



# Santa Clara Valley Water District

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**File No.:** 18-0159

**Agenda Date:** 3/13/2018

**Item No.:** \*5.2.

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## BOARD AGENDA MEMORANDUM

### **SUBJECT:**

Resolution Authorizing Acquisition of Real Property from the County of Santa Clara for the Upper Llagas Creek Flood Protection Project, (Morgan Hill), (District 1). (Previously Listed as Item 6.1)

### **RECOMMENDATION:**

- A. Approve the Purchase and Sale Agreement for Real Estate File No. 5010-229 to Acquire Real Property (APNs 779-03-114, 779-06-030, and 779-49-014) from the County of Santa Clara, a political subdivision of the State of California, for the Upper Llagas Creek Flood Protection Project, Project No. 26174051 and other potential benefits (Morgan Hill), (District 1);
- B. Authorize the Chief Executive Officer to execute the Purchase and Sale Agreement for Real Estate File No. 5010-229 (Assessor's Parcels 779-03-114, 779-06-030, and 779-49-014);
- C. Authorize the Chief Executive Officer to execute the Certificate of Acceptance for Grant Deed 5010-229;
- D. Authorize the Chief Executive Officer to execute and grant a Conservation Easement Deed for Real Estate File No. 5010-229.2 (APNs 779-03-114, 779-06-030, and 779-49-014) and Real Estate File No. 5010-244.1 (APN 779-06-032) to the County of Santa Clara, a political subdivision of the State of California and the City of Morgan Hill, a municipal corporation of the State of California for park purposes of trail connectivity, habitat conservation, and open space preservation;
- E. Exempt the Lake Silveira property (APNs 779-03-114, 779-06-030, and 779-49-014) from Resolution 82-30 (Declaring Policy to Govern Joint Use of Lands Acquired for Upper and Lower Llagas Creek PL 566 Watershed Projects); and
- F. Adopt the Resolution ACQUISITION OF A GRANT DEED FROM COUNTY OF SANTA CLARA, CONVEYANCE OF A CONSERVATION EASEMENT TO COUNTY OF SANTA CLARA AND CITY OF MORGAN HILL FOR LAKE SILVEIRA FOR THE UPPER LLAGAS CREEK FLOOD PROTECTION PROJECT NO. 26174051 (MORGAN HILL), AND EXEMPTION OF LAKE SILVEIRA FROM RESOLUTION 82-30.

### **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 (USACE) and the City of Morgan Hill (City) to provide 1% flood protection to approximately 1,100 homes and 500 businesses along West Little Llagas Creek, East Little Llagas Creek, and Llagas Creek. The Project is approximately 13.9 miles long and encompasses the City of Morgan Hill, City of Gilroy, and various unincorporated areas of Santa Clara County, including San Martin (Attachment 1).

The District requires real property from the County of Santa Clara (or “Seller”) at Lake Silveira for construction of Phase-1 of the Project. District staff has worked with Seller staff on a Purchase and Sale Agreement to acquire Seller’s Lake Silveira lands for \$1,350,650 (Seller’s original purchase price). Seller has accepted the Purchase and Sale Agreement (Attachment 2; hereinafter “Agreement”) with Seller’s Board of Supervisors considering execution after the Morgan Hill City Council has executed Exhibit G (Conservation Easement) to Attachment 2, and the District’s Board of Directors has approved the Agreement.

### ***Key Provisions of Real Property Purchase and Sale Agreement***

AS-IS Sale: This purchase is an AS-IS fee acquisition. The Agreement is structured such that (1) the Parties have established the criteria which will constitute the AS-IS delivery condition of the property, (2) the District was afforded the opportunity to investigate the property, (3) the District will grant a conservation mitigation easement (15.993± acres) to Land Trust of Santa Clara Valley, and (4) the District will grant a conservation easement of 53.272± acres [Real Estate File No. 5010-229.2 (52.932± acres) + Real Estate File No. 5010-244.1 (0.34± acres)] for park purposes of trail connectivity, habitat conservation, and open space preservation to the Seller and the City.

Deposit: After the Agreement is executed by the Parties, including execution of Exhibit D (Mitigation Easement) and Exhibit G (Conservation Easement), the District will deposit one million, three hundred fifty thousand, six hundred and fifty dollars (\$1,350,650) into escrow.

### ***Project Background***

The Llagas Creek Flood Protection Project was originally administered by the United States Natural Resources Conservation Service (NRCS), formerly known as the Soil Conservation Service (SCS). In 1999, the Corps was authorized by Congress to take over from NRCS and construct the remaining portion of the Project. However, due to lack of federal funding, the Corps’ progress on the Project stalled. To get the Project back on schedule, the Corps approved the District’s request to take over the Project’s lead to administer the planning (preparation of the environmental documents) and design phases.

On September 22, 2009, the Board approved a cost-sharing agreement with the City of Morgan Hill (City) to prepare 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 as to advance the Project work. The City agreed to reimburse the District up to \$3 million of the total anticipated cost of these work efforts. On April 7, 2014, the District received final payment

in full from the City of Morgan Hill.

An Environmental Impact Statement/Environmental Impact Report (EIS/EIR) was prepared in 1982 that analyzed the original Llagas Creek Flood Watershed Project developed by the United States Department of Agriculture's SCS in the late 1960s. Since the approval of the 1982 EIS/EIR, numerous changes have occurred within the Project limits, including increased urbanization and riparian habitat, changes in runoff conditions, the federal listing of steelhead, and state/federal listings of California Tiger Salamander as threatened species, have resulted in refinements to the original Project design.

Project elements include:

1. Widening (generally by constructing against one bank) and deepening the channel in all reaches;
2. Construction of a geomorphically stable channel form that includes a sinuous low-flow channel, with geomorphic benches at bankfull elevation where the channel is widened;
3. Permanent maintenance access roads along the top of both banks;
4. Aquatic habitat enhancements;
5. Grade control structures;
6. Modifications to culverts and bridges;
7. Construction of a tunnel beneath Nob Hill through downtown City of Morgan Hill to bypass high flows from a portion of existing West Little Llagas Creek through the City's downtown that can remain natural (as-is), thus preserving the existing vegetation and habitat;
8. New 1.25-mile-long diversion channel (Reach 7a).

#### Certification of the Final EIR and Adoption of the Findings and MMRP

The Draft EIR was completed, a Notice of Completion was filed with the California Office of Planning and Research (OPR), and the Draft EIR was released for public review on January 6, 2014. A public meeting to receive comments on the Project was held on January 15, 2014, within the 45-day public review period. Resource agencies requested additional time for review and comment, which District staff granted. Ten letters with comments were received from the public and agencies in addition to oral comments received at the public meeting. Formal responses to each comment were incorporated into the Final EIR.

On June 10, 2014, the District's Board certified the Final EIR and approved the recommended Tunnel Alternative as the Project.

#### Certification of the Final EIS

U.S. Army Corps of Engineers (USACE) San Francisco Regulatory Division released the Project's Draft Environmental Impact Statement (EIS) for Public Review and 45-day comment period on December 31, 2015. The Public Review comment period ended on February 16, 2016. The USACE Regulatory addressed the comments in their Final EIS, with Corps Regulatory certification of the EIS anticipated in approximately March 2018.

The Project has been divided into two phases for construction as identified in Attachment 1. Phase 1

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[Reaches 4, 5 (a portion), 7A, and Lake Silveira] construction is approximately 4.2 miles in length. Phase 2 [Reaches 5 (a portion), 6, 7B, 8, and 14] is approximately 9.7 miles in length. Phase 1 construction cost estimate is \$35 million and Phase 2 construction cost estimate is \$80 million (2017 values).

### **Resolution 82-30**

To move forward with the Project, the Lake Silveira acquisition will need to be exempted from the requirements of Resolution 82-30. The Board adopted Resolution 82-30 on May 25, 1982, declaring a policy to govern joint use of lands acquired for Upper and Lower Llagas Creek PL-566 Watershed Projects. The policy states that the District shall *neither make nor permit any use whatever for public access for park, trails, or recreation or similar purposes of lands presently owned or acquired by it for the Upper and Lower Llagas Creek Watershed projects while adjacent lands are within the areas designated Resource Conservation Areas in the land use plan of the General Plan of the County of Santa Clara* (Attachment 4).

One of the County's conditions for sale of the Lake Silveira property is that a portion of the property remain available for future trail development and connectivity. This would not be permitted under the current version of Resolution 82-30.

At its January 10, 2017 meeting, the Board heard a presentation on Resolution 82-30 as it related to trail development along flood protection facilities included in the Upper and Lower Llagas Creek Watershed Projects. At that meeting the Board approved amending Resolution 82-30. Staff recommends that the Board begin with exempting the Lake Silveira property from Resolution 82-30 so that this project may move forward.

### **Next Steps**

Phase 1 construction (Reach 4, Reach 7a diversion, and the on-site mitigation - Lake Silveira) is currently estimated to be advertised for construction in 2018, subject to receipt of a USACE 404 permit. The Project has received a 401 Certification from the Regional Board (July 2017) and a 1600 permit from California Department of Fish & Wildlife (January 2017). Phase 2 construction (all remaining reaches) will require approximately 100 parcels to be acquired. Approximately 80 of these parcels have been acquired to date, with the remaining parcels to be acquired by September 2018.

### **FINANCIAL IMPACT:**

There is sufficient Project funding in the FY18 budget for the acquisition of this parcel.

The Project's property acquisition costs, including appraisal costs and fees, are eligible for 100% reimbursement by the Department of Water Resources (DWR) State Subventions Program.

### **CEQA:**

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On June 10, 2014, the Board certified the Environmental Impact Report for the Upper Llagas Creek Project, Resolution no. 14-67. The Notice of Determination is attached (Attachment 3).

**ATTACHMENTS:**

- Attachment 1: Map
- Attachment 2: Purchase and Sale Agreement
- Attachment 3: Notice of Determination
- Attachment 4: SCVWD Resolution 82-30
- Attachment 5: Resolution

**UNCLASSIFIED MANAGER:**

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