



Agenda Item D.2
PUBLIC HEARING
Meeting Date: February 3, 2009

TO: Mayor and Councilmembers

FROM: Dan Singer, City Manager

CONTACT: Steve Wagner, Director of Community Services
Rosemarie Gaglione, Capital Improvement Project Manager

SUBJECT: San Jose Creek Capacity Improvement Project -
Resolution of Necessity

RECOMMENDATIONS:

- A. Open the public hearing
- B. Receive staff presentation and allow property owner and public testimony
- C. Close the public hearing
- D. Adopt by a two thirds vote City Council Resolution 09-__ entitled "A Resolution of the City of Goleta, California, Adopting a Resolution of Necessity for the Acquisition of Certain Parcels Located Adjacent to the San Jose Creek Capacity Improvement Project."

BACKGROUND:

The concept for the San Jose Creek improvements arose after the devastating 1995 flooding in Old Town Goleta. A capital improvement project to eliminate future flooding of Goleta Old Town was identified and included in the Goleta Old Town Revitalization Plan which was approved by the County of Santa Barbara in 1998.

Following the City's incorporation in 2002, the San Jose Creek Capacity Project was added to the City's capital improvement program as the highest priority project. Since then the City, in cooperation with the County Flood Control District, has taken the lead in managing the project.

The San Jose Creek Capacity Improvement project is consistent with all applicable provisions of the City's General Plan/Coastal Land Use Plan, adopted by the City Council on October 2, 2006 and the Coastal Act.

A Mitigated Negative Declaration Addendum/Environmental Assessment for the project was approved by the Council on April 15, 2008. The City is in the final design phase of the project and construction is scheduled to begin in May 2009.

The City must acquire various surface and subsurface easements across adjacent parcels in order to construct the project. Negotiations are ongoing, but may not reach mutually acceptable conclusions by the start of construction. There are issues of valuation and compensation that will require additional time to resolve. The City of Goleta is fully committed to continuing to work through these issues until they can be resolved to the mutual agreement of the parties involved. In order to ensure timely delivery of the project the City of Goleta has prepared this Resolution of Necessity to initiate the eminent domain process.

DISCUSSION:

Tonight's hearing is for consideration of a Resolution of Necessity. This is a necessary prerequisite for the City to exercise its power to acquire property by eminent domain. This action will not commit the City to the use of this tool, but will allow the City to do so if necessary to maintain the construction schedule for the project.

The scope of this hearing is limited, pursuant to California Code of Civil Procedure Section 1240.030 to determination of the following questions:

1. *Does the public interest and necessity require the project; and*
2. *Is the project planned or located in the manner that will be most compatible with the greatest public good and the least private injury; and*
3. *Is the property sought to be acquired necessary for the project.*

Staff believes that the proposed San Jose Creek Capacity Project meets these criteria as further explained below.

Does the public interest and necessity require the project?

The existing flood control channel will only accommodate a 25 year storm event. The San Jose Creek Capacity Improvement Project will increase the capacity of the channel to accommodate a 100 year storm event without overtopping. Past flood events have caused significant damage to developed property in Old Town. The threat of future flood damage limits the City's ability to meet the goals identified in the Goleta Old Town Revitalization Plan as much of Old Town is location within the FEMA regulatory floodplain limits. Flooding is also a danger to public health, since flood waters can be contaminated due to the release of harmful chemicals and waste products. There is no feasible alternative to alleviate this flood threat.

Is the project planned or located in the manner that will be most compatible with the greatest public good and the least private injury?

The project will increase the capacity of the existing flood control channel, which was designed and built by the Army Corps of Engineers in 1964. The location and alignment

of the channel were determined by the Army Corps of Engineers to be the most beneficial. The location of the project is fixed due to the location of the existing channel.

In order to insure that the project will result in the least private injury the project has been designed to minimize impacts to adjacent developed properties removing and replacing the existing channel with a larger channel in the same location. The proposed project also incorporates the use of subsurface retaining wall tie backs to minimize the surface area of adjacent properties impacted during construction. Even the temporary construction easements were developed with the convenience and utility for the affected property owners in mind.

Is the property sought to be acquired necessary for the project?

All easements identified in Attachment 1 are necessary to construct the project. Each easement area is for a specific purpose. Temporary construction easements are necessary to allow for access to and from the work site during construction. Permanent flood control easements are necessary for the final limits of the reconstructed channel. Subsurface easements are required for the underground tie backs required to support the reconstructed channel walls. There are no other viable project alternatives that would result in fewer impacts to private property.

Offers based on certified appraisals for each of the needed easements have been presented to the affected property owners. Negotiations for the fair compensation of property owners are ongoing and it is the City's desire to reach mutually acceptable terms with each owner such that the project can be kept on schedule. However, there may be issues of valuation and compensation that will require additional time to resolve. The City of Goleta is fully committed to continuing to work through these issues until they can be resolved to the mutual agreement of the parties involved.

In order to keep the project on schedule for construction this year the attached draft resolution of necessity has been prepared and reviewed by the City Attorney. Adoption of the attached resolution of necessity will allow the City to move forward with construction of the project in the event that right of way acquisition cannot be completed by the start of construction, while at the same time preserving the ability for the City and the property owners to continue with negotiations for the purchase of that right of way.

This action in no way diminishes the ability of the property owners to negotiate satisfactory compensation for these easements with the City of Goleta. The benefit of this process is that construction and right of way negotiations can move forward on parallel tracks.

If the City does not go forward with the eminent domain process and agreements cannot be reached and finalized before the end of April 2009, the project will have to be delayed at least until 2010. The properties affected by this Resolution of Necessity are listed in Attachment 2 to this report.

GOLETA STRATEGIC PLAN

The San Jose Creek Channel Capacity and Fish Passage Improvement Project is the highest priority capital improvement project for the City of Goleta and is consistent with the goal in the Goleta Strategic Plan entitled “Emphasize Old Town Revitalization.” The increased flood conveyance capacity of the channel will allow for the redrawing of the 100 year FEMA flood hazard map which will encourage commercial and residential investment in Goleta Old Town.

FISCAL IMPACTS:

If the Council does not adopt the Resolution of Necessity and the project is delayed for a year, the construction cost would likely increase. Construction costs have gone down the last year, but if the construction portion of the federal stimulus package is underway next year, the increased demand could drive prices up again. Also, the past two years have been very dry, which leads to a lower water table. If the project is delayed and next winter is extremely wet, the cost of dewatering and over-excavation of potentially unsuitable materials will be considerably higher.

ALTERNATIVES:

Council could choose not to adopt the Resolution of Necessity and risk delaying project construction until at least 2010.

LEGAL REVIEW:

This staff report and the accompanying Resolution were reviewed by the City Attorney.

Submitted By:

Reviewed by:

Approved By:

Steve Wagner, Director
Community Services

Michelle Greene, Director
Administrative Services

Daniel Singer
City Manager

ATTACHMENT:

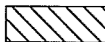
1. Proposed Easement Areas and Summary Table
2. Resolution No.09-__ entitled “A Resolution of the City of Goleta, California, Adopting a Resolution of Necessity for the Acquisition of Certain Parcels Located Adjacent to the San Jose Creek Capacity Improvement Project.”

Attachment 1

Proposed Easement Areas and Summary Table

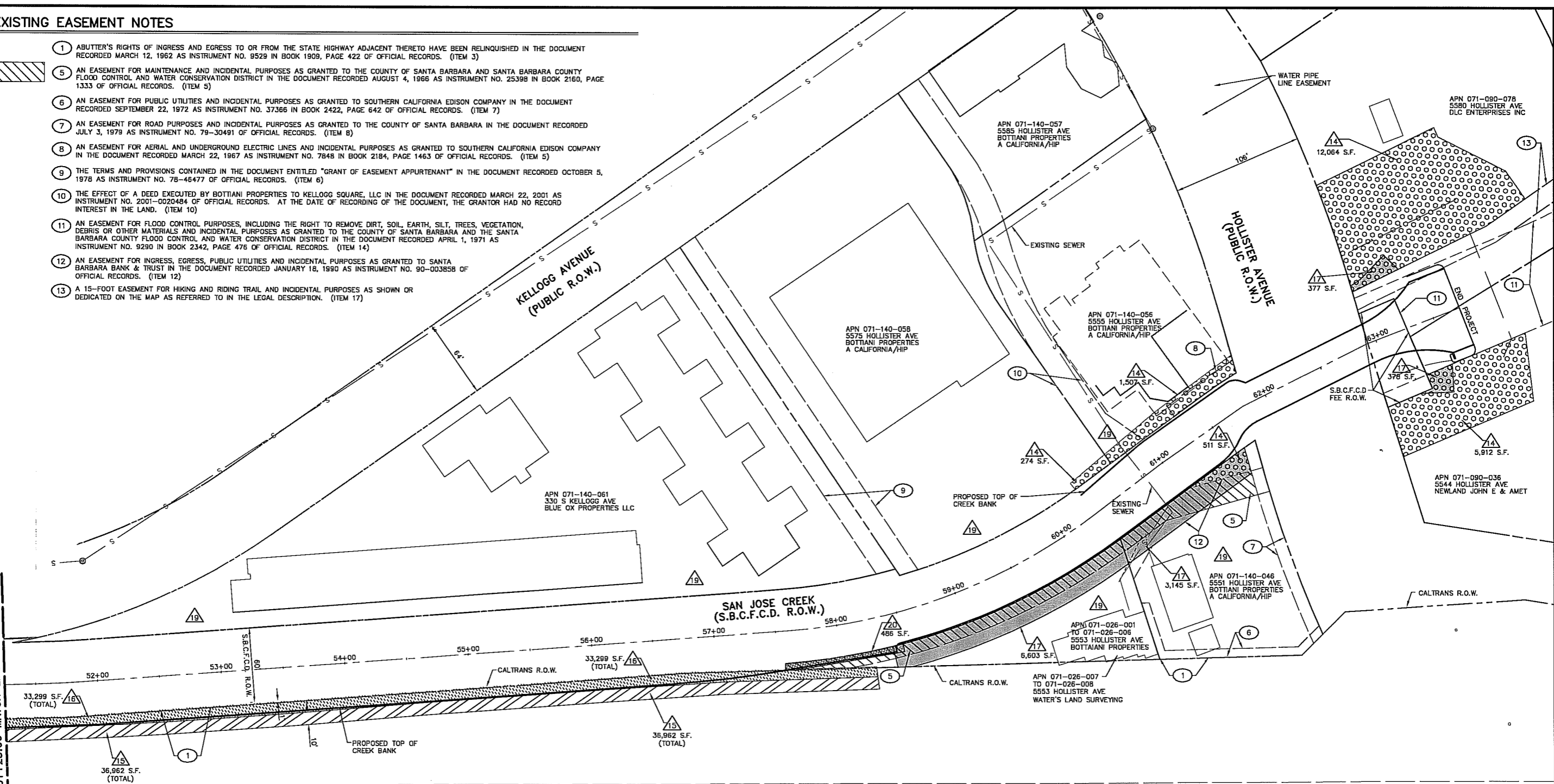
EXISTING EASEMENT NOTES

- 1 ABUTTER'S RIGHTS OF INGRESS AND EGRESS TO OR FROM THE STATE HIGHWAY ADJACENT THERETO HAVE BEEN RELINQUISHED IN THE DOCUMENT RECORDED MARCH 12, 1962 AS INSTRUMENT NO. 9529 IN BOOK 1909, PAGE 422 OF OFFICIAL RECORDS. (ITEM 3)
- 5 AN EASEMENT FOR MAINTENANCE AND INCIDENTAL PURPOSES AS GRANTED TO THE COUNTY OF SANTA BARBARA AND SANTA BARBARA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT IN THE DOCUMENT RECORDED AUGUST 4, 1966 AS INSTRUMENT NO. 25398 IN BOOK 2160, PAGE 1333 OF OFFICIAL RECORDS. (ITEM 5)
- 6 AN EASEMENT FOR PUBLIC UTILITIES AND INCIDENTAL PURPOSES AS GRANTED TO SOUTHERN CALIFORNIA EDISON COMPANY IN THE DOCUMENT RECORDED SEPTEMBER 22, 1972 AS INSTRUMENT NO. 37366 IN BOOK 2422, PAGE 642 OF OFFICIAL RECORDS. (ITEM 7)
- 7 AN EASEMENT FOR ROAD PURPOSES AND INCIDENTAL PURPOSES AS GRANTED TO THE COUNTY OF SANTA BARBARA IN THE DOCUMENT RECORDED JULY 3, 1979 AS INSTRUMENT NO. 79-30491 OF OFFICIAL RECORDS. (ITEM 8)
- 8 AN EASEMENT FOR AERIAL AND UNDERGROUND ELECTRIC LINES AND INCIDENTAL PURPOSES AS GRANTED TO SOUTHERN CALIFORNIA EDISON COMPANY IN THE DOCUMENT RECORDED MARCH 22, 1967 AS INSTRUMENT NO. 7848 IN BOOK 2184, PAGE 1463 OF OFFICIAL RECORDS. (ITEM 5)
- 9 THE TERMS AND PROVISIONS CONTAINED IN THE DOCUMENT ENTITLED "GRANT OF EASEMENT APPURTENANT" IN THE DOCUMENT RECORDED OCTOBER 5, 1978 AS INSTRUMENT NO. 78-46477 OF OFFICIAL RECORDS. (ITEM 6)
- 10 THE EFFECT OF A DEED EXECUTED BY BOTTIANI PROPERTIES TO KELLOGG SQUARE, LLC IN THE DOCUMENT RECORDED MARCH 22, 2001 AS INSTRUMENT NO. 2001-0020484 OF OFFICIAL RECORDS. AT THE DATE OF RECORDING OF THE DOCUMENT, THE GRANTOR HAD NO RECORD INTEREST IN THE LAND. (ITEM 10)
- 11 AN EASEMENT FOR FLOOD CONTROL PURPOSES, INCLUDING THE RIGHT TO REMOVE DIRT, SOIL, EARTH, SILT, TREES, VEGETATION, DEBRIS OR OTHER MATERIALS AND INCIDENTAL PURPOSES AS GRANTED TO THE COUNTY OF SANTA BARBARA AND THE SANTA BARBARA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT IN THE DOCUMENT RECORDED APRIL 1, 1971 AS INSTRUMENT NO. 9290 IN BOOK 2342, PAGE 476 OF OFFICIAL RECORDS. (ITEM 14)
- 12 AN EASEMENT FOR INGRESS, EGRESS, PUBLIC UTILITIES AND INCIDENTAL PURPOSES AS GRANTED TO SANTA BARBARA BANK & TRUST IN THE DOCUMENT RECORDED JANUARY 18, 1990 AS INSTRUMENT NO. 90-003858 OF OFFICIAL RECORDS. (ITEM 12)
- 13 A 15-FOOT EASEMENT FOR HIKING AND RIDING TRAIL AND INCIDENTAL PURPOSES AS SHOWN OR DEDICATED ON THE MAP AS REFERRED TO IN THE LEGAL DESCRIPTION. (ITEM 17)



STA. 51+25.00 MATCH LINE - SEE SHEET 1

34-ENG SAVE DATE: 10/31/2008 12:48:49 PM PLOT BY: Jeremy Salts PLOT DATE: 10/31/2008 1:41:48 PM PLOT SCALE: 1:1

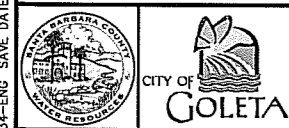
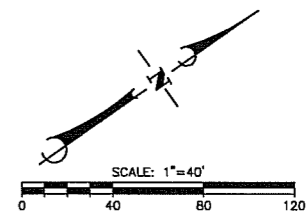


PROPOSED EASEMENT NOTES

- 14 TEMPORARY CONSTRUCTION EASEMENT (CITY OF GOLETA)
- 15 10-FOOT WIDE CALTRANS TEMPORARY ENCROACHMENT
- 16 CALTRANS AREA TO BE RELINQUISHED TO COUNTY OF SANTA BARBARA FLOOD CONTROL
- 17 PERMANENT 20-FOOT TO 30-FOOT SUB-SURFACE FLOOD CONTROL EASEMENT (AFFECTS ONLY BELOW 4-FOOT DEPTH)
- 19 PERMANENT ACCESS EASEMENT FOR FLOOD CONTROL MAINTENANCE OVER DRIVEWAYS AND PARKING AREAS.
- 20 PERMANENT FLOOD CONTROL EASEMENT OVER PERMANENT ACCESS EASEMENT

NOTE

AREAS ARE CALCULATED FOR EACH PROPERTY/APN.



SANTA BARBARA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT
 REVIEWED BY: _____ DATE: _____

NO.	DATE	REVISIONS	APPD.

Penfield & Smith
 Engineering • Surveying • Planning
 • Construction Management •
 111 East Victoria Street, Santa Barbara, CA 93101
 Phone: (805) 963-9532 Fax: (805) 966-9801



DESIGN: DLH CHECKED: _____
 GUY JEREMY SALTS DATE: _____
 PROJECT ENGINEER
 R.C.E. 60,488 (EXP. 08-30-10)

CITY OF GOLETA
 REVIEWED BY: _____ DATE: _____

SAN JOSE CREEK IMPROVEMENT PROJECT
RIGHT-OF-WAY EXHIBIT
 CITY OF GOLETA, STATE OF CALIFORNIA

P&S PROJECT NO. 15581.03
 SHEET 2 OF 2
 PLAN DATE OCTOBER 31, 2008

DRAWING: f:\vacad\work\15581\civil\exhibits\1558103aer_row_01.dwg

**San Jose Creek Capacity Improvement Project
Proposed Easement Area Data Table**

Parcel Number	Address	Type of Easement	Square Footage
071-090-036	5544 Hollister Avenue	Permanent Flood Control Temporary Construction	378 SF 5,912 SF
071-090-073	5580 Hollister Avenue	Permanent Flood Control Temporary Construction	377 SF 12,064 SF
071-140-046	5551 Hollister Avenue	Permanent Flood Control Temporary Construction Permanent Access Sewer	2,489 SF 511 SF Floating Nominal
071-140-056	5555 Hollister Avenue	Temporary Construction Permanent Access	1,507 SF Nominal
071-140-058	5575 Hollister Avenue	Temporary Construction Permanent Access	274 SF Nominal
071-260-001 071-260-002 071-260-003 071-260-004 071-260-005 071-260-006	5553 Hollister Avenue	Permanent Flood Control Permanent Access Permanent Subsurface	486 SF Nominal 4,114 SF
071-260-007 071-260-008	5553 Hollister Avenue	Permanent Flood Control Permanent Access Permanent Subsurface	486 SF Nominal 4,114 SF

Attachment 2

**RESOLUTION No. 09-___ A RESOLUTION OF THE CITY OF GOLETA,
CALIFORNIA, ADOPTING A RESOLUTION OF NECESSITY FOR THE
ACQUISITION OF CERTAIN PARCELS LOCATED ADJACENT TO THE SAN
JOSE CREEK CAPACITY IMPROVEMENT PROJECT**

RESOLUTION No. 09-____

**A RESOLUTION OF THE CITY OF GOLETA, CALIFORNIA,
ADOPTING A RESOLUTION OF NECESSITY FOR THE
ACQUISITION OF CERTAIN PARCELS LOCATED ADJACENT
TO THE SAN JOSE CREEK CAPACITY IMPROVEMENT
PROJECT**

WHEREAS, the existing San Jose Creek Flood Channel only has adequate capacity to accommodate a 25 year storm event; and

WHEREAS, the area has a history of severe flooding; and

WHEREAS, repeated flooding has stymied the economic revitalization of Goleta Old Town; and

WHEREAS, the San Jose Creek Capacity Improvement Project will increase the capacity of the channel to carry a 100 year event and allow for the removal of over 200 parcels from the floodplain area described in the floodplain map published by the Federal Emergency Management Agency (FEMA) ; and

WHEREAS, the project, including the completion of the creek capacity improvements as well as the acquisition of necessary easements, is consistent with all applicable provisions of the City's General Plan/Coastal Land Use Plan; and

WHEREAS, construction of the project will require certain interests in private property be acquired for surface and subsurface easements adjacent to the project which will allow temporary access to the site for construction or for the location of subsurface support structures; and

WHEREAS, the interests sought to be acquired are identified as follows:

Parcel # 071-260-01 to 06	5553 Hollister Avenue
Permanent Flood Control, Permanent Access & Permanent Subsurface	
Parcel # 071-260-07 and 08	5553 Hollister Avenue
Permanent Flood Control, Permanent Access & Permanent Subsurface	
Parcel # 071-140-56 and 58	5555 Hollister Avenue
Temporary Construction & Permanent Access	
Parcel #071-140-46	5551 Hollister Avenue
Temporary Construction, Permanent Access, Permanent Flood Control & Sewer	
Parcel # 071-090-36	5544 Hollister Avenue
Permanent Flood Control & Temporary Construction	
Parcel # 071-090-73	5580 Hollister Avenue
Permanent Flood Control & Temporary Construction	

WHEREAS, an offer of compensation required by Section 726732 of the Government Code has been made to each of the respective owner or owners of record.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF GOLETA AS FOLLOWS:

SECTION 1: Authority

The City of Goleta has the authority to acquire property through the exercise of the power of eminent domain pursuant to California Government Code Section 37350.5.

SECTION 2: Public Use

The property sought to be acquired herein is for the public purpose of constructing the San Jose Creek Capacity Improvement Project.

SECTION 3: Property Interests

The following private property interests are needed for the San Jose Creek Capacity Improvement Project and are sought to be acquired:

Parcel # 071-260-01 to 06	5553 Hollister Avenue	Permanent Flood Control, Permanent Access & Permanent Subsurface
Parcel # 071-260-07 and 08	5553 Hollister Avenue	Permanent Flood Control, Permanent Access & Permanent Subsurface
Parcel # 071-140-56 and 58	5555 Hollister Avenue	Temporary Construction & Permanent Access
Parcel #071-140-46	5551 Hollister Avenue	Temporary Construction, Permanent Access, Permanent Flood Control & Sewer
Parcel # 071-090-36	5544 Hollister Avenue	Permanent Flood Control & Temporary Construction
Parcel # 071-090-73	5580 Hollister Avenue	Permanent Flood Control & Temporary Construction

SECTION 4: Hearing

The owners of record for the above-referenced parties were provided notice pursuant to California Code of Civil Procedure section 1245.235 and an opportunity to be heard before the City Council and a hearing was held on February 3, 2009.

SECTION 5: Findings

Having duly heard and considered this matter at a hearing on February 3, 2009, the City Council finds and hereby declares:

- a. The public interest and necessity require the proposed San Jose Creek Capacity Improvement Project.
- b. The proposed San Jose Creek Capacity Improvement Project is designed, planned and located in the manner that will be most compatible with the greatest public

good and the least private injury.

c. The private property interests described in this resolution are necessary for the proposed San Jose Creek Capacity Improvement Project.

d. The offer of compensation required by Section 72 has been made to each of the respective owner or owners of record.

SECTION 6: Adoption

This resolution is adopted by at least two-thirds vote of the members of the City Council as required pursuant to California Code of Civil Procedure section 1245.240.

SECTION 7:

The City Clerk shall certify to the passage and adoption of this resolution and enter it into the book of original resolutions.

PASSED, APPROVED, AND ADOPTED this 3rd day of February, 2009.

ROGER S. ACEVES, MAYOR

ATTEST:

APPROVED AS TO FORM:

DEBORAH CONSTANTINO
CITY CLERK

TIM W. GILES
CITY ATTORNEY

STATE OF CALIFORNIA)
COUNTY OF GOLETA) ss.
CITY OF GOLETA)

I, Deborah Constantino, City Clerk of the City of Goleta, California, DO HEREBY CERTIFY that the foregoing Resolution No. 09-__ was duly adopted by the City Council of the City of Goleta at a regular meeting held on the 3rd day of February, 2009, by the following vote of the Council:

AYES:

NOES:

ABSENT:

(SEAL)

DEBORAH CONSTANTINO
CITY CLERK