

**BOARD OF DIRECTORS  
SANTA CLARA VALLEY WATER DISTRICT**

**RESOLUTION NO. 23-**

**DETERMINING AND DECLARING THE PUBLIC NECESSITY FOR THE  
ACQUISITION OF CERTAIN REAL PROPERTY OR INTERESTS IN REAL  
PROPERTY BY EMINENT DOMAIN FOR THE COYOTE CREEK FLOOD  
MANAGEMENT MEASURES PROJECT (PROJECT NO. 91864007)  
(CODE OF CIVIL PROCEDURE SECTIONS 1245.220, et seq.)**

WHEREAS, Santa Clara Valley Water District (Valley Water or “the District”) intends to complete a multi-phased flood protection project [Coyote Creek Flood Management Measures Project (CCFMMP) and Coyote Creek Flood Protection Project (CCFPP), collectively referred to as Coyote Creek Flood Projects] to implement flood improvements along Coyote Creek to protect against a 20-year flood event, similar to the one that inundated areas in San José in February 2017; and

WHEREAS, the Coyote Creek Flood Projects’ limits comprise approximately nine miles of Coyote Creek, between Montague Expressway and Tully Road, all within the City of San José; and

WHEREAS, on February 20, 2020, the Federal Energy Regulatory Commission ordered Valley Water to reduce risks to public safety by implementing certain risk reduction measures for Anderson Dam operation related to the completion of the Anderson Dam Tunnel Project; and

WHEREAS, risk reduction measures must be implemented along Coyote Creek before water is released from the completed Anderson Dam Tunnel, expected in August 2024; and

WHEREAS, Valley Water identified approximately 40-percent of the Coyote Creek Flood Projects as satisfying these risk reduction measure needs and is implementing them as an accelerated flood management project, the CCFMMP; and

WHEREAS, completion of the CCFMMP will coincide with completion of the Anderson Dam Tunnel, expected in August 2024; and

WHEREAS, the overall flood risk reduction objective of protecting areas of Coyote Creek against a flood event approximately equivalent to the February 2017 flood event will be met by the completion of both the CCFMMP and the CCFPP; and

WHEREAS, CCFMMP, as part of the FOCPP, is exempt from CEQA review pursuant to the statutory exemption for specific actions necessary to prevent or mitigate an emergency under CEQA Guidelines §15269(c) and Public Resources Code §21080(b)(4). The District filed a Notice of Exemption for FOCPP with Santa Clara County Clerk-Recorder Office on June 29, 2020; and

WHEREAS, the District is authorized to condemn property for the Project pursuant to Article I, Section 19 of the California Constitution, Part 3, Title 7 of the California Code of Civil Procedure, Section 6 of the Santa Clara Valley Water District Act, and other provisions and principles of law; and

WHEREAS, the property interests to be acquired for the Project are described and shown in more detail in the plat map and legal description attached hereto as Exhibit A and incorporated herein (the "Property"); and

WHEREAS, the Project cannot be completed without the Property, and acquisition of the Property is accordingly necessary and in the public interest; and

WHEREAS, the use of the Property for the Project will not interfere with or impair any known, existing public uses and, therefore, is compatible with any other public uses pursuant to Code of Civil Procedure Section 1240.510; and

WHEREAS, after exercising reasonable diligence to locate the property owner(s), the District was unable to obtain sufficient documentation to confirm the actual owner; therefore, no offer was made; and

WHEREAS, due to the inability to identify the actual owners of the property, the District was not able to and is not required to mail the Notice of Intention to Adopt a RON pursuant to California Code of Civil Procedure Section 1245.235; and

WHEREAS, the District has calendared consideration of this Resolution as an item on its Agenda and invited public comment prior to the meeting; and

WHEREAS, the District's Board of Directors held a public hearing on January 24, 2023, to consider the adoption of this resolution, and all interested parties were given an opportunity to be heard.

NOW, THEREFORE BE IT RESOLVED that the Board of Directors of the Santa Clara Valley Water District finds, determines, and hereby declares:

1. The public interest and necessity require the Project;
2. The Project is planned or located in a manner that will be most compatible with the greatest public good and the least private injury;
3. The Properties described herein in plat maps and legal descriptions attached hereto as Exhibit A are necessary for the Project;
4. After exercising reasonable diligence to locate the property owner(s), the District was unable to definitively identify the appropriate property owner(s); therefore, the District did not make an offer;
5. Due to the inability to identify the actual owners of the property interests, the District was unable to and is not required to mail the Notice of Intention to Adopt a RON pursuant to California Code of Civil Procedure Section 1245.235;
6. The District has complied with all conditions and statutory requirements necessary to exercise the power of eminent domain to acquire the Property;
7. The District has complied with the requirements of the California Environmental Quality Act ("CEQA") for the Project, The FOCP was determined to be exempt from CEQA review pursuant to the statutory exemption for specific actions necessary to prevent or mitigate an emergency under CEQA Guidelines §15269(c) and Public Resources Code §21080(b)(4). Valley Water filed a

Notice of Exemption for FOCF with Santa Clara County Clerk- Recorder Office on June 29, 2020. This acquisition is considered part of the CCFMMP, which is included in the FOCF and continues to be exempt from CEQA pursuant to the above-cited provisions;

8. The District's Office of the District Counsel and/or its designee is hereby authorized to commence and prosecute an eminent domain proceeding to acquire the Property, to deposit the amount of probable compensation pursuant to Code of Civil Procedure Section 1255.010, and to acquire prejudgment possession of the Property as may be necessary for the Project.

PASSED AND ADOPTED by the Board of Directors of the Santa Clara Valley Water District on the following, two-thirds majority vote, on January 24, 2023:

AYES: Directors

NOES: Directors

ABSENT: Directors

ABSTAIN: Directors

SANTA CLARA VALLEY WATER DISTRICT

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JOHN L. VARELA  
Chair, Board of Directors

ATTEST: MICHELE L. KING, CMC

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Clerk, Board of Directors

**EXHIBIT A  
COVERSHEET**

**PLAT MAP AND LEGAL DESCRIPTION**

No. of Pages: 4

Exhibit Attachments: 4021-305 Exhibit A to Resolution of Necessity 23-0008

## EXHIBIT A

(Water Management and/or Storm Water Drainage Easement, File No. 4021-305)

An easement for water management and/or storm water drainage purposes in, upon, over, and across that certain real property in the City of San Jose, County of Santa Clara, State of California, shown on that certain Record of Survey, recorded in Book 148 of Maps, page 39, filed on June 21, 1962, in the Office of the Recorder, County of Santa Clara, State of California, more particularly described as follows:

### PARCEL 1

**COMMENCING** at a 2" x 3" witness post located on the northwesterly line of the lands described in that certain Deed recorded as Document Number 25149697 filed on October 29, 2021, said point also being on the southeasterly line of the land described as "EIGHTEENTH" in that certain Official Record, recorded in Book 313, pages 579 thru 585, filed on January 14, 1907, all in the Office of the Recorder, County of Santa Clara, State of California;

Thence along said northwesterly line, S47° 45' 54"W, 161.42 feet;

Thence leaving said northwesterly line, N42° 14' 06"W, 50 feet to the **POINT OF BEGINNING**, said point also being on the northwesterly line of the lands described as "EIGHTEENTH".

Thence along said northwesterly line, S47° 45' 54"W, 32.74 feet;

Thence leaving said northwesterly line, N48° 29' 54"W, 7.22 feet, to a point on the general southerly line of "BERRYESSA ROAD" as shown on that certain Record of Survey, recorded in Book 148 of Maps, page 39, filed on January 7, 1960, in the Office of the Recorder, County of Santa Clara, State of California;

Thence along said general southerly line, N37° 29' 38"E, 34.48 feet;

Thence leaving said general southerly line, S40° 38' 32"E, 13.49 feet to the **POINT OF BEGINNING**.

Containing 345 square feet of land, more or less.

### PARCEL 2

**COMMENCING** at a 2" x 3" witness post located on the northwesterly line of the lands described in that certain Deed recorded as Document Number 25149697 filed on October 29, 2021, said point also being on the southeasterly line of the land described as "EIGHTEENTH" in that certain Official Record, recorded in Book 313, pages 579 thru 585, filed on January 14, 1907, all in the Office of the Recorder, County of Santa Clara, State of California;

Thence along said northwesterly line, S47° 45' 54"W, 161.42 feet;

Thence leaving said northwesterly line, N42° 14' 06"W, 50 feet to a point on the northwesterly line of said lands described as "EIGHTEENTH";

Thence along said northwesterly line, N47° 45' 54"E, 180.06 feet to the **POINT OF BEGINNING**;

Thence leaving said northwesterly line, the following three (3) courses:

- 1) N47° 38' 26"W, 25.36 feet;
- 2) N42° 21' 34"E, 27.75 feet;
- 3) S47° 38' 26"E, 27.98 feet, to a point on said northwesterly line;

Thence along said northwesterly line, S47° 45' 54"W, 27.87 feet to the **POINT OF BEGINNING**.

Containing 740 square feet of land, more or less.

**BASIS OF BEARINGS:**

The bearing of S47° 45' 54"W, described as N46° 46'E along the northwesterly line of the lands described in that certain Deed, recorded as Document Number 25149697, filed on October 29, 2021, in the Office of the Recorder, County of Santa Clara, State of California, was used as Basis of Bearings shown hereon.

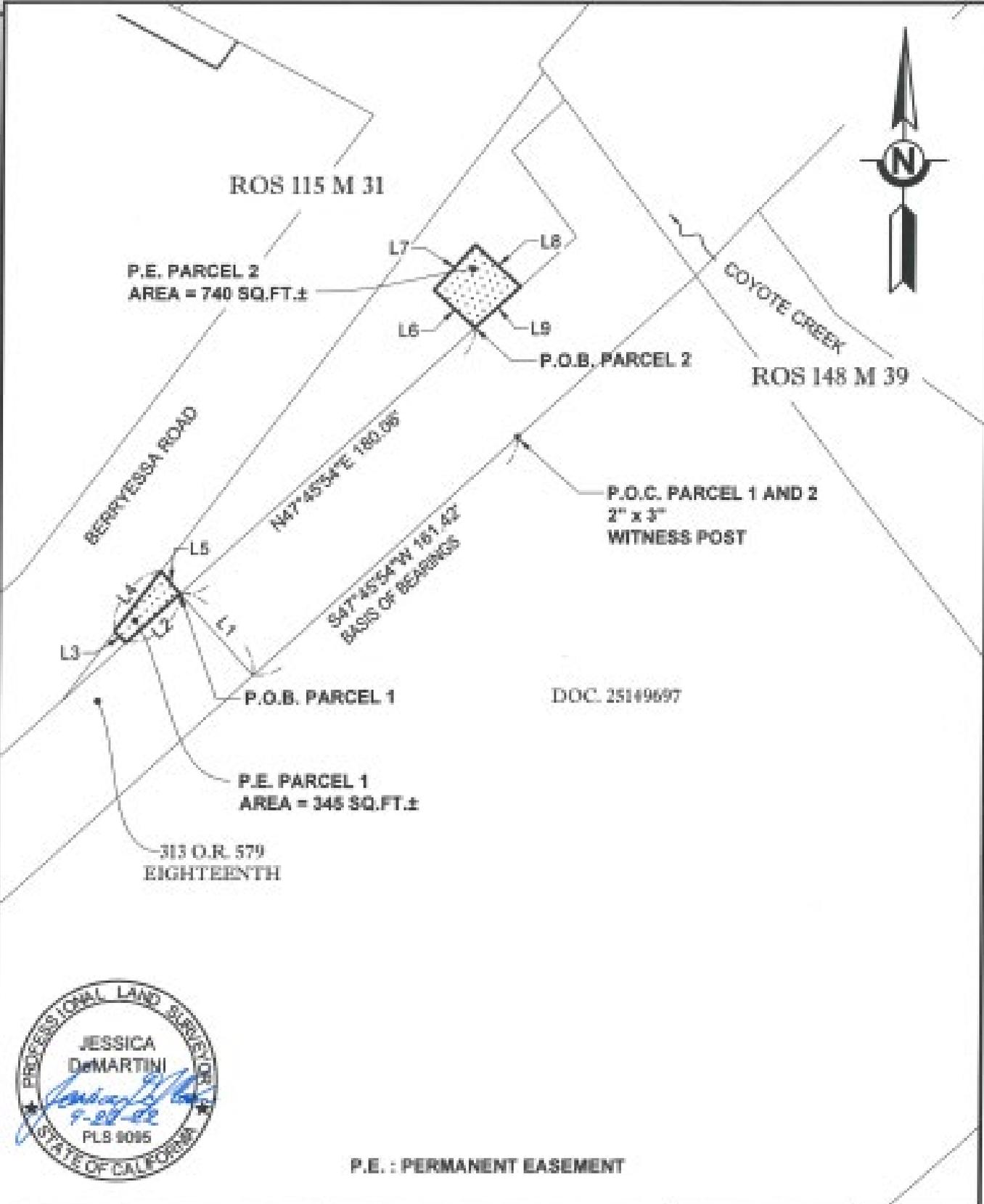
Said easement area shall be kept clear of any type of building, fences, structure, pavement, or trees unless prior written approval is obtained from Valley Water.

The easement shall include the right to construct, reconstruct, inspect, maintain, and repair a channel, protection works, and appurtenant structures, together with the right to trim or remove such trees or brush within the easement area as may constitute a hazard to persons or property or may interfere with the use of said area for the purpose granted. It also shall include the right to enter upon said land with vehicles, tools, implements, and other materials, take there from and use earth, rock, sand, and gravel for construction, maintenance, and repair of said channel, protection work, and appurtenant structures by Valley Water, its officers, agents, and employees, and by persons under contract with it and their employees whenever and wherever necessary for flood control or storm drainage purposes.

The easement shall also include the non-exclusive right of ingress from and egress to public streets to the easement area described in Exhibit A and B, over and across the property of the Grantor by such route or routes as shall occasion the least practicable damage to the property and inconvenience to Grantor for the purposes of routine inspection and maintenance of the improvements within the easement. Valley Water shall provide reasonable advance notification of its intent to enter Grantor's property.

(As used above, the term "grantor" shall include the plural as well as the singular number. The words "himself" and "his" shall include the feminine gender as the case may be.)

SCVWD 5:\REQUESTS\COYOTE CREEK\2022\_1372 Working\Official\RDW\Plats and Legal Descriptions\Reach 50005-305-305 Unknown Owner\4021-305 PE\2022-137\_4021-305 PE.dwg



SANTA CLARA VALLEY WATER DISTRICT 	SCALE: 1" = 60'	RESU FILE NO.	4021-305
		APN	
		TITLE REPORT NO.	
		DRAWN	B. BAINS

SC:\WD 3\REQUESTS\COYOTE CREEK\2022\_13712\Working\Office\RD\Plats and Legal Descriptions\Reach 500X-01-001 Unknown Owner\4021-305 PE\022-137\_4021-305\_PE.dwg



Line Table		
Line #	Bearings	Distance
L1	N42°14'06"W	50.00'
L2	S47°45'54"W	32.74'
L3	N48°29'54"W	7.22'
L4	N37°13'38"E	34.48'
L5	S40°38'32"E	13.49'
L6	N47°38'26"W	25.36'
L7	N42°21'34"E	27.75'
L8	S47°38'26"E	27.98'
L9	S47°45'54"W	27.87'



SANTA CLARA VALLEY WATER DISTRICT



SCALE: N.T.S.

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