



Board Agenda Item 23

DATE: October 19, 2021
TO: Board of Supervisors
SUBMITTED BY: Daniel C. Cederborg, County Counsel
SUBJECT: Settlement with EVC Homes, LLC

RECOMMENDED ACTION(S):

Approve and authorize the Chairman to execute the Deferred Litigation Settlement Agreement with EVC Homes, LLC.

Approval of the recommended action will result in the settlement of the dispute involving EVC Homes, LLC's unpermitted encroachment and removal of certain trees within County's right-of-way at the southeast corner near the intersection of West Ashlan Avenue and North Van Ness Boulevard. County Counsel previously received settlement authority from your Board in closed session on October 5, 2021. This item pertains to a location in District 2.

ALTERNATIVE ACTION(S):

Your Board could decide not to execute the recommended Settlement Agreement and the County would litigate its claims against EVC Homes, LLC, the owner of record of 4190 N. Van Ness Boulevard.

FISCAL IMPACT:

There is no anticipated fiscal impact associated with this settlement. Any expenses or costs the County may, in its discretion, incur would be recoverable from EVC Homes, LLC in a subsequent legal action to recover these costs and expenses, including attorney's fees, to enforce the terms of the Agreement.

DISCUSSION:

The recommended Settlement Agreement would resolve the pending dispute involving EVC Homes, LLC's unpermitted encroachment and removal of certain trees within County's right-of-way at the southeast corner near the intersection of West Ashlan Avenue and North Van Ness Boulevard. Through this Settlement Agreement, EVC Homes, LLC agrees to install two 36-inch, or approximate size, Deodar cedar trees; three 24-inch box, or approximate size, Crepe Myrtle trees and additional drought resistant groundcover within the subject right-of-way. As part of the Settlement Agreement, EVC Homes, LLC is to prepare a landscaping plan to show the location of the trees and groundcover to be installed, the installed trees provide adequate vehicle sightline distance, the location of ingress/egress of the property, and irrigation systems for the trees and groundcover to be installed. In exchange, the County will waive and release its claims for damages and trespass against EVC Homes, LLC as a result of its unauthorized work within the right-of-way, vacate the stop work order, and defer taking any additional code enforcement or other legal action due to this unauthorized work.

County Counsel and the Department of Public Works and Planning believe that this settlement is reasonable

and in the best interest of the County to avoid further expenditure of staff resources and the costs of additional litigation. The recommended Settlement Agreement will result in the restoration of the lost trees within the right-of-way, improve the surrounding neighborhood, and avoid further litigation and the additional costs associated with continued litigation.

ATTACHMENTS INCLUDED AND/OR ON FILE:

On file with Clerk - Deferred Litigation Settlement Agreement

CAO ANALYST:

Moises Mendoza