

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

**RESOLUTION NO. 23-**

**APPROVING THE MODIFICATION TO THE UPPER PENITENCIA CREEK  
FLOOD PROTECTION PROJECT OF THE SAFE, CLEAN WATER AND  
NATURAL FLOOD PROTECTION PROGRAM**

WHEREAS, on July 21, 2020, the Board of Directors of the Santa Clara Valley Water District (Valley Water) adopted Resolution No. 20-64 Providing for the Continuation and Levy of a Special Tax to Pay the Cost of the Safe, Clean Water and Natural Flood Protection Program in the Combined Flood Control Zone of the Santa Clara Valley Water District Subject, Nevertheless, to Specified Limits and Conditions (Resolution No. 20-64); and

WHEREAS, the purpose of the special tax is to supplement other available but limited revenues to keep Valley Water's flood protection system of levees, channels, drains, debris basins, and other improvements in a safe and effective condition; to enable Valley Water to respond to emergencies; to perform maintenance and repair; to acquire, restore, and preserve habitat; to provide recreation; to conduct environmental education; to protect and improve water quality; and, to construct and operate flood protection storm drainage facilities; including in each case the cost of financing such activities; support public health and public safety as it relates to Valley Water's mission; and

WHEREAS, in November 2020, Valley Water's Measure S was overwhelmingly approved by more than a two-thirds majority vote of the electorate of Valley Water, renewing a special tax, the proceeds of which are used solely for the purpose of supporting the six funding priorities of the Safe, Clean Water and Natural Flood Protection Program (Safe, Clean Water Program), which are as follows: 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; and Priority F: Support Public Health and Public Safety for Our Community; and

WHEREAS, Project E4: Upper Penitencia Creek Flood Protection Project (Project E4) is included under Priority E of the Safe, Clean Water Program; and

WHEREAS, the Safe, Clean Water Program describes the primary objective of the Preferred Project as follows: "This project continues a partnership with the U.S. Army Corps of Engineers (USACE), to plan, design and construct improvements along 4.2 miles of Upper Penitencia Creek from the confluence with Coyote Creek to Dorel Drive. Part of the project will protect the area around the Bay Area Rapid Transit's (BART) Berryessa station near King Road, which would otherwise be subject to flooding. In addition to providing flood protection, this multi-objective project will provide ecological restoration and recreation benefits while preserving the water supply. The natural creek channel will be preserved while adjacent existing open space and parkland will remain as recreational areas, only rarely taking the role as a temporary floodplain so that floodwaters do not enter surrounding neighborhoods and commercial areas. Proposed construction measures may include modified floodplains, limited levees/ floodwalls, a bypass channel, and fish passage improvements."; and

WHEREAS, the Safe, Clean Water Program describes the primary objective of the Local-Funding-Only Project as follows: "The original local-funding-only project was to acquire all necessary rights-of-way and construct a 1% (100-year event) flood protection project from Coyote Creek confluence to King Road, which would have protected 450 parcels. In December 2019, the Valley Water Board directed staff to use the available local funding to complete the design and construction of the locally funded project as well as build the reaches

of the preferred project that can be constructed with the available funding. This approach extends the local-funding-only project from King Road to Capital Avenue and provides 1% flood protection for an additional 800 parcels. As a result, the new local-funding-only project would be to construct flood improvements along Upper Penitencia Creek from the confluence of Coyote Creek to Capital Avenue to increase the 1% flood protection provided with local available dollars to 1,250 parcels, including the new Berryessa BART station.”; and

WHEREAS, the Safe, Clean Water Program identifies the Key Performance Indicators (KPIs) for Project E4 as follows:

- “1. Preferred project with federal and local funding: Construct a flood protection project to provide 1% (100-year) flood protection to 8,000 parcels.
2. With local funding only: Construct a 1% (100-year) flood protection project from Coyote Creek confluence to Capital Avenue to provide 1% (100-year) flood protection to 1,250 parcels, including the new Berryessa BART station.”; and

WHEREAS, Project E4 has a 15-Year Funding Allocation of approximately \$23.592 million; and

WHEREAS, infrastructure construction projects in the Safe, Clean Water Program are experiencing significant cost increases; and

WHEREAS, these increased costs are impacting the Safe, Clean Water Program Fund's (Fund 26) financial health, resulting in staff's recommendation that the Valley Water Board of Directors provide direction on balancing the overall Fund and delivering the voter-approved Safe, Clean Water Program; and

WHEREAS, as a result of construction cost escalations, staff is recommending modifying Project E4 funding allocation to reallocate construction-related planned expenditures to the Fund 26 Operating and Capital Reserves; and

WHEREAS, modifying the 15-Year Funding Allocation to reallocate construction-related planned expenditures would reduce the allocation to approximately \$1.534 million which would impact Valley Water's ability to construct the project and deliver the KPIs; and

WHEREAS, Valley Water will reassess the availability of funding on an annual basis as part of the Capital Improvement Program's financial planning process, through which the Board may reallocate construction funding to Project E4, when and if, funding becomes available; and

WHEREAS, Valley Water's Resolution No. 20-64 authorizes modifications to proposed projects. Paragraph N. reads as follows: “The Board of Directors may direct that proposed projects in the Safe, Clean Water and Natural Flood Protection Program be modified or not implemented depending upon a number of factors, including federal and state funding limitations and the analysis and results of CEQA environmental review and permitting by state and federal regulatory agencies. The Board of Directors must hold a formal, public hearing on the matter, which will be noticed by publication and notification to interested parties, before adoption of any such decision to modify or not implement a project”; and

WHEREAS, at its regular Board meeting conducted on January 10, 2023, Valley Water's Board of Directors set a time and place for a formal public hearing to occur on January 24, 2023, at which time the Board will consider the Proposed Modification to Project E4: Upper Penitencia Creek Flood Protection Project of the Safe, Clean Water and Natural Flood Protection Program.

NOW, THEREFORE BE IT RESOLVED by the Board of Directors of the Santa Clara Valley Water District as follows:

1. Pursuant to the requirements stated in California Government Code section 6066, staff prepared and published advertisements in Santa Clara County newspapers of general circulation.
2. Pursuant to the requirements stated in Valley Water's Resolution No. 20-64, Paragraph N., a noticed public hearing was held.
3. Modify the funding allocation for Project E4: Upper Penitencia Creek Flood Protection Project, as set forth in the Safe, Clean Water Program, as follows:

E4: Upper Penitencia Creek Flood Protection Project Financial Summary (\$ Thousand)	
15-Year Allocation	Modified 15-Year Allocation (approx.) *
\$23,592	\$1,534

*\*The modified funding allocations are approximated at this time and will be finalized through the development and Board approval of the Capital Improvement Program's FY 2024-28 Five-Year Plan.*

4. Valley Water's Safe, Clean Water and Natural Flood Protection Program's Project E4: Upper Penitencia Creek Flood Protection Project, is hereby modified as stated in Exhibit A, Modified 15-Year Funding Allocation, hereto, which includes the approved approximated Modified 15-Year Allocation, which will be finalized through the development and Board approval of the Capital Improvement Program's Fiscal Years 2024-28 Five-Year Plan.

PASSED AND ADOPTED by the Board of Directors of the Santa Clara Valley Water District by the following vote on January 24, 2023:

AYES: Directors

NOES: Directors

ABSENT: Directors

ABSTAIN: Directors

SANTA CLARA VALLEY WATER DISTRICT

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JOHN L. VARELA  
Chair, Board of Directors

ATTEST: MICHELE L. KING, CMC

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Clerk, Board of Directors

# **EXHIBIT A COVERSHEET**

## **MODIFIED 15-YEAR FUNDING ALLOCATION**

No. of Pages: 2

Exhibit Attachments: None

# PROJECT E4

## UPPER PENITENCIA CREEK FLOOD PROTECTION

### Preferred project: A federal-state-local partnership

This project continues a partnership with the U.S. Army Corps of Engineers (USACE), to plan, design and construct improvements along 4.2 miles of Upper Penitencia Creek from the confluence with Coyote Creek to Dorel Drive. Part of the project will protect the area around the Bay Area Rapid Transit's (BART) Berryessa station near King Road, which would otherwise be subject to flooding.

In addition to providing flood protection, this multi-objective project will provide ecological restoration and recreation benefits while preserving the water supply. The natural creek channel will be preserved while adjacent existing open space and parkland will remain as recreational areas, only rarely taking the role as a temporary floodplain so that floodwaters do not enter surrounding neighborhoods and commercial areas. Proposed construction measures may include modified floodplains, limited levees/ floodwalls, a bypass channel, and fish passage improvements.

### Local-funding-only project

The original local-funding-only project was to acquire all necessary rights-of-way and construct a 1% (100-year event) flood protection project from Coyote Creek confluence to King Road, which would have protected 450 parcels. In December 2019, the Valley Water Board directed staff to use the available local funding to complete the design and construction of the locally funded project as well as build the reaches of the preferred project that can be constructed with the available funding. This approach extends the local-funding-only project from King Road to Capital Avenue and provides 1% flood protection for an additional 800 parcels. As a result, the new local-funding-only project would be to construct flood improvements along Upper Penitencia Creek from the confluence of Coyote Creek to Capital Avenue to increase the 1% flood protection provided with local available dollars to 1,250 parcels, including the new Berryessa BART station.

### Benefits

- Preferred project provides up to 1% flood protection to approximately 8,000 homes, schools and businesses.
- Local-funding-only project provides 1% flood protection to 1,250 parcels, including the new Berryessa BART station.
- Restores/enhances ecological and riparian habitat.
- Reduces sedimentation and maintenance requirements.
- Improves water quality in Upper Penitencia and Coyote creeks.

## Exhibit A – Modified 15-Year Funding Allocation

- Provides opportunities for recreation improvements consistent with the City of San José and Santa Clara County Park master plans.
- Addresses climate change.

### Key Performance Indicators (FY22–36)

1. Preferred project with federal and local funding: Construct a flood protection project to provide 1% (100-year) flood protection to 8,000 parcels.
2. With local funding only: Construct a 1% (100-year) flood protection project from Coyote Creek confluence to Capital Avenue to provide 1% (100-year) flood protection to 1,250 parcels, including the new Berryessa BART station.

### Modified Funding Allocation

E4: Upper Penitencia Creek Flood Protection Project Financial Summary (\$ Thousand)	
15-Year Allocation	Modified 15-Year Allocation (approx.) *
\$23,592	\$1,534

*\*The modified funding allocations are approximated at this time and will be finalized through the development and Board approval of the Capital Improvement Program's FY 2024-28 Five-Year Plan.*