



GALLINAS LEVEE UPGRADE PROJECT

Project Update:

Process for Acquiring Easements

As part of the levee upgrade project, the Marin County Flood Control and Water Conservation District is proposing to purchase permanent easements under the existing levee and timber reinforced berm (TRB) for construction and future maintenance. This document answers questions received about that process. Staff is working on an outline of the easement acquisition process and will post it to the project webpage when it is complete. For more information on the project visit the project webpage.

<http://www.marinwatersheds.org/resources/projects/gallinas-levee-upgrade-project>

1. Is the easement negotiation process with each separate property owner entirely confidential? Or is any part of that process public information that is available to other Santa Venetia residents and property owners? Once there is a signed agreement with a property owner does it have to be approved by the District Board of Supervisors?

The negotiation process with each property owner is on an individual basis and is confidential beginning with the appraisal all the way through contract negotiations. Once the contract is signed by a property owner, then staff would schedule it for approval by the District Board of Supervisors. At the time it is brought before the District Board the contract and staff report are made public.

The remainder of the property file including appraisal, correspondence between staff and property owner and any other related materials are kept confidential until such time that the purchase is completed which includes payment to the property owner and recording the easement at the Marin County Recorder's office. If at that time, there is a request by the public to view a specific file then a Public Records Act request may be made.

2. My concern is that I am being asked to vote for a ballot measure that includes acquisition of easements without much knowledge of what to expect. While I can understand a need for confidentiality, I think there will be an issue of fairness under the scenario you outline. For example, if I were to convey an easement without compensation only to find out after the fact that my neighbor, with an identical situation, received some compensation, I'd probably feel slighted.

Every property where a permanent and/or temporary Flood Control easement is required will be treated the same. Each property will be appraised for the easement rights necessary for the project. Each property owner will receive an offer of just compensation for the easement rights. It is up to each property owner to decide if they want to voluntarily waive their rights to compensation and donate the easements to the District or accept the District's offer. Note that a voluntary waiver of compensation would reduce the overall cost of the project and make more funds available for flood infrastructure specifically in Zone 7 - Santa Venetia.

a. At least some rights I now enjoy will be lost. What are these?

The County/Flood Control District standard Easement Deed will be used along with a Right of Way Contract for the temporary easement rights. The permanent easement will allow the District to build, maintain, repair and replace the proposed flood control structure and the berm that it is built within the easement area described in the Easement Deed (likely to be 10 feet wide or less). Each property owner still retains title to their lot as was described in their Grant Deed when they purchased or acquired their property. The new easement would be an exception to title similar to other easements that may appear on title already.

i. Property Tax Implications

Generally, there are no changes in the property tax basis as far as a decrease in valuation due to the acquisition. Based on experience gained from other projects we do not know of a property owner that has received a decrease in tax valuation as a result of a flood control easement acquisition. Conversely there would be no increase in property tax valuation as a result of the District's acquisition.

ii. Rights of access: Who, what, when?

The permanent easement includes rights of access to perform the functions and uses of the easement by the District. The temporary construction easement would only be for the initial construction of the project with an expiration date or time period and not extend to ongoing maintenance and use. Access to the easement area would be longitudinal from specific access points along the TRB in normal circumstances. Access through private yards would have to be made on an individual permission only basis if

ever necessary. No public access is allowed on the easement, only District employees, contractors or related parties will be allowed to access the easement area.

b. Landscaping

i. Whose responsibility is weed control?

Weeds within the maintenance easement that may impact flood safety and/or required environmental plantings associated with the project will be controlled by and at the expense of the District. For example, if weeds are physically blocking District staff's ability to assess the integrity of the levee system they may be pulled. Another example is if weeds on the waterside of the levee are significantly inhibiting the growth of necessary refugia for native species and environmental regulatory agencies require their management, weeds may be removed by the District. It is District policy not to use herbicides, but there will be no restrictions on homeowners of their ability to remove or use herbicides on weeds as they feel appropriate for their landscaping.

Following 3-10 years of annual post-construction monitoring (depending on final project permit requirements), unless a specific issue is suspected, such as after a significant storm or winter period, or an inspection is requested by landowners, the District intends to inspect the easement no more than once per year, and therefore does not anticipate a need to frequent the easement for weed control. The TRB will be designed to discourage the growth of weeds within the TRB.

ii. What can and can't be done on easement?

Structures are not allowed within the easement area except common boundary fencing. Landscaping would be allowed so long as it doesn't interfere with the District's improvements and maintenance thereof.

3. Structures and improvements

a. Who will pay for demolition and reconstruction for conforming structures and improvements?

The District will pay the property owner to have certain improvements modified, removed, moved or replaced depending on the situation. Some improvements are more portable than others such as hot tubs, small garden sheds, greenhouses, gazebos and other small items not attached to the ground in many cases can be moved out of the easement area. Permanent improvements such as decks, gazebos with foundations, concrete or brick BBQs – outdoor kitchens, large sheds and structures, etc. may not be movable and may require demolition or modification. If an improvement is in place at the time of construction and the owner does not

wish to retain it or its not feasible to move it then the project contractor will demolish the improvement within the easement area.

b. Non-conforming structures?

Non-conforming structures would be handled in a similar manner as conforming except that the District and County take no responsibility to ensure that a non-conforming structure is brought into conformance as a result of the project.

c. What will/ will not be allowed after project?

See Landscaping, no permanent structures allowed within permanent easement area.

4. Representation of Homeowners during negotiations.

These real estate negotiations are more complex than I am comfortable entering into without some counsel. And while I don't think the County or Flood Zone is out to get anybody, County Counsel will have a duty to the Flood Zone and my interests may not be entirely aligned. Before I record a permanent easement I would like to have some advice from an attorney skilled in this area. Will I be expected to bear those costs as well?

Attorney fees are not reimbursable. If at the time the District enters into negotiations and any of the conditions outlined below in the Code of Civil Procedure 1263.025 are met, the homeowner may choose to get their own appraisal and the District would reimburse reasonable costs up to \$5,000.

(a) A public entity shall offer to pay the reasonable costs, not to exceed five thousand dollars (\$5,000), of an independent appraisal ordered by the owner of a property that the public entity offers to purchase under a threat of eminent domain, at the time the public entity makes the offer to purchase the property. The independent appraisal shall be conducted by an appraiser licensed by the Office of Real Estate Appraisers.

(b) For purposes of this section, an offer to purchase a property "under a threat of eminent domain" is an offer to purchase a property pursuant to any of the following:

(1) Eminent domain.

(2) Following adoption of a resolution of necessity for the property pursuant to Section 1240.040.

(3) Following a statement that the public entity may take the property by eminent domain.

(Added by Stats. 2006, Ch. 594, Sec. 8. Effective January 1, 2007.)

5. What if a homeowner says no to the easement?

The project apparently requires participation from 100% of creekside homeowners in Zone 7. What happens if a homeowner declines the offer?

If the project receives CEQA approval and funding and the Board of Supervisors decides to authorize implementing construction of the project then the District may elect to use its powers of Eminent Domain as established in the US Constitution, Federal code, State code, and Water Code Appendix 68-5.13 to acquire the necessary easements for the project. Under the scenario where a property owner declines the District's offer of just compensation for the necessary easements and negotiations fail then the District Board may decide to approve a Resolution of Necessity which establishes the need for the easements on that specific property. With the Resolution of Necessity approved District Counsel may file an Eminent Domain lawsuit against the property owner and request an Order of Possession from the Court. The District must deposit the offered just compensation with the court at the time of filing for the Order of Possession. The property owner may withdraw that compensation from the court if they so choose. Once an Order of Possession is issued by the Court the District will have the right to build the project on the property and the parties will continue to negotiate a settlement for compensation while the project moves forward.

6. Liability and Insurance after the easement

a. Will the homeowner be liable for damages caused by construction or failure of the levee?

The property owner would not be liable for construction or actions of the District related to the easement and District's improvements constructed therein.

b. What about an accident during construction or maintenance of the levee?

The District will become liable for incidents that occur within its easement during and after construction of the project with certain exceptions where the property owner or third party were negligent or purposely caused the incident.

c. How will liability after the easement be different than it is today?

The District has no permanent right to perform maintenance so acquiring a permanent easement will make the District responsible for the permissions and uses granted by the Easement Deed and carry the associated liability.