



Santa Clara Valley Water District

File No.: 18-0598

Agenda Date: 8/28/2018

Item No.: 3.2.

BOARD AGENDA MEMORANDUM

SUBJECT:

Joint Use Agreement with the City of Morgan Hill for Construction of Recreational Trails as part of the Upper Llagas Creek Flood Protection Project, (Morgan Hill) (District 1).

RECOMMENDATION:

- A. Approve the Joint Use Agreement between the City of Morgan Hill and the Santa Clara Valley Water District;
- B. Exempt the Santa Clara Valley Water District properties within Reaches 7a and 7b of the Upper Llagas Creek Flood Protection Project from Resolution 82-30 (Declaring Policy to Govern Joint Use of Lands Acquired for Upper and Lower Llagas Creek PL 566 Watershed Projects); and
- C. Authorize the Chief Executive Officer to execute the Joint Use Agreement between the City of Morgan Hill and the Santa Clara Valley Water District.

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's Project team have conducted outreach by attending several meetings with the City and County staffs over the past few years regarding their respective Trail Master Plans for their proposed future expansion of public recreational trails, trail improvements, and trail connectivity within the proposed District's Project right of way. District Project team staff is recommending to the Board to allow the City's proposed public trail improvements within the existing District's Project right of way (Reaches 7a and 7b), at City's sole expense for planning, design, and construction and in accordance with the terms and conditions set forth the Joint Use Agreement (JUA) (Attachment 2).

As a result of the planning, design, and construction by the City of proposed future public recreational trails and trail improvements within the District's right of way after construction of the District's

Project, the City and District have negotiated a Joint Use Agreement, which staff recommends the Board approve. The JUA documents the District's approval of public recreational use of District property along Reaches 7a and 7b of the Project; the District has historically encouraged joint use of its properties, when appropriate. The location of the District properties is identified in Exhibit A of the JUA (Attachment 2), depicting the premises subject to the JUA.

The Board adopted Resolution 74-38 declaring its policy on joint use of District facilities. This policy encourages joint use provided the use is compatible with the District's primary purpose of the property and normal District activities are not significantly hindered. The JUA will allow the use of District property for 25 years with an option for renewal for an additional 25 years. The JUA may be terminated by either party with at least 180 days prior written notice.

The City's future trail development and improvements are coincident with the District's maintenance access roads, so will not significantly hinder normal District activities and are compatible with the District's use of the property. The JUA allocates to the City, responsibility for all costs associated with the public recreational use including trail surface maintenance, vegetation management, litter and graffiti removal. The JUA requires the City and District cooperate to create and install signage that benefits the programs of each party. This JUA does not waive the District requirement for the City to secure a District permit prior to their proposed construction of public trails and improvements within District right of way.

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 September 2018.

The Project has been divided into two phases for construction as identified in Attachment 1. Phase 1 [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 allow the City to utilize the existing District right-of-way within Reaches 7a and 7b of the Project for trail and recreational purposes as described in the attached JUA, this JUA 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 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 3).

One of the City conditions to seek grant funding for their future planning, design, and construction of their proposed park, trails, or recreation improvements within District property primarily along West Little Llagas Creek is to first secure the necessary rights of way. Execution of this JUA will allow the City to explore and seek funding opportunities to expand their 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 directed staff to initiate outreach and return to the Board with a summary of the outreach efforts and a proposal to retain, modify, amend, or rescind Resolution 82-30. Staff recommends the Board modify Resolution 82-30 by exempting Reaches 7a and 7b of the Project from Resolution 82-30, so this JUA can be executed and consequently the City can explore and seek funding opportunities to expand, plan, design, and construct their proposed future public trail improvements after completion of the Upper Llagas Creek Flood Protection Project by the U.S. Army Corps of Engineers and the District.

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 December 2018.

FINANCIAL IMPACT:

There is no financial impact associated with this item.

CEQA:

On June 10, 2014, the Board certified the Environmental Impact Report for the Upper Llagas Creek Project, Resolution no. 14-67.

ATTACHMENTS:

Attachment 1: Map

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Attachment 2: Joint Use Agreement
Attachment 3: SCVWD Resolution No. 82-30

UNCLASSIFIED MANAGER:
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