



Santa Clara Valley Water District

File No.: 20-1132

Agenda Date: 1/12/2021

Item No.: 3.4.

BOARD AGENDA MEMORANDUM

SUBJECT:

Approve Modification of Real Property Easement Rights Between Santa Clara Valley Water District and Milpitas Materials Company, for the Lower Calera Creek Flood Protection Project, Project No.40174005, APN No. 022-02-014, Real Estate File No. 4018-6.1 (Milpitas) (District 3).

RECOMMENDATION:

- A. Approve and Authorize the Chief Executive Officer to sign the Right of Way Agreement with Milpitas Materials Company; and
- B. Approve and Authorize the Chief Executive Officer to sign the Easement Modification Agreement (4018-6.1) with Milpitas Materials Company.

SUMMARY:

In April 2010, the Board adopted Resolution No. 10-31, specifying its intention to consider undertaking a work of improvement for the Lower Berryessa Creek Flood Protection Project (Project). Design and construction of the Project is occurring in two phases. Phase 1 extends from Lower Penitencia Creek confluence to Abel Street. Phase 2 extends from Abel Street to Calaveras Boulevard and includes a portion of Lower Calera Creek that begins at the Lower Berryessa Creek confluence and continues approximately 500 feet upstream of Arizona Avenue. Construction of Phase 1 was completed in December 2016 and construction of the portion of Phase 2 from Abel Street to Calaveras Boulevard was completed in July 2020. The Lower Calera Creek portion of the project is currently finalizing the design which will be completed in December of 2020 with construction to begin in May of 2021. Construction of the improvements along Lower Calera Creek will result in the need to modify an existing permanent easement (Deed 4018-6) from Milpitas Materials Company (MMC) acquired in 1979 (Attachment 3). Authorization and approval of this easement modification is recommended to allow the Project to progress to construction as scheduled.

Modification of Existing Permanent Easement

In 1979, Valley Water acquired the permanent easement for flood control and storm drainage purposes over a portion of the real property owned by MMC (Attachment 3). The 1979 easement agreement, among other things, contained a provision limiting the height of the any floodwall

constructed by Valley Water within the easement area. The 1979 easement also allowed MMC to mount certain fixtures on the existing floodwall and install a water line across Calera Creek channel and easement area. Design for the Lower Calera Creek Flood Protection Project requires that a new floodwall be constructed which will exceed the 1979 height limitation. The Easement Modification Agreement will provide rights to construct the new floodwall and contain provisions to allow future improvements in the event that the floodwall must be raised due to changing flood conditions. None of the modifications to the 1979 easement materially expand the rights of MMC or impose new restrictions on Valley Water's rights under the 1979 easement.

FINANCIAL IMPACT:

The purchase price for modification of the 1979 easement agreement is \$705,412. While there is no cost directly associated with the modification of the easement rights, MMC has incurred and will incur certain costs from construction impacts such as waterline relocation costs, wall demolition costs and concrete slab repair costs. MMC will incur modest loss of income as an impact of project construction. Attached is an itemization of the costs associated with restoring the MMC operation (Attachment 4). It is noted that Valley Water and MMC will share the cost of demolishing the existing floodwall and repairing the adjacent concrete slab deck which will be impacted by the project. This purchase price represents just compensation of the real property interest being acquired and remediation of impacts to the MMC property and business operation. As provided in the Right of Way Agreement (Attachment 1), the District will pay all title, escrow and recording costs associated with recording the Easement Modification Agreement. These costs are estimated to be about \$3,000, in addition to the purchase price of \$705,412. Adequate project funds are budgeted in the Watershed Stream Stewardship Fund for Project 40174005 (Berryessa Creek, Lower Penitencia Phase 2) in FY21 for this acquisition.

CEQA:

On December 13, 2011, the Board certified the Final Environmental Impact Report (EIR) for the Lower Berryessa Creek Project, Resolution No. 11-78. The Final EIR covered acquisition of permanent and temporary easements required to implement the project, including the subject easement at the Lower Calera Creek element. The "Notice of Determination" is attached (Attachment 5).

ATTACHMENTS:

- Attachment 1: Right of Way Agreement
- Attachment 2: Easement Modification Agreement
- Attachment 3: 1979 Easement Agreement
- Attachment 4: Itemization of Costs
- Attachment 5: Notice of Determination

UNCLASSIFIED MANAGER:

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