



# Santa Clara Valley Water District

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**File No.:** 17-0669

**Agenda Date:** 10/10/2017

**Item No.:** \*2.8.

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## BOARD AGENDA MEMORANDUM

### **SUBJECT:**

Hearing to Consider Adoption of Resolution of Necessity Relating to Acquisition of Real Property Interests from Eleanor Sade, Trustee, Necessary to Complete the Upper Llagas Creek Flood Protection Project, Project No. 26174051 (Morgan Hill) (District 1) (Continued From September 26, 2017).

### **RECOMMENDATION:**

- A. Conduct Hearing to consider adoption of Resolution of Necessity relating to acquisition of real property interests from Eleanor Sade, Trustee necessary to complete the Upper Llagas Creek Flood Protection Project, Project No. 26174051; and
- B. Adopt the Resolution of Necessity DETERMINING AND DECLARING THE PUBLIC NECESSITY FOR THE ACQUISITION OF CERTAIN REAL PROPERTY OR INTERESTS IN REAL PROPERTY BY EMINENT DOMAIN FOR THE UPPER LLAGAS CREEK FLOOD PROTECTION PROJECT NO. 26174051 (CODE OF CIVIL PROCEDURE SECTIONS 1245.220, *et seq.*), by two-thirds vote.

### **SUMMARY:**

The Santa Clara Valley Water District (District) is undertaking the Upper Llagas Creek Flood Protection Project (Project) in partnership with the U.S. Army Corps of Engineers (Corps) and the City of Morgan Hill (City) to provide flood protection. The Project is approximately 13 miles long and encompasses the Cities of Morgan Hill, Gilroy, and various unincorporated areas of Santa Clara County, including San Martin.

The Project has been divided into two phases for construction as identified in Attachment 1. Phase 1 construction is approximately 4.2 miles in length and includes Reach 4, a portion of Reach 5, Reach 7a (diversion channel), and Lake Silveira (on-site compensatory mitigation). Phase 2 construction is approximately 9.7 miles in length and includes a portion of Reach 5 and Reaches 6, 7b, 8, and 14.

This proposed acquisition of property is required for Phase 2 construction of the Project.

Background. The Project was originally administered by the United States Natural Resources Conservation Service (NRCS). In 1999, the Corps was authorized by Congress to take over from

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NRCS and construct the Project. However, due to lack of federal funding, the Corps' progress on the Project stalled. The Corps approved the District's request to resume the lead role in the Project's planning and design phases in order to advance the Project to eventual construction.

On September 22, 2009, the Board approved a cost sharing agreement with the City of Morgan Hill (City) for preparing the environmental document and the design plans and specifications for the Project. This Board action set the course for the District to take on Project tasks normally performed by the Corps, so that the Project could advance. The District is responsible for acquisition of necessary property for the Project.

On October 22, 2013, the District Board of Directors approved a Real Estate Consultant Agreement with Overland, Pacific & Cutler (OPC) to assist District staff in acquiring an estimated 146 parcels needed for the Project.

On June 10, 2014, the Board considered an Environmental Impact Report (EIR) and adopted a Resolution Making Findings of Fact and a Statement of Overriding Considerations regarding the EIR for the Project and adopted a Mitigation Monitoring and Reporting Program. At the same meeting, the Board approved the Project.

Description of the Public Project. The Project improvements are designed to improve flood protection in Upper Llagas Creek, including enhanced protection for 1,100 homes and 500 businesses. Specifically, the Project will provide one percent conveyance capacity in Reaches 7 and 8 of the Project, no induced flooding in Reaches 4, 5, and 6 due to upstream improvements, and ten percent conveyance capacity in Reach 14.

Acquisition of the Property Interests. To construct the Project, the District must acquire various real property interests from 146 property owners. Real property interests from 41 property owners are needed for Phase 1 [Reaches 4, 5 (a portion), 7A, and Lake Silveira] and real property interests are needed from 105 property owners for Phase 2 [Reaches 5 (a portion), 6, 7B, 8, and 14] (see Attachment 1, page 1 of 2). To date, the District has acquired the necessary property interests, or the properties are in the legal process to be acquired, for all but two of the properties required for Phase 1 of the Project. Staff continues to acquire the necessary property interests for Phase 2 of the Project. To date, 68 offers have been made, and 55 owners have reached resolution with the District. Staff continues to negotiate and communicate with the remaining property owners.

Amongst the other properties needed, the District requires the property rights shown in Attachment 1 (page 2 of 2) from property owned by Eleanor Sade, Trustee. To construct the box culvert for the Project, the District must acquire a permanent easement and temporary construction easements over a portion of this property (APN 767-09-017) as described and depicted in Exhibits A and B attached to the Resolution of Necessity (RON) (Attachment 2).

The District made good faith attempts to negotiate a settlement with the property owner. Offers were made to the Owner on April 19, 2016, June 27, 2016, and February 7, 2017, but other than confirming receipt of the offers, Owner has been unresponsive to the various attempts made by OPC to negotiate a settlement.

In conformance with the Code of Civil Procedure Section 1245.235, the District sent a notice of the hearing on adopting the Resolution of Necessity (Attachment 2) by certified mail to the person or persons whose name and address appears on the last equalized county assessment roll for APN 767-09-017, to provide them a reasonable opportunity to be heard by the Board.

The hearing by the Board and the adoption of the RON are legal preconditions to the exercise of the District's power of eminent domain. This statutory requirement is designed to ensure that public entities verify and confirm the validity of their intended use of the power of eminent domain. A RON must contain a general statement of the public use for which the property is taken, a reference to the authorizing statutes, a description of the property, and a declaration stating that the Board has found and determined each of the following underlined findings to be true:

1. The public's interest and necessity for the Project. To provide flood protection to the numerous properties in the cities of Morgan Hill, Gilroy, and San Martin, the Project must acquire the property rights from Eleanor Sade, Trustee to construct 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. This design impacts the fewest private properties to the least extent possible while providing the conveyance capacity necessary to reduce flood risk from the one percent flood event, ten percent flood event, or no induced flooding. The design also provides for a stable channel, preserving and enhancing habitat, and reducing long-term maintenance of the creek.
3. The properties are necessary for the Project. The Project cannot be executed without the portions of APN 767-09-017, as described and depicted in Exhibits A and B attached to the RON, Attachment 2.
4. The Government Code Section 7267.2(a) offer has been made to the owner or owners of record. On February 7, 2017, the District sent via certified mail a final written offer to the owner for 767-09-017 to acquire the property interests, and the District has received confirmation of the owner's receipt. The District's offer complies with California Government Code Section 7267.2.

Attached for the Board's consideration is the proposed RON (Attachment 2). The RON includes direction from the Board authorizing acquisition of the subject property interests described therein by eminent domain.

As stated above, the District has attempted to acquire the needed property interests through a negotiated purchase and has reached an impasse; therefore, adoption of the RON should be considered to meet the Project schedule. If the RON is adopted, the District will still continue efforts to negotiate and achieve a mutual settlement prior to any court action.

The Upper Llagas Creek Project EIR Final May 2014 State Clearinghouse No. 2012102032 and the documents and reports included and referenced therein and the offer(s) made to and appraisal(s)

provided to fee owners are incorporated by reference and made a part of this staff report. They are available for the Board of Directors to review and they support the findings to be made by the Board.

**FINANCIAL IMPACT:**

The property acquisition costs will be funded from the Upper Llagas Creek Project Clean Safe Creeks and Safe Clean Water Program funds, and are consistent with the FY 18-22 Capital Improvement Program. The District will be responsible for the appraised value of the parcel and any court ordered eminent domain costs.

There are adequate funds in Project's Fiscal Year 2017-2018 budget to complete this transaction required for the Upper Llagas Creek Flood Protection Project.

**CEQA:**

The District Board of Directors approved the Project and certified the Project Environmental Impact Report (EIR) on June 10, 2014.

**ATTACHMENTS:**

Attachment 1: Map

Attachment 2: Resolution

\*Handout 2.8-A, PowerPoint

**UNCLASSIFIED MANAGER:**

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