



# *CITY COUNCIL AGENDA REPORT*

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MEETING DATE: SEPTEMBER 18, 2007

ITEM NUMBER:

**SUBJECT: CONSERVATION EASEMENT WITH THE UNITED STATES ARMY CORPS OF ENGINEERS AND ORANGE COUNTY FLOOD CONTROL DISTRICT FOR THE CONSTRUCTION OF WETLANDS AND RIPARIAN HABITAT AT FAIRVIEW PARK**

**DATE: SEPTEMBER 6, 2007**

**FROM: PUBLIC SERVICES DEPARTMENT/ENGINEERING DIVISION**

**PRESENTATION BY: WILLIAM J. MORRIS, PUBLIC SERVICES DIRECTOR**

**FOR FURTHER INFORMATION CONTACT: ERNESTO MUNOZ, CITY ENGINEER, 714-754-5343**

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## **RECOMMENDATION**

1. Approve the proposed Conservation Easement in concept between the City and Orange County Flood Control District and the United States Army Corps of Engineers (USACE) as a third party beneficiary, to facilitate the construction of approximately 17 acres of wetlands and riparian habitat at Fairview Park to be constructed by the USACE.
2. Authorize staff to finalize the Conservation Easement language, and the Mayor to execute the Easement once it is completed and in a form acceptable to the City Manager and City Attorney.

## **BACKGROUND**

The Public Services Department has been working with a consultant, Moffat & Nichol, on the plans and specifications for the Fairview Park Wetlands and Riparian Habitat Project. The project is being designed to be constructed in three phases, and the design of all phases is at the 90% completion stage. Construction elements will include a water delivery system, grading and hardscape improvements, treatment wetlands (where dry-weather runoff from the Greenville-Banning Channel will be pumped to ponds and streams to be treated naturally), riparian habitat and native shrub plantings, trails, and picnic areas. The different phases have been designed as follows (please refer to Attachment 1):

### **I. Phase 1 of the Wetlands and Riparian Habitat Restoration Project**

The United States Army Corps of Engineers (USACE) has agreed in concept to fulfill their mitigation obligation, as a result of construction activities in the Santa Ana River, at Fairview Park. They are prepared to immediately hire a contractor to expend their mitigation funds within USACE's current fiscal year which ends on September 30, 2007, or these funds will be lost if not encumbered by this date. The USACE funds will be used to grade, excavate, and plant 17 acres of riparian habitat. They will also install a temporary irrigation system to establish the plantings. Concurrently, once the plans are completed this fall, the Public Services Department will be prepared to accept construction bids for the remaining items included in Phase 1 of the project, which will be paid for by grant funds and the City's match.

### **II. Phase 2**

Construct treatment wetland ponds, restore Placenta Drain, and install coastal sage scrub and native plantings.

### III. Phase 3

Construct pathways, picnic areas and hardscape, park landscaping, signage and benches, and infiltration wells.

#### **ANALYSIS**

The USACE proposes to award a construction contract this federal fiscal year (ends in September 2007) for the construction of approximately 17 acres of wetlands and riparian habitat, Phase 1 of the Wetlands and Riparian Habitat Project. USACE requires that a conservation agreement be in place prior to issuing a construction contract. According to USACE, these funds will be redirected to another project in the region if the Fairview Park Project is not approved by September 30, 2007.

The attached Conservation Easement (Attachment 2) will allow the USACE to proceed with the creation of 17 acres of wetlands and riparian habitat at Fairview Park. Approval of this document is required for the USACE to proceed with the improvements. The Conservation Easement is between the City and the Orange County Flood Control District, with the USACE as a third party.

The Orange County Flood Control District, acting as the local sponsor, has been working on the design and construction of the Santa Ana Mainstem Reach 2 Excavation Project with the USACE. The local sponsor acquires all lands, easements, rights-of-way, and performs relocations required to make way for construction of the Mainstem Project. The USACE is responsible for constructing the improvements. The easement area, lower northern portion of Fairview Park, provides, among other things, mitigation for certain impacts related to this project.

The Purpose of this Conservation Easement is to ensure the Easement Area will be preserved in a natural condition, **in perpetuity**, and to prevent any use of the Easement Area that will materially impair or interfere with the conservation values of the Easement Area. The City intends that this Conservation Easement will confine the use of the Easement Area to such activities, including without limitation, those involving the preservation and enhancement of native species and their habitat in a manner consistent with the habitat conservation purposes.

At the regular meeting of April 5, 2005, City Council previously approved a similar Conservation Agreement in perpetuity for the Headlands Restoration Project at Fairview Park adjacent to this project. The Headlands Restoration Project has planted approximately eleven acres of Coastal Sage habitat that is now being established.

In accordance with Council Policy 500-11 (Attachment 3), the Wetlands and Riparian Habitat Project has been reviewed by the Development Services Department, Engineering and Transportation Services Divisions, Police Department, and Fire Prevention Division, and all find that the proposed improvements are in conformance with the Fairview Park Master Plan (Attachment 4).

#### **ALTERNATIVES CONSIDERED**

If the City chooses not to enter into a Conservation Easement with Orange County Flood Control District, the available mitigation funds from USACE will not be captured, and staff will continue to pursue grants and alternative funding for this project.

#### **FISCAL REVIEW**

USACE is funding the entire cost of this portion of Phase 1 as described above. Construction is estimated to cost \$1.8M. The cost for the project's design is \$489,895 and was funded by Park Development and Capital Outlay funds (\$247,495 and \$242,400 respectively). These design plans have allowed for a preliminary construction cost estimate to be made on the entire project (Attachment 5).

As can be seen from Attachment 5, funding is currently available to complete Phase 1 only. The shortfall for completion of the entire riparian and habitat restoration project (Phases 1, 2, and 3), is estimated at \$4.6M in today's dollars. If no other funding, grant or otherwise, is obtained to complete Phases 2 and 3 of the wetlands project, the City will have Phase 1 (two elements) of the Fairview Park Master Plan completed; namely, a multipurpose trail connecting Placentia Avenue and the Santa Ana River Trail, and 17 acres of established riparian habitat. Also, the pump station will be retrofitted and the waterline in place to charge the ponds in the future. The remaining riparian/habitat/wetlands areas of Phases 2 and 3, approximately 17 acres, would still be available for possible mitigation bank credits to other agencies or developers, but this funding cannot be guaranteed.

If Phase 1 is constructed, the maintenance of the riparian habitat will be the responsibility of the Public Services Department after five years from the date of planting. The first five-year plant establishment period will be the responsibility of the USACE and the landscape contractor. The estimated cost to maintain this 17-acre area for the first five-year establishment period, in today's dollars, is \$486,200, as determined by the design consultant.

The annual cost to the City to maintain the 17-acre area after the five-year establishment period is estimated to be \$40,000 in today's Dollars. Once the City takes ownership of the completed project, the Public Services Department will decide to either add the work to the current landscape maintenance contract or perform the work with in-house staff.

## LEGAL REVIEW

City staff, including the City Attorney's Office, and the USACE are in the process of finalizing the proposed Conservation Easement which would allow for the creation and restoration of the habitat in Fairview Park. Approval of this Conservation Easement will allow the improvement to move forward.

The City Attorney has reviewed the proposed Conservation Easement.

## CONCLUSION

It is recommended that the City Council approve the Conservation Easement in concept, authorize staff to work with the City Attorney's Office, USACE, and the County of Orange to finalize the Conservation Easement language, and authorize the Mayor, City Attorney, and City Clerk to execute same, to capture the available USACE mitigation funding, and move forward with Phase 1 of the Fairview Park Wetlands and Riparian Habitat Project.

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**Ernesto Munoz**  
City Engineer

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**William J. Morris**  
Director of Public Services

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Attachments: 1- [Project Construction Phasing Map](#)  
2- [Proposed Conservation Easement](#)  
3- [Council Policy 500-11](#)  
4- [Fairview Park Master Plan](#)  
5- [Project Funding Table](#)

c: City Manager  
Assistant City Manager  
City Engineer

City Attorney  
City Clerk  
Parks Maintenance Supervisor  
Fairview Park Plan Administrator