



Santa Clara Valley Water District

File No.: 22-1373

Agenda Date: 1/10/2023

Item No.: 7.1.

BOARD AGENDA MEMORANDUM

Government Code § 84308 Applies: Yes No
(If "YES" Complete Attachment A - Gov. Code § 84308)

SUBJECT:

Authorize Acquisition of a Real Property Interest from Janice M. Schultz, Trustee, for the Anderson Dam Tunnel Project as part of the Federal Energy Regulatory Commission Order Compliance Project, Under the Anderson Dam Seismic Retrofit Project, Project No. 91864006, APNs 729-37-020, -021, and -022, Real Estate File No. 9186-49 (Morgan Hill, District 1).

RECOMMENDATION:

- A. Authorize the Chief Executive Officer to execute a Right of Way Agreement between Janice M. Schultz, Trustee, and the Santa Clara Valley Water District, for acquisition of APNs 729-37-020, -021, and -022, located at 17520, 17530, and 17540 Hoot Owl Way, Morgan Hill, CA, based upon the terms and conditions as set forth in the Agreement; and
- B. Authorize the Chief Executive Officer to accept the Grant Deed from Janice M. Schultz, Trustee.

SUMMARY:

Santa Clara Valley Water District (Valley Water) staff recommends acquisition of residential real property located at 17520, 17530, and 17540 Hoot Owl Way in Morgan Hill, California owned by Janice M. Schultz, Trustee, according to the terms of Right of Way Agreement No. 9186-49 (Attachment 1). This property is shown on the plat and description of Grant Deed No. 9186-49 (Attachment 2). Acquisition of this property is necessary for the Anderson Dam Tunnel Project (ADTP) reservoir bank and rim stability improvements to address ground movement associated with pre-existing landslide areas around Anderson Reservoir.

PROJECT BACKGROUND

Valley Water is undertaking the Federal Energy Regulatory Commission (FERC) Order Compliance Project (FOCP) as a result of the February 20, 2020, directive from FERC to implement interim risk reduction measures at Anderson Dam to protect the public from risk of dam failure due to seismic activity. ADTP, Project No. 91864006, is one of five Capital Construction Projects comprising the FOCP. ADTP is currently being constructed and includes building a diversion system to augment the existing outlet, consisting of a new diversion tunnel, an outlet structure, a micro-tunnel lake tap, and modifications to Coyote Creek just downstream of the base of the dam. ADTP also includes reservoir

bank and rim stability improvements, and existing intake structure modification.

The purpose of the ADTP reservoir bank and rim stability improvements is to address ground movement associated with pre-existing landslide areas around Anderson Reservoir. One of the landslide areas that requires stabilization is known as the “Hoot Owl Way Landslide,” located on the reservoir slope below Hoot Owl Way in the Holiday Lake Estates community. Slope movements at the Hoot Owl Way Landslide have been documented in the past during reservoir operations, seismic events, and other drought and flood related circumstances, and were monitored during the drawdown of Anderson Reservoir in 2020.

When the new diversion system becomes operational, rapid drawdowns during heavy storms may contribute to subsequent slope movement. The ADTP team developed alternatives to mitigate future slope movements around the reservoir using engineering solutions such as soil nails, retaining walls, regrading, shear keys, and drainage improvements. However, analyses of the Hoot Owl Way landslide area determined these solutions may not fully prevent further movement of the slope. Valley Water also considered precautionary acquisition of the nine parcels that are materially threatened by the Hoot Owl Way Landslide as a mitigation alternative. After evaluating the various mitigation alternatives, Valley Water determined that the most feasible option is to pursue acquisition of all nine parcels that may be affected by the Hoot Owl Way Landslide.

ACQUISITION OF 17520, 17530, and 17540 HOOT OWL WAY

The property located at 17520, 17530, and 17540 Hoot Owl Way is located on the reservoir slope and has been identified as property where ground movement associated with pre-existing landslide requires stabilization. Precautionary acquisition of the property and restoration to a more natural condition is determined to be the most appropriate way to address risks threatened by the Hoot Owl Way Landslide.

Valley Water retained Chapman & Patton, Real Estate Appraisers and Consultants, to appraise the properties. Chapman & Patton established fair market value of \$1,650,000 for 17520 and 17530 Hoot Owl Way as of January 19, 2022. The same appraiser established a fair market value of \$1,025,000 for 17540 Hoot Owl Way as of January 19, 2022. An offer in the aggregated amount of \$2,675,000 was made to the owner on April 7, 2022.

On June 21, 2022, Janice M. Schultz, Trustee, expressed concern that the offer did not give appropriate consideration to the development potential of the 17520 Hoot Owl Way parcel and did not adequately consider the extent of recent improvements made to the structures at 17530 Hoot Owl Way. Ms. Schultz, Trustee, made a counteroffer in the amount of \$3,200,000 and provided extensive copies of receipts for all recent improvements made to the properties.

On June 28, 2022, Valley Water reiterated Ms. Schultz’s right to obtain a second appraisal. Ms. Schultz declined to obtain a second appraisal.

On August 16, 2022, Valley Water had a meeting with Ms. Schultz at which a tentative purchase amount of \$2,942,500 was discussed. On August 19, 2022, Ms. Schultz gave verbal confirmation

of the \$2,942,500 purchase amount and documents were prepared for execution by the parties.

On November 14, 2022, Valley Water submitted an offer of \$2,942,500 to Ms. Schultz, subject to board approval, which she accepted.

In the Right of Way Agreement, a standard contamination provision permitting Valley Water to offset contamination remediation costs against the sale price has been removed at the request of the owner. It is replaced by a representation from the owner that she has no actual knowledge of any hazardous materials affecting the property. Based on Valley Water's inspection of the property and Valley Water's intended uses of the property, it is staff's determination that removing the contamination provision will not likely subject Valley Water to significantly increased risks.

The parties agreed that the owner may select the closing date for the acquisition of this property so long as the closing occurs not later than May 31, 2023. This will facilitate the owner locating a new residence and will not interfere with the Valley Water project.

ENVIRONMENTAL JUSTICE IMPACT:

The intent of the ADTP reservoir bank and rim stability improvements is to address ground movement associated with pre-existing landslide areas around Anderson Reservoir. Purchase price of the real property and relocation of occupants will be required to achieve the goal of stabilizing this landslide area in the Holiday Lakes Community. These parcels are not in the SB 535 Disadvantaged Communities. The SB 535 map utilizes California Communities Environmental Health Screening Tool (CalEnviroScreen) which is a screening methodology that can be used to help identify California communities that are disproportionately burdened by multiple sources of pollution. The location of the parcel has a CalEnviroScreen 4.0 score below 70. Areas of concern have scores between 70 and 100.

Valley Water will comply with the Uniform Relocation Assistance and Real Properties Acquisitions Act of 1970, California Relocation Assistance Law, and other applicable local ordinances in providing the full spectrum of relocation services through personalized outreach, and regular communication, to each potentially impacted household.

Additionally, the Valley Water ADTP team continues to coordinate with the community and key stakeholders as the project advances.

FINANCIAL IMPACT:

The Anderson Dam Tunnel Project, Project No. 91864006, is part of the Federal Energy Regulatory Commission Order Compliance Project and is included in the Capital Improvement Program Fiscal Year (FY) 2023-27 Five-Year Plan and in the FY 2022-23 Adopted Budget. The purchase price of the property is \$2,942,500. There are adequate funds in the project's current FY 2022-23 Adopted Budget to purchase the property. The Project is funded by Water Utility Enterprise Fund (Fund 61), with 81.9% of the costs allocated to North County Zone W-2, and South County Zones as follows; 7.9% to Zone W-5, 10.3% to Zone W-7, and 0% to Zone W-8.

CEQA:

Valley Water's acquisition of the property is proposed to ensure public safety during FOCIP implementation. Valley Water determined that the FOCIP was exempt from CEQA pursuant to the statutory exemption for specific actions necessary to prevent or mitigate an emergency (CEQA Guidelines §15269 and Public Resources Code §21080(b)(4)). Acquisition of the property to address the FOCIP impacts are therefore also exempt under the same emergency exemption. In addition, acquisition of property has no possibility of causing significant environmental impacts, and thus are also exempt from CEQA under the "common sense" exemption (CEQA Guidelines § 15061(b)(3)).

ATTACHMENTS:

Attachment A: Gov. Code § 84308, Janice Schultz
Attachment 1: Right of Way Agreement
Attachment 2: Grant Deed No. 9186-49

UNCLASSIFIED MANAGER:

Chris Hakes, 408-630-3796