



County of San Mateo

Inter-Departmental Correspondence

Department: COUNTY MANAGER

File #: 19-343

Board Meeting Date: 4/23/2019

Special Notice / Hearing: None
Vote Required: Majority

To: Honorable Board of Supervisors

From: Michael P. Callagy, County Manager

Subject: Amended Encroachment Permit with Loma Mar Mutual Water & Improvement Company Over County-owned Property

RECOMMENDATION:

Adopt a resolution authorizing:

- A) The Board President to execute an Amended Encroachment Permit with Loma Mar Mutual Water & Improvement Company to allow the replacement of water storage facilities over County-owned property in Loma Mar in unincorporated San Mateo County; and
- B) The County Manager, or his designee, to accept and execute on behalf of the County any and all notices, consents, approvals, terminations, and other documents in connection with the Amended Encroachment Permit.

BACKGROUND:

On June 16, 2014, the County acquired approximately 174 acres of land (APNs 084-101-010, 084-101-020; 084-102-010; 084-102-020; 084-102-030; and 084-102-040) ("Property") located north of Pescadero Creek Road in Loma Mar in unincorporated San Mateo County from the Superintendent of Schools of the County of San Mateo ("County Superintendent"). The Property was acquired for parks and open space purposes in part with funds from the Peninsula Open Space Trust ("POST") and the California State Coastal Conservancy ("Conservancy"). As a condition of accepting the acquisition funds, the County granted certain conservation deed restrictions in favor of POST and the Conservancy over the Property. The Property is adjacent to Memorial Park, which is part of the County Parks system.

At the time of the acquisition, the Property was subject to a 1985 recorded Revocable Encroachment Permit ("Permit") granted by the County Superintendent to Loma Mar Mutual Water & Improvement Company ("Loma Mar Water"), a nonprofit mutual benefit company that operates a potable water system serving the Loma Mar Subdivision. The Permit allows Loma Mar Water to erect and maintain

three water storage tanks and associated facilities, encompassing a total storage capacity of approximately 58,500 gallons.

Loma Mar Water recently proposed a project (“Project”) to replace the existing older water storage facilities with updated facilities not exceeding existing capacity to: 1) better serve the water needs of the community of Loma Mar; and 2) protect in-stream creek flows and salmon habitat. The San Mateo County Resource Conservation District (“RCD”) has helped to secure California Department of Water Resources Bay Area Integrated Regional Water Management Plan funding to assist with the Project. The Project prompted an update to the Permit to reflect this replacement of the facilities described in the Permit.

DISCUSSION:

Loma Mar Water has asserted that it does not need permit rights from the County for its water tank facilities because, owing to activities on the Property dating back to the 1930s, it acquired prescriptive rights to own, operate, and maintain water storage tanks and associated facilities at the Property. While the County has not agreed to the claims raised by Loma Mar Water, the Real Property Division, with the assistance of County Counsel, has negotiated an Amendment Encroachment Permit that facilitates the Project, without a determination of, or prejudice to, the parties’ respective positions regarding prescriptive rights.

The Project contemplated by the Amended Encroachment Permit involves the removal of two inactive 5,000-gallon tanks, construction of foundations for four new 4,995-gallon water storage tanks and related retaining walls, fencing, and equipment; and after these tanks are in operation, removal of the existing active 40,000-gallon water storage tank. The maximum storage capacity allowed under the Amended Encroachment Permit is 58,500 gallons (i.e., the same as under the Permit). The Project does not interfere with the County’s plans to maintain the Property for parks and open space purposes.

The Amended Encroachment Permit has a term of thirty (30) years, allowing Loma Mar Mutual to derive the benefit of the investment in the Project. During the last year of the term, the parties agree to meet and confer in good faith regarding a possible extension of the Permit at that time.

The Parks Department concurs in this recommendation. County Counsel has approved the resolution and Amended Encroachment Permit as to form.

FISCAL IMPACT:

There is no impact on the General Fund. Staff time has been paid for by the Parks Department reserve fund.