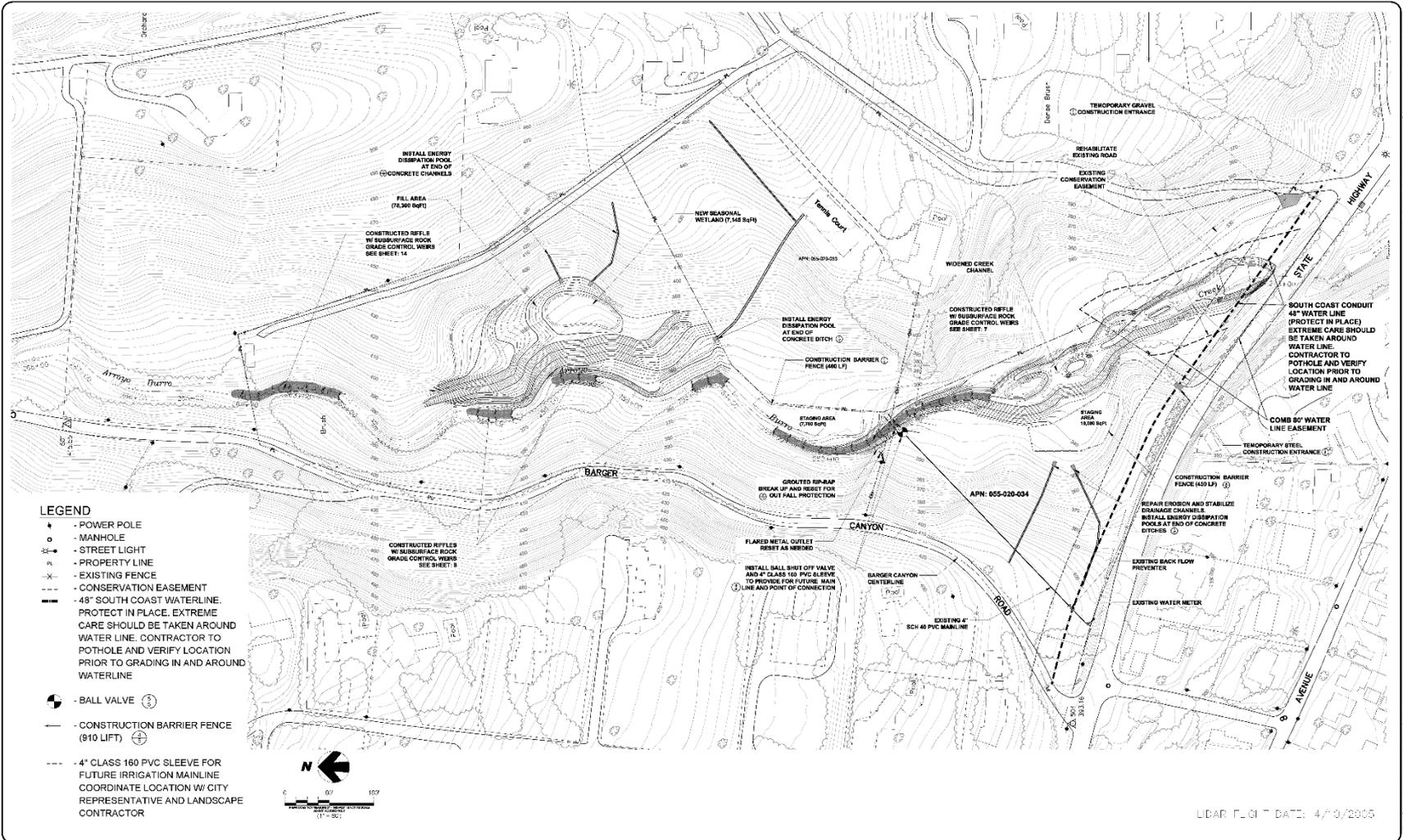
- Increase riparian zone
- Reduce erosion through the removal of hard channel features and laying back of creek banks
- Restore channel meanders to the lower portion of the channel
- Remove all un-natural manmade structures
- Remove non-native species and re-vegetate with locally collected natives





# Barger Canyon

## Project Designs





# Barger Canyon

## Timeline

- Environmental review and permitting complete
- Anticipated construction start date of August 2016
- Expecting three months to complete construction and two months for landscaping
- Completed by November 2016



# Barger Canyon

## Budget

	Basic Contract	Change Funds	Total
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