



CITY OF SANTA BARBARA

COUNCIL AGENDA REPORT

AGENDA DATE: November 18, 2014

TO: Mayor and Councilmembers

FROM: Engineering Division, Public Works Department,
City Attorney's Office

SUBJECT: Public Hearing To Adopt A Resolution Of Necessity For The
Cabrillo Boulevard Bridge Replacement Project And Authorization
For Agreement For Legal Services

RECOMMENDATION: That Council:

- A. Hold a public hearing, and make the necessary findings to acquire the real property rights in the parcels subject to this hearing, and subsequently adopt (by a 2/3 vote), by reading of title only, A Resolution of Necessity of the Council of the City of Santa Barbara to Acquire Certain Real Property Rights over the Property Commonly Known as 13 (Otherwise Known as 15) East Cabrillo Boulevard (APN: 033-111-012), 21 Helena Avenue (APN: 033-111-004), and 6 State Street (APN: 033-111-011); and
- B. Authorize the City Attorney to execute a professional services agreement with the law firm of Best Best & Krieger, LLP, in the not-to-exceed amount of \$200,000 for special legal services to the City on matters related to the Cabrillo Boulevard Bridge Replacement Project.

EXECUTIVE SUMMARY:

The Cabrillo Boulevard Bridge Replacement Project (Project) involves the replacement of the structurally deficient bridge over Lower Mission Creek, located in the Santa Barbara Waterfront at the intersection of State Street and Cabrillo Boulevard, next to Stearns Wharf. The Project specifically calls for the removal of the existing bridge, and replacement with a longer bridge design that will comply with current structural capacity requirements and improve the hydraulic flow of Mission Creek in this area. The Project has been approved for grant funding through the Federal Highway Administration Bridge Program (FHWA Bridge Program), with engineering and real property oversight provided to the City through the California Department of Transportation (Caltrans).

Certain real property rights must be acquired to accomplish the demolition of existing structures and the construction of the replacement bridge and flood control channel, and

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for areas for staging, etc., during the construction. As such, the purpose of this hearing is to determine the public necessity to acquire certain property rights over 13 (otherwise known as 13 East Cabrillo Boulevard (APN: 033-111-012), 21 Helena Avenue (APN: 033-111-004), and 6 State Street (APN: 033-111-011); to make the necessary findings to use the eminent domain process; and to adopt the proposed Resolution of Necessity (Resolution).

In addition, the City Attorney's Office requires the services of special counsel to represent the City in any further negotiations with the property owner and in any eminent domain proceedings, if they become necessary. The law firm of Best Best & Krieger (BBK) specializes in eminent domain proceedings. The City Attorney's Office recommends contracting with BBK in an amount not to exceed \$200,000.

DISCUSSION:

Background

The property rights 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 FHWA Bridge Program.

Project construction is scheduled to begin in early November 2014, and has been planned and located in a manner that will be most compatible with the greatest public good and least private injury. The estimated timeframe for the construction of the Project is approximately twenty-four months.

There is an existing restaurant building (formerly leased by Rusty's Pizza Parlor, Inc.) at 13 East Cabrillo Boulevard that was built over a portion of the Mission Creek Channel and attached to the existing bridge. The reconstruction of the bridge and flood control channel requires the demolition of that portion of the restaurant building that is in conflict with the new bridge and channel.

To accomplish the demolition of the restaurant building and subsequent construction of the bridge and flood control channel, the City needs to acquire a temporary construction easement over the restaurant building parcel that will give the City the right to occupy, control, and use the property. The Project requires a complete evacuation of the restaurant building. Permanent easements are required for street, flood, and drainage purposes to build the replacement bridge and to rebuild the creek channel to improve its flood control capacity. Additional temporary construction easements are needed for use as staging areas, etc., during the construction.

The following table identifies the type of easement needed to be acquired over each parcel:

PARCEL NUMBER	REQUIRED (S.F.)	REAL PROPERTY INTEREST
033-111-011-01	273	Easement for street, landscape, flood control and drainage purposes
033-111-011-02	9,531	Easement for street, flood control and drainage purposes
033-111-011-03	4,596	Temporary construction easement
033-111-011-04	46	Easement for street, flood control and drainage purposes
033-111-012-01	745	Easement for street, flood control and drainage purposes
033-111-012-02	6,087	Temporary construction easement
033-111-012-03	80	Temporary construction easement
033-111-012-04	27	Easement for street, flood control and drainage purposes
033-111-004-01	10,000	Temporary construction easement

On October 15, 2013, the City made a written offer to purchase certain permanent and temporary construction easements, as identified in the table above and in Attachments 1 and 2, color-coded Parcel Map and Parcel Description Table, (hereinafter collectively referred to as Easements) over 13 East Cabrillo Boulevard (APN: 033-111-012), 6 State Street (APN: 033-111-011), and 21 Helena Avenue (APN: 033-111-004), from Virginia Castagnola Hunter, as trustee of the Virginia Castagnola Hunter Trust, Scott Hollister (also known as James Scott Hollister), George C. Hollister and Cathleen W. Hollister, Trustees of the GCH and CWH Trust, Catherine Wallenfels, Francesca Hunter, and Alexis Chernow (more recently known as Alexis Hunter), hereinafter collectively referred to as Property Owner, which are necessary for the City to construct the Project and for flood control purposes. The offer was based on the City's determination of just compensation supported by two fee appraisal reports that were prepared for the City, and dated June 4, 2013, for 6 State Street, and July 1, 2013, for 13 East Cabrillo Boulevard and 21 Helena Avenue.

On December 23, 2013, the Property Owner rejected the City's offer with a counter offer much higher than the City's offer. As negotiations continued into January 2014 without success, the City approached the Property Owner for a Right of Entry which would permit the City to occupy and possess the subject property until such time as there was a negotiated acquisition or final order of condemnation. Obtaining the Right of Entry, an agreement acceptable in the FHWA Bridge Program right of way acquisition process, was in the City's best interest to protect the Project schedule and to secure the City's programmed FHWA Bridge Program funding. In exchange for payment of a negotiated

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monthly rent by the City, the Property Owner was willing to grant the City a Right of Entry providing the City with the exclusive possession and use of the real property until negotiations are reached or until a final Order of Condemnation is recorded, should negotiations fail. The Right of Entry, City Agreement Number 24,720, was accepted by the City on January 28, 2014, and allows for the construction of the Project to move forward while the parties continue negotiations. However, due to the extensive scope and time sensitive nature of the Project, both parties agreed that if a negotiated acquisition was not reached within 120 days from acceptance of the Right of Entry, the City would proceed by way of condemnation.

In an effort to avoid condemnation, the City had a new appraisal prepared in May 2014 for the 13 East Cabrillo Boulevard and 21 Helena Avenue properties, and a counter offer was presented to the Property Owner on May 12, 2014. The City received a counter "settlement" proposal on November 3, 2014; however, the two parties continue to have significant differences in what the just compensation should be.

With the uncertainty of whether there will be a negotiated acquisition, the City requires the adoption of the Resolution of Necessity in order to proceed with the acquisition and compensation for the Easements through eminent domain.

Whether the City accomplishes a negotiated acquisition or proceeds with eminent domain, the services of special legal counsel are needed. The firm of BBK is an experienced eminent domain law firm that has successfully worked on behalf of other local agencies in completing their respective public works projects, including successful litigation, when necessary. BBK was previously under contract with the City back in 2009 when it anticipated going through the eminent domain process on this same Project and with the same property owner. BBK filed a complaint in the Superior Court on behalf of the City to begin the condemnation proceedings. Shortly after the complaint was filed the City believed it was close to settling the matter with the property owner and determined that BBK's services were no longer required. While the City has been in negotiation with the property owner since 2009, it has been unable to reach a negotiated settlement, and again requires the legal expertise offered by BBK. Staff recommends BBK for retention by the City due to their strong level of experience and that the estimated \$200,000 for legal services is reasonable based on the complexity of the property acquisition and possible need for litigation.

Purpose of Hearing on the Resolution of Necessity

There must be a determination made by the City of the necessity for the acquisition of the Easements at the properties at 13 East Cabrillo Boulevard, 21 Helena Avenue, and 6 State Street, which is done through the adoption of a Resolution and the supported findings.

In addition to the adoption of the proposed Resolution, and in order to proceed with eminent domain, the law requires that a public hearing be held concerning each of the

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required real 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.

The statutes which authorize the City to acquire the property by eminent domain for this Project include the Code of Civil Procedure Sections 1240.110 and 1240.120. As provided in the Code of Civil Procedure, the public hearing related to the proposed adoption of the Resolution, and any objection thereto by the property owner, should be limited to discussion of the requisite statutory findings specifically set forth in Section 1240.030 of the Code of Civil Procedure, namely:

- a. The public interest and necessity require the Project.
- b. The 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. The property rights sought to be acquired are necessary for the Project.

Section 1245.235 of the Code of Civil Procedure provides for the property owner to be noticed of the hearing for the proposed Resolution and to be given a reasonable opportunity to appear and be heard on the matters identified in the above paragraph. However, the Property Owner waived both the right to the notice and to the adoption of the Resolution when it executed the Right of Entry. The Property Owner also agreed not to object to the filing of an eminent domain proceeding or to challenge the City's right to take the property. The only outstanding issue is the amount of just compensation for the property, which is the matter to be considered through the eminent domain proceeding and not before the City Council.

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 Code of Civil Procedure, the adoption of the proposed Resolution requires approval by two-thirds vote of the City Council (five Council members vote required).

Evidentiary Findings

The proposed Resolutions contains the findings required by Section 1245.230 of the California Code of Civil Procedure:

1. The public interest and necessity require the Project;
2. The Project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury;

3. The property interests are necessary for the Project; and
4. Prior to making the above findings and determinations, the offer required by Section 7267.2 of the Government Code was made to the owner or owners of record of the property interests to be acquired.

The basis for these findings is as follows:

FINDING 1: The Public Interest and Necessity Require the Project:

The Project is necessary to replace the existing structurally deficient bridge and improve the hydraulic flow of Mission Creek through the reconstruction of the flood control channel. The Project is an approved FHWA Bridge Program project with oversight provided through the State of California, Department of Transportation (Caltrans). The federal funding is provided through the MAP 21 Act (P.L. 112-141). The Project specifically calls for the removal of the existing bridge and replacement with a slightly longer bridge design that will comply with current structural capacity requirements and also improve the hydraulic flow of Mission Creek in this area.

There is an existing restaurant building that was built over a portion of the Mission Creek Channel and attached to the existing bridge. The restaurant building presently rests in part on an existing structurally deficient channel wall that was built by the property owners in the 1950s. The reconstruction of the bridge and the flood control channel requires the demolition of that portion of the restaurant building that is in conflict with the new channel and bridge.

FINDING 2: The Project is Planned or Located in the Manner that Will Be Most Compatible with the Greatest Public Good and the Least Private Injury:

The Project is replacing the existing structurally deficient bridge located in the Santa Barbara Waterfront at the intersection of State Street and Cabrillo Boulevard, next to Stearns Wharf. The bridge and creek are to remain in their existing locations. No realignment was proven to be necessary or warranted.

FINDING 3: The Property Interests are Necessary for the Project:

The existing roadway, bridge, and creek alignments dictate the property that must be acquired. It is necessary to acquire the Easements in order to gain legal access to the properties and to efficiently and economically complete the Project.

The Project requires the City's acquisition of certain real property rights in the form of permanent easements for street, sidewalk, flood control, and drainage purposes; temporary construction easements for bridge and creek channel construction; and partial demolition of the existing restaurant building. The justification for the need of a temporary construction easement over the restaurant building parcel is that the

demolition of the building requires a complete evacuation of the premises by the owner and any tenant. The City is to control the parcel for the stages of demolition, construction of the flood control channel and construction of the bridge.

FINDING 4: The Offers Required by Government Code Section 7267.2 Have Been Made:

City staff has made two formal written offers to the Property Owner who is subject to this Resolution of Necessity Hearing. The first written offer, made on October 15, 2013, was rejected by the property owner on December 23, 2013. City staff made a counter offer on May 12, 2014. To date, the counter offer has not been accepted, rejected, or countered. Although negotiations will continue even if Council adopts the proposed Resolution, there is no guarantee that they will result in an acquisition of the Easements.

Environmental Review

The proposed Project was evaluated in the Mitigated Negative Declaration, dated February 21, 2007, and the Notice of Determination filed with the State Clearing House on August 21, 2007, pursuant to the California Environmental Quality Act. Additionally, the Project was evaluated pursuant to the National Environmental Protection Act, and the determination was made that it is a Categorical Exclusion under 23 CFR 771.117(d); activity (d)(3). The findings, reports, permits, and adopting actions have been placed in the Mayor and Council Office's Reading File and are available for public review in the City Clerk's Office.

BUDGET/FINANCIAL INFORMATION:

The final purchase price of the Easements is 88.53 percent reimbursable through the FHWA Bridge Program. The remaining 11.47 percent is the City's responsibility and there are sufficient funds in the Project fund to cover these expenses. Staff has negotiated an acceptable fee for the anticipated services that is consistent with that typically paid by other public agencies for such services.

Typically, all staff costs, including consultant fees for services such as engineering, right of way, appraisals, relocation assistance, and legal services, are eligible for the 88.53 percent reimbursement, and the City will be receiving most, if not all, of the staff and consulting costs incurred to date. But, the right of way acquisition component of this Project has been on-going for many years, and the City has exceeded what is typically found to be reasonable staff and consulting fees for the right of way acquisition efforts. Therefore, it is uncertain at this time, how much, if any, of the continuing staff fees and new legal services fees, including any court fees, will be reimbursed. If the City is not reimbursed at the 88.53 percent of these continuing costs, it will be required to cover these costs at 100 percent out of City funds.

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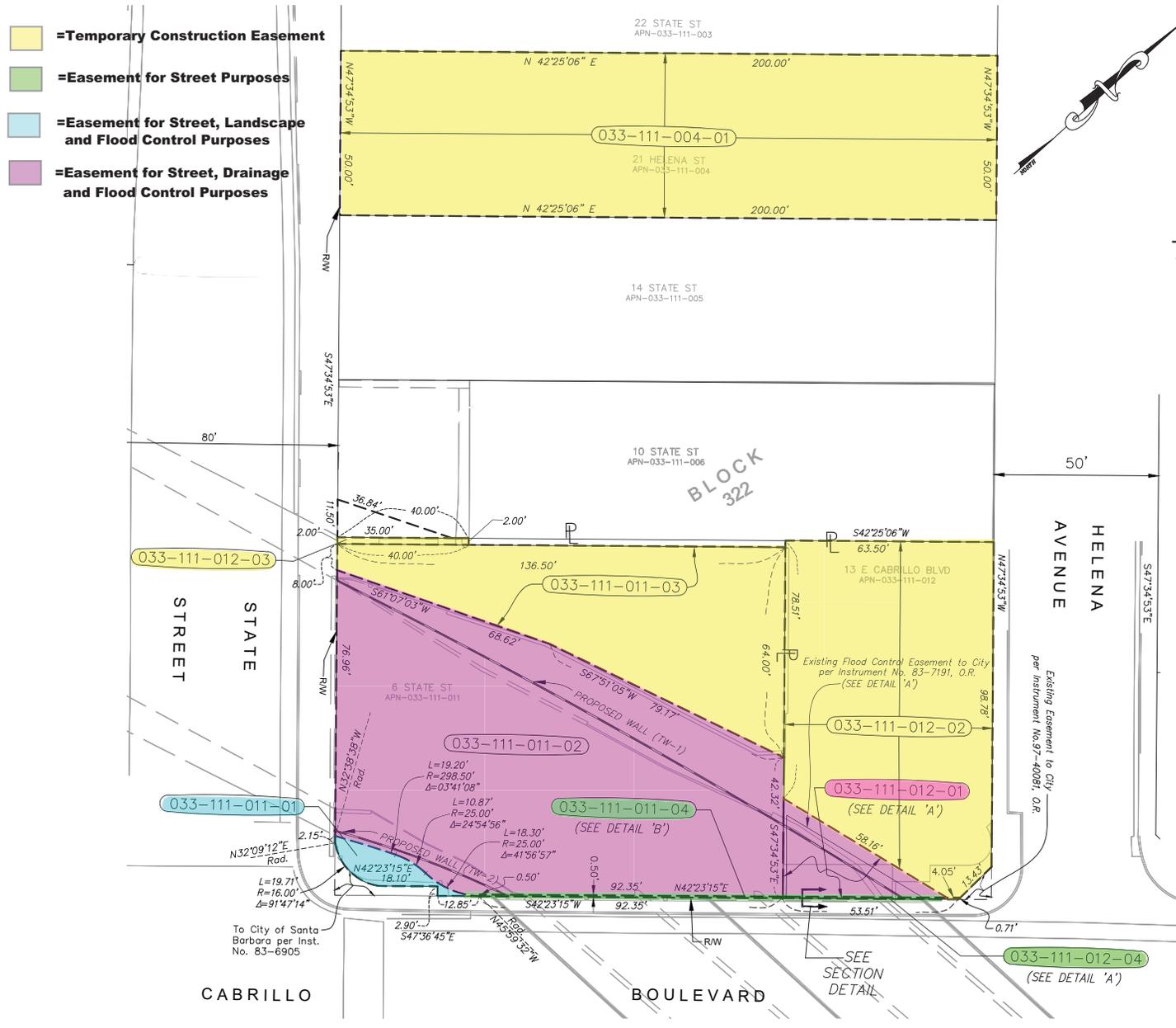
ATTACHMENTS: 1. Parcel Map
2. Parcel Description Table

PREPARED BY: Pat Kelly, Assistant Public Works Director/City Engineer/MAW/sk

SUBMITTED BY: Rebecca Bjork, Public Works Director
Ariel Pierre Calonne, City Attorney

APPROVED BY: City Administrator's Office

PARCEL MAP



PARCEL DESCRIPTION TABLE

PARCEL NO.	GRANTOR	AREAS		REMARKS
		REQUIRED (S.F.)	TOTAL PROPERTY (S.F.)	
033-111-011-01	CASTAGNOLA HUNTER, et al.	273	14,446	EASEMENT FOR STREET, LANDSCAPE, FLOOD CONTROL & DRAINAGE PURPOSES
033-111-011-02	"	9,531		EASEMENT FOR STREET, FLOOD CONTROL & DRAINAGE PURPOSES
033-111-011-03	"	4,596		TEMPORARY CONSTRUCTION EASEMENT
033-111-011-04	"	46		EASEMENT FOR STREET, FLOOD CONTROL & DRAINAGE PURPOSES
033-111-012-01	"	745	7,182	EASEMENT FOR STREET, FLOOD CONTROL & DRAINAGE PURPOSES
033-111-012-02	"	6,087		TEMPORARY CONSTRUCTION EASEMENT
033-111-012-03	"	80		TEMPORARY CONSTRUCTION EASEMENT
033-111-012-04	"	27		EASEMENT FOR STREET, FLOOD CONTROL & DRAINAGE PURPOSES
033-111-004-01	"	10,000	10,000	TEMPORARY CONSTRUCTION EASEMENT



Cabrillo Boulevard Bridge Replacement Project

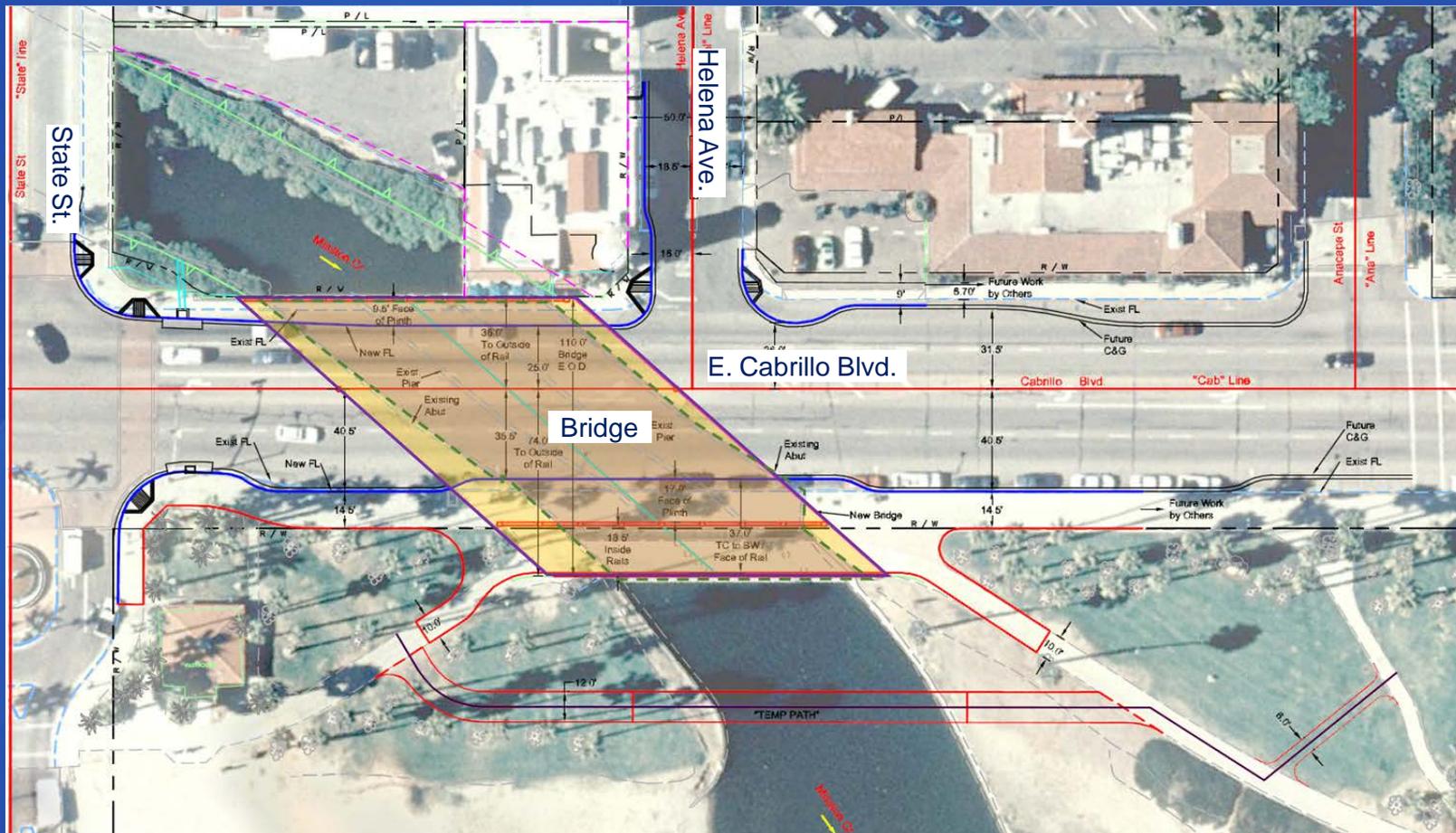


Public Hearing – November 18, 2014
Resolution of Necessity for Acquisition of Real Property
Interests by Eminent Domain

Project Location



Bridge Project Layout





Benefits of a New Bridge

- ◆ Improved pedestrian pathways and lighting
- ◆ Improved public safety
- ◆ Improved stability to bridge, channel, and adjacent properties
- ◆ Increased water flow capacity under bridge
 - Enhanced Mission Creek banks
- ◆ Habitat areas for steelhead trout and tidewater gobies



Bridge Replacement Project Costs

- ◆ Grant funding provided through Federal Highway Administration (FHWA) Bridge Program
- ◆ Estimated Total Project Cost:
Approximately \$26,701,648 Million
- ◆ Mostly federal grant funded, with approximately \$4.1 Million of the cost being City participation

Deteriorated Bridge



Deteriorated Bridge Support



Restaurant Foundation



Collapsed Timber Piles



10 State Street

- ◆ There were two property owners affected by the Project
- ◆ Necessary easement acquired on one property
 - Temporary Construction Easement over 10 State Street
 - Successfully acquired in February 2014



13 E. Cabrillo Blvd., 6 State St., and 21 Helena Ave.

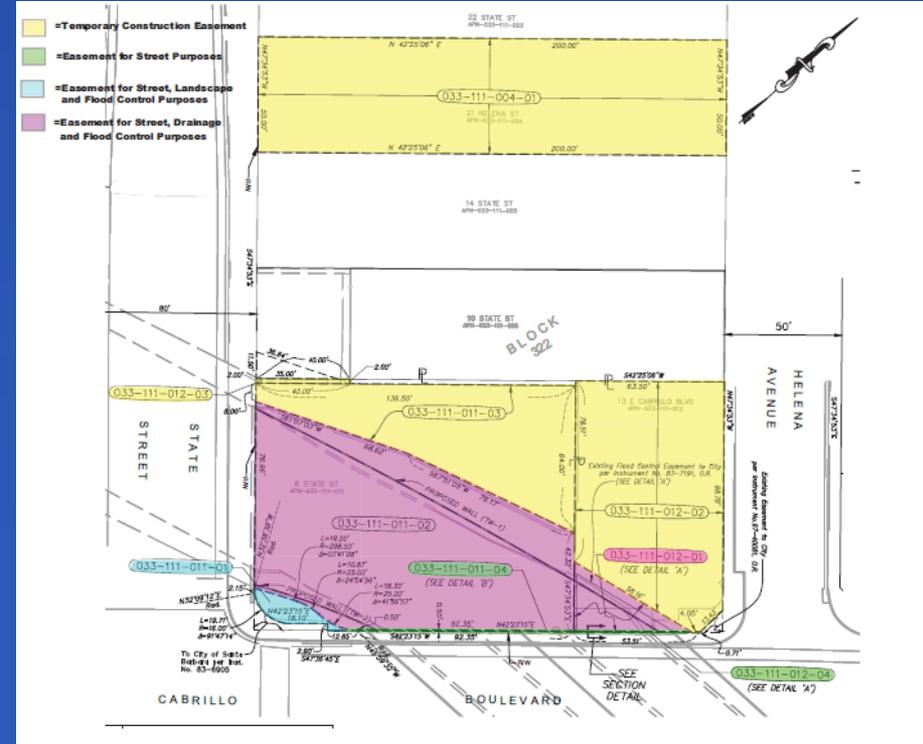


Restaurant Building at 13 E. Cabrillo Blvd.



Easements to be Acquired

PARCEL NO.	GRANTOR	AREAS		REMARKS
		REQUIRED (S.F.)	TOTAL PROPERTY (S.F.)	
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Key Project Milestones

- ◆ JANUARY 2014: Right of Entry obtained from Subject property owner
- ◆ FEBRUARY 2014: Acquisition of Temporary Construction Easement from owner of 10 State St.
- ◆ MARCH 2014: Right of Way Certification obtained from Caltrans
- ◆ OCTOBER 2014: Award of construction contract
- ◆ NOVEMBER 10, 2014: Notice to Proceed to construct and begin construction



Findings

The proposed Resolution of Necessity contains the findings required by Section 1245.230 of the California Code of Civil Procedure:

1. The public interest and necessity require the Project;
2. The Project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury;
3. The property interests are necessary for the Project; and
4. Prior to making the above findings and determinations, the offer required by Section 7267.2 of the Government Code was made to the owner or owners of record of the property interests to be acquired.



Requested Actions

Staff recommends:

- ◆ City Council conduct a Hearing on Resolution of Necessity and Adopt the Resolution of Necessity to acquire the Permanent Easements and Temporary Construction Easements.
 - A 2/3rds vote by Council is required for adoption of the Resolution (5/7 Councilmembers)
- ◆ Additionally,
 - The Project was analyzed and included in a Mitigated Negative Declaration and Categorical Exclusion. Council is being asked to accept these two reports.
 - Staff is requesting authorization to execute an Professional Services Agreement for Legal Services with Best Best & Kreiger in the not-to-exceed amount of \$200,000 for special legal services.