PLACE: West Sacramento Chamber of Commerce Meeting Room
1420 Merkley Avenue, Suite 6
West Sacramento, CA

DATE: Thursday, May 5, 2011

TIME: 10:30 AM

Special Meeting Agenda

1. Public Comment

2. Consideration of Resolution 11-05-01 Authorizing an Eminent Domain Action to Acquire Real Property for the West Sacramento Levee Improvement Program, The Rivers EIP – Yolo County Assessor’s Parcel Numbers 014-580-009 and 014-580-010, Williams Portfolio 2.

3. Adjourn

** In accordance to the Brown Act, any documents related to agenda items that are made available to the Board before the meeting will be available for review by the public at 1420 Merkley Ave., Suite 4, West Sacramento, CA 95691, 8:00 am to 4:00 pm, Monday through Friday.**
OBJECTIVE
The purpose of the report is to request the West Sacramento Area Flood Control Agency's (WSAFCA) approval of a resolution authorizing the initiation of eminent domain proceedings to acquire certain real property needed for construction of levee improvements necessary to achieve and maintain at least a 200-year level of flood protection throughout the City and at this section of the Sacramento River North as part of the Rivers Early Implementation Project (EIP) ("Project").

RECOMMENDED ACTION
It is respectfully recommended that the JPA Board approve the findings and adopt Resolution 11-05-01 (Attachment 1):

A) Determining that the public interest and necessity require the Project; and
B) Determining that the Project is planned and located in the manner that will be most compatible with the greatest public good and the least private injury; and
C) Determining that the property owned by the Williams Portfolio 2, located at 1120 Riverbank Road, West Sacramento, CA (APN 014-580-009 and 014-580-010 "Williams Property") is necessary for the Project; and
D) Determining that the offer required by Section 7257.2 of the Government Code has been made to the owner of record; and
E) Authorizing WSAFCA's attorney to file a complaint in eminent domain to acquire such property interest, to apply for an order of possession before judgment, and to prosecute that action to final judgment; and
F) Authorizing the deposit of the amount of probable compensation in the amount of $173,900.

BACKGROUND
The West Sacramento Area Flood Control Agency (WSAFCA) is the joint powers authority of the City of West Sacramento, Reclamation District 900 and Reclamation District 537. WSAFCA was created in 1994 to plan and build facilities to protect the city from flood hazards and to finance the local share of these flood control projects in partnership with the state and federal governments.

In late 2005, the City of West Sacramento adopted a comprehensive flood control strategy for the purposes of improving the City's flood protection system, thereby meeting new federal standards for evaluating levee integrity. WSAFCA's goal is to achieve a minimum 200-year flood protection for the city. A 200-year flood has a 0.5% chance of occurring in any given year. The agency's objectives to meet this goal are to:

- Construct levee improvements as soon as possible to reduce flood risk as quickly as possible;
- Construct improvements that are politically, socially, economically and environmentally acceptable;
- Provide recreation and open space features that are compatible with flood improvement actions;
- Preserve and enhance riparian and other native habitats; and
- Ensure continuing federal and state assistance for levee repairs and maintenance.
By the fall of 2006, WSAFCA had begun funding the initial stages of a levee study. In August of 2007, upon completion of the study, the City Council hired HDR Engineering, Inc. to facilitate the environmental, design and permitting for the first phase of improvements. The result of this process identified the first round of construction sites.

WSAFCA is working with the California Department of Water Resources (DWR) and the U.S. Army Corps of Engineers (USACE) on a comprehensive study of the flood control facilities protecting the City. This study, called the West Sacramento General Reevaluation Report (GRR), will enable the USACE to determine the Federal interest for improving the City’s flood control system. While the GRR is under development, WSAFCA is advancing early implementation levee improvement projects (EIPs) to accelerate improvements that incrementally reduce the risk of flooding and associated damages.

In the levee improvement program, outlined in WSAFCA’s Draft Alternatives Analysis report dated November 13, 2009, three reaches of the levee system were identified as priorities for immediate improvement. One of those reaches was the south levee of the Sacramento River north of Bryte Park. WSAFCA has determined to pursue an EIP at this reach. This Project is called the Rivers EIP. The Rivers EIP will improve 3,035 feet of the levee. In October of 2010, HDR completed 100% construction drawings for the Rivers EIP.

WSAFCA has prepared an environmental impact report (EIR) under CEQA, and an environmental impact statement (EIS) under NEPA for the Rivers EIP which includes evaluation of the project specific impacts of the Rivers EIP Project. The board certified that document on March 10, 2011. At that same meeting WSAFCA also approved and formalized the offers on all parcels zoned or used as open space in the Project, which includes the Williams Property. On March 16, 2011, WSAFCA’s right-of-way agent, Bender Rosenthal, Inc. (BRI) made an offer for fee title on the property. Construction of the Rivers EIP improvements is scheduled to begin in July of this year. In order to complete the improvements during the dry season, all real property interests needed for construction must be acquired prior to the commencement of construction, which is scheduled to begin in July 2011.

ANALYSIS

Acquisition

Surrounded by levees on all sides, the City of West Sacramento has a long history living with flood risk. Currently most of the City mapped by the Federal Emergency Management Agency (FEMA) in 1995 was in an X- zone, which indicates that it area is protected by levees from a 100-year flood. Using new evaluation techniques developed after flood events along the gulf coast, the City has identified problems, with seepage, stability, and erosion throughout the levee system. These are common forms of levee deficiencies throughout the Central Valley and may threaten the public’s safety and the City’s economic vitality if left unchecked. The impacts of the deficiencies in the levee system reach beyond those apparent during a storm event when the lives and livelihoods of citizens of West Sacramento could be in jeopardy. The potential of FEMA remapping prevents business expansion and hinder s the attraction of new investment to the City. It halts residential construction and can negatively impact property values of existing homes and businesses, all of which have impacts to the funds available to the City to pay for essential services, including police and fire. It is essential that that WSAFCA take an aggressive approach to addressing these shortfalls.

City staff and WSAFCA’s engineering consultants have evaluated different alternatives and considered the implications of these alternatives in order to accomplish WSAFCA’s goal to achieve a minimum 200-year flood protection for the City. Those considerations have resulted in the design of priority levee improvements throughout the City, including the Rivers Phase 1 EIP. In addition to the necessary flood improvements that were designed as a result of the deficiencies found, recreation improvements are also planned on the site. These improvements include a paved bicy cle & pedestrian trail on the levee crown, access to the trail from Riverbank Road, paved trails to the river, as well as access controls & signage.

Findings Required to Adopt a Resolution of Necessity

On April 19, 2011, WSAFCA issued a Notice of Hearing for a Resolution of Necessity to the owner of record, notifying it that a hearing is scheduled on May 5, 2011 at 10:30 am before WSAFCA. This written notice is required by Code of Civil Procedure section 1245.235 and advises the property owner of its, or its representative’s, right to appear and be heard before WSAFCA and address the proposed resolution including the following issues:

(00932814)
1. The public interest and necessity of the proposed Project.

Based on the newest Federal standards, certain important deficiencies have been found in the Federal levee system that protects the City. Without an intact levee system that meets current Federal standards, the lives of the citizens of the City of West Sacramento are in danger of flooding during an intense storm event. There are direct negative impacts to the local economy when the levee system is not to current standards. Lastly, there is the potential for the negative impacts to the funding of essential City services, paid for with property taxes and sales tax.

In addition to the public safety objectives, WSAFCA has objectives related to providing recreation and open space features that are compatible with flood improvement actions for the use and enjoyment of the public and objectives for the preservation and enhancement of riparian and other native habitats.

In 2007, the City conducted an initial screening and selection process to identify its first round of EIP sites. This initial process used nine site selection screening criteria for identifying deficient levee reaches throughout the West Sacramento basin as potential candidates for Early Implementation Project sites. These screening criteria include: Public Safety (primary criterion), and secondary criteria including availability of funds, real estate requirements, scalability of construction, evolving technical policy, land-use compatibility, permit requirements, environmental and cultural impacts, and integration of multiple objectives. The Rivers Phase 1 EIP Site was selected for consideration as an Early Implementation Project based on an overall favorable assessment when compared against these criteria.

2. The proposed Project is planned or located in a manner that will be most compatible with the greatest public good and least private injury.

The Rivers EIP levee improvements initially were approximately 4,500 feet long and included approximately 1,500 feet along River Crest Drive, in The Rivers residential development. As the project design was developed, engineering analysis revealed that levee improvements other than a seepage cut-off wall may be preferable along River Crest Drive. To determine the best solution, further analysis is required. The time required for that analysis would have delayed the entire project. Instead of delaying the project, the decision was made to remove the portion along River Crest Drive from the project. The eastern 1/3, approximately 1,500 feet, was truncated from the project, the Project is now approximately 3,000 feet long and the eastern edge of the Project is now at the intersection of River Crest Drive and Westlake Drive. Deficiencies at this site include geometry, stability, through-seepage, and under-seepage. To address these deficiencies, The Rivers EIP design calls for a combination of slurry cutoff wall and landside slope flattening.

In addition to the flood protection improvements, compatible recreation improvements would be constructed as part of this Project at the Williams Property in a manner consistent with its current flood designation, zoning and existing property uses. The current FEMA map, revised in 1995, shows that a large northerly portion of the Williams Property is labeled a special area in undated by a 100-year flood. The proposed acquisition and flood protection improvements are consistent with the existing designation and City zoning of open space. In a title report, prepared by Placer Tile Company, the property is encumbered by rights of Reclamation District No. 811, along the southerly edge where the existing levee is located. The proposed improvements include a paved bicycle & pedestrian trail on the levee crown, ramps on the landside of the levee to provide access to the trail from Riverbank Road, paved trails on the water-side of the levee crown providing access through the vegetation and to the river, as well as access controls & signage.

The flood improvements required to meet the above mentioned design criteria for the improvement of levees is subject to the authority of the Central Valley Flood Protection Board (CVFPB). Their authority is granted by the State of California via Title 23, "Water." They determine the extent of the operation and maintenance corridor. The Project requires Section 408 approval from the United States Army Corps of Engineers. The Project also requires approval from both the State Department of Water Resources and the CVFPB, which requires each agency to conduct extensive design review and approval. The extent of the improvements to meet WSAFCA's
3. The property sought is necessary for the Project.

The Williams Property is more that 80% of the land needed for the Rivers Phase 1 EIP property. Staff and consultants have determined that in order to be compliant with state and Federal design standards and to meet WSAFCA’s objectives of flood protection, environmental enhancement, open space preservation, and recreational features compatible with and in support of flood protection improvements, and the need for permanent, perpetual and completely transferable rights, with multiple public agencies having interest in the property, an acquisition of fee title for the Williams Property is needed.

4. The offer required by Section 7267.2 of the Government Code has been made to the owner of record.
   - On March 10, 2011 WSAFCA certified the Project’s EIR/EIS.
   - On March 16, 2011 BRI mailed a final offer packet to the property owner. The packet included a written offer satisfying Government Code section 7267.2, which requires WSAFCA to make an offer in writing for the property of at least its appraised fair market value prior to adopting a resolution of necessity. The appraisal on which WSAFCA based its offer was completed on October 21, 2011.

Strategic Plan Integration
This strategic acquisition for flood control purposes furthers WSAFCA’s objectives and is done in support the City strategic planning principles of providing a place where people feel safe and secure, provides for a financially sound city government, and is a top priority of the 2008, 2009 and 2010 Policy Agenda.

Alternatives
1. WSAFCA adopts Resolution 11-05-01.

2. WSAFCA may choose to make modifications to the Resolution. WSAFCA may direct staff to make those changes in conjunction with legal counsel. This is not recommended, as it delays the filing of the complaint in eminent domain to acquire such property interest, which in turn delays the final judgment of order for possession. Delay in possession will result in the Project commencing construction in 2012, rather than 2011 as presently planned.

3. WSAFCA may choose not to adopt this resolution. This is not recommended because it will prevent the acquisition of the property rights needed for the Project.

Alternative 1 is the staff recommendation. Staff does not recommend the alternative approaches because they would prevent construction from occurring this year.

Coordination and Review
This report was coordinated with WSAFCA, the City’s Finance Department, and legal counsel for WSAFCA and the City.

Budget/Cost Impact
The total deposit of the amount of probable compensation is $173,900. The total cost of the eminent domain proceedings is unknown but is eligible for reimbursement upon DWR’s approval of the Construction Funding Agreement and the subsequent approval of the Project’s Real Estate Plan. Appropriations for these acquisitions were included in the current Capital Improvements Project Budget, funded by a combination of property flood assessment revenue, bond proceeds, and the City of West Sacramento. Ninety-five percent of
the costs are eligible for reimbursement through the State-Federal Flood Control Systems Modification Program’s Land Acquisition Process.

ATTACHMENT
Attachment 1 - Resolution 11-05-01
RESOLUTION 11-05-01

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE WEST SACRAMENTO AREA FLOOD CONTROL AGENCY AUTHORIZING AN EMINENT DOMAIN ACTION TO ACQUIRE REAL PROPERTY FOR THE WEST SACRAMENTO LEVEE IMPROVEMENT PROGRAM, THE RIVERS EARLY IMPLEMENTATION PROJECT – YOLO COUNTY ASSESSOR’S PARCEL NUMBERS 014-580-009 & 014-580-010, WILLIAMS PORTFOLIO 2

WHEREAS, WSAFCA is a Joint Powers Authority comprised of the City of West Sacramento, Reclamation District (RD) 900, and RD 537 for the purposes of constructing the improvements necessary to enhance the levee system protecting the City of West Sacramento; and

WHEREAS, WSAFCA has been granted the authority to accomplish the purposes and projects necessary to achieve and maintain at least a 200-year level of flood protection, through the development, design, acquisition, and construction of such projects as are required to provide the necessary flood protection for the protection of the public and property within WSAFCA’s boundaries, which are coextensive with those of the City of West Sacramento; and

WHEREAS, WSAFCA has been granted the authority to accomplish the purposes and projects necessary to preserve environmental resources that support or are compatible with at least a 200-year level of flood protection through the development, design, acquisition, and construction of such projects as are required to provide mitigation for environmental impacts resulting from the development, operation and maintenance of necessary flood protection infrastructure within WSAFCA’s boundaries, which are coextensive with those of the City of West Sacramento; and

WHEREAS, WSAFCA has been granted the authority to accomplish the purposes and projects necessary to enhance ecosystem services that support or are compatible with at least a 200-year level of flood protection through the development, design, acquisition, and construction of such projects as are required to improve the function of existing habitat or create new habitat within WSAFCA’s boundaries, which are coextensive with those of the City of West Sacramento; and

WHEREAS, WSAFCA has been granted the authority to accomplish the purposes and projects necessary to achieve recreational benefits that support or are compatible with at least a 200-year level of flood protection, through the development, design, acquisition, and construction of such recreational features that can be efficiently integrated with delivery of the necessary flood protection infrastructure within WSAFCA’s boundaries, which are coextensive with those of the City of West Sacramento; and

WHEREAS, in furtherance of its purposes, WSAFCA commissioned a levee study to evaluate the entire West Sacramento Levee System; and

WHEREAS, the study determined that substantial improvements to the system must be made to meet the new Federal criteria and protect the lives and livelihoods of those living and working in West Sacramento; and

[00932815]
WHEREAS, in August of 2007, the City Council of the City of West Sacramento approved a contract with HDR Engineering, Inc. for environmental, design, and permitting to prepare an Early Implementation Program (EIP) to guide the first phase of improvements, selecting the sites based primarily on those providing the greatest public safety, with the least negative effects; and

WHEREAS, based on that criterion HDR identified a series of necessary improvements to the flood control facilities surrounding the City of West Sacramento; and

WHEREAS, in October 2010, HDR completed its 100% construction drawings for the levee improvements for a portion of Reach 2, known as “the Rivers EIP,” which included the geometry for the extent of the real property interest to be acquired in support of the levee and ancillary recreational improvements, and riparian habitat restoration; and

WHEREAS, Resolution 11-01-01 approved contingent offers for parcel owned in fee by the Williams Portfolio 2 (the “Property”) within the Rivers EIP; and

WHEREAS, WSAFCA has had an environmental impact report (“EIR”) under CEQA, and an environmental impact statement (“EIS”) under NEPA, prepared for the Rivers EIP which includes evaluation of the project-specific impacts and measures to mitigate the potentially significant adverse impacts of the Rivers EIP Project (“EIR/EIS”); and

WHEREAS, by Resolution 11-03-01, WSAFCA has certified the EIR/EIS prepared for the Rivers EIP, which includes evaluation of the project specific impacts and measures to mitigate the potentially significant adverse impacts of the Rivers EIP Project; and

WHEREAS, the California Department of Fish and Game and US Fish and Wildlife Service require WSAFCA to provide on-site mitigation for riparian habitat that must be removed to build levee improvements in compliance with the levee construction and maintenance standards of the California Department of Water Resources, Central Valley Flood Protection Board and US Army Corps of Engineers; and

WHEREAS, the flood control improvements contemplated under the Rivers EIP require that WSAFCA obtain lands for construction of levee and ancillary recreational improvements, and riparian habitat restoration; and

WHEREAS, acquisition of the fee simple interest in Yolo County APNs 014-580-009 & 014-580-010, consisting of approximately 22.60± acres of unoccupied land located along the Sacramento River within the City of West Sacramento, is necessary for the Rivers EIP; and

WHEREAS, each person whose name and address appeared on the last equalized County Assessment Role as an owner of the Property has been given notice and a reasonable opportunity to appear and be heard on this date on the matters referred to in California Code of Civil Procedure section 1240.030 in accordance with California Code of Civil Procedure section 1245.235;

NOW, THEREFORE, BE IT RESOLVED by West Sacramento Area Flood Control Agency that:
Section 1: WSAFCA intends to acquire through the exercise of the power of eminent domain the real property or interest in real property identified above as the "Property," including all riparian and other water rights appurtenant to the Property.

Section 2: That the public use for which the Property is to be taken is for construction, operation, reconstruction, repair and maintenance of improvements for present and future flood control, infrastructure relocations, environmental impact mitigation, recreational and other purposes in connection with the Project.

Section 3: That WSAFCA is authorized to acquire the Property by eminent domain for the above-mentioned public purposes by California Government Code sections 6523 and 37350.5, Water Code section 50930, and as set forth in section 5.f. of the West Sacramento Area Flood Control Agency Joint Exercise of Powers Agreement made and entered into as of July 20, 1994, by and between the City of West Sacramento, RD 900, and RD 537.

Section 4: That the Property is described in Exhibit A and shown as "Fee Acquisition Area" on Exhibit B, both exhibits being attached hereto and incorporated herein by this reference.

Section 5: That the Board declares that it has found and determined each of the following:

a. The public interest and necessity require the Project.

b. The Project is planned and located in the manner that will be most compatible with the greatest public good and the least private injury.

c. The Property is necessary for the Project.

d. WSAFCA has made the offer required under Section 7267.2 of the Government Code to the owners of record or representatives of the owners of record of the Property.

Section 6: That WSAFCA, a joint exercise of powers agency, its appropriate officers, employees and agents, are hereby authorized and empowered:

a. To acquire in the name of WSAFCA, a joint exercise of powers agency, the Property, including all riparian and other water rights appurtenant to the Property, by condemnation in accordance with the provisions of the Eminent Domain Law of the State of California.

b. To prepare, file and prosecute in the appropriate court, such proceedings in eminent domain as are necessary for the acquisition of the Property.

c. To deposit the probable amount of compensation with the appropriate authority.

d. To make application to a court of competent jurisdiction for an order permitting WSAFCA to take immediate possession and use of the Property.

OWNER: Williams Portfolio 2, a corporation
Resolution 11-05-01
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APNs: 014-580-009 & 014-580-010

PASSED AND ADOPTED by the West Sacramento Area Flood Control on this 5th day of May, 2011, by the following vote:

AYES: 
NOES: 
ABSENT:

__________________________
William E. Denton, President

ATTEST:

__________________________
Kenneth A. Ruzich, General Manager

APPROVED AS TO FORM:

__________________________
James M. Day, Jr., WSAFCA Attorney
Exhibit A
[Legal Description]
EXHIBIT "A"
LEGAL DESCRIPTION

THE LAND DESCRIBED HEREIN IS SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF YOLO, CITY OF WEST SACRAMENTO, AND IS DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT ON THE WESTERLY LINE OF SWAMP & OVERFLOWED LANDS SURVEY NO. 305, DISTANT THEREON NORTH 18 DEGREES, 10' WEST, 2272.54 FEET FROM THE SOUTHWEST CORNER OF SAID SURVEY NO. 305, WHICH POINT OF BEGINNING IS FURTHER DESCRIBED AS BEING THE INTERSECTION OF SAID WESTERLY LINE OF SURVEY NO. 305 WITH THE INSIDE TOE OF THE SACRAMENTO RIVER LEVEE IN RECLAMATION DISTRICT NO. 811; THENCE FROM SAID POINT OF BEGINNING ALONG THE SAID INSIDE TOE OF LEVEE, THE FOLLOWING COURSES AND DISTANCES:

NORTH 83 DEGREES, 18' EAST, 97.95 FEET; NORTH 67 DEGREES, 33' EAST 200.06 FEET; NORTH 67 DEGREES, 40' EAST, 293.40 FEET; NORTH 84 DEGREES, 03' 30" EAST, 355.91 FEET; NORTH 81 DEGREES, 32' EAST 398.83 FEET; NORTH 78 DEGREES, 58' EAST, 610.51 FEET; NORTH 85 DEGREES, 07' EAST, 582.34 FEET; SOUTH 88 DEGREES, 27' EAST 466.32 FEET TO THE WESTERLY LINE OF LANDS NOW OR FORMERLY OWNED BY FOURSESS; THENCE ALONG SAID LINE, NORTH 0 DEGREES, 16' EAST, 391.32 FEET, MORE OR LESS, TO THE ORDINARY HIGH WATER LINE OF THE SACRAMENTO RIVER; THENCE ALONG SAID ORDINARY HIGH WATER LINE, AND FOLLOWING THE MEANDERS THEREOF, WESTERLY, A DISTANCE OF 3120 FEET, MORE OR LESS, TO THE INTERSECTION THEREOF WITH THE WESTERLY LINE OF SWAMP AND OVERFLOWED LANDS SURVEY NO. 305, PROJECTED NORTH 18 DEGREES, 10' WEST FROM THE POINT OF BEGINNING; THENCE SOUTH 18 DEGREES, 10' EAST, 300 FEET, MORE OR LESS TO THE POINT OF BEGINNING.

ASSESSOR'S PARCEL NUMBER: 014-580-009 AND 010

CLTA Preliminary Report
Exhibit B
[Map]