



Santa Clara Valley Water District

File No.: 22-1436

Agenda Date: 1/10/2023

Item No.: 2.10.

BOARD AGENDA MEMORANDUM

Government Code § 84308 Applies: Yes ☒ No ☐
(If "YES" Refer to Attachment A - Gov. Code § 84308)

SUBJECT:

Conduct a Public Hearing to Consider Adopting a Resolution of Necessity Relating to Acquisition of Real Property Interests from the Santos/Alviso Partnership, L.P., a California Limited Partnership, Necessary to Complete the South San Francisco Bay Shoreline Phase I Economic Impact Area 11 Project, Project No. 00044026, APN 015-25-012, Real Estate File No. 2044-13 (San Jose, District No. 3).

RECOMMENDATION:

- A. Open and conduct the Public Hearing to consider adoption of a Resolution of Necessity relating to acquisition of real property interests from the Santos/Alviso Partnership, L.P., a California Limited Partnership, Necessary to Complete the South San Francisco Bay Shoreline Phase I Economic Impact Area 11 Project, Project No. 00044026;
- B. Close the Public Hearing; and
- C. 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 SOUTH SAN FRANCISCO BAY SHORELINE PHASE 1 ECONOMIC IMPACT AREA 11 PROJECT NO. 00044026 (CODE OF CIVIL PROCEDURE SECTIONS 1245.220, *et seq.*), by two-thirds vote.

SUMMARY:

The San Francisco Bay Shoreline Phase I Economic Impact Area 11 Project (Project) will provide coastal flood protection to the community of Alviso and to public infrastructure between Alviso Slough and Coyote Creek through the construction of four miles of Federal Emergency Management Agency certifiable coastal levees. 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. 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.

The United States Army Corps of Engineers (USACE) is the federal sponsor for this Project and is

responsible for construction of this multi-purpose project. Santa Clara Valley Water District (Valley Water) is the local sponsor and is responsible for obtaining the necessary rights of way.

The Project is approximately 4 miles long and made up of five reaches. The main design features of the Project include: a flood risk management levee, ecotone habitat, maintenance access road/recreational trail, and the restoration of ponds (Attachment 1).

The USACE readvertised Reaches 1-3, which begins at the Alviso Marina County Park and ends at the Artesian Slough for construction in January 2021, and began construction in December 2021.

Background

Valley Water previously acquired the rights of way necessary for the USACE to begin construction of Reaches 1-3. One of these rights of way is a 3,841-square foot temporary work area easement (TWAE) from the Property Owner, Santos/Alviso Partnership L.P. (Partnership). The TWAE is described and depicted in the plat and legal description included in Exhibit A of the Resolution of Necessity (RON) (Attachment 2).

The Valley Water Board conducted a hearing to consider adoption of the RON on this TWAE from Santos/Alviso Partnership, L.P. on December 11, 2018. At the same meeting, the Board adopted the Resolution determining and declaring the public necessity of acquiring the TWAE by eminent domain for the Project. A final order of condemnation was recorded in April 2019.

USACE initially planned to start construction of the Project in 2020 but did not actually commence until December 2021. The TWAE from the Partnership will expire on April 12, 2023. Due to the delay in construction start, on October 11, 2022, the USACE requested an extension of the TWAE on the Property. In order for the USACE to complete construction of Reaches 1-3, Valley Water must now acquire a two-year extension of the TWAE from the Partnership.

Valley Water obtained an appraisal for the TWAE from J. Kaeuper & Co. dated November 25, 2022, which provided a fair market value of the property interest at \$101.75, which Valley Water rounded up to \$102.00 in the offer package.

Acquisition of the Property Interest

The hearing by the Board and the adoption of the RON are legal preconditions to the exercise of Valley Water's power of eminent domain. Code of Civil Procedure Section 1245.230 requires that the Board make the following findings and that each be included in the RON:

1. The public interest and necessity require the project. In order to provide flood protection to properties in the Project area, Valley Water must acquire the property right for the parcel described and depicted in the plat map and legal description in Exhibit A of the RON (Attachment 2) to construct flood protection improvements.
2. The project is 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 protection necessary to reduce flood risk from the one-

percent coastal flood event and to restore and enhance tidal marsh and related habitat in the County of Santa Clara. The property rights to be acquired are located where essential project features (e.g., levee, maintenance access roads and ramps, construction staging area, and vegetative planting) are planned. Furthermore, the property rights to be acquired will not impact private structures or access to private structures.

3. These property interests are necessary for the project. The Project cannot be completed without the property right as shown on and described and depicted in the plat map and legal description in Exhibit A of the RON (Attachment 2).
4. A Government Code Section 7267.2(a) offer was mailed to the Partnership on December 6, 2022.

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.

In the offer letter, Valley Water informed Mr. Tony A. Santos, Manager of Santos Management Company, LLC who is General Partner of the Partnership, that because Mr. Richard Santos, a member of the Santa Clara Valley Water District Board of Directors, has an ownership interest in the Partnership, Government Code 1090 prohibits Valley Water from negotiating with the Partnership. Valley Water believes it is in the best interest of Valley Water to acquire these property interests through eminent domain. During litigation, Valley Water will be permitted to negotiate with the Partnership. Furthermore, the acquisition process will be supervised by an impartial court and will be approved through a court order.

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 RON (Attachment 3) authorizing Valley Water to acquire the Property by eminent domain. 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.

The RON includes direction from the Board authorizing acquisition of the subject property interest described therein by eminent domain. If the RON is adopted, Valley Water will pursue acquisition of this property interest by eminent domain.

ENVIRONMENTAL JUSTICE IMPACT:

There are no Environmental Justice impacts associated with this item.

FINANCIAL IMPACT:

The South San Francisco Bay Shoreline Project, Project No. 00044026 is included in the Capital Improvement Program (CIP) Fiscal Year (FY) 2023-27 Five-Year Plan and in the FY 2022-23 Adopted Budget. There are adequate funds in the project's FY 2022-23 Adopted Budget for the appraised value of the parcel interests of \$102.00. The parcel interests of \$102.00 does not change the overall Total Project Cost reflected in the CIP. A copy of the appraisal report is included as Attachment 4. Valley Water will be responsible for the appraised value of the property rights and any court ordered eminent domain costs.

CEQA:

The Final Environmental Impact Report/Environmental Impact Statement for the South San Francisco Bay Shoreline Phase 1 Study was certified by the Board on March 22, 2016 and the Board adopted Resolution No. 16-20 "Adopting Certain Findings for flood control work, pond restoration work and recreational opportunities in an area of North San Jose between the Alviso Slough and the Coyote Creek" on that date. Acquisition of property interests are a part of the Project and are covered in the Environmental Impact Report.

ATTACHMENTS:

Attachment A: Gov. Code § 84308, Santos/Alviso
Attachment 1: Project Map
Attachment 2: Resolution
Attachment 3: Notice of Intention
Attachment 4: Appraisal
Attachment 5: PowerPoint

UNCLASSIFIED MANAGER:

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