

Agenda Report

DATE: DECEMBER 9, 2002

TO: CITY COUNCIL

FROM: CYNTHIA J. KURTZ, CITY MANAGER

SUBJECT: APPROVAL OF A RESOLUTION OF NECESSITY FOR THE ACQUISITION IN EMINENT DOMAIN OF TEMPORARY TIE-BACK EASEMENTS ON REAL PROPERTY LOCATED WITHIN THE PUBLIC RIGHT OF WAY, UNDER THE NORTH SIDE OF COLORADO BOULEVARD, AND UNDER THE WEST SIDE OF LOS ROBLES AVENUE, IN THE CITY OF PASADENA, IN CONNECTION WITH THE CONSTRUCTION OF THE WESTERN ASSET PLAZA PROJECT, AND ALL USES NECESSARY AND CONVENIENT THERETO.

RECOMMENDATION

It is recommended that the City Council:

- (1) Consider the Resolution of Necessity of the City of Pasadena declaring certain real property interests necessary for public purposes and authorizing the acquisition thereof, in connection with the temporary shoring within the public right of way in connection with the construction of the Western Asset Plaza Project, and all uses necessary or convenient thereto;
- (2) If the Resolution of Necessity is approved, authorize the City Manager to execute all necessary documents and authorize the City Attorney's office and staff to take all necessary steps to file and prosecute eminent domain proceedings to acquire the subject property interests.

EXECUTIVE SUMMARY

The Resolution of Necessity on the City Council agenda seeks to acquire temporary tie back easements on the real property located within the public right-of-way, under the north side of Colorado Boulevard, and under the west side of Los Robles Avenue, (the "Subject Property Interests"). The Subject Property Interests are sought for public purposes. Specifically, the Subject Property Interests are being acquired for temporary shoring within the public right of way in connection with the construction of the Western

Asset Plaza Project ("the Project") and all uses necessary or convenient thereto. The City Council will acquire the Subject Property Interests pursuant to California Constitution Article I, Section 19, California Government Code sections 37350, 37350.5, 37351, 37353, 40401, 40404 and 54031 and California Code of Civil Procedure section 1230.010 *et seq.* ("Eminent Domain Law"), including, but not limited to, sections 1240.010 through 1240.110, 1240.120, 1240.410, 1240.510, 1240.610, 1240.650, and other provisions of law.

BACKGROUND

The Project is consistent with and furthers the objectives, goals and policies of the City's *General Plan Land Use Element* and the *Civic Center Specific Plan* and conforms to the Planned Development Standards of PD-26 (Los Robles – Colorado) in the Zoning Code.

The Pasadena Community Development Commission ("Commission") and the Developer have entered into that certain Disposition and Development Agreement (the "DDA") dated as of June 24, 2002. Pursuant to the DDA, Maguire Partners ("the Developer") will construct an approximately 270,000 gross square foot office building with ground floor retail and restaurants along the Colorado Boulevard frontage and office related uses along the Los Robles Avenue Frontage, and three levels of subterranean parking providing approximately 772 parking spaces. The purpose of the DDA was to assist in the elimination of blight.

In order for the Developer to perform its obligations pursuant to the DDA in a timely manner, and not interfere with the scheduled construction of the Western Asset Plaza project, the construction requires acquisition of the Subject Property Interests for temporary tie-back easements purposes. These easements are to be located on property within the public right-of-way, beneath the north side of Colorado Boulevard, and under the west side of Los Robles Avenue.

The subsurface improvements consist of shoring, tie-back units, piers and soldier beams (collectively, "Shoring and Tie-Back Units"). The subterranean walls of the parking garage will be temporarily supported by the shoring and tie-back units which will be abandoned in place upon completion of the structure. The temporary easements sought will not interfere with the surface use of the property.

Environmental Clearance

The potential environmental impacts of the Project were studied and analyzed in connection with the EIR for the Western Asset Plaza project (formerly known as the Plaza Las Fuentes Phase II project), SCH 2001081086, with the Statement of Overriding Considerations certified by the City Council on April 29, 2002 by Resolution No. 8102. The certification of the EIR and Facts and Findings were based on the contents of the EIR, the comments received on the EIR, and the report of the proceedings in connection with the proposed Project, and the duly noticed public hearings.

The EIR together with its Exhibits, Resolution No. 8102 and a Notice of Determination are on file in the Office of the Los Angeles County Recorder and are incorporated in this report by this reference.

Appraisal of Value

Pursuant to Government Code section 7262, *et seq.*, the City obtained a fair market value appraisal of the Subject Property Interests based upon an October 1, 2002 date of value. The City set just compensation in accordance with the fair market value, and in October 2002 extended a written offer to the owners of record.

EMINENT DOMAIN PROCEEDING COMPLAINT

A. The Public Interest And Necessity Require The Proposed Project

As explained above, the City seeks to acquire the Subject Property Interests for temporary subsurface shoring within the public right of way in connection with the construction of the subterranean garage for the Western Asset Plaza Project, a public purpose.

The public interest and necessity for the project will be served by furthering the objectives, goals and policies of the City's General Plan and conformance with the Civic Center Specific Plan, as amended April 2002, and the Planned Development Standards (PD-26 Colorado--Los Robles) outlined in the Zoning Code amended in April 2002.

In addition, the Project supports the goals of the Pasadena Community Development Commission's (the "Commission") current Five Year Implementation Plan for the Downtown Redevelopment Project Area (1999-2004). Conditions of blight that exist include deterioration or disuse of buildings, lack of parking, irregular and inadequately sized parcels limiting economically feasible development, and lack of commercial facilities.

The development of the project will (1) promote economic vitality to existing businesses and providing for the attraction of new businesses; (2) retain an existing Pasadena business entity and allow for the expansion of this business, thus providing more jobs and additional economic benefit to the City; (3) encourage additional private sector investment in this area of Downtown Pasadena; (4) eliminate blighted conditions on the Project site by providing the highest and best use, including the removal of vacant unimproved land, and consolidation of adjacent parcels, three of which are small and inadequate for conventional commercial development. Therefore, the proposed Project will preserve, protect and enhance the public interest.

B. The Proposed Project is Planned and Located in The Manner That Will be Compatible With The Greatest Public Good And Least Private Injury

The City seeks to acquire the Subject Property Interests for Temporary tie-back easements through this eminent domain action. The property is located within the public right of way, beneath the north side of Colorado Boulevard, and under the west side of Los Robles Avenue. These easements would permit the Developer to install Shoring and Tie-Back Units in connection with construction of the Project's subterranean parking structure. The construction of the Project will not impact the surface use of the properties on which these easements are sought.

C. The Subject Property Interests Described in The Resolutions of Necessity Are Necessary For The Proposed Project

As explained above, the construction of the Project in the manner proposed would require the temporary acquisition of the Subject Property Interests for shoring purposes. This construction would include the insertion of shoring and tie-back units into the soil underneath the public rights-of-way until such time as they are no longer required or within eighteen (18) months of recordation of the License Agreement.

D. The Offer Required by Section 7267.2 of The Government Code Has Been Made to The Owners of Record of The Real Property Interests Sought to be Acquired

Pursuant to Government Code section 7262, *et seq.*, the City obtained a fair market value appraisal of the Subject Property Interests, set just compensation in accordance with the appraised fair market value, and performed extensive due diligence in an attempt to locate anyone associated with Broadway-Hale Stores, Inc.. The City located the address for the agent for service of process, who has forwarded our offer to the Federated Department Stores, Inc. Their legal department has recently advised us that they do not believe they own this interest.

To date, however, no negotiated purchase has been consummated and the schedule for the proposed Project requires that the City Council consider the proposed Resolution of Necessity at this time.

If the City Council finds, based upon the evidence contained in and referred to in this Report and the testimony and comments received at this hearing, that the evidence warrants the necessary findings with respect to the proposed Resolutions of Necessity, then staff recommends that the City Council, in the exercise of its discretion, adopt the Resolution (which requires a 4/5ths vote) and authorize that an eminent domain proceeding be filed to acquire the following real property interests (described more particularly in the Exhibit attached to the Resolution).

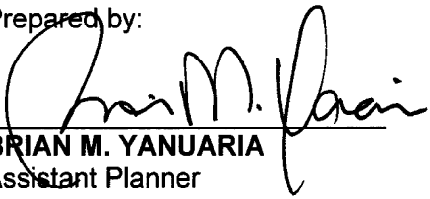
FISCAL IMPACT

Pursuant to an existing Acquisition Funding Agreement between the City and the Developer, the Developer has agreed to pay all costs incurred by the City in the acquisition effort and indemnifies the City for all liabilities resulting from such efforts.

Respectfully submitted,

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