



CITY OF SANTA BARBARA

COUNCIL AGENDA REPORT

AGENDA DATE: July 23, 2013

TO: Mayor and Councilmembers

FROM: Engineering Division, Public Works Department

SUBJECT: Public Hearing To Adopt Resolution Of Necessity For 115 Kimberly Avenue For The Mason Street Bridge Replacement Project

RECOMMENDATION:

That Council adopt, by reading of title only, A Resolution of Necessity by the Council of the City of Santa Barbara to Acquire the Real Property Commonly Known as 115 Kimberly Avenue.

DISCUSSION:

The Mason Street Bridge Replacement Project (Project) is necessary to replace the structurally deficient bridge over the Lower Mission Creek. The Project is an approved Federal Highway Administration (FHWA) Bridge Program project with oversight provided by the California Department of Transportation (Caltrans). The full property acquisition at 115 Kimberly Avenue is necessary to accommodate the widening of Mission Creek and the proposed realignment of Kimberly Avenue. The acquisition will be in accordance with applicable federal and state laws and guidelines to maintain the City's eligibility for reimbursement of Project costs using funds provided by the FHWA. The subject property is undeveloped and there are no existing buildings on the property. The Project design is 90 percent complete. Project construction is scheduled to begin in the spring of 2014.

The necessary real property interests are currently being acquired as identified below and on the Attachment. The existing adjacent residential (triplex) structure at 20 W. Mason Street was acquired by the City, since it is anticipated to sustain damage due to its proximity to the bridge and retaining wall construction. The commercial building at 15 W. Mason Street has also been acquired by the City. The building will be demolished to accommodate creek widening that is part of the proposed Project. A portion of the property at 16 W. Mason Street is required for the realignment of Kimberly Avenue as well as a Temporary Construction Easement (TCE), and a small easement on the 28 W. Cabrillo Boulevard property is also needed for permanent access and maintenance to the creek improvements once completed. The current status of the four properties and the easement required for acquisition is summarized below.

Mason Bridge Property Acquisitions and Status:

Address	Owner (Acquisition)	City Offer/Appraisal	Owner Appraisal	Owner Counter Offer	City Counter Offer	Settlement Price
15 W. Mason	Nordahl, et al (full)	\$1,950,000 10/30/12	none	\$2,600,000 2/4/13	\$2,200,000 3/7/13	\$2,300,000 3/14/13
20 W. Mason	Walters (full)	\$1,700,000 10/18/12	\$1,900,000 2/7/13	\$1,900,000 3/12/13	\$1,800,000 3/15/13	\$1,850,000 3/22/13
16 W. Mason	Romasanta (partial, and TCE)	\$194,000 5/17/13	None	\$214,000 6/25/13	\$217,000 6/28/13	Pending
28 W. Cabrillo	Romasanta (easement)	\$2,600 5/22/13	None			Pending
115 Kimberly	Funke (full)	\$100,000 5/17/13	Pending receipt			Pending

On May 7, 2013, Council approved execution of the agreements to acquire 15 and 20 W. Mason Street. These agreements have been fully executed, escrows have closed, and the City now owns these properties. The partial property and easement acquisitions for the Romasanta properties are anticipated to settle in the near future. The property at 115 Kimberly Avenue is awaiting receipt of the second appraisal that was requested by the Owners for further negotiations, and now requires the adoption of the Resolution of Necessity in order to proceed efficiently within the timeline for property acquisitions and subsequent construction of the Project.

Purpose of Hearing on the Resolution of Necessity

To comply with requirements of the federal and state agencies governing funding of the Project and reimbursement of costs to the City, the City must make a determination of the necessity to acquire the property at 115 Kimberly Avenue, which is done through the adoption of a Resolution of Necessity (Resolution) and the supported findings.

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

In compliance with California Code of Civil Procedure Section 1245. 235 et. seq., written notice of the scheduled hearing on the Resolution was mailed to Alex and Erik Funke, the current property owners of 115 Kimberly Avenue, on July 8, 2013. The statutory purpose of the notice is to inform Alex and Erik Funke of Council's intent to hear all evidence in consideration of the possible adoption of the Resolution and to advise them

that, if they wish to object to the adoption of the Resolution, they must do so in writing within 15 days of said notice of the Council hearing. The notice sent to Alex and Erik Funke satisfies all legal noticing requirements for the hearing and provides that their last day to submit a written objection to the adoption of the Resolution of Necessity is July 23, 2013.

As provided in the State Code of Civil Procedure, the public hearing related to the proposed adoption of the Resolution should be limited to discussion of the requisite statutory findings specifically set forth in Section 1240.030 of the State 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 Resolution 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 Resolution 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 Resolution requires approval by five Councilmembers.

EVIDENTIARY FINDINGS

The Project is necessary to replace the existing structurally deficient public bridge and widen Mission Creek for flood control purposes. As stated above, however, due to the parcel at 115 Kimberly Avenue being located within the proposed creek widening area and adjacent to the proposed wider bridge, it is necessary to acquire the property in order to efficiently and economically complete the Project. All of the property will be utilized to widen Mission Creek and for the Kimberly Avenue realignment, channel wall construction, and restoration of the vegetated creek bank, including continued access for Santa Barbara County Flood Control for emergency flood response.

The subject property parcel is primarily within the creek and at the top of the creek bank, with a small portion of the parcel at the eastern property boundary containing two parking spaces for which the owners will be compensated in accordance with the appraised value of the property. Full acquisition is necessary to gain control of the property to complete the proposed Project construction. The City's real property agent consultant, Hamner, Jewell & Associates, have made offers for purchase of the property to the owner as required under Government Code Section 7267.2, and will continue negotiation efforts in an attempt to acquire the property 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 Property by Eminent Domain, and its attached Exhibit describing the property interest 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 the Council reading file and to the public at the City Clerk's Office, or at the public counter of the Community Development Department building at 630 Garden Street.

BUDGET/FINANCIAL INFORMATION:

There are sufficient funds in the Streets Capital Fund to purchase the required property. The funds include a FHWA reimbursement of 100 percent for the right of way acquisition and construction phases.

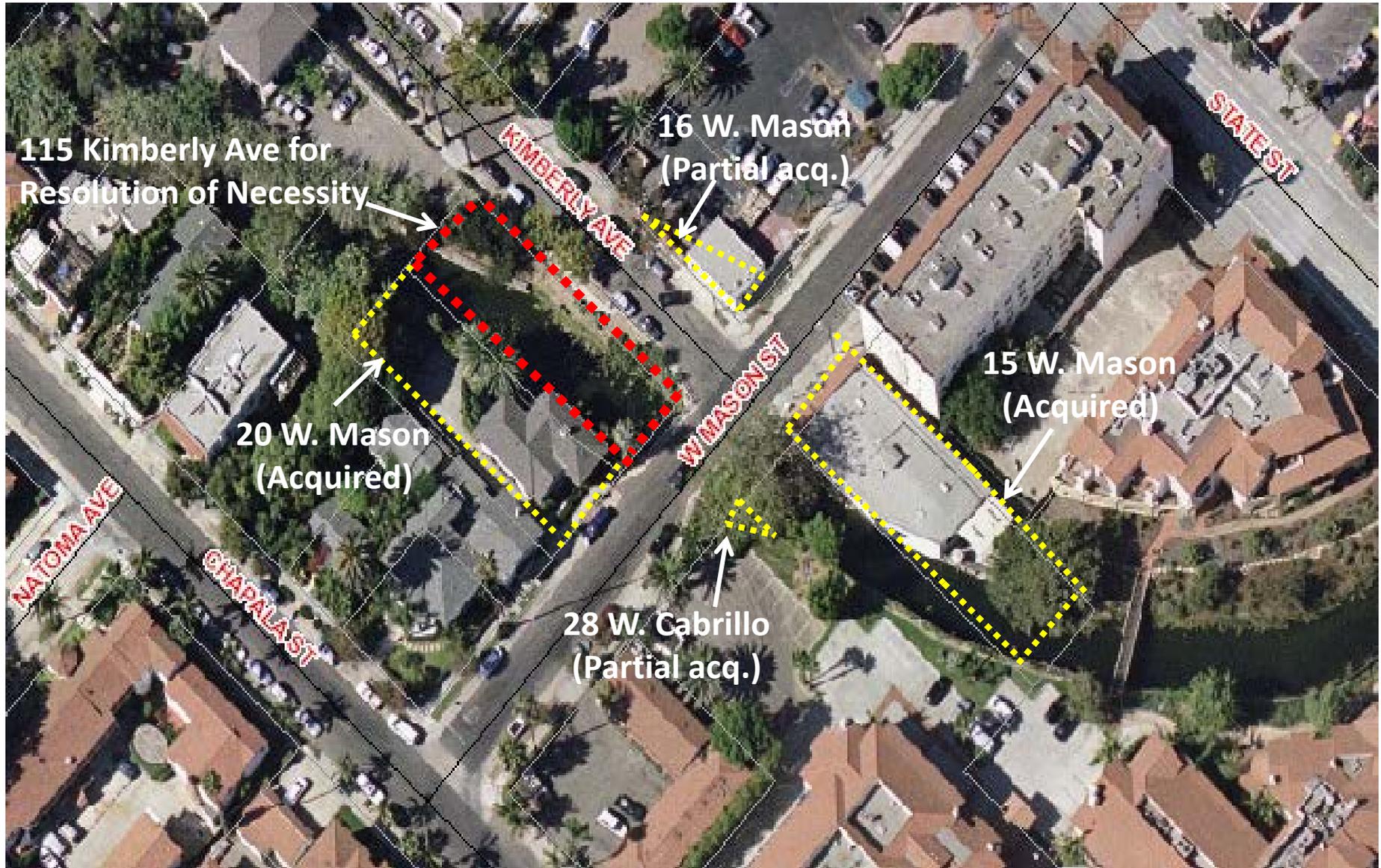
ATTACHMENT(S): Aerial map of properties being acquired

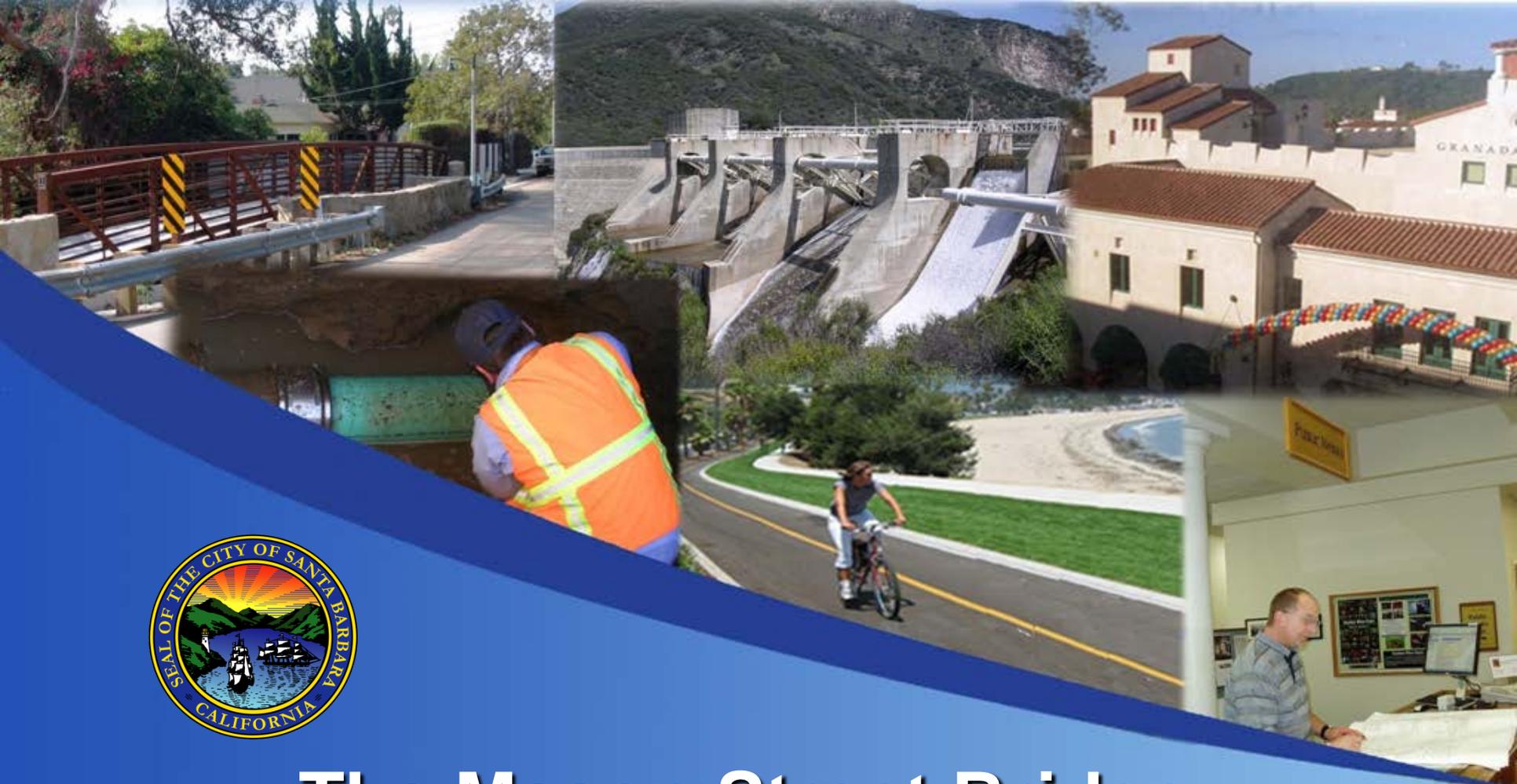
PREPARED BY: John Ewasiuk, Principal Civil Engineer/DT/mj

SUBMITTED BY: Christine F. Andersen, Public Works Director

APPROVED BY: City Administrator's Office

Mason Street Bridge Replacement Project Property Acquisitions Resolution of Necessity for 115 Kimberly Avenue





The Mason Street Bridge Replacement Project

Public Hearing – July 22, 2013
Adoption Of Resolution of Necessity For The
Mason Street Bridge Replacement Project

Mason Street Bridge



Existing Mason Street Bridge



115 Kimberly Avenue





Project Elements

- ◆ Old Bridge – 33.4 feet by 36 feet long
- ◆ New Bridge – 49.5 feet by 63.9 feet long
- ◆ Realignment of Kimberly Avenue
 - Designed in concert with Lower Mission Creek Flood Control Project
 - Requires acquisition of properties by City for right of way needed for improvements and construction

112 CHAPALA ST.
APN-033-074-009

108 CHAPALA ST.
APN-033-074-008

104 CHAPALA ST.
APN-033-074-007

28 W. MASON ST.
APN-033-074-006

20 W. MASON ST.
APN-033-074-005

115 KIMBERLY AVE
APN-033-074-019

KIMBERLY AVE.
APN-033-075-010

16 W. MASON ST.
APN-033-075-006

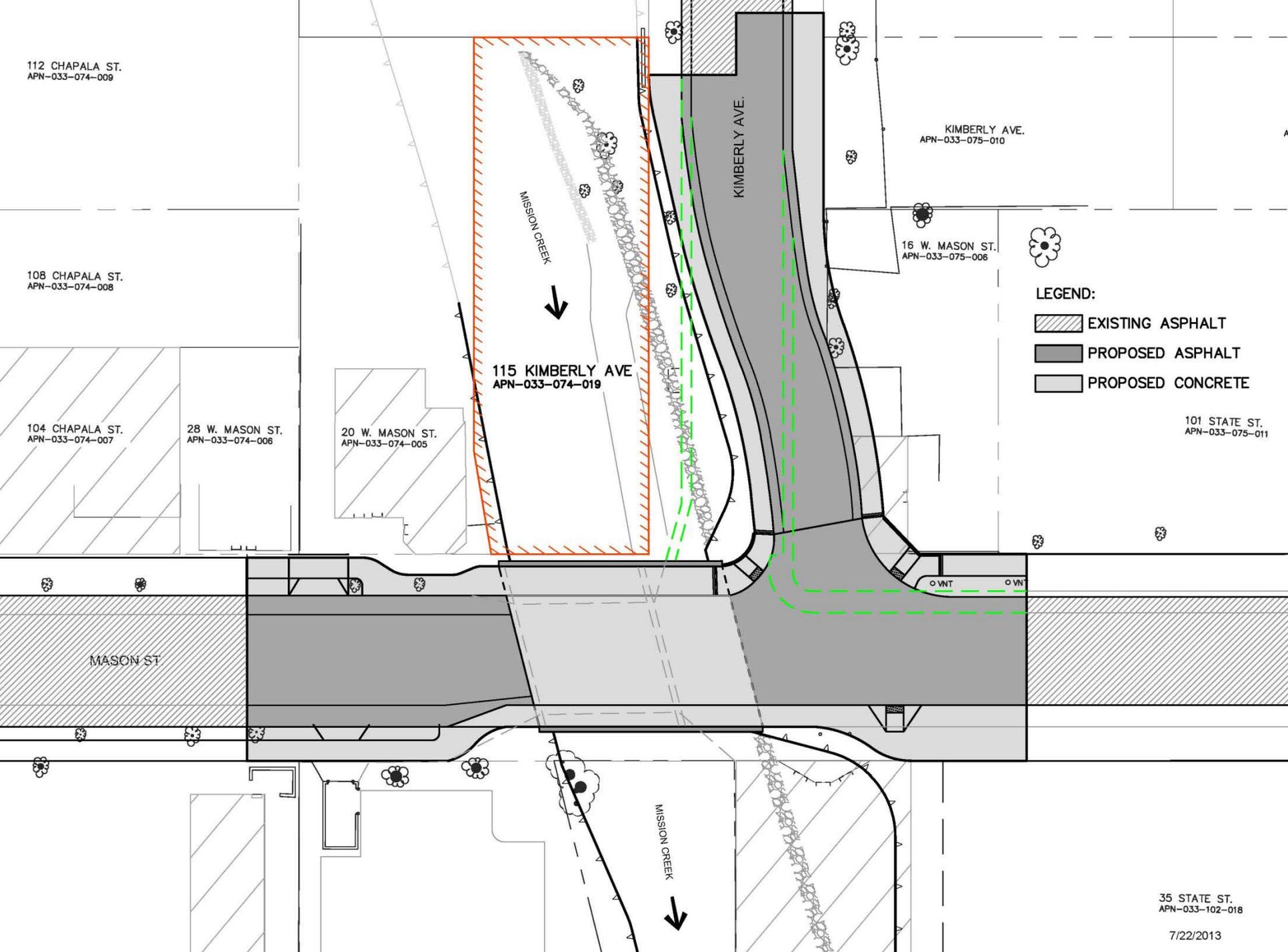
101 STATE ST.
APN-033-075-011

35 STATE ST.
APN-033-102-018



LEGEND:

-  EXISTING ASPHALT
-  PROPOSED ASPHALT
-  PROPOSED CONCRETE





Mason Street Bridge



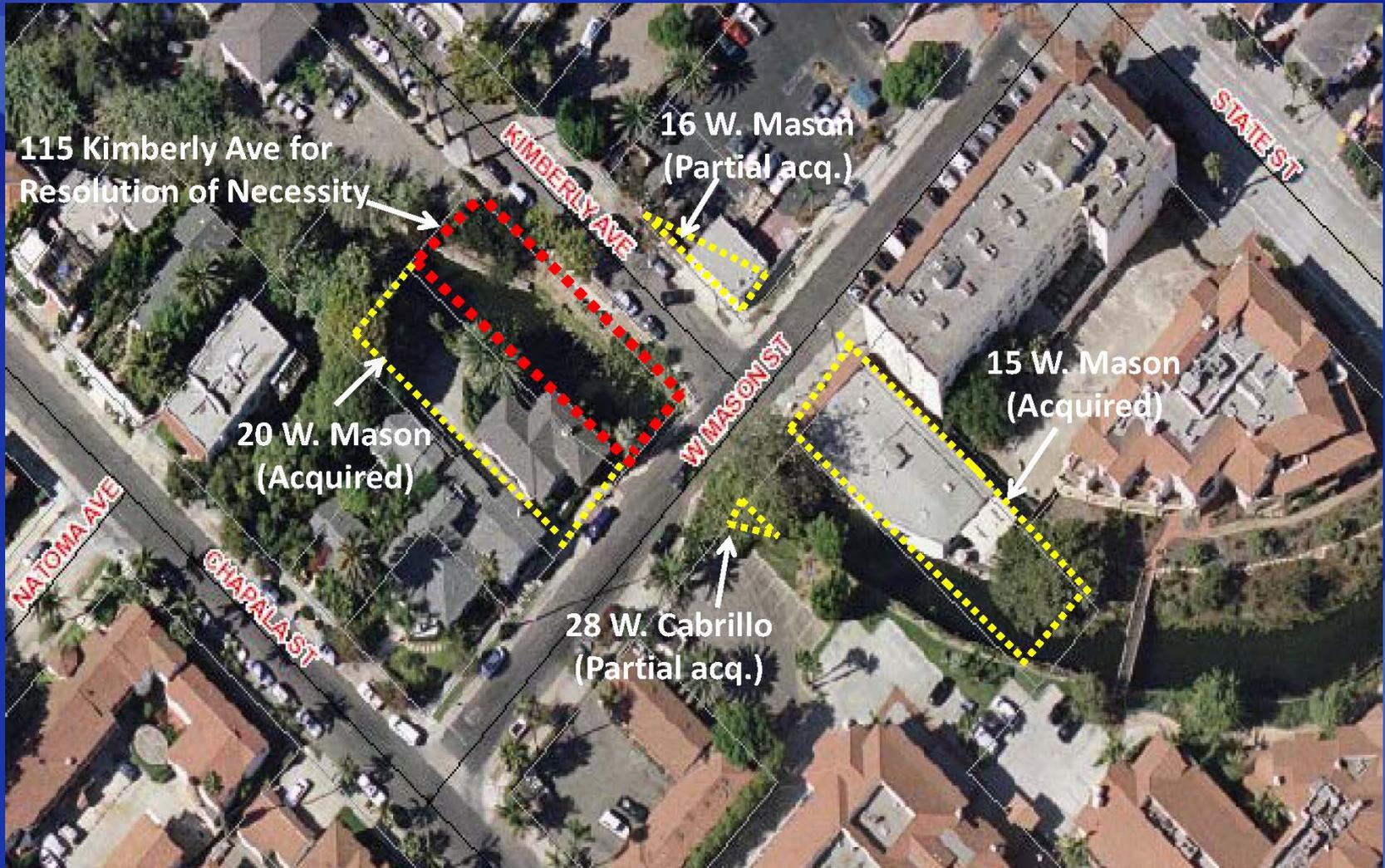


Mason Street Bridge



Project Area Acquisitions

15 W Mason and 20 W Mason Properties Acquired
115 Kimberly Avenue Resolution of Necessity





Acquisition of Rights of Way

- ◆ City acquired 15 W Mason and 20 W Mason Street properties
- ◆ Partial acquisitions being finalized at 16 & 28 W Mason Street
- ◆ Full acquisition necessary at 115 Kimberly Street
 - City agent pursuing a proposed settlement agreement with owners
 - If agreement not obtained, eminent domain will keep project on schedule



Bridge Replacement Project

- ◆ Grant Funding by Federal Highway Administration (FHWA)
- ◆ Estimated Total Project Cost: \$11.2 M
- ◆ Design Costs
 - 88.53% Reimbursed by FHWA
 - 11.47% City Match (Streets Capital Fund)
- ◆ Right of Way & Construction Costs
 - 100% Reimbursed by FHWA



Key Project Milestones

7/23/2013	Council Hearing for Resolution of Necessity
9/2013	Possession of right of way at 115 Kimberly Ave 1. Settlement Agreement and close of escrow, when received 2. Order of Possession if eminent domain used, if necessary
10/2013	Right of Way Certification to Caltrans
11/2013	Caltrans Authorizes Construction
11/2013	Advertise, Receive Bids & Award Construction
1/2014	Award Contract
3/2014	Begin Construction
7/2015	Project Completion



Impacts If Right of Way Delayed

- ◆ FHWA and Caltrans guidelines require legal possession of all necessary rights of way before advertising for construction bids
- ◆ Project construction is scheduled to begin in Spring 2014
- ◆ Any significant delay to acquire necessary project rights of way will delay Right of Way certification and authorization for construction



Eminent Domain

– Project Benefits

- ◆ Ensures ability by public agencies to construct public projects for the benefit of the entire community
- ◆ Enables timely possession of necessary rights of way for construction of public projects



Eminent Domain

– General Benefits

- ◆ Ensures uniform guidelines for appraising and acquiring necessary rights of way
- ◆ Fosters fair and equitable treatment for all parties, public and private
- ◆ Preserves rights of parties to determine amounts of just compensation by court process, when necessary
- ◆ Sometimes favorable tax implications



Right of Way & Relocation Assistance

Right of way activities overseen by design firm Bengal Engineering, Inc., with coordination by Hamner, Jewell & Associates (HJA):

- City staff & advisors, project design team
- Owners of affected rights of way contacted
- Written offer to purchase rights of way communicated on behalf of City



115 Kimberly Avenue

- ◆ The property at 115 Kimberly Avenue must be acquired to widen Mission creek in accordance with the approved EIS/EIR
- ◆ The entire site is owned by Alex and Eric Funke
- ◆ The City has made a purchase offer
- ◆ Property owner has counter offered
- ◆ Working on solidifying a purchase agreement



Resolution of Necessity

- ◆ A Resolution of Necessity will allow eminent domain to purchase the 115 Kimberly Avenue property
- ◆ The property at 115 Kimberly Avenue cannot be omitted from the project
- ◆ At least five Councilmembers must approve the adoption of a Resolution of Necessity



Public Hearing

- ◆ Before using eminent domain, the City must hold a hearing to consider the need for the property at 115 Kimberly Avenue
- ◆ Based on evidence presented, adoption of a Resolution of Necessity is recommended
- ◆ The notice to the property owner regarding the hearing has been provided



Purpose of Hearing

- ◆ Hear interested parties
- ◆ Determine the public necessity to purchase 115 Kimberly Avenue property
- ◆ Make the necessary findings
- ◆ Adopt the required Resolution of Necessity



Ongoing Discussions

- Even if a Resolution of Necessity is adopted, City agents continue to work to obtain a purchase agreement
- When an agreement has been obtained:
 - It will be scheduled for Council approval
 - An escrow will be opened for transfer of property
 - Eminent domain action may be suspended if not required to obtain possession of rights of way at 115 Kimberly Avenue

Adoption Of Resolution of Necessity For The Mason Street Bridge Replacement Project



An architectural rendering of a street scene. In the background, there is a two-story blue house with white trim and a dark roof. To the left, there are white buildings with red-tiled roofs. The foreground shows a paved road with a crosswalk, a sidewalk, and a red circular area. A person is walking a dog on the sidewalk. There are palm trees and other greenery throughout the scene. The sky is clear and blue.

Questions?

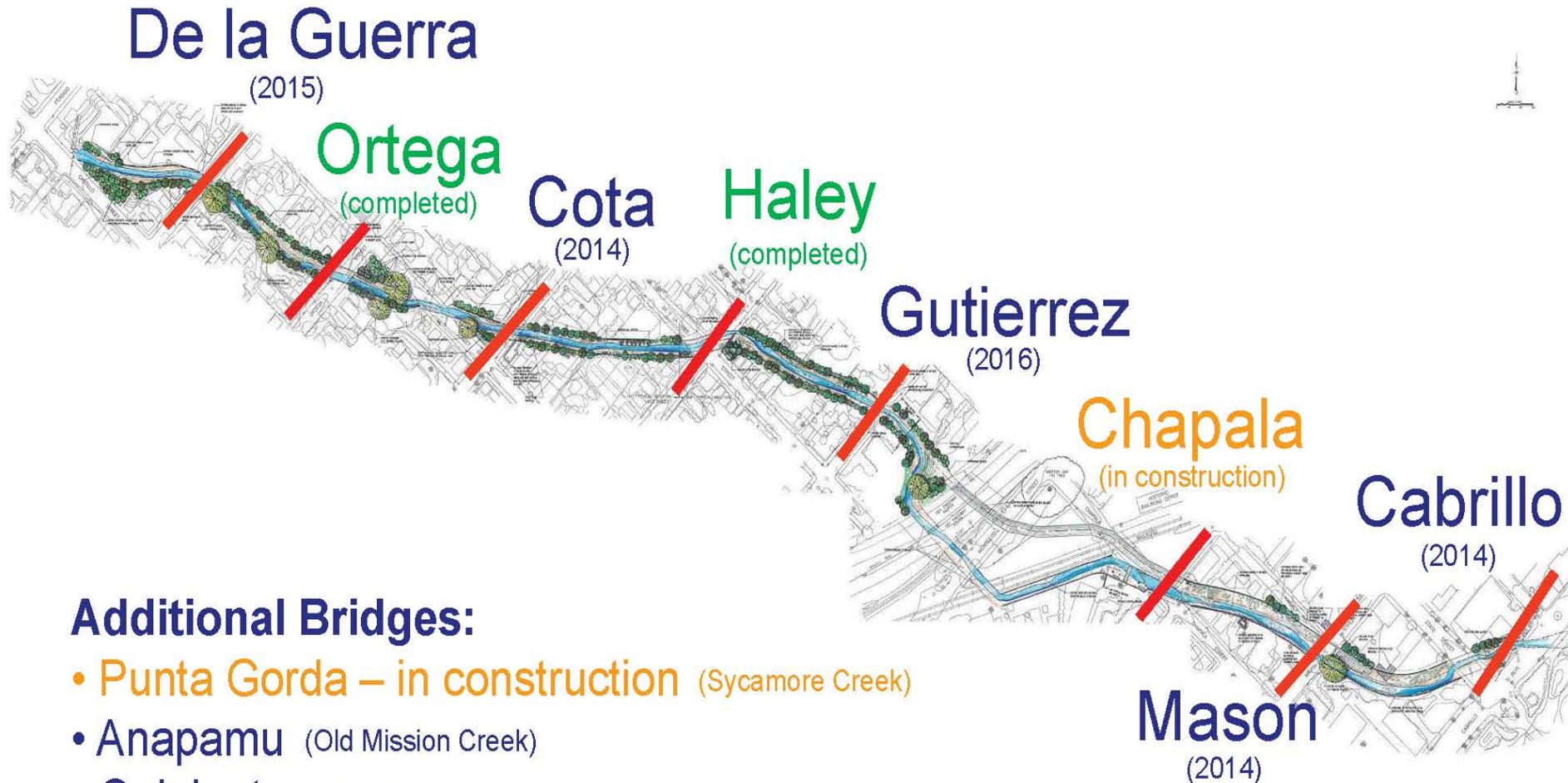
Mason Street Bridge



Bengal Engineering

City Bridge Projects

Lower Mission Creek Flood Control



Additional Bridges:

- **Punta Gorda** – in construction (Sycamore Creek)
- **Anapamu** (Old Mission Creek)
- **Quinientos** (Sycamore Creek)