



Santa Clara Valley Water District

File No.: 17-0714

Agenda Date: 11/28/2017

Item No.: 6.1.

BOARD AGENDA MEMORANDUM

SUBJECT:

Lower Penitencia Creek Improvements Project - Resolution Certifying the Final Environmental Impact Report, Adopting the Mitigation Monitoring and Reporting Program, Findings of Fact, and Statement of Overriding Considerations; and Approving the Project.

RECOMMENDATION:

- A. Consider the Potential Environmental Effects of the Lower Penitencia Creek Improvements Project (Project) as presented in the Final Environmental Impact Report (EIR);
- B. Adopt the Resolution CERTIFYING THE FINAL ENVIRONMENTAL IMPACT REPORT, ADOPTING THE MITIGATION MONITORING AND REPORTING PROGRAM, FINDINGS OF FACT, AND STATEMENT OF OVERRIDING CONSIDERATIONS FOR THE LOWER PENITENCIA CREEK IMPROVEMENTS PROJECT; and
- C. Approve the Project.

SUMMARY:

Background and Project Description

In December 2011, the District Board certified an EIR for the Lower Berryessa Creek Program which includes capital improvements to six program elements: (1) Lower Berryessa Creek; (2) Lower Calera Creek; (3) Upper Calera Creek element 1; (4) Upper Calera Creek element 2; (5) Tularcitos Creek; and (6) Lower Penitencia Creek. The 2011 EIR (State Clearinghouse Number 2007092084) evaluated environmental impacts of improvements to the Upper Calera Creek elements 1 and 2, Tularcitos Creek and Lower Penitencia Creek at a programmatic level because the specifics of their design and timing of implementation for these elements were not developed at the time. The District has now prepared a project specific Final EIR for the proposed improvements to the Lower Penitencia Creek element.

Lower Penitencia Creek is situated in the northeasterly portion of Santa Clara County within a developed area in the City of Milpitas. Two tributaries, Berryessa Creek and Penitencia East Channel, flow into Lower Penitencia Creek. Lower Penitencia Creek itself flows into Coyote Creek. The Project extends from the Lower Penitencia Creek/Coyote Creek confluence upstream to the San

Andreas Drive Bridge, located just upstream of Lower Penitencia Creek/Lower Berryessa Creek confluence.

In its current condition, Lower Penitencia Creek has capacity to accommodate the existing 1-percent flood flow without overtopping its levees. However, upstream capital improvements to the Lower Berryessa Creek, Lower Calera Creek, and Tularcitos Creek and Upper Berryessa Creek will increase the 1-percent flow in Lower Penitencia Creek. Construction of improvements to Lower Berryessa and Upper Berryessa Creeks are currently in progress. After the upstream projects are completed, the increased 1-percent flow from the Berryessa Creek delivered to Lower Penitencia Creek will exceed the existing flow conveyance capacity of Lower Penitencia Creek. The Project will be necessary to prevent flooding in the project vicinity during a future 1-percent event. The Project would also maintain the Federal Emergency Management Agency (FEMA) certification of the existing east levee between California Circle and Berryessa Creek.

The proposed project includes improvements to ensure the increased 1-percent flow is contained with required freeboard. Proposed project improvements include sheet pile floodwalls, raised levees, and an in-channel wetlands planting bench.

EIR Preparation and Public Review Process

Pursuant to the California Environmental Quality Act (CEQA), the District, as the lead agency for the Project, prepared a Draft EIR to evaluate environmental impacts of the proposed Project. The Draft EIR was made available for review and comment by the public, regulatory agencies, and other parties, agencies, and organizations for a 47-day period from May 18, 2017 to July 3, 2017.

During the public comment period, District received comment letters from Native American Heritage Commission, California Department of Fish and Wildlife (CDFW), San Francisco Bay Regional Water Quality Control Board (Regional Board), Citizens Committee to Complete the Refuge, and Santa Clara Valley Transportation Authority. Staff considered these comments and incorporated them if appropriate prior to preparing the Final EIR.

CDFW and the Regional Board have regulatory authority over the Project. CDFW commented mainly on issues relating to potential project impacts on wildlife and habitats and associated avoidance/mitigation measures, while the Regional Board commented on project design and alternatives as well as project impacts on wetlands, waters, and beneficial uses. In some comments the agencies requested additional information or clarifications on project elements or environmental analysis, and in others they suggested revisions to the analysis and some of the avoidance/mitigation measures included in the EIR. With respect to additional information or clarification, if such information is available, the District included them in its responses and the Final EIR text. With respect to suggested changes to EIR measures, to the extent possible and as appropriate, the District incorporated the agencies' recommendations; if the District disagreed with the recommendations, the responses explained why the changes would not be necessary.

The Final EIR includes comments on the Draft EIR, responses to those comments, minor revisions to the Draft EIR text made in response to comments and other information, and a Mitigation Monitoring

and Reporting Program.

Summary of Environmental Impacts

An executive summary of the Final EIR is included as Attachment 2.

The Final EIR identifies no impacts or less than significant impacts to the following resource areas: Aesthetics, Agriculture and Forestry Resources, Cultural Resources, Land Use, Greenhouse Gas Emissions and Energy, Hydrology and Water Quality, Mineral Resources, Population and Housing, Public Services, Recreation, Tribal Cultural Resources, and Utilities and Service Systems.

The Final EIR concludes that the Project would result in significant impacts relating to air quality, biological resources, geology, soils and seismicity, hazards and hazardous materials, and traffic and transportation. Most of these significant impacts are short term impacts relating to construction. Implementation of applicable District's best management practices (BMPs) along with proposed mitigation measures identified in the Final EIR would reduce these significant impacts to less-than-significant levels.

The Final EIR concludes that several impacts relating to noise and vibration would remain significant despite implementation of feasible mitigation measures. As described in the Project Description chapter, the District intends to construct the Project over the course of two years. While the Final EIR finds that construction noise and vibration would be temporary, the use of heavy equipment and construction vehicles during construction would result in noise levels above the city's established standards and would temporarily increase ambient noise levels at locations near residences and other sensitive receptors, and potentially expose them to groundborne vibration. The District would implement Mitigation Measure NOI-1 to reduce this impact. This mitigation measure requires that the District and/or its contractor to implement numerous noise- and vibration-reducing measures, where appropriate, during construction. Examples of these measures include equipping project equipment and vehicles with mufflers and silencers, shutting off mobile noise-generating equipment and machinery when not in use, utilizing vibration damping devices and noise/vibration shields. The District will also notify residences and other sensitive receptors within 500 feet of the Project site prior to initiation of construction, and if necessary, the District would consider modifying construction activities to minimize vibration when constructing near residences and other sensitive receptors. Mitigation Measure NOI-1 would reduce the severity of the Project's temporary noise and vibration impacts, but not to levels of less-than significant. Thus, this impact would be significant and unavoidable.

Statement of Overriding Considerations

CEQA requires the decision-making body to balance, as applicable, the economic, legal, social, technological, or other benefits of a proposed project against its unavoidable environmental risks when determining whether to approve the project. When a lead agency approves a project, which will result in significant effects which are identified in the Final EIR but are not avoided or substantially lessened, the agency must adopt a statement of overriding considerations (CEQA Guidelines, section 15093).

The Board's Ends Policy No. E-3, adopted December 21, 2004 and most recently revised July 22, 2013, state the District's mission to provide "... a healthy and safe environment for residents, businesses and visitors, as well as for future generations." Similarly, Sections 4(c)(1) and 4(c)(2) of the District Act cite flood protection within several of its objectives and purposes. Failure to provide flood protection proposed by this Project would put hundreds of homes and business at risk, with a large cost of recovery in the event of a flood. Other impacts of flooding may include close of essential transportation arteries, interruptions in emergency service, likely losses to instruction time at area public and private schools, loss of use of affected public facilities such as parks, and at the extreme, loss of human life. The Project would minimize these risks while reducing the need and associated impacts of channel maintenance (e.g., sediment removal).

FINANCIAL IMPACT:

The estimated cost for construction of the Project is \$14.3 million (2017 dollars). The Project would be funded from California Department of Water Resources Proposition 1E, Round 2 Stormwater Flood Management Grant 4600010375 and District's Stream Stewardship funds.

CEQA:

A Final EIR has been prepared for the Project and is before the Board for certification. The Final EIR is available for the Board and public review at the Clerk of the Board's office and on the District's website (<http://valleywater.org/LowerPenitenciaReportsandDocuments.aspx>).

ATTACHMENTS:

Attachment 1: Resolution

Attachment 2: Final Environmental Impact Report Executive Summary

UNCLASSIFIED MANAGER:

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