



## REPORT TO CITY COUNCIL

**To:** Honorable Mayor and Members of the City Council

**From:** Jason Simpson, City Manager

**Prepared by:** Barbara Leibold, City Attorney

**Date:** July 9, 2024

**Subject:** Resolution of Necessity and Authorization to Commence Eminent Domain Proceedings to Acquire Easements in and to Real Property Necessary for the Murrieta Creek Regional Trail Project

### **Recommendation**

1. Conduct a public hearing on the proposed Resolution of Necessity; and
2. Adopt A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAKE ELSINORE, CALIFORNIA, FINDING AND DETERMINING THE PUBLIC INTEREST AND NECESSITY FOR ACQUIRING AND AUTHORIZING THE CONDEMNATION OF EASEMENTS IN AND TO CERTAIN REAL PROPERTY WITHIN THE CITY OF LAKE ELSINORE.

### **Background**

The City Council is being asked to consider the adoption of a Resolution of Necessity to acquire interests in and to real property by eminent domain for (1) a trail right of way easement, and (2) a temporary construction easement, for the Murrieta Creek Regional Trail Project ("Project").

When constructed, the proposed Project will provide an important link in the regional active transportation network consistent with the East Lake Specific Plan, the City's General Plan and the City's Active LE goals. The Project will connect the existing Lake Elsinore Levee Trail to the Palomar Trail and the trail system in our southeast neighboring communities.

A aerial vicinity map is attached as Attachment 1. A map of the trail alignment is attached as Attachment 2. The necessary easements are located on two separate parcels. Both properties are located in the East Lake Specific Plan.

APN 370-120-001 (hereinafter Parcel 001)

Parcel 001 is owned by NP Lake Elsinore Commerce, LLC and is located at the southeast corner of Stoneman Street and Como Street adjacent to the residential neighborhood (Tract 26142). The parcel is 116.69 acres. The owner, NP Lake Elsinore Commerce, LLC, also owns the adjacent parcel (APN 370-120-017). The easement area is unimproved with no site improvements.

The City has completed the appraisal and made an offer to the owner for a trail easement (111,078 SF) and temporary construction easement (28,314 SF) in the amount of \$59,600. However, the owner has not been willing to allow the City to acquire the easements. Currently, the owner has a development application for the development of three (3) industrial buildings totaling 742,544 SF on an approximately 123.3-acre site. The requested easements will not interfere with the proposed development.

The easements in and to a portion of Parcel 001 are described in the legal descriptions and depictions attached as Exhibit "A" (hereinafter the Parcel 001 Easements).

APN 370-120-063 (hereinafter Parcel 063)

Parcel 063 is located at the northern terminus of Skylark Drive. The parcel is 130.06 acres (5,665,414 SF). The owner of record is The Paul Pribble and Patricia Lenore Pribble Family Trust. The easement area is unimproved with no site improvements. The City has completed the appraisal and made an offer to the owner for a trail easement (32,234 SF) and temporary construction easement (19,602 SF) in the amount of \$24,500. However, the owner has not been willing to allow the City to acquire the easements. City staff understands that the property is currently in escrow although there is no definitive date on the close of escrow on the property.

The easements in and to a portion of Parcel 063 are described in the legal descriptions and depictions attached as Exhibit "B" (hereinafter the Parcel 063 Easements).

The Parcel 001 Easements and the Parcel 063 Easements are collectively referred to as the "Project Easements."

Negotiations

City staff presented written offers to acquire the Project Easements and has engaged in good faith negotiations with the property owners. The property owners have declined to negotiate with the City and, as a consequence, the parties have been unable to agree on the purchase price and terms of the proposed acquisition. Because the City has been unable to acquire the necessary easements for this component of the regional trail project, acquisition by eminent domain is recommended.

## **Discussion**

The City may exercise its power of eminent domain to acquire property necessary to carry out any of its powers or functions. The initiation of the eminent domain process is accomplished by the City Council's adoption of a Resolution of Necessity by a two-thirds majority vote, which Resolution may only be adopted after the City Council has given the property owners a reasonable opportunity to appear and be heard on the following matters:

- (1) the public interest and necessity require the proposed project;
- (2) the proposed 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 real property to be acquired is necessary for the project; and
- (4) the offer required by Government Code Section 7267.2 has been made to the owners of record.

Staff recommends the following:

Finding No. 1: Public Interest and Necessity Require the Project. The proposed Project Easements are necessary to serve the recreational needs and promote community health of the community consistent with the standards established in the East Lake Specific Plan, the City's General Plan and the City's Active LE goals. The proposed Project, which necessarily include the Project Easements, will provide an important link in the regional active transportation network. The Project Easements are a critical component of the Project necessary to connect the Project to existing Lake Elsinore Levee Trail to the Palomar Trail and the trail system in southeast neighboring communities.

Finding No. 2: The Project is Planned and Located in the Manner That Will be Most Compatible With the Greatest Pubic Good and the Least Private Injury. The Project Easements are located on property that is currently unimproved and lies along the boundary edges of both Parcel 001 and Parcel 063 away from the public right of way and would be well within the setback area should the parcels be developed at a later date. The Project Easements will not obstruct in any material way access to Parcel 001 and Parcel 063. No other properties are impacted and no new services will be required to complete the Project lying within the Project Easements.

Finding No. 3: The Property is Necessary for the Project. Acquisition of the Project Easements is necessary to complete the proposed regional trail. The Project Easements are located on the only properties available for trail connection taking into account surrounding uses and other restrictions.

Finding No. 4: The City Has Negotiated to Purchase the Property. Government Code Section 7267.2 requires the City to make a good faith offer of just compensation and to attempt to acquire the Project Easements through a negotiated purchase. The offer required by Section 7267.2 of the Government Code was made to the owners of record based on an approved appraisal conducted. The City's initial offers to the owners of record was for the full appraised value. The owners of record have declined to accept the City's initial offers and have further declined to engage in additional negotiations.

Notice of this public hearing was mailed to the property owners of record informing them of their right to appear and be heard on these issues. After all of the testimony and other evidence have been presented by all interested parties, the City Council must make a determination whether to adopt the proposed Resolution of Necessity to acquire the required easements by eminent domain. In order to adopt the Resolution, the City Council must, based on all of the evidence before it, and by a vote of two-thirds of its members, make the findings and determinations stated above exist.

### **Environmental Determination**

The City approved Mitigated Negative Declaration (SCH #2021120441) for the Project (therein identified as the “Murrieta Creek Multi-Use project”) and made findings in compliance with California Environmental Quality Act on February 8, 2022. In addition, the Project is consistent with the MSHCP as an identified Planned Regional Trail and MSHCP covered activity. A Joint Project Review and Determination of Biologically Equivalent or Superior Preservation have been completed for the project and approved by RCA and the wildlife agencies.

### **Fiscal Impact**

The funding for acquisition in the Project Easements is available and would be paid from Active Transportation Program Grant funds. In addition to the acquisition costs, the City will become obligated to pay litigation expenses to prosecute an eminent domain action. The litigation budget is extremely difficult to predict and will depend on a variety of factors. As included in the Resolution, the City Attorney’s Office requests authorization to engage special counsel services to represent the City in the proposed acquisition and to revise the existing Engagement Agreement with the law firm of Murphy & Evertz to an amount not to exceed \$50,000.

### **Attachments**

Attachment 1 – Vicinity Map  
Attachment 2 – Alignment Map  
Attachment 3 – Resolution  
Exhibit “A” – Legal Descriptions/Depictions (APN 370-120-001)  
Exhibit “B” – Legal Descriptions/Depictions (APN 370-120-063)  
Attachment 4 – Notices

Attorney’s Office, Engineering