



Santa Clara Valley Water District Board of Directors

HQ. Bldg. Boardroom, 5700 Almaden Expressway, San Jose, California
Join Zoom Meeting: <https://valleywater.zoom.us/j/84454515597>

***AMENDED/APPENDED CLOSED SESSION AND REGULAR MEETING AGENDA**

**Tuesday, July 14, 2026
11:00 AM**

***ITEMS AMENDED AND/OR APPENDED SINCE THE ORIGINAL PUBLICATION OF THIS AGENDA
ARE IDENTIFIED BY AN ASTERISK (*) HEREIN**

District Mission: Provide Silicon Valley safe, clean water for a healthy life, environment and economy.

DISTRICT BOARD OF DIRECTORS

Tony Estremera, Chair-District 6
Richard P. Santos, Vice Chair-District 3
John L. Varela-District 1
Shiloh Ballard-District 2
Jim Beall-District 4
Nai Hsueh-District 5
Rebecca Eisenberg-District 7

All public records relating to an open session item on this agenda, which are not exempt from disclosure pursuant to the California Public Records Act, that are distributed to a majority of the legislative body, will be available to the public through the legislative body agenda web page at the same time that the public records are distributed or made available to the legislative body. Santa Clara Valley Water District will make reasonable efforts to accommodate persons with disabilities wishing to participate in the legislative body's meeting. Please advise the Clerk of the Board Office of any special needs by calling (408) 630-2277.

MELANIE RICHARDSON
Interim Chief Executive
Officer

CANDICE KWOK-SMITH
Clerk, Board of the Directors
(408) 630-3193
www.valleywater.org

Note: The finalized Board Agenda, exception items and supplemental items will be posted prior to the meeting in accordance with the Brown Act.

Santa Clara Valley Water District Board of Directors

***AMENDED/APPEDED AGENDA**

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IMPORTANT NOTICES AND PARTICIPATION INSTRUCTIONS

Santa Clara Valley Water District (Valley Water) Board of Directors/Board Committee meetings are held as hybrid meetings, conducted in-person as well as by telecommunication, and are compliant with the provisions of the Ralph M. Brown Act.

To maximize public safety while maintaining transparency and public access, members of the public have the option to participate via teleconference/video conference or attend in person. To participate in the meeting via teleconference/video conference, please refer to the meeting link located at the top of the agenda. If attending in-person, you are required to comply with Ordinance 22-03 - AN ORDINANCE OF THE SANTA CLARA VALLEY WATER DISTRICT SPECIFYING RULES OF DECORUM FOR PARTICIPATION IN BOARD AND COMMITTEE MEETINGS located at <https://s3.us-west-2.amazonaws.com/valleywater.org.if-us-west-2/f2-live/s3fs-public/Ord.pdf>

In accordance with the requirements of Gov. Code Section 54954.3(a), members of the public wishing to address the Board/Committee during public comment or on any item listed on the agenda, may do so by filling out a Speaker Card and submitting it to the Clerk or using the "Raise Hand" tool located in the Zoom meeting application to identify yourself in order to speak, at the time the item is called. Speakers will be acknowledged by the Board/Committee Chair in the order that requests are received and granted speaking access to address the Board. Written comments on any item on the agenda may be submitted to clerkoftheboard@valleywater.org or board@valleywater.org.

- Members of the Public may test their connection to Zoom Meetings at: <https://zoom.us/test>
- Members of the Public are encouraged to review our overview on joining Valley Water Board Meetings at: <https://www.youtube.com/watch?v=ToJpYCxXm0>

Valley Water, in complying with the Americans with Disabilities Act (ADA), requests individuals who require special accommodations to access and/or participate in Valley Water Board of Directors/Board Committee meetings to please contact the Clerk of the Board's office at (408) 630-2277, at least 3 business days before the scheduled meeting to ensure that Valley Water may assist you.

This agenda has been prepared as required by the applicable laws of the State of California, including but not limited to, Government Code Sections 54950 et. seq., and has not been prepared with a view to informing an investment decision in any of Valley Water's bonds, notes, or other obligations. Any projections, plans, or other forward-looking statements included in the information on this agenda are subject to a variety of uncertainties that could cause any actual plans or results to differ materially from any such statement. The information herein is not intended to be used by investors or potential investors in considering the purchase or sale of Valley Water's bonds, notes or other obligations and investors and potential investors should rely only on information filed by Valley Water on the Municipal Securities Rulemaking Board's Electronic Municipal Market Access System for municipal securities

disclosures and Valley Water's Investor Relations website, maintained on the World Wide Web at <https://emmas.msrb.org/> and <https://www.valleywater.org/how-we-operate/financebudget/investor-relations>, respectively.

Under the Brown Act, members of the public are not required to provide identifying information in order to attend public meetings. Through the link below, the Zoom webinar program requests entry of a name and email address, and Valley Water is unable to modify this requirement. Members of the public not wishing to provide such identifying information are encouraged to enter "Anonymous" or some other reference under name and to enter a fictional email address (e.g., attendee@valleywater.org) in lieu of their actual address. Inputting such values will not impact your ability to access the meeting through Zoom.

Join Zoom Meeting:

<https://valleywater.zoom.us/j/84454515597>

Meeting ID: 844 5451 5597

Join by Phone:

1 (669) 900-9128, 84454515597#

1. CALL TO ORDER/ROLL CALL:

1.1. Roll Call.

2. 11:00 AM - CLOSED SESSION:

Notice to the Public: The Board of Directors meets in Closed Session in accordance with the Ralph M. Brown Act. Following the conclusion of Closed Session discussion, the Board will return for the remaining items on the regular meeting agenda.

2.1. CLOSED SESSION [26-0616](#)
PUBLIC EMPLOYEE PERFORMANCE EVALUATION
Pursuant to Government Code Section 54957(b)(1)
Title: Clerk of the Board

2.2. CLOSED SESSION [26-0579](#)
PUBLIC EMPLOYEE APPOINTMENT
Pursuant to Government Code Section 54957(b)(1)
Title: Chief Executive Officer

2.3. CLOSED SESSION [26-0605](#)
CONFERENCE WITH LEGAL COUNSEL, EXISTING LITIGATION
Pursuant to Government Code Section 54956.9(d)(1)
Santa Clara Valley Water District v. San Jose Unified School District
Case Number 26CV487931

2.4. CLOSED SESSION [26-0618](#)
CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION
Pursuant to Government Code Section 54956.9(d)(2)
Two Cases

2.5. District Counsel Report on Closed Session.

3. 1:00 PM - TIME CERTAIN:

3.1. Pledge of Allegiance/National Anthem.

3.2. Orders of the Day.

A. Approximate Discussion Time (Board); and

B. Adjustments to the Order of Agenda Items.

3.3. Time Open for Public Comment on any Item not on the Agenda.

Notice to the public: Members of the public who wish to address the Board/Committee on matters not listed on the agenda may do so by completing a Speaker Card and submitting it to the Clerk, or by using the "Raise Hand" feature within the Zoom meeting application to request recognition. Speakers will be acknowledged by the Board/Committee Chair in the order requests are received and, when recognized, will be granted speaking access to address the Board/Committee.

Public comments shall be limited to three (3) minutes per speaker, or such other time as determined by the Chair. State law does not permit the Board/Committee to take action on, or engage in extended discussion of, any item not appearing on the posted agenda, except as otherwise authorized under applicable law. If Board/Committee action is requested, the matter may be scheduled for consideration at a future meeting.

All public comments requiring a response will be referred to staff for a written reply. The Board/Committee may take action on any item of business appearing on the posted agenda.

3.4. Conduct a Public Hearing on Proposed Modifications to Projects under Priorities E and F of the Safe, Clean Water and Natural Flood Protection Program.

[26-0600](#)

Recommendation:

- A. Open and conduct a Public Hearing to receive comments on the proposed modifications to the following projects in the Safe, Clean Water and Natural Flood Protection Program: **Project E5**: San Francisquito Creek Flood Protection, and **Project F6**: Good Neighbor Program: Graffiti and Litter Removal and Public Art; and
- B. Continue the Public Hearing at the following regularly scheduled Board Meeting on August 11, 2026, and conclude it, or if necessary, continue it to the subsequent regularly scheduled Board Meeting on August 25, 2026.

Manager: Luz Penilla, 408-630-2228

Attachments: [Attachment 1: Change Control Process At-a-Glance](#)
[Attachment 2: Audit Report](#)
[Attachment 3: Notice of Public Hearing and Schedule](#)
[Attachment 4: FAQs](#)
[Attachment 5: Project Timeline](#)
[Attachment 6: PowerPoint](#)
[Handout 3.4-A: H. Hitchings](#)
[Handout 3.4-B: J. Shore](#)

Est. Staff Time: 25 Minutes.

- 3.5. Receive Results of Consultant Study Regarding Santa Clara Valley Water District's Water Use Projections, Water Demand Elasticity, and Customer Affordability; Receive an Update on Valley Water's Water Rate Assistance Program; and Provide Direction to Staff as Needed. [26-0254](#)

Recommendation: A. Receive results of the completed consultant study regarding Santa Clara Valley Water District's water use projections, water demand elasticity, and customer affordability;
B. Receive an update on Valley Water's Water Rate Assistance Program (WRAP); and
C. Provide direction to staff, as needed.

Manager: Rachael Gibson, 408-630-2884
Darin Taylor, 408-630-3068

Attachments: [Attachment 1: PowerPoint](#)
[Attachment 2: Comprehensive Executive Summary](#)
[Attachment 3: Full Study Report](#)

Est. Staff Time: 20 Minutes.

REGULAR AGENDA:

4. CONSENT CALENDAR: (*4.1 - *4.4) (Est. Time: 5 Minutes)

Notice to the public: There is no separate discussion of individual consent calendar items. Recommended actions are voted on in one motion. If an item is approved on the consent vote, the specific action recommended by staff is adopted. Items listed in this section of the agenda are considered to be routine by the Board, or delegated to the Board Appointed Officers (BAOs) yet required by law or contract to be Board approved (EL-7.10). Any item may be removed for separate consideration at the request of a Board member. Whenever a resolution is on the consent calendar, a roll call vote will be taken on the entire calendar. Members of the public wishing to address the Board on any consent items may do so by filling out a Speaker Card and submitting it to the Clerk or using the "Raise Hand" tool located in the Zoom meeting application to identify themselves to speak.

- *4.1. Adopt a Resolution Authorizing the Santa Clara Valley Water District to Submit a Grant Application to the United States Economic Development Administration Fiscal Year 2025 Disaster Supplemental Grant Program for \$19,500,000 and, if Awarded, Delegate Authority to the Chief Executive Officer to Negotiate and Execute the Grant Agreement, and any Amendments Thereto, for the Anderson Dam Seismic Retrofit Project, Project No. 91864005, Stage 2 Diversion Project. [26-0378](#)

Recommendation:

- A. Adopt the RESOLUTION AUTHORIZING SUBMISSION OF A GRANT APPLICATION TO THE UNITED STATES ECONOMIC DEVELOPMENT ADMINISTRATION (EDA) GRANT PROGRAM FOR \$19,500,000 AND, IF AWARDED, DELEGATE AUTHORITY TO THE CHIEF EXECUTIVE OFFICER, TO NEGOTIATE AND EXECUTE A GRANT AGREEMENT AND ANY AMENDMENTS THERETO, FOR THE ANDERSON DAM SEISMIC RETROFIT PROJECT STAGE 2 DIVERSION PROJECT, PROJECT NO. 91864005;
- B. Delegate authority to the Chief Executive Officer (CEO) to submit a grant application and, if awarded, to negotiate and execute a Grant Agreement with Economic Development Administration (EDA) to support the Anderson Dam Seismic Retrofit Project (ADSRP) Stage 2 Diversion Project, and any amendments thereto provided all grant requirements can be met;
- C. Delegate authority to the CEO to sign and submit invoices to EDA for grant fund reimbursements to be made pursuant to the Grant Agreement; and
- D. Delegate to the CEO, such other authority as needed, to provide management and support services required for the performance of the work and administration, pursuant to the Grant Agreement, as deemed necessary and appropriate.

Manager: Angie Perkins-Haslam, 408-630-2165

Attachments: [Attachment 1: Resolution](#)
[Attachment 2: Project Location Map](#)
[Attachment 3: Project Location Map, Stage 2](#)
[*Handout 4.1-A: PowerPoint](#)

- 4.2. Adopt a Resolution Authorizing the Approval of the Compensation Agreement Transferring Three Public Parking Garage Parcels in Sunnyvale from the Sunnyvale Successor Agency to the City of Sunnyvale and Authorize the Chief Executive Officer to Execute the Compensation Agreement. [26-0499](#)

Recommendation:

- A. Adopt the Resolution AUTHORIZING THE APPROVAL OF THE COMPENSATION AGREEMENT

TRANSFERRING THREE PUBLIC PARKING GARAGE
PARCELS IN SUNNYVALE FROM THE SUNNYVALE
SUCCESSOR AGENCY TO THE CITY OF
SUNNYVALE; and

- B. Authorize the Chief Executive Officer to execute the
Compensation Agreement.

Manager: Darin Taylor, 408-630-3068

Attachments: [Attachment 1: Resolution](#)
[*Attachment 2: Agreement](#)
[Attachment 3: County Executive Memo](#)
[Attachment 4: Resolution No. OB-2026-4](#)

- *4.3. Approval of Minutes of June 9, 2026. [26-0094](#)

Recommendation: Approve the minutes of June 9, 2026.

Manager: Candice Kwok-Smith, 408-630-3193

Attachments: [*Attachment 1: 06092026 CS and Regular Meeting Minutes](#)

- *4.4. Accept the CEO Bulletin for the Weeks of June 19 through July 9, 2026. [26-0595](#)

Recommendation: Accept the CEO Bulletin.

Manager: Melanie Richardson, 408-630-2017

Attachments: [*Attachment 1: 07092026 CEO Bulletin](#)

5. BOARD OF DIRECTORS:

- 5.1. Adopt a Resolution Providing for the Compensation for the Clerk of the Board, a Board Appointed Officer of the Santa Clara Valley Water District. [26-0562](#)

Recommendation: A. Consider and determine compensation adjustments, if any, for the Clerk of the Board;
B. Adopt the Resolution PROVIDING FOR THE COMPENSATION FOR THE CLERK OF THE BOARD, A BOARD APPOINTED OFFICER OF THE SANTA CLARA VALLEY WATER DISTRICT; and
C. Approve the First Amendment to the Employment Agreement Between the Santa Clara Valley Water District and Candice Kwok-Smith, consistent with Board-approved compensation.

Manager: Patrice McElroy, 408-630-3159

Attachments: [Attachment 1: Resolution](#)

Est. Staff Time: 10 Minutes.

- *5.2. Consider the June 16, 2026, Board Policy and Monitoring Committee Recommendation to Approve the Interim Board Appointed Officer Complaint Policy. [26-0615](#)

Recommendation: Consider the June 16, 2026, Board Policy and Monitoring Committee recommendation to approve the Interim Board Appointed Officer Complaint Policy.

Manager: Candice Kwok-Smith, 408-630-3193

Attachments: [*Attachment 1: BL-6, Interim Policy](#)
[*Attachment 2: Flow Chart](#)

Est. Staff Time: 5 Minutes.

- *5.3. Consider March 18, 2026, Board Audit Committee Recommendation to Approve Proposed Amendments to the Board Audit Committee Audit Charter and Proposed Amendments to the Board of Directors Code of Conduct and Ethics; and Provide Further Direction as Needed. [26-0624](#)

Recommendation: Consider recommendations resulting from the March 18, 2026, Board Audit Committee meeting to:

- A. Consider and approve proposed amendments to the Board Audit Committee Audit Charter;
- B. Consider and approve proposed amendments to the Board of Directors Code of Conduct and Ethics; and
- C. Provide further direction, as needed.

Manager: Darin Taylor, 408-630-3068

Attachments: [*Attachment 1: Board Audit Committee Charter, Red-lined](#)
[*Attachment 2: Directors Code of Conduct and Ethics, Red-lined](#)
[*Attachment 3: PowerPoint](#)

- *5.4. Board Committee Reports. [26-0594](#)
(*Previously listed as Item 5.2)

Attachments: [*Handout 5.4-A: 04082026 WC, Summary](#)
[*Handout 5.4-B: 05072026 IMC, Summary](#)
[*Handout 5.4-C: 05182026 CIP, Summary](#)
[*Handout 5.4-D: 05202026 BAC, Summary](#)
[*Handout 5.4-E: 05272026 RWC, Summary](#)
[*Handout 5.4-F: 06162026 BPMC, Summary](#)

Est. Staff Time: 5 Minutes.

6. WATER UTILITY ENTERPRISE:

- 6.1. Adopt a Resolution Making Responsible Agency Findings Under the California Environmental Quality Act and Approve and Authorize the [26-0460](#)

Interim Chief Executive Officer to Negotiate and Execute the Site Works Agreement Among Valley Water, the City of San Jose, and Microsoft Corporation.

- Recommendation:
- A. Adopt the Resolution CONSIDERING THE FINAL ENVIRONMENTAL IMPACT REPORT FOR THE SAN JOSE DATA CENTER PROJECT AND ITS ADDENDUM AND MAKING CEQA RESPONSIBLE AGENCY FINDINGS FOR THE SITE WORKS AGREEMENT; and
 - B. Authorize the Interim Chief Executive Officer to negotiate and execute the Site Works Agreement among Valley Water, the City of San José, and Microsoft Corporation, in substantially the same form as the attached draft and sign the Notice of Determination.

Manager: Kirsten Struve, 408-630-3138

Attachments: [Attachment 1: Resolution](#)
[Attachment 2: Draft Agreement](#)
[Attachment 3: Location Map](#)

Est. Staff Time: 15 Minutes.

7. WATERSHEDS:

8. ASSISTANT CHIEF EXECUTIVE OFFICER:

9. EXTERNAL AFFAIRS:

10. CHIEF EXECUTIVE OFFICER:

*10.1 CEO and Chiefs' Reports.

[26-0593](#)

.

Attachments: [*Handout 10.1-A: OCE, Monthly Update](#)
[*Handout 10.1-B: OGR, Summary](#)

Est. Staff Time: 5 Minutes.

11. ADMINISTRATION:

12. DISTRICT COUNSEL:

13. BOARD POLICY PLANNING CALENDAR/PROPOSED FUTURE BOARD AGENDA ITEMS:

*13.1 Review the Fiscal Year 2027 Board Policy Planning Calendar.

[26-0005](#)

.

Recommendation: Review the Fiscal Year 2027 Board Policy Planning Calendar.

Manager: Candice Kwok-Smith, 408-630-3139

14. BOARD MEMBER REPORTS/ANNOUNCEMENTS:

15. CLERK REVIEW AND CLARIFICATION OF BOARD REQUESTS:

16. ADJOURN:

- 16.1 *The Board will convene its next Special Board Meeting at 1:00 p.m. on Friday, July 24, 2026, in the Boardroom of the Santa Clara Valley Water District Headquarters Building, 5700 Almaden Expressway, San Jose, California, and via Zoom teleconference.



Santa Clara Valley Water District

File No.: 26-0616

Agenda Date: 7/14/2026
Item No.: 2.1.

NON-EXHIBIT/CLOSED SESSION ITEM

SUBJECT:
CLOSED SESSION
PUBLIC EMPLOYEE PERFORMANCE EVALUATION
Pursuant to Government Code Section 54957(b)(1)
Title: Clerk of the Board



Santa Clara Valley Water District

File No.: 26-0579

Agenda Date: 7/14/2026
Item No.: 2.2.

NON-EXHIBIT/CLOSED SESSION ITEM

SUBJECT:

CLOSED SESSION

PUBLIC EMPLOYEE APPOINTMENT

Pursuant to Government Code Section 54957(b)(1)

Title: Chief Executive Officer



Santa Clara Valley Water District

File No.: 26-0605

Agenda Date: 7/14/2026

Item No.: 2.3.

NON-EXHIBIT/CLOSED SESSION ITEM

SUBJECT:

CLOSED SESSION

CONFERENCE WITH LEGAL COUNSEL, EXISTING LITIGATION

Pursuant to Government Code Section 54956.9(d)(1)

Santa Clara Valley Water District v. San Jose Unified School District

Case Number 26CV487931



Santa Clara Valley Water District

File No.: 26-0618

Agenda Date: 7/14/2026
Item No.: 2.4.

NON-EXHIBIT/CLOSED SESSION ITEM

SUBJECT:

CLOSED SESSION

CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Pursuant to Government Code Section 54956.9(d)(2)

Two Cases



Santa Clara Valley Water District

File No.: 26-0600

Agenda Date: 7/14/2026

Item No.: 3.4.

BOARD AGENDA MEMORANDUM

Government Code § 84308 Applies: Yes ☐ No ☒
(If "YES" Complete Attachment A - Gov. Code § 84308)

SUBJECT:

Conduct a Public Hearing on Proposed Modifications to Projects under Priorities E and F of the Safe, Clean Water and Natural Flood Protection Program.

RECOMMENDATION:

- A. Open and conduct a Public Hearing to receive comments on the proposed modifications to the following projects in the Safe, Clean Water and Natural Flood Protection Program: **Project E5:** San Francisquito Creek Flood Protection, and **Project F6:** Good Neighbor Program: Graffiti and Litter Removal and Public Art; and
- B. Continue the Public Hearing at the following regularly scheduled Board Meeting on August 11, 2026, and conclude it, or if necessary, continue it to the subsequent regularly scheduled Board Meeting on August 25, 2026.

SUMMARY:

In November 2020, Santa Clara County voters approved Measure S, renewing Santa Clara Valley Water District's (Valley Water) Safe, Clean Water and Natural Flood Protection Program (Safe, Clean Water Program or Program). This measure provides continued funding through a special parcel tax for projects delivering safe water, natural flood protection, and environmental stewardship. The Safe, Clean Water Program, effective July 1, 2021, replaced the 2012 Safe, Clean Water and Natural Flood Protection Program in its entirety, carrying forward funding for previously identified capital projects and replacing other projects with comparable initiatives.

The Program addresses six community priorities:

Priority A: Ensure a Safe, Reliable Water Supply

Priority B: Reduce Toxins, Hazards, and Contaminants in Our Waterways

Priority C: Protect Our Water Supply and Dams from Earthquakes and Other Natural Disasters

Priority D: Restore Wildlife Habitat and Provide Open Space

Priority E: Provide Flood Protection to Homes, Businesses, Schools, Streets, and Highways

Priority F: Support Public Health and Public Safety for Our Community

Each priority includes specific operational and capital projects, along with associated Key Performance Indicators (KPIs). The KPIs enable Valley Water to monitor the progress of specific projects, identify potential issues, and maintain accountability.

As the Program progresses, adjustments or modifications to the projects and sometimes the KPIs may be necessary due to inflation, regulatory changes, or evolving project conditions. Valley Water follows a Board-approved Change Control Process for implementing any adjustments and modifications to the Program, which was last updated by the Board on February 24, 2026 (a simplified version of the process is provided in Attachment 1). Adjustments are changes to the Safe, Clean Water Program's project text or funding allocation that do not impact the delivery of any project KPI, or changes to a project schedule. Adjustments may include change(s) to a KPI when the purpose of such change(s) is to clarify the project KPI to be consistent with the applicable project description in the approved Program. Modifications are changes to project description, project KPI, or funding allocation that impact the delivery of any project KPI. Adjustments can be approved by the Board during publicly noticed Board meetings, while modifications require a formal Public Hearing.

Safe, Clean Water Program Performance Audit

To ensure accountability and transparency to voters, Measure S requires the Valley Water Board of Directors to obtain an independent professional audit of the Safe, Clean Water Program at least once every five years. Although an independent audit is required at least every five years, the Independent Monitoring Committee (IMC) requested an earlier review of the Program, and the Board concurred.

PMA Consultants (Auditor) conducted the independent audit, which assessed Program implementation during its first three years and evaluated governance, compliance, transparency, and progress toward meeting the Program's priorities and KPIs.

On November 12, 2025, the Board received the Safe, Clean Water Performance Audit Report (Audit Report), covering the period from July 1, 2021, through June 30, 2024 (Attachment 2). The audit report includes nine findings, two of which provide recommendations for Valley Water to evaluate whether to modify the KPIs for several projects to ensure that they are financially sustainable, remain aligned with current project activities, and that their descriptions clearly articulate the project's scope and deliverables. At the November 12 meeting, the Board directed the Chair to work with the CEO to identify and assign an appropriate Board committee to review the Auditor's findings and evaluate whether any KPI changes are necessary. The Board Policy and Monitoring Committee (BPMC) was assigned, and on April 21, 2026, received staff's evaluation and recommendations in response to the independent audit findings relating to KPIs. To view the April 21, 2026, BPMC meeting, visit: <https://fta.valleywater.org/dl/JqPTJw6xykH6>

The BPMC supported staff's recommendations, and on June 9, 2026, staff brought forward the recommended adjustments for the Board's review and approval. The purpose of this item is to address the outstanding recommendations for proposed modifications.

Below is a summary of staff's evaluation and recommendations for modifications to the Safe, Clean Water Program:

Audit Report Finding #7: Project E5 - San Francisquito Creek Flood Protection, San Francisco Bay to Upstream of Highway 101 - Palo AltoAuditor's Finding

In Finding 7, the Auditor noted that the KPIs for Project E5 are misaligned with Valley Water's role and authority because the "KPI holds Valley Water accountable for delivering a specific community outcome (protecting parcels from a 70-year flood event), yet Valley Water no longer has the direct control or authority to ensure this outcome is achieved" and the "KPI, as currently worded, does not accurately reflect Valley Water's role as a funding partner." The current KPIs for Project E5 are:

1. Preferred project with federal, state and local funding: Protect more than 3,000 parcels by providing 1% (100-year) flood protection.
2. With state and local funding only: Protect approximately 3,000 parcels by providing 1% (100-year) flood protection downstream of Highway 101, and approximately 1.4% (70-year) protection upstream of Highway 101.

Based on its findings, the Auditor recommended that Valley Water re-evaluate the KPI for Project E5 and consider options for shifting the KPI from an outcome-based metric to one that measures Valley Water's specific, controllable contributions, such as a funding or partnership-based deliverable.

Staff's Evaluation and Proposed Modifications to the KPIs

Staff agrees that Valley Water is not the lead agency responsible for the delivery of Project E5. The project description makes clear that the project is led by the San Francisquito Creek Joint Powers Authority (SFCJPA), of which Valley Water is a member agency. The SFCJPA is responsible for the overall project design, securing and finalizing permits, and securing project funding.

Since the existing KPIs imply that the delivery of the project is within Valley Water's control, staff recommends modifying the KPIs by replacing the existing KPIs #1 and #2, with a modified KPI#1 to allow for more flexibility in project planning and design and incorporation of other SFCJPA member agencies' requirements, as the SFCJPA continues to implement the remainder of the project. To align with the Auditor's recommendation that the KPIs for this project should focus on deliverables within Valley Water's control, staff proposes a modified KPI that focuses on Valley Water's funding contributions rather than project development and delivery, making it clear in the KPI that Valley Water's financial contributions should be commensurate with the value of the benefits that the project will provide for Santa Clara County. Below are staff's recommended modifications to the KPIs:

1. ~~Preferred project with federal, state and local funding: Protect more than 3,000 parcels by providing 1% (100-year) flood protection.~~
2. ~~With state and local funding only: Protect approximately 3,000 parcels by providing 1% (100-year) flood protection downstream of Highway 101, and approximately 1.4% (70-year) protection upstream of Highway 101.~~

1. Provide the San Francisquito Creek Joint Powers Authority a portion of funds commensurate with the project's benefits to Santa Clara County, to provide flood protection along San Francisquito Creek.

Staff Recommended Modification: Project F6 -- Good Neighbor Program: Graffiti and Litter Removal and Public Art

In addition to the Audit Report findings and recommendations referenced above, to better align the Public Art Program with Valley Water's strategic goals, available funding, and staffing capacity, staff has identified a need to change Project F6's KPI#3 (along with its Description and Benefit Sections), which currently authorizes grant funding for public art on Valley Water property to deter graffiti and litter.

Staff proposes expanding the scope of this KPI#3. This change would allow funding for eligible art projects throughout Santa Clara County, moving beyond Valley Water-owned infrastructure and property. The goal is to leverage public art as a tool for community education on water and environmental stewardship, while deterring graffiti and litter.

This proposed change also increases the feasibility, supports greater community benefit, and ensures the program can be delivered within existing resources.

The current KPI#3 reads:

"Provide up to \$1.5 million over 15 years to implement public art projects on Valley Water property and infrastructure."

Staff proposes the following change for KPI#3:

"Provide up to \$1.5 million over 15 years to implement **or fund** public art projects ~~on Valley Water property and infrastructure.~~"

To maintain consistency with the proposed change to KPI#3, staff recommends the following changes to the Project F6 description:

"This project allows Valley Water to continue responding to requests for cleanup of illegal dumping, trash and graffiti on Valley Water's property and rights-of-way. Cleanup efforts include graffiti removal from floodwalls, concrete embankments, signs, structures and other Valley Water assets, as well as maintaining, repairing and installing fences and gates so that Valley Water structures and facilities remain safe and clean. The project also funds installation and maintenance of public art projects, such as murals, ~~to beautify Valley Water property and infrastructure, to~~ **in public spaces throughout Santa Clara County to educate the public about water and environmental stewardship, which in turn will also help deter graffiti and litter.**"

Staff is also requesting that the Board approve a text adjustment to the 5th bullet under the Benefits section to align with the proposed modifications. Staff's recommended adjustments reads as follows:

~~“Helps deter graffiti and litter by implementing public art projects to beautify Valley Water property and infrastructure~~ **in public spaces while providing opportunities to educate the public about water and environmental stewardship throughout Santa Clara County.”**

Public Outreach and Engagement

Informing the public about the proposed modifications to the Safe, Clean Water and Natural Flood Protection Program and the associated Public Hearings is an important component of Safe, Clean Water Program public outreach and engagement efforts.

To encourage public participation, Valley Water has conducted a comprehensive outreach effort to inform the community about the proposed modifications to the Safe, Clean Water and Natural Flood Protection Program and to encourage participation in the Public Hearing. Valley Water outreach efforts include:

- Publishing Public Hearing notices in local news publications. See Attachment 3 for the public notice advertisement and the publication schedule.
- Publishing a District News article and creating a Facebook event for the Public Hearing.
- Posting notices on Nextdoor and other Valley Water social media channels, including Facebook, LinkedIn, and X (formerly Twitter).
- Distributing an electronic newsletter and a follow-up reminder about the Public Hearing.
- Sending email announcements to Independent Monitoring Committee (IMC) members, subscribers to the Safe, Clean Water Program email list, and applicable project-specific distribution lists.
- Posting the information on Valley Water’s website and relevant project webpages.

Furthermore, at its June 23, 2026, meeting, the Board established the date, time, and location of the Public Hearing and directed staff to prepare a Frequently Asked Questions (FAQ) document addressing questions raised by the public and interested parties regarding the proposed Program modifications. Staff prepared and posted the FAQ document on Valley Water's website to provide additional information in advance of the Public Hearing (Attachment 4).

For additional context, staff also prepared the San Francisquito Creek Flood Protection Project timeline (Attachment 5).

Staff has and will continue to engage with interested parties, including the San Francisquito Creek Joint Powers Authority (SFCJPA) Executive Director and City of Palo Alto staff, to discuss the proposed modifications and respond to questions.

Next Steps

Pursuant to the Program's Change Control Process and the associated standard process timeline (see slide 16 in the PowerPoint presentation, Attachment 6), Valley Water is required to hold at least two Public Hearing meetings before the Board considers and acts on the proposed Program modifications.

Accordingly, staff recommends continuing the Public Hearing at the following regularly scheduled Board Meeting on August 11, 2026, and concluding it, or if necessary, continuing it to the subsequent regularly scheduled Board Meeting on August 25, 2026, for conclusion.

ENVIRONMENTAL JUSTICE IMPACT:

There are no environmental justice impacts associated with this item.

FINANCIAL IMPACT:

The financial impact associated with this item is the cost of placing the public notice ad. The cost for the public notice ad is approximately \$10,000 and there is sufficient budget in the FY 26 budget for the Safe, Clean Water Program Implementation Project (Project No. 26061012).

CEQA:

The recommended action does not constitute a project under CEQA because it does not have potential for resulting in direct or reasonably foreseeable indirect physical change in the environment.

ATTACHMENTS:

Attachment 1: Change Control Process At-A-Glance
Attachment 2: Audit Report
Attachment 3: Notice of Public Hearing and Schedule
Attachment 4: FAQs
Attachment 5: Project Timeline
Attachment 6: PowerPoint
Handout 3.4-A: H. Hitchings
Handout 3.4-B: J. Shore

File No.: 26-0600

Agenda Date: 7/14/2026
Item No.: 3.4.

UNCLASSIFIED MANAGER:

Luz Penilla, 408-630-2228

Safe, Clean Water Program Change Control Process—At-A-Glance

YOUR TAX DOLLARS AT WORK



**Safe,
Clean
Water**
and Natural Flood Protection

What is the Change Control Process?

The Change Control Process outlines how Valley Water evaluates and implements decisions to **adjust, modify, or not carry out** a Safe, Clean Water project. It ensures projects stay on track, use funds wisely, and meet community needs. Every project has clear outcomes, called key performance indicators (KPIs), that are used to measure progress and results.

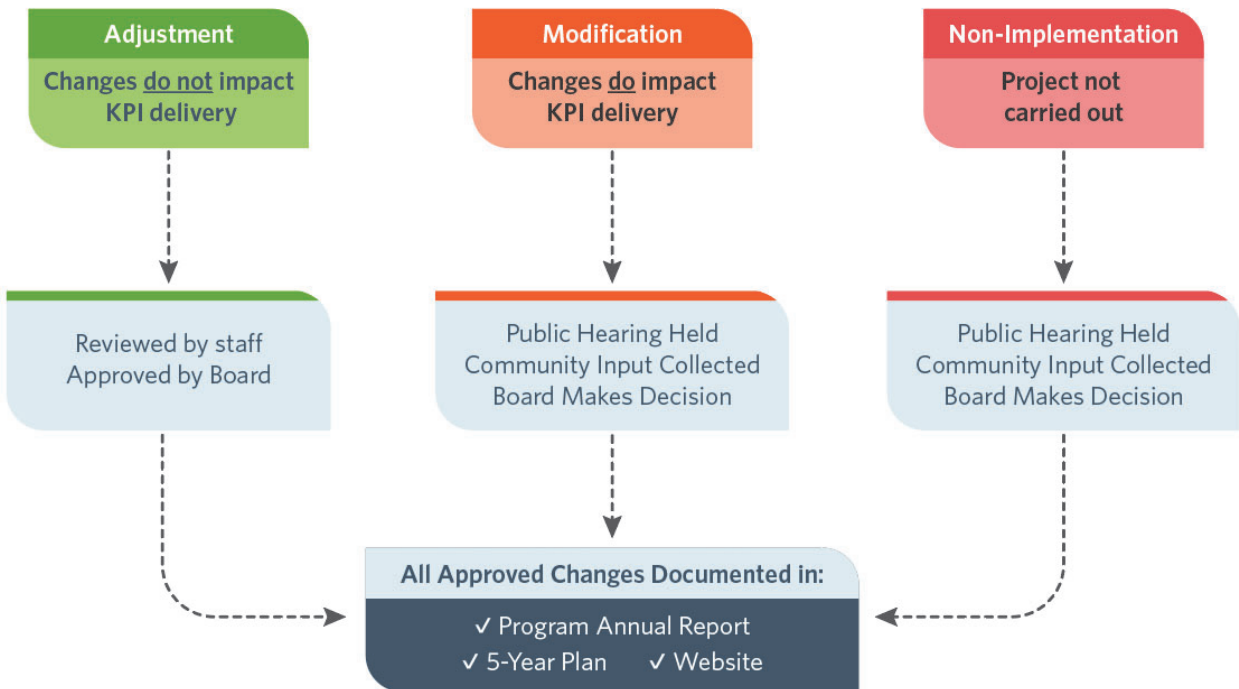
Types of Changes

Type of Change	What It Means	Public Hearing Needed?
Adjustment	Changes to project text or funding allocation that do not impact the delivery of any project KPI , or changes to a project schedule. Adjustments may include change(s) to a KPI when the purpose of such change(s) is to clarify the project KPI to be consistent with the applicable project description in the approved Program.	No public hearing—Board approves during regular meetings.
Modification	Changes to project description, project KPI, or funding allocation that impact delivery of any project KPI .	Yes—requires a public hearing.
Non-Implementation	A decision not to carry out a project.	Yes—requires a public hearing.

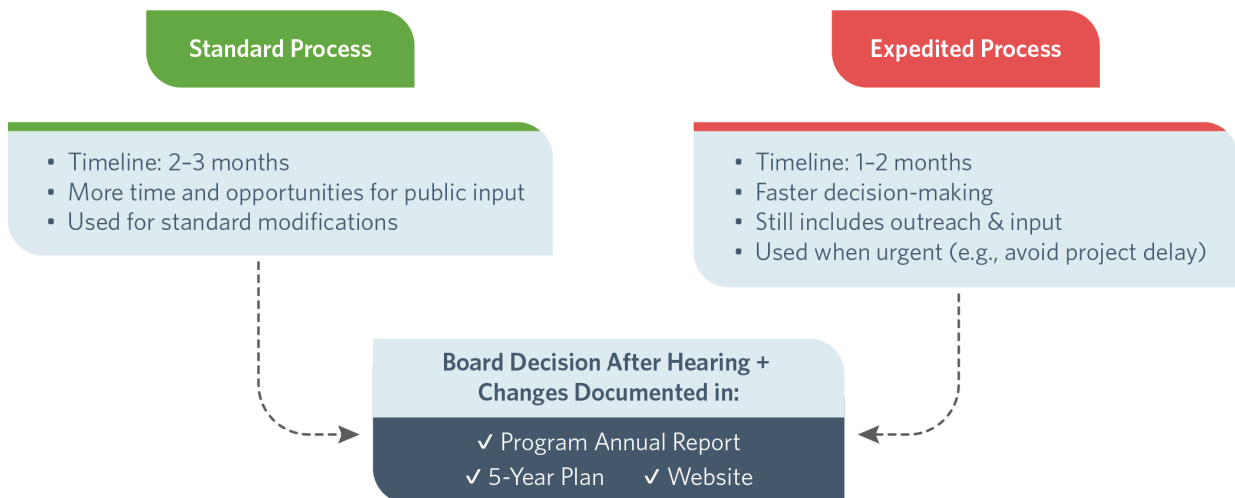
Public Hearings—Your Role

- **When?**
Usually, no later than April.
- **How long?**
Standard process (2–3 months) or expedited process (1–2 months if urgent).
- **How are you notified?**
Notices in local newspapers, Valley Water’s website, social media, and email updates.
- **How can you participate?**
Attend hearings, sign up for email updates, and join public meetings.

How a Proposed Project Change Flows



Standard vs. Expedited Public Hearing



Summary

- Changes with no impact to KPI delivery are approved during Board meetings.
- Changes with any impact to KPI delivery are approved by the Board after holding a noticed public hearing.
- Your voice helps shape the future of Safe, Clean Water projects.



Santa Clara Valley Water District

Safe, Clean Water and Natural Flood Protection Program (Measure S)

Performance Audit Report FY22 – FY24

Prepared by:

PMA Consultants
San Jose, California
July 2025

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EXECUTIVE SUMMARY

A. Introduction

The Santa Clara Valley Water District (Valley Water) ensures current and future water supplies, protects water resources from contaminants, provides flood protection, safeguards infrastructure from natural disasters, and restores ecosystems within Santa Clara County. In November 2020, voters in Santa Clara County approved Measure S, establishing the renewed Safe, Clean Water and Natural Flood Protection Program (SCW Program). This measure provides continued funding via a special parcel tax for projects delivering safe water, natural flood protection, and environmental stewardship. The renewed SCW Program, effective July 1, 2021, replaced the previous 2012 Safe, Clean Water and Natural Flood Protection Program in its entirety, carrying forward funding for previously identified capital projects and replacing other projects with comparable initiatives under the renewed program structure.

To ensure accountability and transparency, Measure S requires the Valley Water Board of Directors to conduct independent professional audits of the SCW Program at least every five years while the program is in effect. In fulfillment of this requirement, Valley Water engaged PMA Consultants to conduct this independent performance audit of the renewed SCW Program.

B. Overall Audit Objectives

The primary objective of this independent performance audit was to assess the renewed Safe, Clean Water and Natural Flood Protection (SCW) Program for the period covering July 1, 2021, through June 30, 2024. The audit evaluated key aspects of program implementation, including:

- **Governance and Transparency:** The audit evaluated the effectiveness of overall program governance, managerial oversight and independent monitoring, including the roles of the Board of Directors and the Independent Monitoring Committee (IMC), and assessed the transparency and accuracy of public reporting on program progress and outcomes.
- **Compliance:** The audit verified the program's compliance with key provisions of the Measure S tax measure. This included assessing whether funds were collected and expended appropriately and whether the Board-approved Change Control Process was properly implemented for project adjustments, modifications and non-implementation.
- **Performance:** The audit assessed Valley Water's progress toward meeting the SCW Program's six priorities and its key performance indicators (KPIs). This assessment included deep-dive reviews of a sample of projects to evaluate project management effectiveness in meeting scope, budget, and schedule commitments.

The remainder of this report provides the detailed procedures, findings, and recommendations resulting from this work.

C. Summary of Key Findings

The audit concluded that Valley Water has established the formal governance, oversight, and reporting structures mandated by Measure S, and the audit identified several noteworthy practices demonstrating effective program management. The audit also resulted in nine findings that identified opportunities for improvement. The key findings, which are summarized below, focus on opportunities to improve the processes for reporting project progress and to strengthen the governance of complex partnerships and program oversight.

Key findings are summarized below:

- **Opportunity to Improve Reporting for SCW Program Projects:** The audit identified opportunities to improve the processes used to report on the funding allocations and schedules for SCW Program projects. For project funding allocations, the methods for reconciling adjustments can be improved to ensure more accurate and timely reporting in the SCW Annual Report. Similarly, for project schedules, improving the reconciliation of changes approved in the Capital Improvement Program's Five-Year Plan (CIP Plan) would make it easier for stakeholders to trace the impact of adjustments on the delivery of project KPIs.
- **Governance and Partnership Complexity:** The audit identified governance challenges with the San Francisquito Creek flood protection project (Project E5), where Valley Water's evolution from project lead to funding partner has resulted in a misalignment between its accountability for a specific outcome and its current role and authority. Additionally, opportunities were identified to enhance the effectiveness of the Independent Monitoring Committee (IMC), and a prior audit recommendation regarding the Conflict of Interest policy for the IMC remains unresolved.

D. Summary of Key Recommendations

The recommendations in this report are intended to support Valley Water's continuing efforts to maintain and enhance a robust, transparent, and effective oversight and governance framework for the SCW Program. The key recommendations are:

- **Improve Reporting Processes and Transparency:** Strengthen the processes for reporting on SCW Program projects by requiring a formal reconciliation of all funding allocations and schedule changes. This will ensure changes approved through the CIP Plan are accurately translated and reported, improving the clarity and transparency of the SCW Annual Report.

- **Strengthen Governance and Partnership Management:** Enhance the management of key external partnerships, such as on the San Francisquito Creek flood protection project (Project E5), by developing tools to better track strategic decisions and risks, and continuing efforts to align project KPIs with Valley Water's evolving role. Strengthen the processes for recruiting IMC members and resolve the outstanding Conflict of Interest policy issue.

D. Findings, Recommendations, and Management Responses Overview

Our procedures identified improvement opportunities that are listed in the following table and presented in detail in the Procedures, Findings, and Recommendations section of this report. All improvement opportunities are also summarized in Appendix C.

Summary of observations	Detail on Page #
1. <u>The Program is Operating in Compliance with Key Measure S Provisions, with One Minor Procedural Discrepancy Noted</u> The audit identified a minor procedural discrepancy in how Valley Water files Measure S tax resolutions with Santa Clara County.	14
2. <u>Process for Reconciling SCW Project Funding Allocations with CIP Adjustments Needs Improvement to Enhance Reporting Reliability.</u> The process for reconciling SCW capital project funding allocations with CIP Plan adjustments needs improvement to support accurate and timely reporting in the SCW Annual Report.	15
3. <u>A Clearer Crosswalk is Needed between CIP and SCW Schedule Adjustments</u> A clearer crosswalk is needed between CIP and SCW schedule adjustments to improve transparency and traceability.	18
4. <u>A Prior Audit Recommendation Regarding the IMC Conflict of Interest Policy Remains Unresolved</u> A prior audit recommendation to implement a conflict-of-interest policy for the Independent Monitoring Committee (IMC) remains unresolved.	21
5. <u>Ongoing Vacancies on the Independent Monitoring Committee Impact its Effectiveness</u> Ongoing vacancies on the Independent Monitoring Committee have created challenges in meeting quorum requirements and distributing workload.	21

Summary of observations	Detail on Page #
6. <u>Management of Key Partnership Projects Could Be Enhanced</u> Valley Water's current management tools are not fully suited to its evolving role as a funding partner in externally led projects like Project E5.	23
7. <u>The KPI for a Key Partnership Project is Misaligned with Valley Water's Role and Authority</u> The KPI for Project E5 does not reflect Valley Water's current role as a funding partner and may overstate its accountability for project outcomes.	24
8. <u>Performance Data Impacted by Inconsistent Data Entry and Reporting</u> Discrepancies in operational data reporting for Projects D1 and F5 stemmed from inconsistent data entry and compilation.	24
9. <u>KPIs that are Open-Ended or Do Not Fully Reflect Program Activities Pose Long-Term Financial and Communication Risks</u> There is an opportunity to improve KPIs to ensure long-term financial sustainability and clearer communications. Project F1.1's KPI represents a perpetual maintenance commitment, and KPIs for Projects D1 and F3 could be enhanced for clarity and scope.	25

I. INTRODUCTION

A. Background on the Safe, Clean Water and Natural Flood Protection Program

In November 2020, Santa Clara County voters approved Measure S, establishing the renewed Safe, Clean Water and Natural Flood Protection Program (hereafter referred to as the "SCW Program" or "the Program"). This measure replaced the prior 2012 program of the same name and the original 2000 Clean, Safe Creeks and Natural Flood Protection Plan. Effective July 1, 2021, the renewed SCW Program provides a dedicated and continuous funding source through a special parcel tax levied on properties within the Santa Clara Valley Water District (Valley Water).

The purpose of the special tax is to fund projects and activities aligned with Valley Water's core mission areas. These missions include ensuring safe and reliable water supplies, protecting water resources from toxins, providing natural flood protection, safeguarding infrastructure from natural disasters, and restoring creek and bay ecosystems. The renewed Program's priorities were developed with community and stakeholder engagement to ensure alignment with the priorities of Santa Clara County residents. The Program operates on 15-year financial planning cycles and includes specific projects with Key Performance Indicators (KPIs) to monitor long-term performance and maintain accountability. As part of this long-term framework, Measure S also mandates that the Board of Directors evaluate the continued need for the special tax every fifteen years, ensuring ongoing public oversight.

The renewed SCW Program is organized around six key priorities that guide the allocation of funds and the execution of specific projects. The six priorities are:

- **Priority A: Ensure a Safe, Reliable Water Supply:** Focuses on upgrading water infrastructure, supporting water conservation efforts, and ensuring emergency water supply reliability.
- **Priority B: Reduce Toxins, Hazards, and Contaminants in Our Waterways:** Addresses water quality through pollution reduction, hazardous material response, supporting volunteer cleanups, and managing urban runoff.
- **Priority C: Protect Our Water Supply and Dams from Earthquakes and Other Natural Disasters:** Centers on the seismic retrofitting of critical infrastructure like Anderson Dam to ensure public safety and water supply security.
- **Priority D: Restore Wildlife Habitat and Provide Open Space:** Includes projects for managing vegetation, revitalizing habitats, improving fish passage, supporting ecological data collection, restoring natural creek functions, and conserving habitat lands.

- **Priority E: Provide Flood Protection to Homes, Businesses, Schools, Streets, and Highways:** Concentrates on major capital construction projects to reduce flood risk in vulnerable areas, often involving partnerships with federal and state agencies.
- **Priority F: Support Public Health and Public Safety for Our Community:** Encompasses a range of multi-benefit projects, including vegetation and sediment management for flood channel capacity, emergency response planning, encampment cleanups, and community grant programs.

B. Audit Objectives and Methodology

As mandated by Measure S, the primary objective of this performance audit was to provide the Board of Directors, stakeholders, and the public with an independent and transparent assessment of the renewed Safe, Clean Water and Natural Flood Protection (SCW) Program. The audit was designed to evaluate program governance, compliance, transparency, and performance since the renewed program's inception.

To achieve these objectives, the audit team performed procedures aligned with the key tasks outlined in the Scope of Work. The methodology for each major area of the audit is described below.

Prior Audit Documentation Review: The audit commenced with a review of prior audits of the 2012 Safe, Clean Water Program, including an initial audit dated June 1, 2017, and a closeout performance audit dated March 25, 2024. The findings from those reports were discussed with Valley Water management to provide context and inform the scope and focus of the current audit. Based on this review, it was determined that no modifications were needed to the planned scope of work.

Reporting and Transparency Review: To assess the program's transparency, the audit team reviewed public-facing documents, including financial reports and project status updates, to evaluate their accuracy and clarity. The audit also included a review of the Independent Monitoring Committee's (IMC) roles and responsibilities as outlined in the SCW Program Resolution, along with related documentation such as meeting minutes and annual reports.

Program Oversight and Governance Review: The audit team evaluated the effectiveness of the program's governance framework and managerial oversight mechanisms. This included conducting interviews with key personnel, including members of the Board of Directors, the IMC, and Valley Water management, to understand oversight roles and responsibilities. The procedures also included assessing compliance with key provisions of the Measure S tax measure by reviewing financial data to determine if funds were collected and expended appropriately. Finally, the audit evaluated whether Valley Water is properly implementing the Board-approved Change Control Process for program adjustments.

Program and Project Performance Assessment: This phase of the audit assessed whether Valley Water is making reasonable progress toward meeting the Program's six priorities and associated Key Performance Indicators (KPIs). The methodology involved a multi-step process:

- **Project Selection:** To facilitate the review of program execution and progress, a representative sample of projects was selected from the renewed SCW Program. A judgmental sampling approach was used to select approximately one-third of the projects while ensuring diversity across several criteria, including representation from each of the program's six priorities, project budget size, and project complexity. The initial selection was discussed with Valley Water staff, leading to minor refinements to ensure adequate coverage.
- **Project Deep Dives:** For each selected project, the audit team performed deep-dive reviews to evaluate project management effectiveness. This included obtaining and evaluating project management artifacts (e.g., schedules, budgets, progress reports) and assessing performance against scope, schedule, budget, and KPIs. These procedures were designed to identify any deficiencies or challenges, such as funding delays or hyper-escalation, and to form a basis for recommending improvements.

C. Audit Scope and Period

The scope of this audit focused exclusively on the renewed SCW Program. The audit period covered program activities from July 1, 2021, through June 30, 2024, which aligns with the first three fiscal years of the program's implementation. This report reflects audit activities and the status of findings and recommendations as of July 28, 2025—the date fieldwork was completed. It does not reflect any subsequent developments or client actions occurring after that date.

To provide further clarity, the scope of this audit did not include: a review of the prior 2012 Safe, Clean Water Program, other than for historical context; an opinion on Valley Water's overall financial statements, as this was a performance audit, not a financial statement audit; a deep-dive review of every project within the SCW Program portfolio, as our work was based on a representative sample; or a technical validation of project designs or construction quality. Furthermore, the audit focused on assessing progress toward the formal Key Performance Indicators (KPIs) defined in the Measure S program text and did not include an evaluation of the ultimate attainment of the separate project "Benefits" that are also described in the SCW Annual Report. The audit assessed whether Valley Water is making "reasonable progress" toward its KPIs based on activities and evidence from the audit period; the objective was not to conclude on the ultimate achievement of long-term KPIs but to evaluate the program's management and progress to date.

D. Acknowledgements

The audit team wishes to thank the many individuals at Valley Water who contributed to this performance audit. We appreciate the time and effort provided by the Safe, Clean Water Program team and other staff, whose cooperation and responsiveness were essential to our work.

II. COMMENDATIONS

In addition to the findings and recommendations detailed later in this report, the audit identified several practices that demonstrate effective program management and oversight. These practices are highlighted to provide a balanced assessment of the program and to acknowledge areas of strength that support the successful implementation of the Safe, Clean Water Program.

- **Established and Transparent Governance Structure:** The audit confirmed that Valley Water has established the formal, multi-faceted governance structure mandated by Measure S, consisting of the Board of Directors, the Independent Monitoring Committee (IMC), and dedicated program staff. The Board provides ultimate oversight and decision-making authority, utilizing its standing committees for more detailed review of SCW projects. The IMC serves its mandated role of providing independent annual review and recommendations directly to the Board, and its operations are transparent, with information such as meeting dates, agendas, and minutes made publicly available. This overall structure creates a continuous cycle of oversight encompassing strategic planning, financial governance, and project monitoring.
- **Adherence to Annual Reporting Requirements:** Valley Water adheres to the Measure S requirements for both annual rate-setting and annual financial reporting. For each year of the audit period, the CEO prepared and published the SCW Annual Rate-Setting Report, which was formally accepted by the Board of Directors at a public meeting. Similarly, the Chief Financial Officer filed a fiscal year report with the Board in compliance with the required deadline. These annual reports contained the mandated information, including the amount of funds collected and expended and the status of authorized projects.
- **Public Access to Information:** Valley Water uses multiple channels to provide the public with access to program information. These include a monthly Valley Water eNewsletter with over 50,000 subscribers, project-specific email lists and public meetings, and the SCW Program webpages. These webpages feature an archive page that contains all program reports, change control documents, five-year implementation plans, and audit reports. Additionally, the SCW Program project pages are updated at least once each quarter.
- **Comprehensive Capital Project Management Framework:** The audit observed that SCW-funded capital projects are managed under a comprehensive framework guided by the Capital Improvement Program (CIP) Program Manual. This framework provides a strong foundation for project execution, including detailed work plans, phase-based delivery procedures, and a clear hierarchy of oversight meetings. While the findings in

this report identify opportunities to improve the reconciliation between the CIP and the SCW Program's external reporting, the underlying project management structure is a key strength.

- **Effective Performance of Operational Projects:** The audit of selected projects indicated that six of the seven¹ active operational, maintenance (e.g., performance-based), and fiscal-based projects included in our sample of projects are consistently meeting or exceeding their annual Key Performance Indicator (KPI) targets.
- **Strategic Use of Tiered KPIs for Risk Management:** The audit identified that the use of a tiered KPI structure for certain complex capital projects, which includes both a preferred KPI and a "local-funding-only" alternative, serves as an effective risk management tool, providing a pre-approved path for project progress under different funding scenarios.

¹ See Finding 9 on page 25 regarding Project D1 (Management of Riparian Planting and Invasive Plant Removal).

III. PROCEDURES, FINDINGS AND RECOMMENDATIONS

This section of the report presents the summary of findings and recommendations resulting from our audit procedures. The findings are organized by the major audit objectives outlined in Section I.

A. Reporting and Transparency

This area of the audit focused on assessing the transparency and accuracy of reporting on the renewed SCW Program's progress and outcomes, including the public disclosure of financial information, project status updates, and the roles and responsibilities of the Independent Monitoring Committee (IMC).

Procedures Performed

To evaluate reporting and transparency, audit procedures included reviewing key documents required by Measure S. This involved examining the Annual Rate-Setting Reports prepared by Valley Water's CEO for each year of the audit period to confirm they included the required proposed tax rates. We also reviewed the annual fiscal year reports prepared by the Chief Financial Officer to verify they were filed on time and contained the required information on funds collected and expended, and the status of funded projects. Additionally, the audit reviewed the operations of the Independent Monitoring Committee (IMC). Procedures included examining the public availability of meeting schedules, agendas, and minutes, and reviewing Valley Water's Conflict of Interest policy applicable to the IMC.

B. Program Oversight and Governance

This area of the audit focused on evaluating the overall program governance and the effectiveness of managerial oversight mechanisms. The audit also verified compliance with key provisions of the Measure S tax measure and the implementation of the Board-approved Change Control Process.

Procedures Performed

To evaluate program oversight and governance, our audit procedures were designed to assess the framework from multiple perspectives:

- **Review of the Governance Framework:** We reviewed the governance structure mandated by Measure S and established in Valley Water documentation. To understand the roles, responsibilities, and effectiveness of this structure, we conducted interviews with members of the Board of Directors, the Independent Monitoring Committee (IMC), and key Valley Water management and staff.

- **Assessment of Compliance:** To assess compliance with key provisions of Measure S, we reviewed publicly available documentation, including Annual Reports and Board meeting materials, to evaluate adherence to the measure's requirements. This included assessing whether program funds were collected and expended appropriately.
- **Evaluation of the Change Control Process:** We reviewed the Board-approved Change Control Process and examined a sample of project adjustments and modifications made during the audit period to determine if the process was being implemented as designed.

Findings, Recommendations and Management Responses

Finding 1: The Program is Operating in Compliance with Key Measure S Provisions, with One Minor Procedural Discrepancy Noted.

Issue: The audit's review of compliance with key Measure S provisions found that Valley Water adheres to the primary procedural, financial control, and reporting mandates. A minor discrepancy was noted regarding Measure S, Provision C, which specifies that tax resolutions be filed with the "Auditor-Controller" and the "County Recorder." Current practice involves filing these documents with the County Clerk-Recorder's Office and the County Tax Assessor's Office. This variance appears related to changes in County departmental structures since Measure S was drafted. While the specific titles of the offices differ, the filings appear to achieve the functional intent of the provision by ensuring the relevant county entities are formally notified for billing and recording purposes.

Risk: Without formal documentation explaining the variance between the procedural text in Measure S and current practice, there is a risk of perceived non-compliance with the voter-approved measure. Such perceived non-compliance may make it more difficult for future such initiatives to pass.

Recommendation: To address the minor discrepancy in filing offices for tax resolutions, Valley Water should formally document its assessment that the current process meets the functional intent of Measure S, Provision C. Furthermore, standard clarifying language should be incorporated into future Board resolutions to explicitly state the specific County offices where certified copies will be filed. These actions will enhance transparency by creating a clear and complete public record, demonstrating the Program's adherence to Measure S requirements.

Management's Response: Agree. Management agrees with the recommendation and staff will implement this recommendation.

Responsible Party: Chief Financial Officer (CFO), Financial Planning & Management Services Division.

Completion Date: Q4, FY26 for FY2026-2027 Annual Rate Setting Report (May 2026).

Finding 2: Process for Reconciling SCW Project Funding Allocations with CIP Adjustments Needs Improvement to Enhance Reporting Reliability.

Issue: To support Valley Water's ongoing efforts to improve the Safe, Clean Water (SCW) Program, this finding identifies an opportunity to enhance the reporting of long-term project funding allocation adjustments. Primarily there is a need to strengthen the procedural methods for reconciling CIP Plan adjustments to project funding allocations in order to increase data accuracy and reliability. Additionally, there is an opportunity to clarify the language in the Board-approved Change Control Process to specify what information regarding these adjustments will be reported and where information related to budget adjustments and changes to project funding allocations will be made publicly available. This issue is specific to the program's capital projects, as our audit work found no similar material discrepancies in the reporting for operational projects. Our audit of the SCW Program's capital project budgets found that the cumulative "Board Appv'd Adj" figures reported in Appendix A-1.2 of the SCW Annual Reports for FY23, and FY24 did not reconcile to supporting documentation. We were unable to determine the magnitude of the reconciliation discrepancies as performance of detailed reconciliations was outside the scope of our procedures, and staff's efforts to update the reconciliation is ongoing. In response to our inquiries, staff indicated they had identified an error in the methodology used for their detailed review of Board-approved adjustments, which was initiated as part of the FY24 reporting cycle. As staff explained, this methodology used the Capital Improvement Program's Five-Year Plan (CIP Plan) as the baseline for identifying funding allocation adjustments instead of the SCW Program's 5-Year Implementation Plan. While the Change Control Process for capital projects appropriately uses the CIP Plan cycle for approving changes, there is an opportunity to improve the methods used to identify, reconcile, and report those approved changes within the SCW Annual Report in an accurate and timely manner. Staff have been proactive in addressing this issue and plan to restate and republish the FY23 and FY24 annual reports once their detailed review and reconciliation is complete. The following recommendations are intended to support these ongoing improvement efforts.

Risk: When the funding allocation data presented in the SCW Annual Report is not presented in an accurate, complete, and timely manner, there is a risk that public accountability is diminished. This condition could have an impact on effective oversight by the Board.

Recommendation: To help ensure the accuracy, completeness and timeliness of the SCW Program's long-term budgetary reporting, we recommend that Staff revise the methods and processes used to identify, reconcile and report funding allocation adjustments within the SCW Annual Reports. This revised process should include:

1. **A Corrected and Auditable Baseline:** Complete an updated, comprehensive review and reconciliation of all Board-approved funding allocation adjustments made since FY22,

starting from the SCW 5-Year Implementation Plan. This corrected baseline must be documented and used for all future reporting.

2. **A Formal Reconciliation Procedure:** For any CIP change affecting a SCW project, a standard procedure must be followed to formally document the specific impact on the SCW Program's 15-year allocation. This reconciliation and supporting documentation must be retained as auditable evidence.
3. **Independent Review:** This SCW-specific reconciliation should be reviewed and approved by management before the SCW Annual Report is finalized.
4. **Accurate and Transparent Reporting:** Ensure the "Board Appv'd Adj" column in Appendix A-1.2 and its corresponding footnotes accurately reflect the reconciled, cumulative adjustments to only the renewed SCW Program funding allocations, clearly distinguishing it from the total project costs reported in the CIP Plan.
5. **Informed Board Approval of the CIP Plan:** When presenting the annual CIP Plan for Board approval, management should include a summary schedule that explicitly quantifies how proposed CIP planned expenditures will impact the 15-year funding allocations of the corresponding SCW Program projects. This ensures the Board is fully informed of the SCW Program implications at the time of the CIP decision.
6. **Clarify the Change Control Process Policy:** In conjunction with the procedural improvements, update the language in the Board-approved Change Control Process to better clarify how fiscal year budget adjustments and changes to project funding allocation will be made publicly available through reporting and posting on the Program's web page.

Management's Response: Agree. Management agrees with the recommendation. Staff will address the recommendation as follows:

1. **A Corrected and Auditable Baseline:** As noted in the report, staff is proactively addressing this issue. Staff completed a detailed review and reconciliation of all Board-approved funding allocation adjustments made since FY22 and republished the FY23 and FY24 annual reports. Staff is also implementing measures to strengthen and enhance processes for identifying, reconciling, and reporting funding allocation adjustments to Safe, Clean Water projects.
2. **A Formal Reconciliation Procedure:** Currently, the standard process for capital projects follows the annual Capital Improvement Program's Five-Year Plan (CIP Plan) development cycle, which includes Change Management Memos (CMMs) outlining scope, schedule and budget adjustments, financial analysis to determine fund impacts, CIP evaluation team review, recommendations for Board approval, and activation of the Change Control Process for any changes that affect any key performance indicators (KPIs). To address the audit recommendation and enhance accountability, staff plans to

strengthen this process by implementing a requirement for the CMMs to clearly identify impacts on Safe, Clean Water projects and developing a standardized reconciliation template to clearly quantify and document any SCW-related financial impacts from CIP changes. These documents will be retained as auditable evidence.

3. **Independent Review:** The SCW annual report is approved by the management, including Deputy Operating Officers, Chiefs, CFO, ACEO, and the CEO, prior to Board approval. The CFO will review and validate the standardized reconciliation template being developed prior to its implementation to clearly quantify and document any SCW-related financial impacts from the CIP Plan planned expenditure changes.
4. **Accurate and Transparent Reporting:** In future annual reports, staff will ensure that the Board Approved Adjustment column in Appendix A-1.2 and its footnotes accurately reflect that the reconciled, cumulative adjustments are specifically related to the renewed SCW Program funding allocations. It will clearly differentiate these adjustments from the total capital project reported in the CIP Plan.
5. **Informed Board Approval of the CIP:** The current Annual Process for Development of the CIP Five-Year Plan (CIP Plan Process) for Safe, Clean Water projects will be enhanced to implement the recommendation. Currently, staff brings to the Board all project scope, schedule, and cost changes. The Project Plan Updates attachment is presented every year to the Board to provide details regarding the changes incorporated into the CIP Plan and all Safe, Clean Water projects are noted with a reference to the SCW project number. Furthermore, through the financial modeling presented and discussed as part of the preliminary CIP plan and rate-setting process, staff assesses and determines if there are any impacts on the fund's health that would trigger the Safe, Clean Water Program's Change Control Process.

To enhance clarity and visibility, staff plans to implement the following changes:

- a. Currently, any changes to the scope, schedule, or costs of a capital project must be documented through a Change Management Memo (CMM). This memo is submitted by the Project Manager to the Deputy Operating Officer for approval. The CMM template is being updated to specifically identify if the proposed change affects the scope, schedule, or cost of a SCW project. The memo will specify whether the change impacts the project KPI(s), the scheduled delivery date, or funding allocations. If any of these elements are affected, the CMM will indicate this, alerting staff to initiate the Change Control Process.
- b. The Project Plan Updates provided to the Board as part of the CIP Plan development will include information specific to each SCW project scope, schedule, or cost change. It will capture the impact of these changes and clearly state if it triggers the Program's Change Control Process.

- c. Similarly, for Operating projects, the Budget Adjustment Form is being updated to clearly specify whether the requested adjustment is for an SCW project and whether it impacts the project's funding allocations and/or KPI delivery. If any of these elements are affected, the form will indicate this, alerting staff to initiate the Change Control Process.
6. **Clarify the Change Control Process Policy:** The Safe, Clean Water Program Change Control Process is being enhanced to expand opportunities for public engagement. The enhancement will include updating language to better clarify how fiscal year budget adjustments and changes to project funding allocation will be made publicly available through reporting and posting on the Program's web page. The enhanced Change Control Process, first presented to the Board in June 2025, is scheduled for formal approval in FY26 Q2.

These enhancements will ensure that all CIP planned expenditure changes affecting SCW projects are transparently assessed, clearly documented, and readily available for audit purposes.

Additional Clarification: It should be clarified that the SCW Annual Report is retrospective in nature and does not serve as a forward-looking planning document. Its primary purpose is to transparently report on progress and expenditures for public accountability. Accurate and complete financial information in the report is indeed vital for transparency and monitoring, and we are committed to achieving that. However, it is important to note that the data presented in the SCW Annual Report does not directly influence budget or funding decisions. These determinations are made through a separate, forward-looking process, namely, the long-term forecast and the financial modeling that supports the development of the CIP Plan and the rate-setting process. As part of this process, staff evaluate whether any funding needs impact the overall health of the SCW Fund and, if so, whether those impacts warrant action through the established Change Control Process.

Responsible Party: CFO, Financial Planning & Management Services Division (1, 3, 4, and 5.c) ; and Assistant Officer (AO), Office of Integrated Water Management – Business Planning and Analysis Unit (2, 5.a, 5.b, and 6).

Completion Date: Q4, FY26.

Finding 3: A Clearer Crosswalk is Needed between CIP and SCW Schedule Adjustments

Issue: Similar to the budget reporting process, there is an opportunity to enhance the transparency of project schedule reporting by providing a clearer crosswalk between the schedules presented in the CIP Plan and those in the SCW Annual Report. Additionally, there is an opportunity to clarify the language in the Board-approved Change Control Process to specify

what information will be reported and where information related to adjustments to project schedules will be made publicly available. The SCW Change Control Process appropriately uses the CIP Plan as the primary vehicle for approving schedule changes for capital projects. However, the two reports are prepared on different bases and at different times, which can make it challenging for an external stakeholder to independently reconcile the information. As management explained, a key reason for these differences is the timing of when each report is produced. The CIP Plan is adopted in May and reflects planned schedules and expenditures for the upcoming fiscal year. In contrast, the SCW Annual Report is published after the fiscal year has ended and reflects actual project developments. This can lead to situations where a project's schedule is adjusted in the SCW Annual Report based on year-end progress, but that change is not yet reflected in the already-published CIP Plan.

Risk: While this approach is reasonable for internal management, and the schedules in the SCW Annual Report are clear, the lack of a formal, public-facing reconciliation between these two reporting methodologies makes it difficult for stakeholders to independently trace the impact of a schedule change approved in the CIP Plan on the delivery of a project's KPI. This places the burden of reconciling the different reporting frameworks on the reader and reduces the ease with which stakeholders can track the impact changes to the CIP plans will have on the project's KPI schedule.

Recommendation: To improve the clarity and consistency of project schedule reporting, we recommend that Valley Water:

1. Continue the practice of clearly and visually differentiating the milestone for achieving a project's KPI from the milestones for other project phases (e.g., design, plant establishment, closeout) in the SCW Annual Report's schedule graphics.
2. Provide a clear reconciliation on the SCW Program webpage that illustrates and explains how Board-approved changes to capital project construction schedules in the CIP Plan impact the delivery schedule for the corresponding SCW Program KPI.
3. When presenting the annual CIP Plan for Board approval, explicitly report on how proposed schedule changes will affect the KPI delivery dates for SCW projects, ensuring the Board understands the direct impact on program commitments at the time of their decision.
4. In conjunction with the procedural improvements, update the language in the Board-approved Change Control Process to better clarify how adjustments to project schedules will be made publicly available through reporting and posting on the Program's web page.

Management's Response: Agree. Management agrees with the recommendation and will implement the following:

1. **Differentiated milestones:** In the Safe, Clean Water Program Annual Report schedule graphics, Valley Water will continue the practice of clearly and visually differentiating the milestone for achieving a project's KPI from the milestones for other project phases (e.g., design, plant establishment, closeout).
2. **Schedule Reconciliation:** At the end of each fiscal year, staff will provide the Board with a summary of all schedule adjustments impacting KPI delivery, including those approved as part of the Board's approval of the CIP Plan. Currently, these schedule adjustments are reported in the SCW Program annual report. Going forward, a consolidated summary will also be available to the public on the Program's webpage.
3. **CIP Plan Impacts on KPI Delivery:** The current CIP Plan Process for SCW projects will be enhanced to implement the recommendation. Currently, staff brings to the Board all project scope, schedule, and cost changes. The Project Plan Updates attachment is presented every year to the Board to provide details regarding the changes incorporated into the CIP Plan and all SCW projects are identified through the SCW project number.

To enhance clarity and visibility, staff plans to implement the following changes:

- a. The CMM template is being updated to specifically identify if the proposed change affects the scope, schedule, or cost of a SCW project. The memo will specify whether the change impacts the project KPI(s), the scheduled delivery date, or funding allocations. If any of these elements are affected, the CMM will indicate this, alerting staff to initiate the Change Control Process.
 - b. The Project Plan Updates provided to the Board as part of the CIP Plan development will include information specific to each SCW project scope, schedule, or cost change. It will capture the impact of these changes and clearly state if it triggers the Program's Change Control Process.
4. **Clarify the Change Control Process Policy:** The Safe, Clean Water Program Change Control Process is being enhanced to expand opportunities for public engagement. The enhancement will include updating language to better clarify how adjustments to project schedules will be made publicly available through reporting and posting on the Program's webpage. The enhanced Change Control Process, first presented to the Board in June 2025, is scheduled for formal approval in FY26 Q2.

Responsible Party: AO, Office of Integrated Water Management – Business Planning and Analysis Unit

Completion Date: Q4, FY26.

Finding 4: A Prior Audit Recommendation Regarding the IMC Conflict of Interest Policy Remains Unresolved

Issue: A 2024 closeout audit of the prior Safe, Clean Water Program recommended that Valley Water develop a conflict-of-interest policy for the Independent Monitoring Committee (IMC) to manage real or perceived conflicts. During our audit period, we noted that Valley Water is actively working to address this recommendation. However, a formal, updated Conflict of Interest framework specifically for the IMC has not yet been finalized and implemented.

Risk: Without a formal, implemented conflict-of-interest policy tailored to the specific advisory role of the IMC, there is a risk that real or perceived conflicts could arise. This could potentially undermine the credibility of the committee's independent oversight function and diminish public trust in the governance of the SCW Program.

Recommendation: We recommend that Valley Water finalize and implement a formal Conflict of Interest framework for the Independent Monitoring Committee.

Management's Response: Agree. Management agrees with the recommendation and on Sept. 23, 2025, the Board adopted a resolution establishing new conflict of interest disclosure requirements for IMC members.

Responsible Party: AO, Office of Integrated Water Management – Business Planning and Analysis Unit; and Clerk of the Board (COB), Office of the Clerk of the Board.

Completion Date: Q2, FY26.

Finding 5: Ongoing Vacancies on the Independent Monitoring Committee Impact its Effectiveness

Issue: Interviews with members of the Independent Monitoring Committee (IMC) highlighted operational challenges that could impact the effectiveness of this key oversight body. Members noted that ongoing vacancies on the committee have created difficulties in consistently attaining a quorum for meetings and have led to an uneven distribution of workload.

Risk: The operational challenges facing the IMC, including persistent vacancies, could hinder its ability to consistently and effectively fulfill its mandated oversight responsibilities. This could lead to delays in the IMC's annual review process, reduce the depth of its analysis, and ultimately weaken a key component of the SCW Program's public accountability framework.

Recommendation: To support Valley Water's ongoing efforts to ensure the effectiveness of the Independent Monitoring Committee, we recommend that management partner with the Board of Directors to enhance the processes for recruiting committee members. This could include:

- **Enhancing Recruitment:** Exploring additional recruitment strategies beyond standard website postings to identify, attract, and recruit qualified candidates to fill committee vacancies in a timely manner. This could involve targeted outreach to subject matter experts or community organizations.

Management's Response: Agree. Management agrees with the recommendation and staff will explore additional recruitment strategies in partnership with the Board of Directors.

Responsible Party: COB, Office of the Clerk of the Board.

Completion Date: Q4, FY26; and will be implemented on an ongoing basis.

C. Program and Project Performance

This area of the audit focused on assessing whether Valley Water is making reasonable progress toward meeting the SCW Program's six priorities and their associated Key Performance Indicators (KPIs). This assessment was based on detailed reviews of a representative sample of projects to evaluate project management effectiveness and the adequacy of the KPIs themselves.

Procedures Performed

To evaluate program and project performance, the audit team performed the following procedures:

- **Assessed Progress Toward KPIs:** We assessed Valley Water's progress toward meeting the Program's six priorities by evaluating the reported progress for a selection of projects against their established KPIs. Our assessment included a review of progress documented in the FY22, FY23, and FY24 SCW Annual Reports and an evaluation of documented project challenges and risks impacting KPI achievement.
- **Reviewed KPI Adequacy and Structure:** We reviewed the KPIs for the selected projects to determine their adequacy and inherent achievability. This review included an assessment of each KPI's clarity and measurability, its alignment with the corresponding Program Priority, and its structure in measuring project outputs (e.g., construction deliverables) versus community outcomes (e.g., parcels protected).
- **Evaluated Project Management:** We performed deep-dive reviews of the selected projects to understand and evaluate how each is being managed. This included conducting interviews with Project Managers and other key staff to discuss the management of project scope, budget, schedule, and progress toward achieving KPIs.

- **Verified Project Artifacts:** We obtained and evaluated a variety of project management artifacts, such as project plans, work-tracking reports, budget vs. actual expenditure reports, and risk assessments. The purpose of this review was to identify process strengths, deficiencies, and challenges, and to obtain evidence supporting the reported progress towards reported project milestones.

Findings, Recommendations and Management Responses

Finding 6: Management of Key Partnership Projects Could Be Enhanced

Issue: For Project E5 (San Francisquito Creek Flood Protection), Valley Water's role has evolved from project lead to that of a primary funder and influential partner within the San Francisquito Creek Joint Powers Authority (SFCJPA). The project's existing management mechanisms, which are designed for direct project execution, may not be the most effective tools for managing this evolving role. This presents an opportunity to supplement existing processes with a more strategic tool to effectively track risks to Valley Water's investment, coordinate its positions on key issues, and document decisions within the multi-agency partnership.

Risk: Without a formal mechanism to track and manage its position on key decisions within the partnership, there is a risk that Valley Water may not be able to effectively influence project outcomes, protect its financial investment, or ensure alignment with its strategic goals. This could lead to a misalignment of priorities between Valley Water and the lead agency, potentially impacting the project's success and the return on public funds.

Recommendation: To effectively manage its role in externally led partnerships like Project E5, Valley Water should develop and implement a 'Strategic Decision & Risk Log' to formalize its partnership management. This tool would serve as a formal mechanism to 1) identify and monitor the key technical, funding, and governance decisions being managed by the partner agency; 2) formally document Valley Water's official position on each critical issue; 3) identify the associated risks to Valley Water's investment and policy goals; and 4) define and track a proactive position strategy.

Management's Response: Agree. Management agrees with the recommendation and where applicable, staff will develop and implement a Strategic Decision & Risk Log to formalize its partnership management.

Responsible Party: Chief Operating Officer (COO), Watersheds.

Completion Date: Q4, FY26.

Finding 7: The KPI for a Key Partnership Project is Misaligned with Valley Water's Role and Authority

Issue: The KPI for Project E5 holds Valley Water accountable for delivering a specific community outcome (protecting parcels from a 70-year flood event), yet Valley Water no longer has the direct control or authority to ensure this outcome is achieved. The transfer of project leadership to the SFCJPA means the KPI, as currently worded, does not accurately reflect Valley Water's role as a funding partner, making it an inadequate measure of its performance and accountability for the public funds invested.

Risk: When a project's KPI is not aligned with Valley Water's actual role and authority, there is a risk that the organization will be held accountable for outcomes it cannot control. This can lead to a misrepresentation of Valley Water's performance, diminish public accountability, and make it difficult to accurately assess the effectiveness of its contributions to the project.

Recommendation: Valley Water should continue to formalize the re-evaluation of the Project E5 KPI to align it with current realities. This evaluation should consider options for shifting the KPI from an outcome-based metric to one that measures Valley Water's specific, controllable contributions, such as a funding or partnership-based deliverable.

Management's Response: Agree. Management agrees with the recommendation and staff will reevaluate Project E5: San Francisquito Creek Flood Protection KPIs to determine how best to reflect current realities. If it is determined that modifications to the KPIs are required, management will propose them in accordance with the Change Control Process.

Responsible Party: COO, Watersheds.

Completion Date: Q4, FY26.

Finding 8: Performance Data Impacted by Inconsistent Data Entry and Reporting

Issue: For the two projects noted below, the performance information included in the SCW Annual Reports does not align with detailed operational activities performed. Our audit identified an opportunity to improve the processes for entering data into the Maximo work management system and compiling data from the system for reporting.

- **Project D1 (Management of Riparian Planting and Invasive Plant Removal),** Variances exist between the operational data recorded in the Maximo work management system and the summary figures published in the SCW Annual Reports because of incorrect summary information being pulled from the system. While these variances did not materially affect the project's overall achievement of its KPI targets for the years reviewed, this represents an opportunity to strengthen procedural controls.

- **Project F5 (Good Neighbor Program: Encampment Cleanup),** Our sample of work orders reviewed identified instances where the amount of work recorded in completed work orders differed from the amount of work expected and actually performed. These differences in the manual entry of "acreage of work accomplished" resulted in both under-reported and over-reported amounts of the acreage in our sample of work orders. As a result of our audit, staff have corrected the data entry errors identified and are performing a review of similar data to ensure its accuracy.

These two observations—the first related to the compilation of summary data for Project D1 and the other to the initial entry of source data for Project F5—point to an opportunity to improve procedures for ensuring data integrity from its initial entry in Maximo to its final publication in the SCW Annual Report.

Risk: When operational data is not accurately entered into the source system, or when it is not correctly compiled for reporting, there is a risk that the reliability of performance data in the SCW Annual Report could be diminished. This could reduce the ability of stakeholders to independently validate the program's progress.

Recommendation: We recommend that management enhance procedures for entering operational data into the Maximo work management system and compiling data for reporting to ensure accuracy and reliability. These procedures should include, at a minimum,

- **Data Review Processes:** Implement a supervisory review for key data fields (such as acres managed for Project F5) within Maximo work orders to verify data accuracy, comparing the amounts entered against expected results.
- **Data Reporting:** Define processes for extracting data from source systems and for reconciling detailed supporting data to the figures that will be published in the SCW Annual Report, to ensure accuracy and completeness.

Management's Response: Agree. Management agrees with the recommendations and staff will develop a process to verify that the data entered is aligned with the work performed.

Responsible Party: Deputy Operating Officer (DOO), Watersheds Operations and Maintenance Division.

Completion Date: Q4, FY26.

Finding 9: KPIs that are Open-Ended or Do Not Fully Reflect Program Activities Pose Long-Term Financial and Communication Risks

Issue: There is an opportunity to improve KPIs to ensure long-term financial sustainability and clearer communications. The KPI for Project F1.1 ("Maintain completed flood protection

projects for flow conveyance") represents a perpetual maintenance commitment. While appropriate for the project's flood protection function, an open-ended commitment of this nature poses a long-term financial commitment and risk for the program. For projects D1 and F3, the audit identified instances where specific KPI language could be enhanced for clarity and scope. The KPI for Project D1 (Management of Riparian Planting and Invasive Plant Removal) focuses exclusively on removing *Arundo donax*, which does not fully capture the work done by Valley Water on other high-priority invasive species. For Project F3 (Flood Risk Assessment Studies), the KPI's reference to "FEMA standards" for map updates could be misinterpreted by stakeholders, as the primary deliverable is an internal planning map, not an official FEMA regulatory map.

Risks:

- Project F1.1: A perpetual maintenance commitment creates a potential long-term financial risk, as unforeseen increases in future maintenance costs could consume a disproportionate amount of SCW Program funds. This could impact the funding available for other new projects and priorities in future 15-year cycles of the program.
- Projects D1 and F3: When KPI language is not clear or does not fully reflect the scope of work being performed, there is a risk of miscommunicating the program's accomplishments and challenges to the public and oversight bodies. This can lead to a misunderstanding of the project's value and progress and could create incorrect expectations about project deliverables.

Recommendation: Valley Water should enhance its review of KPIs to ensure they are financially sustainable, remain aligned with current project activities, and that their descriptions clearly articulate the project's scope and deliverables. Should this review identify the need for a modification to a KPI, management should use the established Change Control Process to bring a formal proposal to the Board.

Management's Response: Management acknowledges the recommendation. Staff is assessing related policies and processes. Depending on the outcome of those efforts, Valley Water may consider modifying the KPI in the current 15-year financial cycle or revisit it in the next 15-year financial cycle.

Responsible Party: COO, Watersheds.

Completion Date: Q4, FY26.

IV. APPENDICES

A. List of Projects Selected for Review

To facilitate the review of SCW Program execution and progress, a representative sample of projects was selected from the projects included in the renewed SCW Program.

Selection Rationale and Criteria

A judgmental sampling approach was used to select approximately one-third of the projects (11 projects were chosen). The key criteria used for selecting the sample and ensuring diversity included:

- Representation from each of the SCW Program's six priorities.
- Proportional representation based on total project budget, with more selections from priorities having higher total budgets.
- Inclusion of projects managed by different project managers and across different Valley Water divisions.
- A mix of large and small projects based on budget.
- Representation of various Key Performance Indicator (KPI) types.
- Consideration of project complexity and geographic location.
- Exclusion of projects that had not yet started or were in very early stages, as they offered limited audit evidence.
- Adaptation of the selection as needed, such as adjusting selections between priorities to ensure adequate coverage.

The initial selection was discussed with Valley Water staff, leading to minor refinements.

Final Sampled Projects

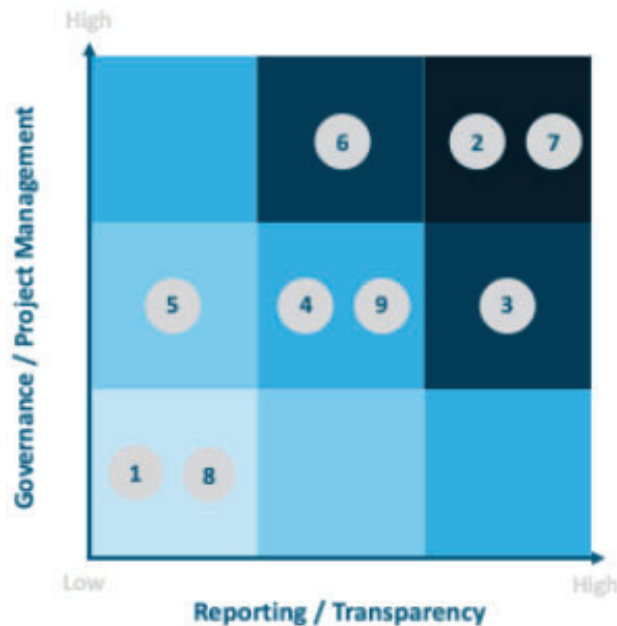
The final list of 11 projects selected for detailed audit procedures, including interviews and documentation review, is as follows:

- A2: Water Conservation Rebates and Programs
- B1: Impaired Water Bodies Improvement
- C1: Anderson Dam Seismic Retrofit
- D1: Management of Riparian Planting and Invasive Plant Removal
- D4: Fish Habitat and Passage Improvement Projects (including D4.1-D4.5 subprojects)

- E1: Coyote Creek Flood Protection
- E5: San Francisquito Creek Flood Protection: SF Bay to Upstream of Hwy 101
- E6: Upper Llagas Creek Flood Protection
- F1.1: Vegetation Control for Capacity (Flood Protection)
- F3: Flood Risk Assessment Studies
- F5: Good Neighbor Program: Encampment Cleanups

B. Prioritization of Findings

To assist the reader, this appendix summarizes the audit findings and assigns a priority level (High, Medium, or Low) to each. The priority is judgmentally determined by assessing the finding's impact on two key areas: 1) internal **Governance and Project Management** and 2) external **Reporting and Transparency**. Findings with a high impact on either area are assigned a high priority.



Finding No.	Topic	Finding Title	Priority (High / Medium / Low)
1	Measure S	The Program is Operating in Compliance with Key Measure S Provisions, with One Minor Procedural Discrepancy Noted	Low
2	Change Control / Annual Reporting	Process for Reconciling SCW Project Budgets with CIP Adjustments Needs Improvement to Enhance Reporting Reliability.	High
3	Change Control / Annual Reporting	A Clearer Crosswalk is Needed between CIP and SCW Schedule Adjustments	High
4	IMC	A Prior Audit Recommendation Regarding the IMC Conflict of Interest Policy Remains Unresolved	Medium
5	IMC	Ongoing Vacancies on the Independent Monitoring Committee Impact its Effectiveness	Medium
6	Project E5	Management of Key Partnership Projects Could Be Enhanced	High
7	Project E5	The KPI for a Key Partnership Project is Misaligned with Valley Water's Role and Authority	High
8	Projects D1 & F5	Performance Data Impacted by Inconsistent Data Entry and Reporting	Low
9	Project F1, D1 & F3	KPIs that are Open-Ended or Do Not Fully Reflect Program Activities Pose Long-Term Financial and Communication Risks	Medium

C. Summary of Findings, Recommendations and Management Responses

Issue and Recommendation Summary		Responsible Party	Summary of Management Response/Implementation Plan
Finding 1: The Program is Operating in Compliance with Key Measure S Provisions, with One Minor Procedural Discrepancy Noted			
Issue:	The audit identified a minor procedural discrepancy in how Valley Water files Measure S tax resolutions with Santa Clara County. While the measure specifies filing with the Auditor-Controller and County Recorder, current practice is to file with the County Clerk-Recorder and Tax Assessor, reflecting changes in County office structure.	CFO, Financial Planning & Management Services	Agree.
Recommendation:	Formally document the assessment that the current process meets the functional intent of Measure S, Provision C. Furthermore, incorporate clarifying language into future Board resolutions to explicitly state the specific County offices where certified copies will be filed. Document the rationale supporting the current filing process and include clarifying language in future Board resolutions specifying why certified copies are filed with the current County offices.		Management agrees with the recommendation and staff will implement this recommendation. Implementation Date: Q4, FY26 for FY2026-2027 Annual Rate Setting Report (May 2026).

Issue and Recommendation Summary		Responsible Party	Summary of Management Response/Implementation Plan
Finding 2: Process for Reconciling SCW Project Funding Allocations with CIP Adjustments Needs Improvement to Enhance Reporting Reliability (Priority High)			
Issue:	The process for reconciling SCW capital project funding allocations with adjustments approved in the CIP Plan needs improvement to support accurate and timely reporting in the SCW Annual Report.	CFO, Financial Planning & Management Services and AO, Office of Integrated Water Management – Business Planning and Analysis Unit	Agree.
Recommendation:	Revise methods for identifying, reconciling, and reporting SCW funding allocation adjustments. Establish a corrected baseline, create a formal reconciliation process for CIP changes, require management review before publication, and clarify public reporting expectations in the Change Control Process.		Management agrees with the recommendation and staff will implement the recommendation. Implementation Date: Q4, FY26.

Issue and Recommendation Summary		Responsible Party	Summary of Management Response/Implementation Plan
Finding 3: A Clearer Crosswalk is Needed between CIP and SCW Schedule Adjustments (Priority High)			
Issue:	A clearer crosswalk is needed between CIP and SCW project schedule adjustments to improve transparency for stakeholders. Currently, differences in reporting cycles and formats make it challenging to track the impact of schedule changes on KPI delivery.	AO, Office of Integrated Water Management – Business Planning and Analysis Unit	Agree.
Recommendation:	Continue the practice of clearly and visually differentiating the milestone for achieving a project's KPI from the milestones for other project phases; illustrate and explain how adjustments to capital project schedules in the CIP Plan impact the delivery schedule for the corresponding SCW Program KPI; when presenting the annual CIP Plan for Board approval, explicitly report on how proposed schedule changes will affect the KPI delivery dates for SCW projects; and update the Change Control Process to clarify how schedule changes will be made publicly available through reporting and posting on the Program's web page.		Management agrees with the recommendation and staff will implement the recommendation. Implementation Date: Q4, FY26.

Issue and Recommendation Summary		Responsible Party	Summary of Management Response/Implementation Plan
Finding 4: A Prior Audit Recommendation Regarding the IMC Conflict of Interest Policy Remains Unresolved			
Issue:	A prior audit recommendation to implement a conflict-of-interest policy for the Independent Monitoring Committee (IMC) has not yet been finalized or implemented.	AO, Office of Integrated Water Management – Business Planning and Analysis Unit and COB, Office of the Clerk of the Board	Agree.
Recommendation:	Finalize and implement a formal Conflict of Interest framework for the Independent Monitoring Committee.		Management agrees with the recommendation and on Sept. 23, 2025, the Board adopted a resolution establishing new conflict of interest disclosure requirements for IMC members. Implementation Date: Q2, FY26.
Finding 5: Ongoing Vacancies on the Independent Monitoring Committee Impact its Effectiveness			
Issue:	Ongoing vacancies on the IMC have made it challenging to consistently meet quorum requirements and distribute workload among members.	COB, Office of the Clerk of the Board	Agree.
Recommendation:	Partner with the Board to enhance recruitment strategies, to identify, attract, and recruit qualified candidates.		Management agrees with the recommendation and staff will explore additional recruitment strategies in partnership with the Board of Directors. Implementation Date: Q4, FY26.

Issue and Recommendation Summary		Responsible Party	Summary of Management Response/Implementation Plan
Finding 6: Management of Key Partnership Projects Could Be Enhanced (Priority High)			
Issue:	Valley Water's role in this externally led partnership, Project E5, has shifted from project lead to funding partner. The project's existing management mechanisms, designed for direct project execution, may not be the most effective tools for managing this evolving role.	COO, Watersheds	Agree.
Recommendation:	Implement a Strategic Decision & Risk Log to identify and monitor key decisions, document Valley Water's official positions, assess associated risks, and guide proactive engagement.		Management agrees with the recommendation and where applicable, staff will develop and implement a Strategic Decision & Risk Log to formalize its partnership management. Implementation Date: Q4, FY26.

Issue and Recommendation Summary		Responsible Party	Summary of Management Response/Implementation Plan
Finding 7: The KPI for a Key Partnership Project is Misaligned with Valley Water's Role and Authority (Priority High)			
Issue:	The KPI for Project E5 holds Valley Water accountable for a community outcome it no longer directly controls due to the transfer of leadership to the SFCJPA. The KPI, as currently worded, does not accurately reflect Valley Water's role.	COO, Watersheds	Agree.
Recommendation:	Continue to re-evaluate the KPI, shifting from an outcome-based metric to one that measures Valley Water's specific, controllable contributions, such as a funding or partnership-based deliverable.		Management agrees with the recommendation and staff will reevaluate Project E5: San Francisquito Creek Flood Protection KPIs to determine how best to reflect current realities. If it is determined that modifications to the KPIs are required, management will propose them in accordance with the Change Control Process. Implementation Date: Q4, FY26.

Issue and Recommendation Summary		Responsible Party	Summary of Management Response/Implementation Plan
Finding 8: Performance Data Impacted by Inconsistent Data Entry and Reporting			
Issue:	Inconsistent processes for entering and compiling operational data impacted the accuracy of reported performance figures. For Project F5, inconsistencies were noted in the initial entry of source data, while for Project D1, reported figures in the SCW Annual Report varied from the underlying data in the Maximo system.	DOO, Watersheds Operations and Maintenance Division	Agree.
Recommendation:	Enhance procedures to ensure accurate data entry and processes for ensuring final reports align with source data.		Management agrees with the recommendations and staff will develop a process to verify that the data entered is in alignment with the work performed. Implementation Date: Q4, FY26.

Issue and Recommendation Summary		Responsible Party	Summary of Management Response/Implementation Plan
Finding 9: KPIs that are Open-Ended or Do Not Fully Reflect Program Activities Pose Long-Term Financial and Communication Risks			
Issue:	KPIs could be improved to support long-term financial sustainability and more accurately reflect the scope of program activities. Project F1.1's KPI represents a perpetual maintenance commitment, while KPIs for Projects D1 and F3 could be enhanced for clarity and scope.	COO, Watersheds	Acknowledge.
Recommendation:	Enhance review of KPIs to ensure they are financially sustainable, remain aligned with current project activities, and that their descriptions clearly articulate the project's scope and deliverables.		Management acknowledges the recommendation. Staff is assessing related policies and processes. Depending on the outcome of those efforts, Valley Water may consider modifying the KPI in the current 15-year financial cycle or revisit it in the next 15-year financial cycle. Implementation Date: Q4, FY26.

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Topic: Public Hearing on Proposed Modifications to the Safe, Clean Water and Natural Flood Protection Program

Who: Santa Clara Valley Water District (Valley Water)

When: Tuesday, July 14, 2026, 1:00 p.m.

Where: Valley Water Headquarters Building Boardroom
5700 Almaden Expressway, San Jose, CA
and by Zoom Teleconference at valleywater.zoom.us/j/84454515597

Valley Water invites you to a Public Hearing regarding proposed modifications to the Safe, Clean Water and Natural Flood Protection Program (Safe, Clean Water Program or Program).

Priority E: Provide Flood Protection to Homes, Businesses, Schools, Streets, and Highways

E5: San Francisquito Creek Flood Protection, San Francisco Bay to Upstream of Highway 101 - Palo Alto (Modify Key Performance Indicators)

As part of the voter-approved Measure S, Valley Water conducted an independent professional audit of the Safe, Clean Water Program. The auditor assessed Program implementation during its first three years and evaluated governance, compliance, transparency, and progress toward meeting the Program's priorities and key performance indicators (KPIs). KPIs are measurable targets used to track project outcomes and ensure program accountability under Measure S.

Among the auditor's findings was that Project E5: San Francisquito Creek Flood Protection Project's (E5) current KPIs do not fully align with Valley Water's role, because the San Francisquito Creek Joint Powers Authority (SFCJPA), not Valley Water, is the lead agency responsible for overall project delivery. In response, Valley Water is proposing modifications to Project E5's KPIs to better reflect Valley Water's role as a funding partner in the project.

The proposed modification replaces the existing KPIs #1 and #2 with a modified KPI #1 to focus on Valley Water's funding contributions rather than project delivery outcomes outside Valley Water's direct control.

Proposed KPI Modifications:

1. **Preferred project with federal, state and local funding- Protect more than 3,000 parcels by providing 1% (100-year) flood protection.**

2. **With state and local funding only- Protect approximately 3,000 parcels by providing 1% (100-year) flood protection downstream of Highway 101, and approximately 1.4% (70-year) protection upstream of Highway 101.**

1. **Provide the San Francisquito Creek Joint Powers Authority a portion of funds commensurate with the project's benefits to Santa Clara County, to provide flood protection along San Francisquito Creek.**

Priority F: Support Public Health and Public Safety for Our Community

F6: Good Neighbor Program - Graffiti and Litter Removal and Public Art (Modify KPI and Expand Project Scope)

Staff also proposes expanding the scope of Project F6: Good Neighbor Program - Graffiti and Litter Removal and Public Art (F6), specifically the Public Art Program and the associated KPI #3. The proposed modification is to extend the Public Art Program beyond Valley Water-owned property and infrastructure. The proposed modification would allow funding for eligible public art projects throughout Santa Clara County, rather than limiting funding to projects on Valley Water property and infrastructure. It will better align the program with Valley Water's strategic goals, available funding, and staffing capacity. It aims to use public art to support broader community benefit, create more opportunities for public education regarding water and environmental stewardship, deter graffiti and litter, and ultimately increase community benefit.

Proposed KPI #3 Modification:

"Provide up to \$1.5 million over 15 years to implement **or fund** public art projects ~~on Valley Water property and infrastructure.~~"

Proposed Description Modification (Scope)

To maintain consistency with the proposed change to KPI#3, staff recommends the following modification to the Project F6 description:

"This project allows Valley Water to continue responding to requests for cleanup of illegal dumping, trash and graffiti on Valley Water's property and rights-of-way. Cleanup efforts include graffiti removal from floodwalls, concrete embankments, signs, structures and other Valley Water assets, as well as maintaining, repairing and installing fences and gates so that Valley Water structures and facilities remain safe and clean. The project also funds installation

and maintenance of public art projects, such as murals, to beautify Valley Water property and infrastructure, to **in public spaces throughout Santa Clara County to educate the public about water and environmental stewardship, which in turn will also help deter graffiti and litter.**"

This meeting is being held in accordance with the Brown Act. The 1:00 p.m., July 14, 2026, public hearing will be held during a board meeting and is accessible for public in-person participation at the time, date, and location shown above, and by public virtual participation at the Zoom link above. Document(s) associated with this hearing are available for public inspection prior to the meeting in the Clerk of the Board's Office and online at valleywater.org, and will be available at the meeting.

For more information, contact Luz Penilla, Assistant Officer, at **408-630-2228**.

Important Notices:

Valley Water, in complying with the Americans with Disabilities Act (ADA), requests individuals who require special accommodations to access and/or participate in Valley Water Board meetings to please contact the Clerk of the Board's office at (408) 630-2277, at least 3 business days before the scheduled Valley Water Board meeting to ensure that Valley Water may assist you. Reasonable efforts will be made to accommodate persons with disabilities.

重要通知:

Valley Water 遵守美國殘疾人法案(ADA), 要求需要特殊便利才能訪問和/或參加Valley Water 委員會會議的個人請致電(408) 630-2277 聯繫委員會辦公室的書記員, 網址為在預定的Valley Water 委員會會議召開前至少3個工作日, 以確保Valley Water 可以為您提供幫助。將做出合理的努力以容納殘疾人。

Thông báo quan trọng:

Valley Water, để tuân thủ Đạo luật Người Mỹ Khuyết tật (ADA), yêu cầu những cá nhân cần điều chỉnh đặc biệt để tiếp cận và/hoặc tham gia các cuộc họp của Hội đồng Valley Water vui lòng liên hệ với Văn phòng Thư ký của Hội đồng theo số (408) 630-2277, tại ít nhất 3 ngày làm việc trước cuộc họp đã lên lịch của Hội đồng Valley Water để đảm bảo rằng Valley Water có thể hỗ trợ bạn. Những nỗ lực hợp lý sẽ được thực hiện để hỗ trợ người khuyết tật.

Aviso Importantes:

Valley Water, en cumplimiento de la Ley de Estadounidenses con Discapacidades (ADA), solicita a las personas que requieren adaptaciones especiales para acceder y/o participar en las reuniones de la Junta de Valley Water que se comuniquen con la oficina del Secretario de la Junta al (408) 630-2277, al menos 3 días hábiles antes de la reunión programada de la Junta de Valley Water para asegurarse de que Valley Water pueda ayudarlo. Se harán esfuerzos razonables para acomodar a las personas con discapacidades.

Safe, Clean Water Program Public Notice Advertisement Publication Schedule:

- San Jose Post-Record – June 26 & July 6
- Palo Alto Daily – June 29 & July 6
- Silicon Valley Community Newspapers (SVCN) – July 3 & July 10
- Morgan Hill/Gilroy – July 3 & July 10
- El Observador – July 3 & July 10
- Vietnam Daily – July 3 & July 10

Proposed Modifications to the Safe, Clean Water Program: Projects E5 and F6



San Francisquito Creek

Frequently Asked Questions (FAQ)

This FAQ addresses proposed modifications to two projects in the voter-approved Safe, Clean Water and Natural Flood Protection Program.

Project E5 is the San Francisquito Creek Flood Protection Project, for which Reach 2, stretching from Highway 101 upstream to the Pope-Chaucer Bridge, remains to be completed. Project F6 is the Good Neighbor Program: Graffiti and Litter Removal and Public Art, which provides countywide benefits.

General

Why is Valley Water proposing changes to these projects?

Valley Water wants to change Project E5 Key Performance Indicators (KPIs), so its performance goals align with the agency's responsibilities. An independent audit of the Safe, Clean Water Program recommended changing the KPIs so they better reflect Valley Water's role and keep the

program transparent and accountable. For Project F6, staff suggested changes to improve community benefits and better match Valley Water's goals and resources.

What role did the independent audit play?

PMA Consultants reviewed the program implementation from July 1, 2021, through June 30, 2024. Their audit identified nine findings and recommended changing certain project KPIs so they stay financially realistic, match current project activities, and clearly show what each project is supposed to deliver. The full audit report is available at tinyurl.com/SCWauditFY22-24.

The audit recommended reevaluating the KPI for Project E5. Their suggestion was to change it so it reflects Valley Water's actual role as a funding partner and as one of the five member agencies in the San Francisquito Creek Joint Powers Authority (SFCJPA), rather than holding Valley Water accountable for outcomes controlled by another agency.

Has the Valley Water Board approved these modifications?

No. On June 23, 2026, the Board began a public hearing process after the Board Policy and Monitoring Committee (BPMC) reviewed the proposed recommendations and supported them.

The Board has not approved the proposed modifications. The public hearing will open on July 14, 2026, and continue through August 11, 2026. The Board will then decide whether to continue or close the hearing. The purpose of the public hearing is to gather community input before the Board decides whether to approve, revise, or reject the recommended modifications. The Board will make its decision after the public hearing has closed.

Why is a public hearing required?

The Safe, Clean Water Program Change Control Process requires a public hearing whenever a proposed modification affects a project's description, KPI, or funding allocation in a way that impacts KPI delivery. The hearing provides transparency and an opportunity for public participation.

Are these changes reducing Measure S funding?

No. The proposed modifications do not reduce the Safe, Clean Water Program funding allocated to either Project E5: San Francisquito Creek Flood Protection or Project F6: Good Neighbor Program: Graffiti and Litter Removal and Public Art.

Are KPIs allowed to change after voters approved Measure S?

Yes. Measure S includes a Board approved Change Control Process that allows the Board to consider modifications to the program. This process defines a modification as any change to a project's description, project KPI, or funding allocation that affects the delivery of any KPI. Any proposed modification must go through the required public process. The public hearing gives the community a chance to review the proposed modifications and share input before the Board decides.

Can the Board modify the proposed KPI based on public input?

Yes. The purpose of the public hearing is to gather comments and recommendations from the public. After reviewing that input, the Board may approve the proposal as presented, direct changes to it, or reject the proposed modifications.

How can the public participate?

Community members are encouraged to take part throughout the Change Control Process. They can submit written comments, attend Board meetings and the public hearing, and share testimony before the Board considers the proposed modifications. The Board will review all public comments before deciding whether to approve, revise, or reject the proposed modifications. While the public may suggest changes, any modifications to the Safe, Clean Water Program KPIs must be formally considered and approved by the Valley Water Board through the Change Control Process.



Project E5 : San Francisquito Creek Flood Protection

Who is responsible for delivering the San Francisquito Creek project?

The San Francisquito Creek Joint Powers Authority (SFCJPA) is responsible for planning, designing, permitting, coordinating funding, and constructing the project. Valley Water is one of five member agencies and participates according to the SFCJPA Joint Powers Agreement.

Community members who want to follow the pace or direction of the San Francisquito Creek project can attend SFCJPA Board meetings or send comments directly to the SFCJPA. Meeting schedules, agendas, and contact information are available on the [SFCJPA website](#).

Why is Valley Water proposing to modify the Project E5 KPI?

The independent performance audit found that the current KPI measures an outcome that Valley Water does not control. The San Francisquito Creek Joint Powers Authority (SFCJPA), not Valley Water, is responsible for delivering the overall project. The proposed KPI is meant

continued on back →

to better match Valley Water’s actual responsibilities as one of five member agencies with equal roles, and as a funding partner.

Is Valley Water withdrawing from the San Francisquito Creek project?

No. Valley Water remains a member of the SFCJPA and continues to participate according to its responsibilities as outlined in the [SFCJPA member agreement](#). The proposal does not reduce Valley Water’s funding commitment under the Safe, Clean Water Program.

Valley Water continues to provide funding for known project elements, including the local cost share for the Newell Road Bridge Replacement. At the same time, the SFCJPA is continuing to seek additional federal, state, and local funding for the remaining project elements that are still being planned.

Does this proposal weaken Valley Water’s commitment to the project?

No. The proposal only changes how Valley Water measures its performance under Measure S; it does not change the project’s flood protection objectives, Valley Water’s participation in the project or SFCJPA partnership, or any existing funding commitments.

In fact, Valley Water’s Safe, Clean Water Program funding for Project E5 has increased over time as project costs have been refined. Since the renewed Safe, Clean Water Program began, funding for Project E5 has grown from approximately \$11.5 million to approximately \$26.3 million, showing Valley Water’s continued financial commitment to the project.

Does this proposal eliminate Valley Water’s commitment to flood protection?

No. Flood protection is still the primary purpose of the project, and this benefit is clearly stated in the proposed KPI. The proposed KPI focuses on the responsibilities Valley Water can directly measure under the Safe, Clean Water Program, rather than the overall project outcome, which is not within Valley Water’s control.

Why isn’t the proposed KPI based on flood protection outcomes?

Valley Water is not the lead agency, so it cannot independently guarantee delivery of the overall flood protection outcome. The project outcome depends on the actions of the SFCJPA and its five member Board. Valley Water holds one of five seats on the SFCJPA Board. The cities of East Palo Alto, Menlo Park, Palo Alto and One

Shoreline hold the other four seats, and they all equally share responsibility for project implementation and funding according to the current SFCJPA member agreement.

The SFCJPA is responsible for overall project planning, design, permitting, funding coordination, and construction. The proposed KPI modification, therefore, measures Valley Water’s responsibilities under Measure S rather than outcomes that depend on actions taken by all SFCJPA member agencies, each of which has one vote as a member agency.

Does the proposed KPI change Valley Water’s contractual obligations?

No. The [existing agreement](#) among the SFCJPA member agencies remains unchanged. The proposal only changes the Measure S performance metric. It does not change Valley Water’s funding responsibilities, partnership commitments, or any other responsibilities established through the existing membership agreement.

Why is Valley Water’s role different now from the lead role it took on the Reach 1 project?

Valley Water’s role as the lead for construction of Reach 1 was established in a Construction Management agreement between the SFCJPA and Valley Water in 2015 (see the San Francisquito Creek Project Timeline). There is no similar current agreement that designates Valley Water as the lead for project planning, design, or construction of Reach 2.

If the SFCJPA Board determines that it is in the best interest of the project for Valley Water to serve as the lead for any phase, agreements similar to those used for the Reach 1 project can be executed.

If members of the public want to advocate for Valley Water to have a lead role in the Reach 2 project, [SFCJPA Board meetings](#) are an appropriate venue for those public comments.



Aerial view of San Francisquito Creek

What does 'commensurate with the project's benefits to Santa Clara County' mean?

The Safe, Clean Water Program/Measure S is a Santa Clara County voter approved special parcel tax and is fully funded by Santa Clara County taxpayers.

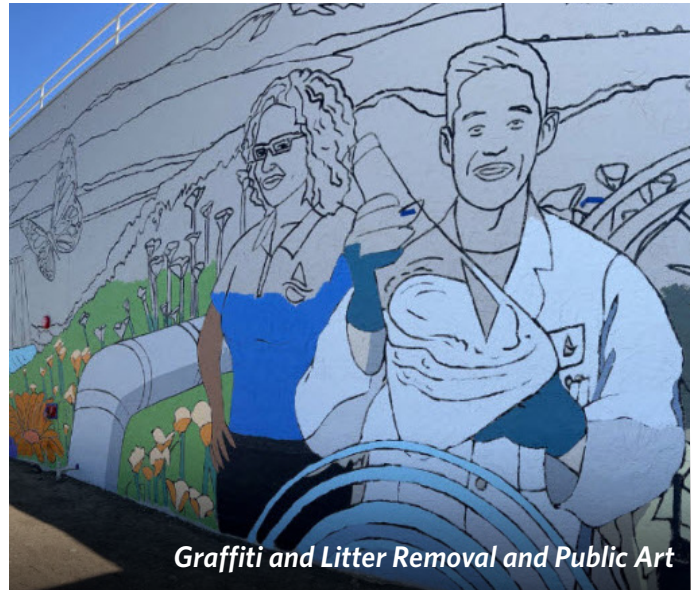
Safe, Clean Water funds are intended to provide benefits for Santa Clara County through the delivery of the program's priorities. Because of this, the proposed language recognizes that Valley Water's financial participation should be proportional to the flood protection benefits the project provides within Santa Clara County. It does not change the project's existing funding under the program or modify existing agreements among the partner agencies. It simply acknowledges that Valley Water's financial participation should align with the level of flood-protection benefits the project delivers within Santa Clara County.

Does this proposal affect Valley Water's current role or technical support?

No. The KPI addresses performance measurement only. It does not establish or eliminate technical support that may be provided through separate agreements, Board direction, or Valley Water's participation in the SFCJPA. It also does not change Valley Water's role as a member agency of the SFCJPA.

Why is Valley Water proposing this change now?

The proposal went through several steps. It began with the independent performance audit. After that, the Board directed staff to send the audit's recommended changes to the Board Policy and Monitoring Committee (BPMC) for review. Staff evaluated the audit recommendations, and the BPMC reviewed them and expressed support. With that completed, the Board then directed staff to begin the public hearing process.



Graffiti and Litter Removal and Public Art

Project F6 : Good Neighbor Program - Graffiti and Litter Removal and Public Art

What changes are proposed for the Public Art Program?

The proposal would allow Valley Water to implement or fund eligible public art projects beyond Valley Water-owned property and infrastructure, expanding accessibility and opportunities for public education about water resources and environmental stewardship while helping deter graffiti and litter.

Does this reduce graffiti removal or litter cleanup?

No. Graffiti removal, litter cleanup, fence maintenance, and related activities would continue as described in the project.

Why expand public art beyond Valley Water property?

The proposed change is intended to increase community benefit, public engagement, improve program feasibility, and better align the program with Valley Water's strategic goals and available resources.

CONTACT US

To find out the latest information on Valley Water projects or to submit questions or comments, use our **Access Valley Water** customer request system at access.valleywater.org.



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San Francisquito Creek Project Timeline



1998

During the February 1998 El Nino event a flood of record on San Francisquito Creek caused an estimated \$28 million in damages in Palo Alto, East Palo Alto, and Menlo Park. The impact of this flood event was widespread because San Francisquito Creek runs along the border of San Mateo and Santa Clara counties.

1999

The cities of East Palo Alto, Palo Alto, Menlo Park, the San Mateo County Flooding and Sea Level Resiliency District, and Valley Water formed the San Francisquito Creek Joint Powers Authority (SFCJPA) to lead projects that mitigate the risk of flooding along San Francisquito Creek and the Bay.

2000

The Clean, Safe Creeks and Natural Flood Protection Plan (Clean, Safe Creeks Plan) was approved by voters, providing funding for the San Francisquito Creek Flood Protection Project.

2009

The Project was separated into two reaches: Reach 1 was the San Francisco Bay to Highway 101; and Reach 2 was focused on Upstream of Highway 101.

2012

The Safe, Clean Water and Natural Flood Protection Program was approved by voters and replaced the Clean, Safe Creeks Plan in entirety. Work continued with planning and design, with Valley Water providing technical expertise and support in the management of the design consultant.

2014

SFCJPA member agencies entered into a construction funding agreement for the SF Bay to Highway 101 project (Reach 1) with Valley Water providing the bulk of the construction funding, which required shifting funds originally planned for use on the Upstream of Highway 101 project (Reach 2)

2015

Valley Water's role as the lead for construction of Reach 1 was established in a Construction Management agreement between the SFCJPA and Valley Water.

2016

Based on an agreement with the SFCJPA, Valley Water bid and awarded a construction contract for the Reach 1 Project and served as the construction lead.

2019

Construction of Reach 1 was completed, providing 100-year (1%) flood protection downstream of Highway 101.

2019

An Environmental Impact Report (EIR) was adopted by the SFCJPA Board. Valley Water utilized existing on-call consultant agreements to issue task orders for design and the US Army Corps of Engineers (USACE) CAP 205 study for channel widening began for the Upstream of Highway 101 reach (Reach 2).

2020

In November the renewed Safe, Clean Water Program was approved by voters.

2021

The Safe, Clean Water Program's Independent Monitoring Committee recommended that the Board initiate the first of the Program's required independent professional audits earlier than the planned initiation for the 5th year of the Program. The Board directed staff to first initiate a closeout audit of the 2012 Safe, Clean Water Program. After its completion, staff initiated the audit for the renewed Safe, Clean Water Program.

2022

Valley Water issued task order for channel widening design.

2022

The December 31, 2022 flood event produced the second-highest of recorded flows.

2023

In May 2023, Valley Water sent a letter to request guidance from the SFCJPA on the desired design flow, which also confirmed Valley Water is leading the design of several project elements.

2023

In June 2023, Valley Water submitted a technical memoranda on updated stream hydrology and capacity based on findings from the December 31, 2022 flood event to the SFCJPA.

2023

In September of 2023 the SFCJPA response letter stated that the SFCJPA would conduct an independent analysis of hydraulics and updated capacity, and will confirm the design with its members and would provide its findings to Valley Water.

2024

In February 2024, an independent review led by the SFCJPA was completed and confirmed Valley Water's hydrology and updated capacity findings. **The results required a reevaluation and redesign of the Reach 2 Project.***

2025

In the fall of 2025, the renewed Safe, Clean Water and Natural Flood Protection Program audit was completed. The audit was conducted by PMA Consultants and evaluated the Safe, Clean Water and Natural Flood Protection Program's implementation from July 1, 2021, through June 30, 2024. The audit identified nine findings and included recommendations to review and update certain project KPIs to ensure they remain financially sustainable, aligned with current project activities, and clearly reflect project scope and intended deliverables. The audit report can be found at tinyurl.com/SCWauditFY22-24.

2025

The Board received the Audit Report on November 12, 2025, and directed that the appropriate Board committee evaluate the Auditor's recommendations and determine whether KPI revisions were warranted. The Board Policy and Monitoring Committee (BPMC) was assigned.

2026

On April 21, 2026, the BPMC reviewed proposed revisions to the KPIs of the renewed Safe, Clean Water Program, which included a review of the proposed modified KPI language for the San Francisquito Creek Flood Protection Project (Project E5) and a staff recommended modification to Project F6, the Good Neighbor Program: Graffiti and Litter Removal and Public Art. **Following staff's presentation, the SFCJPA Executive Director made a public comment in support of the proposed revisions to Project E5, the San Francisquito Creek Flood Protection Project.** To view the April 21, 2026, BMPC meeting, visit: <https://fta.valleywater.org/dl/JqPTJw6xykH6>

2026

On June 23, 2026, the Valley Water Board of Directors reviewed proposed modifications to Projects E5 and F6 and set the time and place for a public hearing on the proposed modifications to Projects E5 and F6 of the Safe, Clean Water and Natural Flood Protection Program for 1:00 PM on July 14, 2026, at the Santa Clara Valley Water District Boardroom, 5700 Almaden Expressway, San Jose, California, and via Teleconference Zoom Board Meeting

***As of June 2026, the SFCJPA is continuing to re-evaluate and re-design the Reach 2 Project.**

The proposed modification to the KPI does not reduce the project's funding under the Safe, Clean Water Program. Because the project has not yet been fully defined or designed by the SFCJPA, and the benefit to Santa Clara County remains undefined, an accurate and reliable cost estimate is not currently available. Consequently, it is not possible at this time to determine the portion of funding that is commensurate with the project's benefits to Santa Clara County.

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Proposed Modifications

Presented by: **Jessica Collins**, Business Planning and Analysis Unit Manager

July 14, 2026

Agenda

Renewed Safe, Clean Water Program

Change Control Process

Proposed Modifications

Next Steps

History of Voter-approved Measures



Community-Preferred Priorities



Transparency and Accountability



Multiple
15-Year
Financial
Planning
Cycles



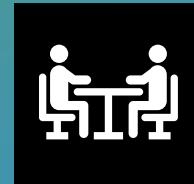
5-Year
Checkpoints and
Implementation
Plans



Annual Reports;
Website
Updates



Independent
Monitoring



5-Year
Professional,
Independent
Audits



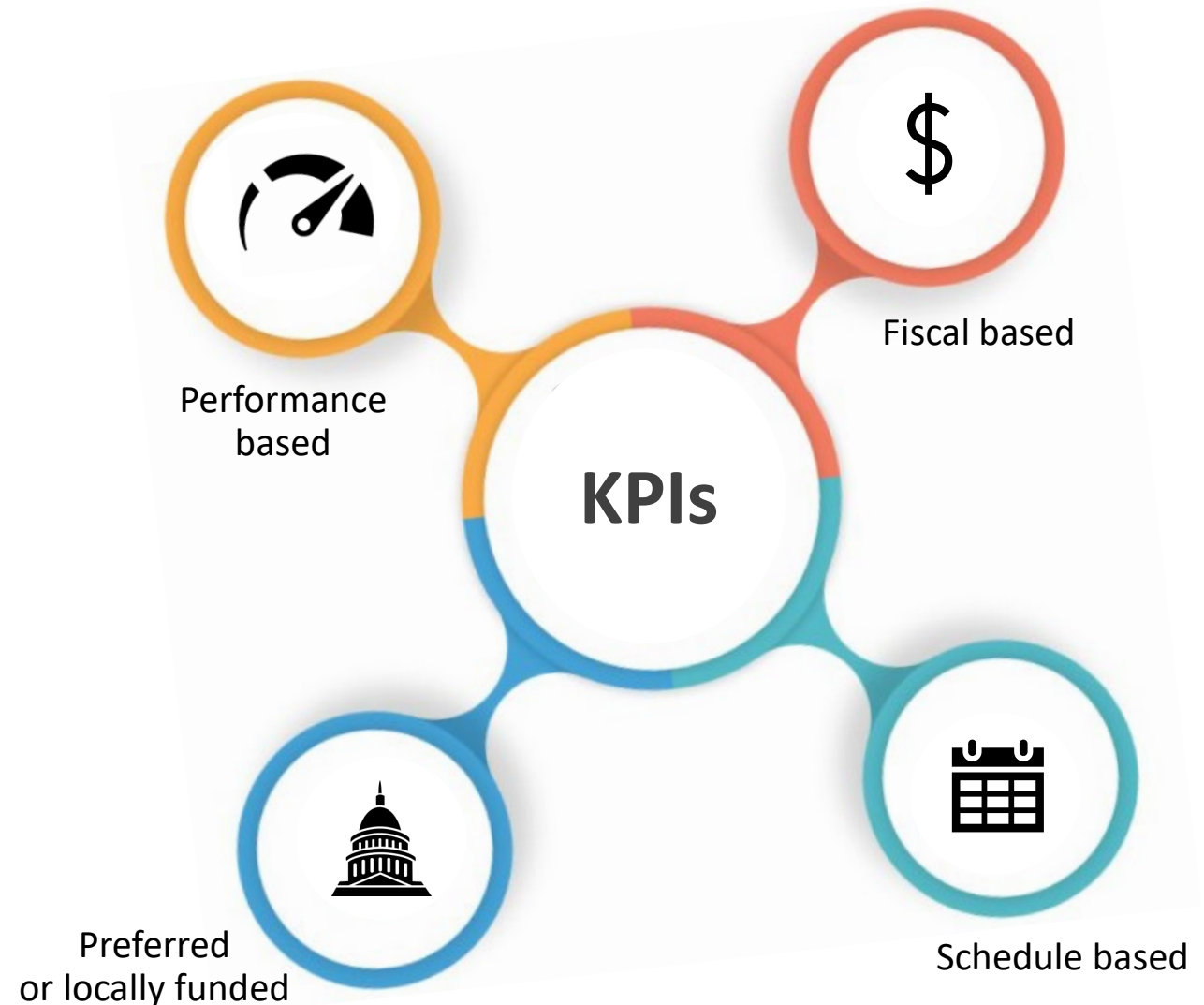
Change
Control
Process



Public &
Interested
Parties
Engagement
Process every
15-years

Monitoring Projects & Program Performance

- KPIs are contained in the election resolution approved by the voters
- Staff, IMC, or Board may recommend KPI adjustment or modification
- Board may modify or adjust KPIs as per the Change Control Process

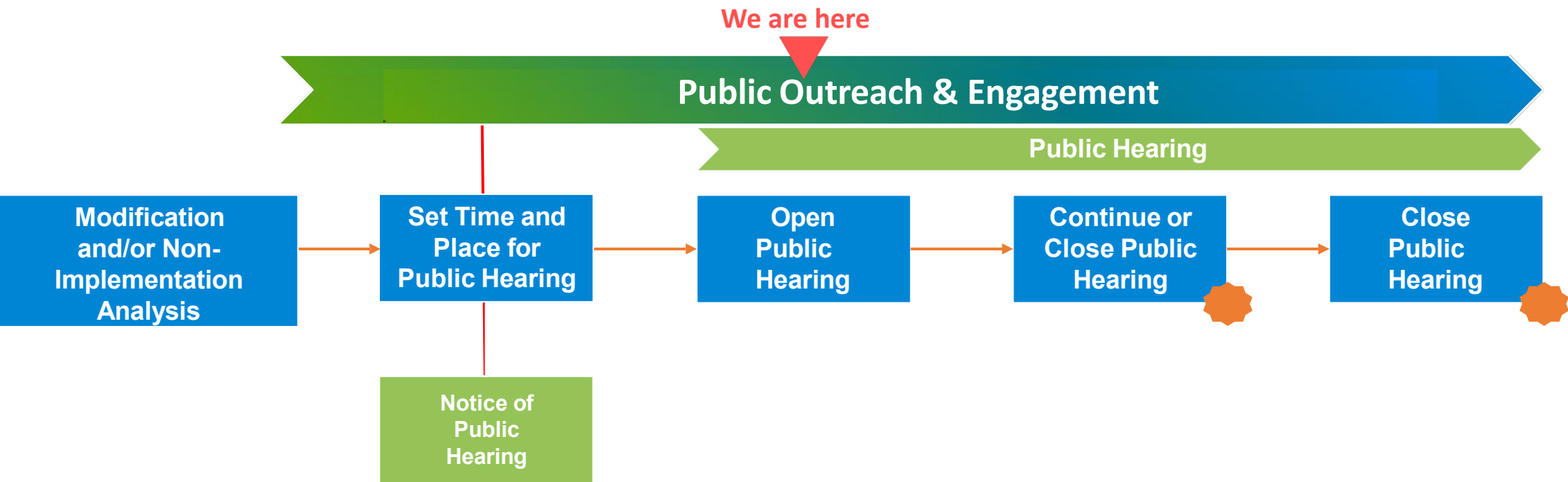


Change Control Process



Change Control Process: Recent Improvements

Standard Process Timeline*



- Board Meeting
- Public Hearing Process
- Public Outreach & Engagement
- Board Direction Provided After Close of Public Hearing

* Estimated duration 2-3 months, may require Board Committee Meetings.

Change Control Process: Recent Improvements

Definitions

Adjustment

(publicly noticed Board meeting)

Changes to the project text or funding allocation that **do not impact** the delivery of any project **KPI**, or changes to a project schedule. Adjustments may include change(s) to a KPI when the purpose of such change(s) is to clarify the project KPI to be consistent with the applicable project description in the approved Program

Modification

(formal public hearing)*

Changes to project description, project KPI, or funding allocation that **impact** the delivery of any project **KPI**.

Not Implement

(formal public hearing)*

A decision by the Board to **not implement** a **project**

Proposed Modifications



Project E5: San Francisquito Creek Flood Protection (Palo Alto)

Auditor Finding #7 and Proposed Modifications

Current KPI #1 and KPI #2:

1. “Preferred project with federal, state and local funding: Protect more than 3,000 parcels by providing 1% (100-year) flood protection.”
2. “With state and local funding only: Protect approximately 3,000 parcels by providing 1% (100-year) flood protection downstream of Highway 101, and approximately 1.4% (70-year) protection upstream of Highway 101.”

Auditor Finding (Finding 7):

- KPI holds Valley Water accountable for flood protection outcome, while Valley Water has no direct control or authority to ensure this outcome is achieved
- KPI does not accurately reflect Valley Water’s current role as a funding partner

Project E5: San Francisquito Creek Flood Protection (Palo Alto)

Auditor Finding #7 and Proposed Modifications

Proposed KPI #1 and KPI #2 Revisions:

- ~~1. “Preferred project with federal, state and local funding: Protect more than 3,000 parcels by providing 1% (100-year) flood protection.”~~
 - ~~2. “With state and local funding only: Protect approximately 3,000 parcels by providing 1% (100-year) flood protection downstream of Highway 101, and approximately 1.4% (70-year) protection upstream of Highway 101.~~
-
1. Provide the San Francisquito Creek Joint Powers Authority a portion of funds commensurate with the project’s benefits to Santa Clara County, to provide flood protection along San Francisquito Creek.

Project F6: Good Neighbor Program: Graffiti | Litter Removal | Public Art

Proposed Modifications

Current KPI #3:

3. “Provide up to \$1.5 million over 15 years to implement public art projects on Valley Water property and infrastructure.”

Purpose of Proposed Modification:

Allow funding of public art projects beyond Valley Water property and infrastructure to educate the public about water and environmental stewardship

Proposed KPI #3:

3. “Provide up to \$1.5 million over 15 years to implement **or fund** public art projects ~~on Valley Water property and infrastructure.~~”

Project F6: Good Neighbor Program: Graffiti | Litter Removal | Public Art

Proposed Modifications

Project Description (Scope):

To maintain consistency with the proposed change to KPI#3, staff recommends the following changes to the Project F6 description:

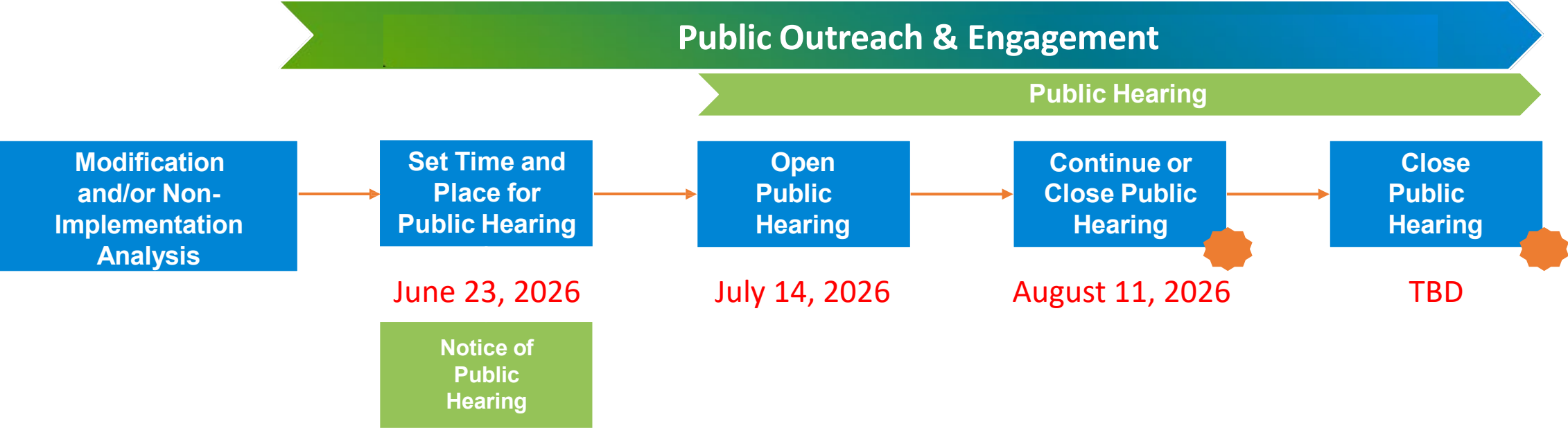
“This project allows Valley Water to continue responding to requests for cleanup of illegal dumping, trash and graffiti on Valley Water’s property and rights-of-way. Cleanup efforts include graffiti removal from floodwalls, concrete embankments, signs, structures and other Valley Water assets, as well as maintaining, repairing and installing fences and gates so that Valley Water structures and facilities remain safe and clean. The project also funds installation and maintenance of public art projects, such as murals, ~~to beautify Valley Water property and infrastructure, to~~ in public spaces throughout Santa Clara County to educate the public about water and environmental stewardship, which in turn will also help deter graffiti and litter.”

Next Steps



Change Control Process: Recent Improvements

Standard Process Timeline*



- Board Meeting
- Public Hearing Process
- Public Outreach & Engagement

Board Direction Provided After Close of Public Hearing

* Estimated duration 2-3 months, may require Board Committee Meetings.

QUESTIONS





Valley Water

Clean Water • Healthy Environment • Flood Protection

Frequently Asked Questions and Answers (FAQs)

Q1: Are KPIs allowed to change after voters approved Measure S?

- A.
- *Yes. Measure S (Safe, Clean Water Program or Program) includes a Board-approved Change Control Process that allows the Board to consider modifications to the Program.*
 - *Any change impacting project descriptions, benefits, KPI, or funding allocations follows the Board-approved Change Control Process*
 - *Public hearing to modify a project ensures transparency and provides the opportunity for community input before a Board action*

FAQs (continued)

Q2: Why is Valley Water proposing changes to these projects?

A. **Project E5**

- *Responds to the independent performance audit recommendation*
- *Current KPIs measure outcomes outside Valley Water's control*
- *Proposed KPI aligns with Valley Water's role as a funding partner and one of the five equal members of SFCJPA*

Project F6

- *Staff-initiated proposal*
- *Increases community benefits*
- *Improves long-term program feasibility*
- *Better aligns the project with Valley Water's strategic priorities and available resources*

FAQs (continued)

Q3: Who is responsible for delivering the San Francisquito Creek project?

- A. • *SFCJPA is the lead agency responsible for:*
- *Project planning and design*
 - *Environmental permitting*
 - *Funding coordination*
 - *Construction delivery*
- *Valley Water is one of five SFCJPA member agencies*
- *Valley Water participates in accordance with the Joint Powers Agreement*
- *Community members interested in the pace or direction of the project may provide input directly through SFCJPA Board meetings and public comment opportunities*

FAQs (continued)

Q4: Is Valley Water withdrawing from the San Francisquito Creek project?

- A. • *No. Valley Water remains an SFCJPA member*
- *Safe, Clean Water Program funding commitment remains unchanged, including the local cost share for the Newell Road Bridge Replacement*
 - *SFCJPA continues pursuing additional federal, state, and local funding for the remaining project elements, which are still being planned*

Q5: Does this proposal weaken Valley Water's commitment to the project?

- A. • *No. The proposal only changes how performance is measured under the Program*
- *It does not change Valley Water's commitment, and Valley Water remains an active SFCJPA partner with no change to existing responsibilities or funding commitments*
 - *Project's flood protection objectives remain unchanged*
 - *Since 2022, Program funding has increased from \$11.5 million to ~\$26.3 million, reflecting Valley Water's continued financial commitment*

FAQs (continued)

Q6: Does this proposal eliminate Valley Water's commitment to flood protection?

- A.
- *No. Flood protection remains the project's primary purpose and benefit.*
 - *The proposed KPI focuses on Valley Water's measurable responsibilities under the Program*
 - *Overall flood protection outcomes depend on the collective actions of the SFCJPA, not Valley Water alone*

Q7: Why isn't the proposed KPI based on flood protection outcomes?

- A.
- *SFCJPA is the lead agency responsible for planning, design, permitting, funding coordination, and construction*
 - *Valley Water is one of five SFCJPA member agencies and funding partners, participating under the Joint Powers Agreement*
 - *Project outcomes depend on all five SFCJPA member agencies, not Valley Water alone*
 - *Proposed KPI measures Valley Water's responsibilities under the Program, rather than outcomes outside its control*

FAQs (continued)

Q8: Does the proposed KPI change Valley Water's contractual obligations?

- A. • *No. Existing SFCJPA agreements remain unchanged.*
- *Proposal only changes the Program's performance metric*
 - *No changes to funding responsibilities or partnership commitments, or other responsibilities established through the existing membership agreement*

Q9: Why is Valley Water's role in Reach 2 different from Reach 1?

- A. • *Valley Water led Reach 1 under a 2015 Construction Management Agreement*
- *No comparable agreement exists for Reach 2*
 - *SFCJPA remains the lead agency for Reach 2*
 - *Future lead roles would require SFCJPA Board approval and new agreements*
 - *SFCJPA Board meetings are the best venue for public input on Valley Water's role or any other agency's role in Reach 2*

FAQs (continued)

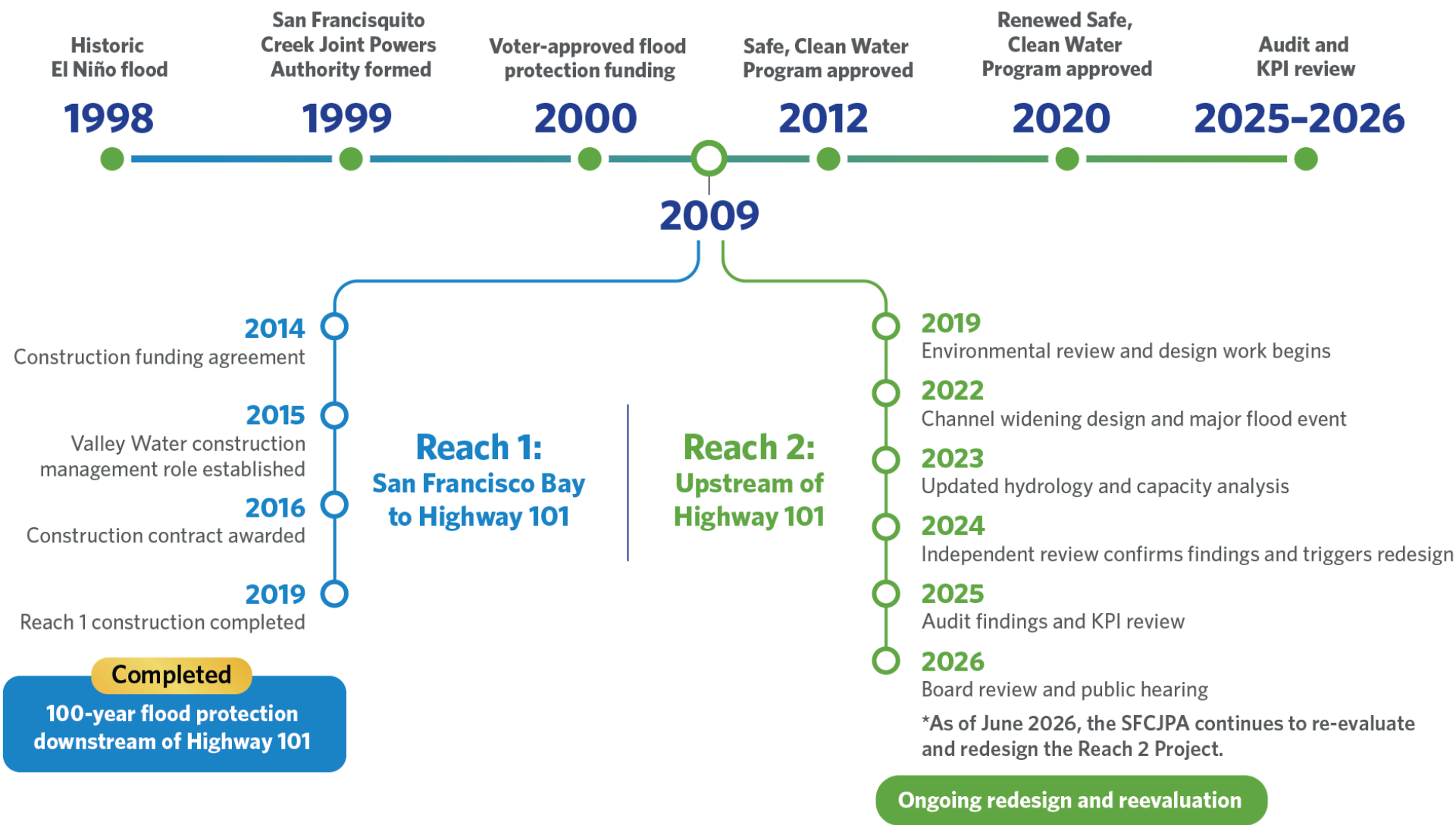
Q10: What does “commensurate with the project's benefits to Santa Clara County” mean?

- A.
- *Safe, Clean Water Program is funded by Santa Clara County taxpayers*
 - *Valley Water's financial participation should be proportional to the flood protection benefits the project provides within Santa Clara County*
 - *No change to current Program funding allocations or SFCJPA agreements*
 - *Provides a framework for future funding decisions as project benefits are defined*

Q11: Does this proposal affect Valley Water’s current role or the technical support provided by Valley Water?

- A.
- *No. KPI change affects performance measurement only*
 - *No change to Valley Water's role as an SFCJPA member agency*
 - *Technical support continues under existing agreements and Board direction*

San Francisquito Creek Project Timeline



The proposed modification to the KPI does not reduce the project's funding under the Safe, Clean Water Program. Because the project has not yet been fully defined or designed by the SFCJPA, and the benefit to Santa Clara County remains undefined, an accurate and reliable cost estimate is not currently available. Consequently, it is not possible at this time to determine the portion of funding that is commensurate with the project's benefits to Santa Clara County.



Valley Water

Clean Water • Healthy Environment • Flood Protection

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Clarification Requested on Measure S KPI E5 and San Francisquito Creek Flood Protection

From Hamilton Hitchings <hitchingsh@yahoo.com>

Date Tue 06/30/2026 08:04 PM

To Board of Directors <board@valleywater.org>

*** This email originated from outside of Valley Water. Do not click links or open attachments unless you recognize the sender and know the content is safe. ***

Dear Chair and Members of the Valley Water Board,

Ahead of the July 14 discussion of Measure S KPI E5 for San Francisquito Creek Flood Protection, I am writing to request clarification on Valley Water's ongoing role, technical participation, and funding commitment to the San Francisquito Creek Joint Powers Authority.

At the June 23 Valley Water Board meeting, staff publicly assured the community that the proposed KPI E5 modification would change only how Valley Water measures the success of its work with the JPA, not Valley Water's participation, role, or funding allocation. Specifically, during the staff presentation, staff stated:

"This proposed KPI modification has no impact on Valley Water's participation with or role with the San Francisquito Creek Joint Powers Authority or on the project's funding allocation. The KPI revision is only pertinent to how we track Safe Clean Water Program and Project Performance."

That assurance was helpful. However, I am concerned that Director Hsueh's comments at the April 21 Valley Water Board Policy and Monitoring Committee meeting may suggest a more restrictive interpretation. Director Hsueh stated that Valley Water stands ready to provide technical support, but that such support must be initiated by the JPA through an agreement with clear roles and responsibilities. I have included the video link and timestamp for reference:

https://scvwd.granicus.com/MediaPlayer.php?view_id=3&clip_id=2406 timestamp starting at 17:02

I respectfully request that Valley Water staff and Director Hsueh clarify the following for the public, the City of Palo Alto, and the SFC JPA:

1. Does Valley Water agree that the existing JPA member agreement remains sufficient for the SFC JPA to request and receive Valley Water technical support?
2. Is Valley Water saying that a new agreement is needed before technical support can continue?
3. Will Valley Water continue to make its experienced technical staff and subject matter experts available to support the Reach 2 project when requested by the SFC JPA?
4. Will eligible Valley Water technical support for this project continue to be funded through Measure S, consistent with past practice?

I believe this clarification should be stated clearly on the record and, ideally, reflected in the KPI

language. Regardless of which agency serves as project lead, Valley Water's technical participation and subject matter expertise are vital to the success of San Francisquito Creek flood protection. Handout 3.4-A 07/14/2026

Finally, Valley Water's website, last updated in April 2026, currently lists \$53.5 million in funding for this project. Please clarify whether that funding amount remains unchanged under the proposed KPI modification. In addition, has Valley Water provided the SFC JPA, and made public, how much Measure S funding has been spent so far on San Francisquito Creek Flood Protection and, at least at a high level, how those funds were used? This information is necessary for the SFC JPA, Palo Alto, and the public to understand the remaining funding available and to plan the Reach 2 project responsibly.

Thank you for your consideration and for clarifying these issues before or during the July 14 discussion.

Sincerely,

Hamilton Hitchings

Max Overland

From: Mr. Shore <jshore1905@gmail.com>
Sent: Thursday, July 2, 2026 11:37 AM
To: John Varela; Shiloh Ballard; Richard Santos; Jim Beall; Nai Hsueh; Tony Estremera; Rebecca Eisenberg; Clerk of the Board
Cc: greer.stone@paltoalto.gov; lgauthier@smcgov.org; mdinan@cityofepa.org; Combs, Drew; Keith.Reckdahl@paltoalto.gov; keakin@redwoodcity.org; cttaylor@menlopark.gov; rabrica@cityofepa.org; Margaret Bruce; Shikada, Ed; Melanie Richardson
Subject: Proposed Modification of Project E5 Key Performance Indicator
Attachments: SCVWD-E5_KPI--Edgewood--01Jul2026.pdf

Follow Up Flag: Follow up
Flag Status: Completed

Categories: Completed

*** This email originated from outside of Valley Water. Do not click links or open attachments unless you recognize the sender and know the content is safe. ***

Please find attached a comment letter on the above-referenced subject for your consideration.

Respectfully,

Jeffrey Shore

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July 2, 2026

VIA EMAIL

To: jvarela@valleywater.org, sballard@valleywater.org, rsantos@valleywater.org,
jbeall@valleywater.org, nhsueh@valleywater.org, testremera@valleywater.org,
reisenberg@valleywater.org, clerkoftheboard@valleywater.org

cc: greer.stone@palocalto.gov, lgauthier@smcgov.org, mdinan@cityofepa.org,
dcombs@menlopark.gov, Keith.Reckdahl@PaloAlto.gov, keakin@redwoodcity.org,
cttaylor@menlopark.gov, rabrica@cityofepa.org, mbruce@sfcjpa.org,
ed.shikada@palocalto.gov, mrichardson@valleywater.org

Re: Comments Regarding Proposed Modification of Project E5 Key Performance Indicator — San Francisquito Creek Reach 2 — July 14, 2026 Public Hearing

Dear Chair Estremera, Vice Chair Santos and Members of the Board,

I am writing on behalf of myself and more than a dozen other families whose homes on Edgewood Drive in Palo Alto border San Francisquito Creek just upstream of Highway 101. After the February 1998 flood, East Palo Alto authorized a developer to raise above flood level a creek-adjacent site opposite our homes and construct a multi-story apartment complex on it. In response, Valley Water worked with homeowners, the developer, permitting agencies and officials from Palo Alto, East Palo Alto and San Mateo County to spearhead the San Francisquito Creek Levee Project in 2002, protecting our homes and surrounding properties from increased flood risk associated with the raised site. That project, like the one now before this Board, required construction through backyards, coordination across four jurisdictions, and no small measure of diplomacy — on a much smaller scale than Reach 2, but drawing on the same skills and experience this project will require.

I. Our Request

Speaking for our neighborhood, and also as someone who has lived adjacent to San Francisquito Creek just upstream of Highway 101 since 1996, has attended innumerable Board meetings of the San Francisquito Creek Joint Powers Authority (“*SFCJPA*”), served on Valley Water’s former Lower Peninsula Flood Control and Watershed Advisory Committee for many years, and who voted for the renewal of the SCW Program in 2020, we have one request.

Before advancing the modification of the Project E5 Key Performance Indicator (“*KPI*”), we urge Valley Water to make a sustained and genuine effort to adjust its role in and authority

over SFCJPA’s Reach 2 project (the “*Project*”) and preserve the current KPI.¹ Having made a commitment to voters in 2020, the burden should fall on Valley Water to demonstrate that no adjustment — of whatever form — could preserve the existing KPI. It is the KPI that should be protected, and Valley Water’s role or authority that should be adjusted — not the reverse. As a first step, we ask the Board to direct staff to prepare a framework defining the roles and responsibilities that would allow the existing KPI to be preserved, as described further below.

II. Why This Matters Now

Valley Water has been the principal funder of flood risk reduction improvements on San Francisquito Creek for many years, and the community is mindful of that investment, as well as the genuine resource constraints that Valley Water currently faces. The concern raised here is not with Valley Water’s commitment to date, but with what the proposed KPI would mean for the Project going forward.²

The proposed KPI modification would be unwelcome at any time, but it comes at a moment of heightened stress for the Project. Federal funding constraints are tightening across the board, every dollar of local funding is under pressure, and within the affected communities there remains genuine disagreement about the relative benefits of the leading solution and whether its costs are proportionate to the protection they would deliver. In this environment, community and institutional confidence in the Project’s leadership and accountability structure is not a nicety — it is a precondition for the Project moving forward at all.

III. Why Valley Water’s Engagement Is Structurally Necessary

The SFCJPA was never designed to deliver the Project independently. Its lean staff and its member agencies have no comparable experience managing a flood control capital project of this complexity. A funding-only KPI would not simply reflect Valley Water’s reduced role; it would codify and entrench it, removing the outcome-based pressure that gives Valley Water reason to fully engage and depriving the SFCJPA of the informed scrutiny that Valley Water’s active involvement brings to the Project. What the Board is being asked to ratify is Valley Water’s transformation — unannounced and until December 2024 unknown to the public — from a full partner in Project delivery into a source of Project funds.

¹ The Reach 2 Project covers the extent of San Francisquito Creek from Highway 101 upstream to Middlefield Road. The current Project E5 KPI is a 2-part outcome-based metric, as follows: 1. *Preferred project with federal, state and local funding: Protect more than 3,000 parcels by providing 1% (100-year) flood protection.* 2. *With state and local funding only: Protect approximately 3,000 parcels by providing 1% (100-year) flood protection downstream of Highway 101, and approximately 1.4% (70-year) protection upstream of Highway 101.*

² The proposed Project E5 KPI would replace the current 2-part KPI with the following funding-only metric: 1. *Provide the San Francisquito Creek Joint Powers Authority a portion of funds commensurate with the project’s benefits to Santa Clara County, to provide flood protection along San Francisquito Creek.*

IV. Reexamining the Audit's Role as the Impetus for the KPI Modification Proposal

The Performance Audit Report of the Safe, Clean Water and Natural Flood Protection Program (the “*SCW Program*” aka “*Measure S*”) for FY22-24 (the “*Audit Report*”) was prepared by PMA Consultants (the “*Auditors*”), based on fieldwork that ended in July 2025, and was received by the Board in November 2025. Findings 6 and 7 are central to the proposed modification.

A. Finding 7 — KPI Misalignment with Valley Water’s Role and Authority

In Finding 7, the Auditors noted that the KPI for San Francisquito Creek flood protection (“*Project E5*”) is misaligned with Valley Water’s role and authority because the “KPI holds Valley Water accountable for delivering a specific community outcome (protecting parcels from a 70-year flood event), yet Valley Water no longer has the direct control or authority to ensure this outcome is achieved” and that the “KPI, as currently worded, does not accurately reflect Valley Water’s role as a funding partner.” Based on Finding 7, the Auditors recommended that Valley Water re-evaluate the KPI for Project E5 and consider options for shifting the KPI from an outcome-based metric to one that measures Valley Water’s specific, controllable contributions, such as a funding or partnership-based deliverable.”

There are legitimate questions about whether and when Valley Water relinquished “direct control or authority” over the Reach 2 Project, and, if so, whether SFCJPA staff’s assumption of that “direct control or authority” was authorized. In the Committee Agenda Memorandum prepared by staff for the meeting of the Board Policy & Monitoring Committee (the “*BPMC*”) on December 6, 2024 (the “*December 2024 Memo*”), staff assert that Valley Water turned over project design leadership to the JPA in February 2023, at the JPA’s request.³ Publicly available SFCJPA Board agendas and minutes show no evidence that the transfer was authorized by Board-level action or documented in writing.

Section 9(e) of the Second Amended and Restated JPA Agreement (the “*JPA Agreement*”) states that “no Action of the Authority shall be effective or binding unless and until such action has been authorized by the Board of Directors.” If the SFCJPA’s assumption of project design leadership was an Action of the Authority, it would appear to require SFCJPA Board authorization. In addition, section 24 of the JPA Agreement includes a customary integration clause, which states that “there are no oral understandings or agreements not set forth in writing herein.” The absence of any written record of the transfer may not merely constitute a procedural gap; it is potentially inconsistent with the JPA Agreement’s own integration clause. Valley Water signed the JPA Agreement in August

³ A copy of the December 2024 Memo is attached as Exhibit A. Compare the statement in related Finding 6: “*Valley Water’s role has evolved from project lead to that of a primary funder and influential partner within the . . . SFCJPA.*” This notion of an “evolving” role change is echoed in an observation made by Valley Water’s SFCJPA Board representative in an exchange with Menlo Park’s Board representative at a SFCJPA Board meeting on February 26, 2026.

2023, five months after the reported transfer, without any reference to the transfer appearing in the JPA Agreement’s text or in any contemporaneous JPA Board agendas or minutes.

In their written response to the December 2024 Memo, SFCJPA staff did not concede that Valley Water’s authority over the Reach 2 Project had been limited (the “*SFCJPA December 2024 Response*”).⁴ SFCJPA staff argued the opposite: that Valley Water’s role at the time was unchanged from its role in the completed Reach 1 Project.⁵ However, SFCJPA staff simultaneously acknowledged that, beginning in 2020, at Valley Water senior staff’s encouragement and by mutual agreement, SFCJPA staff took on an increasing share of the Project’s coordination, planning, design and management, as Valley Water staff cited heavy workloads and competing priorities. In effect, SFCJPA staff’s own account is not that the role changed, but that Valley Water voluntarily stepped back from it.

Finding 7 concludes that Valley Water’s Project E5 KPI is misaligned with its current role because it “no longer has the direct control or authority” to ensure the 70-year flood protection outcome is achieved. This conclusion appears to rest on the premise that the reported February 2023 transfer of project design leadership was legitimate, authorized, and irreversible. A premise of that kind would typically be confirmed by verifying that the role shift was authorized by the appropriate governing body, documented in a written agreement or resolution, disclosed to and ratified by the SFCJPA Board, and consistent with the governance requirements of the JPA Agreement itself. The Audit Report does not appear to reflect that this verification took place.

Furthermore, Section 5(i) of the JPA Agreement explicitly authorizes the Authority to “assign, delegate, or contract with a Member Entity or third party to perform any of the Authority’s duties.” This provision confirms that even if Valley Water’s role is limited, it is not a structural feature of the JPA. It is a governance choice that the Authority has the power to reverse at any time through a formal delegation. This provision suggests that the misalignment between Valley Water’s role and its KPI is remediable within the existing governance framework — a possibility the Audit Report does not appear to address.

B. Finding 6 — Enhanced Partnership Project Management

Finding 6 recommends that Valley Water develop better tools, specifically a Strategic Decision & Risk Log, to more effectively manage its position within the SFCJPA partnership, protect its financial investment, and influence project outcomes. Management agreed with this recommendation. Finding 6 is a recommendation for more strategic

⁴ A copy of the SFCJPA December 2024 Response is attached as Exhibit B.

⁵ The Reach 1 Project involved the extent of San Francisquito Creek from the San Francisco Bay to Highway 101.

engagement, not less. It does not recommend that Valley Water accept a passive funding role.

C. A Timing Question Worth Probing

The December 2024 Memo, which recommended consideration of a funding-only KPI to address Valley Water’s limited authority over the Reach 2 Project, was written approximately eleven months before the Board reviewed the audit findings now being cited to justify a funding-only KPI. The Board may wish to ask staff to clarify the extent to which staff representations and recommendations reflected in the December 2024 Memo were shared with the Auditors and the extent to which the audit findings informed a position that, on the public record, appears to have been considered in advance of the findings.

V. Clarifying Roles and Preserving the KPI Are Not Mutually Exclusive

At the BPMC meeting on April 21, 2026, a public commenter suggested that the revised KPI should include not only a funding deliverable but also an engineering design support deliverable, noting that Valley Water is the only JPA member with a deep bench of flood-control engineering experts and that residents in the floodplain have a legitimate interest in expecting Valley Water to hold itself accountable for engineering design quality assurance. The BPMC Chair declined, stating that the purpose of this KPI modification is to clarify roles and responsibilities, that Valley Water stands ready to support the technical development of the Project but needs a request from the JPA because it is not Valley Water's project, and that technical support would require a separate bilateral agreement initiated by the JPA that defines roles and responsibilities.

This response sits uneasily alongside Finding 7. Finding 7 recommended shifting the KPI to measure Valley Water’s “specific, controllable contributions, such as a funding or partnership-based deliverable.” Engineering design support is squarely a partnership-based deliverable within the meaning of that recommendation. Valley Water could pursue both: a bilateral agreement clarifying roles and responsibilities with the SFCJPA, and a KPI that retains outcome-based accountability to the voters who funded the SCW Program. Treating these as mutually exclusive is a choice rather than a requirement of the governance structure, and it is worth asking what that choice optimizes for. A bilateral agreement that clarifies roles and responsibilities without preserving an outcome-based KPI would give Valley Water welcome administrative clarity, but without corresponding accountability to the community for the outcome that clarity is meant to serve.

At the Valley Water Board meeting on June 23, 2026, the BPMC Chair again offered the same “clarification-of-roles-and-responsibilities” rationale for the KPI modification.⁶ She observed that the existing KPI gives the false impression that Valley Water is solely responsible for the accomplishment of the entire SF Creek project, when in fact an independent JPA is responsible for delivering the project, and Valley Water is only one of five member agencies that shares that responsibility. This rationale is worth examining on two points.

First, if the problem with the existing KPI is that it creates a misleading impression of sole responsibility, the remedy is to reword the KPI to accurately reflect shared responsibility, not to eliminate the outcome commitment entirely. The proposed replacement language does not say “Valley Water, as one of five SFCJPA member agencies, shares responsibility for delivering 70-year flood protection upstream of Highway 101.” It says nothing about flood protection levels at all. The “shared responsibility” rationale calls for a clarification of accountability, not an abandonment of it. As a Palo Alto Emergency Services Volunteer stated on the June 23 public record, the Board should “direct staff to bring back a revised KPI that preserves accountability for actual flood protection while clarifying Valley Water’s role with the JPA.”

Second, this “shared responsibility” rationale sits in some tension with how Valley Water led and delivered the downstream Reach 1 project. At the SFCJPA Board meeting on February 26, 2026, Valley Water’s representative on the SFCJPA Board confirmed that Valley Water served as project manager and then project construction manager for Reach 1, but that its role has since evolved. The SFCJPA’s multi-agency structure — and Valley Water’s status as one of five member agencies — was no different during Reach 1 than it is today. If shared responsibility among member agencies did not require diluting the outcome-based KPI for Reach 1, it is unclear why the same shared structure requires diluting it for Reach 2. The more plausible explanation is not a structural feature of the JPA, but a governance choice by Valley Water that can be revisited, using the delegation mechanism already available under Section 5(i) of the JPA Agreement.

The Executive Director of the SFCJPA has stated that Valley Water staff kept her apprised of the KPI modification initiative as it developed. She endorsed the initiative as sensible at a SFCJPA Board meeting in February 2026 and endorsed the specific proposed KPI language at a BPMC meeting in April 2026. On June 23, with that language unchanged, she reversed her position. The Executive Director stated that the proposed language is ambiguous, potentially subject to manipulation, and contrary to Valley Water’s voter commitments, and that SFCJPA staff were never consulted about the specific language before that language was posted publicly for the BPMC meeting on April 21. She committed to collaborating with Valley Water on revised language that better serves both agencies’ objectives. The Board has not yet had the

⁶ The “clarification-of-roles-and-responsibilities” rationale was also attributed to Valley Water staff by the SFCJPA Executive Director at the SFCJPA Board meeting on February 26, 2026.

benefit of a public explanation for that reversal, and one may well exist. In its absence, the Board should give real weight to the fact that an informed participant in this process, who found the proposed KPI sensible as recently as April, concluded by June that it was not.

VI. Most of the Original Justifications for the Revised KPI Have Been Overtaken by Events

The perception of structural misalignment between Valley Water’s role and the current KPI appears to stem from institutional tensions that accumulated over several years without being openly examined or resolved. This perception broke into public view at a Special Meeting of the BPMC on December 6, 2024. The agenda memorandum for that meeting (previously referenced and attached as Exhibit A (“*December 2024 Memo*”)) bundled the issue of Valley Water’s KPI together with broader concerns about its governance relationship with the SFCJPA, its financial obligations, the JPA’s financial controls, and the direction of the Project, without clearly distinguishing which of those concerns independently justifies a permanent modification to the KPI. The December 2024 Memo catalogued seven concerns as potential justifications for a KPI modification (apart from limited control or authority over the Project). The status of each, as of this writing, is summarized below:

A. Uncertainty about Level of Flood Protection SFCJPA Would Pursue

On January 30, 2025, the SFCJPA Board formally reaffirmed the 7,200 cfs design goal corresponding to 70-year flood protection, consistent with the 2019 certified EIR. Neither Valley Water staff nor the Auditors cited this resolution as a material development.

B. Apparent Infeasibility of Four-Element Design for Reach 2 following December 2022 Revelation that the Creek has 25% Less Capacity than Previously Modeled

In May 2025, the SFCJPA’s consultant presented its Alternatives Evaluation Technical Report, which detailed preliminary design alternatives that would achieve the design goal of containing 7,200 cfs. Neither Valley Water staff nor the Auditors cited this Report as a material development.

C. The SFCJPA’s Failure to Complete Required Financial Audits for Five Years

On March 26, 2026, the SFCJPA Board accepted audits for all five outstanding fiscal years. Valley Water staff did not cite this resolution as a material development.

D. Valley Water’s Indirect Subsidy of SAFER Bay Project Operations through Inadequate Expense Separation

The SFCJPA December 2024 Response disputed this characterization as untrue. If this concern remains disputed rather than affirmatively resolved, the Board may wish to ask staff whether it continues to be treated as a basis for the proposed KPI modification.

E. Lack of Project Ownership is Inconsistent with Capital Project Status

San Francisquito Creek Flood Protection (E5) was transferred from the CIP Five-Year Plan into an Operating Project for budgeting and long-term forecasting by the Valley Water Board on January 13, 2026, “to be more consistent with other similar projects where Valley Water is not the project owner or lead agency.” Unlike the concerns above, this is not a December 2024 concern that the SFCJPA resolved. It is a subsequent action by Valley Water itself, and it bears directly on the transformation referenced in Section III above.

F. A Funding-Voting Mismatch on the SFCJPA Board

Valley Water has one vote of five on the SFCJPA Board despite contributing most of the project funding. Staff suggested Valley Water consider seeking weighted voting rights. There is no evidence in the public record that Valley Water has pursued this remedy. Therefore, this concern remains unresolved.

G. Funding Gap Anticipated Without Credible Funding Plan

As the December 2024 Memo explained, total Project costs cannot be determined until the level of protection for the upstream reach is finalized. Even the then-current design — which did not achieve 70-year flood protection — carried an approximate \$25 million funding gap after applying all remaining SCW Program funds. Valley Water staff estimated that achieving 70-year protection would require additional infrastructure and \$50 to \$100 million or more in funding beyond that already-unfunded amount. A formal cost-sharing agreement awaits selection of a preferred design alternative with an associated cost estimate, and funding sources beyond the SCW Program will still need to be identified to close the resulting gap.

Of the eight concerns bearing on the proposed KPI modification, Valley Water's purported limited authority over the Project — the central premise of Finding 7 — appears to rest on an unauthorized and undocumented 2023 transfer of project leadership that, as discussed above, is remediable at any time through the JPA Agreement's own delegation mechanism. Of the seven remaining concerns catalogued in the December 2024 Memo, three have been affirmatively resolved by the SFCJPA's own subsequent actions (the reaffirmed design goal, the viable design alternative, and the completed audits). One — the SAFER Bay expense-separation

concern — remains disputed rather than resolved. Two — the funding-voting mismatch and the anticipated funding gap — remain entirely unaddressed. The seventh — reclassifying the Project from a Capital Project to an Operating Project to reflect that Valley Water is not the Project's owner or lead agency — was among the actions the December 2024 Memo itself put before the BPMC for consideration. Unlike the KPI modification now before the Board, that action did not require a public hearing. Valley Water's Board implemented it on January 13, 2026. On this accounting, the central justification for the proposed KPI modification is not a structural fact but a governance choice that remains reversible; roughly half of the supporting concerns catalogued in December 2024 no longer hold; and where Valley Water has already acted on a December 2024 concern, it has done so without the kind of public process now being extended to the KPI question.

VII. Proposed KPI Language Creates an Unmeasurable Funding Standard

If the purpose of the modification is to align the KPI with Valley Water's actual role as a funding partner, the proposed language should clearly define that obligation. Instead, it makes Valley Water's funding contribution contingent on "the project's benefits to Santa Clara County" — a metric that is undefined, unmeasurable at the time of any given funding decision, and subject to unilateral determination by unspecified parties. Several distinct ambiguities follow from this undefined standard.

A. No Connection to Reach 2 Specifically

"Benefits to Santa Clara County" are not defined as benefits from Reach 2. Read broadly, the language could permit Valley Water to treat its funding obligation as satisfied — or reduced — by pointing to benefits from other Santa Clara County flood-control investments on San Francisquito Creek entirely unrelated to Reach 2. Nothing confines "benefits" to the Project itself.

B. No Defined Methodology

The proposed language states no method for measuring "benefits" — no reference to parcels protected, property value, cost-benefit ratio, population served, or any comparable metric. Without a methodology, the term is not merely imprecise but potentially self-justifying. Any funding level could be rationalized after the fact by selecting a favorable measure of "benefits."

C. No Distinction Between County-Wide and City-Level Benefits

Measuring Valley Water's funding commitment by reference to the Project's benefits to Santa Clara County raises the question whether benefits to the City of Palo Alto would be considered identical to, part of or separate from the benefits to Santa Clara County. The

County's benefits do not necessarily align with the City's benefits. After all, the City is a member of the JPA and may have its own project funding obligation.

D. No Defined Timing

It is unclear when "benefits" are assessed – whether annually, at project milestones, only at completion, or on a continuous basis. This uncertainty leaves unclear when Valley Water's funding obligation attaches and could permit funding delays justified by an assertion that benefits have not yet been demonstrated.

E. No Floor, Cap, or Link to Protection Level

The language does not state whether Valley Water's contribution is capped, has a floor, or is fully open-ended and discretionary. Absent a floor, "benefits-based" funding could in principle be reduced to a nominal amount without violating the KPI's own terms. Nor is it clear whether the modification is intended to permit Valley Water to reduce its financial obligation if the Project ultimately delivers less than 70-year flood protection.

F. No Accounting for Cross-Jurisdictional Benefit

The proposed language does not specify whether "benefits" are measured Project-wide, along the full reach shared with San Mateo County communities, or only for the portion of flood protection benefit attributable to Santa Clara County parcels. Because San Francisquito Creek forms the boundary between the two counties, and flood protection improvements on one bank affect hydraulic conditions on the other, an undefined "benefits" metric leaves unclear whether cross-jurisdictional protection needs are accounted for in determining Valley Water's contribution — a question the Board should resolve regardless of how the underlying cost-share is ultimately allocated among member agencies.

VIII. Our Request, First Step

The voters who approved Measure S in 2020 were promised a specific outcome — 70-year flood protection upstream of Highway 101 — not a funding pass-through of indeterminate amount to an agency of indeterminate capacity pursuing an indeterminate level of protection. As Valley Water's own presentation materials confirm, those KPIs are contained in the election resolution approved by the voters. They are not administrative targets. They are voter commitments.

The audit findings cited in support of the proposed KPI modification describe a misalignment between Valley Water's current role and its existing KPI. But misalignment is not a reason to modify the KPI. It is a reason to restore the role.

Valley Water Board of Directors
July 2, 2026
Page 11 of 11

The public record leading to the public hearing on July 14 reflects broad, informed, and technically credible opposition to the proposed language — from neighborhood organizations, Stanford Civil Engineering faculty, long-term SFCJPA participants and an emergency services volunteer. That record does not support approving the proposed language as written.

As a first step, we respectfully request that the Board direct Valley Water staff to prepare, for the August 11 Board meeting, a draft framework that both defines a minimum set of Valley Water roles and responsibilities for the Reach 2 Project and lays out the steps to implement them — sufficient, once implemented, to permit Valley Water to preserve its existing KPI for the Reach 2 Project flood protection outcome.

Respectfully

Jeffrey Shore
jshore1905@gmail.com

cc: Greer Stone, Chairperson, SFCJPA Board
Lisa Gauthier, Vice-Chairperson, SFCJPA Board
Drew Combs, SFCJPA Board Member
Mark Dinan, SFCJPA Board Member
Keith Reckdahl, SFCJPA Alternate Director, City of Palo Alto
Kaia Eakin, SFCJPA Alternate Director, San Mateo County Flood and Sea Level Rise
Cecilia Taylor, SFCJPA Alternate Director, City of Menlo Park
Ruben Abrica, SFCJPA Alternate Director, City of East Palo Alto
Margaret Bruce, Executive Director, SFCJPA
Ed Shikada, City Manager, City of Palo Alto
Melanie Richardson, Interim CEO, Valley Water
Edgewood Neighbors

Valley Water Board of Directors
July 2, 2026

Exhibit A



Santa Clara Valley Water District

File No.: 24-1039

Agenda Date: 12/6/2024
Item No.: 4.1.

COMMITTEE AGENDA MEMORANDUM Board Policy and Monitoring Committee

Government Code § 84308 Applies: Yes ☐ No ☒
(If "YES" Complete Attachment A - Gov. Code § 84308)

SUBJECT:

Discuss San Francisquito Creek Flood Protection Project (Project) and Issues Related to Santa Clara Valley Water District's Participation in the San Francisquito Creek Joint Powers Authority (SFCJPA) and Provide Feedback.

RECOMMENDATION:

- A. Receive an update on Project status and issues related to Santa Clara Valley Water District's participation in the SFCJPA; and
- B. Discuss and identify opportunities for improvement to help resolve these issues and provide feedback to staff on next steps.

SUMMARY:

At Santa Clara Valley Water District's (Valley Water) September 24, 2024, Board meeting, the Board approved payment of Valley Water's annual member contribution to the SFCJPA Operating Budget. At that time, the Board referred recently encountered policy issues associated with the SFCJPA and the Project to the Board Policy and Monitoring Committee (Committee) for further discussion. The summary below provides the background on the SFCJPA and the Project, a Project status update, and a summary of policy issues to be discussed by the Committee.

Background

San Francisquito Creek forms the boundary between San Mateo and Santa Clara Counties, with the cities of Menlo Park and East Palo Alto to the north and the City of Palo Alto to the south. The creek has overtopped and caused flooding in the surrounding communities several times in the past. The largest flood on record occurred in 1998 and was considered a once in 70-year flood event. The most recent flood event occurred on December 31, 2022, and was the second-largest flood on record.

The SFCJPA was formed in 1999 following the 1998 flood event and consists of five member agencies: Valley Water, the City of East Palo Alto, the City of Menlo Park, the City of Palo Alto, and the San Mateo County Flood and Sea Level Rise Resiliency District (One Shoreline). Each of the member agencies designate their own elected representative to the SFCJPA Board. Since its formation in 1999, the SFCJPA has been working to implement the San Francisquito Creek Flood

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Protection Project (Project).

The Project is part of Valley Water's Safe, Clean Water and Natural Flood Protection Program (Safe, Clean Water Program) that voters renewed in November 2020. Each project in the Safe, Clean Water Program has established key performance indicators (KPIs) that are used to monitor the progress and completion of the project. Flood protection projects reliant on federal funding have two KPIs; one for the preferred project with federal funding and another for a local-funding-only project. This approach allows progress on local KPIs while pursuing additional federal funding sources. Valley Water is currently aiming to achieve the local funding KPI listed below for this Project:

"With state and local funding only: Protect approximately 3,000 parcels by providing 1% (100-year) flood protection downstream of Highway 101, and approximately 1.4% (70-year) protection upstream of Highway 101."

The Project consists of two reaches: The downstream reach from San Francisco Bay to US Highway 101 and the upstream reach from US Highway 101 to Middlefield Road. The downstream reach of the Project was completed in 2018 and provides 100-year flood protection, thus meeting the Safe, Clean Water KPI for the downstream reach. The project included sediment removal, channel widening, levee improvements, and floodwalls. Valley Water took a lead role in implementing the downstream reach of the Project and managed the design and construction. There was no formal agreement for Valley Water to lead the project; rather, it was an informal arrangement between the SFCJPA Executive Director, Valley Water executive management, and other member agencies at the time. Valley Water contributed \$51.2 million, or over 70% of the total cost of the downstream reach. Approximately \$46.8 million was funded by the Safe, Clean Water Program, with the remainder funded by Valley Water's Watershed Stream Stewardship Fund.

The upstream reach of the Project is in progress. An EIR was approved in September 2019, and the preferred alternative included four project elements that would protect from a 70-year flood event. These four elements moved forward into design and have reached various levels of completion, listed below:

1. Pope-Chaucer Bridge Replacement - 90% design (by Valley Water)
2. Channel Widening (4 separate sites) - 90% design (by Valley Water)
3. Newell Road Bridge Replacement - design complete (by City of Palo Alto)
4. Top-of-Bank Improvements (floodwalls) - 60% design (by Valley Water)

Current Project Status

As a result of the December 31, 2022 flooding, Valley Water staff determined that the existing creek capacity was less than estimated in previous models. Consequently, the four above-mentioned project elements would no longer convey the 70-year design flow. The Project, as designed, does not meet the Safe, Clean Water KPI for the upstream reach to provide 70-year flood protection.

Valley Water continued to lead the design of the four upstream project elements until February 2023, when at the SFCJPA's request, Valley Water turned over project design to the SFCJPA to lead. In spring 2024, the SFCJPA hired a consultant to re-evaluate the project alternatives and reaffirm the

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preferred alternative (the four elements). Currently, the Pope Chaucer Bridge replacement, channel widening, and top-of-bank improvements are on hold until that analysis is complete.

The City of Palo Alto completed the Newell Road Bridge replacement design and is now proceeding to project construction since it has been determined that the bridge replacement will provide flood protection benefits without transferring risk downstream, and the project has grant funding. This project is being funded by a Caltrans Highway Bridge Program grant, with Valley Water contributing the local match funds for the grant of approximately 11% through a cost-share agreement with the City of Palo Alto.

Summary of Issues

The issues related to Valley Water's participation in the SFCJPA fall into three categories:

1. Valley Water's role in the SFCJPA
2. Project direction
3. Financial concerns

Valley Water's Role in the SFCJPA

Valley Water has limited authority over the Project outcome. Valley Water has limited voting rights as one of five member agencies, each having one vote. Furthermore, while San Mateo County has three member agencies and three votes (One Shoreline, City of East Palo Alto, and City of Menlo Park), Santa Clara County has only two member agencies and two votes (Valley Water and City of Palo Alto). This creates some inequity in representation on the SFCJPA Board between the two counties. In addition, Valley Water is no longer leading the project and SFCJPA staff has taken over the lead role.

Despite this limited authority over the Project outcome, Valley Water has committed a total of \$81.5 million, which is the majority of funding for the Project. As of Fiscal Year 2024, Valley Water has expended approximately \$60.4 million (which includes both Safe, Clean Water and Watershed Stream Stewardship funding), and approximately \$21.1 million remains in Safe Clean Water funding.

For the downstream reach, Valley Water contributed \$51.2 million (which includes both Safe, Clean Water and Watershed Stream Stewardship funding), while the four other member agencies contributed a combined total of \$4.5 million, as outlined in the First Amended Construction Funding Agreement for the downstream reach. The SFCJPA also received \$8.8 million in Department of Water Resources Proposition 1E and Proposition 84 grant funding for the downstream reach, with Valley Water leading pursuit of the Proposition 84 grant.

For the upstream reach, the City of Palo Alto is currently securing a \$12.5 million Caltrans Highway Bridge Program grant for Newell Bridge Construction. The SFCJPA has executed an agreement for Proposition 1 grant funds in the amount of \$5 million and is pursuing approximately \$8.2 million in U.S. Army Corps of Engineers (USACE) CAP 205 funding.

While other member agency contributions and grant funding have been important to the Project's success, Valley Water's funding has been substantial in comparison.

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Additionally, although Valley Water has limited authority over the Project outcome, the Safe, Clean Water Program KPI implies that Valley Water is responsible for project delivery. The Project's KPI calls for delivering 70-year flood protection for the upstream reach. However, Valley Water's altered role more closely aligns with a 'funding contribution' KPI. Several projects in the Safe, Clean Water Program are measured by funding contribution KPIs. One such example is Project F8: Sustainable Creek Infrastructure for Continued Public Safety, with the KPI to *"Provide up to \$7.5 million in the first 15-year period to plan, design and construct projects identified through Watershed Asset Management Plans."*

Lastly, the Project is included in Valley Water's Capital Improvement Program (CIP) Fiscal Years 2025-29 Five-Year Plan. Aside from USACE partnership projects, this is the only project in Valley Water's CIP that is being led by another agency. Other similar projects where Valley Water is not the project owner and only contributing funds through partnership agreements are included in operating budgets rather than the CIP. Examples of these types of projects include the Los Vaqueros Reservoir Expansion Project, the Delta Conveyance Project, and the B.F. Sisk Dam Raise and Reservoir Expansion Project. Valley Water has limited authority over the delivery of these projects, and therefore, they are included in operating budgets rather than the CIP.

Project Direction

The next issue, which is also discussed above under 'Project Status,' is that the current project does not meet the Safe, Clean Water KPI to provide 70-year flood protection. Following the December 2022 flood event, it became evident that the Project as designed would no longer provide 70-year flood protection, and the SFCJPA hired a consultant to re-evaluate the preferred project alternative. SFCJPA staff is currently working with its consultant and the JPA Board to reaffirm the preferred alternative and select an updated level of flood protection. It is uncertain what level of protection the SFCJPA will pursue. If the SFCJPA proceeds with the current design, it will not meet Valley Water's KPI. If the SFCJPA proceeds with 70-year flood protection, additional flood protection elements will need to be added to the design.

Financial Concerns

Until the updated level of protection for the upstream reach of the Project is determined, the total project costs are unknown. Even with the remaining Safe, Clean Water funding applied to the Project as currently designed, which does not provide 70-year flood protection, there is an approximate \$25 million funding gap. Valley Water estimates that 70-year flood protection would require additional infrastructure, and \$50 to \$100 million or more in funding.

Other financial concerns are related to SFCJPA operations. The SFCJPA Agreement requires annual financial audits, but these have not been completed for the past five (5) years. Financial audits are required by law at least bi-annually.

Additionally, there is no clear delineation of operations expenses between the two projects that the SFCJPA leads: the San Francisquito Creek Flood Protection Project and the SAFER Bay Project. The SAFER Bay Project provides coastal and sea level rise flood protection along the San Mateo County Shoreline. The SAFER Bay Project is located in and fully benefits San Mateo County. At a

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2022 SFCJPA Board meeting, Valley Water and the City of Palo Alto raised concerns about continuing to contribute toward operating costs unless there was a clear separation of funding between the two projects. The purpose of separating expenses is to ensure that no portion of Valley Water or the City of Palo Alto's annual member contribution (approximately \$350,000) is funding SAFER Bay project operations expenses, which benefits San Mateo County.

Next Steps

Some potential next steps for the Committee's consideration are provided below.

1. *Investigate options for Valley Water's long-term participation in the SFCJPA:* Valley Water staff could investigate options for Valley Water's continued participation in the SFCJPA, how the San Francisquito Creek Flood Protection Project would proceed under each option, and the pros and cons associated with each option. Options include withdrawing from the SFCJPA, taking a lead role in the SFCJPA, or continuing in the current limited role. The SFCJPA Agreement includes a clause for withdrawal, which would need to occur by May 1st to avoid payment of the following year's annual member contribution.
2. *Take steps to improve the existing SFCJPA and SFCJPA Agreement:* If Valley Water wishes to continue to participate in the SFCJPA, there are actions that may help resolve some of the identified issues, including:
 - a. *Request to amend the Agreement to include weighted voting rights:* Weighted voting rights would provide Valley Water with more authority over project direction and could be based on funding contribution and/or equal weighting between Santa Clara and San Mateo Counties. Some other JPAs that Valley Water participates in include weighted voting based on funding contribution.
 - b. *Request to amend the Agreement so member contribution is contingent upon financial audits and clear separation of SAFER Bay expenses:* The Agreement could be amended so that payment of member contributions is contingent on the SFCJPA conducting annual financial audits and demonstrating clear separation of expenses between the San Francisquito Creek and SAFER Bay projects. This would provide more transparency regarding how Valley Water funds are being used by the SFCJPA.
 - c. *Confirm and advocate for Valley Water's preferred level of protection:* Valley Water may wish to confirm the level of protection it desires for the project to provide (70-year or other). Confirming the level of protection may include an abbreviated planning effort or other cost-benefit analysis. Once determined, Valley Water's representative on the SFCJPA Board could advocate for Valley Water's preferred level of protection.
 - d. *Advocate for additional funding from other members or outside sources:* It's clear that no matter which level of protection is selected or how Valley Water chooses to continue to participate, additional funding will benefit the Project and the SFCJPA. Valley Water may wish to advocate for additional funding from other SFCJPA members or other local, state, or federal sources.

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3. *Consider modifications to the Safe, Clean Water Program:* Depending on how Valley Water chooses to participate in the SFCJPA and the level of protection offered by the Project, Valley Water will need to modify the Safe, Clean Water Program, specifically the Project KPI. If Valley Water continues its current role, a funding contribution KPI more accurately reflects that role. Additionally, the Project level of protection will need to be modified once determined by the SFCJPA unless it remains at the 70-year level.
4. *Consider Changing the Project from a capital to an operations project:* Unless Valley Water becomes the project owner, consider removing the Project from the Capital Improvement Program (CIP) to be more consistent with other similar projects where Valley Water is not the project owner or lead agency.

Staff is requesting feedback from the Committee on proceeding with any of the above listed or other next steps that the Committee recommends.

ENVIRONMENTAL JUSTICE AND EQUITY IMPACT:

This action is unlikely to or will not result in adverse impacts and is not associated with an equity opportunity.

ATTACHMENTS:

Attachment 1: PowerPoint

UNCLASSIFIED MANAGER:

Bhavani Yerrapotu, 408-630-2735

Valley Water Board of Directors
July 2, 2026

Exhibit B



Valley Water Board Policy and Monitoring Committee Meeting Friday, December 6, 2024
Agenda Item 4.1
SFCJPA Comments for the Record.

Summary of Issues Raised in Valley Water Committee Staff Report

1. Valley Water's Role: Valley Water staff feel that they have limited authority over Project Outcome

SFCJPA Response: Valley Water's current role is the same as it was in the completed Reach 1 Project. The SFCJPA bid and managed the design of the Reach 1 Project, including Engineer of Record during construction and As-Builts. The SFCJPA held additional contracts during construction, including PG&E utility relocation and sanitary sewer realignment. In total, the SFCJPA had 10 contracts for design and construction, while Valley Water had two- construction and construction management.

This same role is duplicated with the Newell Road Bridge Replacement Project- where this project is being delivered by the City of Palo Alto, who holds the design contract, with Valley Water funding 11% of the Newell Road Bridge project (the 'non-federal portion') using Measure S funds through an agreement between the City of Palo Alto and Valley Water.

At Valley Water Sr. Staff's encouragement, beginning in 2020, the SFCJPA has taken on a larger and larger share of the project's coordination, planning, design and management. It was by mutual agreement that the SFCJPA took on the formal role related to design and implementation. This occurred after the hydraulics review confirmed that the envisioned project design would need to be reconsidered. At the time, Valley Water staff acknowledged their heavy workloads and competing priorities.

2. Project Direction: The Safe Clean Water KPI indicates Valley Water is responsible for Project delivery; the Project is included in Valley Water's CIP. The Project does not provide 70-year protection to meet the Safe Clean Water KPI.

SFCJPA Response: The Safe Clean Water KPI describes the goal for the level of protection, not that Valley Water is singularly responsible for project delivery (see pages 126 - 128 of the Valley Water Annual Report FY 2023-24). We agree that the current Valley Water design is deficient in meeting this KPI, due to the new understanding of channel capacity. The SFCJPA has not changed the design objective, which is documented in the 2019 EIR; although, with the updated hydraulics, this goal will be more difficult to attain. Ultimately, the SFCJPA board will confirm the specific project goal, and will select the actions to meet that goal, based on various factors such as cost, constructability, and the largest benefit to the community.

The KPI will need to be revised in any case since it currently specifies 70-year protection using state and local funding only. The SFCJPA has had a federal partnership with USACE for specific project elements since 2020 under the CAP 205 Program.



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3. Financial Concerns: The Project does not have enough funding for construction

SFCJPA Response: SFCJPA agrees with this statement. This fact has been known by all member entities for many years. The known project costs and the known available funding (from grants and from Measure S) have been regularly conveyed to the members of the SFCJPA. Members of the SFCJPA are cognizant of their responsibilities to close the funding gap.

a) Has contributed the majority of Project funding

SFCJPA Response: SFCJPA agrees that Valley Water has contributed the majority of San Francisquito Creek project funding, but the presentation does not show the \$11.8 M grant that SFCJPA obtained and managed for Reach 1, awarded for project benefits to the underserved community of East Palo Alto, nor does it reflect contributions made by or, payments to, other SFCJPA members.

b) SFCJPA annual financial audits have not been completed in five years

SFCJPA Response: SFCJPA agrees; these are being worked on. As reported to the Board and Finance Committee, due to technical, software provider, and IT issues, audit work has been delayed but is in-process with SFCJPA auditors. All past due audits are expected to be completed and brought to SFCJPA Finance Committee first then the SFCJPA Board for acceptance within the next six months. Note that while audit work has been delayed, SFCJPA staff has consistently provided the SFCJPA Finance Committee and Board with mid-year and yearly financial reports including updates on project related expenses.

The purpose of an annual audit is to ensure the SFCJPA's financial statements are a fair and accurate representation of its financial transactions and financial position. Annual audits also ensure the SFCJPA has appropriate procedures and controls in place to ensure the accuracy of its financial representations. The annual audits are not the source of information about staff time and grant-funded consultant work.

c) No clear delineation of SAFER Bay Project operations expenses-

SFCJPA Response: This is not a true statement. The SFCJPA tracks staff time to comply with State and federal grant reporting requirements. The SFCJPA rebills SAFER Bay project staff time to grants awarded to the SFCJPA for the SAFER Bay project. Because applicable staff time is re-billed to the grants supporting the SAFER Bay project, the amount of member contributions for operational costs expended towards the SAFER Bay project related staff hours is miniscule.

Valley Water contributes 20% of the SFCJPA's operating expenses. Since April 2022, SFCJPA staff have spent approximately 9.1% of their time on the SAFER Bay Project (Figure 1).

The SAFER Bay project has been part of the SFCJPA since 2011, with multiple unanimous approvals over the years by the SFCJPA Board. Furthermore, shoreline flooding/sea level rise is codified as part of the five-party member agreement (last update completed in December 2023).



The SAFER Bay project geographic scope is currently limited to San Mateo County. However, the SFCJPA completed the Feasibility Study for the City of Palo Alto in 2019. At that time, the City decided to participate in the South Bay Shoreline Project which had been granted \$67.5M in funding from the San Francisco Bay Restoration Authority. After the recent determination of a lack of federal interest by the US Army Corps of Engineers, we understand that the northern Santa Clara County portion of the Shoreline project is on hold, and the City of Palo Alto is evaluating options to accomplish their goal of sea level rise protection. In July the City of Palo Alto asked the SFCJPA to include Palo Alto in the official request to the San Francisco Bay Joint Venture Project for official adoption for the SAFER Bay Project by their board. This formal adoption was approved by their Board in October 2024. Staff time spent preparing for the Joint Venture presentation accounts for the 105 unbillable SAFER hours shown in Figure 1.

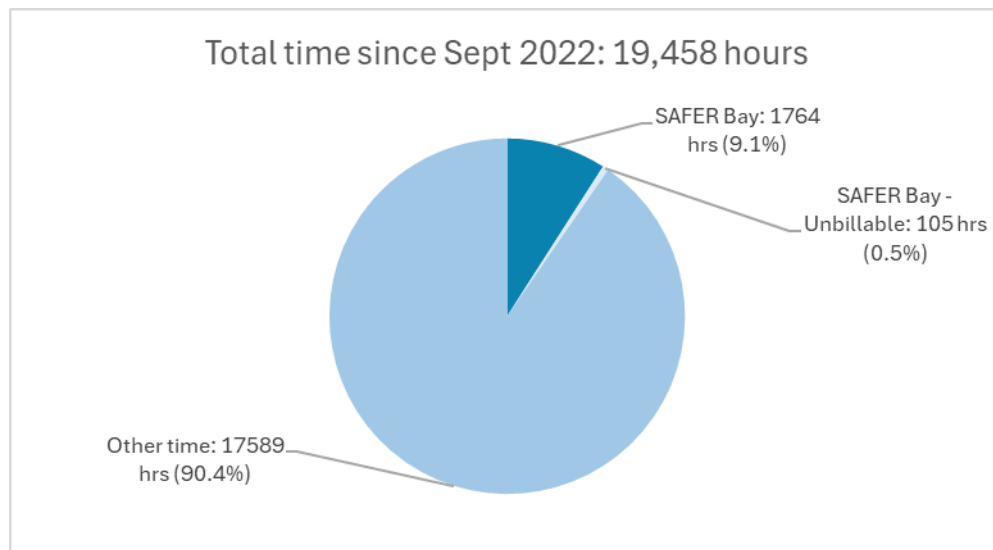


Figure 1: Time spent on SAFER Bay vs. other tasks since September 2022.

The SFCJPA welcomes the opportunity to answer any questions and concerns that any Valley Water board member or staff member may have. The concerns raised in the staff report could have easily been addressed in a manner that did not publicly call into question the capability or integrity of the other SFCJPA members and the staff of the SFCJPA.

POTENTIAL ACTIONS AND LIKELY CONSEQUENCES

The Board Policy and Monitoring Committee is asked to evaluate the following actions:

1. Options for Long Term Participation in SFCJPA
We have already demonstrated that Valley Water's role has not changed, so we focus on the option of VW's withdrawal from the agreement. It should be noted that this agreement was recently amended (concluding in December 2023) and included robust Valley Water participation.



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This action would not serve the needs of the Santa Clara County residents who have been waiting anxiously for the project to be implemented.

Another point to consider is that the City of Menlo Park has been paying their 20% of SFCJPA operations costs and contributed to the costs of the Reach 1 project although the residents of Menlo Park have yet to benefit from these investments.

2. Modifying agreement – The founding agreement was recently updated (December 2023) as discussed above. Valley Water actively participated in that 18-month process. If the issue of concern is the JPA's shoreline flood risk reduction work, we have already demonstrated that SAFER costs are differentiated, fully documented through timekeeping and invoicing, and what is not billed back to grants is a negligible amount. And further, the JPA's shoreline engagement preserves future options for the City of Palo Alto.

Options 2C and 2D- confirm and advocate for Valley Water's preferred level of protection and advocate for additional funding *are already being done.*

3. Modify the Clean Safe Water Program- this action is already needed due to the changed hydraulics and KPI at a minimum, which has been known since 2020.
4. Consider changing project from capital to operations-
As demonstrated above, Valley Water's role on the project has not changed, but it appears that Valley Water staff or board members' perceptions have changed. Changing the budget category from which Valley Water funds this work may be of interest to the Santa Clara County residents who voted for the program.

We note that this change was not indicated with City of Palo Alto's Newell Road Bridge Replacement Project, where Valley Water is paying a fixed 11% of the Newell Road Bridge Replacement Project and Valley Water did not move it to their operations project.

In short, the SFCJPA wants to continue to work with Valley Water and does not understand this very recent change in perception of the Reach 2 Project. We want to continue to work together to implement a flood risk reduction project that is the best we can do with available funding, as soon as we can accomplish it, and preserve opportunities for future improvements.

A question of commensurate transparency –

The Valley Water report on the San Francisquito Creek Reach 2 project for last fiscal year (FY23-24) indicated an annual expenditure of \$1.320 Million dollars. Of that amount, slightly more than \$320 thousand was Valley Water's annual SFCJPA operational budget contribution. What did Valley Water spend nearly \$1M of Measure S Reach 2 project funds on while the project was largely on pause as we considered the implications of what we learned from the '22 NYE storm?

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Santa Clara Valley Water District

File No.: 26-0254

Agenda Date: 7/14/2026

Item No.: 3.5.

BOARD AGENDA MEMORANDUM

Government Code § 84308 Applies: Yes ☐ No ☒
(If "YES" Complete Attachment A - Gov. Code § 84308)

SUBJECT:

Receive Results of Consultant Study Regarding Santa Clara Valley Water District's Water Use Projections, Water Demand Elasticity, and Customer Affordability; Receive an Update on Valley Water's Water Rate Assistance Program; and Provide Direction to Staff as Needed.

RECOMMENDATION:

- A. Receive results of the completed consultant study regarding Santa Clara Valley Water District's water use projections, water demand elasticity, and customer affordability;
- B. Receive an update on Valley Water's Water Rate Assistance Program (WRAP); and
- C. Provide direction to staff, as needed.

SUMMARY:

As the water wholesaler to Santa Clara County, Santa Clara Valley Water District (Valley Water) is keenly sensitive to the impact rising water rates have on the community, both residential and commercial.

In an effort to understand the broader impacts wholesale water rates have, Valley Water engaged a consultant to conduct a study focused on water use projections, water demand elasticity, and water rate affordability. In response to the identified local need for water utility bill assistance, the Board of Directors established the Water Rate Assistance Program (WRAP) in July 2021.

This memo summarizes the study results and highlights the ongoing connection between water rate affordability and WRAP.

Study Background and Results

Santa Clara Valley Water District (Valley Water) recently finalized a consultant study to validate or suggest refinements to Valley Water's current water use projections for Valley Water-managed water use, analyze water demand elasticity, and determine or address the affordability of water to residents and businesses within Santa Clara County (the Study).

The majority of County residents and businesses receive water service from a retailer, while Valley Water acts as the water wholesaler.

Background:

The Financial Planning and Revenue Collection office manages long-term forecast models and the annual rate setting process for the Water Utility. Water charges are adopted annually. Based upon feedback received from the Board during previous long-term forecasting cycles, staff pursued a study to inform future rate setting cycles.

The consultants - Raftelis Financial Consultants, Inc. and Hazen and Sawyer - were tasked to provide analyses for the following Study scope and objectives:

1. Analyze water use projections in Santa Clara County, for retailers, their direct customers, and private well owners to better determine Valley Water-managed water use projections. Valley Water-managed water use translates to revenue for Water Utility.
2. Prepare a water demand elasticity analysis to better understand how rates impact water demand.
3. Determine the affordability of water provided by Valley Water to Santa Clara County residents and businesses now and based on future rate projections.

Valley Water staff and Valley Water's consultants both recognized that the scope of the Study presented unique challenges, one of which was obtaining detailed water usage data from non-Valley Water sources. The Study largely relied on publicly available data in addition to Valley Water sources.

Study Results:

Task 1: Water Use Projections key takeaways are:

- Valley Water's approach to projecting water use is consistent with peer agencies
- Forecast-to-actual water use has been largely accurate, with reduced variance in recent years
- High level statistical analyses demonstrate that the current approach yields reasonable ranges for near-term demand
- Water use overall continues to trend downward
- Tools exist to refine the forecasting method, if desired

Task 2: Water Demand Elasticity Analysis key takeaways are:

- Three econometric methods were used to assess Retailers' water demand sensitivity to Valley Water's wholesale rates, and understand the effect on Retailer's customers
- Water use in Santa Clara County is generally inelastic with respect to price; a 10% increase in price would be expected to reduce retail demand by about 2%
- There is a high correlation (about 83%) and common trend between Valley Water and Retailer's *volumetric* rates

Task 3: Water Affordability Analysis key takeaways are:

- Based on multiple affordability indicators residential water bills are generally below threshold levels
- Based on both the Poverty Prevalence Indicator and Household Burden Indicator, nearly all Retailer water providers fall within the *Low Burden* category
- An estimated 37,000 households - *equivalent to 6% of Santa Clara County households* - could

have water bills that are unaffordable (defined as annual water bills that total more than 2% of reported household income)

The three study tasks produced discrete and valuable results, highlighting the dynamic interrelationships among water demand projections, price elasticity, and affordability.

The Study has provided a foundation by identifying a feedback loop that can inform future rate setting cycles and policy decisions:

- Demand forecasts drive rate levels and are key to rate stability.
- Rate increases reduce demand through price elasticity.
- Wholesale prices pass through to volumetric retail rates.
- Affordability constrains rate-setting flexibility.

Technical memorandums for each of the three (3) analyses have been compiled into a final report documenting the study. Attachment 1 is a PowerPoint presentation. A Comprehensive Executive Summary is included in Attachment 2, and a link to the full report is provided in Attachment 3.

Monitoring and Metrics:

Specific to the Water Affordability Analysis, it is important to note that only publicly available data was used. The detailed information necessary to create meaningful metrics for ongoing monitoring is not available to Valley Water as the wholesaler.

Water Rate Assistance Program (WRAP) Updates: Implementation, Current Status and Metrics to Date

Summary:

On July 13, 2021, the Board of Directors approved the implementation of the Low-Income Residential Water Rate Assistance Program (now called WRAP) to help low-income households in Santa Clara County who had been financially impacted by the COVID-19 pandemic with paying their water bills.

To date, the Board has provided \$3 million in relief funding for low-income families and committed an additional \$2.5 million in relief funding for continued WRAP implementation through 2028.

Background:

The Board approved \$1.225 million to cover the program's total cost, including \$1 million to disburse to the community and up to \$225,000 to cover third-party administration costs. Due to continued need, the Board voted on April 26, 2022, to extend the program and to provide an additional \$1 million for community relief and up to \$225,000 for administrative costs. On May 27, 2025, the Board voted to approve the operating and capital rolling biennial budget, which included WRAP funding of \$1 million per year for community relief and up to \$333,333 annually for program development, implementation, and administrative costs. Finally, on April 28, 2026, the Board approved the staff recommendation to augment annual relief funding by \$250,000, bringing the total funding for community relief to \$1.25 million per fiscal year in 2027 and 2028, to avoid a funding gap in each of those years.

In 2021, Valley Water selected Sacred Heart Community Service (SHCS) as the third-party WRAP administrator. SHCS officially launched the program in November 2021 and has implemented it since then. They initially reached out to their database of over 40,000 low-income households who previously qualified for emergency financial assistance under the Low-Income Home Energy Assistance Program (LIHEAP). SHCS also works with other Emergency Assistance Network (EAN) partners throughout the County to share information on WRAP. In addition to SHCS's outreach, Valley Water also actively promotes WRAP to ensure community awareness.

Metrics to Date:

Since the launch of WRAP in November 2021, SHCS has disbursed approximately \$2.6 million in financial assistance to pay 5,544 water bills for low-income households in Santa Clara County. Based on WRAP's historical baseline data from the first two program cycles, participating households are experiencing extreme financial hardships. For example, the average household income of participants was \$26,412, which is less than 50% of the self-sufficiency standard (\$57,034) for a single adult in Santa Clara County. Of the participating households, 2,543 included a person aged 60 or older; 1,186 included children under age 5; and 679 included a person with a disability.

The households served to date span across 11 water retailers, with over 60% being clients of the San Jose Water Company, the largest water retailer in Santa Clara County. Funds have been disbursed to residents of 13 of the 15 cities in Santa Clara County; only Los Altos (95024) and Monte Sereno (95030) have residents who have not yet received WRAP relief.

Below is a breakdown of program participation by retailers for the current program year.

- San Jose Water Co.: 64%
- City of San Jose: 11%
- Landlords & Property Managers: 5%
- Other retailers: 20%

As WRAP transitions from an emergency response program into a longer-term, sustainable assistance model, Valley Water remains committed to improving program implementation and enhancing opportunities to connect eligible households to much-needed resources.

Next Steps - Water Rate Affordability and WRAP Program

As the County's largest water wholesaler, Valley Water is committed to working with Water Retailers to reduce any barriers and support the community through a transparent annual rate-setting process and by offering a long-term, sustainable water bill assistance model through WRAP.

Staff have begun and continue to expand collaborating with regional partners and other Customer Assistance Programs to identify opportunities to raise awareness about and streamline and facilitate access to available assistance programs. However, successfully expanding program access will likely increase demand for limited program resources.

ENVIRONMENTAL JUSTICE IMPACT:

While receipt of these updates is not an action subject to environmental justice analysis, increasing wholesale water rates may have a direct impact on water bill affordability for households in Santa Clara County. The continued support for relief funding under the WRAP program supports the health of vulnerable households by ensuring continued access to safe, clean drinking water.

FINANCIAL IMPACT:

There is no financial impact associated with this item.

CEQA:

The recommended actions do not constitute a project under CEQA because it does not have a potential for resulting in direct or reasonably foreseeable indirect physical change in the environment.

ATTACHMENTS:

Attachment 1: PowerPoint
Attachment 2: Comprehensive Executive Summary
Attachment 3: Full Study Report

UNCLASSIFIED MANAGER:

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Final Study Results:

Water Use Projections, Water Demand Elasticity, and Customer Affordability

Program Update:

Water Rate Assistance Program

July 14, 2026

Presentation Agenda

**Raftelis & Hazen
Final Study Results**

**Water Use Projections
Water Demand Elasticity
Customer Affordability**

**Valley Water's
Office of Civic Engagement**

**Water Rate Assistance Program
(WRAP) Update**

www.valleywater.org/WRAP

Santa Clara Valley Water District

Final Results

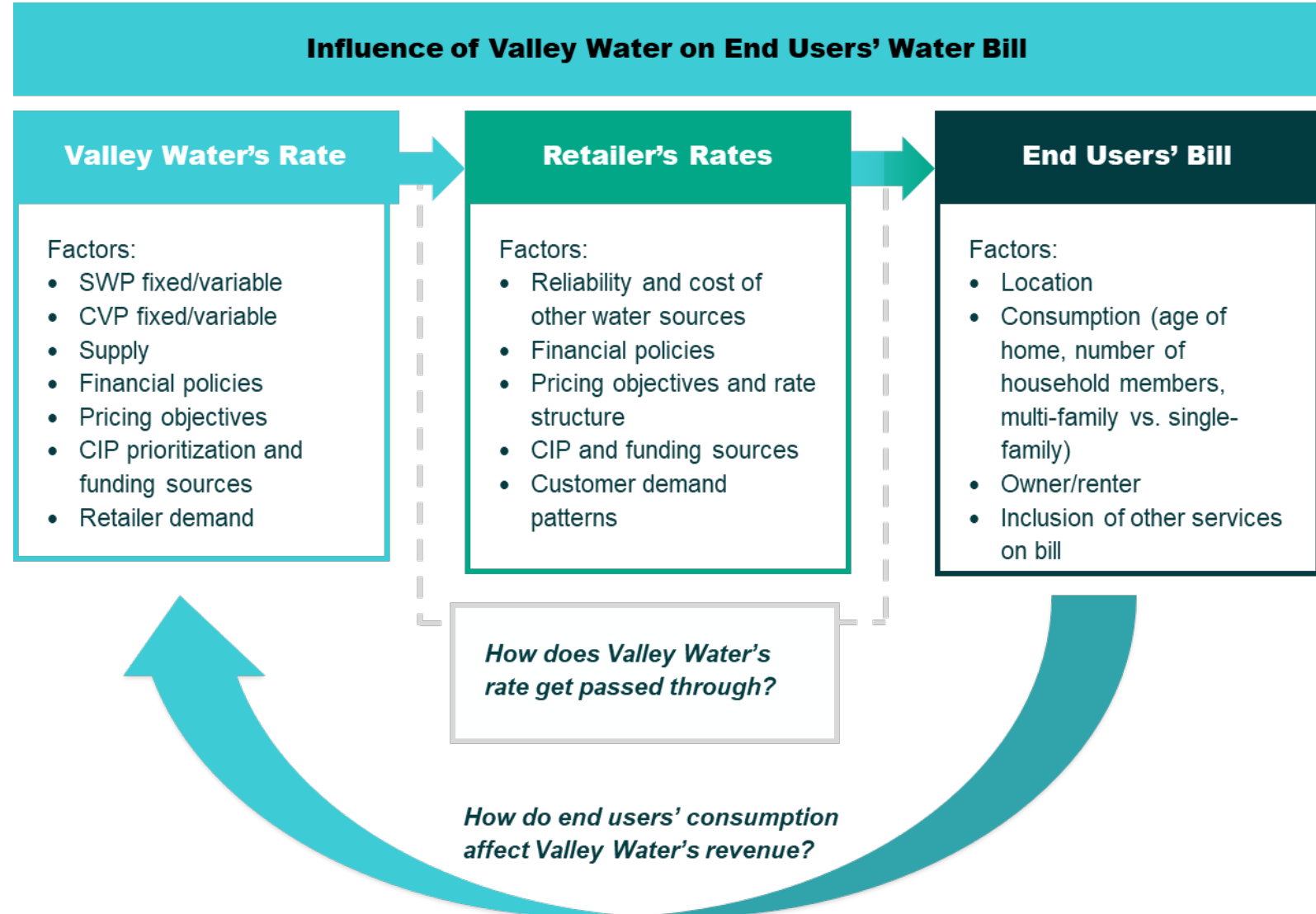
Water Use Projections, Water Demand Elasticity, and Customer Affordability Study

July 14, 2026



Project Goals

- Identify how Valley Water's rates impact water demand (elasticity) and affordability of water service in Santa Clara County
- Validate and/or refine water demand forecasting for purposes of annual rate setting and long-term capital planning
- Tasks:
 - › Demand Forecast
 - › Elasticity Analysis
 - › Affordability Assessment



Preliminary Results – Fall 2025 Meetings



Final Results – Spring 2026 Meetings



Summarized Feedback

- **Affordability results averaged by retailer may not tell the whole story within a community**
- **How to harmonize these affordability indicators with other non-utility indicators? How does affordability relate to other known socio-economic indicators?**
- **At what change in rates would people make behavioral changes? What is that elasticity estimate?**
- **Does Valley Water have a low-income assistance program?**
- **What is Valley Water doing to increase recycled water use?**

Key Findings

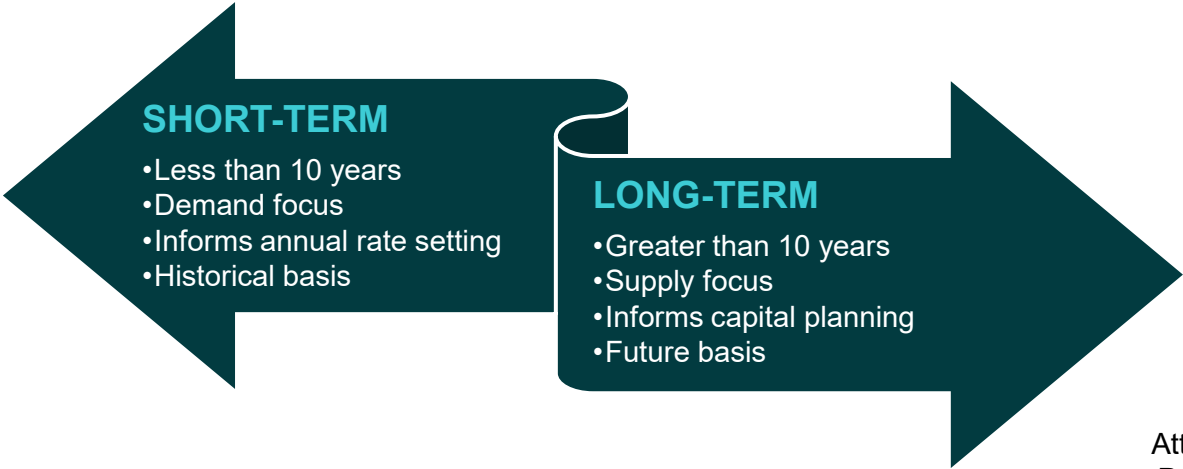


Task 1: Water Use Projections (for rate setting)

- Declining demands across the Valley Water service area
- Demand forecasting approach is consistent with peers and largely accurate
- Evaluation of alternatives demonstrate Valley Water’s approach falls between other approaches

FY 2025	Valley Water Method	Time Series Method	Regression Method	Average
Low Range	208	187	221	205
Medium Range	217	198	230	215
High Range	223	204	234	220

Values in thousand acre-feet per year (TAF)



Task 2: Water Demand Elasticity

- Goal: Estimate the relationship between water prices and water consumption
- Estimates across three methods: **-0.18 to -0.21**
 - › Confirms water demand is inelastic with respect to price
 - › A 10% change in price would be expected to drive a 2% change in demand
- Results align with prior Valley Water studies and academic literature
- Supplemental finding: wholesale-to-retail volumetric pass-through
 - › **83%** of the annual variation in retail volumetric prices is explained by the change in Valley Water's wholesale rates (statistical significance)

Task 3: Customer Affordability

Retail Metrics	North Zone	South Zones	Total Valley Water Service Area	Metric Thresholds
 AR20	1.5% - 3.4%	1.3% - 3.4%	2.5%	5%
 HMW	2.7 – 3.8	2.8 – 5.4	4.6	4
 LQI RI	0.7% - 0.9%	0.7% - 1.6%	1.2%	2%
 MHI RI	0.4% - 0.5%	0.4% - 0.8%	0.7%	2%

¹All results shown at essential water use of 6 HCF

Affordability results averaged by retailer may not tell the whole story within a community.

How to harmonize these affordability indicators with other non-utility indicators?

Single Family Residential Affordability Results by Retailer

Single Family Residential Water Affordability Metrics				
Retailer (and Service Area)	LQI	MHI	HMW	AR ₂₀
City Of Gilroy	0.7%	0.4%	2.7	1.5%
City Of Milpitas	1.1%	0.7%	4.6	2.0%
City Of Morgan Hill	0.9%	0.5%	3.8	1.6%
City Of Mountain View	0.9%	0.5%	3.1	1.8%
City Of Santa Clara	1.1%	0.6%	4.2	2.3%
City Of Sunnyvale	0.7%	0.4%	2.8	1.4%
CWSC Los Altos Suburban	0.9%	0.5%	4.1	1.6%
Great Oaks Water Company	0.8%	0.5%	2.9	1.7%
San Jose Municipal Water System (Coyote)	1.1%	0.7%	3.6	2.5%
San Jose Municipal Water System (Evergreen/Edenvale)	1.2%	0.8%	5.4	2.0%
San Jose Municipal Water System (North San Jose/Alviso)	0.8%	0.6%	4.6	1.3%
San Jose Water	1.6%	0.8%	5.3	3.4%
Valley Water Service Area of Included Retailers*	1.2%	0.7%	4.6	2.5%
<i>Affordability Thresholds - Water Service</i>	<i>2.0%</i>	<i>2.0%</i>	<i>4.0</i>	<i>5.0%</i>
<i>Census tract information - American Community Survey maintained by the US Census Bureau and Consumer Expenditure survey</i>				

**Weighted based on the population served by each retailer*

Single Family Residential AR₂₀ by Retailer and Census Tract

Retailer (and Service Area)	Weighted Average Census Tracts	Affordable Census Tracts (Count)	Unafford. Census Tracts (Count)
City Of Gilroy	1.5%	13	1
City Of Milpitas	2.0%	16	5
City Of Morgan Hill	1.6%	9	2
City Of Mountain View	1.8%	22	3
City Of Santa Clara	2.3%	26	7
City Of Sunnyvale	1.4%	40	1
CWSC Los Altos Suburban	1.6%	40	2
Great Oaks Water Company	1.7%	18	5
San Jose Municipal Water System (Coyote)	2.5%	4	1
San Jose Municipal Water System (Evergreen/Edenvale)	2.0%	18	4
San Jose Municipal Water System (North San Jose/Alviso)	1.3%	8	1
San Jose Water	3.4%	125	88
Valley Water Service Area of Included Retailers	2.5%*	339	120

**Weighted based on the population served by each retailer*

Comparison with Non-Utility Indicators

Source/Method	% of Households
Social Security Income (SSI) Households	8.3%
Supplemental Nutrition Assistance Program (SNAP) Enrolled	7.7%
Public Use Microdata Sample (PUMS) Analysis	5.95%

- PUMS analysis is based on a survey of self-reported income and self-reported household size
- The estimate of 5.95% of households in the Valley Water service area having unaffordable water bills tracks with other indicators that reflect lower income and needs based households
 - Translates to an estimated 37,000 households in Santa Clara County

Customer Assistance Programs (CAP) and Valley Water

- Retailers offer their own customer assistance programs
- Programs vary by retailer and are distinct between private / IOUs and public / municipal utilities
- Valley Water can further work with retailers on related assistance like payment programs, and customer outreach

Valley Water's Water Rate Assistance Program (WRAP) complements other local & regional customer assistance programs

Establishing a Foundation | Recognizing Challenges

Study results can inform future rate setting cycles and policy decisions:

- Demand forecasts drive rate levels and are key to rate stability.
- Rate increases reduce demand through price elasticity.
- Wholesale prices pass through to volumetric retail rates.
- Affordability constrains rate-setting flexibility.

Known challenges exist for monitoring customer behaviors:

- Detailed water use data is generally unavailable to Valley Water as the wholesaler posing a challenge for ongoing monitoring of customer behavior

QUESTIONS





Water Rate Assistance Program Update

July 14, 2026

Rachael Gibson, External Affairs

WRAP Program Summary

Current Status: Third program year (PY) in progress.

Goal: Provide one-time (per program year) emergency water bill payment assistance to LIHEAP-eligible households in Santa Clara County.

Current Challenges:

- Projected funding gap for PY3
- Barriers to customer access

Opportunities:

- Program Evolution
- Streamline Intake

Participant Profile:

Historical Baseline (Program Years 1 & 2)

Households with:



Person living
with disability

679 (15%)



Person older
than 60

2,543 (59%)



Children
under 5

1,186 (28%)

Average annual household income: **\$26,412**

Participation barriers and Impacts

- **Overcoming stigma & power imbalances**
- **Eliminating administrative hurdles & verification red tape**
- **Strategic bottom line**

WRAP Utilization Across Program Years:

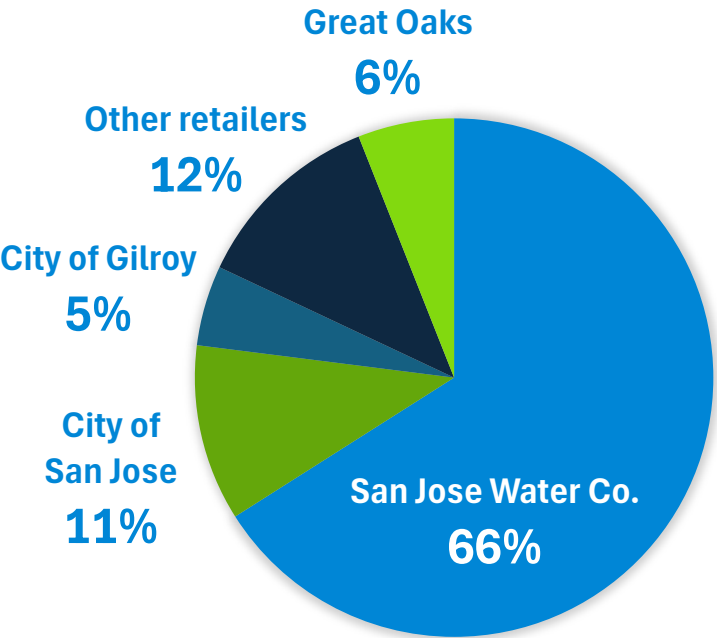
Total Payments: **5,544** as of May 26, 2026
Total Funding Distributed: **\$2.53M** as of April 26, 2026

Program Year 1 (Sept. 21 – May 23)		Program Year 2 (Jun. 23 – Nov. 24)		Program Year 3 (Sept. 25 – Apr. 26)	
# of eligible applications	2,119 (44%)	# of eligible applications	2,135 (40%)	# of eligible applications	1,290 (90%*)
# of applications	4,793	# of applications	5,401	# of applications	1,436
Funds distributed	Total: \$1.02M/\$1M Aver. Bill: \$481	Funds distributed	Total: \$982K/\$1M Aver. Bill: \$460	Funds distributed	Total: \$532K/\$1M Aver. Bill: \$412

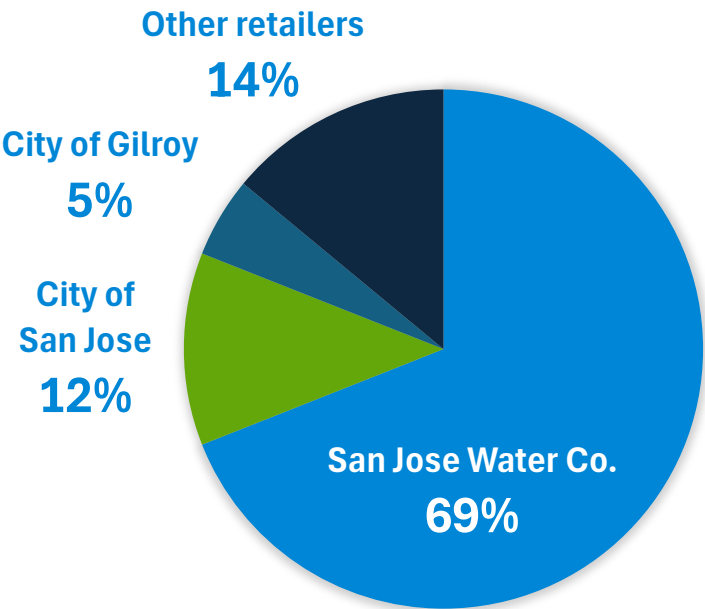
*Includes backlog of eligible applicants from PY2

Percentage of Payments by Retailer

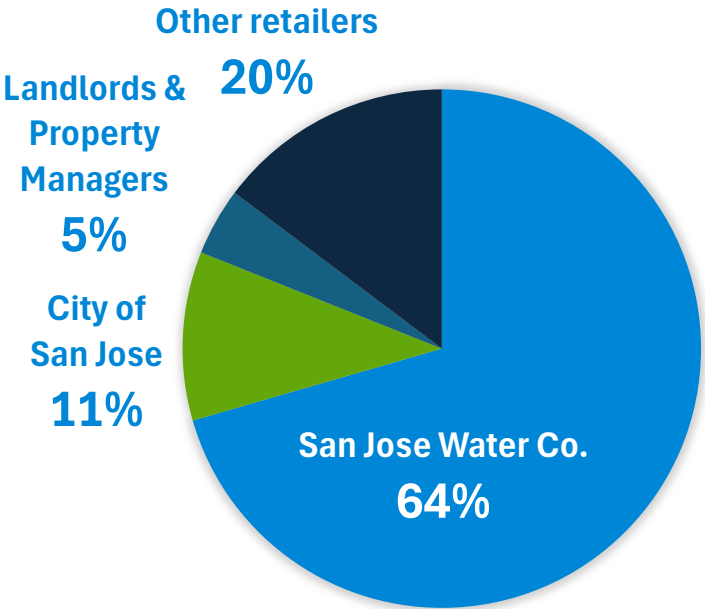
Program Year 1



Program Year 2

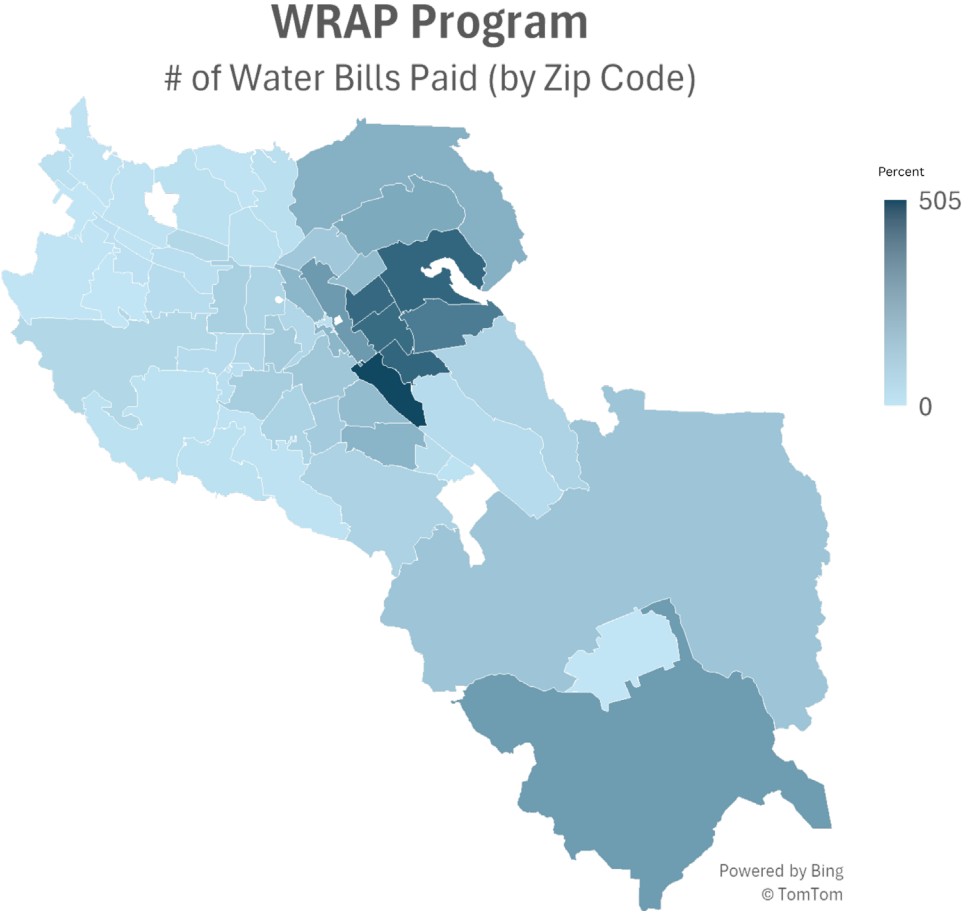
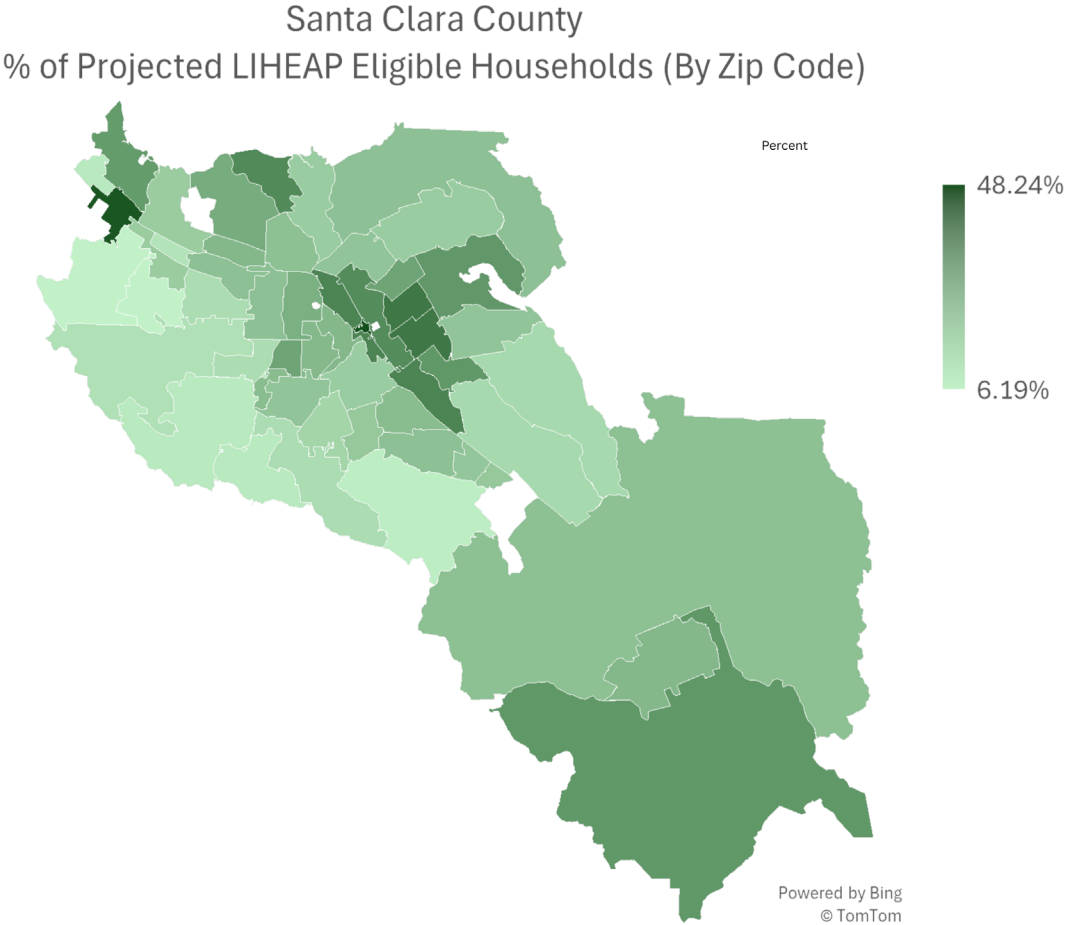


Program Year 3



Geographic Utilization

- Alignment of impact
- Core saturation



Opportunities

- **Program Year Alignment**
 - Transition to a standardized calendar year cycle
- **Coordination with other customer assistance programs**
 - Streamlined intake options

Transition to a sustained assistance model

- Operational efficiencies to reduce barriers
- Bolster utilization tracking

Questions

Backup

**Raftelis & Hazen
Final Study Results**



Glossary of Terms

- HCF: Hundred Cubic Feet (748 gallons)
- gpcd: gallons per capita per day
- MHI: Median Household Income
- LQI: Lowest Quintile of Income
- AR: Affordability Ratio
- HW: Hours at Minimum Wage
- PPI: Poverty Prevalence Indicator
- HBI: Household Burden Indicator
- SFR: Single Family Residential
- MFR: Multi-Family Residential
- PPH: Persons per Household
- CPUC: California Public Utilities Commission
- EPA: United States Environmental Protection Agency
- MIT: Massachusetts Institute of Technology
- CIP: Capital Improvement Program
- SWP: State Water Project
- CVP: Central Valley Project
- SFPUC: San Francisco Public Utilities Commission
- RI: Residential Indicator
- AWWA: American Water Works Association
- WEF: Water Environment Federation
- NACWA: National Association of Clean Water Agencies
- PUMS: Public Use Micro Statistics
- FPL: Federal Poverty Level
- California Urban Water Agencies (CUWA)
- California Water Association (CWA)

Residential Affordability Indicators

Measurement Approaches (Metrics):		Used By
MHI RI: Median Household (Income) Residential Indicator	<i>Average</i> Water Bill / 50 th Percentile Household Income	California Urban Water Agencies (CUWA), California Water Association (CWA), EPA, SFPUC
LQI RI: Lowest Quintile Income	<i>Essential</i> Water Bill / 20 th Percentile Household Income	EPA, SFPUC
HMW: Hours at Minimum Wage	<i>Essential</i> Water Bill / Minimum Wage Rate	California PUC, EPA
AR₂₀: Affordability Ratio	<i>Essential</i> Water Use Bill / (Total Income - Non-Discretionary Expenses ¹)	California PUC ²
HBI: Household Burden Index (HBI)	<i>Average</i> Water Bill / LQI	AWWA/NACWA “New Framework”
PPI: Poverty Prevalence Indicator	Population at or below 200% FPL/ Total population	AWWA/NACWA “New Framework”
Essential Water Use Bill	Bill at 47 gallons per capita per day	California PUC, CWA
Average Water Use Bill	Bill at 64 gallons per capita per day	CUWA, EPA, SFPUC

Retailer Affordability Characteristics*

Characteristics	North Zone	South Zones	Total Valley Water Service Area
% of Total Service Area Population	4% - 52%	3% - 5%	100%
Average Household Size	2.3 – 3.5	3.1 – 3.4	3.0
Minimum Hourly Wage	\$18.20 - \$19.00	\$18.20	\$18.30
Median Household Income (MHI)	\$120k - \$236k	\$142k - \$169k	\$169k
Lowest Quintile Income (LQI)	\$68k - \$80k	\$69k - \$112k	\$76k
Monthly Water Bill @ Essential Use (~6 HCF)	\$54 - \$98	\$45 - \$64	\$83
Monthly Water Bill @ Average Use (~8 HCF)	\$65 - \$118	\$52 - \$71	\$96

29 *All figures are rounded

Resulting Retailer Metrics – AR20, HMW, LQRI, MHRI¹

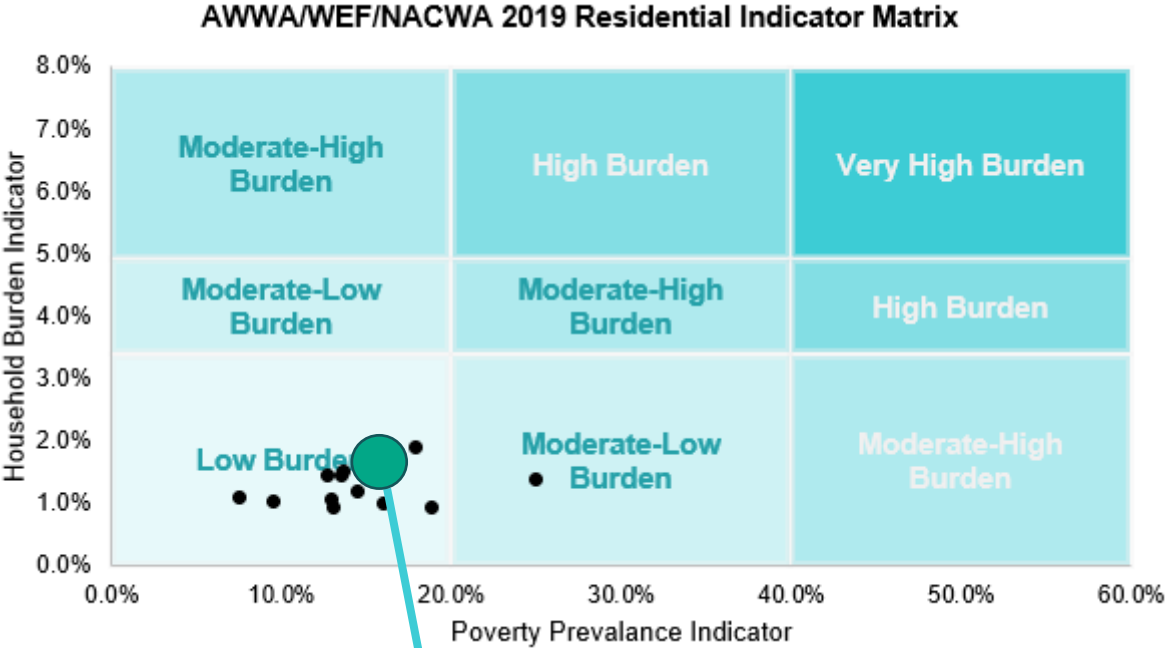
Retail Metrics	North Zone	South Zones	Total Valley Water Service Area	Metric Thresholds
 AR20	1.4% - 3.8%	1.7% - 1.9%	2.8%	5%
 HMW	3.7 – 6.2	2.7 – 3.8	5.3	4
 LQI RI	0.8% - 1.7%	0.8% - 1.0%	1.3%	2%
 MHI RI	0.4% - 0.7%	0.4% - 0.5%	0.6%	2%

¹All results shown at essential water use of 6 HCF

- AR20, LQI, and MHI are all below thresholds across the service area
- HMW is modestly above the threshold value across the service area
- Results are generally lower (water bill is less burdensome) in the South zones

Resulting Retailer Metrics – HBI/PPI Matrix

Retail Metrics	North Zone	South Zones	Total VW Service Area	Metric Threshold Low Burden
HBI	0.8% - 1.7%	0.8% - 1.0%	1.3%	3.5%
PPI	7.5% - 25%	13% - 19%	15.7%	20%



- HBI and PPI are both within the low burden category
 - › All but one retailer are in the Low Burden category
- Both metrics have a wider range in the North zones than in the South zones

Valley Water Service Area
Result (Weighted Average)

Resulting Retailer Metrics – Estimate of Affordability Impact¹

Retail Metrics	North Zone (per Retailer)	South Zones (per Retailer)	Estimated Households Valley Water Service Area ²
Estimated Number of Customers with Unaffordable Water Bills	200 – 24,000	1,000 - 1,200	37,000

¹ Estimate of customers that could be have bills considered unaffordable

² Out of approximately 625,000 households

- Estimates extrapolated based on public use micro statistics (PUMS) household survey data including self reported income, water use, household size, and/or payment of a water bill
- Then, calculate bills over 2% of reported household income *and* estimated essential water use at each retailers' service area rates
- **Household water bills estimated as unaffordable across the Valley Water service area is 5.95%**

Groundwater Benefit Zones

North County Zone W2

- Santa Clara County north of Metcalf Road

South County Zone W5

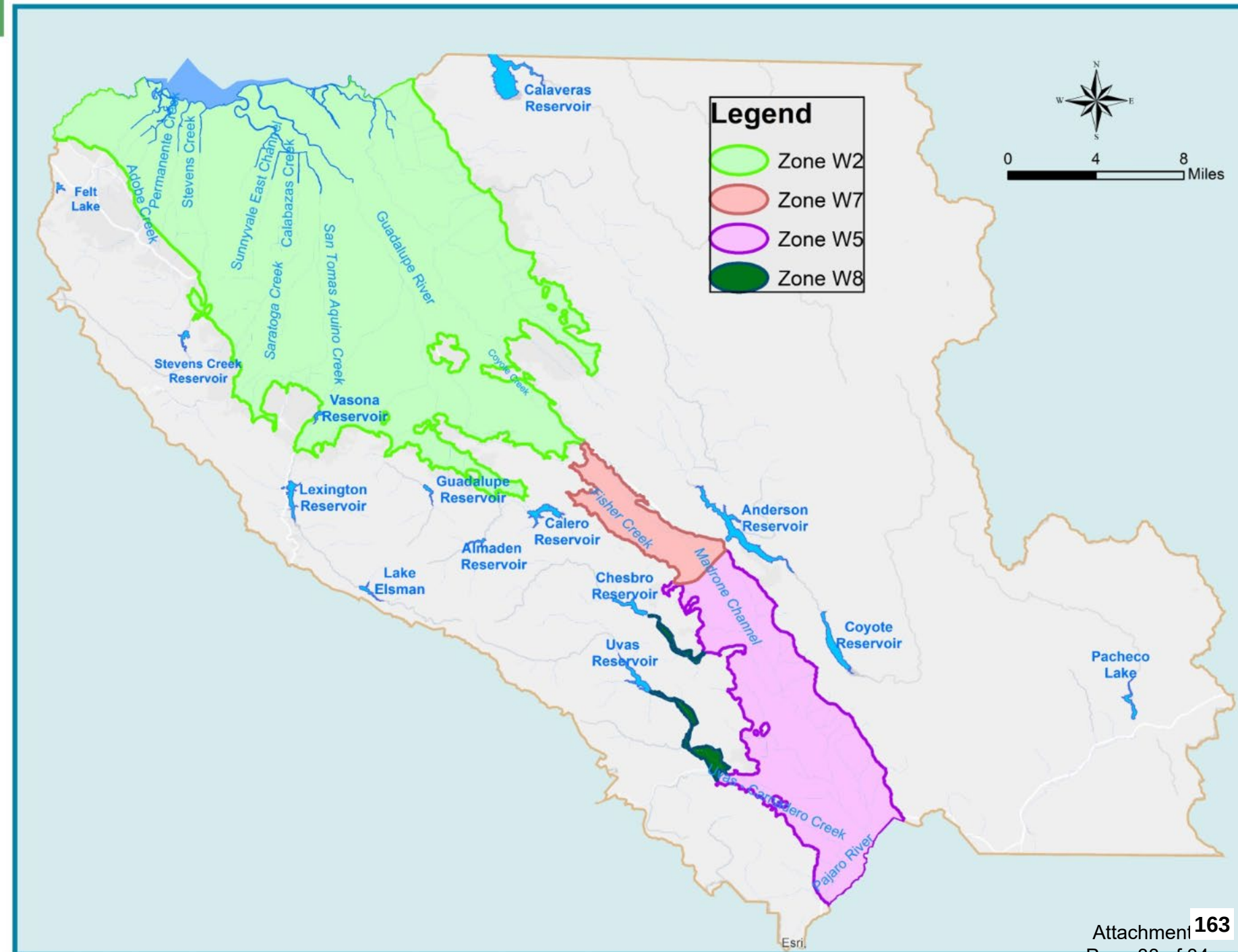
- Morgan Hill to Pajaro River

South County Zone W7

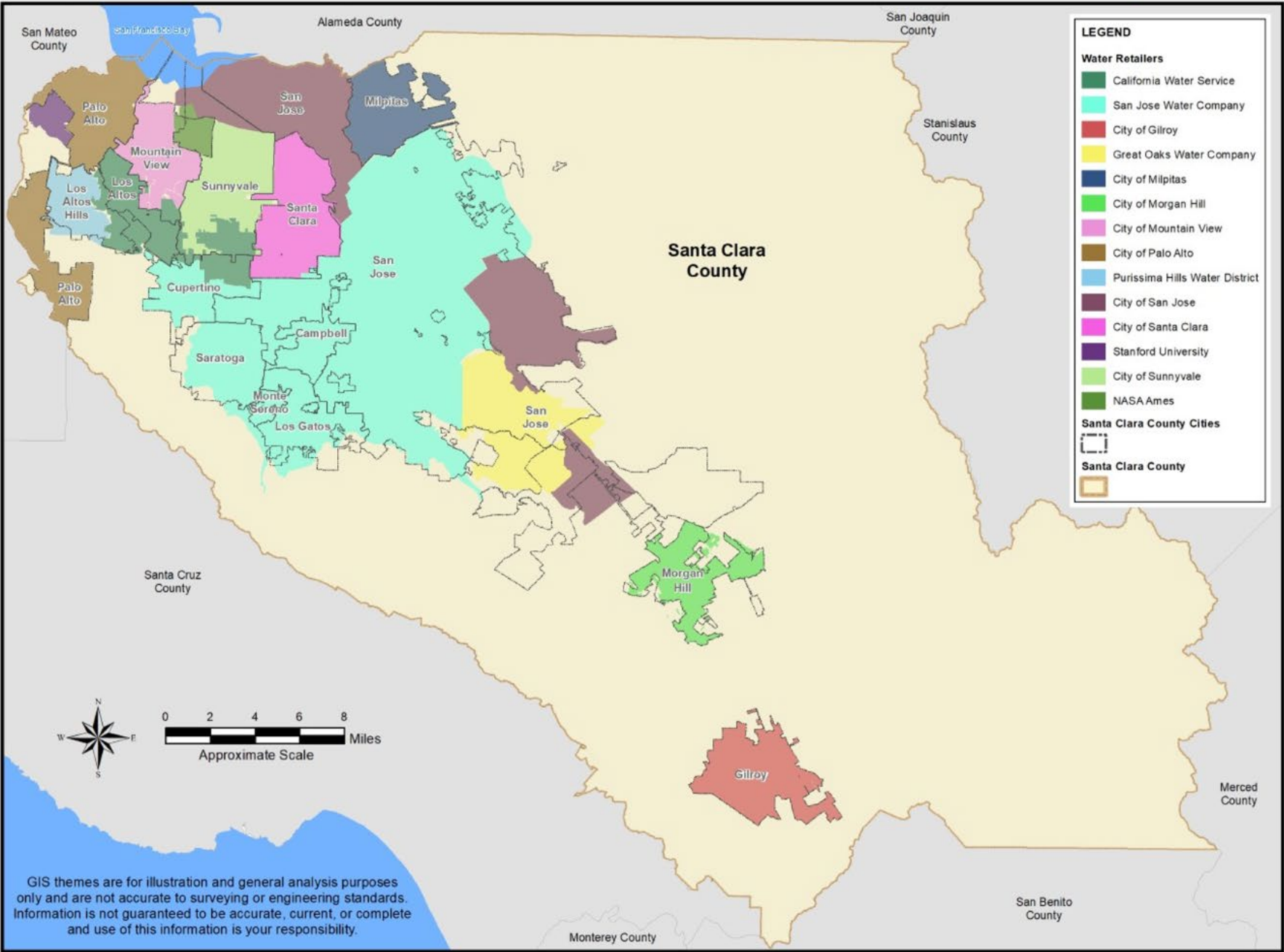
- Coyote Valley

South County Zone W8

- Foothills below Uvas & Chesbro Reservoirs



Water Retailers in Santa Clara County



Executive Summary

Introduction

Raftelis Financial Consultants, Inc. and Hazen and Sawyer (the "project team") were engaged by Santa Clara Valley Water District (Valley Water) to conduct an integrated study comprising three interrelated tasks: 1) review and refinement of water use projections for rate setting, 2) estimation of water demand price elasticity, and 3) assessment of customer affordability of water rates in Santa Clara County. Valley Water provides wholesale water and groundwater management services to local municipalities and private water retailers who deliver drinking water directly to approximately two million residents across Santa Clara County. This executive summary synthesizes the findings from all three tasks and highlights the critical linkages among them.

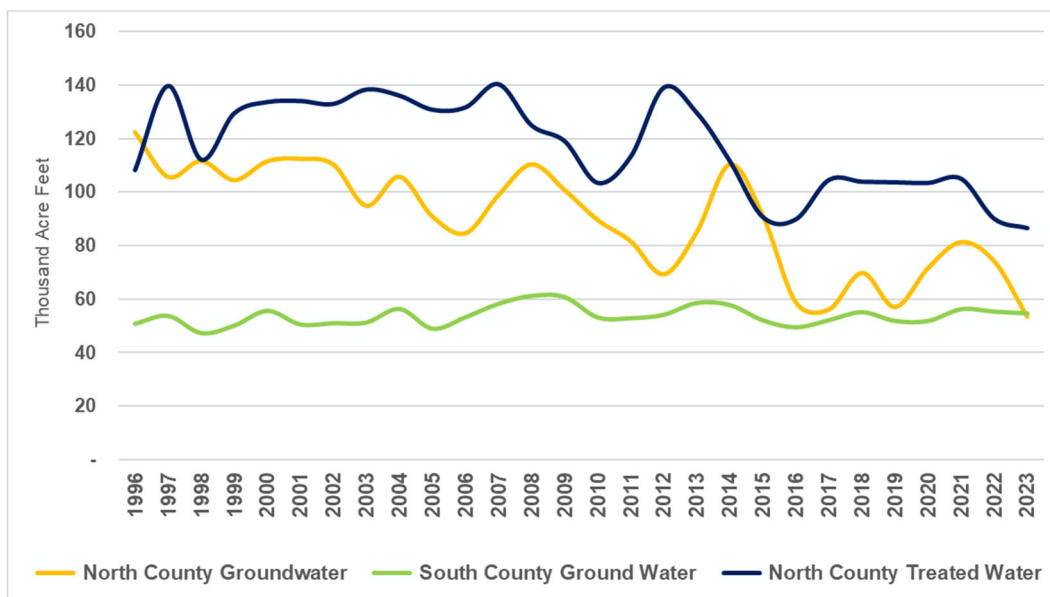
Task 1: Water Use Projections for Rate Setting

Task 1 evaluated Valley Water's methodology for projecting near-term water demand used in annual rate setting. The project team reviewed the District's existing approach, which relies on a three-part framework:

- Historical demand data weighted toward the prior year for the upcoming fiscal year (Year 1);
- Institutional knowledge and professional judgment for interim years (Years 2–3); and
- Growth rates from the 2010 Urban Water Management Plan (UWMP) for the longer term (Year 4 and beyond).

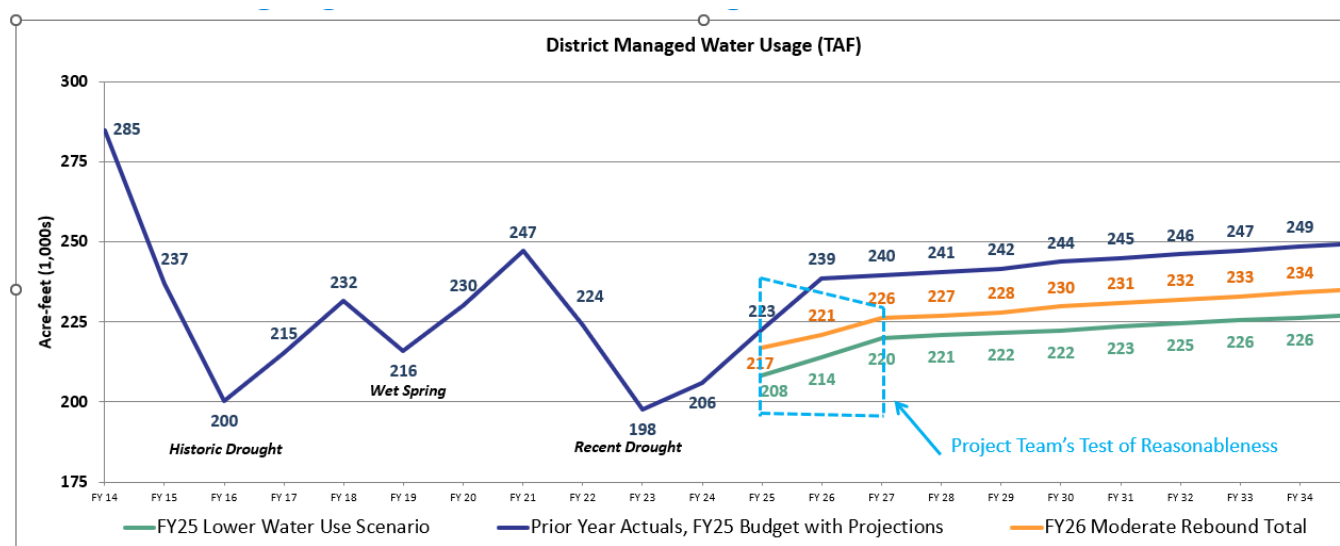
The analysis found that Valley Water's existing approach is largely consistent with practices at peer wholesale agencies and has produced modest forecast variances—averaging 1.41% over the 2012–2024 period—that have narrowed over time. Long-term trends show declining Treated Water and North County Groundwater demands since 1996, while South County Groundwater has remained relatively stable.

ES-1: Water Demand Trends



The project team applied regression and time series methods to generate a range of alternative demand projections with which to compare against Valley Water staff's approach. As shown in Exhibit ES- 2, Valley Water's baseline projection and higher and lower end ranges for FY 2025 fall between the ranges estimated by the project team (ES-3). However, the statistical approaches project declining demand in future years compared to Valley Water's projections which increase over time due to growth assumptions. Valley Water's demand projections could be enhanced by updating their methodology using growth demand forecasts from the most recent UWMP and by weighting demand projections for lower and moderate scenarios more to reflect the overall elasticity results from Task 2.

ES-2: Valley Water District Managed Water Use Demand Projection Ranges Compared to Project Team's Range of Projections



ES-3: Valley Water District Managed Water Use Demand Projection Ranges – Comparison of Alternative Methods

FY 2025 Ranges	Valley Water Method	Time Series Method	Regression Method	Average of Methods
Low Range	208	187	221	205
Medium Range	217	198	230	215
High Range	223	204	234	220

Task 2: Water Demand Price Elasticity

Task 2 estimated the relationship between water prices and water consumption in the Valley Water service area. The analysis used available data which included historical billed water use data from 10 retailers served by Valley Water, over the period from January 2000 to December 2024, which included Valley Water supplies delivered to retailers and classified by source as well as non-Valley Water supplies delivered to retailers. Historical water rate data, including Valley Water wholesale rates, San Francisco Public Utilities Commission (SFPUC) wholesale rates, and individual retailer rates, as well as relevant demographic, economic, public health, and weather data, were also collected.

The study conducted exploratory data analyses involving several different model configurations to estimate price elasticity for water demand from the available data. These configurations experimented with different aggregations of volumes by source, as well as different measures of price, or price instruments. Ultimately, the study applied three general estimation methodologies relating total per capita water use (both Valley Water- and non-Valley Water-sourced) by retailer using a price instrument defined as the incremental residential charge for the 15th water consumption unit.

Three econometric methods—Ordinary Least Squares (OLS), Error Correction Models (ECM), and Cointegrating Regression—produced consistent system-wide price elasticity estimates ranging from -0.18 to -0.21. These results confirm that water demand in Santa Clara County is inelastic with respect to price: a 10% increase in price would be expected to reduce retail demand by only about 2%. This finding aligns with prior Valley Water studies and the broader academic literature. The ECM analysis further indicates that consumer adjustment to price changes occurs relatively rapidly, within approximately two months.

A significant supplementary finding is that approximately 83% of the annual variation in volumetric retail prices assessed by the retailers is explained by variation in Valley Water's wholesale rates, and statistical tests confirm that wholesale price changes lead to volumetric retail price changes. This wholesale-to-retail volumetric price pass-through establishes a direct pathway through which Valley Water's rate decisions influence end-user costs and, consequently, water demand and affordability outcomes.

Task 3: Customer Affordability Assessment

Task 3 established a baseline assessment of water service affordability across Valley Water's service area using multiple quantitative indicators and qualitative analysis. Water affordability is fundamentally a measure of the financial burden that water service places on a household relative to its ability to pay. The most common approach expresses a household's water bill as a percentage of income—the higher the percentage, the greater the burden. The study employed affordability calculations/metrics embraced by the water industry, California water associations, and the California Public Utilities Commission (which regulates several of Valley Water's private water providers). Four primary affordability indicators were evaluated across 12 retailer service areas and 459 census tracts:

1. **Lowest Quintile of Income (LQI):** Annual essential water bill (monthly bill at 47 gpcd × 12) divided by the weighted lowest quintile income for the retailer's service area.
2. **Median Household Income (MHI):** Annual average water bill (monthly bill at 69 gpcd × 12) divided by the weighted median household income for the retailer's service area.
3. **Hours at Minimum Wage (HMW):** Monthly essential water bill divided by the applicable minimum wage (dollars per hour) for the retailer's jurisdiction.

4. **Affordability Ratio at the 20th Percentile of Income (AR₂₀):** Annual essential water bill divided by annual discretionary income (lowest quintile income minus rent minus other utilities minus the essential water bill itself), expressed as a percentage.

Calculating a household's water bill is shaped not only by the wholesale rates charged by Valley Water, but also by the retail rate structures implemented independently by each of the retailers. Five retailers employ tiered rate structures that charge progressively higher rates for higher consumption, while five utilize uniform rates that apply a single volumetric charge regardless of usage. Tiered structures can promote affordability by keeping the cost of essential water use lower—the average Tier 1 rate among tiered retailers was \$4.70 per HCF, compared to \$6.48 per HCF for those with uniform rates. Beyond volumetric pricing, the balance between fixed and variable charges plays a critical role: fixed charges as a percentage of the total bill ranged from 25% to 65% across retailers, representing the portion of a customer's bill that cannot be reduced through conservation. Similarly, the volume of water allocated to the lowest-priced tier varied from 3 HCF to 6 HCF, affecting how much essential use a household can consume before facing higher rates.

Each retailer's water rate structure was used to estimate a single-family household's water bill at both essential and average water use. The water bill was then compared to various income levels – lowest quintile household income, median household income, minimum wage, or discretionary household income at the lowest quintile. Affordability of water service was calculated in aggregate (weighted based on population within a retailer's service area), granularly by census tract within a retailer's service area for the AR₂₀ metric only, and extrapolated using *self-reported* household income and estimated indoor water use based on *self-reported* household size. The resulting range of affordability metrics and estimate of the number of households with affordability challenges are shown in exhibits ES – 3 through ES -5.

ES-4: Resulting Aggregated Single Family Residential Water Affordability Metrics

Single-Family Water Affordability Metrics				
Retailer	LQI	MHI	HMW	AR ₂₀
City Of Gilroy	0.7%	0.4%	2.7	1.5%
City Of Milpitas	1.1%	0.7%	4.6	2.0%
City Of Morgan Hill	0.9%	0.5%	3.8	1.6%
City Of Mountain View	0.9%	0.5%	3.1	1.8%
City Of Santa Clara	1.1%	0.6%	4.2	2.3%
City Of Sunnyvale	0.7%	0.4%	2.8	1.4%
CWSC Los Altos Suburban	0.9%	0.5%	4.1	1.6%
Great Oaks Water Company	0.8%	0.5%	2.9	1.7%
San Jose Municipal Water System Coyote	1.1%	0.7%	3.6	2.5%
San Jose Municipal Water System Evergreen/Edenvale	1.2%	0.8%	5.4	2.0%
San Jose Municipal Water System North San Jose/Alviso	0.8%	0.6%	4.6	1.3%
San Jose Water	1.6%	0.8%	5.3	3.4%
Valley Water Service Area of Included Retailers*	1.2%	0.7%	4.6	2.5%
Affordability Thresholds - Water Service	2.0%	2.0%	4.0	5.0%

Census tract information - American Community Survey maintained by the US Census Bureau and Consumer Expenditure survey

*Weighted based on the population served by each retailer.

ES-5: Single Family Residential Water Affordability, by Retailer - AR₂₀ Metrics

Retailer	Weighted Average Census Tracts	Most Affordable Census Tract	Least Affordable Census Tract	Affordable Census Tracts (Count)	Unafford. Census Tracts (Count)
City Of Gilroy	1.5%	0.7%	7.8%	13	1
City Of Milpitas	2.0%	0.8%	18.1%	16	5
City Of Morgan Hill	1.6%	0.9%	7.8%	9	2
City Of Mountain View	1.8%	0.5%	34.2%	22	3
City Of Santa Clara	2.3%	0.9%	-63.5%	26	7
City Of Sunnyvale	1.4%	0.7%	5.9%	40	1
CWSC Los Altos Suburban	1.6%	0.6%	33.2%	40	2
Great Oaks Water Company	1.7%	0.8%	52.7%	18	5
San Jose Municipal Water System Coyote	2.5%	1.0%	8.0%	4	1
San Jose Municipal Water System Evergreen/Edenvale	2.0%	0.6%	40.9%	18	4
San Jose Municipal Water System North San Jose/Alviso	1.3%	0.8%	8.9%	8	1
San Jose Water	3.4%	0.8%	-132.4%	125	88
<i>Census tract information - American Community Survey maintained by the US Census Bureau and Consumer Expenditure survey</i>					

ES-6: Extrapolated Unaffordable Bills Per Retailer Using Reported Household Income

Retailer	Percentage Unaffordable From PUMS Sample Data	Estimated Service Area Households	Estimated Households with Unaffordable Bills
City of Gilroy	6.06%	20,324	1,232
City of Milpitas	3.02%	25,675	775
City of Morgan Hill	6.06%	17,308	1,049
City of Mountain View	9.65%	34,188	3,300
City of Santa Clara	2.19%	48,138	1,052
City of Sunnyvale	0.50%	47,272	236
CWSC Los Altos Suburban	7.79%	40,308	3,142
Great Oaks Water Company	1.62%	30,249	489
San Jose Muni	5.22%	40,191	2,096
San Jose Water	7.41%	320,902	23,775
Retailer Total	5.95%	624,555	37,145
<i>Self-reported household data - Public Use Microdata Sample (PUMS) data available from the ACS maintained by the US Census Bureau</i>			

At the aggregate level, water service in Santa Clara County remains generally affordable, and Valley Water's service area performs favorably compared to peer agencies. However, household-level analysis using Public Use Microdata Sample (PUMS) data estimates that approximately 6% of households, or roughly 37,000 households in the service area, currently face water affordability challenges. This estimate aligns with other social indicators such as 7.7% of county households receiving Supplemental Nutrition Assistance Program (SNAP) benefits and 8.3% dependent on fixed incomes via Social Security Income (SSI).

Several retailers within Valley Water's service area offer customer assistance programs to help households manage the cost of water and wastewater services, including bill discount programs, flexible payment arrangements, and crisis assistance funds. The availability and design of these programs vary by retailer, and it should be noted that private / investor-owned utilities and public / municipal utilities in California operate under distinct, and different, regulatory requirements that govern how they may fund and administer affordability programs. Beyond retailer-led efforts, Valley Water contributes directly to addressing water affordability through an annual \$1 million contribution to Sacred Heart Community Service, a San Jose–based nonprofit that provides water bill assistance to low-income households in Santa Clara County. In its 2023/2024 Impact Report, Sacred Heart reported providing \$681,701 in water bill assistance to over 1,545 households alongside other forms of financial relief. Together, these retailer and Valley Water initiatives represent a layered approach to mitigating water affordability challenges.

Linking the Three Tasks: An Integrated Framework

While each task produced discrete and valuable results, the study's design recognizes the dynamic interrelationships among water demand projections, price elasticity, and affordability. These connections form a feedback loop central to Valley Water's rate setting and policy decisions:

- **Demand forecasts drive rate levels.** Valley Water's costs are predominantly fixed. When demand declines, rates must increase to recover the same revenue requirement. The demand projection methodology evaluated in Task 1 directly determines the denominator in the rate equation—estimated annual water sales—making demand forecasting for rate setting essential to rate stability.
- **Rate increases reduce demand through price elasticity.** Task 2 established that a 10% wholesale-driven price increase reduces *overall* retail demand (supply from Valley Water and other water providers) by approximately 2%. This creates a recursive dynamic: rate increases needed to offset declining demand may further suppress demand, requiring additional rate adjustments. Explicitly incorporating the elasticity estimate into demand forecasts could produce more realistic revenue projections and reduce forecast variance identified in Task 1, but more analysis is needed to identify which water types of Valley Water's supply, such as treated water, groundwater, etc., would decline.
- **Wholesale prices pass through to volumetric retail rates.** Task 2 demonstrated that 83% of the variation in volumetric retail prices is explained by Valley Water wholesale rates, with wholesale price changes leading retail volumetric price changes. This pass-through means Valley Water's investment decisions and rate increases directly affect the retail volumetric prices that determine affordability for end users.
- **Affordability constrains rate-setting flexibility.** Task 3 identified that while water service is broadly affordable in aggregate, approximately 37,000 households already face affordability challenges, and 26% of census tracts exceed the AR₂₀ threshold. Future rate increases—driven by capital investments, supply reliability needs, and statewide efficiency mandates that reduce volumetric revenue—will intensify these pressures. The inelastic demand estimated in Task 2 means that low-income households, who have the least discretionary water use to curtail, may bear a disproportionate burden from price increases, not only because their water use may be inelastic but also because the fixed portion of their monthly water bill could represent a larger portion of their total water bill and which

is designed based on each retailer's pricing objectives. All of these factors highlight the importance of funding customer assistance programs to offset the burden to these customers.

Looking Forward

Together, the three tasks provide Valley Water with an analytical framework for informed decision-making. Improved demand forecasting (Task 1) enables more accurate rate setting, reducing revenue volatility and unexpected rate adjustments. Price elasticity estimates (Task 2) allow the District to anticipate how rate changes will affect both demand and revenue, and can be explicitly integrated into the demand forecast to improve projections. The affordability baseline (Task 3) equips the District to evaluate how future investments and rate decisions will impact vulnerable populations and the levels of future funding for customer assistance programs to promote affordability. This integrated approach supports Valley Water's mission of delivering reliable, affordable water service while maintaining the financial health of the water enterprise.

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Santa Clara Valley Water District's Water Use Projections, Water Demand Elasticity, Customer Affordability Study

Prepared by Raftelis Financial Consultants and Hazen & Sawyer

March 2026

- Comprehensive Executive Summary
- Task 1 Technical Memorandum: Water Use Projections
- Task 2 Technical Memorandum: Water Demand Elasticity
- Task 3 Technical Memorandum: Water Rate Affordability Assessment

TO VIEW DOCUMENTS CLINK LINK:

<https://fta.valleywater.org/fl/qgVqGyghQCYM>

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Santa Clara Valley Water District

File No.: 26-0378

Agenda Date: 7/14/2026

Item No.: *4.1.

BOARD AGENDA MEMORANDUM

Government Code § 84308 Applies: Yes ☐ No ☒
(If "YES" Complete Attachment A - Gov. Code § 84308)

SUBJECT:

Adopt a Resolution Authorizing the Santa Clara Valley Water District to Submit a Grant Application to the United States Economic Development Administration Fiscal Year 2025 Disaster Supplemental Grant Program for \$19,500,000 and, if Awarded, Delegate Authority to the Chief Executive Officer to Negotiate and Execute the Grant Agreement, and any Amendments Thereto, for the Anderson Dam Seismic Retrofit Project, Project No. 91864005, Stage 2 Diversion Project.

RECOMMENDATION:

- A. Adopt the RESOLUTION AUTHORIZING SUBMISSION OF A GRANT APPLICATION TO THE UNITED STATES ECONOMIC DEVELOPMENT ADMINISTRATION (EDA) GRANT PROGRAM FOR \$19,500,000 AND, IF AWARDED, DELEGATE AUTHORITY TO THE CHIEF EXECUTIVE OFFICER, TO NEGOTIATE AND EXECUTE A GRANT AGREEMENT AND ANY AMENDMENTS THERETO, FOR THE ANDERSON DAM SEISMIC RETROFIT PROJECT STAGE 2 DIVERSION PROJECT, PROJECT NO. 91864005;
- B. Delegate authority to the Chief Executive Officer (CEO) to submit a grant application and, if awarded, to negotiate and execute a Grant Agreement with Economic Development Administration (EDA) to support the Anderson Dam Seismic Retrofit Project (ADSRP) Stage 2 Diversion Project, and any amendments thereto provided all grant requirements can be met;
- C. Delegate authority to the CEO to sign and submit invoices to EDA for grant fund reimbursements to be made pursuant to the Grant Agreement; and
- D. Delegate to the CEO, such other authority as needed, to provide management and support services required for the performance of the work and administration, pursuant to the Grant Agreement, as deemed necessary and appropriate.

SUMMARY:

The ADSRP Stage 2 Diversion Project is a key element of the overall seismic retrofit effort. The project includes the construction of new facilities and improvements to existing infrastructure to safely convey reservoir inflows during dam reconstruction and to provide long-term emergency drawdown capability. Through this application, Santa Clara Valley Water District (Valley Water) seeks \$19,500,000 in EDA funding over a four-year period to support implementation of the ADSRP Stage 2 Diversion Project.

The EDA FY25 Disaster Supplemental Grant Program provides approximately \$1.45 billion to help communities rebuild and transform local economies after major natural disasters declared in 2023 and 2024. Administered by the U.S. Economic Development Administration, under the U.S. Department of Commerce, it offers rolling deadlines and grants ranging from \$100,000 to \$50 million, depending on the chosen project pathway; readiness, implementation, or industry transformation. EDA grants are focused on economic impacts and the effects of disasters on investment, hiring, and other regional economic indicators.

Traditional disaster metrics like residential effects and injuries are not used in this grant, but data like Worker Adjustment and Retraining Notification (WARN) Notices and Gross Domestic Product (GDP) are. As with all Federal grants under the current administration, applications must score well on the given criteria and pass inspection by the appropriate political appointee in order to be awarded.

Staff recommends the Board authorize submittal of a grant application to the EDA under its Disaster Supplemental Grant Program for the Anderson Dam Seismic Retrofit Project (ADSRP), Stage 2 Diversion Project. Although applications are accepted on a rolling basis, staff is targeting submission by July 14, 2026.

ENVIRONMENTAL JUSTICE IMPACT:

There are no Environmental Justice Impacts associated with this action. Seeking outside funding to provide support for the Project could result in additional water conservation and enhanced water supply options for all residents of Santa Clara County.

FINANCIAL IMPACT:

The preliminary construction cost estimate for the Project is \$1.47 Billion; the Disaster Supplemental Grant Program would reimburse up to \$19,500,000 of total Project costs over an approximate 4-year period.

Anderson Dam Seismic Retrofit Project, Project No. 91864005, is included in the FY 2026-27 Adopted Budget. There are adequate funds in the Project's FY 2026-2027 Adopted Budget to cover the anticipated matching funds required should the grant be awarded. Funds to cover expenses in subsequent fiscal years expenses will be recommended by staff during the biennial budget process through budget adjustment(s).

CEQA:

The recommended action has satisfied the requirements of the California Environmental Quality Act (CEQA) through certification of an Environmental Impact Report (EIR).

ATTACHMENTS:

Attachment 1: Resolution

Attachment 2: Project Location Map

File No.: 26-0378

Agenda Date: 7/14/2026
Item No.: *4.1.

Attachment 3: Project Location Map, Stage 2
*Handout 4.1-A: PowerPoint

UNCLASSIFIED MANAGER:
Angie Perkins-Haslam, 408-630-2165

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

RESOLUTION NO. 2026-

RESOLUTION AUTHORIZING SUBMISSION OF A GRANT APPLICATION TO THE UNITED STATES ECONOMIC DEVELOPMENT ADMINISTRATION (EDA) GRANT PROGRAM FOR \$19,500,000 AND, IF AWARDED, DELEGATE AUTHORITY TO THE CHIEF EXECUTIVE OFFICER, TO NEGOTIATE AND EXECUTE A GRANT AGREEMENT AND ANY AMENDMENTS THERETO, FOR THE ANDERSON DAM SEISMIC RETROFIT PROJECT STAGE 2 DIVERSION, PROJECT NO. 91864005

WHEREAS, the Santa Clara Valley Water District (Valley Water) seeks external funding to support the Anderson Dam Seismic Retrofit Project (ADSRP) Stage 2 Diversion Project; and

WHEREAS, the United States Economic Development Administration (EDA) Disaster Supplemental Grant Program is currently accepting financial assistance grant applications for projects such as ADSRP; and

WHEREAS, as a condition of the grant application the EDA requires submission of a resolution adopted by Valley Water's Board of Directors authorizing staff to apply for funding, and, if the application is selected for funding by the EDA, accept award of such funding.

NOW, THEREFORE BE IT RESOLVED that the Board of Directors of Valley Water does hereby:

1. Authorize the Chief Executive Officer to apply for grant funds in the amount of \$19,500,000 and, if awarded, negotiate and execute a Grant Agreement and any subsequent amendments with the EDA to support the ADSRP Stage 2 Diversion Project, provided all grant requirements can be met; and
2. Authorize the CEO to sign and submit invoices to EDA for grant fund reimbursements, to be made pursuant to the Grant Agreement; and
3. Authorize the CEO to provide management and support services required for the performance of the work and administration, pursuant to the Grant Agreement, as deemed necessary and appropriate.
4. Verify that Valley Water will work with EDA to meet established deadlines for entering into a grant or cooperative agreement.

PASSED AND ADOPTED by the Board of Directors of the Santa Clara Valley Water District by the following vote on July 14, 2026:

AYES: Directors

NOES: Directors

ABSENT: Directors

ABSTAIN: Directors

SANTA CLARA VALLEY WATER DISTRICT

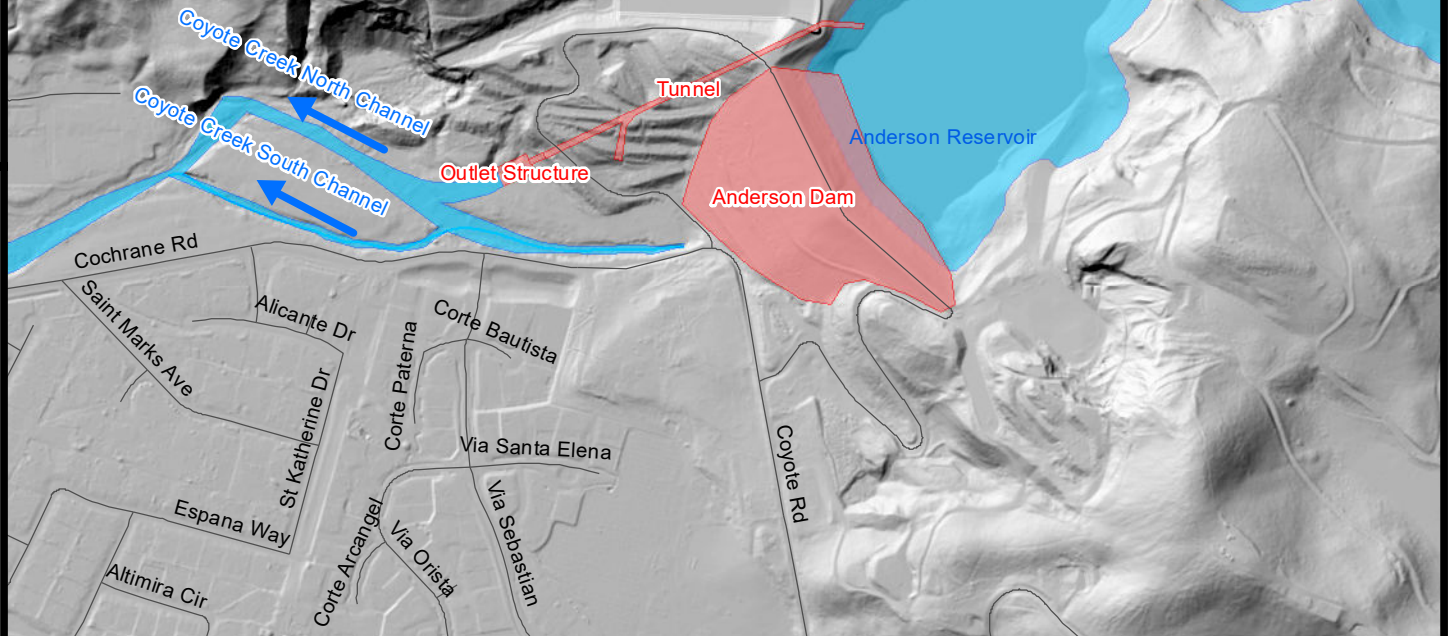
TONY ESTREMER
Chair, Board of Directors

ATTEST

CANDICE KWOK-SMITH
Clerk, Board of Directors

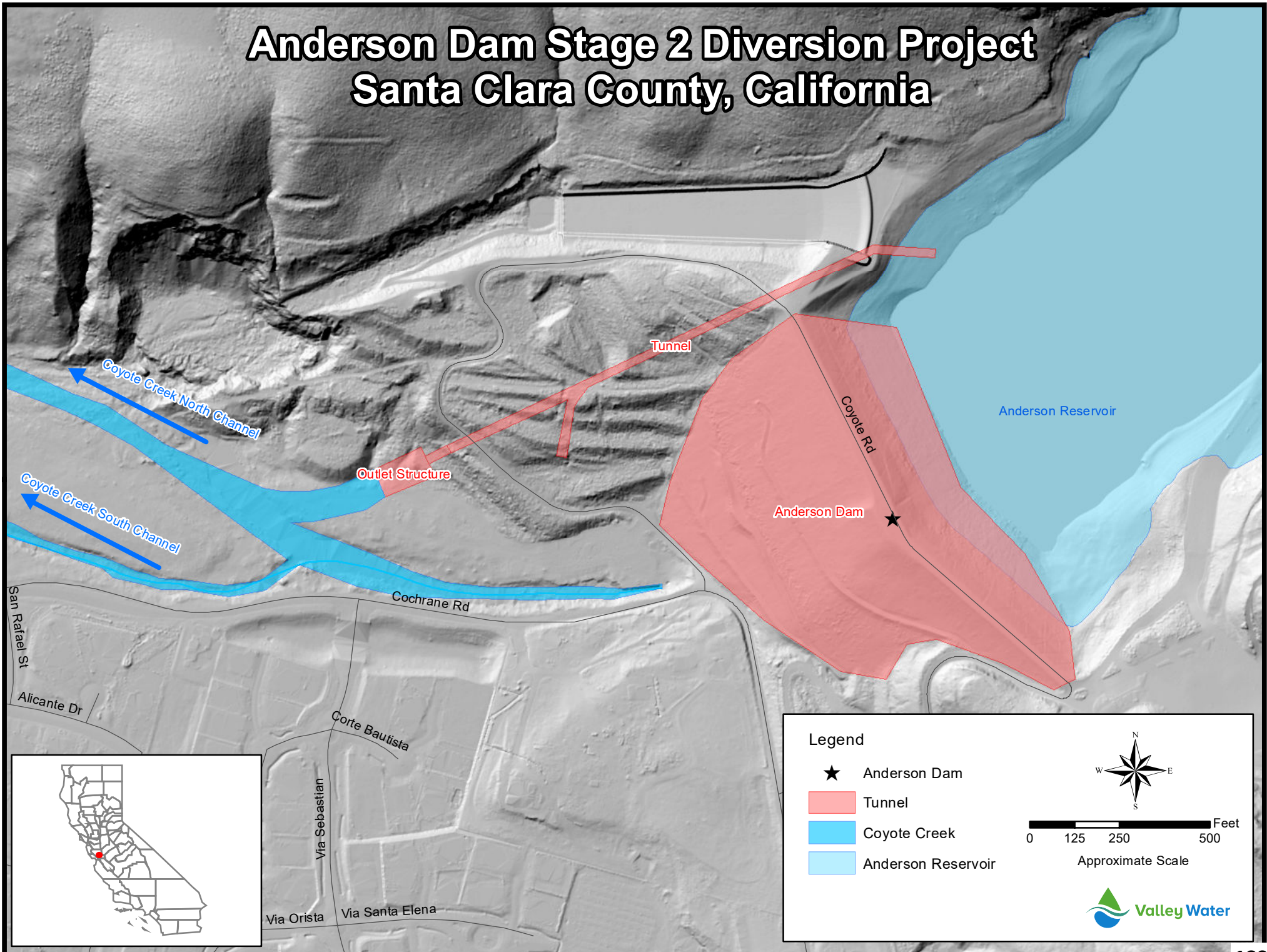
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Anderson Dam Stage 2 Diversion Project Santa Clara County, California



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Anderson Dam Stage 2 Diversion Project Santa Clara County, California



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Valley Water

Clean Water • Healthy Environment • Flood Protection



Anderson Dam Stage 2 Diversion EDA Grant Application

Presented by: Darin Taylor, Chief Financial Officer
Ryan McCarter, Deputy Operating Officer
Angie Perkins Haslam, GCCM Unit Manager

U.S. Department of Commerce Economic Development Administration

The Economic Development Administration (EDA) provides grants to economically distressed communities to generate new employment and stimulate industrial and commercial growth.

EDA's goal is to assist communities recovering from a disaster by realizing opportunities to recover and change the economic trajectory of the community for the better.



U.S. Department of Commerce Economic Development Administration

Under the Implementation Path,
EDA can support projects that will:

- Mitigate or prevent the impacts of future disaster events
- Fund replacement, repair, or upgrades to critical public infrastructure
- Restore sustained economic activity.
- EDA will award investments in regions that experienced severe economic distress in calendar years 2023 and 2024.



Implementation Path

Standalone construction or non-construction projects designed to address the economic challenges faced by a community recovering from a natural disaster and improve economic trajectories beyond pre-disaster economic conditions.

**The Readiness and Industry Transformation Paths are not appropriate for this project.*



EDA Priorities & Criteria

- Job creation, private investment, and risk reduction
- Requires readiness, regional impact & CEDS/Comprehensive Economic Development Strategy alignment
- “National Economic Significance”



This request:

- \$19.5 million
- Rolling due date
- Both criteria-scored and political
- Economic tie-in to catastrophic flood affecting facilities, supply chains, investment potential, and employee access





\$19.5 Million Application

- **\$10 Million Diversion Shaft Excavation and Initial Support**
- **\$9.5 Million 18.5-foot Diameter Diversion Tunnel Excavation and Initial Support**

Resolution Will:



- Approve application submittal
- Allow for award acceptance
- Meet grant requirement

QUESTIONS





Valley Water

Clean Water • Healthy Environment • Flood Protection

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Santa Clara Valley Water District

File No.: 26-0499

Agenda Date: 7/14/2026

Item No.: 4.2.

BOARD AGENDA MEMORANDUM

Government Code § 84308 Applies: Yes ☐ No ☒
(If "YES" Complete Attachment A - Gov. Code § 84308)

SUBJECT:

Adopt a Resolution Authorizing the Approval of the Compensation Agreement Transferring Three Public Parking Garage Parcels in Sunnyvale from the Sunnyvale Successor Agency to the City of Sunnyvale and Authorize the Chief Executive Officer to Execute the Compensation Agreement.

RECOMMENDATION:

- A. Adopt the Resolution AUTHORIZING THE APPROVAL OF THE COMPENSATION AGREEMENT TRANSFERRING THREE PUBLIC PARKING GARAGE PARCELS IN SUNNYVALE FROM THE SUNNYVALE SUCCESSOR AGENCY TO THE CITY OF SUNNYVALE; and
- B. Authorize the Chief Executive Officer to execute the Compensation Agreement.

SUMMARY:

Nearly 15 years ago, the State took action to dissolve redevelopment agencies in California. The Sunnyvale Successor Agency ("Successor Agency") is very close to dissolving as the last 3 remaining properties will be transferred to the City of Sunnyvale ("City") from the Successor Agency via a compensation agreement. The City, County of Santa Clara, and the Redevelopment Dissolution Countywide Oversight Board of Santa Clara County ("Oversight Board") have all signed off on the Compensation Agreement. State law requires all affected taxing entities to consent to the transfer of the properties through the Compensation Agreement before the transfers can take place. The taxing entities (including Valley Water) will be released from future liability associated with the 3 properties (one of which has contamination issues). The City will take on that liability.

The Successor Agency will dissolve upon execution of the Compensation Agreement by all parties. Once the Successor Agency is dissolved, Valley Water should see an overall increase in revenue as a result of administrative and other costs no longer needing to be expended related to the Successor Agency. There is no monetary exchange for this agreement, however, staff estimates that Valley Water would see a modest \$1,170 per year (growing over time) increase in property tax revenue.

Attachment 1 is the Board Resolution that staff is recommending for Board adoption that would authorize the approval of the Compensation Agreement. Attachment 2 is the Compensation Agreement, which includes signatures of the taxing entities obtained to date. Attachment 3 is the

County Executive Memo to the Redevelopment Dissolution Countywide Oversight Board dated January 29, 2026, with additional background information on the Compensation Agreement. Attachment 4 is the resolution of the Santa Clara County Redevelopment Dissolution Countywide Oversight Board that authorizes the Compensation Agreement.

ENVIRONMENTAL JUSTICE IMPACT:

There is no environmental justice impacts associated with this action. This action is unlikely to or will not result in disproportionate impacts on any specific community(ies) relative to the general population from the implementation of this agreement.

FINANCIAL IMPACT:

Once the Successor Agency is dissolved, Valley Water should see an overall increase in revenue as a result of administrative and other costs no longer needing to be expended related to the Successor Agency. Staff estimates that Valley Water would see a modest \$1,170 per year (growing over time) increase in property tax revenue as a result of dissolution.

CEQA:

The recommended action does not constitute a project under CEQA because it does not have potential for resulting in direct or reasonably foreseeable indirect physical change in the environment.

ATTACHMENTS:

Attachment 1: Resolution

*Attachment 2: Agreement

Attachment 3: County Executive Memo

Attachment 4: Resolution No. OB-2026-4

UNCLASSIFIED MANAGER:

Darin Taylor, 408-630-3068

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

RESOLUTION NO. 2026-

**AUTHORIZING THE APPROVAL OF THE COMPENSATION AGREEMENT TRANSFERRING
THREE PUBLIC PARKING GARAGE PARCELS IN SUNNYVALE FROM THE
SUNNYVALE SUCCESSOR AGENCY TO THE CITY OF SUNNYVALE**

WHEREAS, all California redevelopment agencies were dissolved by the enactment of AB XI-26 in 2011, subsequently amended by AB 1484 (2012) and SB 107 (2015) (collectively, the "Dissolution Law") and created successor agencies to wind down and dispose of all assets of the former redevelopment agencies; and

WHEREAS, pursuant to Assembly Bill No. XI-26 ("AB 26"), and the California Supreme Court's decision in California Redevelopment Assn. v. Matosantos (2011) 53 Cal.4th 231, the Redevelopment Agency of the City of Sunnyvale ("Former Redevelopment Agency") was dissolved on February 1, 2012, and the Successor Agency to the Redevelopment Agency of the City of Sunnyvale (the "Successor Agency") succeeded the Former Redevelopment Agency; and

WHEREAS, subsequently, Assembly Bill 1484, passed by the Legislature of the State of California and signed by the Governor of the State of California in June 2012, added Section 34187, subdivision (b) to the California Health and Safety Code, which section provides that within 30 days after all of the debts of a redevelopment agency are retired or paid off, all real property has been disposed of, and all outstanding litigation has been resolved, its successor agency shall submit a request to terminate its existence; and

WHEREAS, pursuant to Section 34181, subdivision (a)(I), of the California Health and Safety Code, the Successor Agency is required to dispose of all assets of the Former Redevelopment Agency or transfer ownership of those assets that were constructed and used for a governmental purpose to the appropriate public jurisdiction pursuant to any existing agreements relating to the construction or use of such an asset; and

WHEREAS, the last remaining properties the Successor Agency has in its possession are three parcels (Assessor Parcel Nos. 209-34-021, 209-34-025, and 209-35-014, collectively, "the Properties") from the Former Redevelopment Agency that are all currently being utilized as public parking garages within the mixed-use development formerly known as the Sunnyvale Town Center; and

WHEREAS, a transfer of the Properties from the Successor Agency to the City of Sunnyvale ("City") would serve the public interest by enabling the Successor Agency to initiate the dissolution process in accordance with California Health and Safety Code section 34187, and where dissolving the Successor Agency would benefit the County of Santa Clara ("County"), City, and other affected taxing entities (collectively, "Affected Taxing Entities") within the former Sunnyvale redevelopment area, including Valley Water, by eliminating staff time and resources associated with the annual preparation, review, and adjudication of the Successor Agency's Recognized Obligation Payment Schedule (ROPS); and

WHEREAS, pursuant to Section 34180, subdivision (f)(1), of the California Health and Safety Code, the City has requested that the Oversight Board and the other Affected Taxing Entities enter into a Compensation Agreement to accomplish the transfer of the Properties from the Successor Agency to the City; and

WHEREAS, the Compensation Agreement involves no payment or future revenue sharing with the Affected Taxing Entities in exchange for releasing the County and the other Affected Taxing Entities from any future liability associated with underground perchloroethylene ("PCE") contamination on the Properties; and upon transfer of the Properties, the City will assume all liability for the property associated with the PCE contamination; and moreover, once the Properties transfer and the Successor Agency dissolves, the Successor Agency's share of annual PCE monitoring costs would be paid by the City outside of the ROPS process; and

WHEREAS, City will obtain a 10-year environmental liability insurance policy; part of the cost for which the Successor Agency is anticipated to include in the amended ROPS for Oversight Board approval at its September 25, 2026 meeting; and whereas the City will be responsible for purchasing any subsequent liability insurance policies at the conclusion of the 10-year period; and

WHEREAS, the City controlling the Properties increases their potential for redevelopment for higher-value uses over the long term, which would increase property tax revenue for all taxing entities; and moreover, the dissolution of the Successor Agency will eliminate the requirement to redirect its share of tax increment to the Redevelopment Property Tax Trust Fund; and

WHEREAS, pursuant to Section 31(a) of the District Act, the Board may dispose of an interest in real property by resolution duly entered into their minutes; and

WHEREAS, this transfer would release Valley Water from any future liability with respect to the physical condition of the Properties, remove Valley Water's administrative and financial burdens associated with the Successor Agency's continued operation, and potentially increase Valley Water's future property tax revenues as a taxing entity; and

WHEREAS, pursuant to Section 31(g) of the District Act, the Board may by a majority vote transfer to any city within the Santa Clara Valley Water District any interest in real property belonging to the district.

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

1. All of the recitals above set forth are true and correct.
2. This resolution is adopted pursuant to Section 34180, subdivision (f), of the California Health and Safety Code and Section 31, subdivisions (a) and (g) of the District Act.
3. The Valley Water Board hereby authorizes the Successor Agency to the Redevelopment Agency of the City of Sunnyvale to execute and implement the Compensation Agreement related to the disposition of the real properties known as the Sunnyvale Town Center public parking garage parcels (Assessor Parcel Nos. 209-34-021, 209-34-025, and 209-35-014).

PASSED AND ADOPTED by the Board of Directors of the Santa Clara Valley Water District by the following vote, on July 14, 2026.

AYES: Directors

NOES: Directors

ABSENT: Directors

ABSTAIN: Directors

SANTA CLARA VALLEY WATER DISTRICT

TONY ESTREMER
Chair, Board of Directors

ATTEST

CANDICE KWOK-SMITH
Clerk, Board of Directors

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

City of Sunnyvale
456 West Olive Avenue
Sunnyvale, CA 94086
Attn: City Attorney's Office

Redevelopment Countywide Oversight
Board of Santa Clara County
70 W. Hedding St, 2nd Floor
San Jose, CA 95110
Attn: County Auditor-Controller

Recorded Without Fee Pursuant to Gov. Code § 27383

COMPENSATION AGREEMENT FOR SUNNYVALE TOWN CENTER PARCELS

This Compensation Agreement ("Agreement") is made and entered into by and among the Successor Agency of the Redevelopment Agency of the City of Sunnyvale, a public entity established under Health and Safety Code section 34173 (the "Successor Agency"); the City of Sunnyvale, a California municipal corporation ("City"); and each of the undersigned local agencies and school districts, each of which is a taxing entity as defined by Health and Safety Code section 34171(k) (the "Taxing Entities"), with the consent of the Redevelopment Dissolution Countywide Oversight Board of Santa Clara County, established under Health and Safety Code section 34179 (the "Oversight Board"). The Successor Agency, the City, and the Taxing Entities are collectively the "Parties" and each a "Party." The "Effective Date" of this Agreement is the date on which it has been executed by all Parties.

RECITALS

WHEREAS, the Successor Agency is the owner of three properties located at 325 South Taaffe Street (APN 209-34-021) ("Parcel 1"), 225 South Taaffe Street (APN 209-34-025) ("Parcel 2"), and 330 S. Murphy Ave (APN 209-35-014) ("Parcel 3"), all of which are located in the City of Sunnyvale, Santa Clara County, California, and are more particularly described in Exhibit A attached hereto and incorporated herein by reference (collectively, the "Property" or the "Parcels"); and

WHEREAS, Parcel 1 and Parcel 2 are developed with two multi-level parking structures that are owned by STC Venture LLC, a Delaware limited liability company, ("Owner"), the owner of the Sunnyvale Town Center mixed-use development (the "Town Center"); and

WHEREAS, Parcel 1 and Parcel 2 are currently subject to the Public Parking Ground Lease Sunnyvale Town Center, dated September 28, 2007, as amended by the First Amendment to Public Parking Ground Lease, dated August 2, 2010 and the Second Amendment to Public

Parking Ground Lease, dated September 23, 2016 (as amended, the “Public Parking Ground Lease”); and

WHEREAS, pursuant to the Public Parking Ground Lease, the Owner pays the Successor Agency \$1.00/year in nominal rental payments relating to Parcels 1 and 2 and other property not subject to this Agreement (“Nominal Rent”); and

WHEREAS, the Public Parking Ground Lease has a term of ninety-nine (99) years commencing on September 28, 2007, subject to the obligation for good faith negotiations regarding an extension of at least 10-years if certain conditions are met; and

WHEREAS, Parcel 3 is developed with a parking structure that is owned by the Successor Agency and subject to an Operations and Maintenance Agreement and easement for the benefit of the Owner which operates the parking structure located on Parcel 3; and

WHEREAS, the City expressly acknowledges and understands that environmental contamination affecting Parcel 3 predates the execution of this Agreement; and

WHEREAS, pursuant to Health and Safety Code section 34180(f), the City has requested that the Taxing Entities enter into this Agreement to accomplish the transfer of the Parcels from the Successor Agency to the City; and

WHEREAS, the transfer of the Parcels in accordance with the terms of this Agreement will allow termination of the Successor Agency, and the Parties agree to cooperate to expeditiously achieve such termination; and

WHEREAS, the Parties desire to enter into this Agreement to convey the Property to the City for public use under the terms and conditions of this Agreement; and

WHEREAS, the Redevelopment Dissolution Oversight Board of Santa Clara County is scheduled to consider this Agreement on January 29, 2026.

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties hereby agree to all of the following terms and conditions:

TERMS & CONDITIONS

Section 1. Incorporation of Recitals. The Parties agree that all of the above Recitals are true and correct and are incorporated in this Agreement’s terms and conditions.

Section 2. Purchase of Environmental Insurance Policy. No later than 30 days after the approval by the California Department of Finance of an amendment to the Successor Agency’s 2025-2026 Recognized Obligation Payment Schedule or the approval of the Successor Agency’s 2026-2027 Recognized Obligation Payment Schedule, adding to the costs of the environmental remediation for Parcel 3 the costs of an environmental insurance policy

("Environment Insurance Policy"), the Successor Agency shall purchase such Environmental Insurance Policy that meets all of the following criteria:

- (a) Has a term of 10 years;
- (b) Is transferrable to successive property owners;
- (c) Does not cost more than the amount allowed on the Successor Agency's Recognized Obligation Payment Schedule for the purchase of such Environmental Insurance Policy;
- (d) Contains or includes an endorsement for the following: i) bodily injury (including death), property damage and environmental cleanup costs, both on the Property and off-site; (ii) transportation of any waste, including loading and unloading from the Property to the final disposal location, with all such disposal locations being scheduled or covered as non-owned disposal sites under the Environmental Insurance Policy.
- (e) Has a reverse-retroactive date of policy inception providing coverage for pre-existing pollution conditions;
- (f) Has a minimum limit of \$25,000,000.

Section 3. Conveyance of Property to City.

(a) **Conveyance.** Subject to the terms and conditions of this Agreement, the Successor Agency shall convey its interest in and to the Property to the City at no cost by quitclaim deed no later than 60 days after the Effective Date or the Successor Agency's purchase of the Environmental Insurance Policy, whichever is later, unless otherwise extended by the Parties for good cause. Any costs of escrow and title associated with the conveyance of the Property to the City shall be borne by the City. The City shall promptly provide the Taxing Entities copies of the recorded quitclaim deed.

(b) **Release.** Except as expressly provided herein, upon the close of escrow and delivery of the quitclaim deed, City hereby waives, releases, acquits, and forever discharges Successor Agency and Taxing Entities, and Successor Agency's and Taxing Entities' agents, directors, officers, and employees to the maximum extent permitted by law, of and from any and all claims, actions, causes of action, demands, rights, liabilities, damages, losses, costs, expenses, compensation, attorneys' fees, consultants' fees and costs and expert fees (collectively "Claims") whatsoever, direct or indirect, known or unknown, foreseen or unforeseen, that it now has or that may arise in the future because of or in any way growing out of or connected with the physical condition of the Property, including without limitation, the physical and environmental condition of the Property or any law or regulation applicable thereto, including, without limitation, any Claim or matter (regardless of when it first appeared) relating to or arising from (i) the presence of any environmental problems, or the use, presence, storage, release, discharge, or migration of hazardous materials on, in, under or around the Property regardless of when such hazardous materials were first introduced in, on or about the Property, (ii) any patent or latent defects or

deficiencies with respect to the Property, (iii) any and all matters related to the Property or any portion thereof, including without limitation, the condition and/or operation of the Property and each part thereof, and (iv) the presence, release and/or remediation of asbestos and asbestos containing materials in, on or about the Property regardless of when such asbestos and asbestos containing materials were first introduced in, on or about the Property. City further hereby waives and agrees not to commence any action, legal proceeding, cause of action or suit in law or equity, of whatever kind or nature, including, but not limited to, a private right of action under the federal superfund laws, 42 U.S.C. Section 9601 *et seq.* and California Health and Safety Code section 78000 *et seq.* (as such laws and statutes may be amended, supplemented or replaced from time to time), directly or indirectly, against Successor Agency, any Taxing Entity, or Successor Agency's or Taxing Entities' agents, directors, officers, and employees in connection with the Property, except matters arising from Successor Agency's fraud, intentional misrepresentation, or concealment.

AS IS CONDITION OF PROPERTY. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, IT IS UNDERSTOOD AND AGREED THAT THE SUCCESSOR AGENCY IS NOT MAKING AND HAS NOT AT ANY TIME MADE ANY WARRANTIES OR REPRESENTATIONS OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, WITH RESPECT TO THE PROPERTY. THE CITY ACKNOWLEDGES AND AGREES THAT UPON THE CLOSING DATE THE SUCCESSOR AGENCY SHALL SELL AND CONVEY THE PROPERTY TO THE CITY "IN ITS THEN EXISTING CONDITION AS IS, WHERE IS, WITH ALL FAULTS" EXCEPT TO THE EXTENT EXPRESSLY PROVIDED OTHERWISE IN THIS AGREEMENT, THE CITY HAS NOT RELIED AND WILL NOT RELY ON, AND THE SUCCESSOR AGENCY IS NOT LIABLE FOR OR BOUND BY, ANY EXPRESS OR IMPLIED WARRANTIES, GUARANTIES, STATEMENTS, REPRESENTATIONS OR INFORMATION PERTAINING TO THE PROPERTY OR RELATING THERETO MADE OR FURNISHED BY THE SUCCESSOR AGENCY OR ANY AGENT PURPORTING TO REPRESENT THE SUCCESSOR AGENCY, UNLESS SPECIFICALLY SET FORTH IN THIS AGREEMENT.

THE CITY REPRESENTS TO THE SUCCESSOR AGENCY THAT CITY HAS CONDUCTED, OR WILL CONDUCT PRIOR TO CLOSING, SUCH INVESTIGATIONS OF THE PROPERTY, INCLUDING BUT NOT LIMITED TO, THE PHYSICAL AND ENVIRONMENTAL CONDITIONS THEREOF, AS THE CITY

DEEMS NECESSARY OR DESIRABLE TO SATISFY ITSELF AS TO THE CONDITION OF THE PROPERTY AND THE EXISTENCE OR NONEXISTENCE OR CURATIVE ACTION TO BE TAKEN WITH RESPECT TO ANY HAZARDOUS MATERIALS ON OR DISCHARGED FROM THE PROPERTY, AND WILL RELY SOLELY UPON SAME AND NOT UPON ANY INFORMATION PROVIDED BY OR ON BEHALF OF SUCCESSOR AGENCY OR ITS AGENTS, OTHER THAN SUCH REPRESENTATIONS AND WARRANTIES OF SUCCESSOR AGENCY AS ARE EXPRESSLY SET FORTH IN THIS AGREEMENT. UPON CLOSING, SUBJECT TO SUCH REPRESENTATIONS AND WARRANTIES OF THE SUCCESSOR AGENCY AS ARE EXPRESSLY SET FORTH IN THIS AGREEMENT, THE CITY SHALL ASSUME THE RISK THAT ADVERSE MATTERS, INCLUDING BUT NOT LIMITED TO, ADVERSE PHYSICAL AND ENVIRONMENTAL CONDITIONS, MAY NOT HAVE BEEN REVEALED BY THE CITY'S INVESTIGATIONS.

IN CONNECTION WITH THE RELEASE PROVIDED FOR IN THIS AGREEMENT, CITY EXPRESSLY WAIVES ALL RIGHTS UNDER CALIFORNIA CIVIL CODE SECTION 1542, WHICH PROVIDES THAT:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY;

THE COVENANTS SET FORTH IN THIS SECTION SHALL SURVIVE CLOSE OF ESCROW AND DELIVERY OF THE QUIT CLAIM DEED(S).

Section 4. Recordation of this Agreement. Upon full execution of this Agreement the City shall cause this Agreement to be recorded against the Property in the Santa Clara County Office of the Clerk-Recorder. The City shall promptly provide the Taxing Entities with a recorded copy of this Agreement. Upon the transfer of the Property to the City pursuant to Section 3(a) above, the Parties agree that the County and the City can execute and record a release of this Agreement to be recorded in the Official Records and the County's execution of

such release shall be conclusive evidence that the Agreement has been fully performed and none of the Taxing Entities shall have any further rights or obligations under this Agreement after recordation of such a release, except that the covenants set forth in Section 3(b) shall survive.

Section 5. Miscellaneous Provisions.

(a) **Non-Waiver.** No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this Agreement will be effective unless it is in writing and signed by the waiving Parties.

(b) **No Partnership.** Nothing contained in this Agreement shall be construed to constitute any Party as a partner, employee, joint venturer, or agent of any other Party.

(c) **Notices.** All deliveries, notices, requests, demands or other communications provided for or required by this Agreement shall be in writing and shall be deemed to have been given when sent by registered or certified mail, return receipt requested; when sent by overnight carrier; or upon email confirmation to sender of receipt of a facsimile communication which is followed by a mailed hard copy from sender. Notices shall be addressed as specified in each Party's signature block.

(d) **Severability.** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement, but this Agreement shall be construed as if such invalid, illegal, or unenforceable provisions had not been contained herein.

(e) **Time is of the Essence.** Time is of the essence regarding each and all of the agreements, covenants, and conditions of this Agreement.

(f) **Ambiguities.** Any rule of construction to the effect that ambiguities are to be resolved against the drafting party does not apply in interpreting this Agreement.

(g) **Integration.** This instrument constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior offers and negotiations, oral or written.

(h) **Amendment.** This Agreement may be modified only in writing and only if signed by the Taxing Entities and the City at the time of the modification. Following the execution of this Agreement, the Successor Agency's consent shall not be required for any modification of the Agreement.

(i) **Governing Law.** This Agreement shall be construed and interpreted according to the laws of the State of California, excluding its conflict of law principles. Proper venue for legal actions will be exclusively vested in a state court in the County of Santa Clara. The Parties agree that subject matter and personal jurisdiction are proper in state court in the County of Santa Clara and waive all venue objections.

(j) **Counterparts.** This Agreement may be executed in one or more counterparts, each of which will be considered an original, but all of which together will constitute one and the same instrument.

(k) **Contract Execution.** Unless otherwise prohibited by law or County policy, the parties agree that an electronic copy of a signed contract, or an electronically signed contract, has the same force and legal effect as a contract executed with an original ink signature. The term "electronic copy of a signed contract" refers to a transmission by facsimile, electronic mail, or other electronic means of a copy of an original signed contract in a portable document format. The term "electronically signed contract" means a contract that is executed by applying an electronic signature using technology approved by the County.

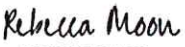
IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

**SUCCESSOR AGENCY TO THE
REDEVELOPMENT AGENCY OF THE
CITY OF SUNNYVALE**

Approved as to form:
DocuSigned by:
 1/8/2026
4004B8486114497...
Rebecca Moon
Agency General Counsel

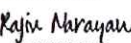
Signed by:
 1/8/2026
By:  A38667B67C1D420...
Name: Tim Kirby
Title: Executive Director
Address: 456 West Olive Ave.
Sunnyvale, CA 94088-3707

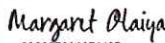
CITY OF SUNNYVALE

Approved as to form:
DocuSigned by:
 1/8/2026
4004B8486114497...
Rebecca Moon
City Attorney

Signed by:
 1/8/2026
By:  A38667B67C1D420...
Name: Tim Kirby
Title: City Manager
Address: 456 West Olive Ave.
Sunnyvale, CA 94088-3707

**SANTA CLARA COUNTY
AUDITOR-CONTROLLER**

Approved as to form and legality:
DocuSigned by:
 1/8/2026
837350331D49492...
Rajiv Narayan
Deputy County Counsel

DocuSigned by:
 1/9/2026
By:  88C20E0A14E143D...
Name: Margaret Olaiya
Title: Director, Finance Agency
70 W. Hedding Street
East Wing, 2nd Floor
San Jose, CA 95110

CONSENT OF OVERSIGHT BOARD

Signed by:
By: David Snow, Vice Chairperson
Name: David Snow
Title: Vice Chairperson

Date: 1/29/2026

TAXING ENTITIES

Approved as to form and legality:

DocuSigned by:

Rajiv Narayan

1/8/2026

Rajiv Narayan

Deputy County Counsel

COUNTY OF SANTA CLARA

By: 

Name: Otto Lee

Title: President, Board of Supervisors

70 W. Hedding Street

East Wing, 10th Floor

San Jose, CA 95110

Signed and certified that a copy of this document has been delivered by electronic or other means to the President, Board of Supervisors.

ATTEST:

 FOR

CURTIS BOONE

Clerk of the Board of Supervisors

FREMONT UNION HIGH SCHOOL DISTRICT

By: _____

Name: _____

Title: _____

Address: _____

SUNNYVALE ELEMENTARY SCHOOL DISTRICT

By: _____

Name: _____

Title: _____

Address: _____

SANTA CLARA COUNTY OFFICE OF EDUCATION

By: _____

Name: _____

Title: _____

Address: _____

FOOTHILL-DeANZA COMMUNITY COLLEGE DISTRICT

By: _____

Name: _____

Title: _____

Address: _____

EL CAMINO HEALTHCARE DISTRICT

By: 
Name: John Zeglin
Title: El Camino Healthcare District
Address: Board Chair
2500 Grant Road, Mountain View
CA 94040

MIDPENINSULA REGIONAL OPEN SPACE DISTRICT

By: _____
Name: _____
Title: _____
Address: _____

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

By: _____
Name: _____
Title: _____
Address: _____

SANTA CLARA VALLEY WATER DISTRICT

By: _____
Name: _____
Title: _____
Address: _____

Exhibits:

A – Legal Description

EXHIBIT A
LEGAL DESCRIPTION

Lot 3, Block 1, Tract No. 9925

All that certain real property situate in the City of Sunnyvale, County of Santa Clara, State of California, described as follows:

Being all of Lot 3, Block 1, Tract No. 9925, entitled "Sunnyvale Town Center," filed October 1, 2007, in Book 818 of Maps at Pages 45 through 55 inclusive, Records of Santa Clara County.

Lot 4, Block 2, Tract No. 9925

All that certain real property situate in the City of Sunnyvale, County of Santa Clara, State of California, described as follows:

Being all of Lot 4, Block 2, Tract No. 9925, entitled "Sunnyvale Town Center," filed October 1, 2007, in Book 818 of Maps at Pages 45 through 55 inclusive, Records of Santa Clara County.

Lot 2, Block 5, Tract No. 9925

All that certain real property situate in the City of Sunnyvale, County of Santa Clara, State of California, described as follows:

Being all of Lot 2, Block 5, Tract No. 9925, entitled "Sunnyvale Town Center," filed October 1, 2007, in Book 818 of Maps at Pages 45 through 55 inclusive, Records of Santa Clara County.

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127385

DATE: January 29, 2026
TO: Redevelopment Dissolution Countywide Oversight Board of Santa Clara County
FROM: James R. Williams, County Executive
SUBJECT: Resolution to Authorize Execution and Implementation of Compensation Agreement

RECOMMENDED ACTION

Adopt Resolution authorizing the Successor Agency to the Redevelopment Agency of the City of Sunnyvale to execute and implement the Compensation Agreement relating to the disposition of the real properties known as the Sunnyvale Town Center public parking garage parcels (Assessor's Parcel Nos. 209-34-021, 209-34-025, and 209-35-014).

FISCAL IMPLICATIONS

Approval and full execution of the compensation agreement will reduce the future liability of the affected taxing entities and allow the Successor Agency to the Redevelopment Agency of the City of Sunnyvale to dissolve, reducing associated administrative costs and thereby freeing up additional property tax revenue to flow to the taxing entities.

REASONS FOR RECOMMENDATION AND BACKGROUND

Pursuant to Health and Safety Code section 34181(a)(1), the Successor Agency to the Redevelopment Agency of the City of Sunnyvale ("Successor Agency") is required to dispose of all assets of the former redevelopment agency. The last remaining properties the Successor Agency to the Redevelopment Agency of the City of Sunnyvale ("Successor Agency") has in its possession are three parcels from the former Redevelopment Agency that are all currently being utilized as public parking garages within the mixed-use development formerly known as the Sunnyvale Town Center.

After multi-year discussions between County and City of Sunnyvale ("City") staff, it was agreed that a transfer of the properties from the Successor Agency to the City would serve the public interest by enabling the Successor Agency to initiate the dissolution process in accordance with Health and Safety Code section 34187, which requires that all of the Successor Agency's debts are paid, its real property is disposed of, and any litigation is

resolved. Dissolving the Successor Agency would benefit all taxing entities¹ within the former Sunnyvale redevelopment area, including school districts, the County, and special districts, by ending the need to redirect former tax increment revenue to the Redevelopment Property Tax Trust Fund (RPTTF) and related costs, and by eliminating other staff time and resources associated with the existence of the Successor Agency, including administrative resources for the annual preparation, review, and adjudication of the Recognized Obligation Payment Schedule (ROPS).

Transferring the properties from the Successor Agency to the City requires a compensation agreement to be approved by all parties, including the City, Successor Agency, and all local taxing entities. On October 28, 2025, the City and Successor Agency adopted resolutions to approve the compensation agreement to allow the transfer of the three properties from the Successor Agency to the City. And, on January 13, 2026 (Item No. 33), the Board of Supervisors approved the compensation agreement, which must also be approved by the Oversight Board, the other taxing entities, and the DOF before taking effect and facilitating the Successor Agency's full dissolution.

County and City staff worked cooperatively on the compensation agreement to ensure it would benefit all parties' interests. The compensation agreement involves no payment or future revenue sharing with the affected taxing entities in exchange for releasing the taxing entities from future liability associated with underground perchloroethylene (PCE) contamination on the Murphy Avenue property, traced to a former dry-cleaning business. Upon transfer of the properties, the City will assume all liability for the property associated with the PCE contamination, and the taxing entities will be released from liability. Moreover, once the properties transfer and the Successor Agency dissolves, the Successor Agency's share of annual PCE monitoring costs—which have ranged from roughly \$8,000 to \$15,000 per year in recent years and are currently reimbursed by the ROPS—would be paid by the City outside of the ROPS process.

The PCE contamination under the Murphy Avenue garage was discovered in 2007 and underwent remediation efforts for several years. Currently, the PCE levels are low enough that the Regional Water Quality Control Board only requires monitoring. The Regional Water Quality Control Board has not, however, issued a “no further action” letter because the PCE levels are still higher than threshold levels. PCE exposure has been associated with various health problems, including kidney, liver, and bladder cancers, as well as reproductive and birth defects, neurotoxicity and other adverse health impacts, according to numerous scientific studies.

As reflected in the compensation agreement, the County has agreed that the City be reimbursed via the ROPS for the cost of a 10-year environmental liability insurance policy. Previous quotes obtained by the City range from \$200,000 to \$300,000 for a 10-year term.

¹ Taxing entities within the former Sunnyvale redevelopment area include the Fremont Union High School District, Sunnyvale Elementary School District, Santa Clara County Office of Education, Foothill-De Anza Community College District, County of Santa Clara, City of Sunnyvale, El Camino Healthcare District, Midpeninsula Regional Open Space District, Bay Area Air Quality Management District, and Santa Clara Valley Water District.

The ROPS submitted for the Fiscal Year 2026-2027 period does not include the cost of this insurance policy; once the compensation agreement is fully executed by all parties, an amended ROPS for FY 2026-2027 is anticipated to be submitted to the Oversight Board for approval to cover the cost of this insurance policy. At the end of the 10-year term, the City will be responsible for purchasing any subsequent environmental liability insurance policies.

In addition to the release of liability, ending the redirection of property tax revenue to the RPTTF, and reducing administrative costs, there are other potential benefits of the recommended action for the taxing entities. The City controlling these properties in the Sunnyvale Town Center increases their potential for redevelopment for higher-value uses over the long term, which would increase property tax revenue for all taxing entities.

The California State Legislature enacted Assembly Bill x1 26 to dissolve redevelopment agencies formed under the Community Redevelopment Law (Health and Safety Code section 33000 et seq.), as amended by Assembly Bill 1484, Statutes of 2012, enacted June 27, 2012. Upon dissolution of the Sunnyvale Redevelopment Agency, the Successor Agency became the owner of all property owned by the former Redevelopment Agency. The three parcels in the proposed compensation agreement are the only remaining properties owned by the Successor Agency:

- 325 S. Taaffe St. (APN 209-34-021), also known as “Pear” or the Cityline Flats “F” garage, located on Block 1, Lot 3, of the Town Center project area.
- 225 S. Taaffe St. (APN 209-34-025), also known as “Orange” or the Cityline Flats “E” garage, located on Block 2, Lot 4, of the Town Center project area.
- 330 S. Murphy Ave. (APN 209-35-014), also known as the “Penney’s garage” or the AMC/Whole Foods garage, located on Block 5, Lot 2, of the Town Center project area.

CONSEQUENCES OF NEGATIVE ACTION

The Successor Agency would not be able to fully dissolve, and the affected taxing entities would not be released from liability associated with the PCE contamination.

STEPS FOLLOWING APPROVAL

Upon priority processing, the Clerk will return two signed copies to the Office of the County Executive, attention Brian Darrow, who will assist the City in securing approval and gathering signatures from the other taxing entities. Following receipt of all signatures, the Office of the County Executive will provide the Clerk of the Board’s Office with a conformed copy of the fully executed agreement for its records.

LINKS:

- Linked From: OB-2026-5 : Adopt Resolution to approve the Recognized Obligation Payment Schedule for period July 1, 2026 through June 30, 2027 for the Successor Agency to the Redevelopment Agency of the City of Sunnyvale.

ATTACHMENTS:

- Resolution Authorizing Execution and Implementation of Compensation Agreement regarding Remaining Sunnyvale Successor Agency Properties (PDF)
- Resolution_OB-2026-4_Resolution Authorizing Execution and Implementation of Compensation Agreement regarding Remaining Sunnyvale Successor Agency Properties_signed (PDF)

RESOLUTION NO. OB-2026-4

**RESOLUTION OF THE REDEVELOPMENT DISSOLUTION
COUNTYWIDE OVERSIGHT BOARD OF SANTA CLARA
COUNTY AUTHORIZING THE SUCCESSOR AGENCY TO
THE REDEVELOPMENT AGENCY OF THE CITY OF
SUNNYVALE TO EXECUTE AND IMPLEMENT THE
COMPENSATION AGREEMENT RELATED TO THE
DISPOSITION OF THE REAL PROPERTY WITHIN THE
AREA COMMONLY KNOWN AS THE SUNNYVALE TOWN
CENTER**

WHEREAS, all California redevelopment agencies were dissolved by the enactment of AB xl 26 in 2011, subsequently amended by AB 1484 (2012) and SB 107 (2015) (collectively, the “Dissolution Law”) and created successor agencies to wind down and dispose of all assets of the former redevelopment agencies;

WHEREAS, pursuant to Assembly Bill No. X1-26 (“AB 26”), and the California Supreme Court’s decision in *California Redevelopment Assn. v. Matosantos* (2011) 53 Cal.4th 231, the Redevelopment Agency of the City of Sunnyvale (“Former Redevelopment Agency”) was dissolved on February 1, 2012, and the Successor Agency to the Redevelopment Agency of the City of Sunnyvale (the “Successor Agency”) succeeded the Former Redevelopment Agency;

WHEREAS, subsequently, Assembly Bill 1484, passed by the Legislature of the State of California and signed by the Governor of the State of California in June 2012, added Section 34187, subdivision (b) to the California Health and Safety Code, which section provides that within one year after all of the debts of a redevelopment agency are retired or paid off, all real property has been disposed of, and all outstanding litigation has been resolved, its successor agency shall terminate its existence;

WHEREAS, pursuant to Section 34179 of the California Health and Safety Code, the Santa Clara County Redevelopment Dissolution Countywide Oversight Board (the “Oversight Board”) acts as the oversight board for the Successor Agency;

WHEREAS, pursuant to Section 34181, subdivision (a)(1), of the California Health and Safety Code, the Successor Agency is required to dispose of all assets of the Former Redevelopment Agency;

WHEREAS, the last remaining properties the Successor Agency has in its possession are three parcels (Assessor Parcel Nos. 209-34-021, 209-34-025, and 209-35-014, collectively, “the Properties”) from the Former Redevelopment Agency that are all currently being utilized as public parking garages within the mixed-use development formerly known as the Sunnyvale Town Center;

WHEREAS, a transfer of the Properties from the Successor Agency to the City of Sunnyvale (“City”) would serve the public interest by enabling the Successor Agency to initiate the dissolution process in accordance with California Health and Safety Code section 34187, and where dissolving the Successor Agency would benefit the County of Santa Clara (“County”), City, and other affected

taxing entities (collectively, “Affected Taxing Entities”) within the former Sunnyvale redevelopment area, including school districts and special districts, by eliminating staff time and resources associated with the annual preparation, review, and adjudication of the Successor Agency’s Recognized Obligation Payment Schedule (ROPS);

WHEREAS, pursuant to Section 34180, subdivision (f), of the California Health and Safety Code, the City has requested that the Oversight Board and the other Affected Taxing Entities enter into a Compensation Agreement to accomplish the transfer of the Properties from the Successor Agency to the City;

WHEREAS, the Compensation Agreement involves no payment or future revenue sharing with the Affected Taxing Entities in exchange for releasing the County and the other Affected Taxing Entities from any future liability associated with underground perchloroethylene (“PCE”) contamination on the Properties; and upon transfer of the Properties, the City will assume all liability for the property associated with the PCE contamination; and moreover, once the Properties transfer and the Successor Agency dissolves, the Successor Agency’s share of annual PCE monitoring costs would be paid by the City outside of the ROPS process;

WHEREAS, City will obtain a 10-year environmental liability insurance policy; part of the cost for which the Successor Agency is anticipated to include in the amended ROPS for Oversight Board approval at its September 25, 2026 meeting; and whereas the City will be responsible for purchasing any subsequent liability insurance policies at the conclusion of the 10-year period; and

WHEREAS, the City controlling the Properties increases their potential for redevelopment for higher-value uses over the long term, which would increase property tax revenue for all taxing entities; and moreover, the dissolution of the Successor Agency will eliminate the requirement to redirect its share of tax increment to the Redevelopment Property Tax Trust Fund.

NOW, THEREFORE, BE IT RESOLVED by the Santa Clara County Redevelopment Dissolution Countywide Oversight Board, as follows:

SECTION 1. All of the recitals above set forth are true and correct, and the Oversight Board hereby so finds and determines.

SECTION 2. This resolution is adopted pursuant to Section 34180, subdivision (f), of the California Health and Safety Code.

SECTION 3. The Oversight Board hereby authorizes the Successor Agency to the Redevelopment Agency of the City of Sunnyvale to execute and implement the Compensation Agreement related to the disposition of the real properties known as the Sunnyvale Town Center public parking garage parcels (Assessor Parcel Nos. 209-34-021, 209-34-025, and 209-35-014).

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SECTION 4. This Resolution shall take effect immediately upon its passage and adoption.

PASSED AND ADOPTED by the Redevelopment Dissolution Countywide Oversight Board of Santa Clara County in the County of Santa Clara, State of California, on

January 29, 2026, by the following vote:

AYES: Barry, Estremera, Gomez, Chim, Snow, Pascoal

NOES: None

ABSTAIN: None

ABSENT: Klein


Chair

Redevelopment Dissolution Oversight Board of
Santa Clara County

ATTEST:



CURTIS BOONE

Clerk of the Countywide Oversight Board

**APPROVED AS TO FORM
AND LEGALITY:**



RAJIV NARAYAN

Deputy County Counsel

Exhibits:

1. Compensation Agreement

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

City of Sunnyvale
456 West Olive Avenue
Sunnyvale, CA 94086
Attn: City Attorney's Office

Redevelopment Countywide Oversight
Board of Santa Clara County
70 W. Hedding St, 2nd Floor
San Jose, CA 95110
Attn: County Auditor-Controller

Recorded Without Fee Pursuant to Gov. Code § 27383

COMPENSATION AGREEMENT FOR SUNNYVALE TOWN CENTER PARCELS

This Compensation Agreement (“Agreement”) is made and entered into by and among the Successor Agency of the Redevelopment Agency of the City of Sunnyvale, a public entity established under Health and Safety Code section 34173 (the “Successor Agency”); the City of Sunnyvale, a California municipal corporation (“City”); and each of the undersigned local agencies and school districts, each of which is a taxing entity as defined by Health and Safety Code section 34171(k) (the “Taxing Entities”), with the consent of the Redevelopment Dissolution Countywide Oversight Board of Santa Clara County, established under Health and Safety Code section 34179 (the “Oversight Board”). The Successor Agency, the City, and the Taxing Entities are collectively the “Parties” and each a “Party.” The “Effective Date” of this Agreement is the date on which it has been executed by all Parties.

RECITALS

WHEREAS, the Successor Agency is the owner of three properties located at 325 South Taaffe Street (APN 209-34-021) (“Parcel 1”), 225 South Taaffe Street (APN 209-34-025) (“Parcel 2”), and 330 S. Murphy Ave (APN 209-35-014) (“Parcel 3”), all of which are located in the City of Sunnyvale, Santa Clara County, California, and are more particularly described in Exhibit A attached hereto and incorporated herein by reference (collectively, the “Property” or the “Parcels”); and

WHEREAS, Parcel 1 and Parcel 2 are developed with two multi-level parking structures that are owned by STC Venture LLC, a Delaware limited liability company, (“Owner”), the owner of the Sunnyvale Town Center mixed-use development (the “Town Center”); and

WHEREAS, Parcel 1 and Parcel 2 are currently subject to the Public Parking Ground Lease Sunnyvale Town Center, dated September 28, 2007, as amended by the First Amendment to Public Parking Ground Lease, dated August 2, 2010 and the Second Amendment to Public

Parking Ground Lease, dated September 23, 2016 (as amended, the “Public Parking Ground Lease”); and

WHEREAS, pursuant to the Public Parking Ground Lease, the Owner pays the Successor Agency \$1.00/year in nominal rental payments relating to Parcels 1 and 2 and other property not subject to this Agreement (“Nominal Rent”); and

WHEREAS, the Public Parking Ground Lease has a term of ninety-nine (99) years commencing on September 28, 2007, subject to the obligation for good faith negotiations regarding an extension of at least 10-years if certain conditions are met; and

WHEREAS, Parcel 3 is developed with a parking structure that is owned by the Successor Agency and subject to an Operations and Maintenance Agreement and easement for the benefit of the Owner which operates the parking structure located on Parcel 3; and

WHEREAS, the City expressly acknowledges and understands that environmental contamination affecting Parcel 3 predates the execution of this Agreement; and

WHEREAS, pursuant to Health and Safety Code section 34180(f), the City has requested that the Taxing Entities enter into this Agreement to accomplish the transfer of the Parcels from the Successor Agency to the City; and

WHEREAS, the transfer of the Parcels in accordance with the terms of this Agreement will allow termination of the Successor Agency, and the Parties agree to cooperate to expeditiously achieve such termination; and

WHEREAS, the Parties desire to enter into this Agreement to convey the Property to the City for public use under the terms and conditions of this Agreement; and

WHEREAS, the Redevelopment Dissolution Oversight Board of Santa Clara County is scheduled to consider this Agreement on January 29, 2026.

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties hereby agree to all of the following terms and conditions:

TERMS & CONDITIONS

Section 1. Incorporation of Recitals. The Parties agree that all of the above Recitals are true and correct and are incorporated in this Agreement’s terms and conditions.

Section 2. Purchase of Environmental Insurance Policy. No later than 30 days after the approval by the California Department of Finance of an amendment to the Successor Agency’s 2025-2026 Recognized Obligation Payment Schedule or the approval of the Successor Agency’s 2026-2027 Recognized Obligation Payment Schedule, adding to the costs of the environmental remediation for Parcel 3 the costs of an environmental insurance policy

(“Environment Insurance Policy”), the Successor Agency shall purchase such Environmental Insurance Policy that meets all of the following criteria:

- (a) Has a term of 10 years;
- (b) Is transferrable to successive property owners;
- (c) Does not cost more than the amount allowed on the Successor Agency’s Recognized Obligation Payment Schedule for the purchase of such Environmental Insurance Policy;
- (d) Contains or includes an endorsement for the following: i) bodily injury (including death), property damage and environmental cleanup costs, both on the Property and off-site; (ii) transportation of any waste, including loading and unloading from the Property to the final disposal location, with all such disposal locations being scheduled or covered as non-owned disposal sites under the Environmental Insurance Policy.
- (e) Has a reverse-retroactive date of policy inception providing coverage for pre-existing pollution conditions;
- (f) Has a minimum limit of \$25,000,000.

Section 3. Conveyance of Property to City.

(a) **Conveyance.** Subject to the terms and conditions of this Agreement, the Successor Agency shall convey its interest in and to the Property to the City at no cost by quitclaim deed no later than 60 days after the Effective Date or the Successor Agency’s purchase of the Environmental Insurance Policy, whichever is later, unless otherwise extended by the Parties for good cause. Any costs of escrow and title associated with the conveyance of the Property to the City shall be borne by the City. The City shall promptly provide the Taxing Entities copies of the recorded quitclaim deed.

(b) **Release.** Except as expressly provided herein, upon the close of escrow and delivery of the quitclaim deed, City hereby waives, releases, acquits, and forever discharges Successor Agency and Taxing Entities, and Successor Agency’s and Taxing Entities’ agents, directors, officers, and employees to the maximum extent permitted by law, of and from any and all claims, actions, causes of action, demands, rights, liabilities, damages, losses, costs, expenses, compensation, attorneys’ fees, consultants’ fees and costs and expert fees (collectively “Claims”) whatsoever, direct or indirect, known or unknown, foreseen or unforeseen, that it now has or that may arise in the future because of or in any way growing out of or connected with the physical condition of the Property, including without limitation, the physical and environmental condition of the Property or any law or regulation applicable thereto, including, without limitation, any Claim or matter (regardless of when it first appeared) relating to or arising from (i) the presence of any environmental problems, or the use, presence, storage, release, discharge, or migration of hazardous materials on, in, under or around the Property regardless of when such hazardous materials were first introduced in, on or about the Property, (ii) any patent or latent defects or

deficiencies with respect to the Property, (iii) any and all matters related to the Property or any portion thereof, including without limitation, the condition and/or operation of the Property and each part thereof, and (iv) the presence, release and/or remediation of asbestos and asbestos containing materials in, on or about the Property regardless of when such asbestos and asbestos containing materials were first introduced in, on or about the Property. City further hereby waives and agrees not to commence any action, legal proceeding, cause of action or suit in law or equity, of whatever kind or nature, including, but not limited to, a private right of action under the federal superfund laws, 42 U.S.C. Section 9601 *et seq.* and California Health and Safety Code section 78000 *et seq.* (as such laws and statutes may be amended, supplemented or replaced from time to time), directly or indirectly, against Successor Agency, any Taxing Entity, or Successor Agency's or Taxing Entities' agents, directors, officers, and employees in connection with the Property, except matters arising from Successor Agency's fraud, intentional misrepresentation, or concealment.

AS IS CONDITION OF PROPERTY. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, IT IS UNDERSTOOD AND AGREED THAT THE SUCCESSOR AGENCY IS NOT MAKING AND HAS NOT AT ANY TIME MADE ANY WARRANTIES OR REPRESENTATIONS OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, WITH RESPECT TO THE PROPERTY. THE CITY ACKNOWLEDGES AND AGREES THAT UPON THE CLOSING DATE THE SUCCESSOR AGENCY SHALL SELL AND CONVEY THE PROPERTY TO THE CITY "IN ITS THEN EXISTING CONDITION AS IS, WHERE IS, WITH ALL FAULTS" EXCEPT TO THE EXTENT EXPRESSLY PROVIDED OTHERWISE IN THIS AGREEMENT, THE CITY HAS NOT RELIED AND WILL NOT RELY ON, AND THE SUCCESSOR AGENCY IS NOT LIABLE FOR OR BOUND BY, ANY EXPRESS OR IMPLIED WARRANTIES, GUARANTIES, STATEMENTS, REPRESENTATIONS OR INFORMATION PERTAINING TO THE PROPERTY OR RELATING THERETO MADE OR FURNISHED BY THE SUCCESSOR AGENCY OR ANY AGENT PURPORTING TO REPRESENT THE SUCCESSOR AGENCY, UNLESS SPECIFICALLY SET FORTH IN THIS AGREEMENT.

THE CITY REPRESENTS TO THE SUCCESSOR AGENCY THAT CITY HAS CONDUCTED, OR WILL CONDUCT PRIOR TO CLOSING, SUCH INVESTIGATIONS OF THE PROPERTY, INCLUDING BUT NOT LIMITED TO, THE PHYSICAL AND ENVIRONMENTAL CONDITIONS THEREOF, AS THE CITY

DEEMS NECESSARY OR DESIRABLE TO SATISFY ITSELF AS TO THE CONDITION OF THE PROPERTY AND THE EXISTENCE OR NONEXISTENCE OR CURATIVE ACTION TO BE TAKEN WITH RESPECT TO ANY HAZARDOUS MATERIALS ON OR DISCHARGED FROM THE PROPERTY, AND WILL RELY SOLELY UPON SAME AND NOT UPON ANY INFORMATION PROVIDED BY OR ON BEHALF OF SUCCESSOR AGENCY OR ITS AGENTS, OTHER THAN SUCH REPRESENTATIONS AND WARRANTIES OF SUCCESSOR AGENCY AS ARE EXPRESSLY SET FORTH IN THIS AGREEMENT. UPON CLOSING, SUBJECT TO SUCH REPRESENTATIONS AND WARRANTIES OF THE SUCCESSOR AGENCY AS ARE EXPRESSLY SET FORTH IN THIS AGREEMENT, THE CITY SHALL ASSUME THE RISK THAT ADVERSE MATTERS, INCLUDING BUT NOT LIMITED TO, ADVERSE PHYSICAL AND ENVIRONMENTAL CONDITIONS, MAY NOT HAVE BEEN REVEALED BY THE CITY'S INVESTIGATIONS.

IN CONNECTION WITH THE RELEASE PROVIDED FOR IN THIS AGREEMENT, CITY EXPRESSLY WAIVES ALL RIGHTS UNDER CALIFORNIA CIVIL CODE SECTION 1542, WHICH PROVIDES THAT:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY;

THE COVENANTS SET FORTH IN THIS SECTION SHALL SURVIVE CLOSE OF ESCROW AND DELIVERY OF THE QUIT CLAIM DEED(S).

Section 4. Recordation of this Agreement. Upon full execution of this Agreement the City shall cause this Agreement to be recorded against the Property in the Santa Clara County Office of the Clerk-Recorder. The City shall promptly provide the Taxing Entities with a recorded copy of this Agreement. Upon the transfer of the Property to the City pursuant to Section 3(a) above, the Parties agree that the County and the City can execute and record a release of this Agreement to be recorded in the Official Records and the County's execution of

such release shall be conclusive evidence that the Agreement has been fully performed and none of the Taxing Entities shall have any further rights or obligations under this Agreement after recordation of such a release, except that the covenants set forth in Section 3(b) shall survive.

Section 5. Miscellaneous Provisions.

(a) **Non-Waiver.** No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this Agreement will be effective unless it is in writing and signed by the waiving Parties.

(b) **No Partnership.** Nothing contained in this Agreement shall be construed to constitute any Party as a partner, employee, joint venturer, or agent of any other Party.

(c) **Notices.** All deliveries, notices, requests, demands or other communications provided for or required by this Agreement shall be in writing and shall be deemed to have been given when sent by registered or certified mail, return receipt requested; when sent by overnight carrier; or upon email confirmation to sender of receipt of a facsimile communication which is followed by a mailed hard copy from sender. Notices shall be addressed as specified in each Party's signature block.

(d) **Severability.** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement, but this Agreement shall be construed as if such invalid, illegal, or unenforceable provisions had not been contained herein.

(e) **Time is of the Essence.** Time is of the essence regarding each and all of the agreements, covenants, and conditions of this Agreement.

(f) **Ambiguities.** Any rule of construction to the effect that ambiguities are to be resolved against the drafting party does not apply in interpreting this Agreement.

(g) **Integration.** This instrument constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior offers and negotiations, oral or written.

(h) **Amendment.** This Agreement may be modified only in writing and only if signed by the Taxing Entities and the City at the time of the modification. Following the execution of this Agreement, the Successor Agency's consent shall not be required for any modification of the Agreement.

(i) **Governing Law.** This Agreement shall be construed and interpreted according to the laws of the State of California, excluding its conflict of law principles. Proper venue for legal actions will be exclusively vested in a state court in the County of Santa Clara. The Parties agree that subject matter and personal jurisdiction are proper in state court in the County of Santa Clara and waive all venue objections.

(j) **Counterparts.** This Agreement may be executed in one or more counterparts, each of which will be considered an original, but all of which together will constitute one and the same instrument.

(k) **Contract Execution.** Unless otherwise prohibited by law or County policy, the parties agree that an electronic copy of a signed contract, or an electronically signed contract, has the same force and legal effect as a contract executed with an original ink signature. The term “electronic copy of a signed contract” refers to a transmission by facsimile, electronic mail, or other electronic means of a copy of an original signed contract in a portable document format. The term “electronically signed contract” means a contract that is executed by applying an electronic signature using technology approved by the County.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

**SUCCESSOR AGENCY TO THE
REDEVELOPMENT AGENCY OF THE
CITY OF SUNNYVALE**

Approved as to form:

DocuSigned by:
 1/8/2026
4004B8486114497...
Rebecca Moon
Agency General Counsel

Signed by:
 1/8/2026
By: A38667B67C1D420...
Name: Tim Kirby
Title: Executive Director
Address: 456 West Olive Ave.
Sunnyvale, CA 94088-3707

CITY OF SUNNYVALE

Approved as to form:

DocuSigned by:
 1/8/2026
4004B8486114497...
Rebecca Moon
City Attorney

Signed by:
 1/8/2026
By: A38667B67C1D420...
Name: Tim Kirby
Title: City Manager
Address: 456 West Olive Ave.
Sunnyvale, CA 94088-3707

**SANTA CLARA COUNTY
AUDITOR-CONTROLLER**

Approved as to form and legality:

DocuSigned by:
 1/8/2026
837350331D49499...
Rajiv Narayan
Deputy County Counsel

DocuSigned by:
 1/9/2026
By: 88C20E0A14E143D...
Name: Margaret Olaiya
Title: Director, Finance Agency
70 W. Hedding Street
East Wing, 2nd Floor
San Jose, CA 95110

CONSENT OF OVERSIGHT BOARD

Signed by:
By: David Snow, Vice Chairperson

B5D9BCE6FA9446...
Name: David Snow

Title: Vice Chairperson

Date: 1/29/2026

TAXING ENTITIES

Approved as to form and legality:

DocuSigned by:
Rajiv Narayan 1/8/2026
907350331049499
Rajiv Narayan
Deputy County Counsel

COUNTY OF SANTA CLARA

By: 
Name: Otto Lee
Title: President, Board of Supervisors
70 W. Hedding Street
East Wing, 10th Floor
San Jose, CA 95110

Signed and certified that a copy of this document has been delivered by electronic or other means to the President, Board of Supervisors.

ATTEST:

 FOR
CURTIS BOONE
Clerk of the Board of Supervisors

FREMONT UNION HIGH SCHOOL DISTRICT

By: _____
Name: _____
Title: _____
Address: _____

SUNNYVALE ELEMENTARY SCHOOL DISTRICT

By: _____
Name: _____
Title: _____
Address: _____

SANTA CLARA COUNTY OFFICE OF EDUCATION

By: _____
Name: _____
Title: _____
Address: _____

FOOTHILL-DeANZA COMMUNITY COLLEGE DISTRICT

By: _____
Name: _____
Title: _____
Address: _____

EL CAMINO HEALTHCARE DISTRICT

By: _____
Name: _____
Title: _____
Address: _____

MIDPENINSULA REGIONAL OPEN SPACE DISTRICT

By: _____
Name: _____
Title: _____
Address: _____

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

By: _____
Name: _____
Title: _____
Address: _____

SANTA CLARA VALLEY WATER DISTRICT

By: _____
Name: _____
Title: _____
Address: _____

Exhibits:
 A – Legal Description

EXHIBIT A
LEGAL DESCRIPTION

Lot 3, Block 1, Tract No. 9925

All that certain real property situate in the City of Sunnyvale, County of Santa Clara, State of California, described as follows:

Being all of Lot 3, Block 1, Tract No. 9925, entitled "Sunnyvale Town Center," filed October 1, 2007, in Book 818 of Maps at Pages 45 through 55 inclusive, Records of Santa Clara County.

Lot 4, Block 2, Tract No. 9925

All that certain real property situate in the City of Sunnyvale, County of Santa Clara, State of California, described as follows:

Being all of Lot 4, Block 2, Tract No. 9925, entitled "Sunnyvale Town Center," filed October 1, 2007, in Book 818 of Maps at Pages 45 through 55 inclusive, Records of Santa Clara County.

Lot 2, Block 5, Tract No. 9925

All that certain real property situate in the City of Sunnyvale, County of Santa Clara, State of California, described as follows:

Being all of Lot 2, Block 5, Tract No. 9925, entitled "Sunnyvale Town Center," filed October 1, 2007, in Book 818 of Maps at Pages 45 through 55 inclusive, Records of Santa Clara County.



Santa Clara Valley Water District

File No.: 26-0094

Agenda Date: 7/14/2026

Item No.: *4.3.

BOARD AGENDA MEMORANDUM

Government Code § 84308 Applies: Yes ☐ No ☒
(If "YES" Complete Attachment A - Gov. Code § 84308)

SUBJECT:

Approval of Minutes of June 9, 2026.

RECOMMENDATION:

Approve the minutes of June 9, 2026.

SUMMARY:

Pursuant to the Ralph M. Brown Act, a summary of discussions and a record of all actions taken during open and public meetings of the Santa Clara Valley Water District (Valley Water) Board of Directors are transcribed and submitted to the Board for review and formal approval.

Upon approval by the Board, the meeting minutes are finalized and incorporated into Valley Water's official archival records, serving as the authoritative historical record of the Board of Directors' proceedings.

ENVIRONMENTAL JUSTICE IMPACT:

The approval of minutes is not subject to environmental justice analysis.

FINANCIAL IMPACT:

There is no financial impact associated with this item.

CEQA:

The recommended action does not constitute a project under CEQA because it does not have potential for resulting in direct or reasonably foreseeable indirect physical change in the environment.

ATTACHMENTS:

*Attachment 1: 06092026 CS and Regular Meeting Minutes

File No.: 26-0094

Agenda Date: 7/14/2026
Item No.: *4.3.

UNCLASSIFIED MANAGER:

Candice Kwok-Smith, 408-630-3193



BOARD OF DIRECTORS MEETING

MINUTES

**CLOSED SESSION AND REGULAR MEETING
TUESDAY, JUNE 9, 2026
11:00 AM**

(Paragraph numbers coincide with agenda item numbers)

1. CALL TO ORDER/ROLL CALL:

A Closed Session and Regular Meeting of the Santa Clara Valley Water District (Valley Water) Board of Directors was called to order at 11:00 a.m. in the Valley Water Headquarters Building Boardroom at 5700 Almaden Expressway, San Jose, California, and by Zoom teleconference.

1.1. Roll Call.

Board members in attendance were Shiloh Ballard, Jim Beall, Nai Hsueh, Richard P. Santos, John L. Varela, and Tony Estremera, Chairperson presiding, constituting a quorum of the Board. Director Rebecca Eisenberg arrived as noted below.

Staff members in attendance were Melanie Richardson, Interim Chief Executive Officer; Linda Mason, Acting District Counsel; Candice Kwok-Smith, Clerk, Board of Directors; M. Bilski, R. Chan, J. Codianne, R. Gibson, V. Gin, A. Gschwind, C. Hakes, W. Ho, A. Lee, R. McCarter, P. McElroy, T. Ndah, L. Penilla, K. Struve, D. Taylor, B. Yerrapotu, and T. Yoke. Deputy Operating Officer Sam Bogale represented Chief Operating Officer Aaron Baker.

2. 11:00 AM CLOSED SESSION:

Chairperson Estremera confirmed that the Board would adjourn to Closed Session to consider Items 2.1, 2.2, 2.3, 2.4, 2.5, 2.6, and 2.7.

Director Eisenberg arrived.

- 2.1. CLOSED SESSION
CONFERENCE WITH LEGAL COUNSEL, ANTICIPATED LITIGATION
Significant Exposure to Litigation
Pursuant to Government Code section 54956.9(d)(2)
One Potential Case
- 2.2. CLOSED SESSION
CONFERENCE WITH LEGAL COUNSEL, ANTICIPATED LITIGATION
Significant Exposure to Litigation
Pursuant to Government Code section 54956.9(d)(2)
Four Potential cases

- 2.3. CLOSED SESSION
PUBLIC EMPLOYEE PERFORMANCE EVALUATION
Pursuant to Government Code Section 54957(b)(1)
Title: District Counsel
- 2.4. CLOSED SESSION
PUBLIC EMPLOYEE PERFORMANCE EVALUATION
Pursuant to Government Code Section 54957(b)(1)
Title: Clerk of the Board
- 2.5. CLOSED SESSION
PUBLIC EMPLOYEE APPOINTMENT
Pursuant to Government Code Section 54957(b)(1)
Title: Chief Executive Officer
- 2.6. CLOSED SESSION
PUBLIC EMPLOYEE APPOINTMENT
Pursuant to Government Code Section 54957(b)(1)
Title: District Counsel
- 2.7. CLOSED SESSION
CONFERENCE WITH LEGAL COUNSEL, INITIATION OF LITIGATION
Pursuant to Government Code Section 54956.9(d)(4)
One Potential Case
(Continued from May 26, 2026)
- 2.8. District Counsel Report on Closed Session.

Linda Mason, Acting District Counsel, reported that regarding Item 2.1, the Board met in Closed Session with all members participating; Director Eisenberg was recused and no reportable action was taken. In regard to Item 2.2 the Board met in Closed Session with all members participating and took no reportable action; in regard to Item 2.7, the Board continued the Item to a future meeting.

Chairperson Estremera reported that regarding Items 2.3, 2.4, 2.5, and 2.6, the Board met in Closed Session with all members participating, and took no reportable action.

3. 1:00 PM TIME CERTAIN:

- 3.1. Pledge of Allegiance/National Anthem.

Vice Chairperson Santos led all present in reciting the Pledge of Allegiance.

- 3.2. Orders of the Day.

Chairperson Estremera confirmed that there were no changes to the Orders of the Day and read the Board Meeting Decorum statement into the record, outlining the expectations for respectful and professional conduct during the proceedings.

Chairperson Estremera entertained a motion to approve the Board Meeting Decorum.

Move to Approve: Richard Santos
Second: Shiloh Ballard
Yeas: Shiloh Ballard, Jim Beall, Rebecca Eisenberg, Nai Hsueh,
Richard Santos, John L. Varela, Tony Estremera
Nays: None
Abstains: None
Recuses: None
Absent: None
Summary: 7 Yeas; 0 Nays; 0 Abstains; 0 Absent.

The motion passed by voice vote.

3.3. Time Open for Public Comment on any Item not on the Agenda.

Public comments were received by the Board from Adrian Jacobs, a San Jose resident, and Maria Segal, Compass Real Estate.

3.4. Recognition of the Watersheds Operations and Maintenance Division.

Vice Chairperson Santos recognized the Watersheds Operations and Maintenance Division's unhoused encampment team for their hard work and dedication on behalf of the Environmental Creek Cleanup Committee and the Board.

3.5. Conduct a Public Hearing on the 2025 Urban Water Management Plan and Water Shortage Contingency Plan.

Recommendation: A. Open and conduct the public hearing on the Draft 2025 Urban Water Management Plan and Water Shortage Contingency Plan; and
B. Close the Public Hearing.

Chairperson Estremera opened the Public Hearing.

Chairperson Estremera acknowledged receipt of the attached Sierra Club Letter, identified as Handout 3.5-A, herein. Copies of the Handout were distributed to the Board and made available to the public.

Kirsten Struve, Assistant Officer, reviewed the information on this item, per the attached Board Agenda Memo, and the corresponding presentation materials contained in Attachment 3 were reviewed by staff as follows: Jing Wu, Senior Water Resources Specialist, reviewed Slides 1 through 13.

Chairperson Estremera declared the time open for public comments.

The Board received public comment from Katja Irvin, of the Sierra Club Loma Prieta Chapter.

Chairperson Estremera requested a motion to close the Public Hearing.

Motion: Close the public hearing.

Move to Approve: John L. Varela

Second: Nai Hsueh
Yeas: Shiloh Ballard, Jim Beall, Rebecca Eisenberg, Nai Hsueh, Richard Santos, John L. Varela, Tony Estremera
Nays: None
Abstains: None
Recuses: None
Absent: None
Summary: 7 Yeas; 0 Nays; 0 Abstains; 0 Absent.

The motion passed by a voice vote.

3.6. Adoption of 2025 Urban Water Management Plan and Water Shortage Contingency Plan.

Recommendation: A. Adopt the Resolution ADOPTING THE 2025 URBAN WATER MANAGEMENT PLAN; and
B. Adopt the Resolution ADOPTING THE WATER SHORTAGE CONTINGENCY PLAN.

Motion: Adopt Resolution No. 2026-38, ADOPTING THE WATER SHORTAGE CONTINGENCY PLAN, and adopt Resolution No. 2026-39, ADOPTING THE 2025 URBAN WATER MANAGEMENT PLAN, by roll call vote.

Move to Approve: Jim Beall
Second: Rebecca Eisenberg
Yeas: Shiloh Ballard, Jim Beall, Nai Hsueh, Richard Santos, John L. Varela, Tony Estremera
Nays: Rebecca Eisenberg
Abstains: None
Recuses: None
Absent: None
Summary: 6 Yeas; 1 Nays; 0 Abstains; 0 Absent.

The motion passed by a roll-call vote.

Motion: Staff to continue to pursue conservation programs.

Move to Approve: Jim Beall
Second: Rebecca Eisenberg
Yeas: Shiloh Ballard, Jim Beall, Rebecca Eisenberg, Nai Hsueh, Richard Santos, John L. Varela, Tony Estremera
Nays: None
Abstains: None
Recuses: None
Absent: None
Summary: 7 Yeas; 0 Nays; 0 Abstains; 0 Absent.

The motion passed by a voice vote.

REGULAR AGENDA:

4. CONSENT CALENDAR:

Chairperson Estremera removed Items 4.2 and 4.3 from the Consent Calendar for individual consideration, and the Board considered Consent Calendar Item 4.1, and Items 4.4 through 4.8 under one motion.

4.1. Adopt a Resolution Requesting and Consenting to Consolidation of

Election for November 3, 2026, and Requesting Consolidation and Performance of Services from the County of Santa Clara Registrar of Voters.

Recommendation: Adopt the Resolution CALLING A GENERAL ELECTION TO BE HELD ON TUESDAY, NOVEMBER 3, 2026, AND REQUESTING CONSOLIDATION AND PERFORMANCE OF SERVICES FROM THE COUNTY OF SANTA CLARA REGISTRAR OF VOTERS.

4.4. Approve Reappointments to the Renewed Safe, Clean Water and Natural Flood Protection Program Independent Monitoring Committee.

Recommendation: Consider and approve reappointments to the Renewed Safe, Clean Water and Natural Flood Protection Program Independent Monitoring Committee.

4.5. Approve Reappointments for a Two Year Term to the Environmental and Water Resources Committee.

Recommendation: Consider and approve reappointments for a two year term to the Environmental and Water Resources Committee.

4.6. Accept the Work as Complete and Direct the Clerk to File the Notice of Completion of Contract and Acceptance of Work for the Security Upgrades and Enhancements Project, Swinerton Builders, Contractor, Project No. 60204022, Contract No. C0713 for Coyote Pumping Plant (Morgan Hill, District 1), Santa Teresa Water Treatment Plant (San Jose, District 7), Winfield Complex (San Jose, District 4), Headquarters Corporate Yard (San Jose, District 4), and Silicon Valley Advanced Water Purification Center (San Jose, District 3).

Recommendation: A. Accept the work on the Security Upgrades and Enhancements Project, Project No. 60204022, Contract No. C0713 as complete; and
B. Direct the Clerk of the Board to sign the Notice of Completion of Contract and Acceptance of Work and submit for recording to the Santa Clara County Clerk Recorder.

4.7. Approval of Minutes from May 12, 2026.

Recommendation: Approve the minutes from May 12, 2026.

4.8. Accept the CEO Bulletin for the Weeks of May 22, 2026, through June 4, 2026.

Recommendation: Accept the CEO Bulletin.

Motion: Approve Consent Calendar Item 4.1, and Items 4.4 through 4.8, under one motion, as follows: adopt Resolution No. 2026-40, CALLING A GENERAL ELECTION TO BE HELD ON TUESDAY, NOVEMBER 3, 2026, AND REQUESTING CONSOLIDATION AND PERFORMANCE OF SERVICES FROM THE COUNTY OF SANTA CLARA REGISTRAR OF VOTERS, by roll call vote, as contained in Item 4.1; consider and approve reappointments to the Renewed Safe, Clean Water and Natural Flood Protection Program Independent Monitoring Committee, as contained in Item 4.4; consider and approve reappointments for a two year term to the Environmental and Water Resources Committee, as contained in Item 4.5; accept the work on the Security Upgrades and Enhancements Project, project no. 60204022, contract no. C0713 as complete; and direct the Clerk of the Board to sign the Notice of Completion of Contract and Acceptance of Work and submit for recording to the Santa Clara County Clerk Recorder, as contained in Item 4.6; approve the minutes from May 12, 2026, as contained in Item 4.7; and accept the CEO Bulletin, as contained in Item 4.8.

Move to Approve: Richard Santos

Second: John L. Varela

Yeas: Shiloh Ballard, Jim Beall, Rebecca Eisenberg, Nai Hsueh, Richard Santos, John L. Varela, Tony Estremera

Nays: None

Abstains: None

Recuses: None

Absent: None

Summary: 7 Yeas; 0 Nays; 0 Abstains; 0 Absent.

The motion passed by a roll-call vote.

Chairperson Estremera moved the agenda to Item 4.2.

The board considered Consent Calendar Items 4.2 and 4.3 under one motion.

4.2. Adopt a Resolution Establishing Appropriations Limit for Fiscal Year 2026-27.

Recommendation: A. Select the cost of living factor to establish the Santa Clara Valley Water District's Appropriations Limit; and
B. Adopt the Resolution ESTABLISHING APPROPRIATIONS LIMIT FOR FISCAL YEAR 2026-27.

Enrique De Anda, Budget Manager, reviewed the information on this item as outlined in the attached Board Agenda Memo.

4.3. Review and Adopt “Reasonable Efforts” to Comply with Senate Bill 707 to Invite Groups that Do Not Traditionally Participate in Public Meetings to Attend Those Meetings.

Recommendation: Adopt staff’s recommended reasonable efforts to invite groups that do not traditionally participate in public meetings to attend Valley Water public meetings, to comply with California State Senate Bill 707.

Motion: Approve Consent Calendar Items 4.3 and 4.4, under one motion, as follows: Adopt Resolution No. 2026-41, ESTABLISHING APPROPRIATIONS LIMIT FOR FISCAL YEAR 2026 27, by roll call vote, as contained in Item 4.2; and adopt staff’s recommended reasonable efforts to invite groups that do not traditionally participate in public meetings to attend Valley Water public meetings, to comply with California State Senate Bill 707, as contained in Item 4.3.

Move to Approve: Richard Santos

Second: Shiloh Ballard

Yeas: Shiloh Ballard, Jim Beall, Rebecca Eisenberg, Nai Hsueh, Richard Santos, John L. Varela, Tony Estremera

Nays: None

Abstains: None

Recuses: None

Absent: None

Summary: 7 Yeas; 0 Nays; 0 Abstains; 0 Absent.

The motion passed by a roll-call vote.

Chairperson Estremera returned the agenda to Item 5.1.

5. BOARD OF DIRECTORS:

5.1. Board Committee Reports.

The Board reviewed the meeting summaries and agendas for the March 16, 2026, Capital Improvement Program (CIP) Committee; April 1, 2026, Joint Water Resources Committee (JWRC); April 20, 2026, CIP Committee; April 24, 2026, Environmental Creek Cleanup Committee (ECCC); May 19, 2026, Board Policy and Monitoring Committee (BPMC); and June 8, 2026, Water Supply and Demand Management Committee (WSDM), as contained in Handouts 5.1-A through 5.1-F, respectively herein, and no formal action was taken. Copies of the Handouts were distributed to the Board and made available to the public.

5.2. Adopt a Resolution Appointing and Providing for the Compensation of the Interim District Counsel, Effective June 9, 2026, Until a New Permanent Incumbent is Appointed Through a Competitive Recruitment Process.

Recommendation: Adopt the Resolution APPOINTING THE INTERIM DISTRICT COUNSEL, AN UNCLASSIFIED EMPLOYEE, APPOINTED BY THE BOARD OF DIRECTORS OF THE

SANTA CLARA VALLEY WATER DISTRICT AND
APPROVING THE COMPENSATION AMOUNT.

The Board considered Item 5.2 without a staff presentation.

Motion: Adopt Resolution No. 2026-42, APPOINTING THE INTERIM DISTRICT COUNSEL, AN UNCLASSIFIED EMPLOYEE, APPOINTED BY THE BOARD OF DIRECTORS OF THE SANTA CLARA VALLEY WATER DISTRICT AND APPROVING THE COMPENSATION AMOUNT, by roll call vote.

Move to Approve: Nai Hsueh
Second: Richard Santos
Yeas: Shiloh Ballard, Jim Beall, Rebecca Eisenberg, Nai Hsueh, Richard Santos, John L. Varela, Tony Estremera
Nays: None
Abstains: None
Recuses: None
Absent: None
Summary: 7 Yeas; 0 Nays; 0 Abstains; 0 Absent.

The motion passed by a roll-call vote.

5.3. Consider the May 19, 2026, Board Policy and Monitoring Committee Recommendation to Approve the Technology Disruption Policy for Board Meetings.

Recommendation: Consider the May 19, 2026, Board Policy and Monitoring

Committee Recommendation to Approve a new policy GP 12.4, Technology Disruption Policy for Board Meetings.

Candice Kwok-Smith, Clerk, Board of Directors, reviewed the information on this item as outlined in the attached Board Agenda Memo.

Move to Approve: Richard Santos
Second: John L. Varela
Yeas: Shiloh Ballard, Jim Beall, Rebecca Eisenberg, Nai Hsueh, Richard Santos, John L. Varela, Tony Estremera
Nays: None
Abstains: None
Recuses: None
Absent: None
Summary: 7 Yeas; 0 Nays; 0 Abstains; 0 Absent.

The motion passed by a voice vote.

6. WATER UTILITY ENTERPRISE:

- 6.1. Receive Report of Bids, Ratify Addenda, Approve the Contingency Fund, and Award the Construction Contract to Con Quest Contractors Inc. for the Penitencia Delivery and Force Main Inspection and Rehabilitation Project, Project No. 95084005, Contract No. C0727 in the Sum of \$6,591,000 (San Jose, District 3).

Recommendation: A. Ratify Addenda No(s). 1 and 2 to the Contract Documents for Penitencia Delivery and Force Main Inspection and Rehabilitation Project;
B. Award the Construction Contract to Con Quest Contractors Inc, located in Burlingame, CA, in the sum of \$6,591,000; and
C. Approve a contingency sum of \$988,650 and authorize the Chief Executive Officer or designee to approve individual change orders up to the designated amount.

The Board considered Item 6.1 without a staff presentation.

Move to Approve: Nai Hsueh
Second: Jim Beall
Yeas: Shiloh Ballard, Jim Beall, Rebecca Eisenberg, Nai Hsueh, Richard Santos, John L. Varela, Tony Estremera
Nays: None
Abstains: None
Recuses: None
Absent: None
Summary: 7 Yeas; 0 Nays; 0 Abstains; 0 Absent.

The motion passed by a voice vote.

- 6.2. Approve the Agreement A5779A with AECOM Technical Services, Inc., for Design Consultant Services for the Pure Water Silicon Valley Demonstration Facility Project, Project No. 91294001, PB File No. VW0473, for a Total Not To Exceed Fee of \$4,499,917.

Recommendation: Approve the Agreement A5779A with AECOM Technical Services, Inc., for Design Consultant Services for the Pure Water Silicon Valley Demonstration Facility Project, Project No. 91294001, PB File No. VW0473, for a total not to exceed fee of \$4,499,917.

Kirsten Struve, Assistant Officer, reviewed the information on this item as outlined in the attached Board Agenda Memo and Attachment 2.

Move to Approve: Richard Santos
Second: Rebecca Esienberg
Yeas: Shiloh Ballard, Jim Beall, Rebecca Eisenberg, Nai Hsueh, Richard Santos, John L. Varela, Tony Estremera
Nays: None
Abstains: None
Recuses: None
Absent: None

Summary: 7 Yeas; 0 Nays; 0 Abstains; 0 Absent.

The motion passed by a voice vote.

7. WATERSHEDS:

None.

8. ASSISTANT CHIEF EXECUTIVE OFFICER:

- 8.1. 5 Year Implementation Plan for Fiscal Years 2027 2031 for the Safe, Clean Water and Natural Flood Protection Program.

Recommendation: A. Approve the proposed key performance indicator (KPI) adjustments to two projects in the Safe, Clean Water and Natural Flood Protection Program (Safe, Clean Water Program);
B. Approve the proposed text adjustment to specific projects in the Safe, Clean Water Program;
C. Approve the Safe, Clean Water Program's 5 Year Implementation Plan for Fiscal Years 2027 2032 (5 Year Plan or Plan); and
D. Authorize staff to update the 5 Year Plan following the close of FY26 and the availability of audited financials.

Luz Penilla, Assistant Officer, introduced the Item, and Jessica Collins, Business Planning and Analysis Manager, reviewed the information on this item per the attached Board Agenda Memo and Attachment 4.

Director Hsueh requested that staff consider continued funding for water conservation programs beyond the 7 years allocated in the Safe Clean Water Program (Board Member Request No. R-26-0003).

Move to Approve: Richard Santos
Second: Nai Hsueh
Yeas: Shiloh Ballard, Jim Beall, Rebecca Eisenberg, Nai Hsueh, Richard Santos, John L. Varela, Tony Estremera
Nays: None
Abstains: None
Recuses: None
Absent: None
Summary: 7 Yeas; 0 Nays; 0 Abstains; 0 Absent.

The motion passed by a voice vote.

9. EXTERNAL AFFAIRS:

None.

10. CHIEF EXECUTIVE OFFICER:

- 10.1 CEO and Chiefs' Reports.

Darin Taylor, Chief Financial Officer, announced that Finance would bring the long-range financial projection review to the August 25, 2026, Regular Board meeting in addition to the Strategic Planning Session, scheduled for August 28, 2026.

Rachael Gibson, Chief of External Affairs, reviewed the attached Office of Civic Engagement Monthly Update, identified as Handout 10.1-A, and Office of Government Relations May Summary, identified as Handout 10.1-B, respectively, herein. Copies of the Handouts were distributed to the Board and made available to the public.

11. ADMINISTRATION:

None.

12. DISTRICT COUNSEL:

None.

13. BOARD POLICY PLANNING CALENDAR/PROPOSED FUTURE BOARD AGENDA ITEMS:

13.1 Review the Fiscal Year 2026 Board Policy Planning Calendar.

Recommendation: Review the Fiscal Year 2026 Board Policy Planning Calendar.

The Board noted the information without formal action.

14. BOARD MEMBER REPORTS/ANNOUNCEMENTS:

Director Ballard reported attending the Water Supply and Demand Management Committee (WSDMC) and Youth Commission (YC) meetings; an Ad Hoc Committee and Landscape Committee meetings; and various meetings with staff.

Director Beall reported attending the Pride Flag Raising ERG Event; an Almaden Valley Community Association, and Emergency Operational Area Council (EOAC) meetings; an Urban Water Management Plan and Water Shortage Contingency Plan event presented by San Jose Water Co.; the Mineta Transportation Institute (MTI)'s 34th Annual Banquet and Convocation Celebration, and various meetings with staff.

Director Eisenberg reported interactions with constituents and stated that she will continue her fiduciary duty as an elected official.

Director Hsueh reported attending the aforementioned WSDMC, YC and Ad Hoc Committee meeting; a San Francisquito Creek Joint Powers Authority (SFCJPA) meeting; attended Water 101 Graduation, met with the Board Auditor, and met with a constituent.

Vice Chair Santos reported attending the aforementioned WSDMC, and Landscape Committee meeting; Milpitas Rotary Club Meeting; a San Luis and Delta-Mendota Water Authority (SLDMWA) meeting; and a South County Regional Wastewater Authority (SCRWA) meeting.

Director Varela reported attending an Association of California Water Agencies (ACWA) Foundation Board Meeting.

Chairperson Estremera reported attending the aforementioned Ad Hoc Committee meeting; a Recycled Water Committee meeting; the Leadership Team Retreat Lunch, and a meeting with Councilmember Domingo Candelas.

15. CLERK REVIEW AND CLARIFICATION OF BOARD REQUESTS:

The new Board Member Requests were not read into the record.

16. ADJOURN:

Chairperson Estremera adjourned the meeting at 2:58 p.m., acknowledging June as Pride Month, Caribbean American Heritage, Immigrant Heritage, and Portuguese American Heritage Month. The Board will convene for the next Regular Meeting at 1:00 p.m. on Tuesday, June 23, 2026, in the Santa Clara Valley Water District Headquarters Building Boardroom, 5700 Almaden Expressway, San Jose, California, and via Zoom teleconference.

Candice Kwok-Smith
Clerk, Board of Directors

Approved:

Date: July 14, 2026



Santa Clara Valley Water District

File No.: 26-0595

Agenda Date: 7/14/2026

Item No.: *4.4.

BOARD AGENDA MEMORANDUM

Government Code § 84308 Applies: Yes ☐ No ☒
(If "YES" Complete Attachment A - Gov. Code § 84308)

SUBJECT:

Accept the CEO Bulletin for the Weeks of June 19 through July 9, 2026.

RECOMMENDATION:

Accept the CEO Bulletin.

SUMMARY:

The CEO Bulletin is a weekly communication to the Board of Directors for the CEO, assuring compliance with Executive Limitations Policy EL-7: The BAOs inform and support the Board in its work. Further, a BAO shall inform the Board of relevant trends, anticipated adverse media coverage, or material external and internal changes, particularly changes in the assumptions upon which any Board policy has previously been established, and report in a timely manner an actual or anticipated noncompliance with any policy of the Board.

CEO Bulletins are produced and distributed to the Board weekly as informational items, and then placed on the bimonthly, regular Board meeting agendas to allow opportunity for Board discussion on any of the matters contained therein.

ENVIRONMENTAL JUSTICE IMPACT:

The CEO Bulletin is not subject to environmental justice analysis.

FINANCIAL IMPACT:

There is no financial impact associated with this item.

CEQA:

The recommended action does not constitute a project under CEQA because it does not have potential for resulting in direct or reasonably foreseeable indirect physical change in the environment.

File No.: 26-0595

Agenda Date: 7/14/2026
Item No.: *4.4.

ATTACHMENTS:

*Attachment 1: 07092026 CEO Bulletin

UNCLASSIFIED MANAGER:

Melanie Richardson, 408-630-2017

CEO BULLETIN



To: Board of Directors
From: Melanie Richardson, Interim CEO

Weeks of June 19, 2026 – July 9, 2026

Board Executive Limitation Policy EL-7:

The Board Appointed Officers shall inform and support the Board in its work. Further, a BAO shall 1) inform the Board of relevant trends, anticipated adverse media coverage, or material external and internal changes, particularly changes in the assumptions upon which any Board policy has previously been established and 2) report in a timely manner an actual or anticipated noncompliance with any policy of the Board.

Item	IN THIS ISSUE
<u>1</u>	Pajaro River Watershed Resilience Plan Completed April 2026
<u>2</u>	Safe, Clean Water Refill Station Grant Closeout: City of Gilroy's Chestnut Fire Safety
<u>3</u>	Safe, Clean Water Refill Station Grant Closeout: City of Gilroy's Las Animas Project
<u>4</u>	Safe, Clean Water Refill Station Grant Closeout: City of Gilroy's Sunrise Fire Station Project
<u>5</u>	Safe, Clean Water Refill Station Grant Closeout: Central Christian Church Refill Station Project
<u>6</u>	Safe, Clean Water Refill Station Grant Closeout: Roman Catholic Bishop of San Jose's St. John Vianney Community Center Project
<u>7</u>	<u>Hsueh</u> At the 6/9/26 Board meeting, Director Hsueh requested that staff consider continued funding for water conservation programs beyond the 7 years allocated in the Safe Clean Water Program. R-26-0003
<u>8</u>	<u>Varela</u> Review the Amazon project proposed in Gilroy and determine impacts on potable water supply and agriculture. I-26-0002

1. Pajaro River Watershed Resilience Plan Completed April 2026

In 2024, the California Department of Water Resources selected the Pajaro Valley Water Management Agency, also known as PV Water, to lead the Pajaro River Watershed Resilience Planning Pilot Program. The program supports planning efforts to strengthen watershed resilience to climate change. The Pajaro River Watershed was one of five watersheds statewide selected for the pilot program, which the Department of Water Resources supported with a \$2 million grant. PV Water invited Valley Water to participate in developing the Pajaro River Watershed Resilience Plan (PRWRP) and to serve on the Advisory Group.

Over 18 months, public agencies, Tribal representatives, agricultural leaders, environmental organizations, community-based organizations, nonprofits, watershed residents, and regional partners worked together to address climate-related challenges, including flooding, drought, groundwater sustainability, habitat degradation, and water quality. The partners completed the Pajaro River Watershed Resilience Plan in April 2026 and submitted it to the Department of Water Resources. The plan establishes a framework for continued coordination and collaboration and identifies priority actions, with an emphasis on watershed-scale solutions.

The plan identifies priority actions such as floodplain restoration, groundwater recharge, agricultural land stewardship, voluntary land repurposing, and nature-based solutions. These actions are intended to reduce climate risks while supporting water supply reliability, ecosystem health, and thriving communities. The partners will use the plan to guide collaboration and strengthen grant applications for climate resilience projects in the watershed. For more information or to read the PRWRP, please go to <https://www.pvwater.org/prwrp>.

For further information, please contact Lisa Bankosh at (408) 630-2618.

2. Safe, Clean Water Refill Station Grant Closeout: City of Gilroy's Chestnut Fire Safety

In Fiscal Year 2025, Valley Water awarded City of Gilroy a \$5,000 Safe, Clean Water Program Refill Station Grant for their Chestnut Fire Station (Project). The City of Gilroy completed the Project and submitted the final invoice items on February 10, 2026, allowing for grant closeout.

The Chestnut Fire Station, located in Gilroy, is a fire station owned and operated by the Grantee and serves as a publicly accessible facility. The City of Gilroy installed a new water refill station inside the fire station facility to provide convenient water access to public employees as well as members of the public visiting the facility.

Key Outcomes:

- Installed a new water refill station inside the Chestnut Fire Station facility.
- Increased access to clean drinking water for members of the public visiting the station.
- Since its installation, the refill station has saved over 276 bottles of water.
- Supports the hydration of the public and residents of all ages year-round.

For further information, please contact Rachael Gibson at (408) 630-2884.

3. Safe, Clean Water Refill Station Grant Closeout: City of Gilroy's Las Animas Project

In Fiscal Year 2025, Valley Water awarded City of Gilroy a \$5,000 Safe, Clean Water Program Refill Station Grant for their Las Animas Fire Station (Project). The City of Gilroy completed the Project and submitted the final invoice items on February 10, 2026, allowing for grant closeout.

The Las Animas Fire Station, located in Gilroy, is a fire station owned and operated by the Grantee and serves as a publicly accessible facility. The City of Gilroy installed a new water refill station inside the fire station facility to provide convenient water access to public employees as well as members of the public visiting the facility.

Key Outcomes:

- Installed a new water refill station inside the Las Animas Fire Station facility.
- Increased access to clean drinking water for members of the public visiting the station.
- Since its installation, the refill station has saved over 425 bottles of water.
- Supports the hydration of the public and residents of all ages year-round.

For further information, please contact Rachael Gibson at (408) 630-2884.

4. Safe, Clean Water Refill Station Grant Closeout: City of Gilroy's Sunrise Fire Station Project

In Fiscal Year 2025, Valley Water awarded City of Gilroy a \$5,000 Safe, Clean Water Program Refill Station Grant for their Sunrise Fire Station (Project). The City of Gilroy completed the Project and submitted the final invoice items on February 10, 2026, allowing for grant closeout.

The Sunrise Fire Station, located in Gilroy, is a fire station owned and operated by the Grantee and serves as a publicly accessible facility. The City of Gilroy installed a new water refill station inside the fire station facility to provide convenient water access to public employees as well as members of the public visiting the facility.

Key Outcomes:

- Installed a new water refill station inside the Sunrise Fire Station facility.
- Increased access to clean drinking water for members of the public visiting the station.
- Since its installation, the refill station has saved over 190 bottles of water.
- Supports the hydration of the public and residents of all ages year-round.

For further information, please contact Rachael Gibson at (408) 630-2884.

5. Safe, Clean Water Refill Station Grant Closeout: City of Gilroy's Central Christian Church Refill Station Project

In Fiscal Year 2025, Valley Water awarded Central Christian Church a \$5,000 Safe, Clean Water Program Refill Station Grant for their Refill Station (Project). Central Christian Church completed the Project and submitted the final invoice items in September 2026, allowing for grant closeout.

Central Christian Church, located in San José, California, participates in supportive housing programs, hosts addiction recovery meetings, runs summer camps for children onsite, and offers scholarships to those in need. Central Christian Church has an open courtyard with 24-hour public access and nearby basketball and pickleball courts. This area is used by the San José Police Department daily, as well local youth and community members. The refill station replaced an existing water fountain located near restrooms and a multipurpose room.

Key Outcomes:

- Installed a new water refill station at Central Christian Church.
- Increased access to clean drinking water for the local community.
- Supports the hydration of the public and residents of all ages year-round.

For further information, please contact Rachael Gibson at (408) 630-2884.

6. Safe, Clean Water Refill Station Grant Closeout: Roman Catholic Bishop of San Jose's St. John Vianney Community Center Project

In Fiscal Year 2025, Valley Water awarded Roman Catholic Bishop of San Jose (Grantee) a \$5,000 Safe, Clean Water Program F9 Refill Station Grant for their St. John Vianney Community Center (Project). The Grantee completed the Project and submitted the final invoice items in February 2026, allowing for grant closeout.

St. John Vianney Community Center, located in San Jose, California, is a gymnasium with public access operated by the Grantee. Local children, youth, and their families come to play in the inter-scholastic basketball tournaments located at the facility. The Grantee installed a water refill station on the outside of the gymnasium to replace a prior non-filtered drinking fountain that was previously unusable due to vandalism. The water refill station is outside and is accessible to the public from 8AM to 9PM every day, including during food distribution, community celebrations hosted at space, and sporting events.

Key Outcomes:

- Installed a new water refill station at the St. John Vianney Community Center.
- Increased access to clean drinking water for sporting events and food program participants.
- Since its installation, the refill station has saved over 470 bottles of water.
- Supports the hydration of the public and residents of all ages year-round.

For further information, please contact Rachael Gibson at (408) 630-2884.

7. Hsueh

At the 6/9/26 Board meeting, Director Hsueh requested that staff consider continued funding for water conservation programs beyond the seven years allocated in the Safe Clean Water Program.

R-26-0003

Staff have included a memo in the July 10, 2026 Non-Agenda that contains their response.

For further information, please contact Luz Penilla at (408) 630-2228.

8. Varela

Review the Amazon project proposed in Gilroy and determine impacts on potable water supply and agriculture.

I-26-0002

Based on the completed Environmental Impact Report, Water Supply Assessment, and Architectural and Site Approval, which can be found on the City of Gilroy's website, the Amazon Web Services Gilroy Data Center Project includes two data center buildings totaling approximately 438,500 square feet on a 56-acre undeveloped parcel in Gilroy. Construction will occur in 2 phases and is expected to take approximately 6.5 years total. At full buildout, the project will have a water demand of up to 23 acre-feet per year (AFY): 18 AFY for cooling (9 AFY per building); 3 AFY for landscaping; and 2 AFY for domestic purposes. Cooling will be achieved through evaporative cooling and will primarily be needed in summer months when outside temperatures are high.

The cooling systems will initially use Gilroy's potable supply of groundwater pumped from the Llagas subbasin but are designed to accept recycled water. The City of Gilroy is requiring recycled water use for the second phase of the project, once new recycled water infrastructure is in place. Valley Water is currently constructing a critical recycled water pipeline segment that will support future data center water use. Additional infrastructure will be funded by Amazon and includes a recycled water line to the project and storage tanks on-site and at the South County Regional Wastewater Authority (SCRWA) Treatment Plant. As the recycled water wholesaler in South County, Valley Water will coordinate with the City, SCWRA and the project developer on these efforts.

The project will convert farmland to non-agricultural use and will be mitigated under the City of Gilroy's Agricultural Mitigation Policy. This policy requires 150-foot buffers adjacent to agricultural land use as well as a 1:1 ratio of additional agricultural land to be protected. The project would not substantially interfere with groundwater recharge because it is not located within a designated groundwater recharge zone.

Valley Water submitted comments on multiple stages of the project's environmental review, requesting additional information on demands and impacts to groundwater quality and supply. The comments were addressed in the final EIR and the Water Supply Assessment conducted by the developer. The WSA found there is ample groundwater supply in normal, single dry, and multiple dry years.

Valley Water's Water Supply Master Plan 2050 and Urban Water Management Plan project demands into the future. Data Centers are a portion of the 26% of water demand from the commercial, industrial and institutional sector, which is expected to remain largely stable. Valley Water estimates the additional data center would represent less than 0.1% of increase in future groundwater pumping if it were using potable water, however, as described, the full build out will be using recycled water. Valley Water's policies and efforts regarding water conservation and water recycling apply to all water users.

For further information, please contact Kirsten Struve at (408) 630-3138.



Santa Clara Valley Water District

File No.: 26-0562

Agenda Date: 7/14/2026

Item No.: 5.1.

BOARD AGENDA MEMORANDUM

Government Code § 84308 Applies: Yes ☐ No ☒
(If "YES" Complete Attachment A - Gov. Code § 84308)

SUBJECT:

Adopt a Resolution Providing for the Compensation for the Clerk of the Board, a Board Appointed Officer of the Santa Clara Valley Water District.

RECOMMENDATION:

- A. Consider and determine compensation adjustments, if any, for the Clerk of the Board;
- B. Adopt the Resolution PROVIDING FOR THE COMPENSATION FOR THE CLERK OF THE BOARD, A BOARD APPOINTED OFFICER OF THE SANTA CLARA VALLEY WATER DISTRICT; and
- C. Approve the First Amendment to the Employment Agreement Between the Santa Clara Valley Water District and Candice Kwok-Smith, consistent with Board-approved compensation.

SUMMARY:

In accordance with the Employment Agreement between the Santa Clara Valley Water District (Valley Water) and Candice Kwok-Smith, Clerk of the Board, and the Board Appointed Officer (BAO) Performance Evaluation Procedure, the Board conducts a performance evaluation on at least a semiannual basis. After completion of the annual evaluation, the Board determines the BAO's annual compensation, if necessary.

The Board may consider and determine a compensation adjustment that would provide for an updated annual salary. The salary will be within the position's range of \$251,451.20 to \$317,179.20.

In compliance with Section 3.2 of Valley Water Board's Governance Policy GP3, "Board Job Description," on an annual basis, the BAO's compensation will be determined using a two-step performance process that considers job accomplishments, monitoring reports, other I-6 information, including the financial health of Valley Water, and other methods deemed appropriate.

The Board used the established two-step process to guide the evaluation and compensation adjustment:

- Step 1. Evaluate BAOs' performance using a six-point scale, ranging from performance level 1, representing sustained outstanding performance, to performance level 6, representing

unsatisfactory performance.

- Step 2. Match compensation to performance level using a six-point pay scale: set compensation at performance level 1 (the high point of the compensation scale), plus one-time extra pay for performance levels through 6, setting pay at the low point of the compensation scale, or consideration of termination.

A Resolution and Employment Agreement Amendment, where the Board can indicate and approve a compensation adjustment, is attached and includes an updated Unclassified Benefit Summary as an attachment to the First Amendment to the Employment Agreement.

ENVIRONMENTAL JUSTICE IMPACT:

There are no Environmental Justice impacts associated with this item.

FINANCIAL IMPACT:

The financial impact of this Resolution is within the 2025 - 2026 budget and will have no additional budget impacts.

CEQA:

The recommended action does not constitute a project under CEQA because it does not have potential for resulting in direct or reasonably foreseeable indirect physical change in the environment.

ATTACHMENTS:

Attachment 1: Resolution

UNCLASSIFIED MANAGER:

Patrice McElroy, 408-630-3159

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

RESOLUTION NO. 2026-

**PROVIDING FOR THE COMPENSATION FOR THE CLERK OF THE BOARD, A BOARD
APPOINTED OFFICER OF THE SANTA CLARA VALLEY WATER DISTRICT**

BE IT RESOLVED, by the Board of Directors of the Santa Clara Valley Water District (Valley Water) as follows:

1. Prior resolutions of the Board, to the extent that they may conflict with the provisions hereof, are hereby superseded and rescinded. This Resolution shall be effective July 1, 2026.
2. The salaries, wages, compensation, and expenses provided herein shall be in full for all official services performed unless expressly otherwise provided and shall be paid on the basis of the biweekly pay period plan. Compensation shall be payable on or before the seventh (7th) calendar day after conclusion of each biweekly pay period for services rendered during the preceding biweekly pay period. All officials and employees of the Santa Clara Valley Water District shall charge, collect, and pay all fees required by law to be charged, collected, and paid into the proper fund of Valley Water and no officer or employee of Valley Water shall be compensated by fees.
3. The Board of Directors previously approved a salary of \$279,177.60 effective April 22, 2025.
4. The total salary of the Clerk of the Board shall be that amount approved by the Board of Directors and formulated in this paragraph. As of July 1, 2026, the Clerk of the Board shall receive a further salary adjustment for a new adjusted annual salary of \$_____.
5. In addition to an annual salary as set forth in paragraph 4, Valley Water shall continue to assume payment of the unclassified benefits that are in effect on the effective date of approval of this Resolution.
6. The First Amendment to Employee Agreement Between Santa Clara Valley Water District and Candice Kwok-Smith (Exhibit A), sets forth a formal written amendment to the original Employment Agreement with the updated annual salary. This First Amendment is hereby approved, and the Chair of the Board is authorized to execute this First Amendment.

PASSED AND ADOPTED by the Board of Directors of the Santa Clara Valley Water District by the following vote on July 14, 2026:

AYES: Directors

NOES: Directors

ABSENT: Directors

ABSTAIN: Directors

SANTA CLARA VALLEY WATER DISTRICT

TONY ESTREMER
Chair, Board of Directors

ATTEST

CHARLOTTE REINTHALER, CMC
Assistant Deputy Clerk II

EXHIBIT A COVERSHEET

FIRST AMENDMENT TO EMPLOYMENT AGREEMENT BETWEEN SANTA CLARA VALLEY WATER DISTRICT AND CANDICE KWOK-SMITH

No. of Pages: 1

Exhibit Attachments: Attachment 1: Valley Water Unclassified Employee Benefits Summary

No. of Pages: 3

**FIRST AMENDMENT TO EMPLOYMENT AGREEMENT BETWEEN
SANTA CLARA VALLEY WATER DISTRICT AND CANDICE KWOK-SMITH**

This First Amendment to the Employment Agreement between Santa Clara Valley Water District and Candice Kwok-Smith is entered into retroactively effective July 1, 2026.

RECITALS

- A. Whereas, in April 2025, the Santa Clara Valley Water District and Candice Kwok-Smith executed an original Employment Agreement with an effective date of April 22, 2025 (Original Agreement) as Clerk of the Board, with an annual salary in the amount of \$279,177.60.
- B. Whereas, on May 26, 2026, the Board approved Resolution No. 2026-37, which approved updates to the salary ranges for unclassified classifications by the same percentage applied to classified employees, increasing the minimum annual salary for the Clerk of the Board position to \$262,766.40 and the maximum annual salary to \$331,448.00.

NOW THEREFORE, in consideration of the mutual obligations of this First Amendment and the Original Agreement, the parties agree as follows:

1. Paragraph 4 of the Original Agreement is modified to read in its entirety as follows:

4. Compensation

Effective July 1, 2026, Valley Water agrees to pay Employee an annual base salary of \$_____ per annum payable in installments in accordance with Valley Water's usual payroll schedule. Thereafter and subject to an annual evaluation of Employee's performance and salary, the Board may, by resolution approving an amendment to this Agreement, increase Employee's salary based on merit and/or market factors. Nothing in this provision requires the Board to use a set formula or to provide a merit or other salary increase following the annual evaluation, but the board will act in good faith in determining whether a salary adjustment is warranted. The Board will determine the amount of any salary adjustment no later than October 1 each year and shall have discretion to make any adjustment retroactive to the immediately preceding July 1.

2. "Attachment A" in the Original Agreement is replaced in its entirety by Attachment 1 to this First Amendment.
3. All provisions of the amended Original Agreement, except as modified by the First Amendment, remain in full force and effect, and are reaffirmed.

IN WITNESS WHEREOF, the parties have entered into this First Amendment as of the effective date written above.

By: _____
Candice Kwok-Smith
Clerk of the Board

By: _____
Tony Estremera
Chair, Board of Directors

By: _____
Charlotte Reinthaler, CMC
Assistant Deputy Clerk II

VALLEY WATER
Unclassified Employee Benefits
(Effective 01-01-2026)

BENEFIT	SUMMARY
Vacation	- Newly hired employees receive 224 hours (28 days/year) of prorated vacation based on the date of hire. The prorated amount is vested immediately for the remainder of the fiscal year and is available for use upon approval of the employee's Appointing Authority. Starting the following fiscal year, vacation shall accrue as set forth below for current employees. - Beginning each fiscal year, current employees receive 224 hours (28 days/year) of vacation, which is vested immediately for the entire fiscal year, and may be accumulated up to 4 times entitlement. - Employees may elect either a cash pay-off for up to 28 days (224 hours) or have all or a portion of the cash value transferred to the Deferred Compensation Plan once each year. Elections to cash out vacation must be made in the calendar year prior to the cash out.
Sick Leave	Sick leave is accrued at the rate of 1 day per month (96 hours per year) with unlimited accumulation. - Upon resignation, with 10 or more years of service with Valley Water, up to 480 hours of accrued sick leave shall be paid at 25% of the equivalent cash value. - Upon retirement (filed for CalPERS retirement), regardless of years of service with Valley Water, sick leave may be paid out as follows: - Sick leave balance <i>up to</i> 480 hours is paid out at 50% of the equivalent cash value. Any remaining balance above 480 hours may be converted into additional CalPERS service credit. Sick leave hours above 480 will not be paid out. - Entire accrued sick leave balance may be converted into additional CalPERS service credit. No sick leave hours will be paid out. - Combination of any portion (<i>up to 480 hours</i>) of the sick leave balance is paid out at 50% and any remaining balance may be converted into additional CalPERS service credit. Sick leave hours above 480 will not be paid out. - Upon death, all accrued, unused sick leave will be paid at 100% of the cash value. Any other payout of accrued sick leave upon separation of employment must be approved by the Chief Executive Officer. Any such approved payout shall not exceed 480 hours of accrued sick leave and shall be at the rate of 25% of the equivalent cash value.
Sick Leave Conservation	<u>Sick Leave Conservation Program</u> - Employees with a minimum of one (1) year of service who have used no more than twenty-seven (27) sick leave hours during the preceding twelve (12) month period may convert up to twenty-four (24) hours to cash. Elections to cash out sick leave must be made in the calendar year prior to the cash-out.
Executive Leave & Personal Leave	24 hours of executive leave and 32 hours of prorated personal leave provided upon hire. Leave may be converted to cash or credited to the deferred compensation plan at any time during the fiscal year. Automatically paid out if no election is made.
Bereavement Leave	5 days of bereavement leave for obligations arising from the death of a family member as defined in the At-Will Policy for Employees in the Unclassified Service. Additional time may be charged to sick leave for a total leave (4 days of bereavement leave plus sick leave) not to exceed 10 consecutive working days.
Parental Leave	Valley Water provides 4 paid days for qualifying parental leave. Thereafter, employees may use sick leave (in addition to current vacation, comp time, and/or personal leave) for all qualifying parental leave. Employees can use this sick leave for bonding (or for the placement of a child with an employee for adoption or foster care). The duration of such parental or bonding leave shall be subject to Valley Water policy.
Reproductive Loss Leave (RLL)	Valley Water provides 4 paid days for qualifying reproductive loss leave. Thereafter, the employee may use 1 additional day from eligible leave banks, or go unpaid, for a qualifying leave up to 5 days. Employees may take their leave consecutively, or intermittently and must use the leave within 3 months of the loss.
Holidays	14 designated days per calendar year.
CalPERS Retirement for Classic Members Hired Prior to 3/19/2012 (Tier 1)	California Public Employees Retirement System (CalPERS) 2.5% at 55 retirement plan with final compensation of highest 12 consecutive months. The current required employee contribution is 8%. Contributions are pre-tax payroll deductions.
CalPERS Retirement for Classic Members Hired On or After 3/19/2012 (Tier 2)	California Public Employees Retirement System (CalPERS) 2.0% at 60 retirement plan with final compensation of highest 36 consecutive months. The current required employee contribution is 0%. Valley Water pays the employee contribution (Employer Paid Member Contributions – EPMC) of 7%.

CalPERS Retirement for New Members Hired On or After 1/1/2013 (Tier 3/PEPRA)	California Public Employees Retirement System (CalPERS) 2.0% at 62 retirement plan with final compensation of highest 36 consecutive months. Employees are required to pay 50% of the total normal cost as determined by the annual CalPERS valuation which is subject to change each fiscal year. The current required employee contribution is 7.25% . Contributions are pre-tax payroll deductions.
Retirement Health Benefits for Employees Hired Prior to 12/30/2006	Medical coverage is provided for retired employees with 10 years of continuous service with Valley Water or a combination of prior public agency service (meaning the State of California or any political subdivision thereof, including any city, county, or special district) with a minimum of 5 consecutive years of Valley Water Service. Medical, Dental, and Vision coverage is provided for retired employees and one eligible dependent with 15 or more years of continuous service with Valley Water or a combination of prior public agency service with a minimum of 5 consecutive years of Valley Water Service. Medical, Dental, and Vision coverage is provided for retired employees plus two (2) or more eligible dependents with 25 or more years of continuous service with Valley Water or a combination of prior public agency service with a minimum of 5 consecutive years of Valley Water Service.
Retirement Health Benefits for Employees Hired on or after 12/30/2006 and Prior to 3/1/2007	Medical coverage is provided for retired employees with 10 years of continuous service with Valley Water or a combination of prior public agency service (meaning the State of California or any political subdivision thereof, including any city, county, or special district) with a minimum of 5 consecutive years of Valley Water Service. Medical, Dental, and Vision coverage is provided for retired employees and one eligible dependent with 15 or more years of continuous service with Valley Water or a combination of prior public agency service with a minimum of 5 consecutive years of Valley Water Service. Medical, Dental, and Vision coverage is provided for retired employees plus two (2) or more eligible dependents with 25 or more years of continuous service with Valley Water or a combination of prior public agency service with a minimum of 5 consecutive years of Valley Water Service. Medical premium cost sharing is required with the same contribution percentage as active employees and based on the medical premium amount applicable to active employees or retirees, whichever is less. Effective April 1, 2024, retirees will pay 0% of the cost of the premium. Valley Water will pay 100% of the cost of the premium.
Retirement Health Benefits for Employees Hired On or After 3/1/2007	Medical coverage is provided for retired employees with 15 years of continuous service with Valley Water or a combination of prior public agency service (meaning the State of California or any political subdivision thereof, including any city, county, or special district) with a minimum of 5 consecutive years of Valley Water Service. Medical coverage is provided for retired employees and one eligible dependent with 20 or more years of continuous service with Valley Water or a combination of prior public agency service with a minimum of 5 consecutive years of Valley Water Service. Medical premium cost sharing is required with the same contribution percentage as active employees and based on the medical premium amount applicable to active employees or retirees, whichever is less. Effective April 1, 2024, retirees will pay 0% of the cost of the premium. Valley Water will pay 100% of the cost of the premium.
Health Insurance	Medical, Dental, Vision Care, and EAP benefits are provided by Valley Water with no monthly premium cost to the employee. Medical, Dental, Vision Care, and EAP benefits are provided to all regular employees and their eligible dependents including domestic partners. Domestic partner coverage is taxable income for federal income tax purposes. Valley Water employees may only receive coverage under one plan; either as single coverage or family coverage and either as the primary subscriber or as a dependent under the plan of a spouse or domestic partner who is a regular Valley Water employee. Eligible dependents will only be covered under one employee's medical plan.
Disability Insurance	Valley Water provides Short Term Disability (STD) equal to 66 2/3% of salary to a maximum weekly benefit of \$3,462 with a 14-day waiting period. STD may transition into Long Term Disability (LTD) after 180 days of disability and then provide 66 2/3% of salary to a maximum monthly benefit of \$15,000.
Life Insurance	Valley Water provides life insurance benefits equal to employee's annual salary up to a maximum benefit of \$100,000 with a five-year phase out in declining increments of \$10,000 per year starting with \$50,000 coverage upon retirement. The premium attributable to life insurance benefit exceeding \$50,000 is considered "imputed income" and must be reported as taxable earnings on the W-2 statement each year, as required by the IRS.

Life Insurance	Optional supplemental life insurance available in amounts equal to 1, 2, 3, or 4 times annual salary to a maximum benefit of \$750,000 is available at employee cost. Guaranteed issue amount is \$200,000.
Deferred Compensation	Deferred compensation plans are available at the employee's option, with up to \$9,000 in annual matching contributions each calendar year from Valley Water. The match will be deposited into the 401(a) plan.
Flexible Spending Account (FSA)	Health Care Spending Account – Maximum contribution up to \$3,400 for eligible medical, dental, vision and prescription expenses for 2026. The rollover amount from 2026 into 2027 is \$680. Dependent Adult or Child Daycare – Maximum contribution of \$7,500 per family or \$3,750 if you file taxes "Married Filing Separately" per calendar year. Commuter Spending Account – Pre-tax deductions are allowed up to the IRS maximum for any public transportation or to pay for qualified vanpools to commute to work.
Employee Assistance Program (EAP)	Valley Water provides an EAP to employees and their eligible dependents that are staffed by licensed credentialed counselors and provides information, referral, and short-term counseling for personal issues affecting work or personal life.
Legal Insurance	Valley Water offers comprehensive legal benefits through Legal Shield which include (but are not limited to): Bullying Protection, Post-Nuptial/DP Agreements, Gender Identifier Change, Elder Law Matter, Civil/Social Discrimination, and Consumer Credit Services.
Accident Insurance	The Standard offers optional coverage that provides cash benefits if you're injured outside of work. Payments can help cover lost income and unexpected medical expenses. The plan pays for a range of injuries and treatments, including chipped teeth, lacerations, and broken bones, helping reduce the financial impact of accidents.
Critical Illness Insurance	The Standard offers optional coverage that provides a lump-sum cash benefit (\$10,000–\$30,000) if you're diagnosed with a covered critical illness, such as cancer, stroke, heart attack, Alzheimer's, or Parkinson's. The benefit can help cover medical costs, caregiving needs, and other expenses, offering financial support during treatment and recovery.
Pet Insurance	Valley Water offers optional pet insurance through MetLife. MetLife Pet can help you be prepared for unexpected vet costs associated with injuries and illnesses and can also cover routine pet care. MetLife is an employee cost direct-bill plan (no paycheck deductions).
Wellness	<u>ValleyWaterWell</u> – Valley Water Wellness program. We offer company-wide challenges, lunchtime seminars, health cooking demos, health stations, and more! <u>Origin Financial Wellness</u> – Valley Water provided financial Wellness tool. Free 1:1 meetings with certified financial planners, free app access with visibility to financial transactions, free basic will preparation, discounted will preparation and more! <u>ClassPass</u> – Fitness & wellness at your fingertips. 13 Valley Water provided credits per month, up to 13 credit rollover. Discounted credit purchases. <u>Personify Health</u> – Valley Water Wellness Platform. Participate in wellness challenges, competitions, and more. Earn up to \$200/annually! <u>LifeBalance</u> – Discounts at thousands of businesses nationwide, including health clubs, fitness studios, online retailers, movie theaters, hotels, and more!
Other	<u>Car Allowance</u> – Board Appointed Officers (BAO) are eligible for a monthly car allowance as follows: CEO & General Counsel = \$600 / Clerk of the Board = \$450. Mileage is paid for out-of-county Valley Water business in addition to a monthly car allowance. <u>Electronic Devices</u> – Valley Water-owned communication devices are provided, including cell phones, pagers, two-way radios, tablets, and computers. A monthly stipend for smartphones is provided. <u>Tuition Assistance Program</u> – Unclassified employees with six (6) or more months of continuous service, up to 100% reimbursement of tuition costs upon satisfactory completion of an approved course to a maximum of \$4,000 per fiscal year.
<i>This is a summary of benefits only. Official plan documents/agreements govern how a benefit is determined or administered.</i>	



Santa Clara Valley Water District

File No.: 26-0615

Agenda Date: 7/14/2026

Item No.: *5.2.

BOARD AGENDA MEMORANDUM

Government Code § 84308 Applies: Yes ☐ No ☒
(If "YES" Complete Attachment A - Gov. Code § 84308)

SUBJECT:

Consider the June 16, 2026, Board Policy and Monitoring Committee Recommendation to Approve the Interim Board Appointed Officer Complaint Policy.

RECOMMENDATION:

Consider the June 16, 2026, Board Policy and Monitoring Committee recommendation to approve the Interim Board Appointed Officer Complaint Policy.

SUMMARY:

At its June 16, 2026, meeting, the Board Policy and Monitoring Committee (BPMC) approved an interim policy for use in the event a complaint is filed against a Board Appointed Officer. The interim policy is currently under review by an external auditor. Following completion of the auditor's review, the Committee will consider the auditor's recommendations, finalize the policy as appropriate, and present it to the Board for consideration and approval. The interim policy (Attachment 1) is based on the process flowcharts (Attachment 2) that were reviewed and discussed during previous Committee meetings.

The interim policy will be a new Board-BAO Linkage (BL) Governance Policy, BL-6 Complaint Against a Board Appointed Officer (Interim Policy)

ENVIRONMENTAL JUSTICE IMPACT:

The Interim Board Appointed Officer Complaint Policy is not subject to environmental justice analysis.

FINANCIAL IMPACT:

There is no financial impact associated with this item.

CEQA:

The recommended action does not constitute a project under CEQA because it does not have the potential to result in direct or reasonably foreseeable indirect physical change in the environment.

ATTACHMENTS:

- *Attachment 1: BL-6, Interim Policy
- *Attachment 2: Flow Chart

UNCLASSIFIED MANAGER:

Candice Kwok-Smith, 408-630-3193

Governance Policies of the Board

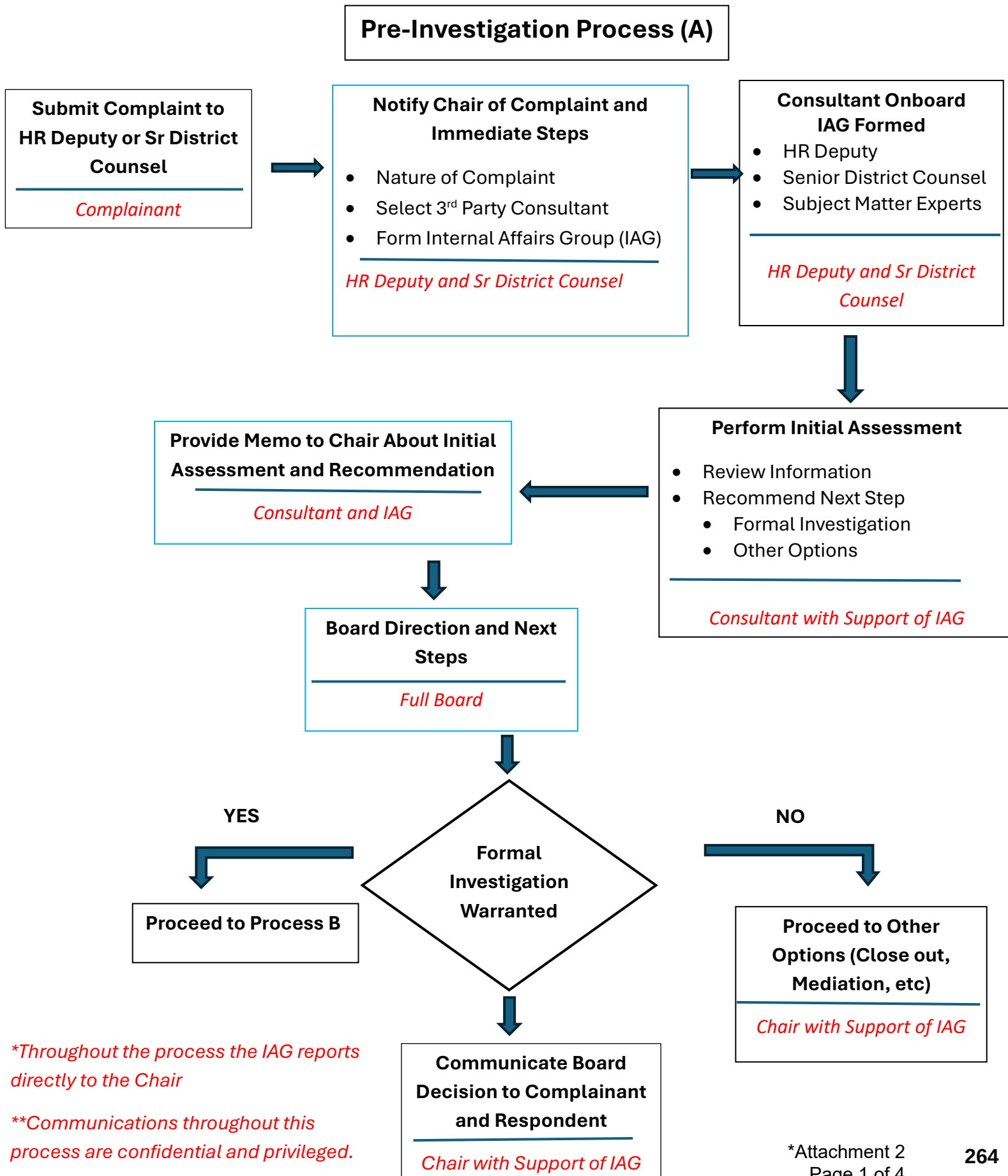
Title: Complaint Against a Board Appointed Officer (Interim Policy)		
Category: Board-Board Appointed Officer Linkage		
Policy No. BL-6	Adopted: July 14, 2026 Chair: Tony Estremera	Latest Revision: Chair:
The Board of Directors adopted this interim policy at its public meeting.		

Anyone may bring a formal complaint against a Board Appointed Officer for misconduct in accordance with this section. Misconduct under this section shall be limited to violations of the Anti-Discrimination, Harassment, Abusive Conduct, and Retaliation Policy (AD-2.8), and/or violations of local, state, and/or federal law

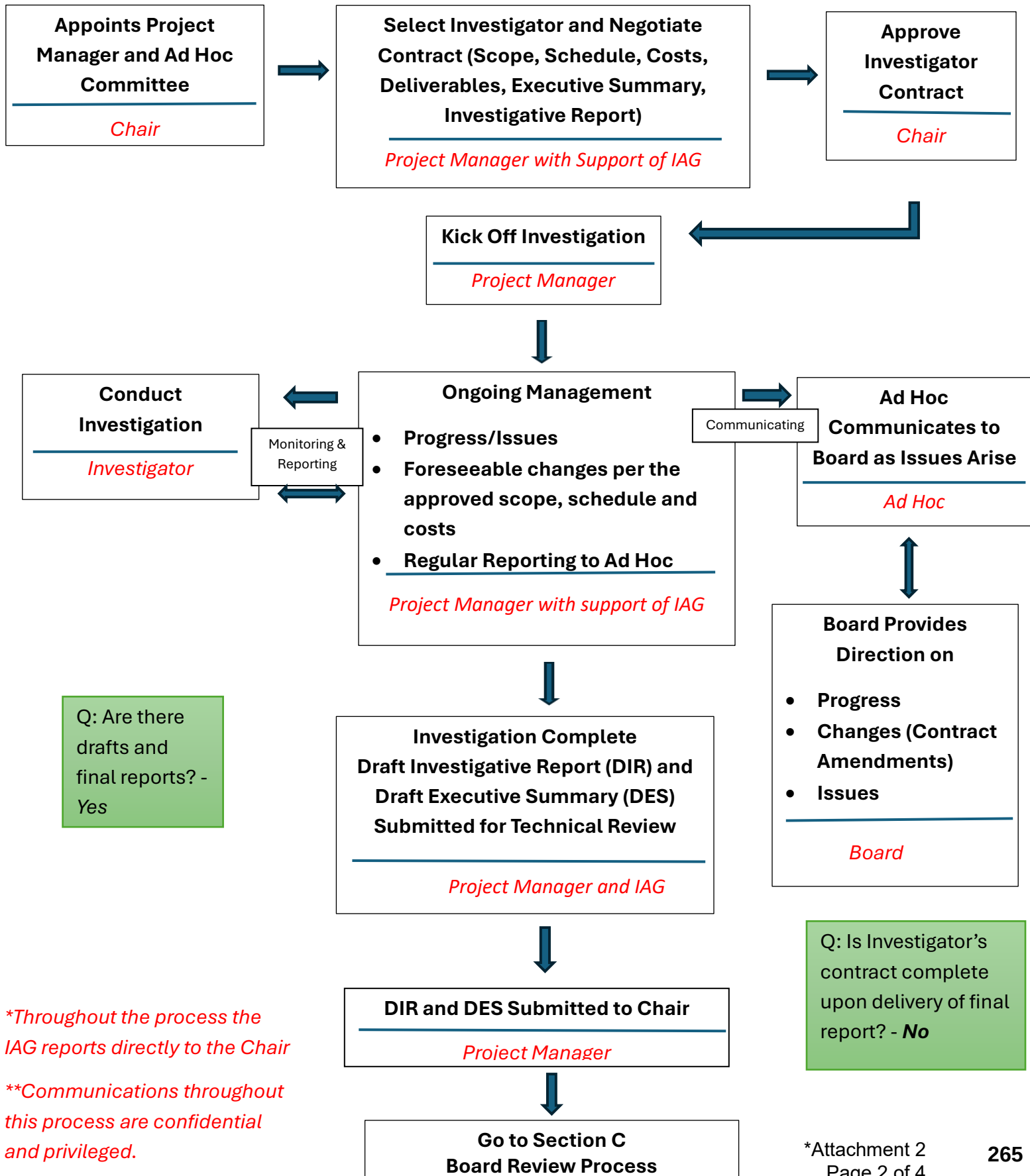
1. Written Complaint Procedure (Pre-Investigation Process – A)
 - 1.1. Complaints must be in writing and signed in the complainant's true legal name. Complaints must identify the accused Board Appointed Officer and should provide as much detail as possible about the alleged misconduct. Complainants must submit their written complaints to the Human Resources Deputy or Senior District Counsel.
 - 1.2. The Board Chair will be notified of the nature of the complaint and form an Internal Affairs Group (IAG). The IAG will consist of the Human Resources Deputy, Senior District Counsel and subject matter experts. Throughout this process, the Human Resources Deputy and Senior District Counsel will report directly to the Chair.
2. Initial Evaluation of Complaint.
 - 2.1. The IAG will select a 3rd party consultant who will perform an initial assessment to determine whether it has sufficient information whether the alleged conduct both occurred and violated policies. The consultant, with support of the IAG, will provide a memo to the Chair with recommendation of next steps. The recommendation will be provided by the Chair to the Board for action.
3. Commencement of Investigation (Investigation Process – B)
 - 3.1. The chair shall appoint a Project Manager and form an Ad Hoc Committee ("Committee") to address the complaint. The Committee shall consist of the Chair and 1-2 other directors.
 - 3.2. The Project Manager with support of the IAG will select an independent investigator and negotiate a contract which will be approved by the Chair.
 - 3.3. No Board member who participates in any investigation in any way may disclose any confidential information regarding the investigation including the identification of any known or suspected witnesses.
 - 3.4. The Board shall endeavor to have investigations completed within a timely manner.
4. Ongoing Management of Investigation
 - 4.1. The Project Manager with support of the IAG will monitor and report progress/issues, foreseeable changes per the approved contract and regularly report to the Committee.

- 4.2. The Committee will communicate to the Board as issues arise needing the Board's direction for issues outside of the Committee's scope or authority.
5. Completion of Investigation. Draft Investigative and Executive Summary Reports may be provided to the Project Manager and IAG for initial technical review. Examples of technical review include ensuring accurate policy references and fixing spelling or grammatical errors, if any
6. Board Review of Report (Board Review Process – C).
 - 6.1. The Draft full report will only be available for viewing by the Chair. The Draft Executive Summary will be available for individual review by the Board. Individual Board Members may request that the Chair schedule a Closed Session meeting with the investigator for the purposes of clarification. Upon completion of individual Board review, the Project Manager, with discussion of the Board, will direct the investigator to finalize the report.
7. Board Consideration of Findings (Post-Investigation Process – D)
 - 7.1. The Board will discuss findings, if any, and will determine next steps. The IAG will close-out the complaint upon completion.

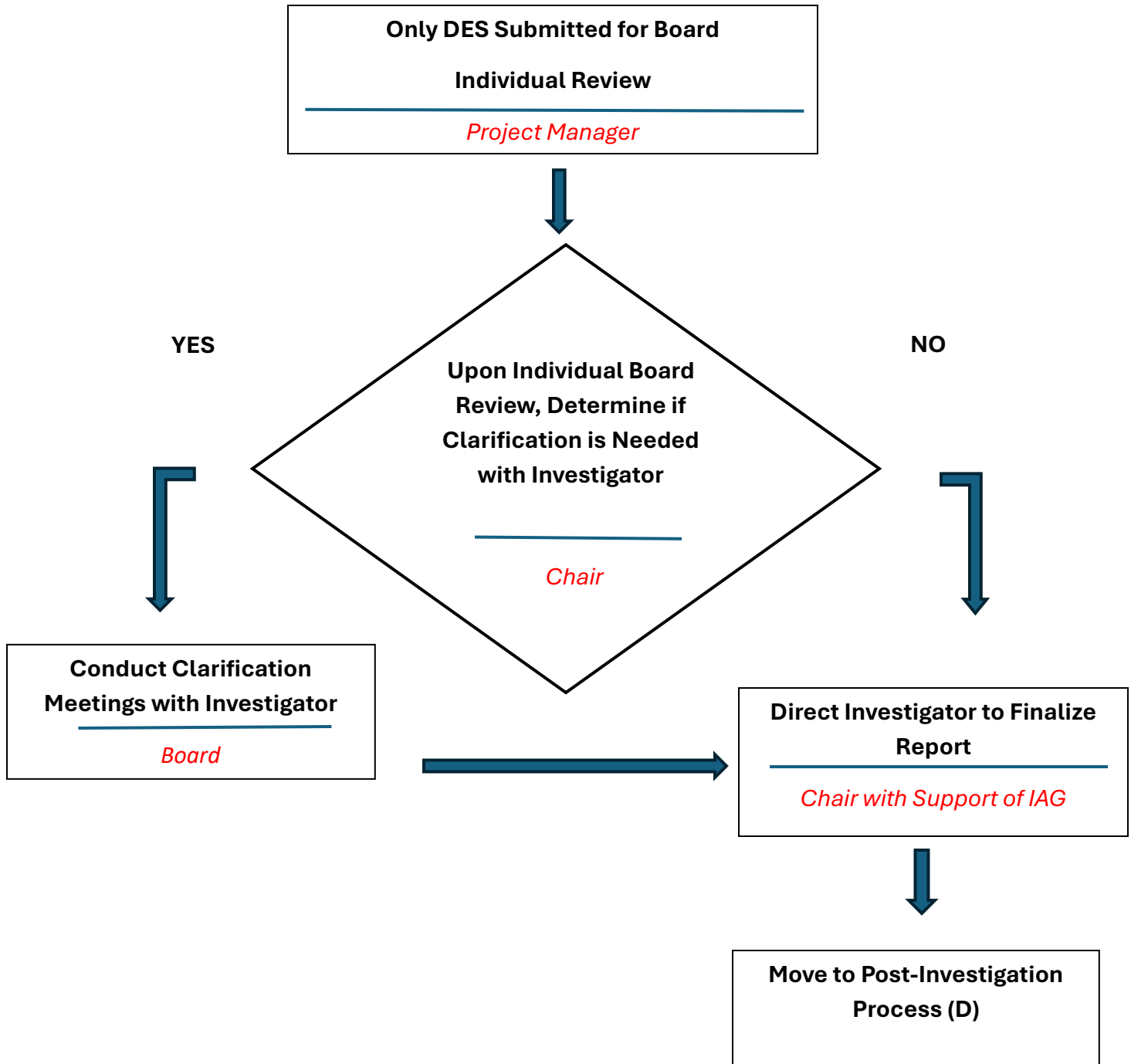
Board Appointed Officer Complaint Process



Investigation Process (B)



Board Review Process (C)



**Throughout the process the IAG reports directly to the Chair*

***Communications throughout this process are confidential and privileged.*

Post-Investigation Process (D)

**Discuss Findings, if any, Meet with
Respondent, and Determine Next Steps to
Address Findings**

Board with Support of IAG



**Communicate with Complainant and
Proceed to Close-out Complaint**

IAG



Santa Clara Valley Water District

File No.: 26-0624

Agenda Date: 7/14/2026

Item No.: *5.3.

BOARD AGENDA MEMORANDUM

Government Code § 84308 Applies: Yes ☐ No ☐
(If "YES" Complete Attachment A - Gov. Code § 84308)

SUBJECT:

Consider March 18, 2026, Board Audit Committee Recommendation to Approve Proposed Amendments to the Board Audit Committee Audit Charter and Proposed Amendments to the Board of Directors Code of Conduct and Ethics; and Provide Further Direction as Needed.

RECOMMENDATION:

Consider recommendations resulting from the March 18, 2026, Board Audit Committee meeting to:

- A. Consider and approve proposed amendments to the Board Audit Committee Audit Charter;
- B. Consider and approve proposed amendments to the Board of Directors Code of Conduct and Ethics; and
- C. Provide further direction, as needed.

SUMMARY:

The Board Audit Committee (BAC) was established to assist the Board of Directors (Board), consistent with direction from the full Board, to identify potential areas for audit and audit priorities, and to review, update, plan, and coordinate execution of Board audits. On September 26, 2018, the BAC directed an Audit Committee Charter be developed, and on August 27, 2019, the Board formally approved the BAC Audit Charter. The BAC Audit Charter was last amended by the Board at its regular meeting on April 22, 2025.

At its regular March 18, 2026, meeting, the BAC considered proposed amendments to the BAC Audit Charter and voted to recommend them to the full Board for approval suggesting the Board of Directors Code of Conduct and Ethics (Code) be reconciled simultaneously to avoid conflicting guidance. These proposed amendments are set forth below.

A. Recommended Changes to the BAC Audit Charter

- (1) Modification: Article III, §7.4

During the BAC meeting on March 18, 2026, the Committee recommended updating Article III, section 7.4 to simplify the language from "tri-annually" to the actual, intended,

review period of “every three years.” This recommendation is reflected below:

Risk Assessment - The Committee shall endeavor to complete a Valley Water-wide risk assessment, at a minimum, every three (3) years tri-annually and to annually update Valley Water-wide audit risk assessment to include objectively recommended audits ranked based upon the potential level of risk to Valley Water. The results of this Valley Water-wide audit risk assessment should be relied upon to develop the proposed Annual Audit Plan.

(2) New: Article III, §9

A new provision is recommended to be added to Article III of the Board Audit Committee Audit Charter (Charter) providing direction when selecting an Independent Auditor. Currently, section 11 of the Board of Directors Code of Ethics and Conduct (Code) prevents Directors from communicating with current or potential auditors after the issuance of a request for goods or services has been released.

The Independent Auditor reports directly to the BAC. Assigning a member of the BAC to sit on the selection panel is a reasonable expectation and has been established as a practice of the Santa Clara Valley Water District (District). Guidance is needed to ensure that a BAC member sitting on the selection panel for a role that they directly supervise, limits any communication solely to their role as a panelist to avoid an actual or perceived violation of the Code.

The following language is recommended to be added to the Charter:

“Selection of Independent Auditor - The Independent Auditor will be required to adhere to the District’s standard procurement process. Where a selection panel is created to review Independent Auditor submissions and/or engage in interviews, one member of the Committee may sit on the selection panel. The Committee member who participates in the selection panel may not interact directly with the potential auditor(s) outside of the selection panel interview. Committee members shall rotate who sits on the selection panel so that no individual Committee member participates in the selection panel more than two (2) consecutive procurement periods.”

(3) Modify: Article VII, §4

Additional language to Article VII, §4 is recommended to clarify *when* Valley Water management shall provide a report to the BAC of the scope and nature of all planned Management initiated Audits. The language currently could be perceived as the next meeting after Valley Water Management staff notifies the Committee of any planned Management Initiated Audits *or* following the Chairs request. The suggested language addition below removes any ambiguity:

Notice to Committee of Management Initiated Audits - Valley Water management shall notify the Committee in writing of any planned Management Initiated Audits before commencing the same. Upon request by the Board Chair, Valley Water management shall provide a report to the Committee of the scope and nature of all planned Management Initiated Audits at the next scheduled Committee meeting **following the Board Chairs request**. Where circumstances require any Management Initiated Audit to commence before the next regularly scheduled Committee meeting, the Committee Chair shall be advised of this need, and the audit need not be delayed. Where the Management Initiated Audit allows for a response by Valley Water staff before it is finalized, the Committee Chair shall be immediately notified by email or telephone and shall determine whether to have the Committee review and comment on any draft Valley Water response at a regularly scheduled or specially noticed Committee meeting. Where possible, Valley Water management shall provide the Committee with at least fifteen calendar days for such review and comment. Where timely review and comment by the full Committee is not reasonably possible, the Committee Chair may conduct such review and comment himself/herself and shall report upon such review and comment at the next scheduled Committee meeting. The Committee Chair may also delegate this responsibility to the Vice Chair for any particular Management Initiated Audit, where the Committee Chair is unavailable. The Committee shall be provided with copies of any final reports on Management Initiated Audits.

B. Recommended Changes to the SCVWD BOD Code of Ethics and Conduct

In order to effectively reconcile the BAC Audit Charter and the BOD Code, the Code also needs to be updated. The following recommendation will reconcile the two documents to ensure that the BAC representative to the selection panel is in adherence of both governing documents. At a broader level, the suggested modifications below apply to the full Board.

(1) Modify: A - Ethics; Section 11:

Representation of Private Interests.

No Director shall contact staff on behalf of a party who is bidding or intends to bid on a Valley Water contract or who has or intends to submit a response to a request for proposals or request for qualifications, nor shall a Director inquire about the identity of bidders or proposers prior to the time that staff has made a recommendation for selection of a

contractor, vendor, or consultant. Directors are not prohibited from making general inquiries about the status of a particular procurement, or from providing a member of the public with information about the appropriate staff contact concerning procurement of goods and services by Valley Water. **Directors are not prohibited from sitting on selection panels where the solicitation is for services that directly report to the Board or Committee they are on so long as no more than one Board member or Committee member participate in the selection panel, no Board member or Committee member interacts with the potential vendor outside of the selection panel interview, and no individual Board member or Committee member participates in the same selection panel more than two (2) consecutive procurement periods.**

After issuance of a request for goods or services, Directors are prohibited from communicating with any current or potential vendor, supplier, contractor, or consultant, except as described in this paragraph~~section~~, until after issuance by the Chief Executive Officer or his/her designee of a decision on any protest relating to the request for goods or services or resultant contract award. Any communications during this period shall be limited to matters unrelated to the request for goods or services or the contract award. Whenever the Director has communicated during the aforementioned period with any current or potential vendor, supplier, contractor, or consultant in violation of these restrictions, the name of the party, the date, and the content of the communications shall be disclosed at the next board meeting after the communication and noted in the minutes.

These recommended changes are also set forth in the attachments. Approval to amend the attachments as hereby presented is requested.

ENVIRONMENTAL JUSTICE IMPACT:

There are no environmental justice impacts associated with adopting the proposed BAC Audit Charter amendments. This action is unlikely to or will not result in adverse impacts and is not associated with an equity opportunity.

FINANCIAL IMPACT:

There is no financial impact associated with this item.

CEQA:

The recommended action does not constitute a project under CEQA because it does not have potential for resulting in direct or reasonably foreseeable indirect physical change in the environment.

ATTACHMENTS:

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- *Attachment 1: Board Audit Committee Charter, Red-lined
 - *Attachment 2: Directors Code of Conduct and Ethics, Red-lined
 - *Attachment 3: PowerPoint

UNCLASSIFIED MANAGER:
Darin Taylor, 408-630-3068



**SANTA CLARA VALLEY WATER DISTRICT
BOARD AUDIT COMMITTEE
AUDIT CHARTER**

ARTICLE I - PURPOSE

1. This Charter shall govern the operation of the Santa Clara Valley Water District (Valley Water) Board Audit Committee (Committee).
2. Valley Water's Board of Directors (Board) is responsible for ensuring that Valley Water provides Silicon Valley with safe, clean water for a healthy life, environment, and economy.
3. Audits constitute an important oversight tool as they provide independent and fact-based information to an agency's elected officials and management. Information derived from audits can be used by those responsible with governance and oversight to use it to improve program performance and operations, confirm regulatory compliance, reduce costs, and facilitate decision making.
4. The Committee shall assist the Board, consistent with direction from the full Board, by identifying potential areas for audit and audit priorities, and to review, update, plan and coordinate execution of Board audits.
5. Through its oversight of the audit process, the Committee serves a critical role in providing oversight of Valley Water's governance, risk management, ethics program, and internal control practices. This oversight mechanism also serves to provide confidence in the integrity of these practices. It is the Committee's responsibility to provide the Board with independent, objective advice on the adequacy of Valley Water management's arrangements with respect to the aspects of the management of Valley Water being evaluated.
6. In carrying out its functions, the Committee shall emphasize: (a) the identification of organizational risk; (b) service delivery; (c) operational efficiency; (d) effectiveness of Valley Water programs; (e) project delivery; (f) establishment of an Annual Workplan and an Annual Audit Workplan to guide the Committee's work; and (g) oversight and monitoring of Valley Water operations and compliance with all applicable regulatory requirements.
7. In addition to carrying out audits in a Board approved Annual Audit Plan, the Committee's purpose also includes oversight of audits initiated by Valley Water management, review and comment upon final audits initiated by third-party governmental or administrative agencies, and the conduct of Limited Investigations of potential fraud, waste or violations of law or policy as set forth herein. The

Committee's oversight of Annual Financial Statement Audits shall include the additional elements set forth in Article VIII herein.

8. The Committee shall serve to reinforce the wholeness of the Board's job and shall never interfere with delegation from the Board to the Board Appointed Officers.
9. Through its oversight of the audit process, the Committee shall provide the Board with independent advice and guidance regarding the adequacy and effectiveness of Valley Water's management practices and potential improvements to those practices.

ARTICLE II - COMPOSITION

1. Number of Committee members/Appointment - The Committee shall consist of at least three members of the Board and shall be appointed by the Board in accordance with the Board's Governance Policies. Committee members shall serve one-year terms.
2. Quorum - The quorum for the Committee shall be a majority of the members.
3. Committee Chair - A Committee Chair shall be elected by a majority of the Committee at the first Committee meeting of the calendar year and shall serve for a one-year term. The Committee Chair shall be responsible for approving agendas for Committee meetings (which shall include the right to add agenda items and, subject to the restrictions of Governance Process sections 6.3 and 6.3.1, review agenda items prior to posting agendas), approving the payment of invoices to Auditors, and making all initial efforts to resolve any conflicts that may arise during an audit, including but not limited to meeting with auditors and Valley Water executive management to discuss audit results and corrective action plans. To the extent the Chair is unable to resolve conflicts arising during the audit, the matter shall be referred to the Committee for attempted resolution.
4. Committee Vice-Chair - A Committee Vice-Chair shall be elected by a majority of the Committee at the first Committee meeting of the calendar year and shall serve for a one-year term. The Vice-Chair shall assume the duties of the Chair during the Chair's absence.

ARTICLE III – OPERATIONAL PRINCIPLES

1. Committee Values. The Committee shall conduct itself in accordance with Valley Water's values as set forth in Valley Water's Governance Policies of the Board of Directors, Governance Process No. GP-7 (Values Statement).

2. Communications – The Committee expects that all communication with management and staff of Valley Water as well as with any external auditors will be direct, open, and complete. The Committee is entitled to receive any explanatory information that it deems necessary to discharge its responsibilities. The Committee will communicate directly with the Board and will not exercise actual authority over Valley Water employees.
3. Disclosure of Impairment to Independence – The Auditor shall disclose the details of any audit-related impairment in fact or in appearance to the Committee (e.g., one which threatens the ability to carry out audit responsibilities in an unbiased manner, including matters of audit identification, scope, procedures, frequency, timing, and report content).
4. Access to Information - Except where action by the full Board is required (such as for the waiver of a legal privilege), the Committee shall have unrestricted access to records, data, reports, and all other relevant information it considers necessary to discharge its duties. If access to requested documents is denied due to legal or confidentiality reasons, the Committee shall follow any prescribed, Board approved mechanism for resolution of the matter.
5. Authority – This Charter sets out the authority of the Committee to carry out the responsibilities established for it by the Board. In the event of any conflict between this Charter and either the District Act or the Board Governance Policies, the provisions of the District Act and Board Governance Policies shall prevail.
6. Annual Work Plan –
 - 6.1. Work Plans are used by all Board Committees to increase Committee efficiency, provide increased public notice of intended Committee discussions, and enable improved follow-up by Valley Water staff. Work Plans are dynamic documents managed by Committee chairs and are subject to change. Annual Work Plans establish a framework for committee discussion and action during the annual meeting schedule. Committee Work Plans also serve as Annual Committee Accomplishments Reports.
 - 6.2. The Committee shall, in coordination with Valley Water’s Clerk of the Board, develop a proposed Annual Work Plan. Items shall be included in the Annual Work Plan based upon a majority vote of the Committee.

7. Annual Audit Plan

7.1. While the Annual Work Plan governs the overall work of the Committee, the Committee shall also develop a proposed “Annual Audit Plan” which shall list each of the individual audits to be performed over the course of the year.

7.2. By November 30 of each year, the Committee shall submit its recommended Annual Audit Plan to the full Board for consideration and direction. Following the Board’s adoption of the Annual Audit Plan, the Committee shall execute the Annual Audit Plan. Any proposed substantive changes to the Annual Audit Plan (e.g., combining audits, adding or removing an audit, or significantly delaying initiation of an audit) must be approved by the Board. Recommended changes should be evidence based.

7.3. Only audits properly included in an approved Annual Audit Plan, as set forth in section 7.2 above, may be undertaken by the Committee.

7.4. Risk Assessment – The Committee shall endeavor to complete a Valley Water-wide risk assessment, at a minimum, **every three (3) years** ~~tri-annually~~ and to annually update Valley Water-wide audit risk assessment to include objectively recommended audits ranked based upon the potential level of risk to Valley Water. The results of this Valley Water-wide audit risk assessment should be relied upon to develop the proposed Annual Audit Plan.

8. Valley Water Independent Auditor – Upon approval of the Board following recommendation by the Committee, Valley Water may retain an Independent Auditor to serve as support to the Committee, to make recommendations for the Annual Work Plan, and to recommend audits for inclusion in the Annual Audit Plan. The Independent Auditor shall not be an employee of Valley Water. The Independent Auditor must report directly to the Audit Committee but is subject to the final authority of the Board. Valley Water staff shall not direct or attempt to direct the work of the Independent Auditor. The Committee may recommend that the Independent Auditor perform individual audits but shall ensure that additional auditors are recommended for use in planned audits so that no single firm conducts a disproportionate number of audits in a given fiscal year.

9. Selection of Independent Auditor – The Independent Auditor will be required to adhere to the District’s standard procurement process. Where a panel is created to review Independent Auditor submissions and/or engage in interviews, one member of the Committee may sit on the selection panel. The Committee member who participates in the selection panel may not interact directly with the potential Independent Auditor outside of the selection panel interview. Committee members

shall rotate who sits on the selection panel so that no individual Committee member participates in the selection panel more than two (2) consecutive procurement periods.

10. Committee Evaluation of Auditor Performance – The Committee shall evaluate the performance of the Independent Auditor and any other Auditor retained by the Board. The Committee may make a recommendation to the Board to discharge

such Independent Auditors or other Auditors where they are not adequately fulfilling their contracted duties.

11. Preparation and Attendance – Committee members are obligated to prepare for and participate in Committee meetings.
12. Conflicts of Interest – It is the responsibility of Committee members to disclose any conflict of interest or appearance of a conflict of interest to the Committee regarding any matters coming before or considered by the Committee.

ARTICLE IV – MEETINGS

1. Meeting Agendas – Guided by the Audit Charter, Annual Work Plan, and Annual Audit Plan, the Committee Chair will establish agendas for Committee meetings in consultation with Committee members, Valley Water Management, and the Clerk of the Board.
2. Meetings – The Committee will conduct its meetings in accordance with the provisions of the Brown Act. The Committee shall meet at least four times per year. Beyond this minimum, there shall be no limit to the number of meetings held over the course of the year.

ARTICLE V – AUDIT PRINCIPLES

1. Audit Purposes – Audits can serve several purposes including, but not limited to:
 - a. Verifying that programs, services, and operations are working based upon the Committee’s understanding;
 - b. Assuring efficiency and effectiveness;
 - c. Identifying the root cause of any problems experienced by Valley Water;
 - d. Assessing future risks facing Valley Water;
 - e. Assessing the progress of prior audit recommendations;
 - f. Identifying any impact that changes in Valley Water operations have had on financial performance and service delivery;
 - g. Identifying leading practices;
 - h. Assessing regulatory compliance;
 - i. Developing policy options; and
 - j. Assessing the accuracy of financial information reported by Valley Water.
2. Audit Types – The types of audits that may be conducted on behalf of Valley Water include, but are not limited to, the following:

- a. Financial audits – Valley Water hires an outside independent audit firm to perform Valley Water’s financial statement audit;
 - b. Internal audits – Internal audits (aka, Management Audits) review the environment, information, and activities that are designed to provide proper accountability over Valley Water operations;
 - c. Compliance audits – Compliance audits review adherence to Valley Water policies and procedures, state regulatory requirements, or federal regulatory requirements;
 - d. Performance audits – Performance audits review the economy, efficiency, and effectiveness of Valley Water’s programs, services and operations. Performance audits can evaluate current impact or assess operations prospectively;
 - e. Desk reviews – Small and quick assessments of limited size or duration for the purpose of determining if a full performance audit is needed. Board approval is not required for Desk reviews, however the Committee shall, as soon as is practicable, provide the Board with notice following the Committee’s approval to initiate any Desk review;
 - f. Follow up audits – Audits evaluating to what extent prior audit recommendations have been implemented. Follow up audits may also assess other actions taken to respond to or prevent the occurrence of problems;
 - g. Best practice reviews – Audits which compare current Valley Water operations to best practices.
 - h. Program audits – Program audits are conducted to evaluate whether a particular Valley Water program is effectively accomplishing its goals and are mandated pursuant to state or federal statute or regulation, ordinance, resolution, ballot measure, grant requirement, or contractual requirement. Program audits are unique in that they are mandated by program requirements, not directed by management or the Board. Program audits fall within the responsibility of Valley Water management except when specifically referred to the Committee by the Board.
3. Audit Objectives – Audit objectives must be developed for every audit conducted on behalf of Valley Water. These audit objectives are questions posed by management, Committee members, Board members, or auditors about the specific nature of the issue or concern that is the subject of the audit. Suggested Audit Objectives shall be referenced in the Annual Audit Plan for every

audit listed therein. The audit objectives may be subject to revision as necessary during the planning phase of the audit.

4. Audit Standards – Audits conducted by or on behalf of the Committee shall conform with the Institute of Internal Auditors International Standards for the Professional Practice of Internal Auditing (RED Book) or the Generally Accepted Government Auditing Standards established by the U.S. Government Accountable Standards (YELLOW Book), or both.
5. Limited Investigations.
 - a) Purpose. In lieu of an audit, the Committee shall also have discretion to conduct or request Limited Investigations to address any discrete issue or concern regarding fraud, waste, or violations of law or policy at Valley Water. The Committee shall not have jurisdiction to conduct Limited Investigations on any other matters. Prior Board approval is not required for the initiation of Limited Investigations.
 - b) Scope. Such Limited Investigations may or may not be subject to the Audit Standards set forth above and shall be undertaken only where: (1) the Limited Investigation is designed to determine the existence or nonexistence of discrete facts involving alleged fraud, waste, or violations of law or policy at Valley Water; (2) the Committee has determined that an audit is not appropriate to address the concern; and (3) the Limited Investigation does not address any matters covered or potentially covered by Board Governance Policy GP-6 (Board Members' Code of Conduct).
 - c) Classified Employees. Classified employees who are parties to any Limited Investigation shall be afforded all applicable rights under the Meyers-Milias-Brown Act and the Memorandum of Understanding then in effect with the employee's union.
 - d) Timely completion. All Limited Investigations must be completed in a timely manner.
 - e) Report of Results. The Committee shall advise the Board of the results of all completed Limited Investigations.
6. Protection of Confidential or Privileged Information – The Committee shall take all necessary steps to prevent the unnecessary disclosure of privileged or confidential information arising in the audit process, arising in the final reports on the audits, arising in the Limited Investigation process, or arising in final reports issued on Limited Investigations.

ARTICLE VI – COMMITTEE OVERSIGHT OF BOARD INITIATED AUDITS

1. Committee recommendation of Auditors – The Committee shall make recommendations to the full Board for the selection of all Auditors to perform audits in the approved Annual Audit Plan. In making such recommendations, the Committee shall consider multiple auditors in order to avoid having any single auditor perform a disproportionate number of audits in a given fiscal year. Following such recommendation, the Board shall make the final decision regarding the selection of such auditors.
2. Board Auditors and Valley Water Staff – Valley Water staff may assist the Committee in its work and may provide information to, assist, or work with Auditors retained by the Board, as necessary. Valley Water staff shall not, however, attempt to direct any Auditors retained by the Board. Auditors retained by the Board shall have a duty to the Board and shall not take direction from Valley Water staff.
3. Communications with Auditors – Individual Committee members shall have the right to speak with Auditors directly regarding the Auditor’s assignments. However, direction to Auditors shall come from the Committee as a whole.
4. Completion of Annual Audit Plan – The Committee shall ensure that audits on the Annual Audit Plan are initiated and completed in an accurate and timely manner.
5. Review of Final Audit Results/Notice to Board – The Committee shall review the observations and conclusions of all audits conducted pursuant to the Annual Audit Plan. Upon finalization of the audits and any related reports, the Committee shall provide the Board with the results and make any recommendations to the Board regarding improvement of program performance and operations, cost reductions, and best practices. Prior to referring any final audit report to the Board, the Committee may refer final audit reports to other Board committees for review and discussion. The Board may also direct that any final audit reports be referred to specified Board committees for review and discussion before being referred to the Board.
6. Draft Audit Reports - Subject to any requirements of the California Public Records Act or any other applicable state or federal law or regulation, Draft Audit Reports shall be treated as confidential records. Despite any contrary prior practice, Draft Audit Reports shall not be presented to the Committee or any other Valley Water committee for review or any other purpose.

7. Valley Water Management Response to Audits – Valley Water Management must hold an exit conference with the Auditor regarding any preliminary draft audit report within ten working days from issuance. Valley Water Management must review and respond to draft audit report recommendations included in Board Initiated audits within fifteen working days from issuance of the final draft audit report, unless the Auditor requires the Management response in a shorter amount of time. The Committee, at the request of Valley Water management, may extend the review and comment periods on an audit-by-audit basis. The Committee may ask questions about or make comments on any responses to the draft audit report recommendations. However, the Committee shall not attempt to direct Valley Water staff in its response to any audit.
8. Follow-up/close out of audits – The Committee may request a report regarding Valley Water’s implementation of measures to address recommendations from individual audits. Where not all audit recommendations have been implemented, this shall be reported in a Follow-up report, and where all recommendations have been implemented, this shall be reported in a Close-out Report. As designated by the Committee, the report shall be prepared by either the Auditor completing the audit or the Independent Auditor. Where no remedial measures have been identified by Valley Water management, the Close-out Report shall address whether management has elected to accept the associated risk or whether the risk no longer exists. Following consideration of the Close-out Report, the Committee may vote to close an audit where it is satisfied that the audit recommendations are adequately addressed or where the risk associated with any unaddressed recommendation is acceptable or no longer exists.
9. Board Monitoring of Committee Performance – The Committee shall provide the Board with timely and periodic reports regarding its activities, its progress on individual audits, its progress on the Annual Work Plan, its progress on the Annual Audit Plan, the results of completed audits, and the Committee’s recommendations based upon the audit results. The Committee may also identify any recognizable trends in the audit results as part of its periodic reports. The Committee shall provide such reports to the Board at least four times per calendar year.

ARTICLE VII – THIRD-PARTY AND MANAGEMENT INITIATED AUDITS

1. Third-Party Audits – Third-Party Audits are audits initiated by a separate governmental agency (entities other than Valley Water).

2. Management Initiated Audits – Management Initiated Audits are audits requested by Valley Water management (i.e., internal audits) and audits mandated by specific program requirements (i.e., Program Audits). Nothing in this Charter shall restrict the ability or discretion of Valley Water management to undertake any audits it deems required or recommended.
3. Notice to Committee of Third-Party Audits – The Committee shall be promptly notified in writing of the existence and results of any Third-Party audits of Valley Water. Where Valley Water has been given an opportunity to submit a response before the Third-Party audit is finalized, the Committee Chair shall be immediately notified by email or telephone and shall determine whether to have the Committee review and comment upon any draft Valley Water response at a regularly scheduled or specially noticed Committee meeting. Where possible, Valley Water management shall provide the Committee with at least fifteen calendar days for such review and comment. Where timely review and comment by the full Committee is not reasonably possible, the Committee Chair may conduct such review and comment himself/herself and shall report upon such review and comment at the next scheduled Committee meeting. The Committee Chair may also delegate this responsibility to the Vice Chair for any particular Third-Party Audit, where the Committee Chair is unavailable. The Committee shall be provided with copies of any final reports on Third-Party Audits.
4. Notice to Committee of Management Initiated Audits – Valley Water management shall notify the Committee in writing of any planned Management Initiated Audits before commencing the same. Upon request by the Board Chair, Valley Water management shall provide a report to the Committee of the scope and nature of all planned Management Initiated Audits at the next scheduled Committee meeting **following the Board Chairs request**. Where circumstances require any Management Initiated Audit to commence before the next regularly scheduled Committee meeting, the Committee Chair shall be advised of this need, and the audit need not be delayed. Where the Management Initiated Audit allows for a response by Valley Water staff before it is finalized, the Committee Chair shall be immediately notified by email or telephone and shall determine whether to have the Committee review and comment on any draft Valley Water response at a regularly scheduled or specially noticed Committee meeting. Where possible, Valley Water management shall provide the Committee with at least fifteen calendar days for such review and comment. Where timely review and comment by the full Committee is not reasonably possible, the Committee Chair may conduct such review and comment himself/herself and shall report upon such review and comment at the next scheduled Committee meeting. The Committee Chair may

also delegate this responsibility to the Vice Chair for any particular Management Initiated Audit, where the Committee Chair is unavailable. The Committee shall be provided with copies of any final reports on Management Initiated Audits.

5. Comment Upon Draft Audit Responses – The Committee Chair and the Committee may ask questions about or make comments upon any draft audit responses. However, they shall not attempt to direct Valley Water staff in its response to any audit.
6. Audit Results – The Committee may request a report by Valley Water Staff on any response to Management Initiated or Third-Party Audits and any plans by Valley Water staff to implement changes as a result of the audits.
7. Board Report of Audit Results – In its periodic reports to the full Board, the Committee may include information regarding Third-Party Audits or Management Initiated Audits.

ARTICLE VIII – ANNUAL FINANCIAL STATEMENT AUDIT

1. Annual Financial Statement Audit - The Committee shall participate in Valley Water's procurement process for Valley Water's annual financial statement audit.
2. The Committee's participation shall include, but not be limited to, providing input to Valley Water management on the selection criteria and desired qualifications of the public accounting firm. The selected external financial auditor shall submit to the Committee Valley Water's audited financial statements annually, including all related management letters to the Committee for review and comment.
3. Financial Statement audit results and pertinent information identified during the course of the audit shall be communicated, in writing or verbally, to the Board Audit Committee. For purposes of this section, "pertinent information" is defined as issues, concerns, practices, programs, or activities that may pose a reputational, operational, financial, or service delivery risk to Valley Water regardless of the magnitude of the apparent risk, as well as any issue deemed pertinent in the auditor's professional judgment.
4. Valley Water contracts for performance of the Annual Financial Statement Audit entered into after December 13, 2022 shall include express contractual obligations in accordance with the aforementioned ARTICLE VIII, Section 3.

ARTICLE IX – REVIEW OF JPA AUDITS

1. For purposes of this Article, “JPA” means any Joint Powers Authority formed under the California Joint Exercise of Powers Act (Government Code sections 6500 et seq.) to which Valley Water is a member pursuant to a Joint Powers Agreement.
2. The Committee shall have the authority to review any formally issued JPA audit reports and, except as set forth below, shall retain discretion regarding what JPA audit reports it may wish to review.
3. Through its review of JPA audits, the Committee may evaluate:
 - a) Whether the JPAs are complying with applicable legal requirements;
 - b) The financial condition of the JPAs;
 - c) Whether the JPAs are complying with the terms of their respective JPA Agreements;
 - d) Whether Valley Water’s interests are being met;
 - e) Whether there are any trends of concern in the activities of the JPA;
 - f) Whether there are any recommended areas for future audits for the JPA; and
 - g) Any specific questions of Valley Water’s Board.
4. The Board may refer specific JPA audits to the Committee for review and/or recommendation as to questions or subjects identified by the Board.
5. In conducting its review, the Committee may seek input from the Independent Auditor, Valley Water staff, and others as needed.
6. The review of any JPA audits shall be included in the Committee’s Annual Work Plan.
7. The Committee may report out to the Board regarding any JPA audit review results and any related recommendations of the Committee.
8. The Committee’s authority to review JPA audits set forth herein does not include any corresponding right to directly communicate with JPAs on behalf of Valley Water or assume any direct responsibilities of Valley Water’s formal representatives on the JPAs. This shall not limit the activities or functions of any Valley Water JPA representative who is also member of the Committee.

ARTICLE X – PERFORMANCE MANAGEMENT

1. The Committee shall periodically review the Audit Charter and shall make any recommendations regarding changes to the Board for final approval.

2. The Board may make any changes to the Audit Charter it deems to be appropriate.
3. Education – The Annual Work Plan shall include some component of planned Committee training on audit principles, practices, or standards. The Independent Auditor shall provide Committee training and other knowledge transfer on some component of audit principles, practices, and standards. While the Committee shall endeavor to schedule and complete such training annually, some component of training must be scheduled and completed by the Committee at least every two years.
4. At least annually, the Committee shall conduct an evaluation of its performance to determine whether it is functioning effectively and to discuss with the Independent Auditor any observations related to the effectiveness of the Committee. The Committee shall prepare a formal report based upon each such self-evaluation and shall provide such report to the full Board following its adoption by the Committee.

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**SANTA CLARA VALLEY WATER DISTRICT
BOARD OF DIRECTORS
CODE OF ETHICS AND CONDUCT**

**SANTA CLARA VALLEY WATER DISTRICT
BOARD OF DIRECTORS
CODE OF ETHICS AND CONDUCT**

The Santa Clara Valley Water District (Valley Water) Board of Directors (Board) commits itself and its members to ethical, business-like, and lawful conduct, including proper use of authority and appropriate decorum when acting as Board Members (Directors).

To assure public confidence in the integrity of the Board's commitment to its mission, governance, and its effective and fair operation, the Board has adopted a Code of Ethics and Conduct Policy (Policy). This Policy is designed to immerse Valley Water's Values (see below) into the Board's day-to-day actions and decision-making, and includes the following sections:

- A. Ethics
- B. Conduct
- C. Accountability

Values

Valley Water believes, and will exemplify, the following values:

1. Valley Water is entrusted to serve the public by carrying out its mission for the benefit of the community.
2. Valley Water is committed to providing excellent service to all customers.
3. All individuals are unique and important and will be treated with fairness, dignity, and respect.
4. Valley Water takes pride in its work and is accountable to carry out its responsibilities safely with honesty and integrity.
5. Initiative, leadership, personal development, and training are vital for continuous improvement.
6. Open communication, cooperation, and teamwork are shared responsibilities and essential to the successful performance of Valley Water work.
7. Valley Water is committed to creating an inclusive work environment, which reflects and supports the diversity of the community and enriches our perspectives.
8. Valley Water strives to support a work culture and workplace environment that attracts and retains superior employees empowered to make decisions about, and take responsibility for, how they do their jobs.
9. Valley Water is committed to its employees and supports market based competitive compensation that is equitable and rewards accomplishment and encourages high performance.
10. Valley Water is committed to sustaining a healthy work-life balance for its employees and places a high value on all the things that provide enrichment and fulfillment, including work and career, health and fitness, family and relationships, spirituality, community service, hobbies and passions, intellectual stimulation, rest and recreation.

A. Ethics

The Ethics section of the Policy provides guidance on ethical issues and questions of right and wrong.

1. Act in the Public Interest.

The Board will produce the link between Valley Water and the public.

Directors must have loyalty to Valley Water and community and not be conflicted by loyalties to staff, other organizations or any personal interest.

2. Comply with both the spirit and the letter of the Law and Board Governance Policy.

The Board will enforce upon itself whatever self-control is needed to govern with excellence. Self-control will apply to matters such as attendance, preparation for meetings, timely arrival to and start of meetings, policymaking principles, respect of roles, decorum and ensuring the continuance of governance capability.

3. Respect for Process.

Directors shall perform their duties in accordance with the processes and rules of order established by the Board of Directors governing the deliberation of public policy issues per GP-12, meaningful involvement of the public, and implementation of policy decisions.

4. Conduct of Public Meetings.

Board meeting discussion content will be only those issues which, according to Board policy, clearly belong to the Board to decide, not the BAOs.

Board deliberation will be ethical, fair, open, and thorough, but also timely, orderly, and kept to the point and shall avoid personal attacks.

Directors will properly prepare for Board deliberation.

5. Decisions Based on Merit.

Directors shall base their decisions with the public interest in mind on the merits and substance of the matter at hand, rather than on unrelated considerations.

6. Communication.

Directors shall verbally disclose any contact or receipt of substantive information they have received outside of the public decision-making process, including the identity of the person who provided the information, that is relevant to a matter under consideration by the Board prior to considering that matter so that all parties have the opportunity to respond to that information.

7. Conflict of Interest.

Directors must avoid conflict of interest with respect to their fiduciary responsibility in accordance with applicable law, including but not limited to Valley Water's Conflict of Interest Policy, and are obligated by virtue of their office to discharge their responsibilities with integrity and fidelity and are prohibited from placing themselves in a position where their private, personal interests may conflict with their official duties.

8. Gifts and Favors.

In addition to complying with applicable law, Directors shall refrain from accepting any gifts, favors or promises of future benefits which might compromise or appear to compromise their independence of judgement or action.

9. Confidential Information.

Directors will respect the confidentiality appropriate to issues of a sensitive nature.
No Director shall violate the confidentiality of a closed session discussion.

10. Use of Public Resources.

Directors shall not use public resources not available to the general public, such as Valley Water staff time, vehicles, equipment, supplies, land or facilities, for private gain or political or personal purposes.

11. Representation of Private Interests.

No Director shall contact staff on behalf of a party who is bidding or intends to bid on a Valley Water contract or who has or intends to submit a response to a request for proposals or request for qualifications, nor shall a Director inquire about the identity of bidders or proposers prior to the time that staff has made a recommendation for selection of a contractor, vendor, or consultant. Directors are not prohibited from making general inquiries about the status of a particular procurement, or from providing a member of the public with information about the appropriate staff contact concerning procurement of goods and services by Valley Water. **Directors are not prohibited from sitting on selection panels where the solicitation is for services that directly report to the Board or Committee they are on so long as no more than one Board member or Committee member participate in the selection panel, no Board member or Committee member interacts with the potential vendor outside of the selection panel interview, and no individual Board member or Committee member participates in the same selection panel more than two (2) consecutive procurement periods.**

After issuance of a request for goods or services, Directors are prohibited from communicating with any current or potential vendor, supplier, contractor, or consultant, except as described in this paragraph~~section~~, until after issuance by the Chief Executive Officer or his/her designee of a decision on any protest relating to the request for goods or services or resultant contract award. Any communications during this period shall be limited to matters unrelated to the request for goods or services or the contract award. Whenever the Director has communicated during the aforementioned period with any current or potential vendor, supplier, contractor, or consultant in violation of these restrictions, the name of the party, the date, and the content of the communications shall be disclosed at the next board meeting after the communication and noted in the minutes.

12. Advocacy.

Directors' interaction with public, press or other entities must recognize the same limitation and the inability of any Director to speak for the Board except to repeat explicitly stated Board decisions.

Directors serving on external committees or other governing bodies shall serve in the best interest of Valley Water unless otherwise required by statute, ordinance, resolution or other legislative action.

Directors are required to state they are speaking for themselves when doing so.

13. Policy Role of Directors.

Directors' interaction with the BAOs or with staff must recognize the lack of authority vested in individual Directors except when explicitly Board authorized.

The Board will cultivate a sense of group responsibility. The Board will be responsible for excellence in governing. The Board will be the initiator of policy, not merely a reactor to initiatives. The Board may use the expertise of individual Directors to enhance the ability of the Board as a body, rather than to substitute the individual judgments for the Board's values.

The Board will direct, control, and inspire the organization through the careful establishment of broad written policies reflecting the Board's values and perspectives. The Board's major policy focus will be on the intended results, not on the administrative or programmatic means of attaining those effects.

Directors may not attempt to exercise individual authority over the organization.

14. Positive Workplace Environment.

The Board is committed to providing equal employment opportunity to all persons and to building a diverse work force that values diversity and inclusion.

The Board firmly believes that such a work force provides advantages both internally, in terms of the human resources potential offered by a variety of diverse perspectives, and externally, in increasing Valley Water's ability to respond to the community we serve.

The Board understands that diversity is more than inclusion of gender, racial or cultural groups, that valuing diversity involves respect for all persons, and that valuing diversity requires a positive change in the way we interact with each other and a change in our organizational culture.

Accordingly:

The Board and its Directors will not discriminate, harass, or allow harassment against any applicant, employee, customer, or other person on the basis of sex (which includes pregnancy, childbirth, breastfeeding and medical conditions related to pregnancy, childbirth or breastfeeding), race, religion, color, national origin (including language use restrictions), ancestry, religious creed (including religious dress and grooming practices, political affiliation, disability (mental and physical, including HIV or AIDS), medical condition (cancer and genetic characteristics), genetic information, marital status, parental status, gender, age (40 and over), pregnancy, military and veteran status, sexual orientation, gender identity and gender expression, the exercise of family and medical care leave, the exercise of pregnancy disability leave, or the request, exercise, or need for reasonable accommodation.

The Board commits itself and its Directors to support all actions necessary to make equal employment opportunity at Valley Water a reality for all.

The Board will require that the organization's work environment be one in which all people are welcomed and included, and in which all individuals are unique and important and are treated with fairness and dignity.

The Board will respect all people and seek to accommodate and learn from the different perspectives and values they contribute.

B. Conduct

This section is designed to describe the manner in which Directors should treat one another, Valley Water staff, constituents, and others they come into contact with when representing Valley Water.

The constant and consistent theme through all of the conduct guidelines is "respect." Directors experience huge workloads and tremendous stress in making decisions that could impact thousands of lives. Despite these pressures, Directors are called upon to exhibit appropriate and respectful behaviors at all times.

The professional and personal conduct of Directors must be above reproach and avoid even the appearance of impropriety. *Directors shall support the maintenance of a positive and constructive environment for Valley Water Employees.* Directors will refrain from abusive conduct, personal charges, or verbal assaults upon the character or motives of other Directors, Valley Water employees, stakeholders, or the public.

1. Board Members' Conduct with One Another

Directors have a wide variety of backgrounds, personalities, values, opinions, and goals. Despite this diversity, all have chosen to serve in public office in order to support the community. In all cases, this common goal should be acknowledged even though individuals may "agree to disagree" on contentious issues.

1(a). In Public Meetings

Use formal titles

Directors should refer to one another formally during public meetings, Chair, Vice Chair or Director followed by the individual's last name.

Practice civility and decorum in discussions and debate

Criticism is an essential component of democracy. This does not however, allow Directors to make belligerent, personal, slanderous, threatening, abusive, or disparaging comments. No shouting, unauthorized interruptions or physical actions, such as finger pointing at other Directors, that could be construed as threatening will be tolerated.

Follow the role of the Board Chair in maintaining order

It is the responsibility of the Board Chair to keep Directors on track during public meetings. Directors should honor efforts by the Board Chair to focus discussions on current agenda items. If there is disagreement about the agenda or the Board Chair's actions, Directors should follow Board parliamentary procedure as documented under GP-12: Conduct of Board Meetings to voice their objections politely.

Avoid personal comments that could offend other Directors

If a Director is personally offended by the remarks of another Director, the offended Director should note the actual words used and call for a 'point of personal privilege' that challenges the other Director to justify or retract their language. The Board Chair will maintain control of this discussion.

Demonstrate effective problem-solving approaches

Directors have a public state to show how individuals with disparate points of view can find common ground and seek a compromise that benefits the community as a whole.

Texting, Emailing or Messaging Other Directors

Directors should refrain from texting, emailing or messaging other Directors during public meetings. Discussions should occur verbally on the dais.

Representing the Board

Outside of official Board meetings, individual Directors may represent Valley Water to outside parties in announcing Board-stated positions and decisions. In private settings, Directors may communicate at any time and on any subject with individual Directors [less than a quorum] and may express to them individual viewpoints and opinions. In public, however, all Directors shall state the official policies or positions of the Board.

1(b). In Private Encounters

Continue respectful behavior in private

The same level of respect and consideration of differing points of view that is deemed appropriate for public discussion should be maintained in private conversations.

Be aware of the insecurity of written notes, voicemail messages, emails, text messages and social media messages/posts

Technology allows words written or said without much forethought to be distributed wide and far. Written notes, voicemail messages, emails, text messages and social media messages/posts should be treated as potentially "public" communications.

Even private conversations can have a public presence

Directors are always on display – their actions, mannerisms, and language are monitored by people around them that they may not know. Lunch table conversations will be eavesdropped upon, parking lot debates will be watched, and casual comments between individuals before and after public meetings noted. Cellular phones and other technologies allow for recording of these events with the potential for recorded conversations and actions being shared via social media.

2. Board Members' Conduct with Valley Water Staff

Directors shall support the maintenance of a positive and constructive environment for Valley Water employees.

Treat all staff as professionals

Treat Valley Water staff with respect. Poor behavior towards staff is not acceptable.

Do not disrupt Valley Water staff from their jobs

Directors should not disrupt Valley Water staff while they are in meetings, on the phone, or engrossed in performing their job functions. Do not attend Valley Water staff meetings unless requested by staff – even if the Director does not say anything, his or her presence could intimidate staff and hampers their ability to do their job objectively.

Never publicly criticize an individual employee, including Board Appointed Officers (BAOs)

Directors should never express concerns about the performance of a Valley Water employee in public, including through social media, to the employee directly, or to the employee's manager. Comments about staff performance should only be made to the appropriate BAO privately.

Do not get involved in administrative details

Directors must not attempt to influence Valley Water staff on administrative details, i.e., making of appointments, hiring of employees, awarding of contracts, or selecting consultants, etc.

Do not solicit political support from staff

Directors should not solicit any type of political support (financial contributions, display of posters or lawn signs, name on support list, etc.) from Valley Water staff. Valley Water staff may, as private citizens with constitutional rights, support political candidates but all such activities must be done away from the workplace and outside of the employee's work hours.

3. Board Members' Conduct with the Public

Directors shall make the public feel welcomed. This is an important part of the democratic process. No signs of partiality, prejudice or disrespect should be evident on the part of individual Directors toward an individual participating in a public forum, or the organization which they represent. Every effort should be made to be fair and impartial in listening to public testimony.

3(a). In Public Meetings

Be welcoming to speakers and treat them with respect and professionalism.

While questions of clarification may be asked, the Director's primary role during public testimony is to listen.

Be fair and equitable in allocating public testimony time to individual speakers

No speaker will be turned away unless they exhibit disruptive behavior as outlined in [Ordinance 22-03 Specifying Rules of Decorum in the Participation of Board and Committee Meetings](#). Each speaker may only speak once during public comment and on individual board agenda items unless the Board Chair or a Director requests additional clarification on specific comments.

The Board Chair will determine and announce limits on speakers at the start of the Board Meeting. Questions should not be asked for the express purpose of allowing a speaker to evade the time limit imposed on all others (e.g., "Was there something else you wanted to say?"). Generally, each speaker will be allocated three minutes to speak during public comment and on individual board agenda items. If

many speakers are anticipated, the Board Chair may shorten the time limit and/or ask speakers to limit themselves to new information and points of view not already covered by previous speakers.

Active listening is significant

It is disconcerting to speakers when Directors do not look at them when they are speaking. It is important to avoid facial expressions that could be interpreted as smirking, disbelief, anger, disrespect, or boredom. All electronic devices (cell phones and laptops) should be put away, except for the district-issued iPads necessary to access the published meeting agenda and personal notes.

Maintain an open mind

The public deserve an opportunity to influence the thinking of Directors. To express an opinion before all speakers have addressed the Board casts doubt on the Board's fairness. Directors have the responsibility to hear all viewpoints at a public meeting. Directors must always keep an open mind, and not rush to pre-judge any matter, until all concerned parties (including members of the public and staff) are heard during the public meeting. Directors must not come to a conclusion on a matter until members of the public in attendance have had a chance to speak.

Ask for clarification, but avoid debate and argument with the public

Only the Board Chair – not individual Directors – can interrupt a speaker during a presentation. However, a Director may ask the Board Chair for a point of order if the speaker is off the topic or exhibiting behavior or language the Director finds disturbing, as outlined in [Ordinance 22-03](#)

Specifying Rules of Decorum in the Participation of Board and Committee Meetings. If speakers become flustered or defensive by questions, it is the responsibility of the Board Chair to calm and focus the speaker and to maintain order and decorum. Questions by members of the public testifying should seek to clarify or expand information. It is never appropriate to belligerently challenge or belittle a speaker.

No personal attacks of any kind, under any circumstance

Directors should also be aware of their body language and tone of voice, as well as the words they use, can appear to be intimidating or aggressive.

3(b). In Unofficial Settings

Make no promises on behalf of the Board

Directors will frequently be asked to explain a Board action or to give their opinion about an issue as they talk with community members. It is appropriate to give a brief overview of Valley Water policy and to refer to Valley Water staff for further information. It is inappropriate to overtly or implicitly promise Board action, or to promise that Valley Water staff will do something specific.

Directors' interaction with the public, press or other entities must recognize the same limitations and the inability of any Director to speak for the Board except to repeat explicitly stated Board decisions.

Make no personal comments about other Directors

It is acceptable to publicly disagree about an issue, but it is unacceptable to make derogatory personal comments about other Directors, their opinions and actions.

Remember that Board Members are Leaders

Directors are constantly observed by the community every day that they serve in office. Their behaviors and comments serve as models for proper deportment at Valley Water. Honesty and respect for the dignity of each individual should be reflected in every word and action taken by Directors, 24 hours a day, seven days a week. This is a serious and continuous responsibility.

3(c). Board Correspondence with the Public

The Board receives correspondence from constituents, political officials, organizations, and other groups, via mail, email and hand delivery. The general Board email address, physical mailing address, and email addresses for each individual Director are all listed on the Valley Water website. All correspondence is logged by the Office of the Clerk of the Board and handled in accordance with Board Governance Policy EL-2.6, which states a BAO shall provide correspondence addressed to the Board to each Director within 7 calendar days from receipt and respond with 14 calendar days of receipt. In those individual situations where it is not possible for the BAOs to respond completely to an inquiry, sending a response to the originator, acknowledging receipt of the inquiry, an explanation of actions being taken, and timelines for preparing the complete response, is acceptable for complying with this 14-day response time. Copies of all correspondence are forwarded to the entire Board via the weekly non-agenda packet. In addition, correspondence is immediately forwarded to the appropriate Director as an FYI, if the subject is relevant to their specific district. Correspondence requiring a response is assigned to the subject matter staff to prepare a draft response for the Board Chair or appropriate Director to approve and a copy of the response is provided in the weekly non-agenda packet for consistency with approved Board Governance Policy EL-2.6.

4. Board Member Conduct When Serving on External Committees/Boards and Personal Interests

Be clear about representing Valley Water or personal interests

When representing Valley Water, the Director must support and advocate the official Valley Water position on an issue, not a personal viewpoint.

C. Accountability

The Policy establishes guiding principles for appropriate conduct and behavior and sets forth the expectations for members of the Board of Directors.

The Policy is intended to be self-enforcing. Directors themselves have the primary responsibility to assure the Policy elements are understood and met. For this reason, current Directors and future elected/appointed Directors shall sign a statement affirming they read and understand the Policy. In addition, the Policy shall be annually reviewed by the Board of Directors and updated as necessary.

I affirm that I have read and that I understand the Santa Clara Valley Water District Board of Directors Code of Ethics and Conduct Policy.

Signature _____

Date _____

Print Name _____

District _____



Valley Water

Clean Water • Healthy Environment • Flood Protection

Board Audit Committee Charter

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Proposed Revisions

July 14, 2026

Charter History

- The Board Audit Committee Charter was first adopted in August 2019.
- Art. X, Sec. 1: “The Committee shall periodically review the Audit Charter and shall make any recommendations regarding changes to the Board for final approval.”
- The most recent amendments were approved by the Board on April 22, 2025.

Proposed Revision 1 –Article III, §7.4

- BAC requested clarification on intent behind “tri-annually” at March 18, 2026 meeting
- Suggested clarification:

“Risk Assessment – The Committee shall endeavor to complete a Valley Water- wide risk assessment, at a minimum, **every three (3) years** ~~tri-annually~~ and to annually update Valley Water-wide audit risk assessment to include objectively recommended audits ranked based upon the potential level of risk to Valley Water. The results of this Valley Water-wide audit risk assessment should be relied upon to develop the proposed Annual Audit Plan.”

Proposed Revision 1 – New: Article III, §9

- Article III §9 does not currently provide direction pertaining to Committee member participation in a selection panel of the Independent Auditor
- New language clarifies:
 - How many Committee members can be on the selection panel
 - Communication limitations with potential vendors for that Committee member on the selection panel
 - Provides that one Committee member can only serve on the selection panel up to two (2) consecutive rounds

Proposed Revision 2 – Article VII, §4

- Article VII, §4 provides that Valley Water management shall provide a report to the Committee of the Scope and Nature of all planned Management initiated Audits
- Article VII, §4 also provides that a report shall be provided upon a request from the Board Chair
- Proposed Revision clarifies WHEN the report must be provided to the Committee:
 - Following the Board Chair's request

Board Code of Ethics and Conduct

—

Proposed Revisions July 14, 2026

Proposed Revision 1 – A (11)

- The Code of Conduct prevents Board members from any communication with potential bidders or proposers without consideration that some situations will warrant a Board member or Committee member to sit on a selection panel for a role that reports directly to them.
- New language clarifies:
 - How many Board/Committee members can be on the selection panel
 - Communication limitations with potential vendors for that Board/Committee member on the selection panel
 - Provides that one Board/Committee member can only serve on the selection panel up to two (2) consecutive rounds

Effective Date

- Changes would take effect August 1, 2026

QUESTIONS





Santa Clara Valley Water District

File No.: 26-0594

Agenda Date: 7/14/2026
Item No.: *5.4.

BOARD AGENDA MEMORANDUM

Government Code § 84308 Applies: Yes ☐ No ☒
(If "YES" Complete Attachment A - Gov. Code § 84308)

SUBJECT:

Board Committee Reports.
(*Previously listed as Item 5.2)

ATTACHMENTS:

- *Handout 5.4-A: 04082026 WC, Summary
- *Handout 5.4-B: 05072026 IMC, Summary
- *Handout 5.4-C: 05182026 CIP, Summary
- *Handout 5.4-D: 05202026 BAC, Summary
- *Handout 5.4-E: 05272026 RWC, Summary
- *Handout 5.4-F: 06162026 BPMC, Summary

TO: Board of Directors

FROM: SCVWD WC

SUBJECT: Santa Clara Valley Water District
Water Commission (SCVWD WC)
April 8, 2026 Regular Meeting Summary

DATE: July 14, 2026

This memorandum summarizes agenda items from the regular meeting of the SCVWD WC held on Wednesday, April 8, 2026.

Receive Results of Consultant Study Regarding Santa Clara Valley Water District's Water Use Projections, Water Demand Elasticity, and Customer Affordability; Provide Feedback or Recommendations to Board.

The Commission received the information, took no formal action, and discussed the following with staff input including: lowering the 10 percent water demand elasticity statistic, the Water Supply Master Plan 2050, challenges predicting water supply and demand long-term, receiving metrics about the Sacred Heart Water Rate Assistance Program (WRAP) and increasing WRAP funding, and development and climate change impacts on water supply and demand predictions.

The Commission requested that staff return with a proposal to evaluate increasing the amount of funding to the WRAP, number of cities that have implemented the program, and a general comparison to the Supplemental Nutrition Assistance Program.

Review Proposed Fiscal Year 2026-27 Groundwater Production Charge 26-0256 and Provide Feedback.

The Commission received the information, took no formal action, and discussed the following with staff input including: decreasing water use projections, data center water usage estimates, rebound from droughts, adding an indication of quantitative issues of not executing capital projects, and concerns for raised rates for ratepayers.

Review the 2026 Santa Clara Valley Water District Water Commission Work Plan, the Outcomes of Board Action of Commission Requests, the Commission's Next Meeting Agenda; and Confirm Next Meeting Date.

The Commission received the information without discussion and took no formal action.

The next regular meeting is scheduled at noon on Wednesday, July 22, 2026.

**

Board member comments and suggestions can be forwarded to Stephanie Simunic, Assistant Deputy Board Clerk II at (408) 630-2408 or by email to ssimunic@valleywater.org.

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MEMORANDUM

TO: Board of Directors

FROM: Safe Clean Water Independent Monitoring Committee

SUBJECT: Safe Clean Water Independent Monitoring Committee Meeting Summary for May 7, 2026

DATE: July 14, 2026

This memorandum summarizes agenda items from the regular meeting of the Safe Clean Water Independent Monitoring Committee held on May 7, 2026.

RECEIVE INFORMATION REGARDING THE SAFE, CLEAN WATER AND NATURAL FLOOD PROTECTION PROGRAM'S DRAFT 5-YEAR IMPLEMENTATION PLAN FOR FISCAL YEARS 2027-2031 AND MAKE RECOMMENDATIONS, AS NECESSARY

The Committee discussed and asked questions about various topics, including sources of funding, which projects require high-performance computing, the frequency of audits and the criteria to trigger an audit, capital project resources, implementation strategies, removal of the Pacheco project from the list of projects, risk management, and managing cost pressures proactively. The IMC had no recommendations for the 5-year targets in the Plan. The IMC did have general notes regarding the Plan that were captured in real time. The Committee expressed support for delegating authority to Chairperson Landry to collaborate with staff to finalize the report based on feedback provided by the Committee.

It was moved by Chairperson Landry, seconded by Member Ector, and unanimously carried to approve the Safe, Clean Water and Natural Flood Protection Program's Draft 5-Year Implementation Plan for Fiscal Years 2027 -2031 as modified with IMC notes captured.

DISCUSS PROCESS FOR UPDATES TO VALLEY WATER'S INDEPENDENT MONITORING COMMITTEE (IMC) MEMBER HANDBOOK AND SUPPORTING MATERIALS TO ENHANCE RESOURCES FOR PROSPECTIVE AND CURRENT MEMBERS

Chairperson Landry appointed a subcommittee comprised of herself, Member Fohner, and Vice Chairperson Rauser to review the handbook and report to the full Committee in December 2026.

Board member comments and suggestions can be forwarded to Dave Leon, Assistant Deputy Clerk II at (408) 630-2006 or by email to daveleon@valleywater.org

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MEMORANDUM

TO: Board of Directors

FROM: Nai Hsueh,
CIP Chair

SUBJECT: Capital Improvement Program (CIP)
Committee May 18, 2026 Regular
Meeting Summary

DATE: July 14, 2026

This memorandum summarizes discussion and action from the regular meeting of the Capital Improvement Program Committee (CIP) held on May 18, 2026.

RECEIVE INFORMATION ON THE STAFF RECOMMENDED ALTERNATIVE FOR CALABAZAS AND SAN TOMAS AQUINO CREEK-MARSH CONNECTION PROJECT, PROJECT NO. 20444001

Discussion ensued relating to next steps to obtain Federal funding, efforts and challenges in obtaining grant funding, project timelines, distribution of funds through the different phases of the project, and whether staff anticipates any additional costs that may extend allocated funds.

The Committee received the information and took no formal action.

RECEIVE AND DISCUSS INFORMATION REGARDING THE STATUS OF CAPITAL PROJECTS IN THE DESIGN AND PERMITTING PHASE

Discussion ensued relating to timelines for the next presentation regarding Calero Dam Seismic Retrofit Project and the Guadalupe Dam Seismic Retrofit Project, roads affected by the Sunnyvale East and West Project, and time added to the East West project due to the design of a new clear span bridge.

The Committee received the information and took no formal action.

RECEIVE INFORMATION ON CHANGE ORDERS TO ANDERSON DAM TUNNEL PROJECT CONSTRUCTION CONTRACT

Without discussion, the Committee received the information and took no formal action.

RECEIVE AND DISCUSS INFORMATION REGARDING THE ANDERSON DAM SEISMIC RETROFIT PROJECT PROPOSED CONTINGENCY FUND AND DELEGATED AUTHORITY LEVELS FOR CONTRACT CHANGE ORDERS

Discussion ensued relating to control protocols to ensure that costs will not explode and cause radical changes to the District's budget; the anticipated number of change orders compared to the Anderson Dam Tunnel Project; the bidding process for the project; what percentage the contingency fund is in relation to the total cost of the project; the structure and frequency of reports to the Committee and the Board; and staff's suggestion to present a report to the Committee every three months including change order updates and other

aspects of the project which can also be presented to the Board for consideration.

The Committee received the information and took no formal action.

RECEIVE INFORMATION ON UPCOMING CONSULTANT AGREEMENT AMENDMENTS FOR CAPITAL PROJECTS

The Committee received the information and took no formal action.

REVIEW 2026 CAPITAL IMPROVEMENT PROGRAM COMMITTEE WORK PLAN AND MAKE ADJUSTMENTS AS NECESSARY

Without discussion, the Committee received the information and took no formal action.

Board member comments and suggestions can be forwarded to Dave Leon, Assistant Deputy Clerk II at (408) 630-2006 or by email to daveleon@valleywater.org.

TO: Board of Directors

FROM: Board Audit Committee

SUBJECT: Board Audit Committee (BAC)
May 20, 2026, Regular Meeting Summary

DATE: July 14, 2026

This memorandum summarizes agenda items from the meeting of the Board Audit Committee (BAC) held on Wednesday, May 20, 2026.

Receive Permitting Best Practices Audit Status Update.

The Committee received the information, took no formal action, and noted the audit implementation was initiated in early 2023 and that progress may take additional time because three system implementations are required for the database software to interact with other software, with beta testing currently underway. The Committee discussed the IT program upgrades and how the digital transformation strategy is expected to help prevent similar issues through technology enhancements. The Committee discussed the online permitting process and the associated challenges including the large volume of permit requests and limited staffing resources. The Committee noted that staff will continue using the Community Projects Review Unit name for the time being. The Committee noted that staff are exploring the potential to incorporate customer survey feedback through the CityWorks process. The Committee confirmed that updates are received annually, discussed the general close-out and final audit report process, and expressed interest in customer feedback on the progress.

Receive the Fiscal Year (FY) 2025-2026 Third Quarter Financial Status Update as of March 31, 2026.

The Committee received the information, took no formal action, and discussed the Local Agency Investment Fund (LAIF) and noted that Valley Water is approaching the \$75 million maximum limit. The Committee noted that participation with local banks is well above the 4% target level. The Committee discussed Valley Water's current AA+ credit rating, the state's credit ratings, reserve funds, and refinancing opportunities to achieve cost savings. The Committee discussed the Anderson Dam Seismic Retrofit project and the Water Infrastructure Finance and Innovation Act (WIFIA) loan emphasizing the importance of securing the best financing possible for the project. The Committee noted that the contingency funds are a part of the planned expenditures for the Anderson Dam Seismic Retrofit project, their use will depend on the project's progress, and no separate reserve will be established to cover the contingency.

Discuss 2026 Annual Audit Plan (Risk Assessment, Asset Management, Pacheco Reservoir Project, and Investigations Process), and Provide Feedback as Needed.

The Committee received the information, took no formal action, and without further discussion confirmed the risk assessment timeline is anticipated to begin in August 2026, and noted the update on the 2026 Annual Audit Plan.

Review and Discuss 2026 Board Audit Committee (BAC) Work Plan.

The Committee received the information, took no formal action, and without further discussion, expressed interest in adding audit as general topic to an upcoming Board retreat, and noted the update on the 2026 BAC Work Plan.

The next special meeting is scheduled to occur at 1:00 pm on July 28, 2026.

Board members' comments and suggestions can be forwarded to Nicole Merritt, Deputy Clerk (Committee Meetings) at (408) 630-3262 or by email: nmerritt@valleywater.org

TO: Board of Directors

FROM: RWC

SUBJECT: Recycled Water Committee (RWC)
May 27, 2026 Regular Meeting Summary

DATE: July 14, 2026

This memorandum summarizes agenda items from the regular meeting of the RWC held on Wednesday, May 27, 2026.

Receive an update on the Desalination Engineering Feasibility Study.

The Committee received the information, took no formal action, and noted the following: The Committee expressed appreciation to staff for the comprehensive update and awaits more information on timelines and engineering studies, Director Beall expressed interest in touring existing or under construction desalination facilities, and staff stated that Director Beall and staff toured the Antioch Desalination Facility on November 13, 2025. Chairperson Estremera indicated that he and Vice Chairperson Santos have toured a Carlsbad Desalination Facility, Staff stated they estimate the permitting process takes about eight years.

Receive Pure Water Silicon Valley Update, Including Demonstration Facility and Full-Scale Direct Potable Reuse Facility at the Silicon Valley Advanced Water Purification Center; and Ongoing Outreach.

The Committee received the information without discussion and took no formal action.

Receive Update on the Site Works Agreement with the City of San Jose, Valley Water and Microsoft Corporation.

The Committee received the information, took no formal action, and noted that Vice Chairperson Santos plans to attend the data center groundbreaking ceremony in June 2026.

Review and Discuss the 2026 Recycled Water Committee (RWC) Work Plan and Make Adjustments as Necessary, and Confirm the Committees Next Meeting Date.

The Committee received the information, took no formal action, and agreed to cancel the June 24, 2026 meeting and consolidate items to the July 29, 2026 meeting.

**

Board member comments and suggestions can be forwarded to Stephanie Simunic, Assistant Deputy Clerk II at (408) 630-2408 or by email to ssimunic@valleywater.org.

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TO: Board of Directors **FROM:** BPMC

SUBJECT: Board Policy and Monitoring Committee (BPMC) **DATE:** *July 14, 2026*
June 16, 2026 Regular Meeting Summary

This memorandum summarizes discussion and action from the meeting of the Board Policy and Monitoring Committee (BPMC) held on Tuesday, June 16, 2026.

Review and Provide Feedback on the Board Work Plan (Continued from May 19, 2026).

The Committee received and discussed the information, took no formal action, and noted the following: the Board Work Plan's creation, evolution, and purpose, noting the use of the Carver Board Governance Model, that the Work Plan serves as a yearly guide for budget allocation and board priorities while also as a communication tool for the public, and consistent with existing Committees for purpose, relevance, and subject matter duplicity.

The Committee agreed to review various Board Governance Models and specific work plan items during their upcoming August board planning study session.

Consider the Interim Board Appointed Officer Complaint Policy and Recommend the Interim Policy be Presented to the Full Board for Approval.

The Committee received and discussed the information and noted the following: avoiding conflicts of interest, the chain of command, preserving confidentiality, and timing of the process. Staff noted the project manager would only report to the Board.

It was moved by Director Estremera, seconded by Vice Chairperson Ballard, and unanimously approved to recommend the Interim Board Appointed Officer Complaint Policy is presented to the full Board for approval.

Review and Discuss the 2026 Board Policy and Monitoring Committee (BPMC) Work Plan and Make Adjustments as Necessary, and Confirm the Committees Next Meeting Date.

The Committee received the information and took no formal action.

The next regular meeting is scheduled at 11:00 a.m., on Tuesday, July 21, 2026.

**

Board member comments and suggestions can be forwarded to Stephanie Simunic, Assistant Deputy Clerk II at (408) 630-2408 or by email to ssimunic@valleywater.org.

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Santa Clara Valley Water District

File No.: 26-0460

Agenda Date: 7/14/2026

Item No.: 6.1.

BOARD AGENDA MEMORANDUM

Government Code § 84308 Applies: Yes ☐ No ☒
(If "YES" Complete Attachment A - Gov. Code § 84308)

SUBJECT:

Adopt a Resolution Making Responsible Agency Findings Under the California Environmental Quality Act and Approve and Authorize the Interim Chief Executive Officer to Negotiate and Execute the Site Works Agreement Among Valley Water, the City of San Jose, and Microsoft Corporation.

RECOMMENDATION:

- A. Adopt the Resolution CONSIDERING THE FINAL ENVIRONMENTAL IMPACT REPORT FOR THE SAN JOSE DATA CENTER PROJECT AND ITS ADDENDUM AND MAKING CEQA RESPONSIBLE AGENCY FINDINGS FOR THE SITE WORKS AGREEMENT; and
- B. Authorize the Interim Chief Executive Officer to negotiate and execute the Site Works Agreement among Valley Water, the City of San José, and Microsoft Corporation, in substantially the same form as the attached draft and sign the Notice of Determination.

SUMMARY:

Microsoft Corporation (Microsoft) is developing a new data center on private property to the east of the existing Silicon Valley Advanced Water Purification Center (SVAWPC). As part of this project, Microsoft will be extending and modifying McCarthy Lane, which conflicts with the current location of the SVAWPC visitor center trailer. To address this conflict, Microsoft, Valley Water, and the City of San José negotiated an agreement (Site Works Agreement) to construct a new parking lot and certain required improvements and move the visitor center trailer. Under the Site Works Agreement (Attachment 2), Microsoft would perform the following work at no cost to Valley Water:

- Construct a new visitor parking lot with 48 vehicle and three bus parking spaces adjacent to the SVAWPC, including storm drainage, utility and communication connections and landscaping;
- Relocate the current visitor center trailer to the new parking lot, including packing and unpacking of contents;
- Relocate signage and install security fencing;
- Move manhole for source water line serving SVAWPC outside of widened Zanker Road

roadway;

Microsoft is scheduled to begin construction of the work in early 2027. Microsoft broke ground on the data center project in June 2026.

The Recycled Water Committee (RWC) has received a detailed update on this negotiation in December 2025 and additional updates in February 2026.

ENVIRONMENTAL JUSTICE IMPACT:

There are no environmental justice impacts associated with this item.

FINANCIAL IMPACT:

There are no financial impacts to Valley Water from this agreement.

CEQA:

On July 13, 2022, CEC, as the lead agency, considered and certified the San Jose Data Center (SJDC) Final EIR and approved the SJDC Project. The SJDC Project is proposed by Microsoft Corporation and involves the construction of a data center facility and related supporting infrastructure improvement areas located on approximately 64.5 acres of land at 1657 Alviso-Milpitas Road in the City of San José.

Since the Final EIR was certified, the City of San Jose, as the Responsible Agency under the California Environmental Quality Act (CEQA) and local land use agency, has requested modifications to the supporting roadway improvements and utility infrastructure (City Modified Project) included in the SJDC Project. Given the location of the proposed modifications from SVAWPC and the data center facility, certain changes to the SVAWPC parking lot facilities and relocation of the current small modular visitor center (Valley Water Center Modifications) would also be triggered. As a result, the City of San Jose has determined that the Valley Water Center Modifications also need to be evaluated in the adopted Addendum.

City of San Jose adopted a resolution and filed an Addendum on April 10, 2025. Valley Water, acting as Responsible Agency under CEQA, will consider the Final EIR and Addendum to approve the Valley Water Center Modification Component of the Modified Project.

CEC Final EIR can be found here; [California Energy Commission: Docket Log](https://url.us.mimecastprotect.com/s/B5bqCR6DqNtR4NMLtNhGU1LFsq?domain=efiling.energy.ca.gov)
<[https://url.us.mimecastprotect.com/s/B5bqCR6DqNtR4NMLtNhGU1LFsq?](https://url.us.mimecastprotect.com/s/B5bqCR6DqNtR4NMLtNhGU1LFsq?domain=efiling.energy.ca.gov)
[domain=efiling.energy.ca.gov](https://url.us.mimecastprotect.com/s/B5bqCR6DqNtR4NMLtNhGU1LFsq?domain=efiling.energy.ca.gov)>

SJ's final Addendum can be found here: [San Jose Data Center | City of San José](https://url.us.mimecastprotect.com/s/tRMACVOKxRs5qMWAHyiBUE3kKe?domain=sanjoseca.gov)
<[https://url.us.mimecastprotect.com/s/tRMACVOKxRs5qMWAHyiBUE3kKe?](https://url.us.mimecastprotect.com/s/tRMACVOKxRs5qMWAHyiBUE3kKe?domain=sanjoseca.gov)
[domain=sanjoseca.gov](https://url.us.mimecastprotect.com/s/tRMACVOKxRs5qMWAHyiBUE3kKe?domain=sanjoseca.gov)>

Staff recommends that, prior to any approval of the Valley Water Center Modifications, the Board take actions as Responsible Agency under CEQA, including considering the potential environmental effects of the Valley Water Center Modification as discussed in the Addendum and adopting the Lead

Agency 's CEQA findings.

ATTACHMENTS:

Attachment 1: Resolution

Attachment 2: Draft Agreement

Attachment 3: Location Map

UNCLASSIFIED MANAGER:

Kirsten Struve, 408-630-3138

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

RESOLUTION NO. 2026-

**CONSIDERING THE FINAL ENVIRONMENTAL IMPACT REPORT FOR
THE SAN JOSE DATA CENTER PROJECT AND ITS ADDENDUM AND MAKING
CEQA RESPONSIBLE AGENCY FINDINGS FOR THE SITE WORKS AGREEMENT**

WHEREAS, Microsoft Corporation (Microsoft) is developing a new data center, San Jose Data Center Project (SJDC Project) on a private property to the east of the existing Santa Clara Valley Water District (Valley Water) Silicon Valley Advanced Water Purification Center (SVAWPC); and

WHEREAS, Microsoft will be extending and modifying McCarthy Lane as a part of the SJDC Project; and

WHEREAS, Microsoft's SJDC Project conflicted with the current location of the SVAWPC's visitor center trailer on McCarthy Lane; and

WHEREAS, On July 13, 2022, California Energy Commission (CEC), as the lead agency, certified the San Jose Data Center (SJDC) Final Environmental Impact Report (EIR), adopted a Mitigation Monitoring and Reporting Program (MMRP) for the implementation of the mitigation measures identified therein, adopted CEQA Findings of Fact pursuant to State CEQA Guidelines section 15091, and approved the SJDC Project; and

WHEREAS, After the Final EIR was certified, the City of San José (City), as the responsible agency under the California Environmental Quality Act (CEQA) and local land use agency, requested modifications to the roadway improvements and utility infrastructure (City Modified Project) included in the SJDC Project; and

WHEREAS, the City completed an Addendum to the Final EIR to evaluate the City Modified Project; and

WHEREAS, the City's Addendum concluded that implementation of the City Modified Project would not result in new or more severe significant environmental impacts not considered in the prior CEC certified Final EIR; and

WHEREAS, the City found that the City Modified Project shall conform to all applicable requirements of the MMRP approved for the SJDC Project; and

WHEREAS, Microsoft, Valley Water, and the City negotiated a Site Works Agreement to construct a new parking lot, certain required land improvements, and move the visitor center trailer; and

WHEREAS, the elements of the City Modified Project applicable to Valley Water included in the Site Works Agreement are the construction of a new parking lot and the relocation of the visitor center trailer (Valley Water Purification Center Modifications); and

WHEREAS, the City has evaluated the SJDC road improvement and Valley Water Purification Center Modifications in the adopted Addendum and filed a Notice of Determination (NOD); and

WHEREAS, the City adopted a resolution and filed an Addendum on April 10, 2025; and

WHEREAS, Valley Water is also a responsible agency under CEQA for approving the Site Works Agreement and must consider the Certified Final EIR by the lead agency, CEC, and City's Addendum to approve the Site Work Agreement, and file its own NOD for the Site Works Agreement; and

WHEREAS, Valley Water only seeks to approve the Site Works Agreement and is not approving or committing to the SJDC or the entire City Modified Project; and

WHEREAS, the Final EIR analyzed the potential environmental impacts for the SJDC; and

WHEREAS, the Addendum analyzed the impacts of the City Modified Project compared to the findings of the Final EIR regarding the following environmental issues and concluded that the modifications involve no new significant environmental effects or a substantial increase in the severity of previously identified significant effects on resources such as Air Quality, Biological Resources, Cultural Resources/Tribal Cultural Resources, Energy, Greenhouse Gas Emissions, Hazards and Hazardous Materials, Hydrology and Water Quality, Noise, Transportation, and Utilities; and

WHEREAS, the Final EIR and the Addendum concluded that the SJDC Project and City Modified Project would have less than significant impacts with the implementation of mitigation measures identified in the MMRP; and

WHEREAS, pursuant to State CEQA Guidelines section 15096, Valley Water hereby intends to adopt CEQA Findings of Fact under State CEQA Guidelines section 15091; and

WHEREAS, Valley Water has heard, been presented with, reviewed, and considered all of the information and data presented to the Valley Water Board of Directors, including the CEC certified EIR for the SJDC Project, the City Addendum, and the findings made by those respective agencies under State CEQA Guidelines section 15091 and 15093; and all public comments; and

NOW, THEREFORE BE IT RESOLVED by the Board of Directors of the Santa Clara Valley Water District as follows:

SECTION 1. Incorporation of Recitals. The foregoing recitals are true and correct and are incorporated herein and made an operative part of this Resolution.

SECTION 2. Adequacy of the Final EIR and Addendum under CEQA. Valley Water has independently reviewed and considered the certified Final EIR and Addendum for the SJDC Project and City Modified Project, CEC's record of proceedings, City's record of proceeding, and Valley Water's record of proceedings, and finds that the EIR and the Addendum adequately and properly analyze the potential environmental impacts of the SJDC and City Modified Project only as it related to the Site Works Agreement that Valley Water seeks to approve.

Valley Water further hereby finds that none of the conditions set forth in State CEQA Guidelines section 15162 that could potentially trigger the need for a Subsequent EIR or Subsequent Negative Declaration apply to the approval of the Site Works Agreement. The Site Works Agreement does not entail or propose any substantial changes to the SJDC Project or City Modified Project that will require major revisions of the EIR or Addendum due to the involvement of new significant environmental effects or a substantial increase in the severity of previously

identified significant effects. There have been no substantial changes that have occurred with respect to the circumstances under which the SJDC and the City Modified Project, which was analyzed in the EIR and the Addendum, will be undertaken that will require major revisions of the EIR or Addendum due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects. There has been no new information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the EIR was certified, which shows that (1) the SJDC and the City Modified Project will have one or more significant effects not discussed in the EIR; (2) significant effects previously examined will be substantially more severe than shown in the EIR; (3) mitigation measures or alternatives previously found not to be feasible would in fact be feasible, and would substantially reduce one or more significant effects of the SJDC or City Modified Project; or (4) mitigation measures or alternatives, which are considerably different from those analyzed in the EIR and the Addendum, would substantially reduce one or more significant effects on the environment. None of these conditions, as set forth in State CEQA Guidelines section 15162, apply here.

SECTION 3. Finding concerning Alternatives and Mitigation Measures. Valley Water, as a responsible agency under CEQA, is more limited than the lead agency (i.e., CEC) when considering alternatives and mitigation measures for the SJDC Project and the City Modified Project. A responsible agency has responsibility for mitigating or avoiding only the direct or indirect environmental effects of those parts of a project that the responsible agency decides to carry out, finance, or approve; moreover, a responsible agency is required to adopt a feasible alternative or feasible mitigation measures for a project only if (1) such alternative or mitigation measures are within the responsible agency's powers, and (2) the alternative or mitigation measures would substantially lessen or avoid any significant effect the project would have on the environment.

Here, Valley Water is not approving or committing to carrying out, financing, or approving the SJDC Project or the City Modified Project. Instead, Valley Water seeks only to approve the Site Works Agreement, which would authorize the modifications to the SVAWPC's parking lot and visitor center. Valley Water finds that the mitigation measures to be implemented by CEC and City, as set forth in the EIR and the Addendum, and the MMRP adopted by CEC, mitigate and avoid potential environmental impacts to the extent feasible of the SJDC and City Modified Project. Valley Water finds there are no feasible alternatives or feasible mitigation measures within its powers that would substantially lessen or avoid any significant effects of the Site Works Agreement on the environment, beyond what was identified in the EIR and the MMRP.

SECTION 4. CEQA Findings of Fact under State CEQA Guidelines section 15091. Valley Water adopts CEC's Findings of Facts (**Exhibit A**) and City CEQA Resolution and Findings of Fact (**Exhibit B**), a true and correct copy of which is attached hereto and incorporated herein by reference, as to the Site Works Agreement.

SECTION 5. Notice of Determination. Valley Water Board hereby directs staff to prepare, file, and cause to be posted a Notice of Determination (NOD) with the County Clerk or Clerk to the Board of Supervisors in the County of Santa Clara. A draft NOD is included as **Exhibit C**.

SECTION 6. Custodian of Documents. The custodian of documents constituting the record of proceedings for this matter is Valley Water's Clerk of the Board. The documents constituting the record of proceedings for this matter are located at 5750 Almaden Expressway, San Jose, California.

SECTION 7. Severability. If any provision of this Resolution is held invalid, the remainder of this Resolution shall not be affected by such invalidity, and the provisions of this Resolution are severable.

SECTION 8. Effective Date. This Resolution shall become effective immediately upon its adoption and filing of the NOD.

PASSED AND ADOPTED by the Board of Directors of the Santa Clara Valley Water District by the following vote on July 14, 2026.

AYES: Directors

NOES: Directors

ABSENT: Directors

ABSTAIN: Directors

SANTA CLARA VALLEY WATER DISTRICT

TONY ESTREMER
Chair, Board of Directors

ATTEST

CANDICE KWOK-SMITH
Clerk, Board of Directors

EXHIBIT A COVERSHEET

CEC FINDINGS OF FACT

No. of Pages: 2

Exhibit Attachments: None

CALIFORNIA ENERGY COMMISSION CONCLUSION REGARDING POTENTIAL ENVIRONMENTAL IMPACTS

CALIFORNIA ENERGY COMMISSION

715 P Street Sacramento, California 95814

energy.ca.gov

CEC-70 (Revised 11/2021)

IN THE MATTER OF:

SAN JOSE CITY Backup Generating Facility Docket No. 19-SPPE-04

DECISION

Potential Environmental Impacts: The Final EIR establishes that no substantial adverse impact on the environment will result from the construction or operation of the Backup Generators or the Project. Page 19-26

<https://efiling.energy.ca.gov/GetDocument.aspx?tn=244835&DocumentContentId=79021>

After reviewing the evidence in the record, we find that the Project will not have a significant adverse impact, individually or cumulatively, on the environment. Furthermore, we find that the Final EIR considered and analyzed a reasonable range of alternatives. We also find that the mitigation measures incorporated into the Project design, proposed in the Final EIR, and set forth in the MMRP, will reduce any potentially significant impacts to less than significant levels and will be enforced by the City of San José. Therefore, we conclude that the construction and operation of the Project will not have a substantial adverse impact on the environment.

FINDINGS AND CONCLUSIONS

Based on the record of this proceeding, we find:

1. The Final EIR and March 29th Addendum have been prepared in compliance with CEQA and thoroughly and adequately analyze potential environmental and energy resources impacts.
2. This Decision was prepared in accordance with the public review process mandated by the Warren-Alquist Act, CEC regulations, and CEQA.
3. The Backup Generators are thermal powerplants that have a generating capacity of up to 99 MW.
4. The imposition and implementation of Conditions of Exemption PD-1 and PD-2 will ensure that the generating capacity of the Backup Generators will not exceed 99 MW.
5. The imposition and implementation of mitigation measure AQ-1 will ensure that the Project will not have any significant environmental impacts on air quality.
6. The imposition and implementation of mitigation measures BIO-1 through BIO-20 will ensure that the Project will not have any significant environmental impacts on biological resources.

7. The imposition and implementation of mitigation measures CUL-1 through CUL-6 will ensure that the Project will not have any significant environmental impacts on cultural and tribal cultural resources.

8. The imposition and implementation of mitigation measure GEO-1 will ensure that the Project will not have any significant environmental impacts on geology and soils (paleontology).

9. The imposition and implementation of mitigation measures GHG-1 and GHG-2 will ensure that the Project will not have any significant environmental impacts related to greenhouse gas emissions.

10. The imposition and implementation of mitigation measures HAZ-1 and HAZ-2 will ensure that the Project will not have any significant environmental impacts related to hazards and hazardous materials.

11. The imposition and implementation of mitigation measure NOI-1 will ensure that the Project will not have any significant environmental impacts related to noise.

12. The imposition and implementation of mitigation measure TRA-1 will ensure that the Project will not have any significant environmental impacts on transportation.

13. BAAQMD will require the Project to fully offset NOx emissions during BAAQMD's permitting process.

14. The adoption of the MMRP, set forth in Appendix C, and the City of San José's agreement to serve as the enforcement agency for the MMRP will ensure that the Project complies with all requirements in the MMRP.

15. The Project will not cause any significant adverse environmental impacts with implementation of the Project design features and mitigation measures imposed by this Decision, which incorporates the Final EIR and March 29th Addendum by reference.

16. The Project will not cause any significant adverse impacts to energy resources.

17. Based on the above findings, the CEC may grant a small powerplant exemption in accordance with California Public Resources Code section 25541.

We hereby **CERTIFY** the Final EIR, including the March 29th Addendum to the Final EIR contained in Appendix B, for the CEC's Decision for the Small Power Plant Exemption for the San Jose City Backup Generating Facility. In certifying the Final EIR, we do so through the exercise of our independent judgment and review after finding substantial evidence, considering the record as a whole, to support certification.

We hereby **ADOPT** the MMRP to ensure the Project design features and additional mitigation measures from this Decision will be implemented by the City of San José.

EXHIBIT B COVERSHEET

SAN JOSE RESOLUTION AND FINDINGS OF FACT

No. of Pages: 84

Exhibit Attachments: None

April 10, 2025

Microsoft Corporation
One Microsoft Way
Redmond, WA 98052

Dear Microsoft Corporation:

RE: **Conditional Use Permit, File No. CP23-016, V24-001 & ER20-219**, located on the
Northwesterly corner of State Route 237 and McCarthy Lane (1657 Alviso-Milpitas Road).

The enclosed is your copy of the Planning Commission's action on this Conditional Use Permit.

This permit may contain one or more conditions, such as revised plans, which must be met within a specific deadline. If conditions are not met the permit will automatically expire. Please read your permit carefully!

The Planning Commission's action taken on this permit or any of the conditions of this permit may be appealed by the applicant to the City Council by filing a Notice of Appeal and a \$13,991.00 fee. The appeal must be submitted in person or by e-mail at planningtechs@sanjoseca.gov and presented on the Notice of Appeal form available from this department on or before **5:00 p.m, April 21, 2025**. If you have any questions, please contact the Project Manager, Cameron Gee at (408) 535-6807 or by e-mail at cameron.gee@sanjoseca.gov.

Sincerely,



Manira Sandhir,
Deputy

Enclosures

CG;sg

RESOLUTION NO. 25-008

A Resolution of the Planning Commission of the City of San José granting, subject to conditions, a Conditional Use Permit to allow for the relocation of an existing approximately 1,440-square-foot Valley Water Purification Visitors Center and the removal of 79 trees (35 ordinance-size, 44 non-ordinance-size, and 273 replacement trees) for the construction and operation of a data center with ancillary office use as well as related on- and off-site improvements, consisting of two single-story data center buildings totaling approximately 397,205 square feet, an associated electrical substation, sanitary sewer pump station, storm drain pump station, water storage tank, 226 standby backup generators, surface parking lots, and a Development Exception to allow a parking reduction, on an approximately 64.5-gross-acre site, located at the northwesterly corner of State Route 237 and McCarthy Lane (1657 Alviso-Milpitas Road; APNs 015-31-063 & 015-31-054)

FILE NOS. CP23-016 & V24-001

WHEREAS, pursuant to the provisions of Chapter 20.100 of Title 20 of the San José Municipal Code, on November 21, 2019, Microsoft Corporation, the applicant and property owner, (“Permittee”) filed applications (File Nos. CP23-016 & V24-001) with the City of San José for a Conditional Use Permit to allow the relocation of an existing approximately 1,440-square-foot Valley Water Purification Visitors Center and the removal of 79 trees (35 ordinance-size, 44 non-ordinance-size, and 273 replacement trees) for the construction and operation of a data center with ancillary office use as well as related on- and off-site improvements, consisting of two single-story data center buildings totaling approximately 397,205 square feet, an associated electrical substation, sanitary sewer pump station, storm drain pump station, water storage tank, 226 standby backup generators, surface parking lots, and a Development Exception to allow a parking reduction (“Project”) on an approximately 64.5-gross-acre site, on that certain real property situated in the LI Light Industrial Zoning District and located at the northwesterly corner of State Route 237 and McCarthy Lane (1657 Alviso-Milpitas Road; APN 015-31-054, San José, sometimes referred to herein as the the “data center site” or the “subject property”); and

WHEREAS, related off-site improvements to be installed to serve the Project will be located within off-site supporting infrastructure improvement areas (collectively, the “SIAs”), as well as additional lands owned by the City and leased by Valley Water District (“Valley Water”); and

WHEREAS, the data center site is all that real property consisting of approximately 64.5 acres (APN 015-31-054) more particularly described in Exhibit "A," entitled "Legal Description," which is attached and incorporated by reference; and

WHEREAS, the SIAs, collectively, is all that real property that consists of approximately 6.7 linear miles where off-site improvements will be located on portions of APNs 015-30-061, 015-31-061, 015-31-062, 015-31-063, 015-30-109, 015-31-072, 015-31-044, and 015-31-060, along Zanker Road (no parcel number), and across Alviso Milpitas Road (no parcel number), all of which are owned by the City; and

WHEREAS, in addition, to enable the extension of McCarthy Lane, the existing Valley Water District Visitors Center will be relocated to the southern portion of the new Visitors Center parking lot being installed (along with related relocated utility improvements), all of which will be on lands owned by the City and leased by Valley Water (collectively, the "Valley Water Lands"); and

WHEREAS, pursuant to and in accordance with Chapter 20.100 of Title 20 of the San José Municipal Code, this Planning Commission conducted a duly noticed public hearing on said application, gave all persons full opportunity to be heard and to present evidence and testimony respecting said matter, received and considered the reports and recommendations of the Director of Planning, Building and Code Enforcement, received in evidence a development plan for the subject property entitled, "Microsoft Corporation SJC02 Data Center," dated February 18, 2022, and last revised January 23, 2025; said plan is on file in the Department of Planning, Building and Code Enforcement and is incorporated by reference (collectively, the "Approved Plans" or "Approved Plan Set");

NOW, THEREFORE, BE IT RESOLVED BY THE PLANNING COMMISSION OF THE CITY OF SAN JOSE THAT:

The foregoing recitals are hereby incorporated by reference as if fully set forth herein. The Planning Commission has heard and considered the testimony presented to it at the public hearing, and has further considered written materials submitted on behalf of the Permittee, City staff, and other interested parties and hereby determines, concludes, and finds as follows:

1. **Site Description and Surrounding Uses.** The data center site consists of approximately 64.5 gross acres of vacant land located at 1657 Alviso-Milpitas Road (APN 015-31-054). To the west of the data center site are lands owned by the City of San José and leased by Valley Water District, upon which the San José-Santa Clara Regional Wastewater Facility and Silicon Valley

Advanced Water Purification Center are located, and where the Valley Water Purification Visitors Center will be relocated (APN 015-31-063). This parcel is referred to herein as “Valley Water Lands.”

The two parcels are located northerly of California State Route 237 between Zanker Road and Coyote Creek. Both parcels are surrounded by San José-Santa Clara Regional Wastewater Facility biosolid drying beds to the north, Los Esteros Energy Center and California State Route 237 to the south, Coyote Creek and the City of Milpitas to the east, and vacant land to the west across Zanker Road.

Associated off-site improvements, including new roadway infrastructure and utility connections will be located on APNs 015-30-061, 015-31-061, 015-31-062, 015-31-063, 015-30-109, 015-31-072, 015-31-044, and 015-31-060, along Zanker Road (no parcel number), and across Alviso Milpitas Road (no parcel number) (collectively, the “Supporting Infrastructure Improvement Areas” or “SIIAs”).

The data center site is currently accessible via a private driveway off Alviso-Milpitas Road at the southern boundary of the data center site.

2. **Project Description.** As detailed more fully below, the Project consists of the construction and operation of a data center with ancillary office use, involving two single-story data center buildings totaling approximately 397,205 square feet with a maximum electrical load of 99 MW and supporting infrastructure improvements west of the data center site located on the Supporting Infrastructure Improvement Areas (SIIAs) and other off-site improvements located on the Valley Water Lands.

Data Center Site

The northern data center building (referred to as SJC02) will be approximately 244,771 square feet and consist of five colocation units with supporting amenities to facilitate data center operations. The southern data center building (referred to as SJC03) will be approximately 152,434 square feet and consist of three colocation units with supporting amenities. Both buildings will include approximately 13,826 square feet of administrative space, including restrooms and shower facilities, storage areas, and loading docks. A new 115-kilovolt electrical substation will be located in the northwestern corner of the data center site with two underground 115-kilovolt electrical supply lines that will connect the new 115-kilovolt substation to the existing PG&E Los Esteros Substation, located adjacent to the western boundary of the data center site. The electrical supply lines from the 115-kilovolt substation to the PG&E Los Esteros Substation will be approximately 0.2 miles long. Electricity for the data center will be supplied via a new 115-kilovolt substation that will be constructed on the data center site and connected through the existing PG&E Los Esteros Substation 115-kilovolt bus system.

A total of 224 renewable natural gas emergency generators with an output capacity of 0.45 megawatts will be installed surrounding the data center buildings to provide electrical support to the buildings during utility outages, electrical equipment interruptions or failure, load shedding, demand response, and for resource adequacy purposes. In addition to the renewable natural gas emergency generators, there will be one 0.5-megawatt and one 1.25-megawatt administrative emergency diesel generator to provide continuous power for facility operation,

which will include electrical supply, cooling and heating, network links, and fire monitoring in each data center building.

Additional data center improvements include a water storage tank, pump stations, and bioretention basins. An approximately 54,400-square-foot water storage tank will be located in the northwestern area of the data center site for fire protection/fire flow and backup cooling purposes. The water storage tank will be accompanied by two fire pumps rated at 0.164 megawatts with 220-horsepower engines. An approximately 1,600-square-foot sanitary sewer lift pump station and 3,000-square-foot storm drain pump station will be constructed in between the SJC02 and SJC03 buildings. The sanitary sewer pump station will convey wastewater to an existing sanitary sewer pipeline in Thomas Foon Chew Way via a new sanitary sewer line that will be constructed for the Project. This sanitary sewer pump station will also include a mechanical grinder within a compartment of a wet well for the pump station. The storm drain pump station will pump stormwater from the data center site to a new proposed roadway drainage network within Zanker Road via a new storm drain line for the Project. Both pump stations will be powered by the administrative emergency diesel generators within the data center site during emergency electrical outages. To manage the increased runoff from the data center site, approximately 62,560 square feet of bioretention basins will be provided.

Primary access to the data center site will be via an extension of McCarthy Lane (described in more detail below) with secondary access via the private driveway off Alviso Milpitas Road at the southern boundary of the data center site. A total of 122 vehicle parking spaces and 34 bicycle parking spaces will be provided on-site. The 122 vehicle parking spaces that will be provided for the data center buildings is 63 fewer spaces than the number required under the San José Municipal Code at the time the Project was submitted. A Development Exception was submitted to allow the vehicle parking reduction.

The Operations Plan states that there will be a peak of approximately 100 employees on site during a shift change. Approximately 60 employees will be on site during the daytime shift, 40 employees during the swing shift, and 40 employees during the night/early morning swing shift. Typical on-site operations include monitoring and repairing IT equipment, performing security assessments, custodial activities, engine maintenance, building and landscaping maintenance, office management, and administrative activities.

A total of 79 trees (35 ordinance-size and 44 non-ordinance-size) will be removed to facilitate the construction of the data center. A total of 273 15-gallon replacement trees will be planted.

Supporting Infrastructure Improvement Areas

In the supporting infrastructure improvement areas west of the data center site, there will be new roadway infrastructure and utility connections. There will also be modifications to the Santa Clara Valley Water (Valley Water) Purification Center due to the McCarthy Lane Extension described below.

McCarthy Lane Extension

As described above, primary access to the data center site will be via an extension of the existing McCarthy Lane (herein referred to as McCarthy Lane Extension) located between the Valley Water Purification Center and the San José-Santa Clara Regional Wastewater Facility (RWF) Dewatering Facility. The McCarthy Lane Extension will be approximately 1,150 feet

long with the width varying from approximately 22 to 64 feet. The total acreage will be approximately 0.8 acre. This roadway will be a two-lane facility that will primarily be used by employees, vendors, and visitors of the data center site, Valley Water Purification Center, and RWF Dewatering Facility. Runoff from the McCarthy Lane Extension will be treated via an approximately 2,400-square-foot lined bioretention basin with an underdrain located on the data center site.

Zanker Road Widening and Multimodal Infrastructure

The Project will widen Zanker Road between the McCarthy Lane Extension and the State Route 237 interchange. The roadway will include one additional lane of traffic in each direction (e.g., one north and one south traffic lane), which will change Zanker Road from a two-lane roadway to a four-lane roadway. The upgraded four-lane Zanker Road will transition back to the existing two-lane roadway configuration north of the Zanker Road/McCarthy Lane intersection. Stormwater runoff that will result from an increase in impervious surface area will drain to bioretention basins (totaling approximately 7,600 square feet) that will be constructed along both sides of Zanker Road. New traffic signals will be installed at the intersection of Zanker Road and McCarthy Lane. The existing traffic signal equipment at Zanker Road and the State Route 237 off-ramp intersection to accommodate the widening of Zanker Road will also be upgraded as part of the Project.

Additional modifications to Zanker Road include the construction of new sidewalks on either side of the proposed widened roadway. Two new pedestrian crosswalks will also be provided with one signalized pedestrian crosswalk located just south of the Zanker Road/McCarthy Lane intersection (providing direct access to/from the Valley Water Purification Center across Zanker Road) and a second pedestrian crosswalk will be constructed parallel to Zanker Road where the roadway intersects with a private driveway leading to the RWF operations west of Zanker Road. The second pedestrian crosswalk will provide a continuous connection between the southbound sidewalk proposed along Zanker Road. A Class I bicycle trail (a bicycle trail separated from the roadway) will be constructed on the eastern side of Zanker Road and a new Class IV bicycle lane (a protected lane on the roadway) will be constructed on the western side of Zanker Road. A bicycle crossing will be constructed at the intersection of Zanker Road and the State Route 237 off-ramp to allow bicyclists to cross between the Class I bicycle trail and Class IV bicycle lane.

Utility Connections

To support the data center site, there will be several new utility connections constructed. The utility lines are as follows:

- One approximately 0.8-mile-long, six-inch water line for potable water (Water Line Route #1) that will ultimately connect to an existing 12-inch line in Zanker Road.
- One approximately 1.2-mile-long, 12-inch water line for emergency water (Water Line Route #2) that will ultimately connect to an existing 12-inch line in Zanker Road.
- One approximately 0.9-mile-long, 6-inch sanitary sewer line that will connect into an existing sanitary sewer pipeline located at the western side of Thomas Foon Chew Way.

- One approximately 0.7-mile-long, 8-inch recycled water line that will connect into an existing 30-inch recycled waterline in Zanker Road.
- One approximately 0.7-mile-long, 15- to 21-inch (depending on the line location) storm drain line that will connect into a new proposed storm drain gravity pipeline in Zanker Road, where the roadway intersects with Thomas Foon Chew Way.

Valley Water Visitor Center

The McCarthy Lane Extension modification described above will encroach upon an area currently occupied by the Valley Water Purification Center visitor center and associated parking lot. As a result, the Project will necessitate construction of a new parking lot and relocation of the visitor center to a currently undeveloped area referred to herein as the Valley Water Lands (approximately 0.7-gross-acres), directly east of the existing Valley Water Purification Center.

The Valley Water Purification Center currently provides nine parking spaces for its visitor center. For overflow parking, the Valley Water visitor center has vehicles (including passenger vehicles and buses) park along the eastern terminus of McCarthy Lane. The existing McCarthy Lane can accommodate parking for the equivalent of up to approximately 50 passenger vehicles and three buses used for larger tours and events. The new parking lot will provide a total of 42 car parking spaces and three bus parking spaces. Walkways connecting the parking lot to the Valley Water Purification Center will also be constructed for visitor access. The parking lot will include new lighting and stormwater management facilities, such as a storm drain and a bioretention basin.

The current visitor center is a small portable modular building measuring approximately 1,440 square feet (approximately 23 feet wide and 60 feet long). The existing visitor center will be relocated to the southern portion of the new visitor center parking lot described above. The visitor center will be moved to its new location with the use of two cranes to lift the structure and a haul truck to transport it. No expansion of the visitor center facility or its operations will occur.

Construction

The Project will have an approximately 33-month construction period. Temporary construction staging areas will be within the data center site boundaries and within the supporting infrastructure improvement area along Zanker Road.

3. **Envision San José 2040 General Plan Land Use Conformance.** The data center site (which includes the data center buildings, electrical substation, sanitary sewer pump station, storm drain pump station, water storage tank, and standby backup generators) has an Envision San José 2040 General Plan Land Use/ Transportation Diagram designation of Light Industrial. Both the SIIAs and the Valley Water Lands (which includes the relocated Valley Water Purification Visitors Center, along with related relocated utility improvements and new surface parking lot) have a designation of Public/Quasi-Public. Below is an analysis of the Project with respect to the Light Industrial and Public/Quasi-Public designations of the Envision San José 2040 General Plan.

The Light Industrial designation is intended for a wide variety of industrial uses and excludes uses with unmitigated hazardous or nuisance effects. Warehousing, wholesaling, and light manufacturing are examples of typical uses in this designation. Light Industrial designated properties may also contain service establishments that serve only employees of businesses located in the immediate industrial area. Office and higher-end industrial uses, such as research and development, are discouraged in order to preserve the scarce, lower cost land resources that are available for companies with limited operating history (startup companies) or lower cost industrial operations. The maximum allowed Floor Area Ratio (FAR) within the Light Industrial designation is 1.5.

Analysis: The data center buildings, associated utility structures, and other related improvements are appropriate uses within the Light Industrial land use designation, as they do not involve industrial uses with nuisance or hazardous characteristics such as heavy manufacturing or extractive processing. The development of the data center buildings would result in an FAR of approximately 0.14, which is within the maximum FAR allowed. Therefore, the Project is consistent with the Light Industrial land use designation.

The Public/Quasi-Public designation is used to designate public land uses, including schools, colleges, corporation yards, homeless shelters, permanent supportive housing, libraries, fire stations, water treatment facilities, convention centers and auditoriums, museums, governmental offices, and airports. Joint development Projects which include public and private participation - such as a jointly administered public/private research institute or an integrated convention center/hotel/restaurant complex - are allowed. This category is also used to designate lands used by some private entities, including private schools, daycare centers, hospitals, public utilities, and the facilities of any organization involved in the provision of public services such as gas, water, electricity, and telecommunications facilities that are consistent in character with established public land uses.

Analysis: The relocated Valley Water Purification Visitors Center and related improvements will remain within the Public/Quasi-Public land use designation. The Visitors Center will continue supporting the larger Valley Water facility, an appropriate land use within the Public/Quasi-Public designation. In addition, the other off-site infrastructure to serve the data center use will be located within the SIAs, which are also within the Public/Quasi-Public land use designation, which will not change as a result of the Project. Therefore, the Project is consistent with the Public/Quasi-Public land use designation.

The Project is consistent with the following General Plan Goals and Policies:

Land Use Policy LU-6.4: Encourage the development of new industrial areas and the redevelopment of existing older or marginal industrial areas with new industrial uses, particularly in locations which facilitate efficient commute patterns. Use available public financing to provide necessary infrastructure improvements as one means of encouraging this economic development and revitalization.

Land Use Policy LU-6.5: Maintain and create Light Industrial and Heavy Industrial designated sites that are at least one acre in size in order to facilitate viable industrial uses.

Land Use Policy LU-6.8: Reserve industrial areas for industrial and compatible support uses, while recognizing that industrial uses come in a variety of types and forms. Allow non-

industrial uses which are only incidental to and totally compatible with primary industrial uses in exclusively industrial areas. Consider allowing supportive, non-industrial activities such as retail sales of materials manufactured or stored on-site.

Analysis for LU-6.4, LU-6.5, and LU-6.8: The data center buildings and associated utility structures and related on- and off-site improvements will preserve existing unused industrial areas. The Project will not establish any non-industrial uses that are incompatible with the data center use. Therefore, the Project is consistent with these policies.

Riparian Corridors Policy ER-2.2: Ensure that a 100-foot setback from riparian habitat is the standard to be achieved in all but a limited number of instances, only where no significant environmental impacts would occur.

Riparian Corridors Policy ER-2.3: Design new development to protect adjacent riparian corridors from encroachment of lighting, exotic landscaping, noise, and toxic substances into the riparian zone.

Attractive City Policy CD-1.25: Apply Riparian Corridor Goals and Policies of this Plan when reviewing development adjacent to creeks. Development adjacent to creekside areas should incorporate compatible design and landscaping, including appropriate setbacks and plant species that are native to the area or are compatible with native species. Development should maximize visual and physical access to creeks from the public right-of-way while protecting the natural ecosystem. Consider whether designs could incorporate linear parks along creeks or accommodate them in the future.

Community Forest Policy MS-21.10: Prohibit London plane trees from being planted in the Coyote Planning Area, which is located near the most significant stands of sycamore alluvial woodland in the City. Planting of this species is discouraged elsewhere, particularly near riparian areas. Prohibit holly-leaved oaks from being planted in areas containing stands of native oaks or in proximity to native oak woodland habitat.

Analysis for ER-2.2, ER-2.3, CD-1.25, and MS-21.10: As the site is located adjacent to Coyote Creek to the east, development of the data center site incorporates a 100-foot setback from the riparian habitat, pursuant to the General Plan Riparian Corridor policies and Council Policy 6-34: Riparian Corridor Protection and Bird-Safe Design. Structures and parking facilities will be located approximately 180 feet from the top of the riparian corridor's bank. No London Plane trees will be planted on the subject site. All site lighting will be directed downward and away from riparian areas. Therefore, the Project is consistent with these policies.

4. **Alviso Master Plan Conformance.** The Project site is located within the Alviso Master Plan area. The Alviso Master Plan was adopted in December of 1998 as a Specific Plan for development in the Alviso planning area. The Alviso Master Plan is a Specific Plan for the Alviso Community, which provides a vision and directs positive changes to a unique area of San José. Located at the very northern edge of San José, Alviso is characterized by its small-town atmosphere, rich history, bayside location (San Francisco Bay), wide open spaces, agricultural activities, and a mix of residential, commercial, and industrial uses.

The Project is consistent with the following Alviso Master Plan policies:

Industrial/Non-Industrial Relationships Policy 2: The Light Industrial areas located north of State Street and adjacent to Coyote Creek should mitigate potentially negative environmental impacts to nearby natural resources.

Analysis: The Project provides a 100-foot setback from Coyote Creek. In addition, the Project is mitigating environmental impacts to agricultural resources, air quality, biological resources, cultural resources, greenhouse gas emissions, hazards/hazardous materials, and transportation (as stated in the CEQA Addendum and consistent with the previously certified 2022 FEIR) to the riparian corridor through the Project's Mitigation Monitoring and Reporting Program (MMRP).

Environmental Protection Policy 1: All new parking, circulation, loading, outdoor storage, utility, and other similar activity areas must be located on paved surfaces with proper drainage to avoid potential pollutants from entering the groundwater, Guadalupe River, Coyote Creek, or San Francisco Bay.

Analysis: All activities such as parking, circulation, loading, outdoor storage, utility, and other similar activities will occur on paved surfaces to allow for proper drainage. The Project will ensure that all runoff from the data center use will be fully captured, treated, and pumped off-site via appropriate municipal stormwater systems on the data center site with all applicable stormwater control standards and requirements as conditioned in this Conditional Use Permit.

Environmental Protection Policy 3: The riparian corridors adjacent to Coyote Creek and Guadalupe River should be preserved intact. Any development adjacent to the waterways should follow the City's Riparian Corridor policies.

Analysis: As previously discussed, the Project provides a 100-foot setback from Coyote Creek. Further analysis of the Riparian Corridor policy is included in this Conditional Use Permit.

The Project is consistent with the following Lands Outside of the Village Area – Guidelines for Industrial Development standards of the Alviso Master Plan:

- a. Building Design, Materials, and Architectural Features: Architectural attention should be focused on the overall building volume and shape rather than overly decorating and detailing the structure. Entries should be located along front building elevations.

Analysis: The architectural style of the data center buildings have simple volumes and straight lines with simple articulation and materials. The Project does not necessarily reflect Alviso's small scale development as the Project design is a modern architectural expression with materials that reinforce the modern appearance. However, the Project is located at the edge of the Alviso Master Plan area and is located approximately three miles outside of the Village Area where there is a small-scale development pattern.

- b. Parking, Loading, and Service Areas: Loading and service areas should generally be located behind buildings, visually screened from public roadways with the use of walls and landscaping. Primary consideration should be given to adjoining land uses in locating storage and loading areas.

Analysis: All activities such as parking, circulation, loading, outdoor storage, utility and other similar activities will occur on paved surface to allow for proper drainage.

Furthermore, the parking and loading areas will be located at the sides and rear of the buildings and will retain a 100-foot riparian buffer.

- c. **Flood Mitigation:** Flood Mitigation could be achieved by elevating structures above the anticipated flood level and/or floodproofing buildings to minimize damage.

Analysis: The data center site is located in Flood Zone X, which is not a designated Federal Emergency Management Agency 100-year floodplain. Flood Zone X is an area of moderate or minimal flood hazard. Zone X is used on new and revised maps in place of Zones B and C. There are no City floodplain requirements for Zone X and no specific mitigation is required.

- d. **Landscaping:** Landscaping should be used to screen unattractive uses and soften the effects of taller buildings due to the floor protection requirements.

Analysis: In order to screen the data center site from Coyote Creek and the Coyote Creek trail, a majority of the 273 replacement trees will be planted near a bioretention area to the east of the data center buildings. These replacement trees will create a sufficient screen along the entire length of the property line adjacent to Coyote Creek.

5. **San José Municipal Code Conformance.**

The data center site (which includes all development of the data center buildings and related on-site improvements) is located within the LI Light Industrial Zoning District. The relocated Valley Water Purification Visitors Center is also located within the LI Light Industrial Zoning District. The Project is analyzed for conformance with the use regulations and development standards of the LI Light Industrial Zoning District, pursuant to Section 20.50.100 of the San José Municipal Code. Off-site improvements including new roadway infrastructure and utility connections within the Valley Water Lands as well as the SIIAs are located within the A Agriculture, A(PD) Planned Development (File No. PDC01-088), and LI Light Industrial Zoning Districts.

Use Regulations

Use	Permit
Data center	Special Use Permit
Utility facilities, excluding corporation yards, storage or repair yards and warehouses	Conditional Use Permit

Analysis: Pursuant to Table 20-110 in Section 20.50.100 of the San José Municipal Code, data center uses require a Special Use Permit and utility facility uses require a Conditional Use Permit within the LI Light Industrial Zoning District. Pursuant to Section 20.100.140.C, the Project shall be processed under the procedures required for the highest-level permit, which is the Conditional Use Permit. Therefore, this Conditional Use Permit is the appropriate permit to allow the full Project scope. Site Development Permit findings are also required because the Project includes the erection of new structures.

Development Standards

The table below outlines the development standards of the LI Light Industrial Zoning District, reflected in Table 20-120 of Section 20.50.200.

Development Standard	Requirement	Provided
<i>Easterly parcel (APN 015-31-054)</i>		
Front setback		
Building	15 feet minimum	Approximately 134 feet
Parking and circulation for passenger vehicles	20 feet minimum	Approximately 1,200 feet
Loading docks	60 feet minimum	Approximately 1,080 feet
Side setback		
Building and structures	0 feet	Approximately 132 feet
Parking and circulation for passenger vehicles	0 feet	Approximately 170 feet
Loading docks	0 feet	Approximately 85 feet
Rear setback		
Building and structures	0 feet	Approximately 252 feet
Parking and circulation for passenger vehicles	0 feet	Approximately 110 feet
Loading docks	0 feet	Approximately 570 feet
Maximum height	50 feet	30 feet, 7 inches
<i>Westerly parcel (APN 015-31-063)</i>		
Front setback		
Building	15 feet minimum	Approximately 900 feet
Parking and circulation for passenger vehicles	20 feet minimum	Approximately 1,000 feet
Side setback		
Building and structures	0 feet	Approximately 300 feet

Parking and circulation for passenger vehicles	0 feet	Approximately 750 feet
Rear setback		
Building and structures	0 feet	Approximately 500 feet
Parking and circulation for passenger vehicles	0 feet	Approximately 500 feet
Maximum height	50 feet	Approximately 18 feet

Analysis: As discussed in the Project Description, the data center site consists of one parcel (APN 015-31-054), where the data center buildings, associated utility structures, and other related on-site improvements will be located. The relocated Valley Water Purification Visitors Center and related improvements will be located within APN 015-31-063 to the west. As outlined in the table above, all structures, parking areas, and loading docks comply with the minimum setback and maximum height requirements of the LI Light Industrial Zoning District.

Performance Standards

Section 20.50.300 discusses the maximum noise level for industrial uses, outlined in the table below:

Adjacent Property	Maximum Noise Level in Decibels at Property Line
Used or zoned for residential purposes	55
Used or zoned for commercial purposes	60
Used or zoned for industrial purposes	70

Analysis: As stated in the CEQA Addendum (and consistent with the analysis and impact conclusions in the previously certified 2022 FEIR), the estimated noise level generated by mechanical equipment and backup generators will be approximately 53 dBA at the commercial property approximately 800 feet to the south across State Route 237. The estimated noise level will be approximately 47 dBA at the residential properties approximately 1,600 feet to the south, also across State Route 237. The data center site is not adjacent to any residential or commercial properties. Therefore, the Project complies with the performance standards of the San José Municipal Code.

Parking

As the Project was submitted on November 21, 2019, the Project is subject to the previous parking ordinance in effect at that time. The vehicle and bicycle parking requirements are outlined in the tables below.

Required Vehicle Parking

Use	Square Footage	Ratio	Required
Data Center	27,652 square feet of office space	1 stall per 250 square feet of office space	111 spaces
	369,262 square feet of computer space	1 stall per 5,000 square feet of floor area for computer space	74 spaces
Total Required			185 spaces
Total Provided			122 spaces
Parking Reduction			63 spaces

Analysis: The Project requires a total of 185 vehicle parking spaces based on the square footage of office space and computer space provided by the two data center buildings. The Project will provide 122 vehicle parking spaces, 63 fewer spaces than the requirement. A Development Exception was submitted by the applicant on February 18, 2022 to allow for a reduction in required vehicle parking pursuant to Section 20.100.1320.C. This Conditional Use Permit includes Development Exception findings in the Permit Findings section to allow the Development Exception.

Required Bicycle Parking

Use	Square Footage	Ratio	Required
Data Center	27,652 square feet of office space	1 per 5,000 square feet of office space	6 spaces
	369,262 square feet of computer space	1 for each 50,000 square feet of floor area devoted to computer space	8 spaces
Total Required			14 spaces
Total Provided			34 spaces

Analysis: The Project requires a total of 14 bicycle parking spaces based on the square footage of office space and computer space provided by the two data center buildings. The Project will provide 34 bicycle parking spaces, exceeding the requirement.

- Riparian Corridor Policy Study and Council Policy 6-34: Riparian Corridor Protection and Bird-Safe Design.** As the Project is within 300 feet of a riparian corridor, the Project must comply with the City Council approved Riparian Corridor Policy Study and City Council Policy 6-34 for Riparian Corridor Protection and Bird-Safe Design. The City Council adopted the Riparian Corridor Policy Study on May 17, 1994 (later revised in March 1999) and City Council Policy 6-34 entitled "Riparian Corridor Protection and Bird-Safe Design" on August

23, 2016. The purpose of the Council Policy and Study are to (i) protect, preserve, or restore riparian habitat; (ii) limit the creation of new impervious surface to minimize flooding; and (iii) encourage bird-safe design in baylands north of State Route 237.

Riparian Corridor Policy Study

- a. Guideline 1A: Orientation. Site activities should be oriented to draw activity away from the riparian corridor, for example, entrances, loading and delivery areas, noise generating activities and equipment, and activities requiring night lighting should be oriented towards non-riparian property edges. Circulation and maneuvering areas serving loading docks and other similar major activity areas should be oriented away from the riparian setback area or should be separated from the setback area by a minimum seven-foot-high fence and buffer area thickly planted with native species appropriate to the nearest riparian habitat type.

Analysis: The Project includes two loading areas oriented away from the riparian corridor. There will be no activity within the riparian setback area. The Project includes standby backup generators facing the riparian area; however, the screening mechanism for these generators are sound-attenuated and will not exceed noise levels as specified in the Zoning Ordinance and General Plan. These standby backup generators only operate as a back-up power source. Furthermore, the Project includes a landscape buffer in addition to the 100-foot setback required by City Council Policy 6-34.

- b. Guideline 1B: Incompatible Land Uses. Incompatible operations and activities are discouraged within and adjacent to riparian setback areas to protect the health of existing vegetation and wildlife, reduce adverse cumulative impacts to water quality, and protect the quality of recreation uses in the corridor. Incompatible land uses include the following: land uses which typically generate littering and/or dumping; off-road vehicle use; removal of native vegetation; and those uses that create noxious odors, or use, store or create toxic materials (including fertilizers, herbicides, and pesticides), or generate high volumes of vehicular traffic.

Analysis: The Project is not considered an incompatible land use in that it is not a land use that generates littering or dumping activities, is not an off-road vehicle use, does not remove native vegetation, and does not create noxious odors or stores/creates toxic materials. The data center use does not generate high volumes of vehicular traffic.

- c. Guideline 1C: Setback Areas. Development adjacent to riparian habitats generally should be set back 100 feet from the outside edge of the riparian habitat (or top of bank, whichever is greater) to reduce anticipated impacts to riparian biotic communities and hydrologic regimes.

Analysis: The Project does not include any development within the 100-foot riparian setback area.

- d. Guideline 2A: Building Appearance. In riparian forest settings located in more rural or suburban areas of the city, building facades should blend visually with the surrounding natural landscape. The colors of buildings should generally be of darker earth tones (e.g., brown, tan, grey, or greens); the use of bright colors and glossy finishes are discouraged.

- e. Guideline 2B: Glare. Building materials should not produce glare that would adversely impact the riparian corridor. Windows should not be mirrored but otherwise their use is not limited.
- f. Guideline 2C: Visual. The adverse visual impact of existing or unavoidable incompatible uses such as parking areas, loading zones, trash enclosures, mechanical devices, and similar accessory uses should be minimized by landscaping, hedging, berming, low walls and site design. Rooftop equipment should be screened from view from any riparian corridor trail or recreational, educational, or interpretive facilities within the riparian corridor.

Analysis for Guidelines 2A, 2B, and 2C: The building material palette is primarily comprised of earth tones with non-glossy finishes and does not contain any glare elements. The Project is proposing minimal glazing elements on the buildings (primarily limited to the building entryways) and exterior building materials will include precast concrete, coreten metal panels and insulated metal panels. The minimal glazing included in the Project is a low-e glazing with limited reflectivity.

- g. Guideline 2E: Lighting. For all other developments, lighting within the corridor and setback areas should be avoided. Lighting on development sites should be designed and sited to avoid light and glare impacts to wildlife within the riparian corridor, consistent with public safety considerations. Any lighting located adjacent to riparian areas should be as low as feasible in height and must be directed downward with light sources not visible from riparian areas.

Analysis: The Project will adhere to all applicable lighting requirements and includes perimeter lighting in the form of light poles. A total of eight light fixtures that will be located adjacent to the riparian setback area. However, the level in lumens (ranging from 0.1 to 3.5) will have minimal impact to the riparian setback area and there will be no impact to the riparian corridor, as the lighting will be directed away from the regulated area, and shielding will be provided on the luminaires to mitigate light spillage.

- h. Guideline 2F: Noise. Noise-producing stationary mechanical equipment should be located as far as necessary from riparian corridors to preclude exceeding the ambient noise levels in the corridors.

Analysis: The standby backup generators facing the riparian area will be screened and sound-attenuated and will not exceed noise levels as specified in the Zoning Ordinance and General Plan.

- i. Guideline 3A: Development Landscaping. Landscaping of areas adjacent to the riparian corridor should generally utilize plant species native to central California and appropriate to the riparian habitat type of the corridor.

Analysis: The Project includes an additional landscaping buffer adjacent to the riparian corridor. Landscaping will include native plant species such as Western Redbud, Yellow Pine, and Coast Live Oak.

Council Policy 6-34: Riparian Corridor Protection and Bird-Safe Design

- a. Riparian Guidance

1. Setbacks: Riparian Projects should be designed and implemented to minimize intrusion into riparian corridors. Land use related operational issues that could affect riparian corridors may need to be addressed through conditions in Development Permits. Consistent with recommendations from the Policy Study, the following general guidelines for setbacks from riparian corridors should be included in riparian Projects:

- i. New buildings in existing urban infill areas: 100 feet
- ii. Parking facilities: 100 feet
- iii. Roads: 100 feet

Analysis: The Project provides a 100-foot setback to the riparian corridor. Structures and parking facilities will be located approximately 180 feet from the top of the riparian corridor's bank. No new impervious surface, structures, or outdoor activity areas will be placed in the riparian setback area.

2. Materials and Lighting

- i. New development should use materials and lighting that are designed and constructed to reduce light and glare impacts to riparian corridors. For example, the use of bright colors, and glossy, reflective, see through or glare-producing building and material finishes is discouraged on buildings and structures.
- ii. Lighting should not be directed into riparian corridors.

Analysis: The building material palette is primarily comprised of earth tones with nonglossy finishes and will not contain any glare elements. The Project includes minimal glazing elements on the building entryways, and exterior building materials will include anodized metal elements and insulated metal panels. The minimal glazing included in the Project is a low-e glazing with limited reflectivity. The Project will adhere to all applicable lighting requirements and includes eight perimeter light fixtures that will be located adjacent to the riparian setback area. However, their lumens will range from 0.1 to 3.5 and have minimal impact to the riparian setback area. There will be no impact to the riparian corridor, as the lighting will be directed away from the regulated area, and shielding will be provided on the luminaires to mitigate light spillage.

- b. Bird-Safe Design Guidance

1. Avoid mirrors and large areas of reflective glass.
2. Avoid transparent glass skyways, walkways, or entryways, free-standing glass walls, and transparent building corners.
3. Avoid funneling open space to a building façade.
4. Strategically place landscaping to reduce reflection and views of foliage inside or through glass.
5. Avoid or minimize up-lighting and spotlights.
6. Turn non-emergency lighting off, or shield it, at night to minimize light from

buildings that is visible to birds, especially during bird migration season (February - May and August - November).

Analysis: As previously described in this section, the building materials will be composed of primarily earth tones and will not contain any glare elements. There will also be minimal glazing on the window areas of the building entries. Additionally, there will be a total of eight light fixtures located on-site adjacent to the riparian setback and directed away from the riparian corridor. There will be no lighting affecting the riparian corridor and lighting that will be adjacent to the building nearest to the riparian buffer zone will be shielded to mitigate light spillage.

7. **City Council Policy 6-30: Public Outreach Policy for Pending Land Use Decisions.** Staff followed Council Policy 6-30: Public Outreach Policy in order to inform the public of the Project. Signs have been posted at the site frontages since October 10, 2023. A community meeting was held at Homewood Suites by Hilton at 4315 North First Street on August 17, 2023. Ten attendees were present at the meeting. Questions raised at the meeting were related to vehicular and truck traffic impacts, as well as the Project's benefits to the community. A notice of the public hearing was distributed to the owners and tenants of all properties located within 1,000 feet of the Project site and posted on the City website. The staff report is also posted on the City's website. Staff has also been available to respond to questions from the public. To date, no comments have been received for this Project other than inquiries regarding the availability of the previously certified 2022 Final Environmental Impact Report.

8. **Industrial Design Guidelines.** The City of San José Industrial Design Guidelines apply to all industrial development in the City of San José, including areas with industrial zoning or planned development zoning for industrial use. Guidelines address issues of area compatibility, Project function and aesthetics. As the Project was submitted in November 2019, it is subject to the previously adopted Industrial Design Guidelines. The Project is consistent with the following guidelines.

- a. Site Character, Guideline 1: Natural amenities, such as views, mature trees, creeks, riparian corridors, and similar features unique to the site, should be preserved and used to enhance the design of new Project.

Analysis: As described above, the data center site is adjacent to a riparian corridor. The Project includes new landscaping between the data center buildings and the riparian corridor, consisting of native plant species, and preserves a 100-foot setback to the corridor.

- b. Building Orientation, Guideline 4: Multiple buildings in a single Project should have a positive functional relationship as well as an aesthetically pleasing spatial relationship with each other.

Analysis: The Project includes the construction of two data center buildings, a substation, a water storage tank, and pump stations. The substation, water storage tank, and pump stations will supplement the operation of the data center buildings as described in the Project Description section.

- c. Building Form and Scale, Guideline 4: Long, uninterrupted façades should be avoided by adding windows and openings, recessed portals, wall off-sets, varying color and texture, building articulation and architectural details.

Analysis: As described above, the exterior of the data center buildings incorporates metal panels with multiple colors, helping to break up the façades. In addition, the emergency generators and associated screening are located adjacent to the data center buildings to create further articulation.

- d. Internal Site Landscaping, Guideline 5: Parking lot trees should have large canopies and should be a minimum 15- gallon size when planted. They also need a minimum of 14 feet of vertical clearance over driveways.

Analysis: The surface parking lots include 15-gallon Chinese Elm and White Alder trees. Both trees reach between 40 to 50 feet high at maturity, providing sufficient vertical clearance.

- e. Garbage/Trash/Recycling: An adequate number of trash and recycling bins should be provided for the Project and should also be designed to meet contracted garbage collection company requirements. Bin storage areas should be located so as not to create a nuisance for adjacent properties.

Analysis: There will be two trash enclosures, both located on the western sides of the data center buildings and adjacent to the loading areas. The trash enclosures will not be visible from Coyote Creek or the public right-of-way. The trash enclosure serving the northern data center building will be screened by the substation. The trash enclosure serving the southern data center building will be screened by the existing Los Esteros substation.

- f. Loading, Guideline 3: Loading areas should be located away from highly visible areas of the site, preferably at the rear of buildings.

Analysis: There will be two loading areas, both located on the western sides of the data center buildings. The loading areas will not be visible from Coyote Creek or the public right-of-way. Both loading areas will be screened on the west by the on-site substation and the existing Los Esteros substation and will not be visible from public streets. The loading docks will be used to populate the data center during the initial occupancy. Deliveries of materials such as office supplies, IT equipment, and fuel will typically occur only during daytime business hours.

- g. Lighting: Lighting levels should be sufficient for the safety of site occupants and visitors without spilling onto adjacent properties.

Analysis: Based on the operations plan provided, all outdoor lighting will adhere to all applicable requirements and standards and will include safety lighting and emergency lighting. All outdoor lighting will be directed inward and downward, and no lighting will be directed towards the riparian corridor to the east. Only limited employee vehicle traffic will traverse internal roadways within the northeast portion of the facility, minimizing to the extent feasible, any headlight glare to the adjacent riparian corridor.

9. **Environmental Review.** In accordance with the California Environmental Quality Act (CEQA), the California Energy Commission (CEC) is the lead agency for the Project and Certified the Final Environmental Impact Report ("FEIR") on July 13, 2022. The FEIR identified potential environmental impacts to air quality, biological resources, cultural and tribal resources, geology and soils, greenhouse gas emissions, hazards and hazardous materials, noise, and transportation. These impacts will be reduced to less than significant levels with the implementation of identified mitigation measures. The FEIR determined there will be no significant and unavoidable impacts due to the implementation of the Project.

The City of San José is the Responsible Agency for the Project pursuant to CEQA. Whenever a Responsible Agency approves a Project requiring the implementation of measures to mitigate or avoid significant effects on the environment, CEQA also requires a Responsible Agency to make its own findings pursuant to Section 15091. When making the findings, a Responsible Agency should adopt a mitigation monitoring and reporting program to ensure compliance with the mitigation measures during Project implementation. The City of San José reviewed the Draft EIR prior to its certification by the CEC and concluded that all impacts were adequately addressed, impacts were reduced to a less than significant level, and that a mitigation monitoring and reporting program has been prepared for the Project for consideration by the decision-maker of the City of San José as the Responsible Agency for the Project (the "Mitigation Monitoring and Reporting Program").

Since the 2022 FEIR was certified, the City, as the Responsible Agency and local land use agency, has requested modifications to the supporting roadway improvements and utility infrastructure previously included. CEQA Guidelines Section 15162 provides that when an EIR has been certified or a Negative Declaration adopted for a Project, no subsequent EIR shall be prepared for that Project unless the Lead Agency (or Responsible Agency, as applicable) determines that substantial changes to the Project occur that will require major revisions to the EIR or Negative Declaration, or that new information which was not previously known or studied indicates that significant impacts on the environment may arise from the development of the revised Project. Pursuant to CEQA Guidelines Section 15162, the City of San José, acting as a Responsible Agency under CEQA, prepared an Addendum to the San José Data Center Project Final EIR which evaluated the environmental impacts of the changes proposed. As a result, the City prepared an Addendum to the FEIR. The Addendum concluded that no substantive revisions are needed to the FEIR, as no new significant impacts or impacts of substantially greater severity will result from the Project. The FEIR and the addendum are available at <https://www.sanjoseca.gov/your-government/departments-offices/planning-building-code-enforcement/planning-division/environmental-review/environmental-review-documents/cp23-016-er20-219-san-jose-data-center>.

10. **Conditional Use Permit and Special Use Permit Findings:** Section 20.100.720 of the San José Municipal Code specifies the required findings for the approval of a Conditional Use Permit. Section 20.100.820 of the San José Municipal Code specifies the required findings for the approval of a Special Use Permit.
- The Conditional Use Permit and Special Use Permit, as approved, are consistent with and will further the policies of the general plan, applicable specific plans, and area development policies; and

Analysis: As stated in the Envision San José 2040 General Plan Land Use Conformance section above, the Project is consistent with the Light Industrial land use designations in that the Project retains and develops vacant industrial lands with data center and utility facility uses that do not involve nuisance or hazardous characteristics. The relocated Valley Water Purification Visitors Center will continue supporting the larger Valley Water facility, consistent with the Public/Quasi- Public land use designation.

The Project is located within the Alviso Master Plan area and is consistent with policies related to industrial/non-industrial relationships and environmental protection, as well as design guidelines related to building design, parking, flood mitigation, and landscaping.

- b. The Conditional Use Permit and Special Use Permit, as approved, conform with the zoning code and all other provisions of the San José Municipal Code applicable to the Project; and

Analysis: As stated in the San José Municipal Code Conformance section above, the Project conforms with the LI Light Industrial Zoning District's use regulations, development standards, and noise requirements. The Project is consistent with all minimum setback and maximum height requirements. The Project requires a Development Exception to allow a parking reduction.

- c. The Conditional Use Permit and Special Use Permit, as approved, are consistent with applicable City Council policies, or counterbalancing considerations justify the inconsistency; and

Analysis: The Project is consistent with the Riparian Corridor Policy Study and City Council Policy 6- 34 for Riparian Corridor Protection and Bird-Safe Design in that the Project provides a 100-foot riparian setback, a landscape buffer and fencing materials at the 100-foot riparian setback area, utilizes compatible building materials, and does not propose any activity within the riparian corridor or riparian setback area.

Council Policy 6-30: Public Outreach Policy was also implemented to inform the public of the Project. Signs have been posted at the site frontages since October 10, 2023. A community meeting was held at Homewood Suites by Hilton at 4315 North First Street on August 17, 2023. Ten attendees were present at the meeting. Questions raised at the meeting were related to vehicular and truck traffic impacts, as well as the Project's benefits to the community. A notice of the public hearing was distributed to the owners and tenants of all properties located within 1,000 feet of the Project site and posted on the City website. The staff report is also posted on the City's website. Staff has also been available to respond to questions from the public. To date, no comments have been received for this Project other than inquiries regarding the availability of the previously certified 2022 Final Environmental Impact Report.

- d. The proposed use at the location requested will not:
 - i. Adversely affect the peace, health, safety, morals, or welfare of persons residing or working in the surrounding area; or
 - ii. Impair the utility or value of property of other persons located in the vicinity of the site; or
 - iii. Be detrimental to public health, safety, or general welfare.

Analysis: The Project will develop an existing vacant industrial site (and related off-site areas) with two data center buildings and associated utility structures and related on- and off-site improvements. The Project provides a 100-foot riparian setback and a landscape buffer adjacent to Coyote Creek. In addition, mechanical equipment and standby backup generators will not produce noise which exceeds the maximum levels allowed within the zoning district. Therefore, the Project will not adversely affect the peace, health, safety, morals, or welfare, impair the utility or value of property, or be detrimental to public health, safety, or general welfare.

- e. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding area; and

Analysis: The data center site is adequate in size and shape to accommodate the two data center buildings, associated utility structures, surface parking areas, landscaping improvements, and other related on- and off-site improvements. The Project will still provide a 100-foot riparian setback, integrating the use with the adjacent Coyote Creek.

- f. The proposed site is adequately served:
 - i. By highways or streets of sufficient width and improved as necessary to carry the kind and quantity of traffic such use will generate; or by other forms of transit adequate to carry the kind and quantity of individuals such use will generate; and
 - ii. By other public or private service facilities as are required.

Analysis: Access will be provided from McCarthy Lane, which connects to State Route 237 via Zanker Road. The Project includes street improvements to Zanker Road and an extension of McCarthy Lane to facilitate future vehicle traffic from the data center uses.

- g. The environmental impacts of the Project, including but not limited to noise, vibration, dust, drainage, erosion, storm water runoff, and odor which, even if insignificant for purposes of the California Environmental Quality Act (CEQA), will not have an unacceptable negative effect on adjacent property or properties.

Analysis: As detailed more fully in the CEQA Addendum and consistent with the analysis and impact conclusions of the previously certified 2022 FEIR, the Project does not include any outdoor uses or the installation of equipment that will exceed the zoning district's maximum allowed noise levels. All construction activity and impacts, including but not limited to noise, vibration, dust, drainage, erosion, storm water runoff, and odor, will be temporary. Construction will be limited to between 7:00 a.m. and 7:00 p.m. Monday through Friday, and the Project applicant will comply with standard permit conditions, construction Best Management Practices, and regulatory agency requirements. The Project is required to conform with the City's Post-Construction Urban Runoff Management Policy (Policy 6-29) which requires implementation of Best Management Practices (BMPs) which includes site design measures, source controls and numerically sized Low Impact Development (LID) stormwater treatment measures to minimize stormwater pollutant discharge. The Project also includes standard environmental permit

conditions to reduce and mitigate impacts regarding air quality, dust and emissions control, water quality, and noise. Additionally, the Project is required to adhere to the Mitigation Monitoring and Reporting Program (MMRP) prepared for the Project. Therefore, the Project will not result in significant impacts that will negatively affect adjacent properties.

11. Site Development Permit Findings: Section 20.100.630 of the San José Municipal Code specifies the required findings for the approval of a Site Development Permit.

- a. The Site Development Permit, as approved, is consistent with and will further the policies of the General Plan and applicable specific plans and area development policies.

Analysis: Please refer to Conditional Use Permit and Special Use Permit Finding (a).

- b. The Site Development Permit, as approved, conforms with the Zoning Code and all other provisions of the San José Municipal Code applicable to the Project.

Analysis: Please refer to Conditional Use Permit and Special Use Permit Finding (b).

- c. The Site Development Permit, as approved, is consistent with applicable City Council Policies, or counterbalancing considerations justify the inconsistency.

Analysis: Please refer to Conditional Use Permit and Special Use Permit Finding (c).

- d. The interrelationship between the orientation, location, and elevation of proposed buildings and structures and other uses on-site are mutually compatible and aesthetically harmonious.

Analysis: The two data center buildings will be surrounded by standby backup generators. The associated utility structures will be located to the northwest of the data center buildings, facilitating the operation of the data centers. Therefore, the buildings and structures on site are mutually compatible.

- e. The orientation, location and elevation of the proposed buildings and structures and other uses on the site are compatible with and are aesthetically harmonious with adjacent development or the character of the neighborhood.

Analysis: The two data center buildings will be located closest to Coyote Creek. The associated utility structures will be located northwest of the data center buildings, further from Coyote Creek. Landscaping will be provided along the eastern property line, screening the data center buildings and utility structures from Coyote Creek. Therefore, the Project will be compatible with the property's surroundings.

- f. The environmental impacts of the Project, including, but not limited to noise, vibration, dust, drainage, erosion, storm water runoff, and odor which, even if insignificant for purposes of the California Environmental Quality Act (CEQA), will not have an unacceptable negative affect on adjacent property or properties.

Analysis: Please refer to Conditional Use Permit and Special Use Permit Finding (g).

- g. Landscaping, irrigation systems, walls, and fences, features to conceal outdoor activities, exterior heating, ventilating, plumbing, utility, and trash facilities are sufficient to maintain or upgrade the appearance of the neighborhood.

Analysis: Landscaping will be provided along the eastern property line, between the data center buildings and Coyote Creek. The new landscaping will provide a sufficient buffer to screen the data center buildings from Coyote Creek.

- h. Traffic access, pedestrian access and parking are adequate.

Analysis: Vehicular access will be provided from McCarthy Lane, which connects to State Route 237 via Zanker Road, and will be extended as part of the Project. The Project includes street improvements to Zanker Road and the extension of McCarthy Lane to facilitate vehicle traffic from the data center use. The improvements to Zanker Road include sidewalks and bike lanes.

- 12. Development Exception Findings:** Chapter 20.100 Part 11 of the San Jose Municipal Code establishes evaluation criteria for issuance of a permit to allow for an exception to the off-street parking and loading requirements and regulations of this title. Pursuant to Section 20.100.1320.C, neither the Planning Commission, nor the City Council on appeal, shall grant a development exception unless it is found that the exception, subject to such conditions as may be imposed thereon, will not impair:

- a. The utility or value of adjacent property or the general welfare of the neighborhood; and
- b. The integrity and character of the zoning district in which the subject property is situated.

Analysis: With a Development Exception, the Project will be allowed to provide 63 fewer vehicle parking spaces on site. A Parking Study prepared by Hexagon Transportation Consultants, Inc. dated August 18, 2017 analyzed two existing data centers in Santa Clara. The Parking Study concluded that both data centers had a peak demand of 0.23 parking space per 1,000 square feet of floor area. Based on this observed peak parking demand rate, the Project will need to provide 92 vehicle parking spaces.

The Project will provide 122 vehicle parking spaces, which will exceed the Parking Study's calculated peak parking demand by 30 parking spaces. Based on the findings of the Parking Study, the parking reduction will not impair the utility or value of adjacent property, the general welfare of the neighborhood, or the integrity and character of the subject property's zoning district.

- 13. Demolition Permit Findings:** Chapter 20.80 Part 5 of the San José Municipal Code establishes evaluation criteria for the issuance of a permit to allow demolition.

- a. The failure to approve the permit would result in the creation or continued existence of a nuisance, blight, or dangerous condition; and
- b. The failure to approve the permit would jeopardize public health, safety, or welfare; and
- c. The approval of the permit should facilitate a Project that is compatible with the surrounding neighborhood; and
- d. The approval of the permit should maintain the supply of existing housing stock in the City of San José; and
- e. Both inventoried and non-inventoried buildings, sites and districts of historical significance should be preserved to the maximum extent feasible; and

- f. Rehabilitation or reuse of the existing building would not be feasible; and
- g. The demolition, removal, or relocation of the building without an approved replacement building should not have an adverse impact on the surrounding neighborhood.

Analysis: The Project includes the relocation of the existing approximately 1,440-square-foot Valley Water Purification Visitors Center, located on the Valley Water Lands, along McCarthy Lane, on land owned by the City and leased by Valley Water. The approval of the demolition permit will not result in the creation or continued existence of a nuisance, blight, or dangerous condition, as the relocation of the building (and related improvements) will allow for McCarthy Lane to be extended to serve the Project's vehicle traffic. The failure to approve the demolition permit will not jeopardize public health, safety, or welfare, as the rest of the Valley Water facility will continue its current operations. Furthermore, as previously discussed, the Project is consistent with all applicable General Plan goals and policies, zoning code requirements, applicable city council policies, and design standards. The relocated Visitors Center will be located on the same parcel within the existing larger Valley Water facility and therefore will be compatible with the surrounding site. The approval of the demolition permit will not impact the existing housing stock in the City. The analysis in the CEQA addendum found that the existing Visitors Center is not of historical significance and relocation of the existing building (along with the related relocated utility improvements and new surface parking lot) is necessary to allow the extension of McCarthy Lane.

14. Tree Removal Permit Findings: Chapter 13.32 of the San José Municipal Code establishes at least one of the following required findings must be made for issuance of a Live Tree Removal Permit for ordinance-size trees.

- a. That the tree affected is of a size, type, and condition, and is in such a location in such surroundings, that its removal would not significantly frustrate the purposes of this chapter as set forth in Section 13.32.010; or
- b. That the location of the tree with respect to a proposed improvement unreasonably restricts the economic development of the parcel in question; or
- c. That the condition of the tree with respect to disease, danger of falling, proximity to an existing or proposed structure, and/or interference with utility services, is such that preservation of the public health or safety requires its removal.

Analysis: The Project includes the removal of 79 trees, including 35 ordinance-sized and 44 non- ordinance-sized trees. An Arborist Report prepared by Dave Laczko, certified arborist, dated December 13, 2021 assessed the trees to be removed. The trees to be removed are located within the footprint of the data center buildings, associated utility structures and related improvements, including surface parking areas, therefore retention of the trees will unreasonably restrict the economic development of the parcel in question. The Project is subject to the following tree replacement ratios as shown in the table below.

Tree Replacement Ratios				
Circumference of Tree to be Removed	Type of Tree to be Removed			Minimum Size of Each Replacement Tree
	Native	Non-Native	Orchard	
38 inches or more	5:1	4:1	3:1	15-gallon
19 up to 38 inches	3:1	2:1	none	15-gallon
Less than 19 inches	1:1	1:1	none	15-gallon
x:x = tree replacement to tree loss ratio Note: Trees greater than or equal to 38-inch circumference shall not be removed unless a Tree Removal Permit, or equivalent, has been approved for the removal of such trees. For Multi-Family residential, Commercial, and Industrial properties, a permit is required for removal of trees of any size. A 38-inch tree equals 12.1 inches in diameter. A 24-inch box tree = two 15-gallon trees.				

Analysis: Thirty-two trees are native species, and 47 trees are non-native species. Fourteen trees require replacement at a 5:1 ratio, 21 trees require replacement at a 4:1 ratio, 15 trees require replacement at a 3:1 ratio, 22 trees require replacement at a 2:1 ratio, and 7 trees require replacement at a 1:1 ratio. Based on the requirements listed in the table above, the removal of the 79 trees requires the replacement of either 250 15-gallon trees or 125 24-inch box trees. The Project will plant a total of 273 15-gallon trees, meeting the requirement.

In accordance with the findings set forth above, a Conditional Use Permit and Development Exception to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth are hereby **granted**. This Planning Commission expressly declares that it will not have approved this Permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:

1. **Acceptance of Permit.** Per San José Municipal Code Section 20.100.290(B), should the Permittee fail to file a timely and valid appeal of this Conditional Use Permit ("Permit") within the applicable appeal period, such inaction by the Permittee shall be deemed to constitute all of the following on behalf of the Permittee:
 - a. Acceptance of the Permit by the Permittee; and
 - b. Agreement by the Permittee to be bound by, to comply with, and to do all things required of or by the Permittee pursuant to all the terms, provisions, and conditions of this Permit or other approval and the provisions of Title 20 of the San José Municipal Code applicable to such Permit.

2. **Permit Expiration.** This Permit shall automatically expire two (2) years from and after the date of issuance hereof by the Planning Commission, if within such time period, the proposed use of the site or the construction of buildings (if a Building Permit is required) has not commenced, pursuant to and in accordance with the provision of this Permit. The date of issuance is the date this Permit is approved by the Planning Commission. However, the Director of Planning may approve a Permit Adjustment/Amendment to extend the validity of this Permit in accordance with Title 20. The Permit Adjustment/Amendment must be approved prior to the expiration of this Permit.
3. **Building Permit/Certificate of Occupancy.** Procurement of a Building Permit and/or Certificate of Occupancy from the Building Official for the structures described or contemplated under this Permit shall be deemed acceptance of all conditions specified in this Permit and the Permittee's agreement to fully comply with all of said conditions. No change in the character of occupancy or change to a different group of occupancies as described in the Building Code shall be made without first obtaining a Certificate of Occupancy from the Building Official, as required under San José Municipal Code Section 24.02.610, and any such change in occupancy must comply with all other applicable local and state laws.
4. **Sewage Treatment Demand.** Pursuant to Chapter 15.12 of Title 15 of the San José Municipal Code, acceptance of this Permit by Permittee shall constitute acknowledgement of receipt of notice by Permittee that (1) no vested right to a Building Permit shall accrue as the result of the granting of this Permit when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José - Santa Clara Regional Wastewater Facility represented by approved land uses in the area served by said Facility will cause the total sewage treatment demand to meet or exceed the capacity of San José - Santa Clara Regional Wastewater Facility to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region; (2) substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority; (3) issuance of a Building Permit to implement this Permit may be suspended, conditioned or denied where the City Manager makes a determination that such action is necessary to remain within the aggregate operational capacity of the sanitary sewer system available to the City of San José or to meet the discharge standards of the sanitary sewer system imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region.
5. **Use Authorization.** Subject to all conditions herein, this Permit allows the construction and operation of data center and ancillary office uses and related on- and off-site improvements, consisting of two single-story data center buildings totaling approximately 397,205 square feet, an associated approximately 98,600-square-foot electrical substation, an approximately 1,600-square-foot sanitary sewer pump station, an approximately 3,000-square-foot storm drain pump station, an approximately 54,400-square-foot water storage tank, and 226 standby backup generators, the removal of 79 trees (35 ordinance-size and 44 non-ordinance-size) and the relocation of an approximately 1,440-square-foot Valley Water Purification Visitors Center (along with the related relocation of utility lines and installation of a new surface parking lot), all as further detailed in the Approved Plans. This Permit also allows a parking reduction of 63 vehicle parking spaces pursuant to the associated Development Exception.

6. **Conformance to Plans.** The development of the site and all associated development and improvements shall conform to the approved CP23-016 plans entitled, "Microsoft Corporation SJC02 Data Center," dated February 18, 2022, and last revised January 23, 2025, on file with the Department of Planning, Building and Code Enforcement, as may be amended, and approved by the Director of Planning, Building and Code Enforcement, and shall conform to the San José Building Code (San José Municipal Code, Title 24). The plans are referred to herein as the "Approved Plans" or the "Approved Plan Set."
7. **Demolition Permit.** A demolition permit may be issued for the relocation of the approximately 1,440-square-foot Valley Water Purification Visitors Center only upon the submittal of a complete Public Works Grading Permit application or the submittal of a complete Building Permit application for new construction.
8. **Nuisance.** This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City of San José.
9. **Compliance with Local, State, and Federal Laws.** The subject use shall be conducted in full compliance with all local, state, and federal laws.
10. **Discretionary Review.** The City maintains the right of discretionary review of requests to alter or amend structures, conditions, or restrictions of this Permit incorporated by reference in accordance with Chapter 20.100 of the San José Municipal Code.
11. **Refuse.** All trash and refuse storage areas shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering into the trash or refuse container(s). Trash areas shall be maintained in a manner to discourage illegal dumping.
12. **Outdoor Storage.** No outdoor storage during operation is allowed or permitted unless designated on the Approved Plan Set.
13. **Utilities.** Except for the substation (which will be above-ground), all new on-site telephone, electrical, and other service facilities shall be placed underground as set forth in the Approved Plan Set.
14. **Anti-Graffiti.** All graffiti shall be removed from buildings, signs, and wall surfaces, including job sites for Projects under construction, within 48 hours of defacement.
15. **Anti-Litter.** The site and surrounding area shall be maintained free of litter, refuse, and debris. Cleaning shall include keeping all publicly used areas free of litter, trash, cigarette butts, and garbage.
16. **No Sign Approval.** Any signage shown on the Approved Plan Set are conceptual only. No signs are approved at this time. Any signs shall be subject to review and approval by the Director of Planning, Building and Code Enforcement through a subsequent Permit Adjustment.
17. **Building and Property Maintenance.** The data center site shall be maintained in good visual and functional condition. This shall include, but not be limited to, all exterior elements of the buildings such as paint, roof, paving, signs, lighting, and landscaping.
18. **Required Parking.** This Project shall conform to the vehicular, motorcycle, and bicycle parking requirements as applicable in the Zoning Ordinance, as amended. Any change to the

parking requires the issuance of a Permit Adjustment or Amendment to the satisfaction of the Director of Planning.

19. **Mechanical Equipment.** The location and type of mechanical equipment shall be as shown and screened as indicated on the Approved Plans. Changes to the mechanical equipment require the issuance of a Permit Adjustment or Amendment to the satisfaction of the Director of Planning, Building, and Code Enforcement.
20. **Generators.** This Permit includes the approval of one 0.5-megawatt administrative emergency diesel generator, one 1.5-megawatt administrative emergency diesel generator, and 224 0.45-megawatt natural gas emergency generators throughout the data center site. The required noise standards and air quality standards have been met according to Title 20 of the San Jose Municipal Code. Any modification or substitution requires a Permit Adjustment or Amendment as required by Title 20.
21. **No Extended Construction Hours.** This Permit does not allow any construction activity on a site located within 500 feet of a residential unit before 7:00 a.m. or after 7:00 p.m., Monday through Friday, or at any time on weekends.
22. **Construction Disturbance Coordinator.** Rules and regulations pertaining to all construction activities and limitations identified in this Permit, along with the name and telephone number of a Permittee-appointed disturbance coordinator, shall be posted in a prominent location at the entrance to the job site.
23. **Timing of Tree Removals.** Trees that are proposed for removal to accommodate new development on the data center site shall not be removed until the related complete Public Works Grading Permit Application or Building Permit Application has been filed.
24. **Tree Protection Standards.** The Permittee shall maintain any trees and other vegetation shown to be retained in this Project and as noted on the Approved Plan Set. Maintenance shall include pruning and watering as necessary and protection from construction damage. Prior to the removal of any tree on the data center site, all trees to be preserved shall be permanently identified by metal numbered tags. Prior to issuance of the Grading Permit or removal of any tree on the data center site, all such trees to be saved shall be protected by chain link fencing, or other fencing type approved by the Director of Planning. Said fencing shall be installed at the dripline of the tree in all cases and shall remain during construction. No storage of construction materials, landscape materials, vehicles or construction activities shall occur within the fenced tree protection area. Any root pruning required for construction purposes shall receive prior review and approval and shall be supervised by the consulting licensed arborist. Fencing and signage shall be maintained by the Permittee to prevent disturbances during the full length of the construction period that could potentially disrupt the habitat or trees.
25. **Tree Replacement Enforcement.** Failure to plant trees in conformance with the Approved Plan Set may be subject to in-lieu fees for trees not planted.
26. **Verification of Payment and/or Planting of Replacement Tree(s).** After payment of the in-lieu fee (if applicable) and/or the planting of required replacement trees on-site, the Permittee shall provide appropriate evidence such as, but not limited to, photographs and/or receipts to the Planning Project Manager to verify compliance with the mitigation

requirements. Such evidence shall be uploaded to www.sjpermits.org using these instructions: (1) how to set up an account: <https://www.sanjoseca.gov/business/development-services-permit-center/online-permits-at-sjpermits-org>, and (2) how to upload: <https://www.sanjoseca.gov/home/showpublisheddocument/88853/638088605255430000>. Such evidence shall also be e-mailed to the Planning Project Manager and labeled File Nos. CP23-016 & V24-001.

27. **Replacement Tree Failure.** On-site tree replacement trees that fail within three years after planting shall be promptly replaced.
28. **Landscaping.** Planting and irrigation are to be provided by the Permittee, as indicated, on the final Approved Plans.
29. **Irrigation Standards.** Irrigation shall be installed in accordance with Part 3 of Chapter 15.11 of Title 15 of the San José Municipal Code, Water Efficient Landscape Standards for New and Rehabilitated Landscaping, the City of San José Landscape and Irrigation Guidelines and the Zonal Irrigation Plan in the Approved Plans. The design of the system shall be approved and stamped by a California Registered Landscape Architect.
30. **Certification.** Pursuant to San José Municipal Code, Section 15.11.1050 certificates of substantial completion for landscape and irrigation installation shall be completed by a licensed or certified professional and included on the Landscape Sheets in the Approved Plan Set submitted to the Department of Planning, Building and Code Enforcement prior to approval of the final inspection of the Project.
31. **Replacement Landscaping.** All landscaping removed with the construction of the Project shall be installed in conformance with the Approved Plan. All landscaped areas shall be automatically irrigated to the extent shown in the Approved Plan Set.
32. **Green Building Requirements.** This development is subject to the City's Green Building Ordinance for Private Sector New Construction as set forth in San José Municipal Code Section 17.84. Prior to the issuance of any shell permits, or complete building permits, for the construction of buildings approved through the scope of this Permit, the Permittee shall pay a Green Building Refundable Deposit. In order to receive a refund of the deposit, the Project must achieve the minimum requirements as set forth in Municipal Code Section 17.84. The request for the refund of the Green Building Deposit together with evidence demonstrating the achievement of the green building standards indicated in Municipal Code Section 17.84 shall be submitted within a year after the building permit expires or becomes final, unless a request for an extension is submitted to the Director of Planning, Building, and Code Enforcement in accordance with Section 17.84.305(D) of the Municipal Code.
33. **Building Division Clearance for Issuing Permits:** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:
 - a. *Construction Plans.* This permit File Nos. CP23-016 & V24-001 shall be printed on all construction plans submitted to the Building Division.
 - b. *Americans with Disabilities Act.* The Permittee shall provide appropriate access as required by the Americans with Disabilities Act (ADA).

- c. *Construction Plan Conformance.* A Project construction plan conformance review by the Planning Division is required. Planning Division review for Project conformance begins with the initial plan check submittal to the Building Division. Prior to any Building Permit issuance, Building Permit plans shall conform to the approved Planning Permits and applicable conditions.
 - d. *Other.* Such other requirements as may be specified by the Chief Building Official.
34. **Recycling.** Scrap construction and demolition material shall be recycled. Integrated Waste Management staff at (408) 535-8550 can provide assistance on how to recycle construction and demolition debris from the Project, including information on available haulers and processors.
35. **South Bay Water Recycling (SBWR).** The development is adjacent to an existing recycled water pipeline and therefore shall conform to Chapters 15.10 and 15.11 of the San José Municipal Code. These chapters require all new and restored landscaping for Projects that require a development permit from the City to be designed and constructed to receive recycled water. All irrigation systems shall be metered separately from the potable water supply system, shall have no on-site cross-connections to the potable water supply, and shall meet all other legal requirements necessary to allow for recycled water use. The use of potable water to irrigate any outdoor landscaping plumbed for recycled water where recycled water is available to the property is prohibited.
- a. The design and construction of the irrigation system shall conform to SBWR Rules and Regulations and shall be submitted to and approved by SBWR. Standard details, specifications, and notes are available online at www.sanjoseca.gov/sbwr or by calling (408) 793-1865. The Permittee shall also consider using recycled water in lieu of drinking water for other non-potable applications such as toilet flushing, commercial laundry, and building cooling. Refer to SBWR's website for a complete list of approved uses of recycled water. Questions regarding recycled water use should be directed to SBWR staff at the above number.
36. **Bureau of Fire Department Clearance for Issuing Permits:** Prior to the issuance of any Building Permit, the Project must comply with the California Fire Code as adopted by the City.
37. **Conformance to MMRP.** This Project shall conform to all applicable requirements of the Mitigation Monitoring and Reporting Program approved for this development.
38. **Standard Environmental Permit Conditions.**
- a. **Biological Resources.**
 - i. **Santa Clara Valley Habitat Plan.** The Project may be subject to applicable SCVHP conditions and fees (including the nitrogen deposition fee) prior to issuance of any grading permits. The Permittee shall submit the Santa Clara Valley Habitat Plan Coverage Screening Form (<https://www.scv-habitatagency.org/DocumentCenter/View/151/Coverage-Screening-Form?bidId=>) to the Director of Planning, Building and Code Enforcement (PBCE) or the Director's designee for approval and payment of all applicable fees prior to the issuance of a grading permit. The Habitat Plan and supporting materials can be viewed at <https://scv-habitatagency.org/178/Santa-Clara-Valley-Habitat-Plan>.

- ii. **Tree Replacement.** Trees removed for the Project shall be replaced at ratios required by the City, as stated in Table 4 below, as amended.

Table 4: Tree Replacement Ratios				
Circumference of Tree to be Removed	Type of Tree to be Removed			Minimum Size of Each Replacement Tree
	Native	Non-Native	Orchard	
38 inches or more	5:1	4:1	3:1	15-gallon
19 up to 38 inches	3:1	2:1	none	15-gallon
Less than 19 inches	1:1	1:1	none	15-gallon

x:x = tree replacement to tree loss ratio
 Note: Trees greater than or equal to 38-inch circumference shall not be removed unless a Tree Removal Permit, or equivalent, has been approved for the removal of such trees. For Multi-Family residential, Commercial, and Industrial properties, a permit is required for removal of trees of any size.
 A 38-inch tree equals 12.1 inches in diameter.
 A 24-inch box tree = two 15-gallon trees.

- a) Seventy-nine trees will be removed from the site. Fourteen trees require replacement at a 5:1 ratio, 21 trees require replacement at a 4:1 ratio, 15 trees require replacement at a 3:1 ratio, 22 trees require replacement at a 2:1 ratio, and 7 trees require replacement at a 1:1 ratio. In total, 250 15-gallon replacement trees are required. Two hundred seventy-three 15-gallon trees will be planted on-site, meeting the requirement.

b. **Geology and Soils.**

Seismic Hazards

- i. To avoid or minimize potential damage from seismic shaking, the Project shall be constructed using standard engineering and seismic safety design techniques. Building design and construction at the site shall be completed in conformance with the recommendations of an approved geotechnical investigation. The report shall be reviewed and approved by the City of San José Department of Public Works as part of the building permit review and issuance process. The buildings shall meet the requirements of applicable Building and Fire Codes as adopted or updated by the City. The Project shall be designed to withstand soil hazards identified on the site and the Project shall be designed to reduce the risk to life or property on site and off site to the extent feasible and in compliance with the Building Code.
- ii. Stockpiles and excavated soils shall be covered with secured tarps or plastic sheeting.
- iii. Ditches shall be installed to divert runoff around excavations and graded areas if necessary.
- iv. The Project shall be constructed in accordance with the standard engineering practices in the California Building Code, as adopted by the City of San José. A grading permit from the San José Department of Public Works shall be obtained prior

to the issuance of a Public Works clearance. These standard practices would ensure that the future building on the site is designed to properly account for soils-related hazards on the site.

- v. If dewatering is needed, the design-level geotechnical investigations to be prepared for individual future development Projects shall evaluate the underlying sediments and determine the potential for settlements to occur. If it is determined that unacceptable settlements may occur, then alternative groundwater control systems shall be required.
- c. **Construction-related Water Quality.**
- i. Burlap bags filled with drain rock shall be installed around storm drains to route sediment and other debris away from the drains.
 - ii. Earthmoving or other dust-producing activities shall be suspended during periods of high winds.
 - iii. All exposed or disturbed soil surfaces shall be watered at least twice daily to control dust as necessary.
 - iv. Stockpiles of soil or other materials that can be blown by the wind shall be watered or covered.
 - v. All trucks hauling soil, sand, and other loose materials shall be covered and all trucks shall maintain at least two feet of freeboard.
 - vi. All paved access roads, parking areas, staging areas and residential streets adjacent to the construction sites shall be swept daily (with water sweepers).
 - vii. Vegetation in disturbed areas shall be replanted as quickly as possible.
 - viii. All unpaved entrances to the data center site shall be filled with rock to remove mud from tires prior to entering City streets. A tire wash system shall be installed if requested by the City.
 - ix. The Permittee shall comply with the City of San José Grading Ordinance, including implementing erosion and dust control during site preparation and with the City of San José Zoning Ordinance requirements for keeping adjacent streets free of dirt and mud during construction.
- d. **Construction-Related Noise.** Noise minimization measures include, but are not limited to, the following:
- i. Pile Driving is prohibited.
 - ii. Limit construction to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday for any on-site or off-site work within 500 feet of any residential unit. Construction outside of these hours may be approved through a development permit based on a site-specific "construction noise mitigation plan" and a finding by the Director of Planning, Building and Code Enforcement that the construction noise mitigation plan is adequate to prevent noise disturbance of affected residential use.

- iii. Construct solid plywood fences around ground level construction sites adjacent to operational businesses, residences, or other noise-sensitive land uses.
 - iv. Equip all internal combustion engine-driven equipment with intake and exhaust mufflers that are in good condition and appropriate for the equipment.
 - v. Prohibit unnecessary idling of internal combustion engines.
 - vi. Locate stationary noise-generating equipment such as air compressors or portable power generators as far as possible from sensitive receptors. Construct temporary noise barriers to screen stationary noise-generating equipment when located near adjoining sensitive land uses.
 - vii. Utilize “quiet” air compressors and other stationary noise sources where technology exists.
 - viii. Control noise from construction workers’ radios to a point where they are not audible at existing residences bordering the Project site.
 - ix. Notify all adjacent business, residences, and other noise-sensitive land uses of the construction schedule, in writing, and provide a written schedule of “noisy” construction activities to the adjacent land uses and nearby residences.
 - x. If complaints are received or excessive noise levels cannot be reduced using the measures above, erect a temporary noise control blanket barrier along surrounding building facades that face the construction sites.
 - xi. Designate a “disturbance coordinator” who shall be responsible for responding to any complaints about construction noise. The disturbance coordinator shall determine the cause of the noise complaint (e.g., bad muffler, etc.) and shall require that reasonable measures be implemented to correct the problem. Conspicuously post a telephone number for the disturbance coordinator at the construction site and include it in the notice sent to neighbors regarding the construction schedule.
39. **Public Works Clearance for Building Permit(s) or Map Approval:** Prior to the approval of the Tract or Parcel Map (if applicable) by the Director of Public Works, or the issuance of Building permits, whichever occurs first, the Permittee will be required to have satisfied all of the following Public Works conditions. The Permittee is strongly advised to apply for any necessary Public Works permits prior to applying for Building permits. Standard review timelines and submittal instructions for Public Works permits may be found at the following: <http://www.sanjoseca.gov/devresources>.
- a. **Construction Agreement:** The public improvements conditioned as part of this permit require the execution of a Construction Agreement that guarantees the completion of the public improvements to the satisfaction of the Director of Public Works. This agreement includes privately engineered plans, bonds, insurance, a completion deposit, and engineering and inspection fees.
 - b. **Transportation:** A Transportation Analysis (TA) has been completed for this Project based on a 34 net AM peak-hour trips and 28 net PM peak hour trips. See separate Traffic Memo dated March 19, 2025 for additional information. The following conditions shall be implemented.

- i. Implement the following multimodal physical mitigation measures to reduce the Project employee VMT and partially mitigate the VMT impact:
 - 1) Traffic Calming Measures
 - (a) Construct a raised median along Zanker Road between McCarthy Lane and the SR-237 westbound off-ramp, per the City's Zanker Road plan line design.
 - 2) Pedestrian Network Improvements
 - (a) Construct sidewalks on both sides of Zanker Road, from SR-237 to McCarthy Lane to improve pedestrian connectivity.
 - 3) Install a new signal with crosswalks and sidewalks at the intersection of Zanker Road and McCarthy Lane.
 - 4) Bike Access Improvements
 - (a) Construct a Class I Bikeway Trail extension along the east side of Zanker Road.
 - (b) Construct a Class IV protected bike lane on the west side of Zanker Road, connecting the existing SR-237 Bikeway Trail segment with McCarthy Lane.
 - (c) Install bicycle racks near the administrative buildings and install wayfinding signage and bike route markings on the site's internal roadway network.
 - 5) Limit Parking Supply
 - (a) Provide a total of 122 parking spaces, which is 63 fewer spaces than the City of San Jose Municipal Code requires.
 - 6) Provide End of Trip Bike Facilities
 - (a) Provide a total of 34 bicycle spaces as bicycle racks.
- ii. Refer to the approved TDM Plan dated January 1, 2025 for the following measures to fully mitigate the VMT impact:
 - 1) Commute Trip Reduction Marketing and Education
 - (a) Implement a marketing campaign that encourages active modes of transportation with an expected participation rate of 100% of Project employees.
 - 2) On-site TDM Coordinator
 - (a) Include an annual monitoring requirement establishing an average daily trip (ADT) cap of 44 gross AM peak-hour trips and 36 gross PM peak-hour trips. The annual monitoring report must demonstrate the Project is within 10% of the ADT cap and must be prepared by a traffic engineer.
 - (b) If the Project is not in conformance with the trip cap, the Project may add additional TDM measure to meet the trip cap. A follow up report will be required within six months. If the Project is still out of conformance, penalties will be assessed. See Council Policy 5-1.

- iii. Implement additional pavement at the on-site loading docks to provide adequate maneuverability space, as needed, for the CA Legal design vehicle access.
 - iv. Restrict the driveway along Milpitas-Alviso Road to emergency access only after the completion of the Project construction.
 - v. Implement the parking exemption obtained from the City of San Jose Planning Department to allow for a reduction in parking supply from the City's Municipal Code requirements as set forth in the approved Conditional Use Permit.
- c. **Grading/Geology.**
- i. A grading permit is required prior to the issuance of a Public Works Clearance.
 - ii. All on-site storm drainage conveyance facilities and earth retaining structures 4 feet in height or greater (top of wall to bottom of footing) or is being surcharged (slope of 3:1 or greater abutting the wall) shall be reviewed and approved under Public Works grading and drainage permit prior to the issuance of Public Works Clearance. The drainage plan should include all underground pipes, building drains, area drains and inlets. The Project shall provide storm drainage calculations that adhere to the latest California Plumbing Code as adopted under the City of San Jose Municipal Code Section 24.04.100 or submit a stamped and signed engineered design alternative for Public Works discretionary approval and must be designed to convey a 10-year storm event.
 - iii. If the Project proposes to haul more than 10,000 cubic yards of cut/fill to or from the Project site, a haul route permit is required. Prior to issuance of a grading permit, contact the Department of Transportation at (408) 535-3850 for more information concerning the requirements for obtaining this permit.
 - iv. Because this Project involves a land disturbance of one or more acres, the Permittee is required to submit a Notice of Intent to the State Water Resources Control Board and to prepare a Storm Water Pollution Prevention Plan (SWPPP) for controlling storm water discharges associated with construction activity. Copies of these documents must be submitted to the City Project Engineer prior to issuance of a grading permit.
 - v. The Project site is within the State of California Seismic Hazard Zone. A geotechnical investigation report addressing the potential hazard of liquefaction must be submitted to, reviewed and approved by the City Geologist prior to issuance of a grading permit or Public Works Clearance. The report should also include, but not limited to: foundation, earthwork, utility trenching, retaining and drainage recommendations. The investigation should be consistent with the guidelines published by the State of California (CGS Special Publication 117A) and the Southern California Earthquake Center (SCEC, 1999). A recommended depth of 50 feet should be explored and evaluated in the investigation.
- d. **Stormwater Runoff Pollution Control Measures:** This Project must comply with the City's Post-Construction Urban Runoff Management Policy (Policy 6-29) which requires implementation of Best Management Practices (BMPs) which includes site design

measures, source controls and numerically-sized Low Impact Development (LID) stormwater treatment measures to minimize stormwater pollutant discharges.

- i. The Project's Stormwater Control Plan and numeric sizing calculations have been reviewed and this Project shall be in conformance with City Policy 6-29.
 - ii. Stormwater treatment planters in the public right-of-way and onsite treatment planters subject to vehicular loading/surcharge will require structural calculations and drawings at implementation review.
 - iii. Final inspection and maintenance information on the post-construction treatment control measures must be submitted prior to issuance of a Public Works Clearance.
 - iv. A post construction Final Report is required by the Director of Public Works from a Civil Engineer retained by the owner to observe the installation of the BMPs and stating that all post construction storm water pollution control BMPs have been installed as indicated in the approved plans and all significant changes have been reviewed and approved in advance by the Department of Public Works.
- e. **Stormwater Peak Flow Control Measures:** The Project is located in a non-Hydromodification Management area and is not required to comply with the City's Post-Construction Hydromodification Management Policy (Council Policy 8-14).
- f. **Flood Zone X:** The Project site is not within a designated Federal Emergency Management Agency (FEMA) 100-year floodplain. Flood Zone X is an area of moderate or minimal flood hazard. Zone X is used on new and revised maps in place of Zones B and C. There are no City floodplain requirements for Zone X.
- g. **Sewage Fees:** In accordance with City Ordinance all storm sewer area fees, sanitary sewer connection fees, and sewage treatment plant connection fees, less previous credits, are due and payable prior to issuance of Public Works clearance.
- h. **Municipal Water:** In accordance with City Ordinance #23975, Major Water Facilities Fee is due and payable. Contact Ricardo Rubio-Benitez at (408) 335-9864 for further information.
- i. **Undergrounding:** Undergrounding conversion of the overhead utility facilities along the east side of Zanker Road is not required.
- j. **Master Agreement:** A Master Agreement shall be executed with the City of San Jose, which shall encompass all proposed Utility Easements. Such Easements shall be subject to review and coordination with the Department of Public Works prior to the execution of the Master Agreement.
- k. **Environment Assessment of Easement Dedication:** A street easement dedication is required as part of this permit. An environmental assessment of the easement dedication area from an environmental consultant is required prior to recordation of the easement.
- l. **Street Improvements:**
- i. Prior to final occupancy of SJCO2, the following improvements shall be completed:

- 1) Construct Zanker Road widening from approximately 300 feet north of Highway 237 off-ramp to approximately 700 feet north of the McCarthy Lane intersection. The 127-foot (varies) Zanker Road cross section will include four travel lanes (two lanes in each direction). The southbound sidewalk section shall include a six-inch curb, five-foot, six-inch-park strip, five-foot Class IV bikeway, two-foot buffer, six-foot sidewalk, and two-foot shoulder. The northbound sidewalk section shall include a six-inch curb, five-foot, six-inch park strip, six-foot sidewalk, two-foot shoulder, eight-foot Class I bike trail, and two-foot shoulder. The Zanker Road widening shall begin west of the existing PG&E poles. Street configuration of the Zanker Road widening will be coordinated and finalized at the implementation stage.
- 2) Construct a traffic signal at the intersection of Zanker Road/McCarthy Lane.
- ii. Prior to final occupancy of SJCO3, the following improvements shall be completed:
 - 1) Construct Zanker Road improvements from Highway 237 off-ramp to approximately 300 feet north to align with road widening improvements as conditioned above.
 - 2) Reconstruct asphalt pavement and restripe roadway along Alviso-Milpitas Rd. Project frontage.
 - 3) Construct a 26-foot-wide City standard driveway at the Alviso-Milpitas Road Project site access road.
- iii. Permittee shall be responsible to remove, repair, and replace curb, gutter, and sidewalk damaged by the Permittee during construction of the proposed Project.
- iv. Close unused driveway cut(s).
- v. Dedication and improvement of the public streets to the satisfaction of the Director of Public Works.
- vi. Permittee shall be responsible for adjusting existing utility boxes/vaults to grade, locating, and protecting the existing communication conduits (fiber optic and copper) along the Project frontage.
- vii. Repair, overlay, or reconstruction of asphalt pavement may be required. The existing pavement will be evaluated with the street improvement plans and any necessary pavement restoration will be included as part of the final street improvement plans.
- m. **Site Utilization Plan and Revocable Encroachment Permit (Street/Sidewalk Closures):** At the Implementation stage, Permittee shall provide to the Public Works Project Engineer a Site Utilization Plan with the application of a Revocable Encroachment Permit for any proposed sidewalk and lane closures to support the onsite construction activities.
 - i. The following should be included with the Site Utilization Plan and Revocable Permit application, but are not limited to:
 - 1) **Site Utilization Plan and Letter of Intent:** The site utilization plan should provide a detailed plan of the location of the temporary facilities within the boundary of the

construction site. The Letter of Intent should provide a description of operations of the site as well as the reasons for the sidewalk/lane closures and why the activities/uses that are proposed within the Public right-of-way can't occur within the construction site. These include the use of the right of way for temporary facilities and activities such as man lifts, baker tanks, staging area, concrete pumping activities, etc. The letter must also provide a detailed discussion if covered pedestrian walkways are infeasible (ex. swinging loads over the sidewalk are not safe for pedestrians).

- 2) **Multi-Phased Site-Specific Sketches:** These sketches should show the phased closures during the course of construction with a provided timeframe estimate of when each phase would be implemented. These sketches should include the type and location of the work to be accomplished within the right-of-way. The exhibit should show in detail the vehicular and/or pedestrian diversion route that shows the appropriate safety equipment, such as barricades, cones, arrow boards, signage, etc.
- ii. Permittee shall minimize the potential impact to vehicular and pedestrian traffic by:
 - 1) Implementing the closures at the time the onsite activities dictate the need for the closure.
 - 2) Minimizing the closure timeframes to accomplish the onsite tasks and implement the next phase of the closure as outlined in condition i.2 above.
 - iii. If the proposed lane and parking closures are a part of the Revocable Permit Application, Developer shall submit Downtown Lane Closure and Tow Away Permit Applications to DOT. These applications may be obtained at: <http://www.sanjoseca.gov/?navid=1629>. Developer shall contact DOT at (408) 535-8350 for more information concerning the requirements of these applications.
 - n. **Storm:** At the implementation stage, the Permittee shall submit a design/analysis which minimizes the rate of 10-year stormwater flows to the Oakmead pump station to the satisfaction of the Director of Public Works (approximately 50%), i.e. using a restrictor device or installing a weir for metering the flow. Analysis should also include an evaluation of the existing storm sewer system to determine if downstream storm sewer capacity upgrades are necessary.
 - o. **Electrical:** Existing electroliers along the Project frontage will be evaluated at the public improvement stage and any street lighting requirements will be included on the public improvement plans.
 - p. **Street Trees:** Street trees will not be required for this development due to the protected species habitat.
 - q. **Referrals:** This Project should be referred to the California Department of Transportation (CalTrans) and Valley Water.
40. **Revocation, Suspension, Modification.** This Conditional Use Permit and Development Exception may be revoked, suspended, or modified by the Planning Commission, or by the City Council on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after

a noticed hearing in accordance with Part 2, Chapter 20.100, Title 20 of the San José Municipal Code it finds:

- a. A violation of any conditions of the Conditional Use Permit and Development Exception was not abated, corrected, or rectified within the time specified on the notice of violation; or
- b. A violation of any City ordinance or State law was not abated, corrected, or rectified within the time specified on the notice of violation; or
- c. The use as presently conducted creates a nuisance.

In accordance with the findings set forth above, a permit to use the subject property for said purpose specified above is hereby approved.

APPROVED and issued this **9th day of April 2025**, by the following vote:

AYES: TORDILLOS, CANTRELL, BAROCIO, BHANDAL, BICKFORD, LARDINOIS,
OLIVERIO, ROSARIO, YOUNG

NOES: NONE

ABSENT: NONE

ABSTAIN: NONE

Anthony Tordillos
Anthony Tordillos (Apr 11, 2025 13:12 PDT)

ANTHONY TORDILLOS
Chairperson

ATTEST:

Manira Sandhir

MANIRA SANDHIR
Deputy Director for
CHRISTOPHER BURTON,
Director of Planning, Building & Code Enforcement
Planning Commission Secretary

NOTICE TO PARTIES

The time within which judicial review must be sought to review this decision is governed by the provisions of the California Code of Civil Procedure Section 1094.6.

RESOLUTION NO. 25-009

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF SAN JOSE MAKING CERTAIN FINDINGS AS THE RESPONSIBLE AGENCY FOR PURPOSES OF AND PURSUANT TO THE PROVISIONS OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT OF 1970 IN CONNECTION WITH THE APPROVAL OF DISCRETIONARY ACTIONS BY THE CITY NECESSARY FOR THE CONSTRUCTION AND OPERATION OF THE SAN JOSE DATA CENTER PROJECT; ADOPTING AN ADDENDUM TO THE FINAL ENVIRONMENTAL IMPACT REPORT PREPARED AND CERTIFIED BY THE CALIFORNIA ENERGY COMMISSION; AND ADOPTING THE RELATED MITIGATION MONITORING AND REPORTING PROGRAM, IN ACCORDANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

WHEREAS, on July 13, 2022, the California Energy Commission ("CEC"), acting as the Lead Agency under the California Environmental Quality Act ("CEQA"), certified a Final Environmental Impact Report ("EIR") to evaluate the potential environmental effects of the development of the San José Data Center Project ("project"), in compliance with CEQA, the CEQA Guidelines, the Warren-Alquist Act, and California Code of Regulations, Title 20 (Small Power Plant Exemptions); and

WHEREAS, the project includes an approximately 396,914 gross-square-foot data center facility consisting of two single-story buildings, a new 115 kilovolt electrical substation, and two underground 115 kilovolt electrical supply lines approximately 0.2 miles long that would connect the substation to the PG&E Los Esteros Substation, with a maximum electrical load of 99 MW, on a 64.5-acre site located at 1657 Alviso-Milpitas Road, along with supporting roadway improvements and utility infrastructure, which together constitute the "project" under CEQA; and

WHEREAS, the City of San José ("City") considers the certified EIR as final and no longer subject to challenge and further desires to support the CEC with the design and construction of the project; and

WHEREAS, since the Final EIR was certified, modifications to the Final EIR were proposed for the supporting roadway improvements and utility infrastructure included in the project at the behest of the City as a Responsible Agency and local land use agency, and the project applicant also proposed modifications to certain components of the proposed data center facility (which include a pump station, water storage tank, reduced substation footprint, bioretention basins, a 1.5 MW administrative emergency diesel generator, increased soil remediation haul volumes, a prolonged construction schedule, and lighting design measures); and

WHEREAS, the project, including the proposed modifications to the area where the data center would be constructed and operated ("Data Center Site") and the roadway and utility components that would connect and support operations of the proposed data center ("Supporting Infrastructure Improvement Areas"), may be referred to herein as the "Modified Project" or the "Modified Project Site;" and

WHEREAS, CEQA Guidelines Section 15162 provides that when an EIR has been certified or a Negative Declaration adopted for a project, no subsequent EIR shall be prepared for that project unless the Lead Agency (or Responsible Agency, as applicable) determines that substantial changes to the project occur that will require major revisions to the EIR or Negative Declaration, or that new information which was not previously known or studied indicates that significant impacts on the environment may arise from the development of the revised project; and

WHEREAS, the lead agency (or Responsible Agency, as applicable) shall prepare an addendum tiering from a previously certified EIR if some changes or additions are necessary, but none of the conditions described in CEQA Guidelines Section 15162 calling for preparation of a subsequent EIR or Negative Declaration have occurred, and

an addendum to the San José Data Center Project Final EIR, pursuant to CEQA Guidelines Section 15164, has appropriately been prepared ("Addendum"); and

WHEREAS, the City of San José, acting as a Responsible Agency under CEQA, prepared an Addendum to the San José Data Center Project Final EIR which evaluated the environmental impacts of the extension of McCarthy Lane, modifications to the Santa Clara Valley Water Purification Center Visitor Center, widening of Zanker Road, construction of new multimodal infrastructure, construction of new utility lines, installation of pump stations, modifications to a water storage tank along with substation and bioretention basins, upsizing of an administrative emergency diesel generator, increase in soil remediation hauling, extension of the construction schedule, use of a larger construction staging area, and commitment to lighting design measures; and

WHEREAS, the Addendum concluded that implementation of the project could result in certain significant effects on the environment and identified mitigation measures that would reduce those significant effects to a less than significant level; and

WHEREAS, the Addendum concluded that implementation of the project would not result in new or more severe significant environmental impacts not considered in the prior certified Final EIR; and

WHEREAS, the Addendum concluded that implementation of the project would not result in any substantial increase in the severity of previously identified significant effects in the prior certified Final EIR; and

WHEREAS, the Addendum concluded that implementation of the project would not result in any new or more severe significant environmental impacts that will require major revisions to the prior certified Final EIR; and

WHEREAS, the Addendum concluded that implementation of the project would not alter one or more significant effects discussed in the prior certified Final EIR due to substantial new information or information of substantial importance; and

WHEREAS, the City will be considering proposed discretionary actions necessary to support the implementation of the project within its jurisdiction, including but not limited to the approval of a Conditional Use Permit for the project; and

WHEREAS, approval of the project would constitute a project under the provisions of CEQA of 1970, together with related State and local implementation guidelines and policies promulgated thereunder, all as amended to date (collectively, "CEQA"); and

WHEREAS, whenever a Responsible Agency approves a project requiring the implementation of measures to mitigate or avoid significant effects on the environment, CEQA also requires a Responsible Agency to adopt a mitigation monitoring and reporting program ("Mitigation Monitoring and Reporting Program") to ensure compliance with the mitigation measures during project implementation, and such a Mitigation Monitoring and Reporting Program has been prepared for the project for consideration by the decision-maker of the City as the Responsible Agency for the project; and

WHEREAS, prior to approving discretionary actions necessary to support the implementation of the project within its jurisdiction, the Planning Commission, deemed the decision-maker of the City as the Responsible Agency under CEQA, desires to make certain findings pursuant to Title 14 of the California Code of Regulations, Sections 15091 and 15096, promulgated under CEQA in connection with the reasonably foreseeable discretionary actions to be considered and taken by the City in connection with the implementation of the project within the City's jurisdiction;

NOW, THEREFORE, BE IT RESOLVED BY THE PLANNING COMMISSION OF THE CITY OF SAN JOSE:

1. That the above recitals are true and correct; and

2. That the City has reviewed the information contained in the Final EIR that is relevant to its approval of discretionary actions within the City's jurisdiction necessary for City support of the design and construction of the project as described in the Final EIR; and
3. That the City has reviewed the CEQA Findings, and the Planning Commission hereby determines and concludes all of the following:
 - a. The CEC has identified, disclosed and adopted the mitigation measures recommended in the Final EIR; and
 - b. The City retains its responsibility for mitigating or avoiding only the direct or indirect environmental effects of those parts of the project which the City decides to implement, finance, or approve; and
 - c. The Planning Commission has reviewed and considered the Final EIR together with the related CEQA Findings and determines that the information and analyses contained in the Final EIR, together with the related CEQA Findings, are adequate for its use as a decision-making body for a responsible agency and for its consideration of discretionary actions necessary to implement the project within its jurisdiction; and
 - d. Approvals of the discretionary actions within the City are within the scope of the activities described and evaluated in the Final EIR; and
 - e. Since the Final EIR was finalized there have been no substantial changes to the project and no substantial changes in project circumstances that would require major revisions to the Final EIR due to the involvement of new significant environmental effects or an increase in the severity of previously identified significant impacts, and there is no new information of substantial importance that would change the conclusions set forth in the Final EIR; and
 - f. The City has not identified any feasible alternative or additional feasible mitigation measures within its powers that would substantially lessen or avoid any significant effect that the Project would have on the environment; and
 - g. The Addendum concluded that implementation of the Modified Project would not result in new or more severe significant impacts than those analyzed in the Final EIR and that minor revisions have been made to the mitigation measures to provide clarity, and

4. Therefore, based upon all of the foregoing, the City, as a responsible agency under CEQA, hereby approves the CEC's CEQA findings for the project as its own findings under CEQA to the fullest possible extent that said CEQA findings are relevant to City's decision to approve discretionary actions necessary to implement the project within its jurisdiction; and
5. That the Planning Commission does hereby find that the Addendum modifying the San José Data Center Project Final EIR has been prepared and completed in compliance with CEQA; and
6. That the Planning Commission was presented with, and has independently reviewed and analyzed the Addendum to the Final EIR and other information in the record and has considered the information contained therein prior to acting upon and approving the Project, and has found that the Addendum to the Final EIR represents the independent judgment of the City, and designates the Director of Planning, Building and Code Enforcement at the Director's office at 200 East Santa Clara Street, 3rd Floor Tower, San José, California, 95113, as the custodian of documents and record of proceedings on which the decision of the City is based; and
7. The Planning Commission does hereby make the following findings with respect to the significant effects of the environment of the Project, as identified in the Addendum; and
8. The Planning Commission does hereby find that based upon the entire record of proceedings before it and all information received that there is no substantial evidence that the project will have any new significant effect on the environment and does hereby adopt the Addendum prepared for the Project (Planning File Nos. CP23-016 and ER20-219).

SAN JOSE DATA CENTER PROJECT FINAL EIR AND ADDENDUM SIGNIFICANT ENVIRONMENTAL IMPACTS

Air Quality

Impact: The Final EIR determined that the project could result in a cumulatively considerable net increase of a criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard. The Modified Project would be constructed over a 33-month period and would include the export of 320,000 cubic yards of soil and import of 186,000 cubic yards of soil (an additional 16 months of

construction and a 74 percent increase in earthwork volume compared to the construction assumptions in the Final EIR).

Mitigation: **Mitigation Measure (MM) AQ-1:** To incorporate the Bay Area Air Quality Management District (BAAQMD) recommendations for Best Management Practices to control fugitive dust, the project owner shall implement a fugitive dust control plan that has been reviewed and approved by the Director of Planning, Building and Code Enforcement or the Director's designee prior to the issuance of any grading or building permits, whichever occurs earliest. The project owner shall implement the following measures during construction:

- Minimize fugitive dust generation by watering exposed soils two times per day or as needed.
- Cover truck loads when transporting soil, sand, or other loose materials to or from the site.
- Perform street sweeping to remove all visible mud or first track-out onto adjacent public roads at least once per day. The use of dry power sweeping is prohibited.
- Limit onsite vehicle speeds on unpaved surfaces to 15 miles per hour.
- Pave onsite roads and driveways, and sidewalks as soon as possible in the construction schedule.
- Pour foundations for building pads as soon as possible after grading.
- Install wind breaks (e.g., trees, fences) on the windward side(s) of actively disturbed areas of construction. Wind breaks should have at maximum 50 percent air porosity.
- Suspend excavation, grading, and/or demolition activities when average wind speeds exceed 20 mph.
- Install sandbags or other erosion control measures to prevent silt runoff to public roadways from sites with a slope greater than one percent.
- Limit construction equipment idling times to a maximum 5 minutes, or shut equipment down when not in use.
- Maintain and tune construction equipment in accordance with manufacturer's specifications.
- Ensure that construction off-road equipment greater than 25 horsepower (hp) uses engines that meet or exceed Tier 4 final off-road emission standards, and that zero-emission and hybrid-powered equipment is encouraged. Ensure that all heavy-duty diesel trucks used for material

delivery or hauling meet or exceed California Air Resources Board emissions standards for engine model year 2010.

- Ensure that all heavy-duty diesel trucks used for material delivery or hauling meet or exceed California Air Resources Board emissions standards for engine model year 2010.
- Use grid power where available instead of portable diesel engines.
- Employ a certified visible emission evaluator to verify that construction equipment is functioning properly.
- Post a publicly visible sign with the telephone number and name of the person to contact regarding dust complaints and the BAAQMD telephone number. The contact person shall implement corrective measures, as needed, within 48 hours, and the BAAQMD shall be informed of any legitimate complaints received to verify compliance with applicable regulations.

Finding: With implementation of MM AQ-1 during construction, the project would not result in a cumulatively considerable net increase of any criteria pollutant or result in any new impacts or substantially increase the severity of impacts identified in the Final EIR. The impact is less than significant with mitigation.

Facts in Support of the Finding: MM AQ-1 requires the project to adhere to BAAQMD Best Management Practices that are designed to control fugitive dust, and the mitigation includes requirements to reduce exhaust emissions of air pollutants during construction. As shown in Table 1 of the Addendum, the Modified Project's average daily emissions would remain below the applicable BAAQMD thresholds for construction criteria pollutant emissions. Due to the change in the construction schedule, average daily emissions would be lower than the 2022 Project, with the exception of ROG emissions. The daily ROG emissions for the Modified Project are shown to be higher than the 2022 Project because the modeling software used to calculate emissions has been updated with new and more conservative ROG emission factors since the preparation of the 2022 FEIR. Similarly, the particulate matter emission factors in the model were also updated to assume lower brake wear and exhaust emissions, resulting in lower average daily emissions for the Modified Project. However, both ROG emissions and particulate matter emissions would still be below BAAQMD thresholds. Emissions calculations completed by air quality professionals show that, with implementation of the measures required by MM AQ-1, construction of the project would not result in a cumulatively considerable net increase of criteria pollutants.

Biological Resources

Impact: The Final EIR determined that the project could have a substantial adverse effect, either directly or through habitat modifications, on a species identified as candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Wildlife or United States Fish and Wildlife Service.

The Modified Project would include a new primary access roadway via the proposed McCarthy Lane Extension, additional widening of Zanker Road, relocated utility lines, and changes to the Valley Water visitor center (e.g., new parking lot, relocation of the visitor center, and a new storm drain line for the parking lot). These specific modifications are located in areas not previously surveyed or analyzed for biological resource impacts in the Final EIR. Therefore, the Modified Project could have a substantial adverse effect, either directly or through habitat modifications in a previously undisclosed location, on a species identified as candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Wildlife or United States Fish and Wildlife Service.

Note: Consistent with the CEC's Final EIR, the Modified Project would be required to implement MM BIO-1 to reduce impacts to nesting birds. MM BIO-1 was updated in the Addendum to be more protective for golden eagles and further ensure compliance with the Bald and Golden Eagle Protection Act by incorporating typical protections for active nests of golden eagles applicable under this regulation. The updates to Mitigation Measure BIO-1 also clarify that the appropriate consulting agency for golden eagles is the United States Fish and Wildlife Service. The text edits to Mitigation Measure BIO-1 are shown below. Revised or new language is underlined. All deletions are shown with a ~~strikeout~~.

Mitigation: **MM BIO-1:** If initial site disturbance activities, including tree, shrub, or vegetation removal, are to occur during the breeding season (defined as February 1st to August 31st inclusive for most species, and December 15 to July 31 for golden eagle), a qualified biologist shall conduct pre-construction surveys for nesting migratory birds on-site, ~~and within 250 feet (for raptors other than golden eagle) of the site, and within 1.0 mile (for golden eagles) of the site, where accessible.~~ The survey shall occur within seven days prior to the onset of ground disturbance if ~~disturbances are to commence between February 1st and June 30th and within 30 days prior to the onset of ground disturbance between July 1st and August 31st.~~ If a nesting migratory bird were to be detected, either (1) an appropriate construction-free buffer shall be established by a qualified biologist in consultation with the California Department of Fish

and Wildlife and the Santa Clara Valley Habitat Agency (for most species), or the United States Fish and Wildlife Service (for golden eagles); or (2) the project would obtain approval from the applicable agency, as determined by a qualified biologist, to proceed with work within a protective buffer in accordance with applicable laws and regulations intended to avoid take of individuals. The actual size of the buffer, which shall be determined by the project's qualified biologist, would depend on species, topography, and type of activity that would occur in the vicinity of the nest. The project buffer would be monitored periodically by the project biologist to verify compliance. After the nest is completed, as determined by the biologist, the buffer would no longer be required. The project owner shall notify the Director of Planning, Building and Code Enforcement or Director's designee of a nesting bird within 24 hours of detection, including sharing avoidance (buffer) placement and size.

MM BIO-2: The Santa Clara Valley Habitat Plan identifies the project site to be within 250 feet of potentially suitable tricolored blackbird nesting habitat occurring along Coyote Creek. The project applicant shall conduct surveys for tricolored blackbirds within 250 feet of this habitat, where visual access is possible, prior to the start of construction following protocols in Condition 17 in Chapter 16 of the Santa Clara Valley Habitat Plan. Such protocols would include the following:

- Prior to any ground disturbance, a qualified biologist shall complete a background assessment to determine if there has been nesting at the site or near the site in the past 5 years. This includes checking the CNDDDB, contacting local experts, and looking for evidence of historical nesting (i.e., old nests).
- If nesting in the past 5 years is not evident, the qualified biologist shall conduct a preconstruction survey in areas identified in the habitat survey as supporting potential tricolored blackbird nesting habitat. Surveys shall be made at the appropriate times of year when nesting use is expected to occur and shall document the presence or absence of nesting colonies of tricolored blackbird. Surveys shall conclude no more than 2 calendar days prior to construction, per Condition 17 of Chapter 6 in the Santa Clara Valley Habitat Plan.
- Should a nesting colony of tricolored blackbirds be located, a 250-foot construction-free buffer shall be established from the edge of all hydric vegetation associated with the nest site and the buffer shall be avoided, and the California Department of Fish and Wildlife and United States Fish Wildlife Service shall be notified immediately.
- If construction occurs in the project site during the nesting season and when the 250-foot buffer is in place around active nesting habitat, a qualified biologist shall conduct periodic monitoring of the site to confirm that the 250-foot buffer is enforced. The biologist shall have the authority to increase the buffer size if needed based on tricolored blackbird behavior at the active nesting area.

- If active tricolored blackbird nesting occurs within 250 feet of the project site and offsite utility alignment areas and construction occurs during the active nesting period resulting in the need for a buffer, the qualified biologist shall conduct training for construction personnel in avoidance procedures, buffer zones, and safety protocols to verify no impacts to the nest.

The project owner shall notify the Director of Planning, Building and Code Enforcement or Director's designee, the California Department of Fish and Wildlife, and the United States Fish and Wildlife Service within 24 hours of detection of tricolored blackbird nests and all avoidance measures taken.

MM BIO-3: If necessary, to mitigate impacts to mapped occupied burrowing owl habitat, the project applicant shall pay the applicable burrowing owl fee as specified in the Santa Clara Valley Habitat Plan for each acre of burrowing owl habitat impacted as a result of project buildout. Pursuant to the Santa Clara Valley Habitat Plan (2012), impacts to both temporary and permanent burrowing owl nesting habitat are to be mitigated, via the project owner paying the most up-to-date fees as reported by the Santa Clara Valley Habitat Agency. Fees are to be paid to the City of San José Department of Planning, Building and Code enforcement, before or at the time that the grading permit for the project is issued.

Note: MM BIO-4 was updated in the Addendum to clarify that pre-activity surveys are required on the Data Center Site and in all of the Supporting Infrastructure Improvement Areas. This revision ensures that Mitigation Measure BIO-4 is interpreted in a manner consistent with the requirements of Santa Clara Valley Habitat Plan, which requires surveys for the entire Modified Project Site. Revised or new language is underlined. All deletions are shown with a ~~strikeout~~.

MM BIO-4: The project applicant shall conduct preconstruction surveys to ascertain whether burrowing owls occupy burrows on the Data Center Site and ~~along the utility alignments offsite the Supporting Infrastructure Improvement Areas~~. The preconstruction surveys shall be performed by a qualified biologist and shall consist of a minimum of two surveys, with the first survey no more than 14 days prior to initial construction activities (i.e., vegetation removal, grading, excavation, etc.) and the second survey conducted no more than 2 days prior to initial preconstruction activities. If no burrowing owls or fresh sign of burrowing owls are observed during preconstruction surveys, construction may continue. However, if a burrowing owl is observed during these surveys, occupied burrows shall be identified by the monitoring biologist and a buffer shall be established, as follows:

- If an active nest is found, a qualified biologist shall study nesting behavior and shall establish at a minimum a 250-foot non-disturbance buffer around all nest sites, based on stress response of the birds and the 2012 Staff Report (California Department of Fish and Wildlife 2012). If the biologist determines that the nest is vacant, the non-

disturbance buffer zone may be removed, in accordance with measures described in the Santa Clara Valley Habitat Plan. The biologist shall supervise hand excavation of the burrow to prevent reoccupation only after receiving approval from the wildlife agencies (California Department of Fish and Wildlife and United States Fish Wildlife Service) in accordance with Chapter 6, Condition 15 of the Santa Clara Valley Habitat Plan.

- For permission to encroach within the nest buffer, (February 1st through August 31st), an Avoidance, Minimization, and Monitoring Plan shall be prepared and approved by the City and the wildlife agencies prior to such encroachment in accordance with Chapter 6 of the Santa Clara Valley Habitat Plan.

An Avoidance, Minimization, and Monitoring Plan shall be prepared, provided to the agencies, and approved by the Director of Planning, Building and Code Enforcement or Director's designee and the wildlife agencies prior to nest encroachment in accordance with Chapter 6 of the Santa Clara Valley Habitat Plan.

MM BIO-5: Should a burrowing owl be located during the non-breeding season (September through January), a 250-foot buffer shall be established, and construction activities shall not be allowed within the 250-foot buffer of the active burrow(s) used by any burrowing owl unless the following avoidance measures are adhered to:

- A qualified biologist shall monitor the owls for at least 3 days prior to construction to determine baseline foraging behavior (i.e., behavior without construction).
- The same qualified shall monitor the owls during construction. If the biologist determines there is a change in owl nesting and foraging behavior as a result of construction activities shall cease within the 250-foot buffer.
- If the owls are gone from the burrows for at least 1 week, the project applicant may request approval from the habitat agency to excavate all usable burrows within the construction area to prevent owls from reoccupying the site. After all usable burrows are excavated, the buffer zone shall be removed, and construction may continue.

The project applicant shall request approval from the Santa Clara Valley Habitat Agency to excavate usable, unoccupied burrows within the project site during the non-breeding season.

MM BIO-6: In the event the voluntary relocation of site burrowing owls does not occur (defined as owls having vacated the site for 10 or more consecutive days), the project applicant can request permission to engage in passive relocation during the non-breeding season through the standard Santa Clara Valley Habitat Plan application process (Section 6.8 of the Santa Clara Valley Habitat Plan). If passive relocation is granted, additional measures may be required by the Habitat Agency.

- If the owls voluntarily vacate the site for 10 or more consecutive days, as documented by a qualified biologist, the project applicant could seek permission from the Santa Clara Valley Habitat Agency to have the qualified biologist take measures to collapse vacated and other suitable burrows to confirm that owls do not recolonize the site, in accordance with the Santa Clara Valley Habitat Plan, by preparing a written request and submitting supporting documentation to the Director of Planning, Building and Code Enforcement or Director's designee.

MM BIO-11: The project applicant shall comply with all applicable laws and regulations regarding requirements of the California Department of Fish and Wildlife, United States Army Corps of Engineers, and the Regional Water Quality Control Board for aspects of the project, if any, which fall within those agencies' respective purview, including obtaining any permits required for the construction of the utility lines in the offsite infrastructure alignment areas, as well as compliance with any additional conditions attached to any required permits and monitoring requirements (if any). Copies of the permits, along with an updated Worker Environmental Awareness Program (if necessary per BIO-13) shall be available to the Director of Planning, Building and Code Enforcement or Director's designee at the Santa Clara Valley Habitat Agency upon request.

MM BIO-13: Worker environmental awareness program biological resources module will be conducted for onsite construction personnel prior to the start of construction activities. The module will explain the measure and any other measures developed to prevent impacts on special-status species, including marsh species (saltmarsh common yellowthroat and salt marsh harvest mouse) and nesting birds. The module will also include a description of special-status species and their habitat needs, as well as an explanation of the status of these species and their protection under Endangered Species Act, California Endangered Species Act, and other statutes. A brochure will be provided with color photos of sensitive species, as well as a discussion of any permit measures. A copy of the program and brochure shall be provided for review and approval to Director of Planning, Building and Code Enforcement or Director's designee and the Santa Clara Valley Habitat Agency at least 30 days prior to the start of construction, and updated as necessary per BIO-11. This includes the following measures:

- **Environmental Inspector:** A qualified Environmental Inspector shall verify implementation and compliance with all mitigation measures. The Environmental Inspector shall have the authority to stop work or determine alternative work practices where safe to do so, as appropriate, if construction activities are likely to affect sensitive biological resources.
- **Litter and Trash Management:** Food scraps, wrappers, food containers, cans, bottles, and other trash from the project area shall be deposited into closed trash containers. The containers shall be removed from the project work areas at the end of each working day unless located in an existing substation, potential staging area, or the switching station site.

- **Parking:** Vehicles and equipment shall be parked on pavement, existing roads, and previously disturbed or developed areas, or work areas as identified in this document.
- **Work Areas, Staging Areas:** Work, staging, vehicle parking and equipment parking areas shall be contained within the final areas that are negotiated with the relevant property owner, or as noted above.
- **Wetland and Waters Avoidance:** Wetlands and waters as identified in the Aquatic Resources Delineation Report shall be avoided during all work activities.
- **Pets and Firearms:** No pets or firearms shall be permitted at the project site.

Note: MM BIO-15 was revised in the Addendum to clarify that a protocol-level survey shall be completed prior to disturbance of any wetland that would be impacted by the Modified Project. The mitigation measure has also been modified to clarify which agency would review the results of the protocol survey. The text edits to MM BIO-15 are shown below. Revised or new language is underlined. All deletions are shown with a ~~strikeout~~.

MM BIO-15: Thirty (30) days ~~P~~prior to any disturbance of the ~~on-site~~ wetland(s) that would be impacted by the project, the authorized biologist shall perform protocol-level surveys for the Congdon's tarplant, during the appropriate blooming season (July through October, inclusive). A report shall be prepared and provided to ~~California Department of Fish and Wildlife, the Santa Clara Valley Habitat Agency, and the Director of Planning, Building and Code Enforcement or Director's designee~~ 30 days prior to any disturbance.

MM BIO-16: Pre-construction survey for San Francisco dusky-footed woodrats and ringtail avoidance.

1. A qualified biologist shall conduct a preconstruction survey for San Francisco dusky-footed woodrat nests and ringtail individuals no more than 30 days prior to the onset of construction activities within 50 feet of construction zones. This survey shall be conducted prior to vegetation removal or initial grading activities.
 - a. Non-breeding season nest deconstruction for San Francisco dusky-footed woodrat: Identified nests of the San Francisco dusky-footed woodrat shall be avoided, where possible. If avoidance is not possible, the nest(s) shall be manually deconstructed under supervision of a qualified biologist when helpless young are not present, typically during the nonbreeding season (October through January).
 - b. Breeding season temporary buffer for San Francisco dusky-footed woodrat: If it is determined that San Francisco dusky-footed woodrat young may be present during the pre-construction survey (e.g., during the breeding season), a suitable buffer shall be established around the nest until the young are independent enough to successfully move from the nest.
2. Avoidance of ringtail. If an individual ringtail is identified within the project site during preconstruction surveys, a follow-up survey shall be conducted within 12- hours of

project initiation. If a ringtail is identified during the second survey, the project biologist shall continue to monitor the ringtail to ensure that the individual has moved out of any areas of potential danger of its own volition. Project activities can only commence once the project biologist has determined that the identified animal has moved outside of potential danger from project actions.

A report shall be prepared and provided to the California Department of Fish and Wildlife, the Santa Clara Valley Habitat Agency, and the Director of Planning, Building and Code Enforcement or Director's designee 30 days prior to any disturbance.

MM BIO-17: Temporary disturbance to and permanent loss of salt marsh harvest mouse habitat shall be avoided to the maximum extent practicable. Although avoidance of wetland impacts is described, further attempts to avoid impacts to potentially suitable habitat shall be made. Prior to the issuance of building permits, all temporary staging areas and construction access roads shall be located away from suitable habitat for this species and limits of all wetlands that are to be avoided shall be clearly demarcated by a qualified biologist with Environmentally Sensitive Area fencing to avoid inadvertent disturbance of any habitat outside of the designated construction areas during construction activities.

Prior to issuance of grading permits and under the supervision of a qualified biological monitor, a barrier to exclude salt marsh harvest mice from impact areas shall be installed at the perimeter of all project construction areas that are located within 50 feet of potential salt marsh harvest mouse, and checked weekly by the qualified biologist for any breaches, rips, or tears. This barrier, which shall be constructed under the guidance of a qualified biologist, shall consist of a 3-foot tall, tight cloth or smooth plastic silt fence toed into the soil at least three inches deep and supported with stakes. Documentation of this mitigation measure shall be provided to the Director of Planning, Building and Code Enforcement or Director's designee 30 days prior to any disturbance, and made available to the Santa Clara Valley Habitat Agency upon request.

MM BIO-18: Pursuant to the 2012 Santa Clara Valley Habitat Plan (Santa Clara Valley Habitat Plan) (Chapter 6 and Section 9, Table 9-7b), prior to any ground disturbance, a one-time fee payment for new daily vehicle trips shall be paid for mobile emission sources, as based on the appropriate fees and worksheet (year current to construction) in the Habitat Agency Fee Schedule, or the most recent Nitrogen Deposition Fee Worksheet. Fees are paid to the Santa Clara Valley Habitat Agency.

Note: MM BIO-20 was updated in the Addendum to clarify that the payment of Santa Clara Valley Habitat Plan land cover impact fees shall be paid before the issuance of a grading permit or other applicable permits (i.e., Public Improvement Plan [PIP] and/or Structural Engineering & Code Inspection [SECI]). The text edits to Mitigation

Measure BIO-20 are shown below. Revised or new language is underlined. All deletions are shown with a ~~strikeout~~.

MM BIO-20: The project owner shall pay, before or at the time that the grading permit or other applicable permit authorizing ground disturbing activities for the project is issued, the Santa Clara Valley Habitat Agency Land Cover Fee and Temporary Impact Fee. The project owner shall pay such fees according to the updated Santa Clara Valley Habitat Agency fee schedule at the time of payment.

Finding: With implementation of MM BIO-1, BIO-2, BIO-3, BIO-4, BIO-5, BIO-6, BIO-11, BIO-13, BIO-14, BIO-15, BIO-16, BIO-17, BIO-18, and BIO-20, the project would not have a substantial adverse effect, either directly or through habitat modifications, on a species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Wildlife or United States Fish and Wildlife Service. The impact is less than significant with mitigation and the project would not result in any new impacts or substantially increase the severity of impacts identified in the Final EIR.

Facts in Support of the Finding: MM BIO-1 would reduce impacts to special-status animal species by implementing survey protocols and best site practices for avoidance and minimization of impacts to nesting birds. MM BIO-2 (which is based off Santa Clara Valley Habitat Plan Conditions 16 and 17 for the tricolored blackbird) would reduce impacts to special-status animal species by requiring a background assessment, a pre-construction survey, and establishment of buffers to avoid and minimize impacts to the tricolored blackbird. MM BIO-3 through BIO-6 (which are based off of Santa Clara Valley Habitat Plan Condition 15 for burrowing owls, and the California Department of Fish and Wildlife's Staff Report on Burrowing Owl Mitigation [2012]) would reduce impacts to special-status animal species by requiring payment of applicable Santa Clara Valley Habitat Plan burrowing owl impact fees, pre-construction surveys, establishment of buffer zones as necessary, and relocation as necessary for burrowing owls. MM BIO-11 would reduce impacts to special-status plant and animal species and riparian habitat by requiring compliance with and obtainment of any necessary permits from the California Department of Fish and Wildlife, United States Army Corps of Engineers, and Regional Water Quality Control Board prior to issuance of a grading permit and approval of the PIP or SECI. MM BIO-13 would reduce impacts to special-status species by requiring that a Worker Environmental Awareness Program (WEAP) biological resources module be conducted for on-site construction personnel prior to the start of construction activities that includes descriptions of relevant special-status species and explanations of all relevant protection measures that are required to be implemented for the entire construction duration. MM BIO-14 would reduce impacts to riparian

habitat to less than significant levels by requiring an aquatic resources delineation of the entire project site and avoidance of any jurisdictional areas during construction, or until necessary permits are obtained. MM BIO-15 would reduce impacts to special-status plant species by requiring protocol-level surveys for Congdon's tarplant 30 days prior to disturbance to ensure the plant species is protected if found. MM BIO-16 would reduce impacts to special-status wildlife species by implementing pre-construction surveys and buffers to avoid and minimize of impacts to the San Francisco dusky-footed woodrat and ringtail. MM BIO-17 would reduce impacts to special-status wildlife species by requiring fencing/barriers around salt marsh harvest mouse habitat and staging construction equipment away from this species' habitat. MM BIO-18 would reduce impacts to special-status species and ensure project compliance with the Santa Clara Valley Habitat Plan by requiring the one-time payment of a nitrogen deposition fee, which would reduce impacts from mobile emissions. Furthermore, the Modified Project would not meaningfully change the level of operational NO_x emissions resulting from the project as shown in Table 2 in Section 3.1 Air Quality of the Addendum. The operational criteria air pollutant emissions under the Modified Project would be lower than the operational NO_x shown in the 2022 FEIR. Therefore, the project would not result in a substantial increase in nitrogen deposition in sensitive habitats. MM BIO-20 would ensure project compliance with the Santa Clara Valley Habitat Plan by requiring payment of Santa Clara Valley Habitat Agency Land Cover and Temporary Impact fees. By paying impact fees, the project would fund measures to conserve land cover.

Impact: The Final EIR determined that the project could have a substantial adverse effect on a riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the California Department of Fish and Wildlife or United States Fish and Wildlife Service.

The project would also include a new primary access roadway via the proposed McCarthy Lane Extension, additional widening of Zanker Road, relocated utility lines, and changes to the Valley Water visitor center (e.g., new parking lot, relocation of the visitor center, and a new storm drain line for the parking lot). These specific modifications are located in areas not previously surveyed or analyzed for biological resource impacts in the Final EIR.

Mitigation: **MM BIO-7:** Prior to the start of any grading or other soil disturbing activities, the project applicant shall be required to prepare a Stormwater Pollution Prevention Plan consistent with the City's National Pollutant Discharge Elimination System C3 provisions. The plan shall be submitted to the

Director of Planning, Building and Code Enforcement or Director's designee.

MM BIO-14: An aquatic resources delineation covering the entire project area shall be conducted. All features that are determined to be jurisdictional under the resource agencies shall either be avoided, or the relevant permits shall be obtained for project impacts. Work shall not occur within these jurisdictional features until the relevant permits have been obtained. A delineation report shall be produced and made available to the Santa Clara Valley Habitat Agency and the Director of Planning, Building and Code Enforcement or Director's designee.

MM BIO-11, BIO-13, and BIO-18 (as detailed above) would also be implemented to address this impact.

Finding: With implementation of MM BIO-7, BIO-11, BIO-13, BIO-14, and BIO-18, impacts to riparian habitat or other sensitive natural communities during construction would be reduced to less than significant. The impact is less than significant with mitigation and the project would not result in any new impacts or substantially increase the severity of impacts identified in the Final EIR.

Facts in Support of the Finding: MM BIO-7 would reduce impacts to riparian habitat and sensitive natural communities by requiring preparation of a Stormwater Pollution Prevention Plan, which would reduce erosion and sedimentation being carried by runoff into nearby water systems, such as Coyote Creek . MM BIO-11 would reduce impacts to riparian habitat and sensitive natural communities by requiring compliance with and obtainment of any necessary permits from the California Department of Fish and Wildlife, United States Army Corps of Engineers, and Regional Water Quality Control Board prior to issuance of a grading permit and approval of the PIP or SECI. MM BIO-13 would reduce impacts to riparian habitat and sensitive natural communities by requiring that a WEAP biological resources module be conducted for on-site construction personnel prior to the start of construction activities that includes descriptions of relevant sensitive habitats and explanations of all relevant protection measures that are required to be implemented. MM BIO-14 would reduce impacts to riparian habitat to less than significant levels by requiring an aquatic resources delineation of the entire project site and avoidance of any jurisdictional areas during construction, or until necessary permits are obtained. MM BIO-18 would reduce impacts to sensitive natural communities and ensure project compliance with the Santa Clara Valley Habitat Plan by requiring the one-time payment of a nitrogen deposition fee, which would reduce impacts from mobile emissions t. Furthermore, the Modified Project would not

meaningfully change the level of operational NO_x emissions resulting from the project as shown in Table 2 in Section 3.1 Air Quality of the Addendum. The operational criteria air pollutant emissions under the Modified Project would be lower than the operational NO_x shown in the 2022 FEIR. Therefore, the project would not result in a substantial increase in nitrogen deposition in sensitive habitats.

Impact: The Final EIR determined that the project could have a substantial adverse effect on state or federally protected wetlands (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means.

The Modified Project would include a new primary access roadway via the proposed McCarthy Lane Extension, additional widening of Zanker Road, relocated utility lines, and changes to the Valley Water visitor center (e.g., new parking lot, relocation of the visitor center, and a new storm drain line for the parking lot). These specific modifications are located in areas not previously surveyed or analyzed for wetlands in the Final EIR.

Mitigation: **MM BIO-8:** A qualified biological monitor shall visit the project site daily during utility line construction in the vicinity of the wetland to verify that BIO-7 through BIO-11 are being fully implemented and are effective. Documentation shall be prepared by the biological monitor and made available to the Director of Planning, Building and Code Enforcement or Director's designee or the Santa Clara Valley Habitat Agency upon request.

MM BIO-9: Removal of wetland vegetation and/or trees for the installation of the utility line shall be limited to the minimum extent required. Documentation shall be prepared by the biological monitor and made available to the Director of Planning, Building and Code Enforcement or Director's designee or the Santa Clara Valley Habitat Agency upon request.

MM BIO-10: The project applicant shall verify that all seed mixtures used for revegetation of the impacted wetland area shall be locally native or sterile nonnative species only. No invasive non-native plant species shall be used for revegetation. Documentation shall be prepared by the biological monitor and made available to the Director of Planning, Building and Code Enforcement or Director's designee or the Santa Clara Valley Habitat Agency upon request.

MM BIO-19: Prior to (and only if) the onsite wetlands are developed or impacted; mitigation fees pursuant to the Santa Clara Valley Habitat Plan

Table 9-11 must be paid to the Director of Planning, Building and Code Enforcement or Director's designee.

Finding: With implementation of MM BIO-8 through BIO-10 and BIO-19, impacts to state or federally protected wetlands would be reduced to a less than significant level. Therefore, the impact is less than significant with mitigation and the project would not result in any new impacts or substantially increase the severity of impacts identified in the Final EIR.

Facts in Support of the Finding: MM BIO-8 through MM BIO-10 would reduce impacts to wetlands by requiring construction monitoring by a biologist, minimal removal of wetland vegetation, and revegetation with native plant species. The qualified biologist would also ensure regulatory requirements from the SWPP and applicable permits are being implemented. MM BIO-19 would reduce impacts to wetlands and ensure project compliance with the Santa Clara Valley Habitat Plan by requiring payment of the Santa Clara Valley Habitat Plan wetland impact fee. The Modified Project would be contributing its share of funding to support conservation of wetlands.

Impact: The Final EIR determined that the project could conflict with local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance.

The Modified Project would also require the removal of trees within the Data Center Site and the Supporting Infrastructure Improvement Areas. Therefore, the Modified Project could conflict with local policies or ordinances protecting biological resources.

Mitigation: **MM BIO-12:** Prior to ground disturbance, the project applicant shall ensure that the project site, including linear alignments and the bike path have been surveyed by a certified arborist or biologist and prepare a report. The report, a Tree Protection Plan (TPP), shall be submitted to the Director of Planning, Building and Code Enforcement or Director's designee for trees to be preserved, or replaced, if preservation is not possible. The TPP shall include, but is not limited to, the following:

- Number of trees and location of trees to be protected
- Final landscaping proposal
- Tree Protection Zone (TPZ)
- Size and location of TPZ
- Specific recommendation and suggestions or recommendation for each TPZ if applicable

- Maintenance methodology for tree protection zones during the entire demolition and construction period
- Irrigated schedule
- Pruning schedule for preserved trees, if applicable
- Herbicides and other products recommended to be used on preserved trees
- Tree replacement strategy for removed trees

Finding: With implementation of MM BIO-12, the project would comply with local policies or ordinances protecting biological resources (i.e., the City's Tree Ordinance). Therefore, the impact is less than significant with mitigation and the project would not result in any new impacts or substantially increase the severity of impacts identified in the Final EIR.

Facts in Support of the Finding: MM BIO-12 would ensure consistency with local policies or ordinances for biological resources (i.e., Tree Ordinance) by requiring implementation of a TPP which would require tree protection, care, and replacement.

Impact: The Final EIR determined that the project could conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or State habitat conservation plan.

The Modified Project would include a new primary access roadway via the proposed McCarthy Lane Extension, additional widening of Zanker Road, relocated utility lines, and changes to the Valley Water visitor center (e.g., new parking lot, relocation of the visitor center, and a new storm drain line for the parking lot). These specific new modifications are located in previously undisclosed locations within the Santa Clara Valley Habitat Plan area. Therefore, the project could conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or State habitat conservation plan.

Mitigation: MM BIO-3 and MM BIO-18 (as detailed above) would be implemented to address this impact. In addition, MM BIO-19 and BIO-20 (as detailed above) would be applicable since these mitigation measures require the project applicant to comply with the Santa Clara Valley Habitat plan and pay appropriate biological resource impact fees.

Finding: With implementation of MM BIO-3 and MM BIO-18 through BIO-20, the project would comply with the provisions of an adopted habitat conservation plan (i.e., Santa Clara Valley Habitat Plan). Therefore, the impact is less

than significant with mitigation and the project would not result in any new impacts or substantially increase the severity of impacts identified in the Final EIR.

Facts in Support of the Finding: MM BIO-3 would reduce impacts to burrowing owls by requiring payment of applicable Santa Clara Valley Habitat Plan burrowing owl impact fees. MM BIO-18 would reduce impacts to special-status species and ensure project compliance with the Santa Clara Valley Habitat Plan by requiring the one-time payment of a nitrogen deposition fee, which would reduce impacts from non-point sources to below the level of significance. MM BIO-19 would reduce impacts to wetlands and ensure project compliance with the Santa Clara Valley Habitat Plan by requiring payment of the Santa Clara Valley Habitat Plan wetland impact fee. MM BIO-20 would ensure project compliance with the Santa Clara Valley Habitat Plan by requiring payment of Santa Clara Valley Habitat Agency Land Cover and Temporary Impact fees. By paying these impact fees, the Modified Project would be contributing its share of funding to support conservation strategies and measures to support burrowing owls, reduce nitrogen deposition, protect wetlands, and maintain land cover.

Cultural Resources

Impact: The Final EIR determined that the project could cause a substantial adverse change in the significance of a historical resource pursuant to California Code of Regulations Section 15064.5.

Certain Modified Project improvements (including the expanded area of Zanker Road widening, the McCarthy Lane Extension, the Valley Water visitor center modifications, and the utilities around the southern boundary of the Valley Water Purification Center) would be outside the areas analyzed in the Final EIR for cultural resources. The new project improvement area could include historical and cultural resources.

Note: MM CUL-1 has been updated to include ground disturbance monitoring from a Native American monitor and a qualified archaeologist for the entire duration of ground disturbance. The text edits to Mitigation Measure CUL-1 are shown below. Revised or new language is underlined. All deletions are shown with a ~~strikeout~~.

Mitigation: **MM CUL-1:** Prior to the commencement of construction, the project applicant shall secure the services of qualified archaeological specialists and Native American monitors. These specialists and monitors shall prepare a WEAP [workforce environmental awareness program] to instruct construction workers of the obligation to protect and preserve valuable archaeological and Native American resources for review and approval by

the Director of Planning, Building and Code Enforcement or Director's designee. This program shall be provided to all construction workers via a recorded presentation and shall include a discussion of applicable laws and penalties under the laws; samples or visual aids of resources that could be encountered in the project vicinity; instructions regarding the need to halt work in the vicinity of any potential archaeological and Native American resources encountered; and measures to notify their supervisor, the project applicant, and the specialists. Submit the qualifications of archaeological specialists and Native American monitors, as well as an electronic copy of the WEAP to the Director of Planning, Building and Code Enforcement or Director's designee for review and approval.

The project applicant shall secure the services of a qualified archaeologist and Native American monitor to observe grading of native soil once all pavement is removed from the project site all ground disturbing work involving native soils within the project site. The project applicant shall secure the services of a Native American monitor to observe grading of native soil once all pavement is removed from the project site. Preference in selecting Native American monitors shall be given to Native Americans with:

1. Traditional ties to the area being monitored.
2. Knowledge of local historic and prehistoric Native American village sites.
3. Knowledge and understanding of Health and Safety Code, section 7050.5, and Public Resources Code, section 5097.9 et seq.
4. Ability to effectively communicate the requirements of Health and Safety Code, section 7050.5, and Public Resources Code, section 5097.9 et seq.
5. Ability to work with law enforcement officials and the Native American Heritage Commission to ensure the return of all associated grave goods taken from a Native American grave during excavation.
6. Ability to travel to project sites within traditional tribal territory.
7. Knowledge and understanding of Title 14, California Code of Regulations, section 15064.5.
8. Ability to advocate for the preservation in place of Native American cultural features through knowledge and understanding CEQA mitigation provisions.
9. Ability to read a topographical map and be able to relocate site and reburial locations for future inclusions in the Native American Heritage Commission's Sacred Lands Inventory.
10. Knowledge and understanding of archaeological practices, including the phases of archaeological investigation.

MM CUL-2: Prior to the issuance of any grading permit, the project applicant shall be required to complete subsurface testing to determine the extent of possible resources onsite. Subsurface testing shall be completed by a qualified archaeologist. Methodologies and procedures for completing the subsurface testing will be developed through completion of a testing plan. The testing plan will identify locations where testing will occur, depth and extent of testing. The testing plan will be submitted to the Director of Planning, Building and Code Enforcement or Director's designee for approval prior to the completion of any testing. If the findings of the subsurface testing confirm there are significant cultural resources on-site, an archaeological resources treatment plan shall be prepared by a qualified archaeologist and submitted to Director of Planning, Building and Code Enforcement or Director's designee for approval prior to the issuance of grading permits.

MM CUL-3: Prior to ground disturbance, the project applicant shall implement the approved treatment plan prior to the issuance of grading permits. The approved treatment plan will utilize data recovery methods to reduce impacts on subsurface resources.

MM CUL-4: All prehistoric and historic-era features identified during exploration will be evaluated by a qualified archaeologist based on the California Register of Historical Resources criteria consistent with the archaeological treatment plan. After completion of the field work, all artifacts will be cataloged, and the appropriate forms will be completed and filed with the Northwest Information Center of the California Archaeological Inventory at Sonoma State University by the qualified archaeologist in coordination with the Director or Director's designee of the City of San Jose Department of Planning, Building and Code Enforcement prior to issuance of occupancy permits (temporary or final).

MM CUL-5: In the event that prehistoric or historic resources are encountered during excavation and/or grading of the site, all activity within a 50-foot radius of the find shall be stopped, the Director or Director's designee of the City of San Jose Department of Planning, Building and Code Enforcement shall be notified, and a qualified archaeologist will examine the find. The archaeologist will evaluate the find(s) to determine if they meet the definition of a historical, archaeological, or tribal cultural resource and make appropriate recommendations regarding the disposition of such finds prior to issuance of building permits for any construction occurring within the above-referenced 50-foot radius. If the finds do not meet the definition of a historical, archaeological, or tribal cultural resources, no further study or protection is necessary prior to project implementation. If the find(s) does meet the definition of a historical, archaeological, or tribal

cultural resources, then it will be avoided by project activities. If avoidance is not feasible, adverse effects to such resources will be mitigated in accordance with the recommendations of the archaeologist. Recommendations will include collection, recordation, and analysis of any significant cultural materials. A report of findings documenting any data recovery shall be submitted to the designee Director or Director's designee of the City of San Jose Department of Planning, Building and Code Enforcement, Native American Heritage Commission (tribal cultural resources) and the Northwest Information Center.

The project applicant will ensure that construction personnel do not collect or move any cultural material and will ensure that any fill soils that may be used for construction purposes does not contain any archaeological materials.

Finding: Implementation of MM CUL-1 through CUL-5 would ensure the prompt identification and management of cultural resource discoveries by requiring worker awareness training, subsurface testing prior to construction, development of a treatment plan, and requiring a professional archaeologist and qualified Native American monitor observe ground-disturbing activities associated with the proposed project. The impact is less than significant with mitigation and the project would not result in any new impacts or substantially increase the severity of impacts identified in the Final EIR.

Facts in Support of Finding: By using the services of a qualified archaeologist and a Native American Monitor along with submittal of documentation to the Director of Planning, Building and Code Enforcement or Director's designee confirming the qualifications of the archaeologist and Native American Monitor, MM CUL-1 will ensure the identification and management of historic and cultural resource discoveries are conducted properly. Provision of the WEAP required by MM CUL-1 for construction workers will assist workers in identifying artifacts (if encountered) and will ensure that construction workers are aware of the procedures for notifying the archaeologist and Native American Monitor if artifacts are encountered during construction. The completion of subsurface testing, as required by MM CUL-2, will help to indicate the presence or absence of significant historical resources on-site prior to construction. The implementation of a treatment plan, as required by MM CUL-3, will reduce impacts to subsurface resources through the use of accepted data recovery methods. As required by MM CUL-4, the evaluation of any archaeological findings by a qualified archaeologist will ensure proper identification, handling, and cataloging of the finds. Stopping activity within a 50-foot radius of a historical resource discovery and coordinating with the City and a qualified archaeologist, as

required by MM CUL-5, will ensure historical resources are properly handled and preserved.

Impact: The Final EIR determined that the project could cause a substantial adverse change in the significance of a unique archaeological resource pursuant to California Code of Regulations Section 15064.5.

Certain Modified Project improvements (including the expanded area of Zanker Road widening, the McCarthy Lane Extension, the Valley Water visitor center modifications, and the utilities around the southern boundary of the Valley Water Purification Center) would be outside the areas analyzed in the Final EIR for cultural and historical resources.

Mitigation: MM CUL-1 through CUL-5 (as detailed above) would be implemented to address this impact.

Finding: Implementation of MM CUL-1 through CUL-5 would ensure the prompt identification and management of cultural resource discoveries by requiring worker awareness training, subsurface testing prior to construction, development of a treatment plan, and requiring a professional archaeologist and qualified Native American monitor to observe ground-disturbing activities associated with the proposed project. The impact is less than significant with mitigation and the project would not result in any new impacts or substantially increase the severity of impacts identified in the Final EIR.

Facts in Support of Finding: By using the services of a qualified archaeologist and a Native American Monitor along with submittal of documentation to the Director of Planning, Building and Code Enforcement or Director's designee confirming the qualifications of the archaeologist and Native American Monitor, as required by MM CUL-1, will ensure the identification and management of cultural resource discoveries are conducted properly. Provision of the WEAP required by MM CUL-1 for construction workers will assist workers in recognizing potential artifacts (if encountered) and will ensure that construction workers are aware of the procedures for notifying the archaeologist and Native American Monitor if artifacts are encountered during construction. The completion of subsurface testing, as required by MM CUL-2, will help to indicate the presence or absence of significant cultural resources on-site prior to construction. Implementation of a treatment plan, as required by MM CUL-3, will reduce impacts to subsurface resources through the use of accepted data recovery methods. As required by MM CUL-4, the evaluation of any archaeological finds by a qualified archaeologist will ensure proper identification, handling, and cataloging of the finds. Stopping activity within a 50-foot radius of an archaeological

resource discovery and coordinating with the City and a qualified archaeologist, as required by MM CUL-5, will ensure archaeological resources are properly handled and preserved.

Impact: The Final EIR determined that the project could disturb human remains, including those interred outside of dedicated cemeteries.

The Modified Project would include a new primary access roadway via the proposed McCarthy Lane Extension, additional widening of Zanker Road, relocated utility lines, and changes to the Valley Water visitor center (e.g., new parking lot, relocation of the visitor center, and a new storm drain line for the parking lot). These specific new modifications in previously undisclosed locations where disturbance to human remains, including those interred outside of dedicated cemeteries, could occur.

Mitigation: **MM CUL-6:** In the event that human remains are discovered during excavation and/or grading of the site, all activity within a 50-foot radius of the find will be stopped. The Santa Clara County Coroner shall be notified immediately and will make a determination as to whether the remains are of Native American origin or whether an investigation into the cause of death is required. If the remains are determined to be Native American, the Coroner shall notify the Native American Heritage Commission within 24 hours of the identification. Once the Native American Heritage Commission identifies the most likely descendants (MLD), the descendants will make recommendations regarding proper burial (including the treatment of grave goods), which will be implemented in accordance with Section 15064.5(e) of the CEQA Guidelines. The archaeologist will recover scientifically-valuable information, as appropriate and in accordance with the recommendations of the MLD. A report of findings documenting any data recovery shall be submitted to the Director or Director's designee of the City of San Jose Department of Planning, Building and Code Enforcement and the Northwest Information Center.

Finding: Implementation of MM CUL-6 would occur when human remains are discovered during excavation or grading construction activities. All construction activity would stop within a 50-foot radius of the find and the Santa Clara County Coroner would be notified immediately to make a determination as to whether the remains are of Native American origin or whether an investigation into the cause of death is required. This process, as required by MM CUL-6, will ensure that the handling of human remains is conducted properly. The impact is less than significant with mitigation and the project would not result in any new impacts or substantially increase the severity of impacts identified in the Final EIR.

Facts in Support of Finding: Stopping activity within a 50-foot radius of a human remains discovery and coordinating with the Santa Clara County Coroner, as required by MM CUL-6, will ensure that the handling of human remains is conducted properly. Additionally, contacting the Native American Heritage Commission if the remains are Native American ensures that the proper protocols are followed for discovery of Native American remains.

Tribal Cultural Resources

Impact: The Final EIR determined that the project could cause a substantial adverse change in the significance of a tribal cultural resource, defined in Public Resources Code section 21074 as either a site, feature, place, cultural landscape that is geographically defined in terms of the size and scope of the landscape, sacred place, or object with cultural value to a California Native American tribe, and that is a resource determined by the lead agency, in its discretion and supported by substantial evidence, to be significant pursuant to criteria set forth in subdivision (c) of Public Resources Code Section 5024.1. In applying the criteria set forth in subdivision (c) of Public Resource Code Section 5024.1, the lead agency shall consider the significance of the resource to a California Native American tribe.

Certain Modified Project improvements (including the expanded area of Zanker Road widening, the McCarthy Lane Extension, the Valley Water visitor center modifications, and the utilities around the southern boundary of the Valley Water Purification Center) would be outside the areas analyzed in the Final EIR for cultural resources, which includes tribal cultural resources.

Mitigation: MM CUL-1 through CUL-6 (as detailed above) would be implemented to address this impact.

Finding: Implementation of MM CUL-1 through CUL-6 would ensure the prompt identification and management of cultural and tribal cultural resource discoveries by requiring worker awareness training, subsurface testing prior to construction, development of a treatment plan, and requiring a professional archaeologist and qualified Native American monitor to observe ground-disturbing activities associated with the proposed project. The impact is less than significant with mitigation and the project would not result in any new impacts or substantially increase the severity of impacts identified in the Final EIR.

Facts in Support of Finding: By using the services of a qualified archaeologist and a Native American Monitor along with submittal of documentation to the

Director of Planning, Building and Code Enforcement or Director's designee confirming the qualifications of the archaeologist and Native American Monitor, as required by MM CUL-1, will ensure the identification and management of cultural and tribal cultural resource discoveries are conducted properly. Provision of the WEAP required by MM CUL-1 for construction workers will assist workers in identifying artifacts (if encountered) and will ensure that construction workers are aware of the procedures for notifying the archaeologist and Native American Monitor if artifacts are encountered during construction. The completion of subsurface testing, as required by MM CUL-2, will help to indicate the presence or absence of significant cultural resources on-site prior to construction. The implementation of a treatment plan, as required by MM CUL-3, will reduce impacts to subsurface resources through the use of accepted data recovery methods. As required by MM CUL-4, the evaluation of any archaeological findings by a qualified archaeologist will ensure proper identification, handling, and cataloging of the finds. Stopping activity within a 50-foot radius of an archaeological resource discovery and coordinating with the City and a qualified archaeologist, as required by MM CUL-5, will ensure archaeological resources are properly handled and preserved. Stopping activity within a 50-foot radius of a human remains discovery and coordinating with the Santa Clara County Coroner, as required by MM CUL-6, will ensure that the handling of human remains is conducted properly. Additionally, contacting the Native American Heritage Commission if the remains are Native American ensures that the proper protocols are followed for discovery of Native American remains.

Geology and Soils

Impact: The Final EIR determined that the project could directly or indirectly destroy a unique paleontological resource or site or unique geologic feature. Certain Modified Project improvements (including the expanded area of Zanker Road widening, the McCarthy Lane Extension, the Valley Water visitor center modifications, and the utilities around the southern boundary of the Valley Water Purification Center) would be outside the areas analyzed in the Final EIR for paleontological and geological resources. Therefore, the Modified Project could directly or indirectly destroy a unique paleontological resource or site or unique geologic feature.

Mitigation: MM GEO-1:

- The applicant will secure the services of a qualified professional paleontologist, as defined by the Society of Vertebrate Paleontology, to be on-call prior to the commencement of construction. The paleontologist will be experienced in teaching non-specialists to

recognize fossil materials and how to notify in the event of encountering a suspected fossil. If suspected fossils are encountered during construction, the construction workers will halt construction within 50 feet of any potential fossil find and notify the paleontologist, who will evaluate its significance.

- If a fossil is encountered and determined to be significant and avoidance is not feasible, the paleontologist will develop and implement an excavation and salvage plan in accordance with Society of Vertebrate Paleontology standards. Construction work in the immediate area will be halted or diverted to allow recovery of fossil remains in a timely manner. Fossil remains collected will be cleaned, repaired, sorted, and cataloged, along with copies of all pertinent field notes, photos, and maps.
- The paleontologist will prepare a paleontological resource monitoring report that outlines the results of the monitoring program and any encountered fossils. The report would be submitted to the Director or Director's designee of the City of San Jose Department of Planning, Building and Code Enforcement for review and approval. The report and any fossil remains collected will be submitted to a scientific institution with paleontological collections.
- Prior to the commencement of construction, the applicant will secure the services of a qualified paleontological specialist. The specialist will prepare a Worker Environmental Awareness Program to instruct site workers of the obligation to protect and preserve valuable paleontological resources for review by the Director or Director's designee of the City of San Jose Department of Planning, Building and Code Enforcement. This program will be provided to all construction workers via a recorded presentation and will include a discussion of applicable laws and penalties under the laws; samples or visual aids of resources that could be encountered in the project vicinity; instructions regarding the need to halt work in the vicinity of any potential paleontological resources encountered; and measures to notify their supervisor, the applicant, and the specialists.

Finding: Implementation of MM GEO-1 would ensure impacts to unearthed paleontological resources are reduced to less than significant levels. The impact is less than significant with mitigation and the project would not result in any new impacts or substantially increase the severity of impacts identified in the Final EIR.

Facts in Support of Finding: Although unlikely, paleontological resources could be encountered during ground-disturbing construction activities.

Implementation of MM GEO-1 would provide training to construction personnel, prior to the start of construction work, regarding proper procedures (including recognizing resources and notification) in the event fossil materials are encountered during construction. MM GEO-1 requires a qualified professional paleontologist, as defined by the Society of Vertebrate Paleontology to handle the recovery and processing of significant paleontological finds.

Greenhouse Gas Emissions

Impact: The Final EIR determined that project could generate greenhouse gas (GHG) emissions, either directly or indirectly, that may have a significant impact on the environment.

The Modified Project would upgrade the 1.25 MW administrative diesel generator associated with the SJC02 building to a larger 1.5 MW model. The 0.5 MW administrative diesel generator associated with the SJC03 building would remain unchanged. The Modified Project would also include two fire pumps each powered by one diesel engine (each would be 0.164 MW with 220-horsepower engines) to support the proposed water storage tank during emergency power outages. Due to these specific modifications, the project could generate GHG emissions, either directly or indirectly, that may have a significant impact on the environment.

Note: MM GHG-1 has been modified to include mention of the fire pump diesel engines (refer to the text below). Revised or new language is underlined. All deletions are shown with a ~~strikeout~~.

Mitigation: **MM GHG-1:** The project owner shall purchase renewable natural gas in an amount equivalent to the total energy use of the natural-gas fired generators, which may require securing renewable fuel from Pacific Gas & Electric Company and other suppliers. The project owner shall use renewable diesel fuel for the administrative diesel-fired generators and the fire pump diesel engines to the extent feasible. During an emergency where renewable diesel fuel supplies may be limited, the project owner will document their efforts to secure other vendors of renewable diesel fuel prior to refueling with non-renewable diesel. The project owner shall provide documentation to the Director or Director's designee of the City of San Jose Department of Planning, Building and Code Enforcement to verify the amount of renewable natural gas purchased and the amount renewable diesel fuel used by the administrative diesel-fired generators. The project owner shall submit annual reports demonstrating the use of renewable resources for 100 percent of total energy use by the generators following project commencement.

MM GHG-2: The project owner shall participate in the San José Clean Energy (SJCE) at the Total Green level (i.e., 100 percent carbon-free electricity) for electricity accounts associated with the project, or shall negotiate an electricity contract with SJCE or participate in a clean energy program that accomplishes the same goals as the Total Green level, to ensure compliance with the City's 2030 Greenhouse Gas Emissions Reduction Strategy.

During operation, the project owner shall provide documentation to the Director or Director's designee of the City of San Jose Department of Planning, Building and Code Enforcement of initial enrollment and shall submit annual reports to the Director or Director's designee of the City of San Jose Department of Planning, Building and Code Enforcement documenting either continued participation in SJCE at the Total Green level or documentation that alternative measures continue to provide 100% carbon-free electricity, as verified by an independent third-party auditor specializing in greenhouse gas emissions.

Finding: With the use of renewable natural gas and diesel for 100 percent of the total energy use by the emergency standby generators, as required by MM GHG-1, the GHG emissions from the facility's stationary sources would not exceed the 10,000 metric tons of carbon dioxide equivalent per year (MTCO₂e/yr) BAAQMD significance threshold for GHG emissions from stationary sources. Project participation in SJCE at the TotalGreen level, as required by MM GHG-2, would ensure compliance with applicable plans and policies adopted to reduce GHG emissions and compliance with regulations or requirements adopted to implement a statewide, regional, or local plan for the reduction or mitigation of GHG emissions impacts. The impact is less than significant with mitigation and the project would not result in any new impacts or substantially increase the severity of impacts identified in the Final EIR

Facts in Support of Finding: The BAAQMD CEQA Guidelines that were in place at the time the EIR was prepared indicate that biogenic carbon dioxide (CO₂) emissions, such as those from renewable natural gas and diesel fuel, should not be included in the quantification of GHG emission for characterizing the significance of a project's impact under CEQA. Accordingly, with the requirement under MM GHG-1 to use 100 percent renewable natural gas and diesel, the project's GHG emissions from routine readiness testing and maintenance of the emergency backup generators would be exempt from the stationary source threshold of 10,000 metric tons of CO₂ equivalent identified in the Final EIR, and the project's impact would be less than significant. The City's 2030 Greenhouse Gas Reduction

Strategy (GHGRS) requires implementation and participation in SJCE in order to meet long-term carbon neutrality goals. MM GHG-2 would ensure project compliance with the City's GHGRS by requiring project participation in SJCE at the TotalGreen level (or similar clean energy program as negotiated with the SJCE). The Modified Project would then use 100 percent carbon free electricity from renewable energy source. Thus, implementation of MM GHG-2 would ensure compliance with applicable plans and policies adopted to reduce GHG emissions and compliance with regulations or requirements adopted to implement a statewide, regional, or local plan for the reduction or mitigation of GHG emissions impacts.

Hazards and Hazardous Materials

Impact: The Final EIR determined that, while the project is not located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5, the project may have unknown environmental contamination, and as a result, could create a significant hazard to the public or environment.

The Modified Project would increase the amount of contaminated earthwork volume handled from 290,000 to 506,000 cubic yards and construction in areas not previously surveyed (the McCarthy Lane Extension, Valley Water visitor center parking lot, and utilities around the southern boundary of the Valley Water Purification Center) for soil contamination in the CEC's Final EIR. Therefore, the Modified Project may have unknown environmental contamination, and as a result, could create a significant hazard to the public or environment.

Note: Mitigation Measure HAZ-1, as shown in Section 3.6.1.3 of the Addendum, was initially two mitigation measures in the 2022 FEIR (HAZ-1 and HAZ-2). After the CEC certified the 2022 FEIR, the CEC prepared an Addendum to the 2022 FEIR that included text revisions combining the two mitigation measures into one single measure under the heading of HAZ-1.¹ The record is not clear as to why these measures were combined. In doing so, inconsistencies in the application of regulatory authority were created. For example, the combining of the measures resulted in language obligating the project applicant to obtain approval of the Health and Safety Plan from the California Department of Toxic Substances Control (DTSC), although DTSC does not have any regulatory oversight in this regard. Accordingly, to facilitate effective enforcement and implementation, the project proposes to split the current HAZ-1 back into two mitigation measures, HAZ-1 and HAZ-2, to reflect the original language in the 2022 FEIR, as shown below. Revised or new language is underlined. All deletions are shown with a ~~strikeout~~.

¹ California Energy Commission. *Addendum to the Final Environmental Impact Report Part 1 for the San Jose Data Center SPPE Proceeding*. March 29, 2022.

Mitigation: MM HAZ-1: Site Management Plan (SMP) shall be prepared and implemented and any contaminated soils found in concentrations above established thresholds shall be removed and disposed of according to California Hazardous Waste Regulations or the contaminated portions of the site shall be capped beneath the planned development under the regulatory oversight of the Santa Clara County Hazardous Materials Compliance Division (HMCD) or the California Department of Toxic Substances Control (DTSC). The contaminated soil removed from the site shall be hauled off-site and disposed of at a licensed hazardous materials disposal site.

~~In addition, all contractors and subcontractors at the project site shall develop a Health and Safety Plan (HSP) specific to their scope of work and based upon the known environmental conditions for the site. The HSP shall be approved by the Director or Director's designee with the City of San José Department of Planning, Building and Code Enforcement (PBCE) and the~~

Components of the SMP shall include, but shall not be limited to:

- A detailed discussion of the site background;
- Notification procedures if previously undiscovered significantly impacted soil or free fuel product is encountered during construction;
- On-site soil reuse guidelines based on the California Regional Water Quality Control Board (RWQCB), San Francisco Bay Region's reuse policy;
- Sampling and laboratory analyses of excess soil requiring disposal at an appropriate off-site waste disposal facility;
- Soil stockpiling protocols; and
- Protocols to manage groundwater that may be encountered during trenching and/or subsurface excavation activities.

~~Components of the HSP shall include, but shall not be limited to, the following elements, as applicable:~~

- ~~Provisions for personal protection and monitoring exposure to construction workers;~~
- ~~Procedures to be undertaken in the event that contamination is identified above action levels or previously unknown contamination is discovered;~~

- ~~Procedures for the safe storage, stockpiling, and disposal of contaminated soils;~~
- ~~Provisions for the on-site management and/or treatment of contaminated groundwater during extraction or dewatering activities; and~~
- ~~Emergency procedures and responsible personnel.~~

The SMP and HSP shall be submitted to HMCD, DTSC, or equivalent regulatory agency for review and approval. Copies of the approved SMP and HSP shall be provided to the Planning, Building, and Code Enforcement Supervising Environmental Planner and Environmental Services prior to issuance of grading permits.

HAZ-2: All contractors at the project site shall develop a Health and Safety Plan (HSP) specific to their scope of work and based upon the known environmental conditions for the site. The HSP shall be approved by the Director or Director's designee of the City of San Jose Department of Planning, Building and Code Enforcement and the City of San José Environmental Services Department and implemented under the direction of a Site Safety and Health Officer.

The HSP shall include, but shall not be limited to, the following elements, as applicable:

- Provisions for personal protection and monitoring exposure to construction workers;
- Procedures to be undertaken in the event that contamination is identified above action levels or previously unknown contamination is discovered;
- Procedures for the safe storage, stockpiling, and disposal of contaminated soils;
- Provisions for the onsite management and/or treatment of contaminated groundwater during extraction or dewatering activities; and
- Emergency procedures and responsible personnel.

Finding: Implementation of MM HAZ-1 and MM HAZ-2 requires the applicant to prepare an SMP (to establish proper procedures to be taken when contaminated soil is found and how to dispose of the contaminated soil properly), as well as an HSP, to establish provisions for personal protection and procedure if contaminated soil is encountered, which would reduce

hazard risks to the public or environment to a less than significant level. The impact is less than significant with mitigation and the project would not result in any new impacts or substantially increase the severity of impacts identified in the Final EIR.

Facts in Support of Finding: The SMP and HSP would be prepared by qualified professionals and implemented under the oversight of regulatory agencies with the authority to determine the adequacy of the proposed measures. The SMP required under MM HAZ-1 would detail how to remove contaminated soil off-site and protocols to manage soil during the remediation. The HSP required by MM HAZ-2 would ensure that appropriate management practices for handling impacted soil or other materials that may be encountered during construction activities are conducted, reducing the risk of exposure to construction workers and the public to a less than significant level.

Noise

Impact: The Final EIR determined that the project could result in the generation of substantial temporary ambient noise levels in the vicinity of the project in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies. As noted in the Final EIR, the loudest construction activities can elevate the existing ambient noise levels at the nearest businesses by up to 10 dBA on average for the loudest construction noise levels, that is, causing the noise level to increase to 63 dBA compared to the existing ambient level of 53 dBA. An increase of 10 dBA or more during the day can be perceived as noisy (triggering a community reaction) and warrant additional measures to address noise levels.

The Modified Project would extend the overall construction schedule from approximately 17 months to 33 months compared to the CEC's Final EIR. As a result, construction activities would impact persons at nearby commercial (approximately 800 feet south of the Data Center Site) and residential land uses (approximately 1,650 feet south of the Data Center Site) for a longer period of time.

Mitigation: **MM NOI-1:** The project shall implement the following measures to reduce temporary construction noise to less than significant levels.

- Prior to the start of project construction, identify a noise control disturbance coordinator. The disturbance coordinator will be responsible for responding to any local complaints about construction noise. The disturbance coordinator will determine the

cause of the noise complaint (e.g., starting too early, bad muffler, etc.) and will require that reasonable measures warranted to correct the problem to be implemented.

- Establish a telephone number for the disturbance coordinator and post it on the construction site.
- Prior to the start of construction, submit to the Director or Director's designee of the City of San Jose Department of Planning, Building and Code Enforcement, for review and approval, the schedule or "noisy" construction activities with the telephone number of the disturbance coordinator.
- Prior to the start of construction, and after the approval of the construction schedule by the City of San José Department of Planning, Building, and Code Enforcement, notify the businesses located south of the project site immediately across Highway 237 and the businesses located within 1,000 feet of the project's southeastern boundary of the construction schedule, in writing, and provide a written schedule of "noisy" construction activities to the adjacent land uses. include in the notice, the telephone number for the project's noise disturbance coordinator.

Finding: Implementation of MM NOI-1, which requires identification of a noise control disturbance coordinator and notification of the construction schedule, would reduce construction noise impacts on neighboring residents and other uses during noise-generating construction activities. The impact is less than significant with mitigation and the project would not result in any new impacts or substantially increase the severity of impacts identified in the Final EIR.

Facts in Support of Finding: As noted in the Final EIR, the loudest construction activities can elevate the existing ambient noise levels at the nearest residences by up to 4 dBA—average of the loudest construction noise levels, or 57 dBA compared to the existing ambient level of 53 dBA. This would not be significant. However, MM NOI-1 requires a complaint and redress process to be implemented to ensure construction noise impacts would not be significant, as perceived by the community. Designation of a noise control disturbance coordinator and posting contact information at the project site will provide neighboring properties with the ability to file a complaint and have it addressed in a timely fashion. Noise professionals concluded that the measures included in MM NOI-1 would be sufficient to reduce project construction noise to a less than significant level.

Transportation

Impact: The Final EIR determined that the project could conflict or be inconsistent with CEQA Guidelines section 15064.3, subdivision (b).

The Modified Project would result in the construction and operation of the McCarthy Lane Extension as the primary access roadway to the Data Center Site instead of the Nortech Parkway Extension, which was assumed in the CEC's Final EIR.

Note: Mitigation Measure TRA-1 requires revision to reflect the removal of Nortech Parkway extension from the Project as described in Section 3.9.2.2 of the Addendum. Hexagon Transportation Consultants, who prepared the Transportation Analysis for the 2022 Project, reviewed the Modified Project plans and determined the following revisions to Mitigation Measure TRA-1 are needed (refer to Appendix D of the Addendum). Revised or new language is underlined. All deletions are shown with a ~~strikeout~~.

Mitigation: MM TRA-1: Prior to the issuance of a City of San José Public Works occupancy permit, the project shall implement the following:

- ~~• Increase Roadway Network Connectivity — The project owner shall construct a new street (an extension of Nortech Parkway) that shall extend east from Zanker Road and provide access to the project site. The new intersection created at Zanker Road/Nortech Parkway shall be signalized and shall be located approximately 400 feet north of the Zanker Road/Thomas Foon Chew Way intersection.~~
- Traffic Calming Measures – The project owner shall construct a raised median island along Zanker Road between the new Nortech Parkway Extension McCarthy Lane and the State Route 237 westbound off-ramp.
- Pedestrian Network Improvements – Pedestrian improvements at the new signalized intersection of Zanker Road and Nortech Parkway McCarthy Lane shall include striped crosswalks and pedestrian signals and push buttons. Sidewalks shall be included along both sides of Nortech Parkway Zanker Road between State Route 237 and McCarthy Lane.
- Bike Access Improvements – The project owner shall construct a Class I Bikeway Trail extension along the east side of Zanker Road (within the City's right-of-way) and a Class 4 protected bike lane on the west side of Zanker Road, connecting the existing State Route 237 Bikeway trail segment with the new Nortech Parkway Extension McCarthy Lane. Bike lanes shall be included along both sides of Nortech Parkway.

- **Limit Parking Supply** – The project owner shall provide 122 vehicle parking spaces, which is 63 fewer spaces than what the City of San José Municipal Code requires. The project owner shall request a parking exception from the Director or Director's designee of the City of San Jose Department of Planning, Building and Code Enforcement to qualify for the parking reduction.
- **End of Trip Bike Facilities** – The project shall provide and maintain bike facilities for active alternative transportation users of the project. End of trip bike facilities shall include bike parking, bike lockers, showers, and personal lockers.
- **Commute Trip Reduction Marketing and Education**- The project owner shall prepare and submit a Transportation Demand Management (TDM) plan for review and approval to the City of San José Public Works Department. As part of the TDM plan the project owner shall implement a marketing campaign targeting all employees that encourages the use of shared rides and active modes of transportation. Marketing strategies shall include new employee orientation on alternative commute options, event promotions, and publications. The project owner shall provide information and encourage the use of public transit, shared ride modes, and active modes to reduce drive-alone commute trips.

Finding: Implementation of MM TRA-1, which would require the project owner to implement multi-modal infrastructure improvements and TDM measures, would reduce the project VMT to a less than significant level. The impact is less than significant with mitigation and the project would not result in any new impacts or substantially increase the severity of impacts identified in the Final EIR.

Facts in Support of Finding: The City's threshold of significance for industrial employment is 14.37 VMT per employee. Without mitigation, the project would generate 17.28 VMT per employee. MM TRA-1 requires the installation of traffic calming measures, pedestrian and bike access improvements, bike facilities, a reduction in parking spaces, and implementation of a TDM plan that would encourage ridesharing or multi-modal commute options. As determined by transportation professionals utilizing the San José VMT Evaluation Tool per the methodology outlined in Council Policy 5-1, implementation of MM TRA-1 would reduce the project's VMT to 14.12 per employee, which is below the City's threshold of significance and is the same as determined in the Final EIR.

FINDINGS CONCERNING ALTERNATIVES

In order to comply with the purpose of CEQA, it is important to consider reasonable alternatives to the proposed project that would reduce significant impacts that are anticipated to occur if the project is implemented, while attaining as many of the project's objectives as possible. The CEQA Guidelines emphasize a commonsense approach in that the alternatives should be reasonable, should "foster informed decision making and public participation," and should focus on alternatives that avoid or substantially lessen the significant impacts of the proposed project.

The alternatives analyzed in the Final EIR were developed with the goal of being feasible, given project objectives and site constraints, while avoiding or reducing the project's identified environmental effects.

The following alternatives were considered but rejected and not evaluated further in the Final EIR:

- **Alternative Project Site:** The Final EIR evaluated whether an alternative site location should be identified as a feasible alternative to the proposed project to avoid or substantially lessen significant effects. Some of the project's impacts are the type that would not be avoided or lessened by proposing the project at another location as some of the impacts are an inherent part of the project (e.g., air quality, GHG, construction noise) or would be similar at another location in the San José region (e.g., cultural and tribal resources, geology and soils [paleontology]). Generally, a site with consistent zoning and adjacent uses is preferred. Availability to connect to two natural gas lines, sanitary sewer, potable and reclaimed water, storm water, and transmission lines and a substation with a high level of reliability, such as the Los Esteros Substation, is required for the project to be feasible. Having already acquired the project site, to then acquire an alternative site might be infeasible if a suitable site is not available for sale or lease within a reasonable timeframe. The project was proposed on property zoned for industrial uses and surrounded by compatible uses. For these reasons, an alternative project site was not considered further.
- **Fuel Cell Alternative:** Fuel cells were considered as a potential alternative to the natural gas engine technology proposed by the applicant for backup power. However, this alternative could not achieve the level of reliability required to ensure an uninterrupted power supply to the approved project. Data center customers demand the most reliable data storage service available with low probability of operational failure. There are limitations to fuel cells such as slow response to electricity demand, limited supply, and the need to store fuels like hydrogen on-site. These factors make this type of technology unstable compared to natural gas powered backup generators. Therefore, a fuel cell alternative was not considered further.

- **Standalone Battery Energy Storage Alternative:** Standalone battery energy storage was considered as a potential alternative to the natural gas engine technology proposed by the applicant for backup power. However, this alternative could not achieve the level of reliability required to ensure an uninterrupted power supply to the approved project. There has been no real life demonstration that a battery energy storage system could power a data center of this scale without the inclusion of backup generators. Additionally, there is a risk of fires occurring due to the heat generated by batteries exceeding the heat dissipated in its surroundings. This risk of fire presents a safety issue and would result in a shutdown of the proposed data center until an investigation was completed. Data centers cannot risk having operational interruptions. Therefore, a standalone battery energy storage alternative was not considered further.

The following were evaluated as alternatives to the approved project:

1. No Project Alternative
2. Tandem Battery Energy Storage Alternative

1. No Project Alternative

- A. **No Project Alternative:** This alternative would retain the existing conditions on the site. However, because the project would not be constructed under this No Project alternative, this alternative would not meet any of the project objectives.
- B. **Comparison of Environmental Impacts:** The No Project Alternative would avoid all of the environmental impacts associated with the proposed Project. No mitigation would be required.
- C. **Finding:** The No Project Alternative would not meet any of the Project's objectives. Because the No Project Alternative would not result in any changes to the project site, this Alternative would avoid all the environmental impacts from the approved project. However, the No Project Alternative would not further the General Plan goals and policies related to economic development.

2. Tandem Battery Energy Storage Alternative

- A. **Tandem Battery Energy Storage Alternative:** Under this alternative, a battery energy storage system in tandem with natural gas generators would be utilized for backup power, allowing the batteries to act as primary backup power for short outage durations, with the natural gas generators providing backup power when outages are longer in duration and the batteries are discharged.

- B. Comparison of Environmental Impacts:** Under this alternative, impacts to biological resources, cultural and tribal cultural resources, geology and soils, noise, and transportation would be similar to the approved project. Impacts related to air quality and GHG emissions would be less than the approved project due to the use of batteries to reduce the amount of fuel consumed for backup power. Impacts related to hazardous materials would be greater than the approved project due to an increased risk of fires in the battery systems. Overall, this alternative would potentially lessen the impacts identified in the Final EIR, none of which were found to be significant and unavoidable. Impacts could be mitigated to a less than significant level in the same manner as the approved project.
- C. Finding:** The use of a tandem system combining natural gas generators as backup to a battery energy storage system would reduce the potential hours of emergency operations of the backup generators. The batteries would help respond to an emergency, but it is not known whether the batteries could operate for load shedding, demand response and behind-the-meter resource adequacy ancillary services, as the project proposes. Without the behind the meter services, this alternative may not be fiscally viable. Two of the applicant's objectives are to meet the continuing need for a data center to support the San José region's growing business and work force population and ensure the data center achieves reduced access latency. The redesign necessary for this alternative would delay the proposed online date and thus delay the applicant's ability to meet the continuing need for data centers. Additionally, the selected backup electric generation technology must be extremely reliable in responding to the loss of power from the utility line the data center is connected to. Reliability would be measured by the technology's exposure to the risk of loss of data and rendering of critical services. Whether the batteries are single stacked, double stacked in containers, or stored in a building, the risk of fires, typically caused by thermal runaway, is apparent and currently trending in large-scale applications. Thermal runaway begins when the heat generated within a battery exceeds the amount of heat dissipated to its surroundings. If the cause of the excessive heat generated is not remedied (through heat transfer), the condition will worsen. The internal battery temperature will continue to rise, causing the battery current to rise, thereby creating a domino effect. The rise in temperature in a single battery will begin to affect other batteries in its proximity, and the pattern will continue, thus the term "runaway." There are extensive mitigations, codes and standards, and a comprehensive regulatory framework in place that apply to battery storage to ensure the risk is less than significant. However, even a less than significant risk such as thermal runaway could affect the overall reliability of the data center and the assurance that data would not be lost. Loss of data would be very significant for an operation whose topmost goal is protecting the data against loss, and guaranteeing continuous and uninterruptable access to the data. Furthermore, if a single cell or cluster of the battery system fails the entire project may be shut down for investigation. Once discharged, the batteries would require power to recharge; further design

considerations would be needed to make this happen. Batteries have a lifetime of about 10 years. If the project's lifespan is 20 years, the batteries would have to be replaced at least once, adding to the project cost. For these reasons, the Tandem Battery Energy Storage Alternative would not meet the project's objective of incorporating the most reliable commercially available, and feasible backup generators to ensure uninterrupted power during utility outages, interruptions, or failures, with back-up generation deployed in redundant configurations to achieve a 99.999 percent reliability factor.

Environmentally Superior Alternative

The No Project Alternative would be the environmentally superior alternative; however, per the CEQA Guidelines Section 15126.6(e)(2), if the environmentally superior alternative is the No Project Alternative, the EIR shall also identify an environmentally superior alternative among the other alternatives. Therefore, the Tandem Battery Energy Storage Alternative would be the environmentally superior alternative as it would reduce air quality and GHG emissions impacts as compared to the proposed project. This alternative would achieve the most project objectives with the least amount of impacts and, therefore, is the environmentally superior alternative. However, it would not meet the project objective of incorporating the most reliable commercially available, and feasible backup generators to ensure uninterrupted power during utility outages, interruptions, or failures, with back-up generation deployed in redundant configurations to achieve a 99.999 percent reliability factor.

MITIGATION MONITORING AND REPORTING PROGRAM

Attached to this Resolution as Exhibit "A" and incorporated and adopted as part of this Determination herein is the Mitigation Monitoring and Reporting Program (MMRP) for the Project required under Section 21081.6 of the CEQA Statute and Section 15097(b) of the CEQA Guidelines. The MMRP identifies the impacts of the Project, corresponding mitigation, designation for responsibility for mitigation implementation and the agency responsible for the monitoring action.

LOCATION AND CUSTODIAN OF RECORDS

The documents and other materials that constitute the record of proceedings on which the Planning Commission based the foregoing findings and approval of the Project are located at the Department of Planning, Building and Code Enforcement, 200 East Santa Clara Street, Third Floor Tower, San José, CA 95113.

BE IT FURTHER RESOLVED that the Director of Planning, Building and Code Enforcement is hereby directed to prepare a Notice of Determination under CEQA and

cause the same to be filed with the County Clerk of the County of Santa Clara promptly following the City's approval of any discretionary action related to the project.

APPROVED this ____9th____ day of ____April____, 2025, by the following vote:

AYES: TORDILLOS, CANTRELL, BAROCIO, BHANDAL, BICKFORD,
LARDINOIS, OLIVERIO, ROSARIO, YOUNG

NOES: NONE

ABSENT: NONE

ABSTAIN: NONE

Anthony Tordillos
Anthony Tordillos ID: 2632-13-12-0921
ANTHONY TORDILLOS
Chairperson

ATTEST:

Manira Sandhir
MANIRA SANDHIR
Deputy Director for
CHRISTOPHER BURTON
Director of Planning, Building & Code Enforcement
Planning Commission Secretary

EXHIBIT C COVERSHEET

VALLEY WATER DRAFT NOTICE OF DETERMINATION

No. of Pages: 2

Exhibit Attachments: None



NOTICE OF DETERMINATION

Public Agency:

Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, CA 95118
(408) 265-2600

Lead Agency:

California Energy Commission
715 P Street, MS 40
Sacramento, CA 95814
Lisa Worrell, (916) 661-8367

☒ Office of Land Use and Climate Innovation
1400 Tenth Street, Room 121
Sacramento, CA 95818

☒ County of Santa Clara
Clerk-Recorder's Office
110 West Tasman Drive, First Floor
San Jose, CA 95134

Subject: *Filing of Notice of Determination in compliance with Section 21108 or 21152 of the Public Resource Code.*

Contact Person: Elise Latedjou-Durand	Telephone No: (408) 630-3205	State Clearinghouse No: 2021020002
Project Title: San Jose Data Center Project		
Project Location: The approximate 64.5-acre data center project site is located at 1657 Alviso-Milpitas Road in San Jose (Santa Clara County). The data center site is bounded by the San Jose-Santa Clara Regional Wastewater Facility dewatering facility to the north, Alviso-Milpitas Road to the south, Coyote Creek to the east, and the Pacific Gas & Electric Los Esteros Substation, the Los Esteros Critical Energy Facility, the Silicon Valley Advanced Water Purification Center, and undeveloped grassland to the west. The supporting infrastructure improvement areas for the proposed utilities and roadway infrastructure consist of approximately 6.7 linear miles of improvements located on undeveloped land west of the data center site along Zanker Road and McCarthy Lane.		
Project Background On July 13, 2022, the California Energy Commission (CEC), as the lead agency, considered and certified the San Jose Data Center (SJDC) Final Environmental Impact Report (EIR), filed a Notice of Determination and approved the SJDC Project. The SJDC Project is proposed by Microsoft Corporation (Microsoft) and involves the construction of a data center facility and related supporting infrastructure improvement areas located on approximately 64.5 acres of land at 1657 Alviso-Milpitas Road in the City of San Jose. Since the Final EIR was certified, the City of San Jose (City), as the responsible agency and local land use agency, has requested modifications to the supporting roadway improvements and utility infrastructure (City Modified Project) included in the SJDC Project. Given the location of the proposed modifications in relation to Santa Clara Valley Water District (Valley Water) facilities and the data center facility, certain changes would be required to the Silicon Valley Advanced Water Purification Center (Valley Water Purification Center), including relocating the parking lot facilities and the modular visitor center. The City analyzed these modifications to Valley Water facilities in an Addendum and determined that the modifications to the City Modified Project would not result in any new significant environmental impacts or a substantial increase in the severity of the impacts analyzed in the EIR. The City adopted a resolution approving the Modified Project and filed a Notice of Determination (NOD) to the Final EIR on April 9, 2025. Valley Water is entering into an agreement, referred to herein as Site Works Agreement (Agreement), with Microsoft and the City. Entering into the Agreement would authorize the modifications to Valley Water Purification Center's parking lot and modular visitor center. These project modifications were analyzed in the City's Addendum. Project Description: The CEC Project would involve the construction and operation of an approximately 396,914 gross square foot data center facility with a maximum electrical load of 99 MW on a 64.5-acre undeveloped site at 1657 Alviso-Milpitas Road in San Jose. In addition, the Modified project would include the following supporting infrastructure improvements west of the data center site: • Extension of McCarthy Lane by approximately 1,150 feet to act as the primary access roadway to the data center site; • Construction of a new Santa Clara Valley Water Purification Visitor Center parking lot; • Relocation of the Santa Clara Valley Water Purification Visitor Center onto the new proposed		

parking lot;

- Widening of Zanker Road and construction of new multimodal facilities (e.g., sidewalks and bike lanes) along Zanker Road; and
- Construction of new utility connections (potable water, fire water, recycled water, sanitary sewer, and storm drain) to support the proposed data center site.

The approval of the Agreement would authorize the above modifications to the Valley Water Purification Center's parking lot and modular visitor center.

The lead agency, CEC, certified the SJDC Project Final EIR in July 2022, made the CEQA required findings, and adopted a Mitigation Monitoring Reporting Program per Resolution No. 472 on December 8, 2015. The City, as responsible agency, approved the Addendum to the Final EIR on April 9, 2025, and adopted the CEC's mitigation measures.

This is to advise that Valley Water, as a responsible agency, has considered the Final EIR and addendum as prepared respectively by CEC and the City, concurs with the findings by the CEC and City as it relates to the environmental review of the SJDC and the City Modified Project and finds the EIR and Addendum and the mitigation measures adopted therein adequate to address the potential environmental effects of the SJDC and the City Modified project. As a result, no additional alternatives or mitigation measures are necessary.

Valley Water approved the Agreement on _____, 2026 and has made the following determinations regarding the Project:

1. The Agreement ☐ will, ☒ will not, have a significant effect on the environment.
2. ☒ Environmental Impact Report and Addendum were prepared for the SJDC Project pursuant to the provisions of CEQA.
☐ A Mitigated Negative Declaration was prepared for this project pursuant to the provisions of CEQA.
3. Mitigation measures ☒ were, ☐ were not [made a condition of the approval of the project.]
4. A mitigation reporting or monitoring program ☒ was ☐ was not [adopted for this project.]
5. A Statement of Overriding Considerations ☐ was, ☒ was not adopted for this project.
6. Findings ☒ were, ☐ were not [made pursuant to the provision of CEQA.]

This is to certify that the records of the CEC Final EIR and the City Addendum are available at:

San Jose Addendum

<https://url.us.m.mimecastprotect.com/s/tRMACVOKxRs5qMWAHyiBUE3kKe?domain=sanjoseca.gov>

Final EIR Part 1

<https://efiling.energy.ca.gov/GetDocument.aspx?tn=241977-1&DocumentContentId=75659>

Final EIR Part 2

<https://efiling.energy.ca.gov/GetDocument.aspx?tn=241977-2&DocumentContentId=75660>

Copies of additional information regarding Valley Water's responsible agency environmental documentation and record of approval for the project may be examined at:

Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, CA 95118

Melanie Richardson, P.E. - Interim Chief Executive Officer

Date:

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SITE WORKS AGREEMENT
(Valley Water Visitor Center)

THIS SITE WORKS AGREEMENT (the “**Agreement**”) is entered into as of the date of the last signature below (the “**Effective Date**”), by and between the CITY OF SAN JOSÉ, a municipal corporation of the State of California (“**City**”), SANTA CLARA VALLEY WATER DISTRICT, a special district of the State of California (“**Valley Water**”), and MICROSOFT CORPORATION, a Washington corporation (“**Microsoft**”). City, Valley Water and Microsoft are each individually referred to herein as a “**Party**” and collectively referred to as the “**Parties**”.

RECITALS

A. City and the City of Santa Clara (“**Santa Clara**”) are co-owners of that certain real property and improvements located at the east side of Zanker Road, north of State Route 237 in the City of San José, County of Santa Clara, State of California (the “**Property**”) and City is the administering agency for the San Jose/Santa Clara Water Pollution Control Plant (more commonly known as Regional Wastewater Facility or RWF) which encompasses the wastewater treatment facility and the Property;

B. City and Valley Water previously executed a Ground Lease and Property Use Agreement dated March 2, 2010, and effective July 1, 2010 (the “**Ground Lease**”), for Valley Water to lease the portion of the Property depicted on **Exhibit A** attached hereto (“**VW Property**”). Pursuant to the Ground Lease, Valley Water has constructed and currently operates the Advanced Water Treatment Facility (“**AWTF**”) now known as the Silicon Valley Advanced Water Purification Center (SVAWPC) on the VW Property and a visitor center, which is comprised of a small portable modular building measuring approximately one thousand four hundred forty (1,440) square feet (“**Visitor Center**”), a related parking lot comprised of nine (9) parking spaces (“**Existing Parking Lot**”), and related infrastructure and utility connections (collectively, the “**VW Facilities**”).

C. Microsoft owns approximately 64.5 acres of real property at 1657 Alviso Milpitas Road in the City of San José, County of Santa Clara, State of California (the “**Microsoft Property**”), on which Microsoft may develop, construct and/or operate a data center campus together with related improvements, as described more fully in the application materials submitted to and subsequently approved by City on April 9, 2025 (collectively, the “**Project**”).

D. The Project includes, among other things, the construction of a new, two-lane driveway to the Microsoft Property’s primary access point for use by Valley Water, City, and Microsoft’s employees, vendors, and visitors and such other users as may be permitted by City and Microsoft. This new driveway would run east from the eastern boundary of the McCarthy Connector (as defined below) to, and then south along, the western boundary of the Microsoft Property, as depicted in detail in **Exhibit B** hereto (the “**Microsoft Driveway**”). The Microsoft Driveway will serve as a private driveway for the Project until the City permits public access to

the driveway and requests Microsoft dedicate the portion of the Microsoft Driveway on the Microsoft Property, as further addressed below.

E. The Project also includes, among other things, the construction of a new two-lane public road which will connect the east end of existing McCarthy Lane to the west end of the Microsoft Driveway, as depicted in detail in Exhibit C hereto (the “**McCarthy Connector**”) and the installation of certain infrastructure improvements for the benefit of Valley Water within the Zanker Improvements Area, as such area is depicted in Exhibit D hereto (the “**Zanker Improvements Area**”).

F. The California Energy Commission prepared and certified the Final Environmental Impact Report (“**FEIR**”) for the Project in accordance with the California Environmental Quality Act, as amended (“**CEQA**”). On April 9, 2025, City certified an Addendum to the FEIR and adopted the related Mitigation Monitoring and Reporting Plan, as a responsible agency, in accordance with CEQA.

G. To enable the construction of the McCarthy Connector and the Microsoft Driveway while also ensuring that Valley Water’s operations on the VW Property are not impaired, the Visitor Center would be relocated to a new location adjacent to the VW Property and a new parking lot comprised of forty-two (42) car parking spaces and three (3) bus parking spaces (“**New Parking Lot**”) would be installed adjacent to the VW Property to replace the Existing Parking Lot and to offset the loss of areas currently used for parking on and along existing McCarthy Lane. The area adjacent to the VW Property upon which the relocated Visitor Center and the New Parking Lot would be installed (collectively, the “**Additional VW Area**”) is owned by City and Santa Clara. The Additional VW Area is not currently a part of the Ground Lease, but is currently expected to become a part of the Ground Lease in the future. The Additional VW Area is depicted on Exhibit E attached hereto.

H. Concurrent herewith, City and Microsoft are entering into that certain Master Utility Easement Agreement, dated as of [____], 2026 (the “**MUEA**”), pursuant to which the City is granting certain construction and utility easements to Microsoft. As part of the MUEA, City and Microsoft have agreed to enter into the form of Temporary Construction Easement depicted as Exhibit O to the MUEA (“**TCE**”) and be bound by related Exhibit P to the MUEA (which depicts areas subject to access under the TCE) in advance of Microsoft’s performance of the works contemplated by the MUEA and the Works (as defined below) contemplated by this Agreement. Valley Water acknowledges that even though Valley Water will not be a party to the TCE, the TCE will apply to the Site Works to be performed by Microsoft on the VW Property.

I. City and Valley Water have executed that certain Option Agreement, dated [____], 2026 granting Valley Water the option to amend the Ground Lease (the “**Lease Amendment**”) to construct and operate a proposed direct potable reuse demonstration facility (“**DPR Project**”). Under the Lease Amendment, City and Valley Water shall endeavor to amend the lease footprint of the Ground Lease to reflect (i) the deletion of certain area needed for the McCarthy Connector and (ii) the addition of the Additional VW Area. Collectively, the VW Property and the Additional

VW Area shall be referred to herein as the “**VW Site**”, which shall be the subject lands reflected in the Lease Amendment. If Valley Water constructs the DPR Project, the City intends to grant Valley Water a temporary construction easement over the Property that will include portions of the McCarthy Connector as generally depicted in Exhibit C. Such Lease Amendment shall be completed at the discretion of the City and Valley Water; provided, however, City and Valley Water each agree that any delay in the execution of the Lease Amendment shall not delay or otherwise hinder the start or completion of the Works by Microsoft contemplated herein, including, without limitation, the issuance of any approvals or permits or the completion of any inspections by City or Valley Water required therefor.

J. The Parties desire to proceed with the Works on the terms and conditions set forth in this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth below, and other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree as follows:

1. **Incorporation of Recitals**. The recitals set forth above are hereby incorporated into and made a part of this Agreement as if fully set forth herein. The Parties acknowledge and agree that the recitals are true and correct and form an integral part of the understanding and intent of this Agreement.

2. **Works**.

a. **Site Works**. Subject to Microsoft having obtained all approvals necessary or desirable to construct the Project, Microsoft shall have the right (but not the obligation) to perform the work described in Exhibit F attached hereto (collectively, the “**Site Works**”) on the VW Site and the Zanker Improvements Area, as such Site Works may be refined to reflect any and all changes thereto required by City as part of (i) City’s discretionary approval process for the Project and (ii) City’s review of any required building or other permit applications. Once Microsoft provides the Start Notice as defined in and pursuant to Section 5 below, it shall be obligated to complete the Site Works, and obtain and fulfill any permit requirements associated with the Site Works, as may be applicable, in accordance with the terms of this Agreement.

b. **Connector Works**. Once Microsoft provides the Start Notice, as defined in and pursuant to Section 5 below, it shall be obligated to perform and complete the work described in Exhibit G attached hereto (collectively, the “**Connector Works**”, and together with the Site Works, the “**Works**”) on the area of the McCarthy Connector in accordance with the terms of this Agreement, as such Connector Works may be refined to reflect any and all changes thereto required by City as part of (i) City’s discretionary approval process for the Project and (ii) City’s review of any required building or other permit applications.

3. Works Standards.

a. Applicable Standards; Necessary Approvals. If Microsoft performs the Works pursuant to Section 2 hereof, such Works shall be completed in compliance with all applicable laws and regulations (collectively, the “**Applicable Standards**”). Microsoft shall be responsible for obtaining all necessary or desirable permits, licenses, entitlements and approvals from the relevant public agencies for the construction and installation of the Works (collectively, the “**Works Permits**”), including, but not limited to, obtaining a conditional use permit, building permits, grading permits, and other construction-related permits and conducting all necessary environmental review under the California Environmental Quality Act and complying with all applicable requirements thereunder. For the avoidance of doubt, pursuant to Section 2.2.2.D. of Valley Water’s Water Resources Protection Ordinance, Microsoft shall not be required to obtain any permits, including, without limitation, any encroachment permits, from Valley Water for the Works as all rights and responsibilities of Valley Water and Microsoft with respect to the Works are fully addressed in this Agreement. Without limiting the foregoing, subject to limitations on their authority in their governmental and regulatory capacities, City and Valley Water, as respective owners of the underlying property and the possessory rights thereof, shall cooperate in good faith with respect to Microsoft’s pursuit of the Works Permits (including, without limitation, providing signatures on applications as requested by Microsoft). Microsoft shall provide City and Valley Water with copies of all final Works Permits. Microsoft shall undertake the Works in a safe and professional manner consistent with industry standards and in accordance with the additional standards and requirements described in Exhibit H hereto.

b. Repairs to VW Facilities. In connection with its performance of the Site Works, Microsoft shall have the sole right to replace, repair or reimburse Valley Water, at Valley Water’s election (such election to be exercised within ten business days of receipt of notice), for the reasonable, actual cost of replacement or repair of damage to any Valley Water property, including, but not limited to, the VW Facilities and any personal property located thereupon, but only to the extent any such damage is caused by Microsoft’s construction, reconstruction, use, operation, maintenance, repair, inspection, patrol, replacement, upgrading, or removal of the Site Works during the Term (as defined below). For sixty days after Substantial Completion, Microsoft shall have designated personnel available to assist Valley Water with remedying any problems related to any damage or loss caused by Microsoft or its contractors to the relocated Visitor Center or any personal property located therein. Nothing contained herein, however, shall require Microsoft to remediate, treat, encapsulate, remove, transport or otherwise handle any Hazardous Materials (as defined in Exhibit I hereto) not first placed on the VW Site, the McCarthy Connector or the Zanker Improvements Area by Microsoft.

4. Cost of Construction. Subject to the terms and conditions of this Agreement, Microsoft shall be responsible for the costs of designing, permitting, constructing and installing, and warranting the Works. The costs of such work shall include all labor, materials, equipment,

and other expenses necessary to complete the Works in accordance with the Applicable Standards.

5. **Coordination of Site Works.** If Microsoft performs the Works pursuant to Section 2 hereof, Microsoft, Valley Water and City shall reasonably and in good faith coordinate and cooperate regarding Microsoft's performance of the Works as follows:

a. **Election to Proceed; Start Notice.** Microsoft shall endeavor to provide no less than 90 days' written notice, and shall, in any event, provide no less than 60 days' written notice, to Valley Water and City ("**Start Notice**") of the date on which it expects to start construction on the Works; provided, however, that following Microsoft's delivery of the Start Notice, Valley Water and Microsoft may mutually agree a start date for construction of the Works that is less than 60 days after the date of the Start Notice. Prior to issuance of the first City permit for any aspect of the Works or the date 60 days after the Start Notice is provided, whichever occurs earlier, Microsoft shall (i) furnish a surety bond for the Works to City in accordance with the requirements of the SECI permit for the Works and the related construction agreement to be entered into by City and Microsoft and (ii) furnish a surety bond for the Works to Valley Water for value of the Works, as reasonably allocated by Microsoft's contractor based on the cost of the Site Works and the Connector Works as a portion of the overall amount of the applicable construction contract (which allocation shall not exceed eight million dollars (\$8,000,000) in any event). Prior to undertaking any of the Works, including any Works performed pursuant to rights granted under the MUEA, Microsoft must first issue the Start Notice to Valley Water and City in accordance with the terms of this Agreement.

b. **Review of Plans and Specifications; Regulatory Approval.** Prior to finalizing any required Site Works Permits, Microsoft shall prepare the plans and specifications for the Site Works in accordance with Valley Water's standard construction standards as described exclusively in Valley Water's Water Resources Protection Manual (a current copy of which was provided to Microsoft prior to the date hereof) and the supplemental requirements provided to Microsoft and as set forth in **Exhibit J** hereto (the "**VW Standards**"). Microsoft shall provide Valley Water with copies of the 50% and 90% plans and specifications for the Site Works. Valley Water shall review all such plans and specifications to ensure consistency with the VW Standards and shall provide written comments describing any revisions reasonably required to ensure that the Site Works are consistent with the VW Standards). Valley Water shall provide any written comments thereto within ten (10) business days of request therefor. So long as Valley Water provides written comments that are consistent with the VW Standards within such ten (10) days period, Microsoft shall work with Valley Water to incorporate and resolve such comments in good faith; provided, however, (i) nothing contained herein shall require Microsoft to address any such comments if such comment(s) are not consistent with the VW Standards and (ii) Valley Water shall not be entitled to provide comments regarding the Zanker Road acceleration lane and the new sidewalk and landscaping adjacent to the Zanker Road, as such improvements are required to be installed by Microsoft exclusively in accordance with applicable City standards. Microsoft

shall also notify Valley Water of, and provide Valley Water with, any material changes Microsoft makes (i.e., not initiated by Valley Water) to the plans and specifications between the 90% plans and specifications and the final plans and specifications. Valley Water and Microsoft shall work together in good faith to resolve and incorporate such comments into the final plans and specifications. The final plans and specifications for the Site Works approved by City, Valley Water, and other relevant agencies, in the respective agencies' sole discretion as regulatory agencies, (as such plans and specifications may thereafter be amended from time to time in accordance with this Agreement) in connection with the issuance of required permits are referred to herein as the "Final Plans and Specifications." Microsoft shall provide the Parties with copies of the Final Plans and Specifications and relevant construction documents. In the event of a conflict between the Final Plans and Specifications and the VW Standards, the Final Plans and Specifications shall supersede the VW Standards. Subject to City's obligations hereunder and under applicable law regarding the processing of ministerial permits, it is Microsoft's obligation to obtain any and all necessary permits, rights, or other such approvals as may be necessary to complete the proposed Site Works. Microsoft shall not be required to provide the Start Notice prior to the Final Plans and Specifications being approved.

c. **Kickoff Meeting and Status Updates.** Prior to beginning construction, Microsoft shall arrange one or more meetings among Microsoft, Valley Water, the general contractor and Valley Water's other construction professionals and consultants as Valley Water shall reasonably request be included to discuss construction matters, including construction hours, truck access, dust abatement, marshalling and storage areas, coordination of construction with the DPR Project, and any other matters that may be of concern to Valley Water or which may be of concern to neighbors. In particular, Microsoft or its general contractor shall provide Valley Water with progress reports with such information as Valley Water reasonably requests, at least every two weeks. Valley Water shall designate the Valley Water recipients for such progress reports in writing to Microsoft's general contractor within thirty (30) days of Valley Water's receipt of the Start Notice.

d. **Schedule for Works.** Following any Start Notice, Microsoft will use commercially reasonable efforts to construct the Works in a manner that minimizes downtime and disruptions to the operations of the SVAWPC and any public outreach tour and activities related thereto, in each case to the extent feasible; provided, however, Microsoft and Valley Water acknowledge that Microsoft currently expects that Microsoft will require at least approximately six (6) months to complete the Works; provided further that once the physical relocation of the Visitor Center begins and Valley Water's use thereof is disrupted, Microsoft shall use commercially reasonable efforts to ensure that Substantial Completion of the Connector Works and the Site Works outside of the Zanker Improvements Area are achieved as promptly as reasonably possible thereafter. To ensure close coordination with Valley Water regarding the schedule for and timing of the relocation of the Visitor Center, Microsoft shall ensure that the Works Schedule (as defined below) includes a day by day projection of the expected construction timetable for the Visitor Center relocation starting on the date the Visitor Center is first moved and ending on the

expected date for Substantial Completion. Microsoft, City and Valley Water shall document: (i) the start date for the Works, consistent with the Start Notice, and (ii) the anticipated timing to complete the installation thereof; provided however, the foregoing schedule (the “**Works Schedule**”) may be extended by Microsoft for up to sixty (60) days at its sole discretion. The Works Schedule shall be updated by Microsoft’s general contractor from time to time as it is revised. The following tasks shall be noted on the Works Schedule: the estimated timing for the relocation of the manhole from Zanker Road, road works in and otherwise impeding or redirecting traffic flows on Zanker Road and McCarthy Lane, trailer relocation timing, utility hook-ups timing, and timing of paving activities, and work within the AWTF. The Works Schedule and any updates shall be delivered to those parties designated by Valley Water pursuant to Section 5.c. above, and City and RWF in 15(c), below. The Works Schedule shall also be extended for any delays arising from or caused by any Force Majeure Events (as defined below) or other unanticipated site conditions. Further, the Works Schedule may be modified, from time to time, by mutual consent of Valley Water, City and Microsoft, acting reasonably in good faith.

e. **Construction Site Access; Compliance.** Prior to Substantial Completion of the Site Works, Microsoft shall provide Valley Water with reasonable access to the construction site for the Site Works (“**Construction Site**”) for purposes of monitoring Microsoft’s compliance with this Agreement, provided Valley Water complies with Microsoft’s and its contractor’s safety and security requirements applicable to the Construction Site. Without reducing or relieving Microsoft of its responsibilities as stated herein, Valley Water may periodically have an inspector at the Construction Site to monitor compliance with this Agreement. Valley Water’s inspector shall only be responsible for reporting to Microsoft’s authorized representative any inconsistencies that the inspector observes. Without limitation on any authority reserved for Valley Water pursuant to this Agreement, Valley Water shall not direct or otherwise hinder or interfere with the performance of the Works by Microsoft’s contractor(s). Microsoft assumes all costs and risks for removing and reconstructing any completed work that is inconsistent with the Final Plans and Specifications or with the conditions of any other necessary regulatory permit or approval.

f. **Changes to Final Plans and Specifications.** Microsoft shall provide advance written notice to Valley Water of any material modifications to the Final Plans and Specifications in accordance with the standard notice provisions of this Agreement, which Valley Water shall review and reasonably consider as promptly as practicable. If Valley Water approves requested modifications to the Final Plans and Specifications, Microsoft shall be responsible for obtaining any and all applicable regulatory and public agency approvals required as a result of such modifications to the Final Plans and Specifications. If Valley Water or another regulatory agency reasonably disapproves or rejects the modifications, then Microsoft shall not implement the proposed modifications until such time as the parties agree to alternative modifications.

6. **Lease Amendment or Termination; Further Assurances.** As it is not known if the Lease Amendment will be effective prior to the Start Date, City and Valley Water each acknowledge that the primary purpose of this Agreement is to enable Microsoft to construct the Site Works within the Zanker Improvements Area and the VW Site, which may include

additional premises when the Ground Lease is amended, and the Connector Works within the McCarthy Connector, in each case in accordance with the terms and conditions hereof (regardless of Valley Water and City's respective property rights in the VW Site, the Zanker Improvements Area or the McCarthy Connector at any given time) and that any failure by Valley Water and City to execute the Lease Amendment prior to the Start Date or any termination of the Ground Lease at any time shall not in any way impede Microsoft's rights hereunder. If the Lease Amendment is not executed or if the Ground Lease is terminated at any time, City and Valley Water agree to take all actions necessary to allow Microsoft to complete the Works in accordance with the Works Schedule and the other terms of this Agreement.

7. **Temporary Construction Easement.** If Microsoft delivers a Start Notice to Valley Water and City, then Microsoft and City shall each execute and deliver the TCE no later than forty-five (45) days after the date the Start Notice is delivered to City and Valley Water. To minimize delays to the Works, Microsoft may request preparation of the TCE at any time following execution of this Agreement. The TCE shall be recorded and shall cover those areas described and depicted therein, including the Zanker Improvements Area, the VW Site and the McCarthy Connector.

8. **Substantial Completion of Works; Handover.**

a. **Site Works.** Within twenty (20) business days of Substantial Completion (as defined below) of the Site Works, City shall accept the handover of the Site Works from Microsoft, whereupon Valley Water and/or the City shall assume all responsibility for the maintenance, repair and operation thereof based on their respective obligations under the Ground Lease (and, if effective as of such time, the Lease Amendment) and Microsoft shall have no ongoing liability for the same except for warranty obligations as provided in the Agreement. As used herein, "***Substantial Completion***" means the completion of the Site Works by Microsoft and the successful final inspection thereof by City and Valley Water. Microsoft represents and warrants that upon handover to Valley Water by Microsoft the Site Works shall be free and clear of all claims for mechanics' liens, stop notices, security interests, or other encumbrances related to the work performed for the Site Works. In the event that all Site Works to be performed outside of the Zanker Improvements Area achieve Substantial Completion more than 30 days prior to the expected date of Substantial Completion for the Site Works located within the Zanker Improvements Area (as reasonably determined by Microsoft's general contractor), Microsoft, City and Valley Water agree that City shall accept the handover of the Site Works in two phases, with the first phase being comprised of all Site Works outside of the Zanker Improvements Area (subject to compliance with the requirements of Section 8.b. below regarding the concurrent handover of the Connector Works as part of such first phase) and the second and final phase being comprised of all Site Works within the Zanker Improvements Area. Microsoft shall designate a person available to assist Valley Water and the City with exercising warranty coverage for the Site Works.

Once the Works have been accepted by City, all costs relating to any relocation or other changes to the Works, made at the discretion of Valley Water (which may be made

pursuant the relocation rights of City under the MUEA) shall be the sole responsibility of Valley Water through the termination or extinguishment of the underlying Ground Lease; provided, however, that Valley Water shall have no responsibility for any costs, expenses, delays, claims, losses, liabilities, investigation costs, design costs, permitting costs, construction costs, restoration costs, or other damages arising out of or relating to any Works, or portion thereof, that were not accurately and completely disclosed in all material respects in the Final Plans and Specifications, as-built drawings, CADD files, or other handover documents required to be provided by Microsoft under this Agreement. For purposes of this Section 8.a., “not accurately and completely disclosed in all material respects” means if the applicable documents fail to show, or inaccurately depict, the location, alignment, elevation, depth, dimension, size, material, capacity, configuration, tie-ins, appurtenances, clearances, or other material characteristics of such Works. If any Works, or portion thereof, are not accurately and completely disclosed in all material respects, Microsoft shall, at its sole cost and expense, promptly relocate, modify, remove, reconstruct, repair, or otherwise correct such Works as is reasonably necessary to conform, as applicable, to the Final Plans and Specifications, the required as-built drawings, CADD files, and/or other handover documents, but only if, and then only to the extent, reasonably necessary to avoid interference with Valley Water’s facilities, operations, maintenance, future improvements approved as of the date hereof in Valley Water’s Capital Improvement Program, including, if applicable, the DPR Project, or use of the VW Site consistent with past practice. Microsoft shall not have any obligations or other liability for Works not accurately and completely disclosed in all material respects if Microsoft is not notified in writing regarding any such purported inaccurate or incomplete disclosures within three years of the expiration or termination of this Agreement.

b. **Connector Works.** Within twenty (20) business days of CW Substantial Completion (as defined below), but subject to the prior or concurrent Substantial Completion of the Site Works, City shall accept the handover of the Connector Works from Microsoft, whereupon City shall assume all responsibility for the maintenance, repair and operation thereof and Microsoft shall have no ongoing liability for the same except for warranty obligations as provided in the Agreement. As used herein, “**CW Substantial Completion**” means the completion of the Connector Works by Microsoft and the successful final inspection thereof by City. Notwithstanding any other provision of this Agreement, and for the avoidance of doubt, the Parties agree that the Connector Works and all Site Works located outside of the Zanker Improvements Area shall be handed over to City concurrently, unless otherwise agreed in writing by the Parties. Microsoft represents and warrants that upon handover of the Connector Works to City by Microsoft the Connector Works shall be free and clear of all claims for mechanics’ liens, stop notices, security interests, or other encumbrances related to the work performed for the Connector Works.

9. **Term.** The term of this Agreement shall begin upon the Effective Date and expire ninety (90) days after the later of Substantial Completion or CW Substantial Completion, unless extended in writing by the Parties, which extension shall not be unreasonably withheld, conditioned or denied by City and Valley Water (as may be extended by the Parties, the “**Term**”). At the end of the Term, City and Valley Water shall each release Contractor’s applicable surety

bonds and all provisions of this Agreement shall terminate automatically, unless expressly stated to survive termination as set forth herein. Notwithstanding the foregoing, if Microsoft has not delivered a Start Notice to City and Valley Water on or before December 31, 2028, then this Agreement shall automatically terminate, unless extended in writing by the Parties.

10. **Indemnification; Release; Limitation of Liability.**

a. Microsoft agrees to indemnify, defend, and hold harmless Valley Water and City, their respective officials, officers, directors, employees, and agents (each an “**Indemnified VWC Party**” and, collectively, the “**Indemnified VWC Parties**”) from and against any and all claims, demands and losses, including but not limited to liabilities, obligations, costs (including but not limited to court costs, defense costs, interest, penalties, and fines), reasonable expenses (including but not limited to associated investigation and administrative expenses, reasonable attorneys', consultants', and expert fees, and costs of any alternate dispute resolution), fines, levies, imposts, assessments, demands, damages, or judgments of any kind or nature, whether in law or equity (including without limitation, death or injury to any person, property damage, administrative and judicial orders or consents, or any other loss) (collectively, “**Indemnified Claims**”) arising out of, pertaining to, resulting from, or relating to (i) any and all liens filed in connection with performance of the Site Works under this Agreement; and/or (ii) any injury to or the death of any person or physical damage to property, real or personal (including personal property located inside the Visitor Center), of any kind wherever located and by whomever owned caused in whole or in part by any act or omission of Microsoft or any of its employees or agents, except to the extent that any such Indemnified Claims are caused by the active negligence or willful misconduct of any of the Indemnified VWC Parties. Notwithstanding anything to the contrary contained herein, in no event shall Microsoft have any liability hereunder for any Hazardous Materials (as defined in Exhibit 3 to the TCE) not first placed on the VW Site, the McCarthy Connector or the Zanker Improvements Area by Microsoft. For the avoidance of doubt, to the extent the Site Works include the relocation of any existing improvements (e.g., the Visitor Center) and any Hazardous Materials were previously incorporated therein, then the relocation of the improvements shall not constitute the placement of such Hazardous Materials on the VW Site, the McCarthy Connector or the Zanker Improvements Area by Microsoft.

b. Valley Water and City each agree to indemnify, defend, and hold harmless Microsoft, and its officers, directors, employees, contractors and agents (each an “**Indemnified MS Party**” and, collectively, the “**Indemnified MS Parties**”) from and against any and all Indemnified Claims to the extent resulting from any injury to or the death of any person or physical damage to property, real or personal, of any kind wherever located and by whomever owned caused by the active negligence or willful misconduct of Valley Water or City, as the case may be, or any of their respective employees or agents. The obligations of Valley Water and City under this Section 10.b. shall be several and not joint.

c. Valley Water and/or City, as applicable, shall give prompt written notice to Microsoft, at the address for notices set forth herein, with respect to any Indemnified Claims initiated or threatened against Valley Water or City, as applicable, which Valley Water and/or

City, as applicable, has reason to believe are likely to give rise to an obligation to indemnify, defend and hold harmless Valley Water and/or City, as applicable, pursuant to this Section and Valley Water and/or City, as applicable, shall thereafter cooperate with Microsoft in the defense of such Indemnified Claims. Microsoft shall give prompt written notice to Valley Water and/or City, as the case may be, at the addresses for notices set forth herein, with respect to any Indemnified Claims initiated or threatened against Microsoft which Microsoft has reason to believe are likely to give rise to an obligation to indemnify, defend and hold harmless Microsoft pursuant to this Section and Microsoft shall thereafter cooperate with Valley Water and/or City, as the case may be, in the defense of such Indemnified Claims.

d. Each Party shall be entitled to control the defense, compromise or settlement of any matter for which it is to provide defense hereunder through counsel of its own choice; provided, however, that in all cases any other Party shall each be entitled to participate in such defense, compromise, or settlement at its own expense.

e. Microsoft and, to the fullest extent permitted by law, for itself and its agents, affiliates, successors and assigns, hereby agrees that Microsoft releases and forever discharges City and Valley Water, and their agents, affiliates, successors and assigns from any and all liabilities, penalties, costs, damages, expenses, causes of action, claims, demands, losses, injury, liability for personal injury or property damages or judgments (including, without limitation, reasonable attorney's fees or expenses), or judgments (collectively, "Claims"), including, without limitation, rights, claims and demands at law or in equity, whether known or unknown at the time of this Agreement, which Microsoft had, has or may have in the future, arising out of the Works performed under this Agreement and the physical, environmental, economic or legal condition of the VW Site, the McCarthy Connector and the Zanker Improvements Area, including, without limitation, any claim for indemnification or contribution arising under the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Section 9601, et. seq.) or any similar federal, state or local statute, rule or ordinance relating to liability of property owners for environmental matters.

For the foregoing purposes, Microsoft hereby specifically waives the provisions of Section 1542 of the California Civil Code and any similar law of any other state, territory or jurisdiction. Section 1542 provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR
RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY
HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT
WITH THE DEBTOR OR RELEASED PARTY.

Microsoft's Initials: _____

Having been so apprised, to the fullest extent permitted by law, Microsoft elects to assume all risk for claims heretofore or hereafter, known or unknown, arising from the subject of this

release, and Microsoft knowingly and voluntarily expressly releases City and Valley Water, and their respective officers, agents or employees from all Claims, unknown or unsuspected, arising out of the physical, environmental, economic or legal condition of the Property. Notwithstanding the foregoing, the foregoing waivers and releases are not intended to and do not cover (i) any breach by City or Valley Water of any of their obligations or covenants under this Agreement; (ii) any breach by City or Valley Water of any of their representations and warranties set forth herein; and (iii) any Claims arising from willful misconduct or active negligence of City or Valley Water.

f. Upon expiration of the provisions of Section 10(a) through 10(e) of this Agreement Valley Water shall hereby waive and release City, and its officers, directors, employees and agents from any and all liability to Valley Water, its officers, employees or agents for any loss, damage, liability, or liability for damages, whether for loss of or damage to property, or injury to or death of persons, which may arise out of use of the Work performed under this Agreement by Microsoft, its officers, directors, employees or agents, except such loss or damage as is caused by or arises out of the active negligence or willful misconduct of City, its officers, employees or agents.

g. The provisions of Sections 10(a) through 10 (e) of this Agreement shall survive the expiration or other termination of this Agreement three (3) years. The provisions of Section 10(f) of this Agreement shall survive the expiration or other termination of this Agreement until the termination, extinguishment, or amendment (which shall include a substantively similar waiver and release of the Works) of the Ground Lease, as it may be amended and restated from time to time.

11. **Insurance.** Microsoft shall comply with the insurance requirements set forth in **Exhibit K** for the Agreement term. Microsoft may meet the insurance requirements in part or in whole through the provision of a letter of self-insurance to Valley Water and City.

12. **Transfers.** No Party may assign, mortgage, pledge, hypothecate or otherwise transfer (collectively, “*Transfer*”) its interests in this Agreement to any person other than an affiliate of such person without the prior written consent of the other Parties hereto, which consent shall not be unreasonably delayed, conditioned or withheld; provided, however, Microsoft may Transfer its interests in this Agreement without the consent of the other Parties hereto in connection with the sale by Microsoft of all or substantially all of its interests in the Microsoft Property if Microsoft’s assignee agrees in writing pursuant to an assignment and assumption agreement to perform all of Microsoft’s obligations hereunder.

13. **Representations, Warranties and Covenants.**

a. Valley Water represents and warrants that (i) Valley Water is the sole lessee of the VW Property, and following the execution of the Lease Amendment, proposes to be the sole lessee of the VW Site, (ii) the Ground Lease is in full force and effect without current default by Valley Water and to Valley Water’s knowledge no event has occurred and no condition exists which, with the giving of notice or the passage of time, or both, will constitute a default under

the Ground Lease; (iii) Valley Water has the full right and authority to enter into this Agreement and to perform its obligations under this Agreement, (iv) the person(s) signing this Agreement on its behalf is authorized to do so, and no consent from any third party is required for this Agreement that has not heretofore been obtained.

b. Microsoft represents and warrants that (i) Microsoft has the full right and authority to enter into this Agreement and to perform its obligations under this Agreement, and (ii) the person(s) signing this Agreement on its behalf is authorized to do so, and (iii) no consent from any lender or other third party is required for this Agreement or the TCE that has not heretofore been obtained.

c. City represents and warrants that (i) City and Santa Clara are the sole fee title owners of the VW Site; (ii) the Ground Lease is in full force and effect without current default by either City, Santa Clara or Valley Water and no event has occurred and no condition exists which, with the giving of notice or the passage of time, or both, will constitute a default under the Ground Lease; (iii) City has the full right and authority to enter into this Agreement on behalf of itself and Santa Clara and to perform its obligations under this Agreement, (iv) the person(s) signing this Agreement on its behalf is authorized to do so, and no consent from any third party is required for this Agreement that has not heretofore been obtained, (v) the VW Property is not subject to, and following the execution of the Lease Amendment, the VW Site shall not be subject to, any deeds of trust, mortgages, or similar liens or any covenants, conditions, restrictions, reservations, contracts, leases and licenses or easements that would preclude or otherwise impair Valley Water from performing its obligations under this Agreement, (vi) the terms of this Agreement do not conflict with the terms of the Ground Lease or the Lease Amendment; (vii) there are no adverse parties in possession of the Zanker Improvements Area or the VW Site, or of any part thereof and no parties in possession thereof except City and Valley Water under the Ground Lease, and no party has been granted any license, lease, or other right relating to the use or possession of the VW Site or the Zanker Improvements Area that would adversely impact the rights or obligations of the Parties to this Agreement, except Valley Water under the Ground Lease; (viii) there are no known underground storage tanks or other below-grade improvements under the Additional VW Area or, except as previously disclosed in writing to Microsoft, the Zanker Improvements Area; and (ix) so long as this Agreement remains in effect, the City will not voluntarily terminate the Ground Lease or amend the Ground Lease in any manner that will have an adverse impact on Microsoft's rights and obligations hereunder, without prior written direction from City Council.

14. **Default.** A Party's failure to perform any material covenant or obligation of such Party hereunder and to cure such non-performance within thirty (30) days of receipt of written notice thereof by the non-breaching Party shall constitute a default hereunder, provided that if more than thirty (30) days are reasonably required for such cure, no event of default shall occur if the breaching Party commences such cure within such initial thirty (30) day period and diligently prosecutes such cure to completion. Upon such event of default, the non-breaching Party shall, subject to the terms and conditions of this Agreement, be entitled to all remedies and means to cure or correct such default, both legal and equitable, allowed by operation of law.

15. **Miscellaneous Provisions.**

a. **Covenants Run with Land.** The easements, covenants, restrictions, rights, duties, benefits and burdens contained herein constitute covenants running with the land under California Civil Code Section 1468 and equitable servitudes under common law that burden and bind the VW Site and successive owners and lessors thereof and benefit and bind the MS Property and successive owners and lessors thereof. Each Party shall be liable under this Agreement only for acts or omissions committed during the period during which such Party held an ownership, leasehold or other property interest in the VW Property, and subsequent to the Lease Amendment, the VW Site. No Party shall be liable for actions or omissions by any predecessor or successor owner or lessee unless assumed in signed writing. Within ten (10) days of the execution of this Agreement, the Parties shall execute and City shall record with the Santa Clara County recorder a Memorandum of Agreement summarizing the Agreement. Within ten (10) business days of Microsoft's receipt of notice of the termination of this Agreement, Microsoft shall execute and deliver to City a quitclaim deed relinquishing any interest in the VW Property and acknowledging that the Memorandum of Agreement is of no further force and effect.

b. **Force Majeure.** If any Party is prevented from performing any of its obligations under this Agreement due to a force majeure event, including acts of God, war, terrorism, governmental regulations or directives, labor strikes, supply chain disruptions and/or labor shortages, pandemics, epidemics, or any other cause beyond its control (each an "***Force Majeure Event***"), then such Party shall not be deemed to be in breach of this Agreement, and its performance of this Agreement shall be excused during the period of the Force Majeure Event. The Party affected by the force majeure event shall endeavor to promptly notify the other Parties in writing of the nature and expected duration of the force majeure event and the anticipated effect on its performance under this Agreement. The Parties shall use their commercially reasonable efforts to minimize the impact of the force majeure event and to resume full performance of their respective obligations under this Agreement as soon as practicable.

c. **Notices.** Any notice, request, demand, or other communication required or permitted under this Agreement shall be in writing and shall be deemed to have been duly given if sent by a recognized overnight courier service or electronic mail. Notice shall be deemed to have been received by the addressee as follows: (a) upon receipt by the addressee or delivery to the address of the addressee if sent by recognized overnight courier; (b) if the addressee rejects or otherwise refuses to accept the notice, or if the notice cannot be delivered because of a change in address for which no notice was given, then upon the rejection, refusal, or inability to deliver the notice; and (c) if provided by email, then receipt shall be deemed to have occurred as of the time said email was sent; provided, however, that any email sent after 5:00 p.m. on a business day or any time on a non-business day shall not be deemed sent until the next business day and; provided, further, that no notice of default shall be sent via email. Notices shall be sent to the Parties at the following addresses (or to such other address as the Parties may from time to time designate in writing):

If to the City: City of San José
200 East Santa Clara Street, 16th Floor
San José, CA 95113
Attention: Director of Real Estate

With a copy to: City of San José
200 East Santa Clara Street, 10th Floor
San José, CA 95113
Attention: Assistant Director of Environmental Services

San José-Santa Clara Regional Wastewater Facility
700 Los Esteros Road
San José, CA 95134
Attention: General Manager

City of San José
Office of the City Attorney
200 East Santa Clara Street, 16th Floor
San José, CA 95113
Attention: Real Estate Attorney

If to Valley Water: Santa Clara Valley Water District
5750 Almaden Expressway
San José, CA 95118
Attention: Chief Executive Officer

With a copy to: Santa Clara Valley Water District
Office of the District Counsel
5750 Almaden Expressway
San José, CA 95118

If to Microsoft: Microsoft Corporation
AMERS Land
One Microsoft Way
Redmond, WA 98054
Attn: AMERS Land
Email: amersland@microsoft.com

d. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California.

e. **Exhibits; Entire Agreement.** All exhibits attached hereto are incorporated herein. This Agreement constitutes the entire agreement between the Parties with respect to the subject

matter hereof and supersedes all prior negotiations, understandings, and agreements between the Parties, whether oral or written. In particular, this Agreement supersedes any other agreements related to the Site Works, and in the event of a conflict between this Agreement and any other agreement regarding the Site Works, including the Ground Lease or any Lease Amendment, this Agreement shall prevail.

f. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Any electronic signature to this Agreement or to any other certificate, agreement, document or notice related to this transaction, shall have the same legal validity and enforceability as a manually executed signature or use of a paper-based record-keeping system to the fullest extent permitted by applicable law, including the federal Electronic Signatures in Global and National Commerce Act, any state electronic signatures and/or records act, or any similar state law based on the Uniform Electronic Transactions Act. The parties hereto waive any objection to the contrary. "Electronic signature" as used herein includes (a) any electronic symbol or process attached to, or associated with, a contract or other record and adopted by a person with the intent to sign, authenticate or accept such contract or record (including any signature affixed by Adobe Sign), and (b) any facsimile or .pdf signature.

g. **Modifications; Waiver.** No waiver, modification, amendment, discharge or change of this Agreement shall be valid unless the same is in writing and signed by the Party against which the enforcement of such modification, waiver, amendment, discharge or change is sought.

h. **Time.** Subject to the terms and conditions of this Agreement, time is of the essence of this Agreement and each and every part thereof.

i. **Exclusive Benefit of Parties.** The provisions of this Agreement are for the exclusive benefit of City, Valley Water and Microsoft and their successors and assigns, subject to the provisions hereof, and not for the benefit of nor give rise to any claim or cause of action by any other person; and this Agreement shall not be deemed to have conferred any rights upon any person except City, Valley Water and Microsoft. Nothing herein shall be deemed a dedication of any portion of the VW Site to or for the benefit of the general public.

j. **Survival.** Except as otherwise expressly set forth above, all representations, warranties, waivers, and indemnities given or made hereunder shall survive termination of this Agreement for a period of three (3) years.

k. **Rules of Construction.** Wherever in this Agreement the context requires, reference to the singular shall be deemed to include the plural. The captions in this Agreement are inserted for convenience of reference and in no way define, describe or limit the scope or intent of this Agreement or any of the provisions hereof. All references to "Sections" without reference to a document other than this Agreement, designate sections of this Agreement. The words "herein," "hereof," "hereunder," and other words of similar import refer to this

Agreement as a whole and not to any particular Section, unless specifically designated otherwise. The use of the term “including” shall mean “including but not limited to.” No determination by a court of competent jurisdiction that any term or provision of this Agreement is invalid or otherwise unenforceable shall invalidate or render unenforceable any other term or provision of this Agreement and all remaining provisions shall be enforced in accordance with their terms. No rules of construction against the drafter of this Agreement shall apply in any interpretation or enforcement of this Agreement or any documents or certificates executed pursuant hereto. Any deletion of language from this Agreement prior to its execution by the Parties shall not be construed to raise any presumption, canon of construction or implication, including, without limitation, any implication that the Parties intended thereby to state the converse of the deleted language.

l. **Liability.** The Parties each acknowledge and agree that this Agreement is entered into by each of them as a legal entity and, therefore, agree that no individual official, officer, director, shareholder, member, employee, representative or agent of either of them shall have any personal liability under this Agreement.

m. **Computation of Time.** In the computation of any period of time hereunder, the day of the act or event from which the period of time runs shall be excluded and the last day of such period shall be included. All references to “days” hereunder shall mean calendar days unless otherwise expressly stated herein. Notwithstanding the foregoing, if any deadline hereunder falls on a day that is not a business day, then the deadline will be deemed extended to the next following business day. For purposes hereof, a “business day” shall mean any day other than a Saturday, Sunday or day when banks are closed in the State of California. All times stated herein are by reference to Pacific time.

n. **Distinction from Regulatory Approval.** City enters into this Agreement in its proprietary capacity as a property owner, and not in its regulatory capacity. Notwithstanding the foregoing, City’s approval of this Agreement shall not diminish its authority or obligation, or that of any of its officials, to act in its capacity as a public agency, including its authority and obligation to regulate Microsoft.

o. **Further Assurances.** The Parties hereto agree to promptly execute, acknowledge (if necessary) and deliver all such further other documents and instruments and take all such further action as any Party hereto may reasonably request from time to time in order to effectuate the terms, purposes and intent of this Agreement.

[Signatures on the following page]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

CITY OF SAN JOSÉ, a municipal corporation of the State of California:

Approved as to form:

By: _____

Name: Cameron Day

Title: Senior Deputy City Attorney

Authorized Signer:

By: _____

Name: Emily Lam

Title: Director, Office of Administration, Policy and
Intergovernmental Relations

Date: _____

SANTA CLARA VALLEY WATER DISTRICT, a California special district:

Approved as to form:

By: _____

Name: E. Ray Ruiz

Title: Assistant District Counsel

Authorized Signer:

By: _____

Name:

Title:

Date: _____

MICROSOFT CORPORATION, a Washington corporation:

Authorized Signer:

By: _____

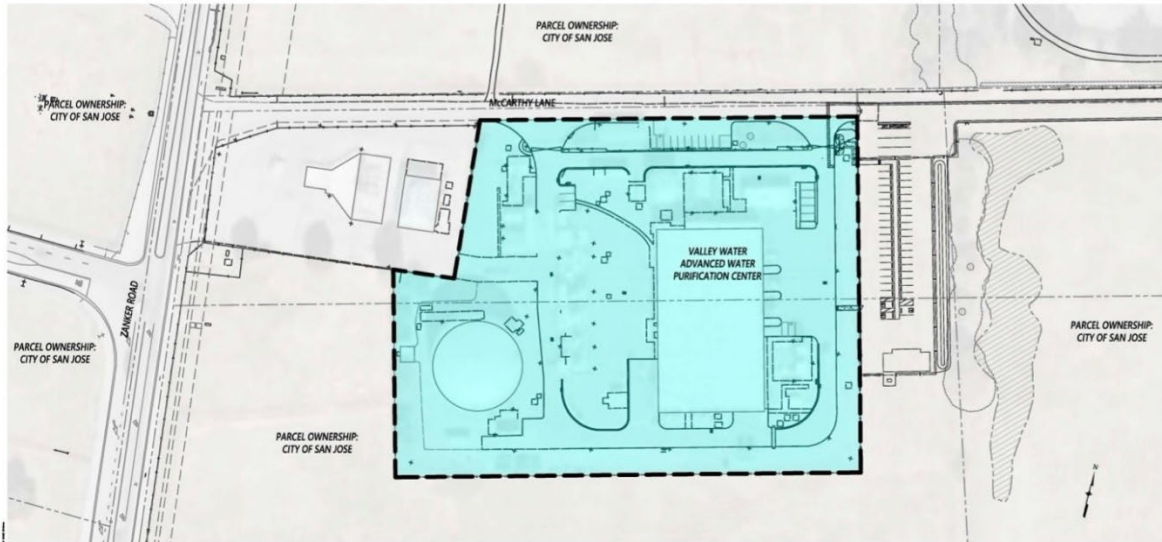
Name:

Title:

Date: _____

Exhibit A

Depiction of the VW Property



LEGEND

 AREA OF VW PROPERTY

EXHIBIT A
DEPICTION OF VW PROPERTY

Exhibit B

Depiction of Microsoft Driveway

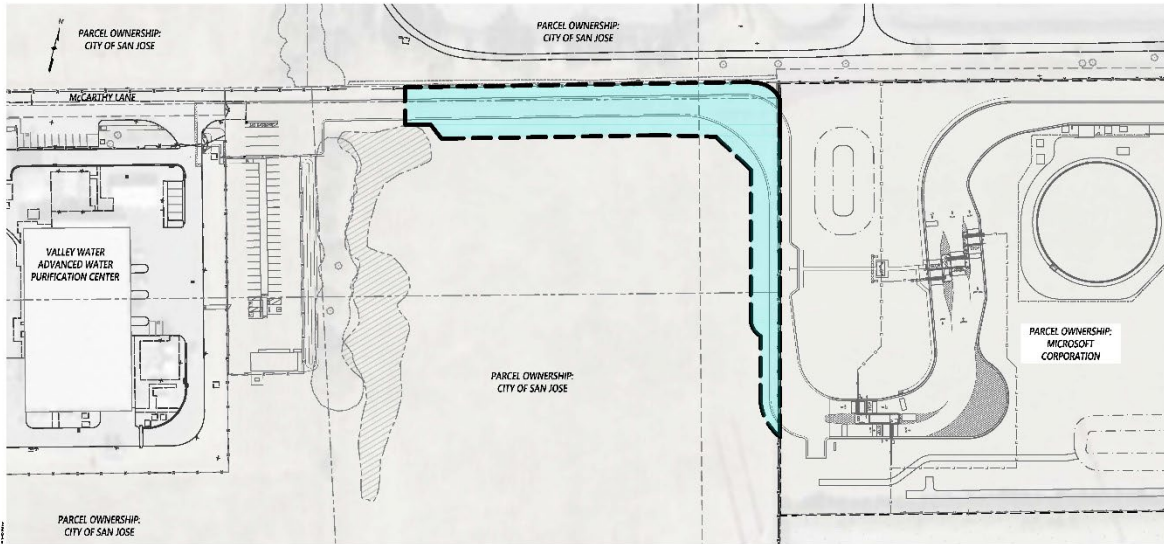


EXHIBIT B
DEPICTION OF MICROSOFT DRIVEWAY

Exhibit C

Depiction of McCarthy Connector

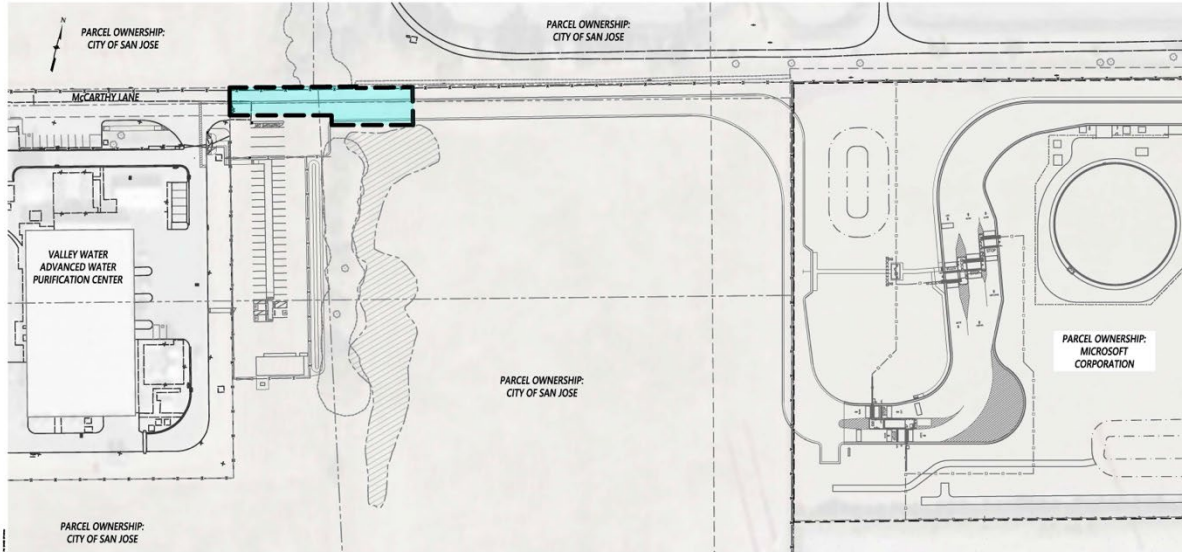


EXHIBIT C
DEPICTION OF MCCARTHY CONNECTOR

Exhibit D

Depiction of Zanker Improvements Area

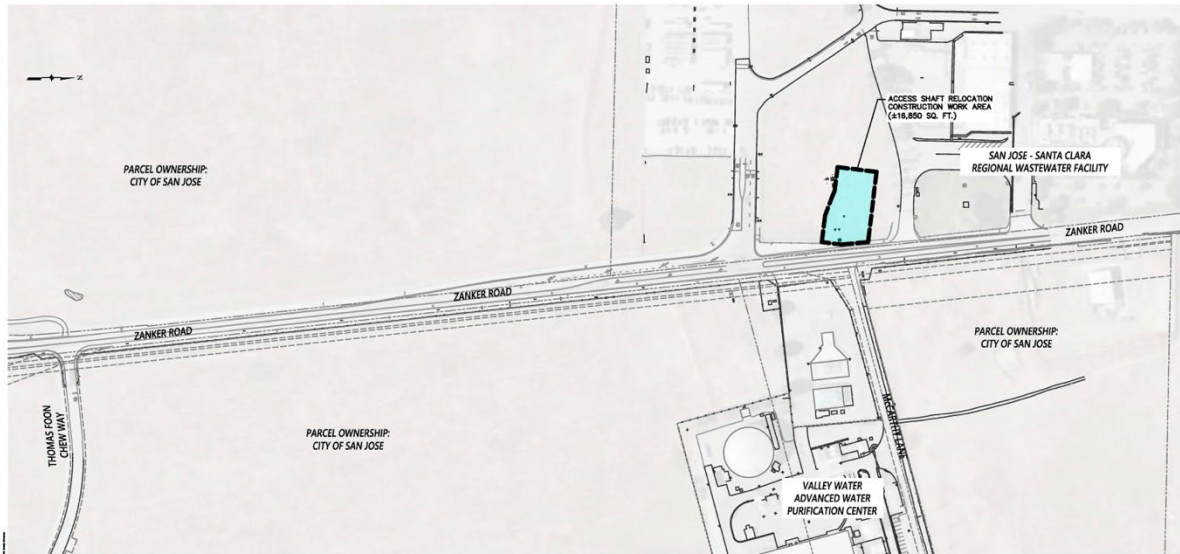


EXHIBIT D
DEPICTION OF ZANKER IMPROVEMENTS AREA

Exhibit E

Depiction of Additional VW Area

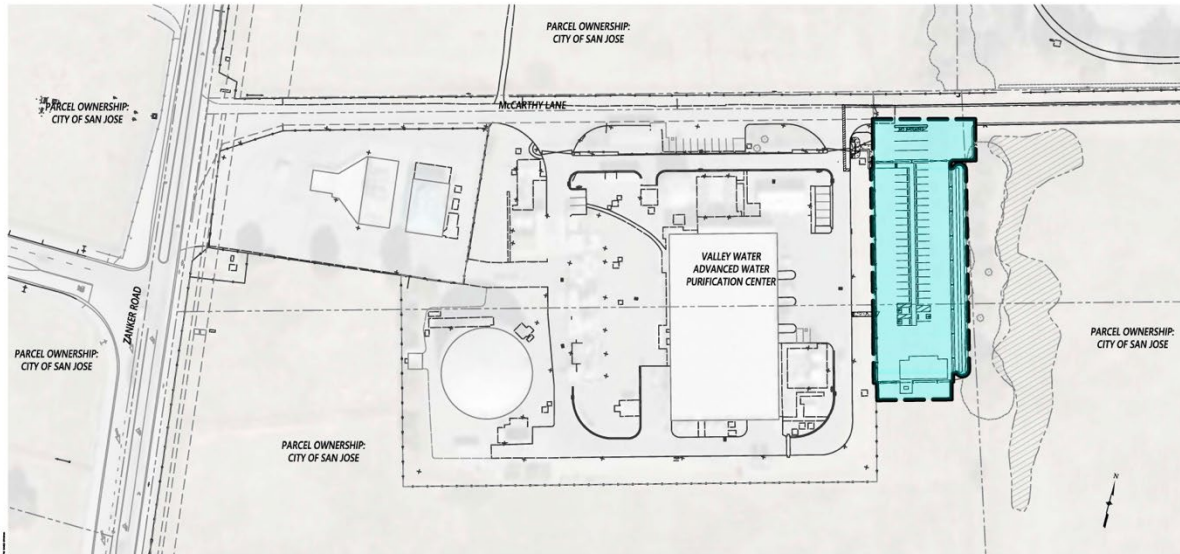


EXHIBIT E
DEPICTION OF ADDITIONAL VW AREA

Exhibit F
Description of Site Works

Subject to such changes as may be required by City pursuant to Section 2 of the Agreement, the Site Works shall consist of the following:

1. Conducting any and all other necessary activities to relocate the Visitor Center and construct the New Parking Lot within the VW Site, including, but not limited to, (i) disassembling, transporting, and reassembling the Visitor Center in accordance with the manufacturer's standard requirements, and (ii) packing, securely storing, and relocating all Valley Water personal property (e.g., files, furnishing, equipment, and other contents) from the Visitor Center to the Additional VW Area which shall include unpacking any boxed or stored items from the Visitor Center (if requested by Valley Water following its relocation);
2. Preparing the Additional VW Area in accordance with the Final Plans and Specifications, including fill, compaction, drainage, paving and any other necessary activities to raise the Additional VW Area to the same elevation as the SVAWPC, consistent with the Final Plans and Specifications;
3. Installing, extending or relocating all required electrical, water, sewer, communication, and other utility connections required for the relocated Visitor Center and the New Parking Lot within the VW Site in accordance with the Final Plans and Specifications;
4. In accordance with the Final Plans and Specifications, constructing the New Parking Lot and striping forty-eight (48) parking spaces for standard sized automobiles and three (3) parking spaces for regular sized school buses within the Additional VW Area;
5. Appropriately relocating, installing and replacing, as needed, the following Valley Water utilities and infrastructure located within the VW Property and the Zanker Improvements Area consistent with the Final Plans and Specifications: (i) the storm drain system and drainage grading (which shall be constructed to adequately collect and drain stormwater and other drainage away from the New Parking Lot, SVAWPC, and adjacent areas within the VW Site and successfully discharge it to the stormwater conveyance system with no flooding or ponding on the VW Site), and (ii), within the Zanker Improvements Area, an access manway and three air release valves west of the expanded Zanker Road vehicle path of travel, bike lane and sidewalk;
6. Appropriately installing and/or replacing, as needed, the following within the Zanker Improvements Area consistent with the Final Plans and Specifications: (i) the Zanker Road acceleration lane; (ii) new sidewalk and landscaping adjacent to the Zanker Road; (iii) the Regional Wastewater Facility property sign monument subject to City approval; and (iv) those areas of the curb, pavement and striping at the Environmental Services Building parking lot affected by the relocation of the Valley Water Visitor Center trailer, all of which shall be restored up to modern operational standards.
7. Relocating or replacing Valley Water-designated monuments and signage to locations within the VW Site designated by Valley Water in writing prior the start of construction works within the VW Site;

8. In accordance with the Final Plans and Specifications, ensuring that access to the relocated Visitor Center complies with the Americans with Disability Act and related state and federal laws;
9. In accordance with the Final Plans and Specifications and within the VW Site, installing all necessary security, lighting including lights placed on McCarthy Lane (within the McCarthy Connector) on either side of the entry to the New Parking Lot, fencing, landscaping and irrigation, sidewalks and curbs, ingress, and egress, including sufficient turning radius, and proper traffic flow in compliance with Valley Water Standards, state and local laws or regulations;
10. Install security fencing around the Additional VW Area and any other required areas within the VW Site and the Zanker Improvements Area, maintain such security fencing for the duration of Microsoft's work in such areas, and remove it upon completion of such works. Upon at least 14 days' written notice to Microsoft following Microsoft's completion of the Site Works, Valley Water may request an extension for removal of such security fencing of up to 45 days.

Exhibit G**Description of Connector Works**

Subject to such changes as may be required by City pursuant to Section 2 of the Agreement, the Connector Works shall consist of the following:

Subject to such changes as may be required by City pursuant to Section 2 of the Agreement, the Connector Works shall mean, within the McCarthy Connector area depicted in Exhibit C, the extension of the roadway, stormwater line and water line and the preservation of the stormwater culvert, all as described in the plans and specifications for such works prepared by Microsoft and approved by City as part of the SECI.

Exhibit H**Additional Standards and Requirements**

Microsoft shall undertake the Site Works in accordance with the following additional standards and requirements:

1. Assume sole responsibility for constructing the Site Works in accordance with the Final Plans and Specifications, and for all persons or entities engaged by Microsoft in such work, including, but not limited to, contractors, subcontractors, suppliers, and service providers.
2. Require its design professional signing and stamping the construction documents to (1) perform to the applicable professional standard of care and prepare documents without any known errors or omissions, and (2) carry reasonable professional liability insurance for claims related to professional liability.
3. Ensure construction fully complies with the appropriate local, state, federal laws, and ordinances, including full compliance with regulatory permits.
4. Require its contractor performing the Site Works to provide at least a three-year warranty on all Site Works and include Valley Water as a third-party beneficiary to all construction contracts entered into for the Site Works so that all warranties will extend to Valley Water.
5. Require its contractor performing the Site Works to comply with all applicable California Prevailing Wage Laws pursuant California Labor Code section 1720, et. seq. and the applicable implementing regulations.
6. Prior to commencement of construction, Microsoft's construction contractor performing the Site Works will secure and maintain in full force and effect, at all times during construction of the Site Works, a commercial general liability policy with limits of no less than \$1,000,000 per occurrence/\$2,000,000 in the aggregate. Valley Water and City shall be named as additional insureds under such policy.
7. Resolve any and all disputes with contractor(s) and/or design professional(s) retained by Microsoft arising out of or related to Microsoft's contract(s) for construction and design of the Site Works, including, but not limited to, disputes relating to bids, payment, performance, workmanship, wages, negligent construction or design, or delay claims.
8. Upon completion of the Site Works, Microsoft shall provide Valley Water two (2) completed sets of as-built drawings in hardcopy and CADD files.

Exhibit I

Definition of Hazardous Materials

For the purpose of this Agreement, “**Hazardous Materials**” shall mean any and all: (a) substances, products, by-products, waste, or other materials of any nature or kind whatsoever which is or becomes listed, regulated or addressed under any Environmental Laws; (b) materials, substances, products, by-products, waste, or other materials of any nature or kind whatsoever whose presence in and of itself or in combination with other materials, substances, products, by-products, or waste may give rise to liability under any Environmental Law or any statutory or common law theory based on negligence, trespass, intentional tort, nuisance, strict or absolute liability or under any reported decisions of any state or federal court; and, (c) substances, products, by-products, wastes or other materials which may be hazardous or harmful to the air, water, soil, environment or affect industrial hygiene, occupational, health, safety and/or general welfare conditions, including without limitation, petroleum and/or asbestos materials, products, by-products, or waste.

For the purposes of this Agreement, “**Environmental Laws**” shall mean and include all federal, state, and local laws, statutes, ordinances, regulations, resolutions, decrees, and/or rules now or hereinafter in effect, as may be amended from time to time, and all implementing regulations, directives, orders, guidelines, and federal or state court decisions, interpreting, relating to, regulating or imposing liability (including, but not limited to, response, removal, remediation and damage costs) or standards of conduct or performance relating to industrial hygiene, occupational, health, and/or safety conditions, environmental conditions, or exposure to, contamination by, or clean-up of, any and all Hazardous Materials, including without limitation, all federal or state super-lien or environmental clean-up.

Exhibit J**VW Standards**

1. Landscape – approved plant drought tolerant plant list.
2. Fiber optics cabling standards
3. Security requirements provided by our security staff – discusses fencing, gates, signage, video surveillance systems, access control and lighting requirements.
4. Chain linked Fence and Pedestrian Gate details/requirements
5. Motorized existing gate specifications – new motorized gates to match these requirements.
6. Card Reader and Camera requirements – model and make provided by our security staff.
7. Power Study (SKM) model and 30-day load recording data – Microsoft to consider these in their design.
8. Visitor Center as-builts. Microsoft to incorporate utility connections (fiber, electrical, potable water and septic system) to the relocated trailer location
9. Appropriate turning radius for chemical delivery trucks
10. Number of vehicle and bus parking spaces at the new parking lots.
11. Relocation of manway and air release valves out of the proposed Zanker path of travel.

Exhibit K**Insurance Requirements**

Microsoft, at Microsoft's sole cost and expense, shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance of the services hereunder by Microsoft, its agents, representatives, employees or subcontractors.

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. The coverage provided by Insurance Services Office Commercial General Liability coverage ("occurrence") Form Number CG 0001; and
2. The coverage provided by Insurance Services Office Form Number CA 0001 covering Automobile Liability. Coverage shall be included for all owned, non-owned and hired automobiles; and
3. Workers' Compensation insurance as required by the California Labor Code and Employers Liability insurance; and
4. Professional Liability Errors and Omissions insurance for all Professional Services rendered; and
5. Microsoft's Pollution Liability insurance including coverage for all operations. Policy shall at a minimum cover on-site and off-site liability including third-party injury and property damage claims, transportation, clean-up costs, as a result of pollution conditions; and
6. Builder's Risk insurance covering property in the course of construction on an "all risk" basis including flood and excluding earthquake.

There shall be no endorsement reducing the scope of coverage required above unless approved by City's Risk Manager.

B. Minimum Limits of Insurance

Microsoft shall maintain limits no less than:

1. Commercial General Liability: \$5,000,000 per occurrence for bodily injury, personal injury and property damage and \$5,000,000 general aggregate; and
2. Automobile Liability: \$2,000,000 combined single limit per accident for bodily injury and property damage; and
3. Workers' Compensation and Employers Liability: Workers' Compensation limits as required by the California Labor Code and Employers Liability limits of \$1,000,000 per accident; and

4. Professional Liability Errors and Omissions: \$2,000,000 per claim and \$2,000,000 aggregate; and
5. Microsoft's Pollution Liability Insurance: \$5,000,000 per contamination incident; and
6. Builder's Risk Insurance: Full cost (with the exception of flood coverage with minimum limits of \$5,000,000).

Any limits requirement may be met with any combination of primary and excess coverage so long as the excess coverage is written on a "follow form" or umbrella basis.

C. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to, and approved by City's Risk Manager.

D. Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

1. Commercial General Liability

Coverage shall contain five (5) years products and completed operations extension.

2. Commercial General Liability and Automobile Liability Coverages

- a. City, its officers, employees and agents are to be covered as additional insureds as respects: Liability arising out of activities performed by or on behalf of, Microsoft; products and completed operations of Microsoft; premises owned, leased or used by Microsoft; and automobiles owned, leased, hired or borrowed by Microsoft. The coverage shall contain no special limitations on the scope of protection afforded to City, its officers, employees.
- b. Valley Water, its officers, agents, and employees are to be covered as additional insureds as respects: Liability arising out of activities performed by or on behalf of, Microsoft; products and completed operations of Microsoft; premises owned, leased or used by Microsoft; and automobiles owned, leased, hired or borrowed by Microsoft. The coverage shall contain no special limitations on the scope of protection afforded to Valley Water, its officers, employees.
- c. Microsoft's insurance coverage shall be primary insurance as respects City, its officers, employees, agents and contractors. Any insurance or self-insurance maintained by City, its officers, employees, or agents shall be excess of Microsoft's insurance and shall not contribute with it.
- d. Any failure to comply with reporting provisions of the policies by Microsoft shall not affect coverage provided to City, its officers, employees, or agents.

- e. Coverage shall state that Microsoft's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- f. Coverage shall contain a waiver of subrogation in favor of City, its officers, employees, and agents.
- g. Coverage shall contain a waiver of subrogation in favor of Valley Water.

2. Workers' Compensation and Employers' Liability

Coverage shall contain waiver of subrogation in favor of City, its officers, employees, and agents.

Coverage shall contain a waiver of subrogation in favor of Valley Water, its officers, employees, and agents.

3. Builder's Risk

Coverage shall provide a loss payable clause in favor of City as its interest may appear.

Coverage shall provide a loss payable clause in favor of Valley Water as its interest may appear.

Coverage shall contain a waiver of subrogation in favor of City, its officials, employees and agents.

Coverage shall contain a waiver of subrogation in favor of Valley Water, its officials, employees and agents.

3. Claims Made Coverages

If coverage is obtained on a "claims made" policy form, the retroactive date shall precede the date services were initiated with City and the coverage shall be maintained for a period of three (3) years after termination of services under this Agreement.

4. All Coverages

Each insurance policy required by this Agreement shall be endorsed to state that coverage shall not be suspended, voided, cancelled, or reduced in limits except after thirty (30) days' prior written notice has been given to City, except that ten (10) days' prior written notice shall apply in the event of cancellation for nonpayment of premium.

E. Acceptability of Insurers

Any deductibles or self-insured retentions must be declared to, and approved by City's Risk Manager.

F. Verification of Coverage

Microsoft shall furnish City and Valley Water with certificates of insurance and endorsements affecting coverage or evidence of self-insurance required by this Agreement. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

Proof of insurance shall be emailed in pdf format to: Riskmgmt@sanjoseca.gov:

Certificate Holder

City of San José—Finance
Risk Management & Insurance
200 East Santa Clara Street, 14th Floor Tower
San Jose, CA 95113-1905

Proof of insurance shall be emailed in pdf format to: shiga@valleywater.org:

Certificate Holder

Santa Clara Valley Water District
5750 Almaden Expressway
San José, CA 95118
Attention: Risk Manager

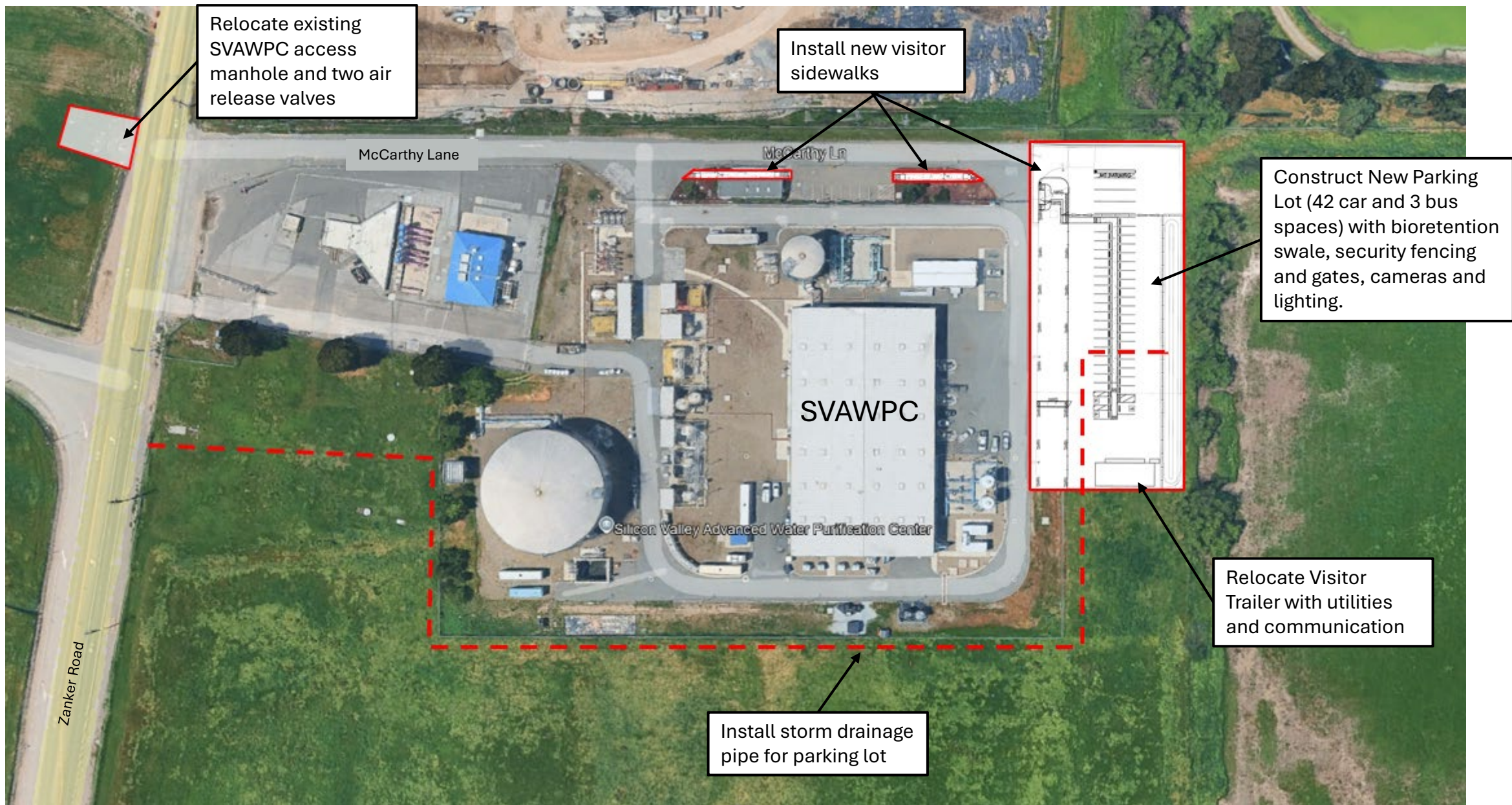
G. Subcontractors

Microsoft shall include all subcontractors or subconsultants as insureds under its policies or shall obtain separate certificates and endorsements for each subcontractor.

H. Authority to Self-Insure

City and Valley Water acknowledge that insurance requirements contained in this Agreement may be fulfilled by self-insurance of Microsoft. However, this shall not in any way limit liabilities assumed by Microsoft under this Agreement. Microsoft's obligations hereunder may be satisfied in whole or in part by adequately funded self-insurance programs or self-insurance retentions.

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Santa Clara Valley Water District

File No.: 26-0593

Agenda Date: 7/14/2026
Item No.: *10.1.

BOARD AGENDA MEMORANDUM

Government Code § 84308 Applies: Yes ☐ No ☒
(If "YES" Complete Attachment A - Gov. Code § 84308)

SUBJECT:

CEO and Chiefs' Reports.

ATTACHMENTS:

*Handout 10.1-A: OCE, Monthly Update

*Handout 10.1-B: OGR, Summary

CREEK STEWARDSHIP

In June, seven Adopt-A-Creek Program partners conducted cleanups. Their combined effort contributed 147 volunteer service hours to remove approximately 489 pounds of litter from the banks of Calabazas Creek, Guadalupe Creek, San Tomas Aquino Creek, Saratoga Creek, and McClellan Groundwater Recharge Ponds. Adopt-A-Creek volunteers continue to use the Access Valley Water system to report cleanup results, request trash pickup, and report large debris and other concerns related to creeks.



3 miles cleaned
197 fiscal year-to-date



489 pounds of trash and recyclables
53,326 fiscal year-to-date



82 volunteers
3,453 fiscal year-to-date



Volunteers show off litter collected from the banks of San Tomas Aquino Creek.

EDUCATION OUTREACH

In June, staff engaged youth from TK to 6th grade through summer programs and camps in partnership with Boys and Girls Clubs, 4-H, the City of Santa Clara, and the City of Los Altos. At Boys and Girls Clubs, students learned about our local water supply and the importance of purified water as a future water source through *The Water We Share* lesson. At the Cities of Santa Clara and Los Altos summer camps, students created 3-D maps of landforms and bodies of water, then discussed the importance of keeping watersheds clean in the *Watershed Maps* lesson.



290 youth
9,372 fiscal year-to-date



7 summer programs
21 fiscal year-to-date



Students at Boys and Girls Club Alviso learn about where local water comes from during *The Water We Share* lesson.

WATER SUPPLY OUTREACH

In June, staff continued to engage the public and Valley Water partners through tours, events, and purified water outreach activities. At the annual Live Town Hall event, employees learned about purified water while enjoying popsicles made from it.

On June 20, 2026, Director Ballard and Assemblymember Patrick Ahrens hosted a community town hall at the UC Santa Cruz extension campus in Santa Clara. The event featured Valley Water's purified water, and attendees sampled agua frescas made with purified water and learned about the purification process. During the event, 43 attendees sampled agua frescas and 10 attendees received purified demonstration water.



Director Ballard and Assemblymember Patrick Ahrens sample agua frescas made with purified water at the Community Town Hall.

Throughout the month, staff welcomed visitors to the Silicon Valley Advanced Water Purification Center for in-person tours and continued outreach efforts to increase awareness and understanding of purified water and local water supply reliability. Altogether, 68 attendees participated in tours and 496 bottles of purified water were distributed through outreach activities.



39 public tour attendees
444 fiscal year-to-date



18 university students
253 fiscal year-to-date



10 industry proponents
65 fiscal year-to-date



68 total attendees
1,677 fiscal year-to-date



1 educator
124 fiscal year-to-date



496 bottles distributed
2,524 current year-to-date

SAFE, CLEAN WATER GRANTS AND PARTNERSHIPS

Refill Station Grants

Closeouts:

- City of Gilroy – Refill Station Grant Project:**

Through three \$5,000 FY 2025 Refill Station Grants, the City of Gilroy installed water refill stations at its Sunrise, Las Animas, and Chestnut Fire Stations, all publicly accessible facilities. Since installation, these refill stations have saved approximately 900 bottles of water.

- Roman Catholic Bishop of San José – Refill Station Grant Project:**

Through a \$5,000 FY 2025 Refill Station Grant, the Roman Catholic Bishop of San José installed a water refill station at St. John Vianney Parish, in a publicly accessible location. Since installation, the refill station has saved 470 bottles of water.

Standard Grants

On June 23, the Board approved four new FY 2026 Standard Grant applications for a total of \$1.78 million through Valley Water's Safe, Clean Water and Natural Flood Protection Program.

The Board also approved allocating the total remaining funds to the FY 2027 Mini-grant (\$73,240) and Refill Station Grant (\$20,000) Programs due to their increasing popularity. In FY 2026, Valley Water awarded 17 mini-grants and 21 refill station grants, a record for both programs.

Standard Grant Awards:

- **City of Cupertino – Lawrence-Mitty Park and Trail Project (\$500,000)**
- **Midpeninsula Regional Open Space District – Santa Cruz Kangaroo Rat Habitat Management Plan Implementation (\$500,000)**
- **Santa Clara Valley Habitat Agency – Pajaro River Riparian and Floodplain Restoration Project (\$500,000)**
- **Santa Clara Valley Transportation Authority – Green Line Water Conservation Landscaping and Pocket Forests (\$276,760)**

Closeouts:

- **West Valley Stormwater Authority – School Site Stormwater Pollution Prevention Plans Project:**
Through a \$35,088 FY 2020 Safe, Clean Water Program Standard Grant, West Valley Stormwater Authority successfully delivered an educational curriculum for Westmont High School in Campbell. The curriculum included hands-on water quality and stormwater activities, such as runoff testing, trash assessments, and development of site-specific best practices. Additionally, they engaged youth commissions in the City of Campbell, Saratoga, Monte Sereno, and the Town of Los Gatos in implementing a stormwater pollution prevention project.



17 Mini-Grants FY 2026
\$170,000 awarded



21 Refill Station Grants FY 2026
\$105,000 awarded



4 Standard Grants FY 2026
\$1,776,760 awarded

WATER 101 ACADEMY

On June 4, the Water 101 Academy held an in-person graduation ceremony, where 18 participants received certificates of completion and officially became Water Ambassadors. Director Hsueh provided opening remarks. Participants learned about the work of External Affairs and were given ideas about how they can advocate as ambassadors. They also participated in a networking mixer after the formal program. The graduates shared positive feedback on their academy experience at the graduation event.



Water 101 Academy Graduates engage with fellow Water Ambassadors during the networking mixer.

WATER RATE ASSISTANCE PROGRAM

In June, WRAP assisted 200 households by paying water bills totaling \$70,403.



200 households assisted
1,525 fiscal year-to-date



\$70,403 paid
\$616,853 fiscal year-to-date

LOOKING AHEAD

Creek Stewardship:

AUG 28 Volunteer Recognition Night at the San José Giants

SVAWPC Tours and Presentations:

JULY 9 West Valley Stormwater Authority

JULY 10 Public Tour

JULY 11 Public Tour

JULY 14 Independence High School Private Tour

JULY 14 Estuary Youth Council

JULY 16 Valley Water New Hire Fun Bus Tour

JULY 29 San José Conservation Corps

Education Outreach Programs:

JULY 2 Boys and Girls Club: Rocketship Discovery Prep

JULY 6 Central High School

JULY 8 Bright Horizons at South Mountain View

JULY 9 Boys and Girls Club: Alum Rock

JULY 10 Emma Prusch Outdoor Adventure Summer Camp

JULY 13 Southwest YMCA

JULY 15 Stratford Schools Los Gatos

JULY 16 Boys and Girls Club: Smythe

JULY 20 Neighborhood Christian Center

JULY 23 Boys and Girls Club: El Toro

Youth Commission:

AUG 26 Youth Commission First Quarterly Meeting

AUG 29 Youth Commission Retreat

FEDERAL ADVOCACY EFFORTS

Valley Water and Water Authority Promote Sisk Dam Raise Project in Visit with Interior Official

On June 5, Vice Chair Santos and staff joined the San Luis & Delta-Mendota Water Authority in hosting Interior Assistant Secretary for Water and Science, Andrea Travnick, at B.F. Sisk Dam to advocate for the Sisk Dam Raise Project. The group was joined by Bureau of Reclamation officials who discussed the timeline for the Safety of Dams Project, and Vice Chair Santos and Water Authority staff spoke about the importance of the Sisk Dam Raise Project. Assistant Secretary Travnick was enthusiastic about both projects and appreciated the opportunity to learn about its many benefits. Valley Water continues to strongly advocate for the project with the federal government, including pursuing federal funding.



STATE ADVOCACY EFFORTS

State Budget Update

On Monday, June 15, the Legislature passed Assembly Bill 109, Budget Act of 2026, and sent it to the Governor for his consideration. The \$356 billion state budget met the constitutionally required deadline but was widely viewed as a step in ongoing negotiations. Budget discussions will intensify over the next few weeks, with some items, such as Proposition 4 allocations, likely to remain unresolved until much later in the legislative session. Staff continues to advocate for direct budget appropriations for our projects and increased Proposition 4 allocations to vital programs such as the Dam Safety and Climate Resilience Local Assistance Program.

LOCAL ADVOCACY EFFORTS

Valley Water Hosts Community Town Hall with Assemblymember Patrick Ahrens

On June 20, Valley Water partnered with Assemblymember Patrick Ahrens to host a community town hall attended by nearly 100 residents interested in learning more about Valley Water's work and regional water issues. Assemblymember Ahrens opened the event and recognized John Tang, Deputy Director of Water Resources for the City of San José, with an Assembly resolution honoring his service to the community. Director Shiloh Ballard then engaged attendees with water-themed trivia before joining Assemblymember Ahrens for a community Q&A discussion. Topics included local water supply, water use, and questions related to data centers.

Valley Water's Water Conservation team also shared information on available programs and rebates. Attendees had the opportunity to connect with staff at informational booths hosted by Valley Water and the Midpeninsula Regional Open Space District. Guests enjoyed aguas frescas prepared by Valley Water staff throughout the event. The event was also attended by Santa Clara Councilmember Suds Jain, Sunnyvale Councilmember Charlsie Chang, Los Altos Hills Vice Mayor Linda Swan, and Open Space Authority Director Helen Chapman.



June 20: Director Ballard and Assemblymember Ahrens with aguas frescas made with purified water.



June 20: Director Ballard welcoming attendees at the community town hall.

RECENT EVENTS

- JUNE 6-7 50th Annual Sunnyvale Art & Wine Festival, Sunnyvale
- JUNE 12 WEPA Fest 2026, San José
- JUNE 13 Día de Portugal, San José
- JUNE 13 African American Community Service Agency's 45th Annual Juneteenth in the Streets Festival, San José

FUTURE EVENTS

- JULY 4 San José Council District 8 4th of July Celebration
- JULY 17 Morgan Hill Chamber Friday Night Music Series
- JULY 29-30 Mountain View Technology Showcase

2025-26 State Legislation with Board-Approved Positions

Bill (Author)	Subject	Position	Status
AB 11 (Lee)	The Social Housing Act	Support	Pending – Senate Housing Committee (2 Yr Bill)
AB 35 (Alvarez)	Safe Drinking Water, Wildfire Prevention, Drought Preparedness, and Clean Air Bond Act of 2024: Administrative Procedure Act: Exemption: Program guidelines and selection criteria	Support	Pending – Senate Natural Resources and Water Committee
AB 259 (Blanca Rubio)	Open Meetings Teleconferences	Support	Pending – Senate Judiciary Committee (2 Yr Bill)
AB 269 (Bennett)	Dam Safety and Climate Resilience Local Assistance Program	Oppose	Failed – Assembly Water, Parks & Wildlife Committee
AB 454 (Kalra)	Migratory Birds: California Migratory Bird Protection Act	Support	Signed by the Governor
AB 514 (Petrie-Norris)	Emergency Water Supplies	Support	Failed – Assembly Appropriations Committee – Suspense File
AB 532 (Ransom)	Water Rate Assistance Program	Support	Pending – Senate Appropriations Committee – Suspense File (2 Yr Bill)
AB 707 (Soria)	San Luis and Delta-Mendota Water Authority: B.F. Sisk Dam Raise and Reservoir Expansion Project	Support	Failed – Assembly Rules Committee
AB 810 (Irwin)	Local Government Internet Websites and Email Addresses	Oppose	Failed – Assembly Appropriations Committee – Suspense File
AB 1319 (Schultz)	Protected Species: California Endangered Species Act	Oppose Unless Amended	Signed by the Governor
AB 1577 (Bauer-Kahan)	Data Centers: Reporting	Support	Pending – Senate Judiciary Committee
AB 1603 (Schultz)	Pesticides: perfluoroalkyl and polyfluoroalkyl substances (PFAS)	Support	Pending – Senate Agriculture Committee
AB 1772 (Papan)	Fish and Wildlife: Invasive Mussels	Support	Pending – Senate Judiciary Committee
AB 2032 (Ransom)	Fish and Wildlife: Golden Mussels	Support	Pending – Senate Environmental Quality Committee
AB 2051 (Wicks)	Public Resources: Coastal Resilience Permitting Working Group	Support	Pending – Senate Natural Resources and Water Committee
AB 2180 (Ward)	Local Government: Proposition 218 Omnibus Implementation Act: Proportional Cost of Service	Support	Pending – Senate Floor
AB 2215 (Calderon)	Water Rights: Permits: State Water Project	Support	Pending – Senate Natural Resources and Water Committee
AB 2469 (Papan)	Water Resources: Data Centers	Support	Pending – Senate Local Government Committee
AB 2619 (Papan)	Water Resources: Data Centers	Support	Pending – Senate Local Government Committee
AB 2739 (Soria)	Water: Affordability and System Stabilization	Support	Pending – Senate Environmental Quality Committee
AB 2777 (Committee on Environmental Safety & Toxic Materials)	State Water Pollution Control Revolving Fund Program: Loans: Outdoor Eating Areas: Water Reuse	Support	Pending – Senate Appropriations Committee
SB 31 (McNerney)	Water Quality: Recycled Water	Support	Signed by the Governor

2025-26 State Legislation with Board-Approved Positions - *continued*

Bill (Author)	Subject	Position	Status
SB 72 (Caballero)	The California Water Plan: Long-Term Supply Targets	Support	Signed by the Governor
SB 454 (McNerney)	State Water Resources Control Board: PFAS Mitigation Program	Support	Vetoed by the Governor
SB 466 (Caballero)	Drinking Water: Hexavalent Chromium: Civil Liability: Exemption	Support	Signed by the Governor
SB 496 (Hurtado)	Advanced Clean Fleets Regulation: Appeals Advisory Committee: Exemptions	Support	Failed – Senate Appropriations Committee – Suspense File
SB 598 (Durazo)	Construction Manager/General Contractor Project Delivery Method	Support	Signed by the Governor
SB 599 (Caballero)	Atmospheric Rivers: Research: Forecasting Methods: Experimental Tools	Support	Pending – Assembly Appropriations Committee – Suspense File (2 Yr Bill)
SB 601 (Allen)	Water: Waste Discharge	Oppose Unless Amended	Pending – Assembly Appropriations Committee – Suspense File (2 Yr Bill)
SB 650 (Cabaldon)	The Sacramento-San Joaquin Delta Reform Act of 2009.	Support	Signed by the Governor
SB 682 (Allen)	Environmental Health: Product Safety: Perfluoroalkyl and Polyfluoroalkyl Substances	Support	Vetoed by the Governor
SB 695 (Cortese)	Transportation: climate resiliency: projects of statewide and regional significance	Support	Signed by the Governor
SB 753 (Cortese)	Special Business Regulations: Shopping Carts	Support	Signed by the Governor
SB 872 (McNerney)	Delta Levees and Canal Subsidence Fund	Support and Amend	Pending - Assembly Water, Parks & Wildlife Committee
SB 899 (Grove)	Fire Prevention: Wildfire and Forest Resilience Task Force: Wildfire Smoke	Support	Pending - Assembly Appropriations Committee
SB 949 (Becker)	Environmental protection: Natural Resources Agency: resource of statewide significance: Santa Cruz Mountains.	Support	Pending - Assembly Appropriations Committee
SB 952 (Laird)	State Water Project: Renewable Energy Resources and Zero-Carbon Resources	Support	Pending – Assembly Appropriations Committee
SB 1085 (Durazo)	Water Supply Planning: California Environmental Quality Act Determination	Support	Pending – Assembly Local Government Committee
SB 1125 (Menjivar)	Water Rate Assistance Program	Support	Pending – Assembly Utilities and Energy Committee
SB 1153 (Caballero)	Disaster Preparedness: Urban Retail Water Suppliers and Public Water Systems: Wildfire	Support	Pending – Assembly Environmental Safety and Toxic Materials Committee

2025-26 Federal Legislation with Board-Approved Positions

Bill (Author)	Subject	Position	Status
H.R. 337 (Costa)	Groundwater Technical Assistance Act	Support	Introduced
H.R. 338 (Costa)	Every Drop Counts Act	Support	Introduced
S. 322 (Padilla)	Improving Atmospheric River Forecasting Act	Support	Introduced
H.R. 1267 (Gluesenkamp Perez)	Water Systems PFAS Liability Protection Act	Support	Introduced

2025-26 Federal Legislation with Board-Approved Positions - *continued*

Bill (Author)	Subject	Position	Status
H.R. 403 (Swalwell)	Preventing Our Next Natural Disaster Act	Support	Introduced
H.R. 1382 (Huffman)	San Francisco Bay Restoration Program Technical Correction Act	Support	Reported Out of Committee
H.R. 605 (Costa)	Headwaters Protection Act of 2025	Support	Introduced
H.R. 1871 (Huffman) S. 857 (Curtis)	Water Conservation Rebate Tax Parity Act of 2025	Support	Introduced
H.R. 1894 (Calvert)	Federally Integrated Species Health (FISH) Act	Support	Introduced
H.R. 2594 (Crawford)	Water Risk and Resilience Organization Establishment Act	Support	Introduced
H.R. 2344 (Schakowsky) S. 1118 (Markey)	Water Information Sharing and Analysis Center (WaterISAC) Threat Protection Act	Support	Introduced
H.R. 2766 (Fallon)	Special District Fairness and Accessibility Act	Support	Introduced
H.R. 2774 (Harder)	Safeguarding Our Levees Act	Support	Introduced
S. 1760 (Curtis)	Restoring WIFIA Eligibility Act	Support	Introduced
H.R. 2907 (Stanton)	Save Building Resilient Infrastructure and Communities (Save BRIC) Act	Support	Introduced
S. 324 (Rosen)	Smarter Weather Forecasting for Water Management, Farming, and Ranching Act of 2025	Support	Introduced
S. 1481 (Wicker)	Lifting Our Communities through Advance Liquidity for Infrastructure (LOCAL Infrastructure) Act	Support	Introduced
H.R. 1255 (Kustoff)	Investing in Our Communities Act	Support	Introduced
S. 1246 (Tillis)	FEMA Independence Act of 2025	Support	Introduced
H.R. 4733 (Sorensen)	Low-Income Household Water Assistance Program Establishment Act	Support and Amend	Introduced
H.R. 3572 (Valadao)	Farm to Market Road Improvement Act	Support and Amend	Introduced
S. 1413 (Padilla)	To authorize additional funding for the San Joaquin River Restoration Settlement Act	Support	Introduced
S. 1477 (Padilla) H.R. 2945 (Lieu)	Housing for All Act of 2025	Support and Amend	Introduced
H.R. 6422 (Stauber)	American Water Stewardship Act	Support	Introduced
S. 3693 (Cortez Masto)	Large-Scale Water Recycling Program Reauthorization Act	Support	Introduced
H.R. 4593 (Fry)	Saving Homeowners from Overregulation With Exceptional Rinsing (SHOWER) Act	Oppose	Passed House
H.R. 6641 (Gray)	Central Valley Water Solution Act	Support	Introduced
H.R. 6984 (Menendez)	Data Center Transparency Act	Support	Introduced
H.R. 5566 (Carbajal) S. 3590 (Blunt Rochester)	Water Infrastructure Resilience and Sustainability Act	Support	Introduced

2025-26 Federal Legislation with Board-Approved Positions - *continued*

Bill (Author)	Subject	Position	Status
H.R. 7845 (Peters)	Drought Relief Obtained Using Government Help Today (DROUGHT) Act	Support	Introduced
H.R. 4144 (Mullin)	Groundwater Rise and Infrastructure Preparedness Act of 2025	Support	Introduced
S. 3732 (Gallego)	Water Security and Drought Resilience Act	Support	Introduced
S. 4213 (Durbin)	Data Center Water and Energy Transparency Act of 2026	Support	Introduced
H.R. 3717 (Harder) S. 4603 (Schiff)	Golden Mussel Eradication and Control Act	Support and Amend	Introduced
S. 4536 (Rosen)	Protecting America’s Drinking Water from Extreme Temperatures Act	Support	Introduced



Santa Clara Valley Water District

File No.: 26-0005

Agenda Date: 7/14/2026
Item No.: *13.1.

BOARD AGENDA MEMORANDUM

Government Code Section 84308 Applies: Yes ☐ No ☒
(If "YES" Complete Attachment A)

SUBJECT:

Review the Fiscal Year 2027 Board Policy Planning Calendar.

RECOMMENDATION:

Review the Fiscal Year 2027 Board Policy Planning Calendar.

SUMMARY:

This item provides the Board an opportunity to review the Fiscal Year 2027 Board Policy Planning Calendar (FY27 Board Calendar) and identify appropriate items for Board Committee work plans for discussion and feedback to the Board.

The current FY27 Board Calendar containing the Board work plan items is attached for Board review.

ENVIRONMENTAL JUSTICE IMPACT:

The FY27 Board Calendar is not subject to environmental justice analysis.

FINANCIAL IMPACT:

There is no financial impact associated with this item.

CEQA:

The recommended action does not constitute a project under CEQA because it does not have the potential for resulting in direct or reasonably foreseeable indirect physical change in the environment.

ATTACHMENTS:

*Attachment 1: FY27 Board Calendar

UNCLASSIFIED MANAGER:

File No.: 26-0005

Agenda Date: 7/14/2026
Item No.: *13.1.

Candice Kwok-Smith, 408-630-3139

Fiscal Year 2026 VALLEY WATER BOARD POLICY PLANNING CALENDAR

Fiscal Year 2026 Board Work Plan			Committee	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	June
1.	Protect and maintain existing assets and infrastructure and advance new projects.														
2.	Improve internal capability to negotiate and acquire regulatory permits.														
3.	Educate and engage the community, elected officials and interested parties on our management of water resources in Santa Clara County.	Joint meeting with City of San Jose			S										
		Environmental Partners Meeting	Environmental Partners Working Group		C			C				C	C		
4.	Explore and pursue diversified, sustainable and cost-effective water storage opportunities.	Sites Reservoir	WSDM Committee		C		C				C/R			C	R
		Sisk Dam Raise Reservoir	WSDM Committee									R		C	
		Groundwater Banking Opportunities	WSDM Committee							C				C	
5.	Secure existing water supplies and water supply infrastructure.	Water Supply Master Plan				R		R							
		Urban Water Management Plan	WSDM Committee								C			C	R
		Delta Conveyance Project													
6.	Lead Purified Water Efforts with committed partners.	Potable Reuse Partnership with City of San Jose	RWC, JRWPAC	C	C / S	C			C		C / R	C	C	C	C
7.	Complete the Anderson Dam Seismic Retrofit Project.	Anderson Dam Tunnel Project	CIP Committee	C / R	C	C	C		C	C		C	C	C	C
		Anderson Dam Seismic Retrofit Project	CIP Committee	C	R	R	R			C			R	C	
8.	Make water conservation a California way of life in Santa Clara County.	Water Conservation Program Updates	WSDM Committee		C		C						C	C	C
9.	Protect people and property from flooding in all regions of the County, by applying a comprehensive, integrated watershed management approach that balances environmental quality, environmental justice, sustainability, and cost.	Watershed Master Plans	Board Policy and Monitoring Committee											C	
		Stream Maintenance Program (SMP3) EIR											R		

Board Meetings
R = Regular
S = Special
C = Committee
X = Closed

5-7-2026

Fiscal Year 2026 VALLEY WATER BOARD POLICY PLANNING CALENDAR

Fiscal Year 2026 Board Work Plan			Committee	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	June
10.	Plan and design projects with multiple benefits, including protecting ecosystem functions, enhancing habitat, and improving connectivity in all regions of the County.														
11.	Protect creeks, bay, and other aquatic ecosystems from threats of pollution and degradation.	Review of WRPZ Ordinance Implementation	Environmental Creek Cleanup Committee							C					
12.	Complete and implement the Fisheries and Aquatic Habitat Collaborative Effort (FAHCE) agreement.	FAHCE Implementation Update	Stream Planning and Operations Committee					C			C			C	
		Project Site Visits	Stream Planning and Operations Committee											C	
13.	Protect waterways and facilities from encampment impacts while collaborating with community partners and supporting regional efforts to reduce homelessness.	Review of WRPZ Ordinance Implementation	Environmental Creek Cleanup Committee							C					
14.	Protect the safety of Valley Water staff, residential neighbors, and unsheltered individuals by working independently and in partnership with law enforcement agencies.	Review of WRPZ Ordinance Implementation	Environmental Creek Cleanup Committee							C					
15.	Address future impacts of extreme weather events to Valley Water’s mission and operations.	Greenhouse Gas Reduction Plan	Board Policy and Monitoring Committee												R
16.	Maintain appropriate staffing levels and expertise, prioritize the safety of our staff, and build and sustain a collaborative working environment for all staff and partners while ensuring fair employment.	Vacancy Status, Recruitment, and Retention Efforts											R		
17.	Provide affordable and cost-effective level of services.	Grant Status Update Reports		R		R		R		R		R		R	
		Annual Audit Workplan Approval	Board Audit Committee					C	R						
18.	Other Notable Policy and Board Actions	Legislative Proposals and Guiding Principles						R							

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Items Regularly Monitored by Board		July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	June
1.	BAO Performance	X						X					
2.	BAO Compensation												X/R
3.	Board Expense Report	R			R			R			R		

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