



# Memorandum

**TO:** HONORABLE MAYOR AND  
CITY COUNCIL

**FROM:** Katy Allen  
James R. Helmer

**SUBJECT:** SEE BELOW

**DATE:** 02-25-04

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Approved

Date

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Council District: 3

**SUBJECT: AUTHORIZE THE CITY MANAGER TO NEGOTIATE AND EXECUTE A STORM DRAIN EASEMENT AND MAINTENANCE AGREEMENT WITH BP ALMADEN ASSOCIATES, LLC, FOR THE BOSTON PROPERTIES DEVELOPMENT PROJECT AT THE NORTHWEST CORNER OF ALMADEN BOULEVARD AND WOZ WAY**

## **RECOMMENDATION**

Adoption of a resolution authorizing the City Manager to negotiate and execute a Storm Drain Easement and Maintenance Agreement with BP Almaden Associates, LLC for the construction and maintenance of a public storm sewer through its private property.  
CEQA: Resolution Nos. 64273 & 68839 and addendum thereto, RH00-05-005.

## **BACKGROUND**

BP Almaden Associates, LLC, also known as Boston Properties, is in the process of developing a 3.6 gross acre site located at the northwest corner of Almaden Boulevard and Woz Way in downtown San José. The project site (see attached map) abuts the Guadalupe River to the west and is directly opposite the existing San José Convention Center on Almaden Boulevard to the east. The City currently leases the site from Boston Properties for the purpose of operating a parking lot.

The property is encumbered by a 60-foot wide storm drain easement. Within the easement is a 30-inch public storm drainage facility that outfalls directly to the Guadalupe River. This storm drainage facility runs east to west through the northerly one-third of the property. Boston Properties is proposing to subdivide the site and construct three office building structures with below grade parking, totaling approximately 860,000 square feet for office use.

Boston Properties is proposing to construct one of the buildings on the northernmost boundary of the site over the existing storm drainage facility within the building's foundational structure in the basement. Boston Properties has requested that the City allow it to reconstruct the storm sewer within the basement of the proposed office complex.

On December 17, 2002, Council authorized the City Manager to negotiate and execute a Storm Drain Easement and Maintenance Agreement with Boston Properties. However, the authorization assumes the 10-foot wide replacement storm drain easement would be dedicated to the City on the project Parcel Map. Instead, the property owner now proposes to dedicate the easement to the City by separate recorded instrument. Per the City Attorney's Office recommendation, staff is requesting Council to authorize the City Manager to negotiate and execute an agreement for the replacement easement due to the change in process that was not previously authorized by Council.

The vacation of the 60-foot wide easement is currently in progress. On February 24, 2004, Council adopted a resolution of intention to vacate the 60-foot wide easement and set a public hearing on March 23, 2004. The vacation of the 60-foot wide easement will not be recorded until all documents for the dedication of the replacement easement are complete and can be recorded concurrently with the vacation.

## **ANALYSIS**

The Departments of Public Works, Transportation, and Finance as well as the City Attorney's Office and San José Redevelopment Agency have been involved in numerous meetings to discuss and analyze the proposal by Boston Properties. For various reasons, the City generally discourages and does not allow publicly owned and maintained infrastructure to be constructed under or through private structures. Typically, the City would require BP to relocate the storm drainage facilities that will lie under the proposed office structure. However, relocating the storm drainage facilities in this case would involve the acquisition of right-of-way from the Santa Clara Valley Water District (SCVWD), which did not support the location of permanent easements over SCVWD land. Under these unique circumstances, City staff supports the reconstruction of the storm sewer within the basement of the proposed office complex upon the condition that the developer, Boston Properties, enter into the Storm Drain Easement and Maintenance Agreement with the City.

The Storm Drain Easement and Maintenance Agreement will require that the current property owner, Boston Properties, or any and all subsequent property owners to privately inspect, repair and maintain the storm sewer in perpetuity. However, the City has the right to conduct regular inspections of the storm drain and in the event of an emergency or a default of contractual obligations by Boston Properties or any successor in interest, the City will have the right to enter the office structure and take all reasonable measures to rectify the situation and repair the Storm Sewer.

### **COST IMPLICATIONS**

All costs associated with the Storm Drain Easement and Maintenance Agreement, including but not limited to the reconstruction, repair, relocation, maintenance and insurance coverage of this storm sewer, are at the expense of Boston Properties or its successors in interest to the property, so there shall be no cost to the City. Any costs incurred during an emergency situation will be billed to Boston Properties as required by the Storm Drain Easement and Maintenance Agreement.

### **PUBLIC OUTREACH**

Not applicable.

### **COORDINATION**

This memorandum and the maintenance agreement have been coordinated with the City Attorney's Office, the Redevelopment Agency, the City Manager's Budget Office and the Departments of Finance and Planning, Building and Code Enforcement.

### **CEQA**

Resolution Nos. 64273 & 68839 and addendum thereto, RH00-05-005.

KATY ALLEN  
Director, Public Works Department

JAMES R. HELMER  
Director of Transportation

GW:rd  
BP Council Memo 031604.doc  
Attachment  
T-147.010/245977