

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

RESOLUTION NO. 23-

**DETERMINING AND DECLARING THE PUBLIC NECESSITY FOR THE ACQUISITION OF
CERTAIN REAL PROPERTY OR INTERESTS IN REAL PROPERTY BY EMINENT DOMAIN
FOR THE SOUTH SAN FRANCISCO BAY SHORELINE PHASE 1 ECONOMIC IMPACT
AREA 11 PROJECT NO. 00044026
(CODE OF CIVIL PROCEDURE SECTIONS 1245.220, *et seq.*)**

WHEREAS, pursuant to a cost-sharing agreement with the United States Army Corps of Engineers (USACE), the Santa Clara Valley Water District (Valley Water) is working to construct the South San Francisco Bay Shoreline Phase 1 Economic Impact Area 11 Project No. 00044026 (the Project), which will provide coastal flood protection to the community of Alviso and to infrastructure between Alviso Slough and Coyote Creek through the construction of four miles of Federal Emergency Management Agency certifiable coastal levees; and

WHEREAS, the Project will help protect the Alviso community of approximately 2,500 residents and 3,000 commuters who work and travel through the area each day, the San Jose-Santa Clara Regional Wastewater Facility, and the Silicon Valley Advanced Water Purification Center; and

WHEREAS, the Project will also help protect against future sea level rise, and will restore and enhance approximately 2,900 acres of tidal marsh and related habitat that was lost due to former salt ponds production activities. The new levees will be used as trails and will have connections to the Bay Trail network, with viewing platforms, interpretive signs, and benches; and

WHEREAS, the USACE is the federal sponsor for this Project and is responsible for design and construction of this multi-purpose project. Valley Water is the local sponsor and is responsible for obtaining necessary rights of way, acquisition of both levee and ecotone fill and relocating utilities; and

WHEREAS, the USACE completed design of Reaches 1, 2 and 3 and planned to start construction of the Project in 2020; and

WHEREAS, Valley Water previously acquired the rights of way necessary for the USACE to begin construction of Reaches 1-3, and one of those rights of way is a 3,841 square foot temporary work area easement (TWAE) from the property owner; and

WHEREAS, the USACE readvertised Reaches 1-3 for construction in January 2021, and began construction of the Project in December 2021; and

WHEREAS, the current TWAE will expire on April 12, 2023, and the Project cannot be completed without the continued and uninterrupted use of the TWAE, thus acquisition of the property interest described below is necessary and in the public interest; and

Determining and Declaring the Public Necessity for the Acquisition of Certain Real Property or Interests in Real Property by Eminent Domain for the South San Francisco Bay Shoreline Phase 1 Economic Impact Area 11 Project No. 00044026 (Code of Civil Procedure Sections 1245.220, *Et Seq.*) Resolution No. 23-

WHEREAS, the property interest to be acquired for the Project is located near Madison Street, Alviso, California 95002, Santa Clara County Assessor's Parcel No. 015-25-012, and is described and depicted in Exhibit A attached hereto and incorporated herein (Property); 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, Valley Water 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, on December 6, 2022, an offer package was sent to the property owner's P.O. Box, which is the address listed on the last equalized County assessment roll notice. Also, a copy of the offer package was sent to the agent for service of process at the street address identified on the Secretary of State website where legal documents may be mailed. On December 8, 2022, Valley Water received confirmation that the package was delivered to and received at the street address 1110 Taylor Street, Alviso, CA 95002 by return receipt; and on December 9, 2022, Valley Water received confirmation that the package was delivered to and received at the P.O. Box by return receipt; and

WHEREAS, Valley Water provided by certified mail to all persons whose names appear on the last Equalized County Assessment Roll as having an interest in the Property a notice that Valley Water's Board of Directors would hold a hearing on January 10, 2023 to consider the adoption of a resolution of necessity authorizing Valley Water to acquire the Property by eminent domain; and

WHEREAS, Valley Water's notice, mailed out on December 15, 2022, advised all such interested persons of the time and place for the hearing, their right to be heard in relation to that matter, and that their failure to file a written request to appear and be heard at the hearing within 15 days from the mailing of the notice would result in a waiver of their right to be heard; and

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

WHEREAS, Valley Water's Board of Directors held a public hearing on January 10, 2023 to consider the adoption of this Resolution, and all interested parties were given an opportunity to be heard.

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

1. The public interest and necessity require the Project;
2. The Project is planned or located in a manner that will be most compatible with the greatest public good and the least private injury;

Determining and Declaring the Public Necessity for the Acquisition of Certain Real Property or Interests in Real Property by Eminent Domain for the South San Francisco Bay Shoreline Phase 1 Economic Impact Area 11 Project No. 00044026 (Code of Civil Procedure Sections 1245.220, *Et Seq.*) Resolution No. 23-

3. The Property described and depicted herein in Exhibit A is necessary for the Project;
4. Valley Water made the offer required by Government Code section 7267.2 to the owners of record;
5. Valley Water has complied with all conditions and statutory requirements necessary to exercise the power of eminent domain to acquire the Property;
6. Valley Water has complied with the requirements of the California Environmental Quality Act (CEQA) for the Project, Valley Water's Board having on March 22, 2016, adopted a Final Environmental Impact Report;
7. Valley Water's Office of the District Counsel and/or its designee is hereby authorized to commence and prosecute an eminent domain proceeding to acquire the Property, to deposit the amount of probable compensation pursuant to Code of Civil Procedure section 1255.010, and to acquire prejudgment possession of the Property as may be necessary for the Project.

PASSED AND ADOPTED by the Board of Directors of the Santa Clara Valley Water District by the following vote on January 10, 2023:

AYES: Directors

NOES: Directors

ABSENT: Directors

ABSTAIN: Directors

SANTA CLARA VALLEY WATER DISTRICT

Chair/Board of Directors

ATTEST: MICHELE L. KING, CMC

Clerk, Board of Directors

EXHIBIT A

TEMPORARY WORK AREA EASEMENT, FILE 2044-13

No. of Pages: 4

Exhibit Attachments: None

EXHIBIT A

(TEMPORARY WORK AREA EASEMENT, FILE 2044-13)

A temporary easement and right-of-way in, on, over and across the land described below, for a period of time not to exceed twenty four (24) months, beginning on April 13, 2023 , for use by the United States Army Corps of Engineers , its representatives, agents, and contractors as a work area, including the right to deposit fill thereon, move, store and remove equipment and supplies, and erect and remove temporary structures on the land and to perform any other work necessary and incident to the construction of the San Francisco Bay Shoreline Phase 1 Economic Impact Area 11 (EIA 11) Project, together with the right to trim, cut, fell and remove therefrom all trees, underbrush, obstructions, and any other vegetation, structures, or obstacles within the limits of the right-of-way; reserving, however, to the landowners, their heirs and assigns, all such rights and privileges as may be used without interfering with or abridging the rights and easement hereby acquired; subject, however, to existing easements for public roads and highways, public utilities, railroads and pipelines.

This temporary construction easement is granted under the express conditions listed below:

1. This easement is necessary for the purpose of constructing the San Francisco Bay Shoreline Phase 1 Economic Impact Area 11 (EIA 11) Project and related activities incident to construction. This temporary construction easement shall not be revoked and shall continue in full force and effect for a period of time not to exceed twenty four (24) months, beginning on April 13, 2023 to complete construction of the San Francisco Bay Shoreline Phase 1 EIA 11 Project.
2. Grantee agrees to use all reasonable efforts to keep the roadway covered by this easement open to traffic and to not interfere with residential occupants or construction activity of Granter on site. Grantee will keep area covered by the easement clean and remove all debris related to its construction.
3. Grantee agrees to indemnify and hold harmless Granter from and against any and all claims, damages, liabilities, costs or any expenses whatsoever, arising from or caused, directly or indirectly by the entry onto the property by Grantee or its agents, employees, invitees, contractors and subcontractors.

**EXHIBIT A
(Continued)**

SANTA CLARA VALLEY WATER DISTRICT

SAN JOSE, CA 95118

PROJECT: SOUTH BAY WETLANDS RESTORATION

RESU FILE NO.: 2044-13

ALL THAT CERTAIN REAL PROPERTY SITUATE IN THE CITY OF SAN JOSE, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, BEING A PORTION OF BLOCK 69 AS DESCRIBED IN THAT CERTAIN GRANT DEED RECORDED ON SEPTEMBER 30, 2005 AS DOCUMENT NUMBER 18605126 OF OFFICIAL RECORDS AND ALSO AS SHOWN ON THAT CERTAIN MAP FILED IN BOOK D OF MAPS ON PAGE 184 AND ALSO AS SHOWN ON THAT CERTAIN RECORD OF SURVEY FILED ON AUGUST 27, 1976 IN BOOK 378 OF MAPS AT PAGE 55, AND ALSO BEING A PORTION OF MADISON STREET AS SHOWN ON SAID MAP AND ALSO AS SHOWN ON SAID RECORD OF SURVEY, ALL IN THE OFFICE OF THE RECORDER, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

(TEMPORARY WORK AREA EASEMENT)

COMMENCING AT THE CAST ALUMINUM MONUMENT 138 ON THE SOUTHERLY LINE OF SAID RECORD OF SURVEY, SAID POINT ALSO SHOWN AS POINT NUMBER 3955 ON SAID RECORD OF SURVEY;

THENCE ALONG SAID SOUTHERLY LINE OF SAID RECORD OF SURVEY, SOUTH 89° 47' 34" EAST, 43.58 FEET TO THE **POINT OF BEGINNING**;

THENCE LEAVING SAID SOUTHERLY LINE, NORTH 02° 31' 31" EAST, 17.93 FEET TO A POINT ON THE CENTER LINE OF SAID MADISON STREET;

THENCE ALONG SAID CENTER LINE OF SAID MADISON STREET, NORTH 49° 07' 40" EAST, 82.58 FEET;

THENCE LEAVING SAID CENTER LINE, SOUTH 02° 31' 31" WEST, 34.41 FEET TO A POINT ON THE SOUTHERLY LINE OF SAID MADISON STREET, SAID LINE ALSO BEING THE NORTHWESTERLY LINE OF BLOCK 69;

THENCE SOUTH 56° 58' 37" EAST, 69.74 FEET TO A POINT ON THE SOUTHERLY LINE OF SAID BLOCK 69, SAID LINE ALSO BEING THE SOUTHERLY LINE OF SAID RECORD OF SURVEY;

THENCE ALONG SAID SOUTHERLY LINE, NORTH 89° 47' 34" WEST, 120.19 FEET TO THE **POINT OF BEGINNING**.

**EXHIBIT A
(Continued)**

CONTAINING 3,841 SQUARE FEET OF LAND, MORE OR LESS.



BASIS OF BEARINGS:

BEARINGS ARE BASED ON AND IDENTICAL TO SAID RECORD OF SURVEY FILED ON AUGUST 27, 1976 IN BOOK 378 OF MAPS AT PAGE 1 THROUGH 57 IN THE OFFICE OF THE RECORDER, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA.

SURVEYOR'S STATEMENT:

THE DESCRIPTION WAS PREPARED BY ME OR UNDER MY DIRECTION IN CONFORMANCE WITH THE REQUIREMENTS OF THE LAND SURVEYOR'S ACT.



GISELA SILKE JOBST, L9169

09/11 / 2.018
DATE



EXHIBIT A
(Continued)

