

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

**RESOLUTION NO. 18-**

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

WHEREAS, on July 24, 2012, the Board of Directors of the Santa Clara Valley Water District (District) adopted Resolution No. 12-62 Providing for the Continuation and Levy of a Special Tax to Pay the Cost of a 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. 12-62); and

WHEREAS, the purpose of the special tax is to supplement other available but limited revenues to keep the District's flood protection system of levees, channels, drains, debris basins and other improvements in a safe and effective condition; to enable the District 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; and

WHEREAS, in November 2012, the District's Measure B was overwhelmingly approved by more than a two-thirds majority vote of the electorate of the District, implementing a special tax, the proceeds of which are used solely for the purpose of supporting the five 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 from earthquakes and natural disasters; Priority D: Restore wildlife habitat and provide open space; and Priority E: Provide flood protection to homes, businesses, schools, and highways; and

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

WHEREAS, the Safe, Clean Water Program describes the primary objective of the Upper Penitencia Creek project as reducing the risk of flooding to homes, schools, businesses and highways in the Upper Penitencia Creek Watershed located in San José; and

WHEREAS, the Safe, Clean Water Program defines the Key Performance Indicator (KPI) for the Upper Penitencia Creek project as follows: 1. Preferred project with federal and local funding: Construct a flood protection project to provide 1% flood protection to 5,000 homes, businesses and public buildings; and 2. With local funding only: Acquire all necessary rights-of-way and construct a 1% flood protection project from Coyote Creek confluence to King Road; and

WHEREAS, in 2016, the U.S. Army Corps of Engineers decided that they could not support a multi-objective project that would be aligned with the interests of the community, resource agencies and the District; and

WHEREAS, the District therefore switched to a local planning effort aimed at developing a multi-purpose project to meet multiple beneficial goals including improving water quality and providing opportunities for recreation improvements and habitat restoration; and

WHEREAS, with the urgent demand for flood risk reduction along Coyote Creek, the Capital Improvement Program (CIP) Committee recommended a modification to reduce the scope of the Upper Penitencia Creek project to the planning phase only and reduce the project's Safe, Clean Water funding from approximately \$42 million to \$2 million; and

WHEREAS, reducing the scope of the Upper Penitencia Creek project would suspend the project's design and construction phases, while completing the project's planning phase would position the District to be able to pursue additional funding for design and construction in the future as grant opportunities and other funding sources may become available; and

WHEREAS, to date, the Upper Penitencia Creek project has not expended any of its allocated Safe, Clean Water funds and has been supported by the District's Watershed and Stream Stewardship fund; and

WHEREAS, the remaining available funding from the Upper Penitencia Creek project would be reallocated to the Coyote Creek Flood Protection Project (Coyote Creek project) to allow the District to complete flood risk reduction along 9 miles of Coyote Creek from Montague Expressway to Tully Road; and

WHEREAS, the Coyote Creek project currently has local funding for the planning and design phases and partial funding for construction, and the additional funding from the Upper Penitencia Creek project would allow the District to construct Coyote Creek's preferred project with local funding only; and

WHEREAS, the District desires to modify the Upper Penitencia Creek Flood Protection Project to reduce the project scope to the planning phase only; and

WHEREAS, the District's Resolution No. 12-62 (Resolution No. 12-62) authorizes modifications to proposed projects. Paragraph J. 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. 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 regularly scheduled meeting conducted on March 27, 2018, the District's Board of Directors set a time and place for a formal public hearing to occur on April 10, 2018, at which time the Board will consider Proposed Modification to the 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 the District's Resolution No. 12-62, paragraph J., a noticed public hearing has been held.
2. To address the urgent demand for flood risk reduction along Coyote Creek and the lack of federal funding available for the Upper Penitencia Creek Flood Protection Project, the scope of the Upper Penitencia Creek project will be reduced to the planning phase only and the project's Safe, Clean Water funding will be reduced to \$2 million.

3. The remaining available funding from the Upper Penitencia Creek project will be reallocated to the Coyote Creek Flood Protection Project to allow the District to construct Coyote Creek's preferred project with local funding only and complete flood risk reduction along 9 miles of Coyote Creek from Montague Expressway to Tully Road.
4. The Key Performance Indicator for the Upper Penitencia Creek Flood Protection Project under Priority E, as set forth in the Safe, Clean Water Program, is modified to state as follows:
  - "1. Complete a planning study report for a flood protection project to provide up to 1% flood protection to 9,000 homes, businesses and public buildings."
5. The District's Safe, Clean Water and Natural Flood Protection Program category of Priority E for the Upper Penitencia Creek Flood Protection Project is hereby modified as stated in Attachment A hereto, Modified Project Text for the Upper Penitencia Creek Flood Protection, Coyote Creek to Dorel Drive – San José.

PASSED AND ADOPTED by the Board of Directors of Santa Clara Valley Water District by the following vote on May 23, 2018:

AYES: Directors

NOES: Directors

ABSENT: Directors

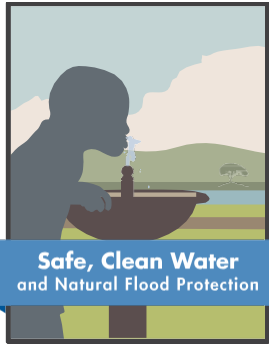
ABSTAIN: Directors

SANTA CLARA VALLEY WATER DISTRICT

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

ATTEST: MICHELE L. KING, CMC

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Clerk/Board of Directors



# Safe, Clean Water and Natural Flood Protection



## ***Attachment A: Modified Project Text***

### **Project E4**

## Upper Penitencia Creek Flood Protection Coyote Creek to Dorel Drive – San José

This project completes a planning study report for flood protection improvements along 4.2 miles of Upper Penitencia Creek from the confluence with Coyote Creek to Dorel Drive. The planning study will address flood protection improvements for the area around the Silicon Valley Rapid Transit's proposed Berryessa/North San José station near King Road, as part of an extension to the Bay Area Rapid Transit line.

The planning study will identify improvements that preserve the natural creek channel and adjacent recreational areas such as the existing open space and parkland, so that they can function on a rare basis to serve as a temporary floodplain to prevent floodwaters from entering surrounding neighborhoods and commercial areas. Proposed flood risk reduction measures may include modified floodplains, levees, detention/retention areas, bypass channels, and fish passage improvements. Modifications to existing District water supply facilities may also be included to protect habitat and improve water supply reliability.

The \$2 million in local funding from Safe, Clean Water allows the District to move ahead with the planning phase of the project. The planning study report will provide the foundation to allow the District to pursue additional funding opportunities for the project design and construction phases.

### **Flooding History and Project Background**

Upper Penitencia is a major tributary of Coyote Creek, flowing westerly from Alum Rock Park through the residential neighborhoods of Berryessa and Alum Rock in San José. More than 5,000 homes, schools and businesses are located in this floodplain, including many high-tech and commercial industries supporting the greater Silicon Valley.

With the capacity to carry less than a 10-year event, Upper Penitencia Creek has spilled its banks at least 7 times since the District began preparing flood reports in 1967. Damaging flood events occurred in 1978, 1980, 1982, 1983, 1986, 1995, and 1998, impacting many homes, businesses and surface streets.

Potential damages from a 1% (or 100-year) flood event are estimated at \$455 million (in 2004 dollars, according to a USACE economic analysis), with average annual damages estimated at \$30.5 million for the full reach from the Coyote Creek confluence to Dorel Drive.

The project would build on a 1981 tri-party agreement between the District, the City of San José, and Santa Clara County to preserve open land and provide flood protection along the Upper Penitencia Creek corridor. As a result of the agreement, 78 acres have been permanently preserved as Penitencia Creek County Park and Penitencia Creek Trail. A 4-mile, intermittent trail follows Upper Penitencia Creek from 700-acre Alum Rock Regional Park to its confluence with Coyote Creek. In addition to much-needed flood protection, this project will help provide the opportunity for the City of San José and Santa Clara County to complete the long-planned trail and linear park.

### **Benefits**

- Project provides a planning study report for:
  - Up to 1% flood protection to approximately 9,000 homes, schools and businesses.
  - Reduction of sedimentation and maintenance requirements
  - Improvements to water quality in Coyote Creek
  - Opportunities for recreation improvements consistent with the City of San José and Santa Clara County Park master plans

### **Key Performance Indicators (15-Year Program)**

1. Complete a planning study report for a flood protection project to provide up to 1% flood protection to 9,000 homes, businesses and public buildings.

### **Geographic Area of Benefit**

San José and Milpitas

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