



# CITY OF SANTA BARBARA

## COUNCIL AGENDA REPORT

**AGENDA DATE:** March 14, 2017

**TO:** Mayor and Councilmembers

**FROM:** Engineering Division, Public Works Department

**SUBJECT:** Notice Of Intent To Adopt A Resolution Of Necessity To Acquire Real Property Rights For The De La Guerra Bridge Replacement Project

### **RECOMMENDATION:**

That Council adopt, by reading of title only, a Resolution of Necessity of the Council of the City of Santa Barbara to Acquire Real Property Rights on the Property Commonly Known as 311 West De La Guerra Street.

### **DISCUSSION:**

The De La Guerra Street Bridge Replacement Project (Project) will replace the structurally deficient bridge over Lower Mission Creek. The new bridge is proposed to be widened within the creek to increase flood conveyance in accordance with the approved Lower Mission Creek Flood Control Project, but will accommodate the same number of traffic lanes and continue to provide pedestrian access on both sides of the bridge. The Project is an approved Federal Highway Administration (FHWA) project with oversight provided by the California Department of Transportation (Caltrans) through the Highway Bridge Program.

Project construction is scheduled to begin in the spring of 2019, pending the availability of City matching funds. Due to the close proximity of residential properties located at 311, 317, and 326 West De La Guerra Street, and at 314, 316, and 318 West De La Guerra Street, it is necessary to acquire all temporary and permanent easements for both the construction and long-term access and maintenance of the new bridge structure and creek wall improvements. No fee ownership rights or properties in whole are being acquired by the City. The temporary easements are needed for the purpose of demolishing the existing bridge and constructing the new bridge. The permanent easements are for access to and maintenance of the new creek wall structure and related flood control purposes for the Santa Barbara County Flood Control and Water Conservation District. The necessary easements for 311 West De La Guerra Street are shown on Attachment 1 and must be acquired by the City in accordance with applicable federal and state laws and guidelines, due to the City's eligibility for reimbursement of Project costs using funds provided by the

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FHWA. The Project design is 95 percent complete. All the required easement rights and their current status are summarized on Attachment 2.

On September 6, 2016, Council approved execution of the agreements to acquire real property rights (easements) at 317 and 326 West De La Guerra Street. The easements at 311 and 314, 316, and 318 West De La Guerra Street are still in negotiations for purchase. The 311 West De La Guerra Street property has an existing driveway accessing the residential structure directly adjacent to the bridge crossing Mission Creek. The work needed to demolish the existing bridge and construct the new one requires a temporary construction easement over the driveway at 311 De La Guerra Street and partially within the creek. In addition, this property (consisting of two separate parcels) also requires acquisition of a permanent easement along the slope of and within Mission Creek to provide maintenance and access to the new creek wall as well as for general flood control purposes.

Based on a new appraisal, counter offers have been made to the owner and no settlement has been reached. Attachment 2 reflects the appraisals, offers and counter offers. The adoption of the Resolution of Necessity (RON) is needed in order to protect the timeline for completing the right of way acquisitions to allow for the subsequent construction of the Project. With the RON in place, legal action to acquire the necessary easements can proceed in the event the City and the property owner are unable to reach an agreement as to the compensation for the easements being acquired. Staff will continue to try to negotiate with the property owner, even after the RON has been adopted, in the hope that a successful settlement can be achieved without the need to proceed through the filing of an eminent domain action in Superior Court.

#### Purpose of Hearing on the Resolution of Necessity

To comply with requirements of the federal and state agencies that govern funding of the Project and reimbursement of costs to the City, there must be a determination made by the Council of the necessity for the acquisition of the property rights at 311 West De La Guerra Street, which is done through the adoption of a RON and the supported findings.

The adoption of the proposed RON requires that a public hearing be held concerning the required property rights being sought by the City and the public necessity for the acquisition of those rights in order to initiate a potential eminent domain action. After the adoption of the RON, these findings of necessity will be presented in an eminent domain proceeding, should such action become necessary in the future.

In compliance with the California Code of Civil Procedure section 1245. 235 et seq., written notice of the scheduled hearing on the RON was sent to Brian and Ruth Kollenborn, property owners of 311 West De La Guerra Street on February 8, 2017. The statutory purpose of the notice is to inform the owners of Council's intent to hear all evidence in consideration of the possible adoption of the Resolution, and to advise them

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that if they wish to object to the adoption of the RON, they must do so in writing within 15 days from the date of notice of the Council hearing. The notices sent to the Kollenborns satisfy all legal noticing requirements for the hearing.

As provided in the State Code of Civil Procedure, the public hearing related to the proposed adoption of the RON should be limited to discussion of the requisite statutory findings that are specifically set forth in Section 1240.030 of the California Code of Civil Procedure, namely:

- a. That the public interest and necessity require the proposed Project.
- b. That the proposed Project is planned or located in the manner that will be the most compatible with the greatest public good and the least private injury.
- c. That the property described in the RON is necessary for the proposed Project.
- d. That either the offer required by Section 7267.2 of the California Government Code has been made to the owner or owners of record, or the offer has not been made because the owner cannot be located with reasonable diligence.

The proposed RON should be adopted by Council to authorize the City Attorney to initiate Superior Court eminent domain litigation, if necessary. Pursuant to Section 1245.240 of the California Code of Civil Procedure, the adoption of the proposed RON requires approval by 2/3 vote of the Council.

#### Evidentiary Findings

The Project is necessary to replace the existing structurally deficient public bridge and widen Mission Creek for flood control purposes. The Project has been designed and located in a manner that will be most compatible with the greatest public good and the least private injury. As stated above, however, due to the close proximity of the 311 West De La Guerra Street residence and driveway to the creek and existing bridge, it is necessary to acquire the temporary easement to demolish the existing bridge and construct the new bridge in an efficient and economical manner. The permanent easements are required for access and maintenance of the new creek wall structure and to provide for long-term maintenance of the improvements, including continued access for Santa Barbara County Flood Control purposes.

The City's real property agent consultant, Hamner, Jewell & Associates, has made offers for purchase of the real property rights to the owner as required under Government Code section 7267.2, and will continue negotiation efforts in an attempt to acquire the property rights without the need for an eminent domain action.

A copy of the Notice of Hearing on the Intent of the City of Santa Barbara to Adopt a Resolution of Necessity to Acquire Real Property Rights by Eminent Domain, and its attached Exhibit describing the property rights to be acquired by eminent domain, are available for public review at the City Clerk's Office, located at 735 Anacapa Street, Santa Barbara, California.

Environmental Review

The proposed Project was evaluated in the Lower Mission Creek Flood Control Project Environmental Impact Statement/Environmental Report; State Clearinghouse

No. 1998101061, certified in 2001, and by subsequent Addendum dated November 2, 2011, pursuant to the California Environmental Quality Act. The environmental findings, reports, permits, and adopting actions, have been made available to Council in their reading file, and to the public at the City Clerk's Office or the public counter of the Community Development building located at 630 Garden Street.

**BUDGET/FINANCIAL INFORMATION:**

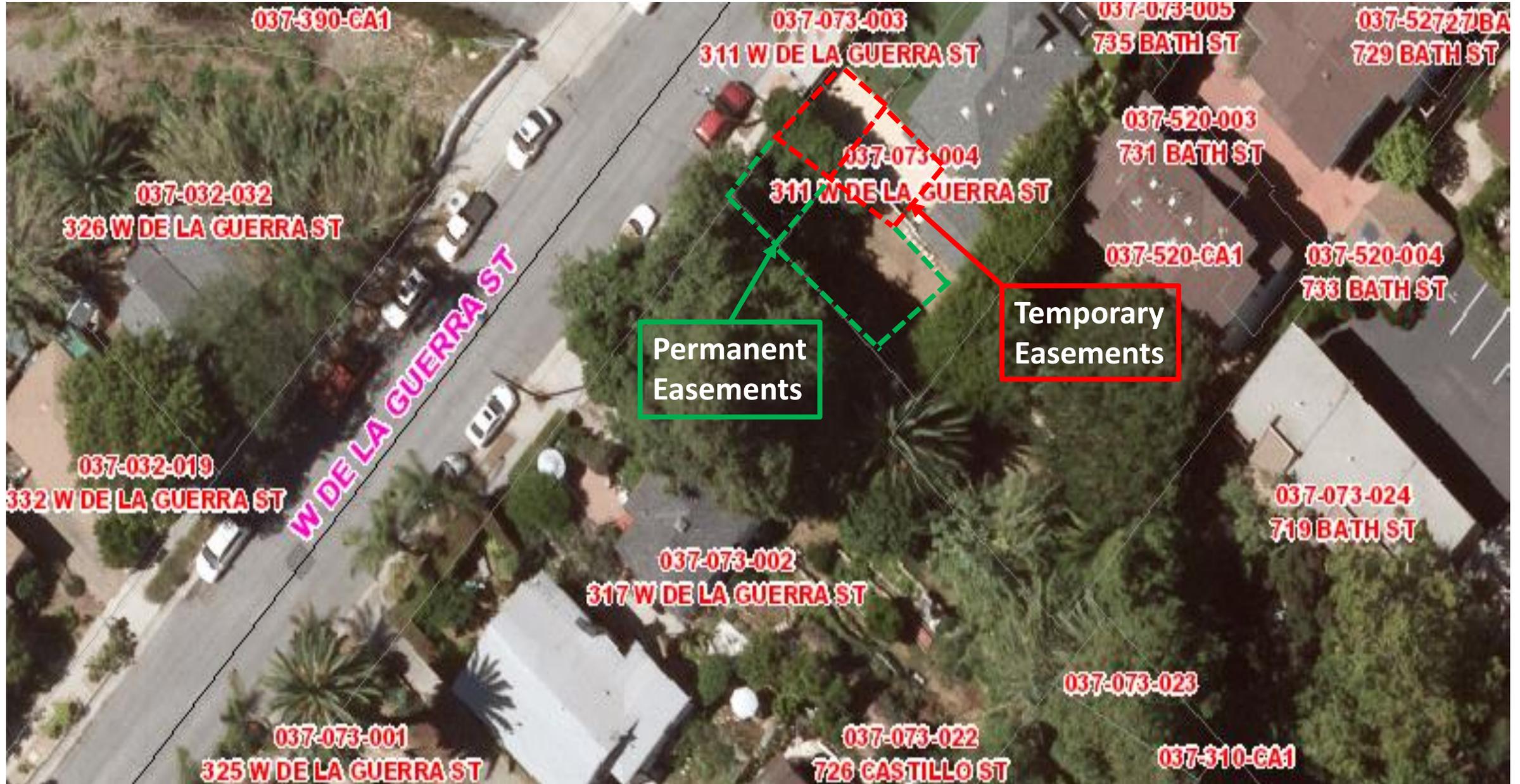
There are sufficient appropriated funds in the Streets Capital Fund to purchase the required property rights. The funds include a FHWA reimbursement of 88.53 percent. The City is responsible for 11.47 percent of the eligible acquisition costs.

- ATTACHMENTS:**
1. Exhibit of easements to be acquired at 311 West De La Guerra Street
  2. De La Guerra Street Bridge Project Easement Acquisitions Summary and Status.

**PREPARED BY:** John Ewasiuk, Principal Civil Engineer/DT/kts

**SUBMITTED BY:** Rebecca J. Bjork, Public Works Director

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



## De La Guerra Street Bridge Project Easement Acquisitions Summary and Status

Address	Owner	City Appraisal Offer (Date)	Owner Appraisal (Date)	City Counter Offer (Date)	Owner Counter Offer (Date)	City Final Offer (Date)	Settlement Date
<b>311 West De La Guerra Street</b>	<b>Kollenborn</b>	<b>\$5,300 (4/22/16)</b>	<b>\$100,000 (9/23/16)</b>	<b>\$15,000 (12/27/16)</b>	<b>\$60,00 (10/4/16)</b>	<b>\$20,000 (2/8/17)</b>	<b>Pending negotiations</b>
314, 316, 318 West De La Guerra Street	De La Guerra Square Homeowners' Association	\$3,200 (4/22/16)	none	none	none	\$3,660 (2/20/17)	Pending negotiations
317 West De La Guerra Street	Davis, et al	\$7,600 (4/22/16)	none	none	none	none	Settled (9/6/16)
326 West De La Guerra Street	Metropolitan Equities	\$3,000 (4/22/16)	none	none	none	none	Settled (9/6/16)