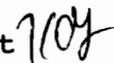


**MOORPARK CITY COUNCIL
AGENDA REPORT**

TO: The Honorable City Council 

FROM: Yugal K. Lall, City Engineer / Public Works Director

BY: Ken Gilbert, Public Works Consultant 

DATE: December 8, 2005 (Council Meeting 12-21-05)

SUBJECT: Hearing Relative to Resolution of Necessity for Acquisition of Certain Property Known as Lots 111, 112 and 113 of the Colonia Virginia Tract (AP Nos. 513-0-031-025 and -035), Located on the North Side of Princeton Avenue East of Nogales Avenue, within the City of Moorpark [Apostolic Church]

OVERVIEW

This presents at a hearing, a Resolution of Necessity ("Resolution"), to initiate eminent domain proceedings for the acquisition of that property shown on the map attached as Exhibit 1, which is generally located on the north side of Princeton Avenue east of Nogales Avenue. The property, which is owned by the Apostolic Assembly of the Faith in Jesus Christ, is required for the construction of a project to widen Princeton Avenue in this general vicinity.

BACKGROUND

The City has caused plans and specifications to be prepared for the construction of a project to widen Princeton Avenue from a point east of Spring Road to a point west of Condor Drive ("Project"). Said Project requires the acquisition of certain property ("Property") identified as Lots 111, 112 and 113 of the Colonia Virginia Tract (APNs 513-0-031-025 and -035) within the City of Moorpark. The legal description of the Property is attached as Exhibit "A" to the draft Resolution, said Property being approximately 0.89 acre in size.

The City has worked to acquire the necessary additional property rights required by the Project from a number of properties located along that portion of Princeton Avenue affected by the Project. The City's intent is to proceed with construction of the Project when all necessary property rights have been obtained.

DISCUSSION

A. Facts

1. The preliminary engineering for the Project has been approved by the City Council and, subsequently, the City Council approved a Mitigated Negative Declaration for the Project, in compliance with the California Environmental Quality Act (CEQA).
2. The Project is identified and listed in the City's Seven Year Capital Improvement Program (CIP) for Streets and Road for FY04/05 - FY10/11. In February of 2005, the Moorpark Planning Commission adopted a Resolution finding that CIP to be in conformance with the Moorpark General Plan.
3. The Property which is subject to this action is currently vacant.
4. The property rights identified to be required to proceed with the construction of the Project are generally described as follows:

Description	Area (S.F.)
Street Rights-of-Way	11,079
Slope Easements	17,619
Sub-Total	28,698
Temporary Construction Easements	6,606
Total Property Rights Required	35,304
Total Area of Property (0.89 ac.)	38,800
Project Requirements Percent of Total	91.0%

5. The topography of the Property consists of steep slopes rendering access to the northerly portion of the Property (where the remnant property would be located) problematic.
6. In that the portion of the Property not encumbered by needed additional street right-of-way, slope easements and temporary construction easements is approximately 3,496 sf (approx. 9% of the total Property) and the access to the residual property would be difficult due to the topography of the Property, it was determined that it was necessary and appropriate to acquire the entire Property. Pursuant to Code

of Civil Procedure 1240.410 et. Seq., where the project only requires a portion of the property, a public agency is authorized to acquire the remnant parcel where the remnant that will be left is of such size, shape, or condition as to be of little market value. Because the remnant in this instance represents only 9% of the total parcel, is located on a severe slope, and is of a size (3,496 square feet) that would not meet the minimum lot size for the zoning, staff has concluded that the remnant has little economic value as a stand alone parcel.

7. Pursuant to, *inter alia*, California Government Code sections 6500 et seq., 7267.2, 37350.5, and 40401 40404, and California Code of Civil Procedure section 1230.010 et seq. and Section 19, Article I of the California Constitution, the City is authorized to acquire the Property, provided certain procedural steps are followed.
 - a. First, pursuant to Section 7267.2 of the California Government Code, the City must make a written offer to the property owner, based upon an appraisal. The City, through its property services consultant ("City's Agent"), made an offer on September 27, 2005, to Andrew Rodriguez, Apostolic Assembly of the Faith in Jesus Christ ("Owner"), to purchase the Property. The offer of \$300,000.00 to the Owner was based upon an appraisal of the Property, and represents the full amount determined to be just compensation for the Property. A copy of the letter of offer is attached as Exhibit 2. Subsequently, the Owner provided to the City's Agent a verbal rejection of that offer. As of the date of the preparation of this report, there has been no subsequent communication from Owner regarding acceptance or rejection of the City's offer.
 - b. Due to Owner's rejection of the offer, it is now necessary that an action in eminent domain be filed to acquire the Property. Prior to filing the action, the City must hold a hearing on a Resolution, and provide the owner an opportunity to be heard at the hearing, provided the owner has filed a request to be heard in writing with the City prior to the hearing. On December 1, 2005, the City mailed a NOTICE OF INTENTION to hold a Condemnation Hearing on December 21, 2005, regarding the proposed acquisition of the Property. A copy of that Notice is attached as Exhibit 3. The NOTICE OF INTENTION was mailed in accordance with the requirements of State law pertaining to eminent domain proceedings.

- c. After conducting the public hearing, the City Council must determine whether the public necessity requires that the City Council adopt the Resolution authorizing condemnation proceedings regarding the Interests for the purpose described in said Resolution.

B. Analysis

As to the Findings of the proposed Resolution, City staff has the following comments:

1. PUBLIC INTEREST AND NECESSITY: The present width of Princeton Avenue is less than the design standard for this segment of Princeton Avenue, approved and adopted by the City Council of the City of Moorpark, and is insufficient to adequately accommodate motor vehicle, bicycle, and pedestrian traffic as contemplated by the aforementioned roadway standard. The construction of the proposed project to widen Princeton Avenue in this area, will provide roadway improvements consistent with that design standard, which will be of an adequate width to accommodate a paved median (for left-turn traffic) and paved shoulders (for pedestrians and bicycles) consistent with the aforesaid street design standard.
2. PUBLIC GOOD VERSUS PRIVATE INJURY: As discussed above, the Project has been designed and is planned to be constructed in accordance with a design standard approved for this segment of Princeton Avenue, in order to render the width of the improvements adequate to properly accommodate vehicular, bicycle and pedestrian traffic in the vicinity of the Project. The decision to acquire the additional street right-of-way required for the Project, in the vicinity of the Property, from the north side of the street, enables the City to provide for the public benefits to be derived from this Project, in a manner which has the least amount of impact to private property, by avoiding the "taking" of a number of properties located on the south side of the street in the vicinity of the Property, which have already been developed for residential uses.
3. ENVIRONMENTAL DETERMINATION: A Mitigated Negative Declaration was prepared for the Project and subsequently reviewed and approved by the City Council in accordance with the requirements of the California Environmental Quality Act (CEQA).

4. NEED FOR THIS PROPERTY FOR THE PROJECT: The City is in the process of or has already acquired a number of other right-of-way parcels, and/or related rights, from properties located on both the north and the south sides of Princeton Avenue, generally listed as follows:

- 512-0-220-185 (Burg)
- 512-0-160-170 (May)
- 512-0-160-300 (Chaldez)
- 513-0-023-025 (Lopez, J.)
- 513-0-031-065 (Villanueva)
- 513-0-010-235 (VCWPD)
- 513-0-032-265 (VCWPD)
- 513-0-032-285 (Main)
- 513-0-032-235 (Cortez)
- 513-0-032-015 (Prieto)
- 513-0-032-025 (Soto)
- 513-0-032-055 (Artiaga)
- 513-0-032-065 (Lopez, G)
- 513-0-024-075 (Lopez, P)
- 513-0-024-045 (Rodriguez)
- 513-0-024-035 (Roman)
- 513-0-024-025 (Roman)
- 513-0-024-105 (Lucas)
- 513-0-024-135 (Lucas)
- 513-0-040-105 (Asadurian)
- 513-0-022-015 (Asadurian)
- 512-0-160-755 (Conejo Ready Mix)
- 512-0-160-635 (Conejo Ready Mix)

The above listed properties and the property subject of this Resolution are necessary for the designed alignment of the Project.

5. NATURE OF THE PROPERTY TO BE ACQUIRED FROM THE OWNER: In that the portion of the Property needed for street right-of-way, slope easements and temporary construction easements consists of approximately ninety-one percent (91%) of the entire Property, it was determined that it was necessary and appropriate to acquire the entire Property.

Questions relating to value are not relevant to this proceeding. However, that does not mean that negotiations for the acquisition of the Property are at an end.

Princeton Avenue Widening Project
Acquisition: Apostolic Church Property
December 8, 2005
Page 6

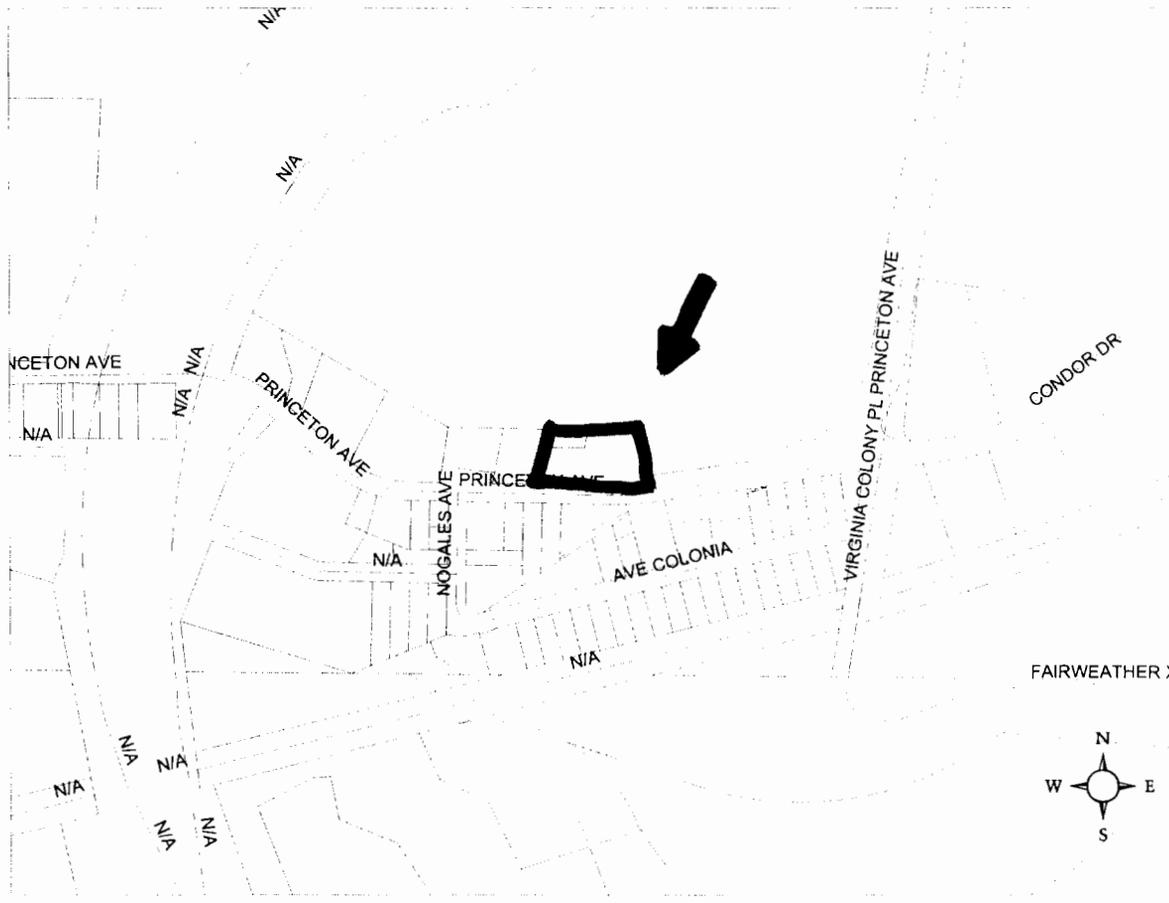
STAFF RECOMMENDATION - Roll Call Vote (2/3rds Affirmative Required)

Staff recommends that, subsequent to the acceptance of comments received at the hearing and a review of all relevant facts, the City Council adopt the Resolution of Necessity (Exhibit 4) to initiate eminent domain proceedings to acquire the Property from the Owner.

Attachments:

- Exhibit 1: Map: Location of property
- Exhibit 2: Letter of Offer
- Exhibit 3: Notice of Intent
- Exhibit 4: Resolution of Necessity

- Street Centerlines
- Parcels
- City Boundary



FAIRWEATHER XI



SCALE 1 : 6,138



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HAMNER, JEWELL & ASSOCIATES

Government Real Estate Services

a division of Beacon Integrated Professional Resources, Inc.

EX. 2

Ventura County Office: 3639 Harbor Blvd., Suite 210, Ventura, CA 93001
Tel: (805) 658-8844 Fax: (805) 658-8859

San Luis Obispo County Office: 340 James Way, Suite 150, Pismo Beach, CA 93449
Tel: (805) 773-1459 Fax: (805) 773-2418

Writer's e-mail address: hjohnson@hamner-jewell.com

September 27, 2005

Andrew Rodriguez
Apostolic Assembly of the Faith in Jesus Christ
8440 Maple Place, Suite 108
Rancho Cucamonga, CA 91730

Via US Certified Mail
Return Receipt Requested

Subject: City of Moorpark – L.A. Widening/Princeton Widening
Acq. A.P. # 513-0-031-025 (Aguirre)

Dear Mr. Rodriguez,

This is to follow up with our conversation this afternoon and provide the Apostolic Assembly of the Faith in Jesus Christ, a corporation ("Church"), with an updated offer on behalf of the City of Moorpark to purchase the Church's property located at 14389 East Los Angeles Avenue, Moorpark, CA. As you know, the City is seeking to acquire the Church's property for the City's Los Angeles Avenue – East/Princeton Widening Project. This is a revised, updated offer based upon an appraisal update and is intended to supercede and nullify the previous offer to the Church, dated December 1, 2003.

As you aware, to ensure that the City offers the Church fair market value for purchasing the property, an independent appraisal was made. That appraisal considered the highest and best use of the affected property, the size of the land, any improvements thereon, and all other factors which affect fair market value. Because you did not agree with the results of the initial appraisal and because well over a year has now passed, the City agreed to commission an updated appraisal. On the attached Updated Appraisal Summary Statement, the Total Compensation figure of **\$300,000** represents the updated fair market value of the Church's property that the City seeks to acquire, as established by the recent independent appraisal, and is the amount of the City's revised offer to the Church for the purchase of this property.

The City hereby offers to purchase the property for the full fair market value shown on the attached Updated Appraisal Summary Statement, subject to mutual approval of the terms and conditions agreed upon in the Agreement for Acquisition of Real Property and further, subject to the Church conveying those interests free and clear of all liens and encumbrances.

The City will pay all usual and necessary escrow, title, transfer, and recording fees associated with this purchase. The Church need only pay off any monetary encumbrances that have been secured against this property.

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Andrew Rodriguez
Apostolic Assembly of the Faith in Jesus Christ
September 27, 2005
Page Two

This offer remains subject to environmental inspection and approval by the City. The purpose of this process will be to attempt to determine whether there is hazardous contamination within, adjacent to, or coming from the property. The environmental inspection and approval process may include physical inspections and environmental assessments as deemed necessary or advisable by the City, as well as other testing or inspection should a preliminary review indicate it advisable. In the event the City determines that corrective or remedial action may be necessary, the City reserves the right to reduce the amount offered to reflect corrective or remedial costs, or to withdraw this offer. Your ongoing cooperation for access to the property for these inspections and assessments is appreciated. These inspections will be conducted at the City's expense.

We trust that the Church Members will find this purchase offer acceptable and representative of just compensation and look forward to working with you to finalize this purchase. As the City's authorized representative, I would be happy to assist you in any way I can. If you have any questions regarding this offer, please contact me at (805) 658-8844 x 18. I look forward to receiving your feedback.

Sincerely,



Heather Johnson

- enclosures: Updated Appraisal Summary Statement
Agreement for Acquisition of Real Property (Revised 09/23/05)
Grant Deed
- cc: Kenneth C. Gilbert, Director of Public Works, City of Moorpark



MOORPARK

799 Moorpark Avenue Moorpark, California 93021 (805) 517-6200

December 1, 2005

First Class Mail

Apostolic Assembly of the Faith in Jesus Christ, A Corporation
14485 Avenida Colonia
Moorpark, CA 93021

Re: NOTICE OF INTENTION OF THE CITY OF MOORPARK TO ADOPT A RESOLUTION OF NECESSITY FOR THE ACQUISITION OF LOTS 111, 112 AND 113 OF THE COLONIA VIRGINIA TRACT, OWNED BY THE APOSTOLIC ASSEMBLY OF THE FAITH IN JESUS CHRIST, LOCATED ON THE NORTH SIDE OF PRINCETON AVENUE EAST OF NOGALES AVENUE AND IDENTIFIED AS ASSESSOR PARCEL NOS. 513-0-031 025 AND 513-0-031-035

Dear Sirs:

YOU ARE HEREBY NOTIFIED, pursuant to Code of Civil Procedures Section 1230.010 et seq., the City Council of the City of Moorpark intends to consider the adoption of a Resolution of Necessity for acquisition by eminent domain of certain real property owned by the Apostolic Assembly of the Faith in Jesus Christ. Said property is described and depicted on Exhibit "A" attached hereto and incorporated herein by reference. Acquisition of said property is required by the City in order to construct the City's Princeton Avenue Widening Project.

The hearing on the Resolution will be held on December 21, 2005, at 7:00 p.m., or as soon thereafter as the City Council can hear said matter, at the Council Chambers, located at 799 Moorpark Avenue, Moorpark, California.

YOU ARE FURTHER NOTIFIED that you have the right to appear and be heard on the issues to be considered at the hearing, and to have the City Council of the City of Moorpark give judicious consideration to your testimony prior to deciding whether or not to adopt the proposed Resolution of Necessity. The precise, and only issues which will be considered, are as follows:

1. Whether or not the public interest and necessity require the proposed project;
2. Whether or not the proposed project is planned or located in the manner that will be most compatible with the greater public good and the least private injury;
3. Whether or not the property sought to be acquired is necessary for the proposed project; and
4. Whether or not the offer required by Government Code Section 7267.2 has been made to the owner or owners of record.

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5. Whether or not the City has statutory authority to acquire the property by eminent domain.

The amount of the compensation to be paid for the acquisition of the property is not a matter or issue being heard by the City Council of the City at this time. Your nonappearance at this noticed hearing will not prevent you from claiming greater compensation, in and as determined by a court of law in accordance with the laws of the State of California.

If you wish to be heard at this hearing you **MUST FILE A WRITTEN REQUEST** indicating your intent to appear and be heard within fifteen days of the mailing of this notice by filing or delivering that written notice to the City Clerk, 799 Moorpark Avenue, Moorpark, California, 93021, telephone (805) 517-6213 no later than 5:00 p.m. on October 21, 2005.

You may use the enclosure for the purpose of notifying the City of your intent and desire to be heard. Your failure to timely file a written request to appear and be heard may result in a waiver of your right to be heard.

For further information, contact the City Clerk's Office at Moorpark City Hall.

Yours truly,



Deborah Traffenstedt
City Clerk
City of Moorpark

Enclosure:
Legal Description

C: The Honorable City Council
Steven Kueny, City Manager
Joseph Montes, City Attorney
Yugal Lall, City Engineer / Public Works Director
Ken Gilbert, Public Works Consultant
Heather Johnson, Hamner, Jewell & Associates
Apostolic Assembly of the Faith in Jesus Christ, c/o Andres Rodriguez 8440 Maple Place,
Suite 108, Rancho Cucamonga, CA 91730
Apostolic Assembly of the Faith in Jesus Christ, c/o Andres Rodriguez 10807 Laurel Street,
Rancho Cucamonga, CA 91730

EXHIBIT A

The land referred to in this report is situated in the State of California, County of Ventura and is described as follows:

LOT 111, 112 AND 113 COLONIA VIRGINIA TRACT, ACCORDING TO THE MAP THEREOF RECORDED IN BOOK 20, PAGES 33 AND 34 OF MISCELLANEOUS RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPT ALL COAL, LIGNITE, COAL OIL, PETROLEUM, NAPHTHA, ASPHALT, MALTHA, BREA, NATURAL GAS AND ALL KINDRED OR SIMILAR MINERALS OR MINERAL SUBSTANCES WHICH NOW EXIST OR AT ANY TIME HEREAFTER MAY EXIST UPON, IN OR UNDER SAID LAND, TOGETHER WITH THE RIGHTS INCIDENTAL THERETO, AS RESERVED BY SIMI LAND AND WATER COMPANY, IN DEED RECORDED NOVEMBER 16, 1889, IN BOOK 29, PAGE 314 OF DEEDS.

REQUEST TO BE HEARD ON RESOLUTION OF NECESSITY
FOR THE ACQUISITION OF CERTAIN PROPERTY
[Lots 111, 112 and 113 of the Colonia Virginia Tract (A.P.Ns. 513-0-031-025 and 035)]
OWNED BY THE APOSTOLIC ASSEMBLY OF THE FAITH IN JESUS CHRIST
AND LOCATED ON THE NORTH SIDE OF PRINCETON AVENUE
EAST OF NOGALES AVENUE

Name: _____ Tel. No. _____

Address: _____

Date: _____

Signature _____

RESOLUTION NO. 2005-__

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MOORPARK, CALIFORNIA, FINDING AND DETERMINING THAT THE PUBLIC INTEREST AND NECESSITY REQUIRE THE ACQUISITION OF CERTAIN PROPERTY, IDENTIFIED AS LOTS 111, 112 AND 113 OF THE COLONIA VIRGINIA TRACT (AP NOS. 513-0-031-025 AND 513-0-031-035), SAID PROPERTY BEING LOCATED ON THE NORTH SIDE OF PRINCETON AVENUE EAST OF NOGALES AVENUE, WITHIN THE CITY OF MOORPARK, CALIFORNIA, FOR PUBLIC USE (APOSTOLIC ASSEMBLY OF THE FAITH IN JESUS CHRIST)

WHEREAS, the City wishes to construct a project to widen Princeton Avenue from a point east of Spring Road to a point west of Condor Drive ("Project"); and,

WHEREAS, in order to proceed with the construction of the Project, the City requires the acquisition of certain property owned by the Apostolic Assembly of the Faith in Jesus Christ ("Owner") and identified as Lots 111, 112 and 113 of the Colonia Virginia Tract (A.P.Ns. 513-0-031-025 and 035) located on the north side of Princeton Avenue east of Nogales Avenue within the City of Moorpark ("Property"); and

WHEREAS, the Property to be acquired from Owner consists of approximately 0.89 acre in total area. The legal description of the Property is attached HERETO as Exhibit 'A'; and

WHEREAS, the City made an offer to Owner on September 27, 2005, to purchase said Property for the full amount determined by the City to be just compensation for said Property; and

WHEREAS, City's pending purchase offer of \$300,000.00, which was based upon an updated appraisal of the Property, represents the full amount determined to be just compensation for the Property; and

WHEREAS, the Owner has not yet accepted said pending offer; and

WHEREAS, the City then notified Owner on December 1, 2005, of a hearing to be held more than fifteen (15) days from the date of said notification, on December 21, 2005, at which time a Resolution of Necessity to acquire the Property by eminent domain would be considered.

WHEREAS, the City Council, at its meeting of December 21, 2005, considered the Agenda Report, staff presentation, discussion, oral testimony and evidence presented with regard to this matter.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MOORPARK, DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. The Property that is subject of this resolution and is to be taken by the City of Moorpark consists of approximately 0.89 acre in total area, as more particularly described herein and in Exhibit 'A' which is attached hereto and incorporated herein.

SECTION 2. The City of Moorpark is authorized to acquire the Property by eminent domain pursuant to California Government Code sections 6500 et seq., 7267.2, 37350.5, and 40404, and California Code of Civil Procedure section 1230.010 et seq. and Section 19, Article I of the California Constitution.

SECTION 3. The public use for which the Property is to be taken is the widening of the Princeton Avenue in the vicinity of the properties that are subject to this resolution.

SECTION 4. The City Council of the City of Moorpark, based upon the Agenda Report, staff presentation, discussion, oral testimony and evidence presented finds and determines and follows:

1. That the public interest and necessity require the proposed Project;
2. 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;
3. That the Property is necessary for the construction and use of the Project;

4. That the offer to purchase the above described properties has been made to the owner of record of the Property, as required by California Government Code Section 7267.2 and said offer has not been accepted by said owner; and;
5. That all conditions and statutory requirements necessary to exercise the power of eminent domain to acquire the Property have been complied with by the City.
6. The City Council has determined that acquisition of the entire parcel is appropriate pursuant to California Code of Civil Procedure Section 1240.410 et. Seq. for the reasons set forth in the Agenda Report and based upon the information presented at the hearing for this Resolution.

SECTION 5. If any of the Property has been previously appropriated to some public use, the public use for which it was taken under this proceeding is a compatible public use or, in the alternative, a more necessary public use pursuant to Code of Civil Procedure sections 1240.510 and 1240.610.

SECTION 6. The City Attorney and the firm of Burke, Williams and Sorensen, LLP are hereby authorized and directed to prepare, institute, and prosecute in the name of the City of Moorpark such proceedings in the court having jurisdiction thereof as may be necessary for the acquisition of the above described properties, including the filing of an application for an order of immediate possession prior to judgment.

SECTION 7. This resolution shall be effective immediately upon its adoption.

SECTION 8. The City Clerk shall certify to the adoption of this resolution by a vote of not less than two-thirds of all of the members of the City Council.

PASSED AND ADOPTED this 21st of December, 2005.

Patrick Hunter, Mayor

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Resolution No. 2005 - _____
Page 4

ATTESTED:

Deborah S. Traffenstedt, City Clerk

Attachments:

Exhibit 'A': Legal Description

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EXHIBIT A

The land referred to in this report is situated in the State of California, County of Ventura and is described as follows:

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EXCEPT ALL COAL, LIGNITE, COAL OIL, PETROLEUM, NAPHTHA, ASPHALT, MALTHA, BREA, NATURAL GAS AND ALL KINDRED OR SIMILAR MINERALS OR MINERAL SUBSTANCES WHICH NOW EXIST OR AT ANY TIME HEREAFTER MAY EXIST UPON, IN OR UNDER SAID LAND, TOGETHER WITH THE RIGHTS INCIDENTAL THERETO, AS RESERVED BY SIMI LAND AND WATER COMPANY, IN DEED RECORDED NOVEMBER 16, 1889, IN BOOK 29, PAGE 314 OF DEEDS.