

From: Reza Mohamadzadeh <rmohamadzadeh@ohhlegal.com>

Sent: Monday, November 24, 2025 6:07 PM

To: Clerk of the Board <clerkoftheboard@valleywater.org>; Board of Directors <board@valleywater.org>; Max Overland <moverland@valleywater.org>; Bhavani Yerrapotu <BYerrapotu@valleywater.org>; Candice Kwok-Smith <ckwok-smith@valleywater.org>

Cc: Philip J. Henderson <phenderson@ohhlegal.com>; Sarine Abrahamian <sabrahamian@ohhlegal.com>; Stan Barankiewicz <sbarankiewicz@ohhlegal.com>; Reddy, Seth <sreddy@sjusd.org>; Morrison, Tracy <tmorrison@sjusd.org>

Subject: San Jose USD - SCVWD - Comments in Opposition to Adoption of RON (Agenda Item No. 3.5)

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Dear Ms. Clerk, Mr. Overland, and Ms. Yerrapotu,

See attached a comment letter submitted on behalf of the San Jose Unified School District in opposition to adoption of a Resolution of Necessity to acquire property at Selma Olinder Elementary School. Please kindly acknowledge receipt of this email and the attached letter.

Best,

Reza Mohamadzadeh, Esq.



Orbach Huff & Henderson LLP
rmohamadzadeh@ohhlegal.com

(310) 228-2049 Direct

(310) 788-9200 Main

(626) 696-0075 Cell (Preferred)

1901 Ave of the Stars, Suite 575

Los Angeles, CA 90067

Los Angeles | Pleasanton | San Diego | City of Industry | Pacific Grove | Orange | Riverside

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November 24, 2025

Preparing
today's students
to be the
thinkers,
leaders,
and creators
of tomorrow.

SAN JOSÉ UNIFIED SCHOOL DISTRICT COMMENTS IN OPPOSITION TO THE
ADOPTION OF A RESOLUTION OF NECESSITY TO ACQUIRE PROPERTY AT SELMA
OLINDER ELEMENTARY SCHOOL BY EMINENT DOMAIN (AGENDA ITEM NO. 3.5

VIA ELECTRONIC MAIL

Santa Clara Valley Water District
Attn: Maximillion Overland,
Acting Clerk of the Board
5750 Almaden Expressway
San Jose, CA 95118
Ph: (408) 630-2749
Em: moverland@valleywater.org

Bhavani Yerrapotu,
Deputy Operating Officer
5750 Almaden Expressway
San Jose, CA 95118
Ph: (408) 630-2735
Em: byerrapotu@valleywater.org

Dear Mr. Overland, Ms. Yerrapotu, and Board Members:

The San José Unified School District (“School District”) submits these comments ahead of the Santa Clara Valley Water District (“Valley Water”) Board of Directors (“Board”) hearing scheduled for November 25, 2025, to consider adoption of a resolution of necessity (“RON”) to acquire a property interest at Selma Olinder Elementary School (“School”) at 890 E. William Street, San Jose, California 95116 (APNs 472-33-007, 472-33-010) (“Property”).

I. INTRODUCTION & BACKGROUND

The School District is in support of the Coyote Creek Flood Protection Project’s (“Project”) goal, but is not in agreement about the location and limits of, and obligations concerning, the easement to be taken; however, the District remains willing to negotiate and grant both a permanent easement and temporary construction easement to Valley Water over portions of the Property depicted in Exhibit A, only if the Water District agreement maintain and repair the area to be flooded and indemnifies the District from inverse condemnation claims. Unless an agreement can be struck, the District urges the Board to reject the RON currently under consideration. As a public agency, the School District recognizes the challenges faced by Valley Water in balancing the needs of multiple constituencies, especially in pursuit of a large-scale project with multiple affected parties. Nonetheless, the District has a responsibility to safeguard the School as a learning environment for its students, and Selma Olinder Park (“Park”), which is owned by the District, as a recreational space for the community.

The School District requests that the Board direct Valley Water staff to engage in further negotiations with the understanding that the Project Improvements, as defined in the Water District’s Offer Packet and Proposed Agreement (“Offer”), if constructed as proposed, would render a substantial portion of the School damaged and inoperable during and after a flood event;

sjusd.org
408-535-6000
855 Lenzen Avenue
San José, CA 95126

and that remediation of such damage is not, and should not be, the School District's responsibility. The School District also requests that the Board direct Valley Water staff to commission a new appraisal of the Property and easements and revise its Offer given that the Offer values the easement areas only, ignoring the diminished utility, increased risk, and probable damage to the portions of the Property south and southwest of the proposed easement that will be subjected to increased flooding impact, therefore not constituting just compensation, as legally required.

II. PROCEDURAL POSTURE

On June 16, 2025, the School District received the Offer Packet from Valley Water, which asserted a valuation for the permanent and temporary construction easements based on Valley Water's appraisal, and essentially initiated the discussion concerning the Project. With a focus on the commencement of negotiations, the School District immediately informed Valley Water that, due to staff schedules, summer construction projects, and the reopening of schools in early August, additional time would be needed to provide a substantive response to the information presented. The Offer Packet was, however, a nonstarter. It was one-sided, provided an inadequate offer amount for the easements, failed to account for remediation of impacts to the Property after a flood event, omitted any consideration of indemnification, and disregarded the issues that previously compelled the School District to litigate against Valley Water concerning San José High School.

Despite these deficiencies, the School District invested significant time and resources reviewing Valley Water's offer and preparing a draft Agreement for Dedication of Easement ("Proposed Agreement"). The Proposed Agreement was carefully worded to, among other things, preserve a safe and educational environment for students, and ensure the community's ongoing access to the Park while affording Valley Water the most efficient use of the Easement Area (defined in the Proposed Agreement). The School District's understanding was that the Proposed Agreement would initiate the negotiation process between the two.

Instead of any substantive response to the Proposed Agreement or acknowledgement of a willingness to discuss or negotiate the proposed terms, Valley Water's subsequent communication of October 14, 2025, simply gave notice of the Board meeting to consider the RON and a message from Mr. Ken Anderssohn indicating that Valley Water had "looked at" the School District's draft and found "so many things in the draft that they cannot accept" if they were to "build the project the way they want to build it." Mr. Anderssohn identified specific provisions of the draft that would not work for Valley Water and concluded that unless the parties reverted to Valley Water's draft agreement, "there is no other way to move forward." This take-it-or-leave-it approach effectively concluded negotiations before they had even begun.

At minimum, the School District expected a counterproposal, rationale for rejecting the School District's proposed terms, or any show of effort to work toward a mutually acceptable solution. Indeed, the law requires Valley Water to make a genuine effort to negotiate before adopting an RON—and that had not occurred by the time the October 14, 2025, Board meeting was scheduled. At approximately 10:30 a.m. on Monday, October 13, 2025, a federal holiday, and one (1) day prior to the Board meeting to decide upon the RON, the School District received correspondence from Valley Water that higher management decided to postpone the hearing so that staff would have more time to negotiate with the School District.

To date, the School District and Valley Water and their respective legal counsel have engaged in two (2) meetings in attempts to negotiate mutually acceptable easement terms—the first on October 30, 2025, and the second on November 13, 2025. Although progress has been made on certain issues, several material points of disagreement remain regarding the primary implications from the Project, including, primarily: (i) just compensation to the School District for the easement and portion of the School to be impacted by the Project during and after a flood event; (ii) responsibility for remediation of impacts to the Park after a flood event; and (iii) indemnification that protects the School District from third-party claims should the Project cause impacts to properties neighboring the School. These unresolved issues pertain directly to the School's operation, the School District's legal exposure, and student safety, rendering any RON legally unsupported and premature. These matters require continued discussion and technical review, at minimum, before any irreversible action may be appropriate. The following provides the Board with a concise account of these issues and their importance to the School District.

Notably, this history demonstrates that Valley Water has yet to engage in the genuine, good-faith negotiations contemplated by Government Code section 7267.2 before seeking an RON, and instead advances toward condemnation on an essentially take-it-or-leave-it basis.

III. LEGAL STANDARD

Valley Water may only commence an eminent domain proceeding after its Board has adopted an RON that meets the requirements

of Article 2, Chapter 4, Title 7, Part 3 of the Code of Civil Procedure. (Code Civ. Proc., § 1245.020.) Absent an emergency project necessary to protect health, safety, welfare, or property, here, the RON must contain all of the following:

- General statement of the public use for which the property is to be taken and reference to the statute that authorizes the entity to acquire the property by eminent domain;
- Description of the general location and extent of the property; and
- Declaration that the entity’s governing board has found and determined all of the following:
 - Public interest and necessity require the project;
 - The project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury;
 - The property is necessary for the project;
 - The compensation offer required by Government Code section 7267.2 has been made to the property owner; and
 - The Project’s use of the Property will not unreasonably interfere with the public use.

(*Id.*, §§ 1240.510, 1245.230.)

Regarding compensation, the entity must provide the property owner a written statement of, and summary of the basis for, the amount proposed as just compensation. (Gov. Code, § 7267.2(b).) Included in such statement, in the matter at hand, must include the following information:

- Date of valuation, highest and best use, and applicable zoning;
- Principal transactions, reproduction or replacement cost analysis, or capitalization analysis, supporting the value determination; and
- The just compensation for the property acquired and for damages to remaining property.

(*Id.*, §§ 7267.2(b)(1)-(3); see also *Id.*, §§ 1263.310 [stating the measure of compensation is fair market value], 1263.410 [addressing compensation for injury to remainder of property where property acquired is part of a larger parcel], 1263.420 [addressing damage to remainder of property].)

The RON has no conclusive effect if its adoption involves a gross abuse of discretion by the condemning entity. (Code Civ. Proc., § 1245.255(b).) A gross abuse of discretion may be proven either by a lack of substantial evidence supporting the RON or by showing that the condemning entity irrevocably committed itself to the taking regardless of the evidence presented at the RON hearing. (*Redevelopment Agency v. Norm’s Slauson* (1985) 173 Cal.App.3d 1121 (“*Redevelopment Agency*”).) As explained further below, the record does not demonstrate substantial evidence of compliance with these requirements, and therefore, Valley Water cannot lawfully adopt the RON.

IV. GROUNDS FOR DENIAL OF RON

A. Valley Water Has Failed to Demonstrate the Necessity of the Easement at Its Currently Proposed Location and That the Property Is Necessary for the Project.

The Water District bears the burden of proving that the location of the proposed easement is necessary for the Project at its current location and that it is compatible with the greatest public good and the least private injury. (Code Civ. Proc., § 1240.030(b).) Such findings must be supported by substantial evidence showing that the easement’s specific placement, configuration, and extent are essential to the Project’s function. The record here does not support such a determination nor may it be used to support a Board finding that the easement’s current alignment is “most compatible with the greatest public good and the least private injury” as required by law.

First, Valley Water has never provided the School District with any technical analysis or expert opinion as to the reasoning for the easement’s direct intersection through the center of the School, nor whether any alternative placements adjacent to the Property were considered. Valley Water has stated that the Project would or may sacrifice the School’s fields for the protection of its buildings. Valley Water fails to consider that the School’s fields are integral educational facilities and are classrooms. Directly west and south of the School is the City of San José-owned William Street Park. There is no indication that Valley Water analyzed the viability of placing the easement

on City (or even School District) property along the border between the Property and William Street Park. No comparative analysis or documentation showing that the currently proposed placement is the least-intrusive option has been provided to the School District. This route places the burden on children who are themselves a part of the public, and inflicting avoidable risk or disruption on them defeats the statute's requirement that Valley Water prioritize "the greatest public good."

The law requires that the Project impose the least injury, which demands, at a minimum, an actual showing that less-injurious placements were considered and deemed infeasible. Therefore, without any such evidence demonstrating why the easement must divide a functioning elementary school rather than be located on undeveloped portions of William Street Park or along Coyote Creek Trail, Valley Water cannot meet its burden of producing substantial evidence to show that the Project Improvements at the School were planned and located in the manner most compatible with the greatest public good and least injury, as is legally required.

Second, contrary to Valley Water's position expressed during the October 20, 2025, conversation with the School District, Valley Water's own Project modeling in the Environmental Impact Report ("EIR") indicates that the Project will have impacts to the School, as shown in Figure 3 and Figure 5 of EIR Appendix H-3, attached hereto and incorporated herein as Exhibit B and Exhibit C, respectively. The Project proposes over seventeen thousand (17,000) feet of flood walls or passive barriers, some of which will reach heights of six (6) and nine (9) feet. (EIR, p. 2-50) No technical analysis is required to comprehend that the Project, given this scope, will channelize flood waters upstream of the Property and through, over, and across the Property, increasing both the extent and severity of inundation to the portions of the Property that the Improvements will subject to flooding. Specifically, the Project, during its operation, has the potential to increase the maximum water depth of flood water at the School by between one (1) and approximately one and one-third (1.3) feet, and increase its maximum velocity by up to one (1) foot per second. (See Exhibit B and Exhibit C.) At minimum, this maximum water depth and maximum velocity rate would expose the recreational portions of the School to greater amounts and risks of erosion, deposition of sediment and debris, scouring and scarification, and other impacts from larger and higher quantities of debris being carried by flood waters than it would experience without the Project. These impacts and conditions directly undermine Valley Water's claims that the Project would not change the flooding on the School and is planned and located in the manner most compatible with the greatest public good and the least private injury. Without any evidence to the contrary, the Board cannot make the required finding of necessity.

Because Valley Water has not offered substantial evidence demonstrating why the easement cannot be relocated or reconfigured in a manner to reduce impacts to the School, the record does not support a finding that the location of the easement is necessary for the Project, especially in light of the potentially severe and far-reaching impacts to the School—which Valley Water's modeling acknowledges. Until Valley Water proffers substantial evidence supporting the chosen location, the Board cannot make the requisite necessity finding, and the RON must be denied.

B. Valley Water Has Failed to Make an Offer of Just Compensation.

Valley Water's offer of compensation for the easements is legally deficient and cannot support adoption of the RON. It has offered the School District a paltry four hundred twenty-eight thousand dollars (\$428,000) for a permanent water easement and temporary construction easement to construct the Project Improvements, along with compensation for eleven (11) mature trees that will be removed and not replaced. The Offer fails to satisfy the requisite standard for just compensation primarily for two (2) reasons.

Under California law, "just compensation," in the context of eminent domain, includes not only the fair market value of the property interests actually taken, but also compensable damages to the remainder of the property. (Code Civ. Proc., §§ 1263.310, 1263.410, 1263.420.) Those severance damages expressly include damage to the remainder caused by the construction and use of the project in the manner proposed by the condemning agency. (Code Civ. Proc., §§ 1263.420(a), (b).) And, before adopting an RON, Valley Water must determine the amount it believes to be just compensation and to make a written offer based on an appraisal that, where appropriate, separately states compensation for the property to be acquired and for damages to the remaining property, including any offsetting benefits and the calculations and narrative explanation supporting such amounts. (Gov. Code, § 7267.2.) Further, if the acquisition of only a portion of a property would leave the remaining portion in such a condition as to constitute it an uneconomic remnant, the public entity must offer to acquire the entire property if the owner desires. (*Ibid.*)

First and foremost, Valley Water's Offer values only the permanent easement for the Project Improvements and a

temporary construction easement, and not the portion of the Property subject to increased flood impacts after construction of the improvements—ignoring the statutory requirement to separately identify and pay for severance damages although the Project’s own EIR modeling confirms that certain portions of the Property will experience deeper, faster, and more destructive flood flows as a direct result of the channelization caused by the Project Improvements. (See above.) Pursuant to Code of Civil Procedure sections 1263.410 and 1263.420, these post-Project impacts are compensable as a matter of law. In this context, the Offer effectively exploits the School District by attempting to shift onto it the entire burden of remediating foreseeable, model-predicted flood impacts to the portions of the Property south and west of the easement. By failing to account for the value of and impacts to the remainder of the Property, Valley Water unlawfully attempts to avoid costs and offload responsibility onto the School District.

Such an artificially narrow valuation constitutes a lack of substantial evidence that just compensation has been offered in accordance with Government Code section 7267.2(b)(3). This provision required Valley Water to include information pertaining to compensation for damages to the remaining property. No such information was included in the Offer Packet. Any offer that omits compensable categories of damages does not constitute an offer of just compensation. (*Id.*; see also Matthew A. Siros, *Just Compensation Under California Law for Temporary Severance Damages and Impairment of Access*, 36 Cardozo L. Rev. 441 (2014).)

Second, the Offer is based on an appraisal that undervalued the Property. On October 9, 2025, the School District received an appraisal of the Property and easements (“School District Appraisal”) from David B. Wraa, Senior Vice President of Bender Rosenthal Inc. (“BRI”), in part to determine whether Valley Water’s Offer constituted just compensation. BRI prepared the School District Appraisal in a manner unlike that of Valley Water’s in the following ways: (i) BRI appraised the Property according to its highest and best use (single-family residential use, likely as a higher-density planned development); (ii) looked at comparable sales of higher-density, larger developments more closely aligned with how the Property would be developed at its highest and best use; (iii) considered the Property’s potential to be developed with a density of twenty (20) units per acre; and (iv) concluded that the permanent easement, construction easement, and improvements impacted by the easement warrant an amount multiple times greater than what Valley Water offered.

The Offer Packet lacks information indicating that Valley Water analyzed whether and to what extent the post-Project, post-flooding condition of the School’s fields will impact school operations in a manner that would leave these areas effectively unusable or, at least, significantly less valuable. Nor does the Offer Packet mention damages to the remainder of the Property or how the Project’s benefits were weighed against the clear risk of increased flooding at at least one (1) operational elementary school, which is required per Government Code section 7267.2(b)(3). Last, the appraisal involved comparison of sales and properties developed less intensively than the Property could be developed, which produced a lower appraisal value. Such errors and omissions contravene the plain language of the Government Code and Code of Civil Procedure in this context.

Last, Valley Water ignores the material risk that, by channelizing flood flows and increasing depth and velocity across the School, the Project may render the School’s fields functionally impaired and too expensive to restore. If, as the modeling indicates, the remainder of the Property will be subjected to deeper, faster, and more destructive flooding, the remainder may qualify as an uneconomic remnant. Valley Water is therefore obligated to evaluate this condition, disclose it, and structure the Offer accordingly. Until Valley Water evaluates whether the fields will be rendered an uneconomic remnant and offers to compensate the School District for that portion of the Property, the Board cannot lawfully conclude that the just compensation requirement has been satisfied.

Valley Water’s Offer does not meet the statutory requirements. The Offer is limited to valuation of the proposed permanent easement and temporary construction easement areas, based on Valley Water’s deficient appraisal, and it fails to include compensation for severance damages. Particularly, the Offer does not include compensation for the portion of the Property proposed to be most impacted during and after a flood event, despite Valley Water’s own analyses concluding that this area of the Property will experience increased inundation, damage, and loss of use as a direct result of the Project. Accordingly, Valley Water must withdraw the current Offer and reissue a revised offer based on an appraisal of the Property based on its highest and best use, and that includes consideration for severance damages, remainder impacts, and all reasonably foreseeable post-Project remediation costs.

C. The Project Will Unreasonably Interfere With the School’s Existing Public Use of the Property.

Approval of the RON is conditioned on the Board’s determination that use of the School “will not unreasonably interfere with or impair the continuance of the public use as it then exists or may reasonably be expected to exist in the future.” (Code Civ. Proc., § 1240.510.) Valley Water cannot meet this standard on the record. The proposed easement and Project Improvements would bisect an active elementary school campus, materially impair the School’s fields, expose the remainder of the Property to greater flood impacts, and expose the District to potential litigation. Furthermore, the Park is not only utilized by District students on a daily basis for physical education and athletics, but also by the City pursuant to a joint use agreement that expires in 2034—a well-established public use since 2004. The Project will impose recurring and consistent operational disruption, safety risk, and eventually, damage of the School’s fields. This constitutes an unreasonable interference with the School’s public use, particularly where less-injurious, less-invasive locations exist for placement of the easements.

D. Valley Water Refuses To Indemnify the District Against Project-Related Claims by Neighboring Property Owners.

The Project proposes to channelize approximately nine (9) miles of the Coyote Creek corridor, which will concentrate flood flows within a confined alignment and increase both water depth and velocity at the Property. Any failure of the Project Improvements or any deviation from expected performance of the Improvements may expose properties adjacent to and downstream from the School to heightened flood impacts. Nevertheless, the Water District refuses to indemnify the School District against third-party claims arising from potential Project impacts. The School District may face legal exposure if the Project Improvements fail, are alleged to have been improperly maintained or tampered with, or even if floodwater damages adjacent property due to channelization. In such an event, neighboring property owners may not risk omitting the School District from the suit, and in fact, may not know whether and to what extent the School District or Valley Water District’s actions or inaction contributed to the cause of the suit.

By refusing to indemnify the District against these claims, Valley Water attempts to shift onto the School District all legal and financial risk of impacts from the Project Improvements at and near the Property. No public agency acting reasonably and responsibly—and particularly as a steward of the community’s children—would accept allocation of such risk, particularly where the purpose of the Project is to protect the broader community. A taking that would leave the School District responsible for the risks and costs of defending and potentially remediating third-party claims arising from the Project does not align with the statutory mandates of “least injury” and “just compensation,” which require that the public entity—not the party losing its property—accept responsibility for foreseeable or potential project-related impacts.

Notably, if Valley Water does not believe the Project will have significant adverse impacts (which it has stated during both negotiation meetings with the School District) or that they will be mitigated, it should have no objection to indemnifying the School District.

E. Approval of the RON Would Constitute a Gross Abuse of Discretion Given Valley Water Pre-Committed Itself to the Taking.

A condemning entity commits a gross abuse of discretion where it irrevocably commits itself to a taking before undergoing the procedures and analyses required by Article 2. (Code Civ. Proc., § 1245.255(b); *Redevelopment Agency, supra*, 173 Cal.App.3d at p. 1127.) An RON adopted under such circumstances is deprived of its conclusive effect. Valley Water’s conduct prior to this scheduled RON hearing constitutes precisely this issue.

Prior to any meaningful negotiation, Water District staff declared that the School District’s Proposed Agreement contained “so many things...that they cannot accept” and that “there is no other way to move forward” unless the School District ceased any attempt at protecting the School and its students and blindly accepted Valley Water’s initial draft. The position was taken prior to Valley Water’s understanding of which terms the School District would have been willing to negotiate on. Additionally, at that point in time, Valley Water could not have been aware of the School District’s primary concerns (i.e., its students’ safety and ability to enjoy the recreational uses on the Property).

Without any intervening correspondence, Valley Water then noticed the first RON hearing, postponing it just one (1) day prior to the scheduled vote and only after the School District submitted its Letter of Intent to Appear which commented sternly on Valley Water’s lack of willingness to participate in good faith negotiations. This sequence indicates that Valley Water had already determined to pursue the taking, and treating the RON hearing as more of

a procedural formality rather than a genuine opportunity to weigh the evidence or learn more about the District's position and willingness to negotiate.

On its own, such pre-commitment is sufficient to deprive any RON of conclusive effect under Code of Civil Procedure section 1245.255(b), even independent of the lack of substantial evidence of necessity, location, just compensation, and public use interference. Given that Valley Water predetermined the outcome and proceeded toward the hearing as though the taking were inevitable, any approval of the RON at this stage would constitute a gross abuse of discretion and be responded to accordingly.

V. CONCLUSION

Accordingly, the School District reiterates its request that Valley Water's Board deny the RON, direct staff to continue negotiations consistent with the principles listed above, direct staff to commission a new appraisal, and propose a new offer for the easements that lawfully accounts for the highest and best use of the Property, severance damages, and remediation costs. The School District appreciates the Board's time and the opportunity to present its position.

Sincerely,



Signing Time: Nov 24, 2025, 05:45:18:580 p.m. (PST)

box SIGN

13KV6J98-4LXWVLL2

Seth Reddy

Chief Business Officer

Exhibit A

Selma Olinder Elementary School, 890 E William Street, San Jose, California 95116
(APNs 472-33-007, 472-33-010)



Exhibit B

EIR, Appendix H-3, Figure 3

Change in Max. Water Depths 1 ft and Over Operational Baseline Conditions

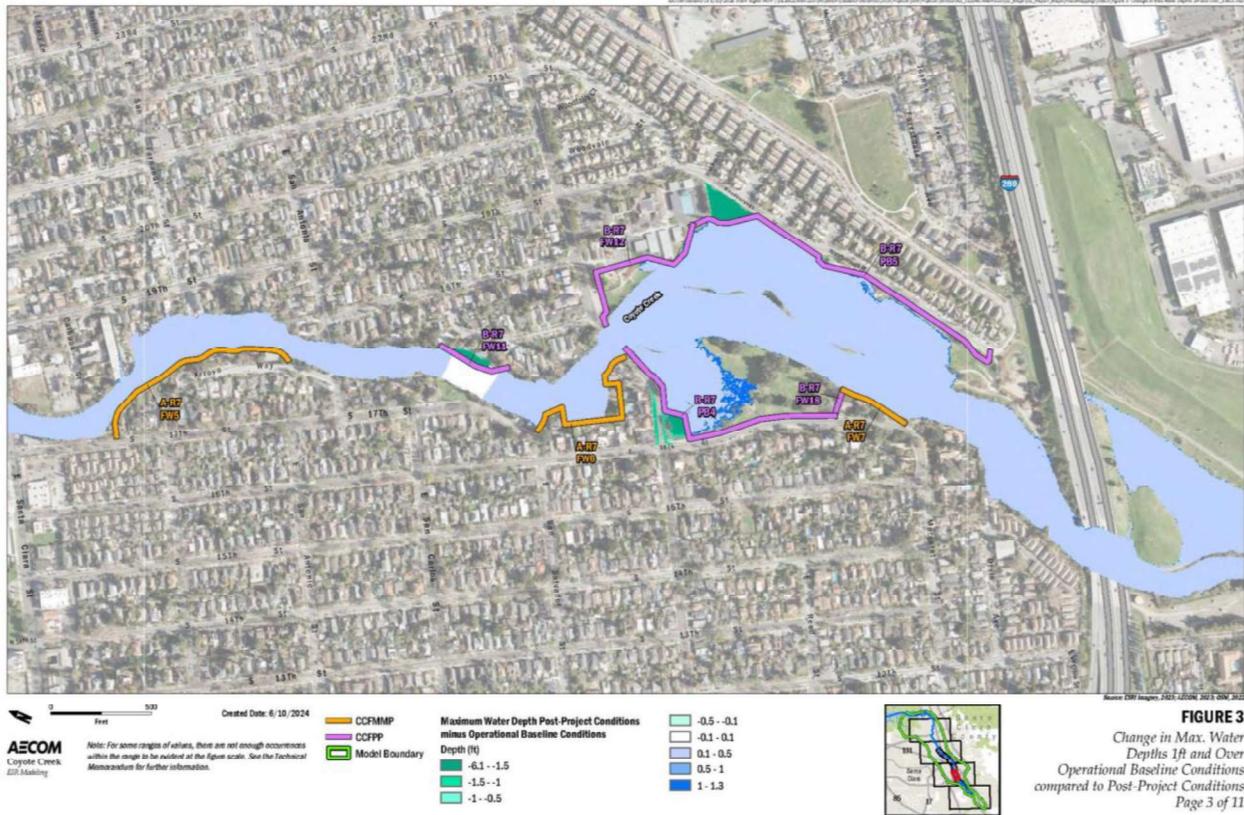
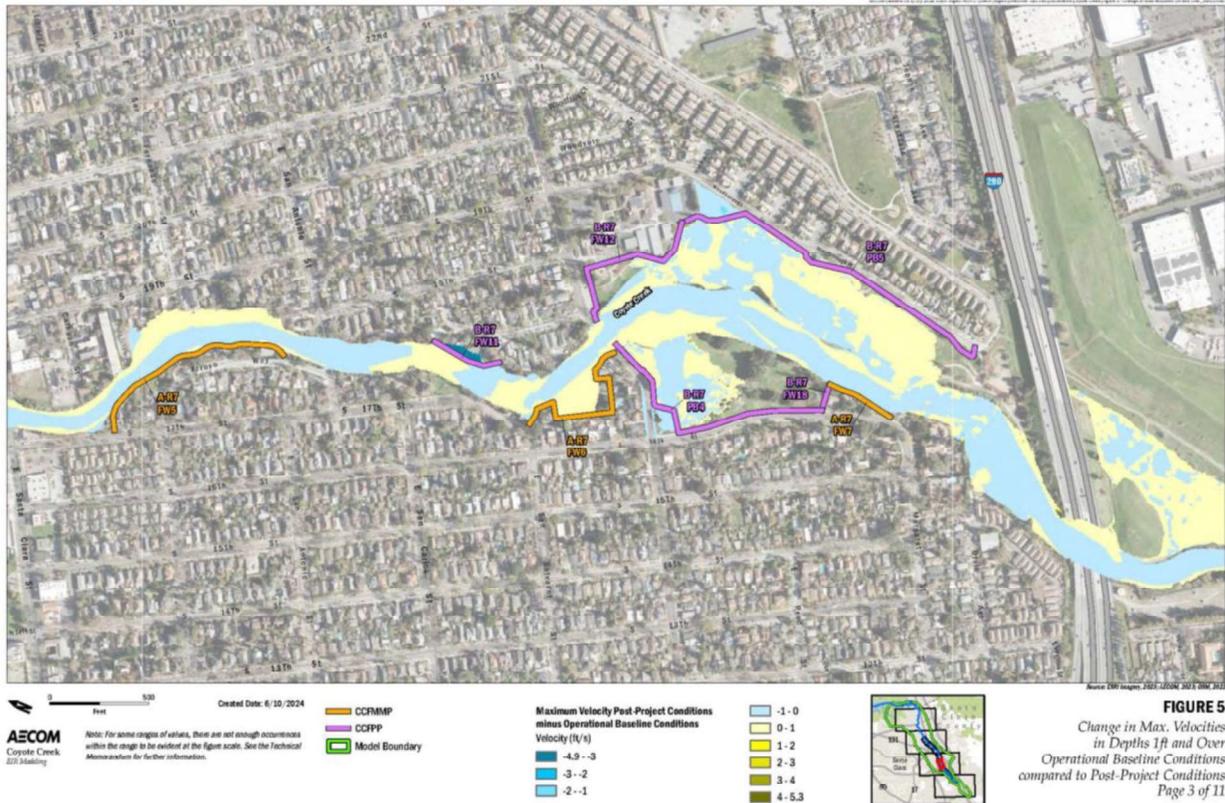


Exhibit C

EIR, Appendix H-3, Figure 5

Change in Max. Velocities in Depths of 1 ft and Over Operational Baseline Conditions



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