Real Estate Acquisition Process For:

MARIN COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT’S

GALLINAS LEVEE UPGRADE PROJECT

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INTRODUCTION

Public Works projects and Government programs designed to benefit the public as a whole sometimes result in the acquisition of private property, including partial acquisitions of permanent and temporary easements. The proposed Marin County Flood Control and Water Conservation District’s Gallinas Levee Upgrade Project, if approved as currently envisioned, would require the acquisition of permanent and temporary easements from private property owners.

Acquisition of real property rights for public projects or programs is recognized as a function and right of government through the U.S. Constitution. The Fifth Amendment of the Constitution states that private property shall not be taken for public use without just compensation.

Federal and State law provides landowners whose property is being purchased for a public project with certain rights and protections in addition to those provided in the Constitution. A primary right and protection consistent in the Constitution and California law is that a property owner is to be fairly compensated for the property rights being acquired for a project or public need. Other rights include, but are not limited to, equal treatment of property owners, the right to accompany the real estate appraiser on their inspection of the property during the appraisal process and relocation assistance if an entire property is required for a project.

BEFORE THE ACQUISITION PROCESS BEGINS

If a property, or a portion of it including an easement (both temporary and permanent), needs to be acquired for a proposed public project, the property owner will be notified as soon as possible of the Agency interest in acquiring the necessary property rights and the Agency’s obligation to secure any necessary appraisals. For this project and within this document the “Agency” shall be the Marin County Flood Control and Water Conservation District (“District”). However, before specific property owner contacts are made regarding the need to acquire real property rights, the District would generally complete the environmental review process (CEQA and in many cases NEPA) for the project. In addition, project funding to design, permit, acquire property and construct the project are generally necessary in order to proceed with the property acquisitions for the project. Preliminary design and proposed property acquisition impacts may be discussed in general during public workshops, community meetings or through informational postings on the District’s website.

For information about the proposed Gallinas Levee Upgrade Project and to track its evolution please access the project website at http://www.marinwatersheds.org/resources/projects/gallinas-levee-upgrade-project for updates, meeting notices, etc.

The acquisition process may begin once the District determines the following:

- the specific property interests that need to be acquired for the project; and
- the project footprint has been defined and approved through the environmental process; and
- project funds have been secured.
PROPERTY APPRAISAL

When the District begins the acquisition process, the first personal contact with the property owner will occur no later than during the appraisal of the property. A written notification of the intent to appraise the property will be sent to the site address and the address on record at the Marin County Assessor’s office.

The District generally contracts with independent real estate appraisers to conduct the appraisal for each property. The appraisers are licensed by the State of California Bureau of Real Estate Appraisers and carry a “Certified General License” which is the highest appraiser qualification for California licensing. In addition, many appraisers also carry the “MAI” professional designation which is “Member of the Appraisal Institute” a private appraisal professional organization that maintains its own standards for member qualifications, training, testing and licensing. Hiring an outside independent appraiser provides a third party analysis of the real property rights required for the project and its potential impacts to the property.

Pursuant to California Government Code, section 7267.1(b) the appraiser will contact the property owner to make an appointment to inspect the property. The appraiser is responsible for determining the fair market value of the property and the real property rights required for the project and providing a cost or value of personal property and improvements within the acquisition area that may be impacted by the project.

The property owner will be invited to accompany the appraiser when the appraiser inspects the property. This is an opportunity for the property owner to point out any unusual or hidden features of the property that the appraiser could overlook or any other information that the property owner feels is relevant to the appraisal process. In some circumstances the negotiator or other District representative may also accompany the appraiser on the property inspection if the property owner requests it or if there is a need to review certain aspects of the property.

In the case of this project, it is expected and proposed that only easements will be acquired for the project. Therefore, it is typical for appraisers to appraise the land value only in determining the fair market value of the required easements. Additional values and costs may be placed on certain yard improvements and personal property that exist within the easement area.

At the time of property inspection, the property owner should be prepared to advise the appraiser if any of these conditions exist:

- There are other persons or entities who have ownership or controlling interest in the property.
- There are tenants on the property.
- There are occupants, children and/or pets that will need to be protected from construction activities.
- Items of real or personal property within the easement area that the property owner would like to keep and remove from the easement area prior to commencement of construction.
• The known presence of hazardous materials, underground storage or utilities such as gas, electric or water lines that may be in the vicinity of the easement. (Landscape, spa, pool plumbing included.)

• The need for communication in a language other than English or accommodations pursuant to the Americans with Disabilities Act or any specific needs the property owner might request related to the project and acquisition process.

During the inspection, the appraiser will inspect your property and note its physical characteristics.

The appraiser will review recent sales of similar properties in order to compare the facts of those sales with the facts about your property. The appraiser will analyze all relevant elements that affect fair market value.

The appraisal report will include a description of the property needed for the project, a list of comparable sales and the appraiser’s opinion of the property’s current fair market value as defined in California Code of Civil Procedure Section 1263.320.

Question: What if the property owner wants their own appraisal?

Answer: A 2007 California law (Code of Civil Procedure Section 1263.025) makes the property owner eligible under certain conditions, and upon receipt of the Formal Written Offer (FWO) packet, to receive reimbursement of up to $5,000 for the reasonable costs associated with retaining the services of a qualified real estate appraiser, licensed by the State Office of Real Estate Appraisers, to prepare an appraisal report for those same property rights for which an offer is being made. Reimbursement will be made by the District after it receives a copy of the appraisal report, a copy of the appraiser’s State license and an invoice from the appraiser to the property owner.

EXCEPTIONS TO THE APPRAISAL REQUIREMENT

The Federal Uniform Act and State law requires that all real property to be acquired must be appraised, but it also authorizes waiving that requirement for low value acquisitions.

Regulations provide that the appraisal may be waived:

• If you elect to donate the property and release the District from the obligation of performing an appraisal, or

• If the District believes the acquisition of your property is uncomplicated and a review of available data supports a fair market value likely to be $10,000 or less, the District may prepare a waiver valuation, rather than a complete appraisal report.

JUST COMPENSATION

Once the appraisal of fair market value is finalized, the complete appraisal report will be submitted to the District by the appraiser for review and approval. The amount determined to be just compensation cannot be less than the fair market value established by the appraisal.

The value of any buildings, structures, or other improvements on the property and within the acquisition area will be taken into consideration in determining just compensation.
In some cases, property owners may choose to waive their right to just compensation at any point in the acquisition process and donate the necessary real property rights for the project which may be considered a charitable donation for tax purposes. If a property owner is interested in donating easements or other necessary real property interests to the District, they should inform the District real estate representative as soon as they make their decision. The District will provide an “Acknowledgement for Donation” form for the property owners to sign which acknowledges that they are waiving their rights to compensation for the real property interests necessary for the project. Property owners are responsible for investigating, through a qualified tax professional, their ability to claim the donation on their income taxes and defend the deduction should the IRS or State of California challenge the deduction.

Additional information regarding just compensation can be found in the appendix.

THE WRITTEN OFFER

After the District establishes just compensation it will begin negotiations with the property owner, or its designated representative, by delivering the written offer of just compensation for the purchase of the necessary real property rights. If practical, it is preferred that the offer will be delivered in person by the District’s qualified real property agent to allow for a full discussion of the offer and all details. Otherwise, the offer will be made by mail and followed up with a contact in person or by telephone. All owners of the property with known addresses will be contacted unless they collectively have designated one person to represent their interests. A District representative will explain the District’s acquisition policies and procedures in writing, either by use of an informational brochure, or in person or both.

The District’s written offer will consist of a written summary statement that includes the following information:

• the amount offered as just compensation; and
• the description and location of the property and the interests to be acquired; and
• the identification of the buildings and other improvements that are considered to be part of the real property; and
• a copy of the summary appraisal report, which includes a list of comparable sales that were used to determine the current fair market value.

If applicable, the offer may include other property specific issues. The offer may include a list items of real property (such as storage sheds, gazebos and other significant structures attached to the property, etc.) that the property owner has indicated that they wish to keep. Costs for moving personal property out of the acquisition area or modifying improvements may be included as well. If you decide to keep any or all of these items, the owner will be responsible for removing the items from the property in a timely manner as specified in the Contract, and prior to commencement of project construction. Any separately held ownership interests in the property, such as tenant-owned improvements or personal property, will be identified by the District, if known or disclosed by the property owner at the time of appraisal.

The District will provide a reasonable amount of time to consider the written offer and ask questions or seek clarification of anything that is not understood. Typically, a reasonable time period to review and
consider the District’s offer is not less than thirty (30) days. Upon review of the offer, if the property owner believes that not all relevant information was considered during the appraisal, they should present such information immediately. Modifications in the proposed terms and conditions of the purchase may be requested and reviewed by the District. The District will consider reasonable requests that are made during negotiations and provide responses as promptly as possible. Requests beyond the amount of just compensation offered must be justified by the property owner in a way that is supportable and equitable. Requests for additional payment without justification would be considered a gift of public funds which is prohibited by law.

NEGOTIATIONS

When the parties reach agreement the property owner will be asked to sign a Contract or Agreement which will describe the property to be purchased, the amount to be paid and all the terms and conditions of the agreement. The property owner’s signature will affirm that they and the District are in agreement concerning the acquisition of the property, including all terms and conditions. Any previous agreements whether verbal or in writing will be superseded by the Contract.

If the parties are unable to reach an agreement and the District believes that a settlement cannot be reached, it has option as a public entity with eminent domain authority, to initiate condemnation proceedings.

The District may not take any action to force you into accepting its offer. Prohibited actions include:

• advancing the condemnation process;
• deferring negotiations;
• deferring condemnation;
• delaying the deposit of funds with the court for your use when condemnation is initiated; or
• any other coercive action designed to force an agreement regarding the price to be paid for your property.

SETTLEMENT

The District will make every effort to reach an agreement with you during negotiations. You may provide additional information and make reasonable counter-offers and proposals for the District to consider. If an agreement is reached between the property owner and District and the property owner signs the Contract, the Contract will then be brought to the Board of Supervisors with a staff recommendation of approval. Until the Board approves the contract, it is not binding or enforceable. Upon approval of the Contract, District staff will provide the property owner with a fully signed Contract and send a copy of the Contract to the designated title company with instructions to complete escrow.

ESCROW AND PAYMENT

The next step in the acquisition process is to enter into an escrow with a designated title company to make payment for the property rights to be acquired. As soon as all the necessary paperwork is completed for transferring title of the property through an escrow at the title company, the District will authorize payment of any outstanding liens that exist against the property with the remaining equity to
the property owner. Liens may include outstanding mechanics liens, past due property taxes and assessments, past due or demands from mortgage lenders and other liens filed against the title of the property. The property incidental expenses will also be paid or reimbursed by the District.

Incidental expenses are reasonable expenses incurred as a result of transferring title to the District, such as:

• recording fees and transfer taxes;
• documentary stamps;
• evidence of title. However, the District is not required to pay costs required solely to perfect the owner’s title or to assure that the title to the real property is entirely without defect;
• surveys and legal descriptions of the real property; and
• other similar expenses necessary to convey the property to the District.

Other costs that may be reimbursable are:

• penalty costs and other charges, as a result of the acquisition, for prepaying any pre-existing recorded mortgage entered into in good faith encumbering the real property will be reimbursed; and

• the pro rata share of any prepaid real property taxes that can be allocated to the period after the District obtains title to the property or takes possession of it will be reimbursed (typically not applicable for easement acquisitions).

The District will pay these costs directly to the title company handling the transaction with instructions to distribute to the property owner at close of escrow.

POSSession

The District may NOT take possession of property unless:

• the property owner has been paid the agreed purchase price;
• the District has made a deposit of purchase funds into escrow and a possession clause in the Contract provides for early possession of the property before close of escrow;
• in the case of condemnation, the District has deposited with the court the just compensation amount for the property owner’s use and benefit; or
• the District has paid the amount of the court’s award of compensation in the condemnation proceeding.

CONDEMNATION

If an agreement on the purchase of the necessary real property rights for the project cannot be reached, the District may choose to acquire the property by exercising its power of eminent domain. Powers of eminent domain are set forth in the US Constitution and provided for in Federal and State Law. The first step in the process is to conduct a public hearing before the Board of Supervisors to consider the District’s request to approve a “Resolution of Necessity” which formally establishes the need to acquire
the property for the project. The District’s attorney would then begin formal condemnation proceedings with the court and deposit the amount determined by the District as just compensation with the court. The deposit may be withdrawn from the court by the property owner if they so desire.

Normally, the District does not reimburse the property owner for its costs that are incurred as a result of condemnation proceedings. However, the District may reimburse the property owner under any of the following conditions:

• The court determines that the District cannot acquire your property by condemnation.

• The condemnation proceedings are abandoned by the District without an agreed-upon settlement.

• The court determines, after it has established just compensation, that under California law you are entitled to recover "litigation expenses" (attorney fees and expert witness fees). California law provides that those items known as "statutory costs" (filing fees, deposition transcript fees, and similar items) are paid to you regardless of whether you are awarded litigation expenses.
APPENDIX

TERMS USED IN THIS BROCHURE

Acquisition

Acquisition is the process of acquiring real property (real estate) or some interest (easements) therein.

Agency

An Agency can be a government organization (Federal, State, or local), a non-government organization (such as a utility company). In this brochure, the word "Agency" is the MARIN COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT.

Appraisal

An appraisal is a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information. Prior to negotiations for any real property needed for the project the District will order an appraisal of current fair market value for each property affected.

Condemnation

Condemnation is the legal process of acquiring private property for public use or purpose through the District’s power of eminent domain. Condemnation is not used until all reasonable attempts to reach a mutually satisfactory agreement through negotiations have failed. The District then goes to court to acquire the needed property.

Easement

In general, an easement is the right of one person to use all or part of the property of another person for some specific purpose. Easements can be permanent or temporary (i.e., limited to a stated period of time). The term may be used to describe either the right itself or the document conferring the right. Examples are: permanent easement for utilities, permanent easement for perpetual maintenance of drainage structures, and temporary easement to allow access and restoration of impacted areas during construction.

Eminent Domain

Eminent domain is the right of government to take private property for public use, subject to the owner of the property taken being given just compensation.

Fair Market Value

Fair market value is market value that has been adjusted to reflect constitutional and other legal requirements for public acquisition. It is usually arrived at by the review of comparable sales in the area.
**Formal Written Offer (FWO)**

A written offer provided to the property owner that will include the purchase documents for the property needed for the project. These documents include a cover letter, a contract, an appraisal summary report and an offer of just compensation.

**Interest**

An interest is a right, title, or legal share in something. People who share in the ownership of real property have an interest in the property.

**Just Compensation**

Just compensation is the price the District must pay to acquire real property. The District will pass a resolution that determines the amount of just compensation to be offered to the property owner for the property needed. That amount may not be less than the amount established in the approved appraisal report as the fair market value for your property.

If the property owner and the District cannot agree on the amount of just compensation to be paid for the property needed, and it becomes necessary for the District to use the condemnation process, the amount determined by the court will be the just compensation for your property.

**Lien**

A lien is a charge against a property in which the property is the security for payment of a debt. A mortgage is a lien. So are taxes and mechanics liens. Customarily, liens must be paid in full when the property is acquired for a public project. Where a portion of the property subject to a mortgage is acquired (easement acquisitions), the mortgage does not be paid off unless the lender can demonstrate that its security interest is being impaired. However, a lender may require a portion or all of the acquisition proceeds be applied to the balance due, including past due payments.

**Market Value**

Market value is the sale price that a willing and informed seller and a willing and informed buyer agree to for a particular property.

**MAI**

The MAI membership designation (Member of the Appraisal Institute) is held by appraisers who are experienced in the valuation and evaluation of commercial, industrial, residential and other types of properties, and who advise clients on real estate investment decisions. All appraisals ordered by the District and County will be performed by an appraiser who is licensed with the State of California’s, Office of Real Estate Appraisers and who also holds a designation of MAI.

**Negotiation**
Negotiation is the process used by the District to reach an amicable agreement with a property owner for the acquisition of needed property. The first FWO is made for the purchase of property in person, or by mail, and the offer is discussed with between the property owner and the District’s qualified real property agent.

**Person**

A person is an individual, partnership, corporation, or association.

**Personal Property**

In general, personal property is property that can be moved. It is not permanently attached to, or a part of, the real property. Personal property is not to be included and valued in the appraisal of real property. However, the cost to move personal property out of the acquisition area or off the property may be included in the District’s offer.

**Program or Project**

A program or project is any activity or series of activities undertaken by an District in order to build and maintain public works or public facilities.

**Qualified Real Property Agent**

Individuals, partnerships, or corporations that are professionally competent and experienced negotiators knowledge in all applicable Federal and State regulations governing the acquisition of real property for public purposes. County staff will serve as the District and County’s qualified real property agent.