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## Orinda City Council Initiates Eminent Domain Proceedings to Keep Glorietta Project on Track

*Laurie Snyder*

The Orinda City Council recently authorized City staff to initiate legal proceedings against the owners of two private properties.

"None of us wants to take this action," said Mayor Steven Glazer. "We do this out of necessity." Glazer's remarks were made during a public hearing on January 17 at which Council members and staff discussed the City's success in acquiring easements from four private property owners free of charge in connection with the Glorietta Storm Drain Improvement Project. An easement was also obtained from the East Bay Municipal Water District.

However, the City has been unable to finalize agreements with two other private property owners - Sara Harkness of Glorietta Boulevard and Jefferson and Seanna Allen of Glorietta Court. The City's "repeated good faith efforts over many months to acquire the necessary easements through negotiation" have, according to a staff report, included offers of compensation to the owners, even though such payments are not required of cities under Government Code section 7267.2.

Council member Victoria Smith, who led the City's effort to negotiate a separate agreement with property owner Diane Szucs, thanked Szucs for the record and noted that Szucs declined the City's offer of compensation and suggested that the Council put the savings toward repaving the City's roads.

"We're not seeking to own the lands," City attorney Osa Wolff clarified for the record. "We're seeking to use it."

### Project Overview

Council authorized the Glorietta project to prevent a recurrence of flooding near Glorietta Boulevard and Moraga Way, which was described in a 2000 incident report from the National Oceanic and Atmospheric Administration (NOAA): "A 6 foot wall of water and mud flowed through the yards and residences along Glorietta Court near Moraga Way. Widespread rain with twenty four hour accumulations of more than 5 inches occurred [sic] over the area on Feb 13 into February 14th."

A subsequent investigation found that a severely deformed corrugated metal pipe (CMP) in the neighborhood's 50-year-old CMP storm drain system was the most likely cause. The City was sued.

Council Member Amy Worth noted that the City has been working since the 2000 flood to identify the best way to fix the problem. Those plans are detailed in numerous staff reports on the City's web site. In a nutshell, it's complex; it's going to be hugely expensive, and "the surrounding properties will be subject to a severe risk of flooding" if the project is not completed, according to the reports.

The easements will enable the workers to get in and do what they need to do in 2012 before a section of the culvert fails completely - and during the only time the weather will be suitable for the work - from June to October. Staff anticipate that the project can be completed in three months or less and "should only involve minor inconvenience for property owners." The City has also "committed to restoring the surface of the affected properties to their condition before construction."

Because time is now running out, the Council concluded that the easements on the remaining properties are "compatible with the greatest public good and least private injury" and initiated eminent domain proceedings.

Seanna Allen, one of the owners of the Glorietta Court property facing eminent domain proceedings, disagrees with the City's statement that its personnel have been negotiating with the Allens for a year.

"We're not trying to stop the project. We just want time to get our appraisals done," said Allen as she explained that she and her husband have been waiting on a report from an independent surveyor who only just completed work on January 6.

In addition to the surveyor's guidance, the Allens have been consulting with an arborist regarding the project's possible effect on their backyard, including the potential impact to a redwood tree estimated to be 75-feet tall. Removing the tree would totally change the backyard's landscaping, but leaving it in place could be problematic if the root system were to be weakened during the drainage system work.

A volunteer for community projects, Allen affirmed, "We love our community. We love our neighbors," and said that she and her husband look forward to working with the City.

"All of us still hope we'll still be able to work this out," said Glazer. Staff will continue their efforts to negotiate with the property owners while the eminent domain action moves forward in the hope that further legal action can be avoided.

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