

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

**RESOLUTION NO. 17-**

**DETERMINING AND DECLARING THE PUBLIC NECESSITY FOR THE  
ACQUISITION OF CERTAIN REAL PROPERTY OR INTERESTS IN REAL  
PROPERTY BY EMINENT DOMAIN FOR THE LOWER BERRYESSA CREEK  
FLOOD PROTECTION PHASE 2 PROJECT (PROJECT NO. 40174005)  
(CODE OF CIVIL PROCEDURE SECTIONS 1245.220, *et seq.*)**

WHEREAS, the Lower Berryessa Creek Flood Protection Project (Project) provides flood protection from a one-percent chance event to the community in Milpitas. The Project extends approximately 1.6 miles from its confluence with Lower Penitencia Creek upstream to Calaveras Boulevard; and

WHEREAS, construction of Phase 1 of the Project, approximately 2,200 feet long, is complete, and Phase 2, approximately 6,400 feet long, began in June 2016; and

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

WHEREAS, the property interest to be acquired for the Project was previously utilized as North Main Street, and it was abandoned by the City of Milpitas when the Abel Street Bridge was completed. Property vacation documents (City of Milpitas resolution 2626) referenced the city retaining easement rights. This property interest is described and shown in more detail in Exhibit 1 and Exhibit 2 (Fee Title) attached hereto and incorporated herein (the "Property"); and

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

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

WHEREAS, a record search did not identify the present owner nor identify an existing deed for the property, and the District could not obtain a title insurance policy for this property; and

WHEREAS, after exercising reasonable diligence to locate the property's owners, the District was able to identify possible heirs to prior, deceased owners, but was unable to obtain sufficient documentation to confirm that the persons were in fact heirs to the estate; therefore, no offer was made; and

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

WHEREAS, the District's Board of Directors held a public hearing on October 13, 2015 to consider the adoption of this resolution, and all known interested parties were given an opportunity to be heard; and

WHEREAS; the District's Board of Directors adopted Resolution No. 15-66, authorizing condemnation of only the property described in Exhibit 2, being the easterly half of Main Street within the Project; and

WHEREAS; on November 10, 2015, Special Counsel for the District filed Case No. 1-15-CV-287904, seeking to condemn only the property described in Exhibit 1; and

WHEREAS; subsequent information disclosed the existence of errors in the legal description used in Resolution No. 15-66, and the pleadings associated with Case N. 1-15-CV-287904, requiring correction; and

WHEREAS, Standard Realty and Development Company (Standard) quitclaimed to the District any interest to both the easterly and westerly halves of Main Street; and

WHEREAS, a subsequent title report raised questions about the ownership of both the westerly and easterly halves of Main Street; and

WHEREAS, because the District mistakenly believed that Standard was the sole owner of the westerly half of Main Street that portion was not included in Resolution No. 15-66 approved at the October 13, 2015 RON public hearing; and

WHEREAS; the determination has been made that the property interests described in Exhibit 1 and Exhibit 2, are required for the project; and

WHEREAS, two defendants have appeared in this case to assert their interest in this property but have not yet proven they are the rightful heirs; and

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

WHEREAS, the two purported heirs that have appeared in this case have been advised of the hearing on this RON; and

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

WHEREAS, the District's Board of Directors held a public hearing on August 8, 2017, to consider the adoption of this resolution, and all interested parties were given an opportunity to be heard.

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

1. The public interest and necessity require the Project.
2. The Project is planned or located in a manner that will be most compatible with the greatest public good and the least private injury.
3. The Property described herein in Exhibits 1 and Exhibit 2 is necessary for the Project.
4. After exercising reasonable diligence, the District was unable to definitively identify the appropriate property owner(s); therefore, the District did not make an offer.
5. Due to the inability to identify the actual owners of the property interests, the District was unable to and is not required to mail the Notice of Intention to Adopt Resolution of Necessity pursuant to California Code of Civil Procedure Section 1245.235.
6. Even though no offer was made, the two, most likely owners have been advised of the hearing on this RON.

7. The District has complied with all conditions and statutory requirements necessary to exercise the power of eminent domain to acquire the Property.
8. The District has complied with the requirements of the California Environmental Quality Act ("CEQA") for the Project, the District's Board having on December 13, 2011, certified a Final Environmental Impact Report for the Project.
9. The District's Office of the District Counsel and/or its designee is hereby authorized to amend the complaint in its eminent domain proceeding and continue prosecuting that proceeding to acquire the Property, to deposit the amount of probable compensation pursuant to Code of Civil Procedure section 1255.010, and to acquire prejudgment possession of the Property as may be necessary for the Project.

PASSED AND ADOPTED by the Board of Directors of Santa Clara Valley Water District by the following vote on August 8, 2017.

AYES: Directors

NOES: Directors

ABSENT: Directors

ABSTAIN: Directors

SANTA CLARA VALLEY WATER DISTRICT

By: \_\_\_\_\_  
RICHARD P. SANTOS  
Vice Chair/Board of Directors

ATTEST: MICHELE L. KING, CMC

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Clerk/Board of Directors

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