



# Santa Clara Valley Water District

---

**File No.:** 18-0922

**Agenda Date:** 12/11/2018

**Item No.:** 2.8.

---

## BOARD AGENDA MEMORANDUM

### **SUBJECT:**

Hearing to Consider Adoption of Resolution of Necessity Relating to Acquisition of Real Property Interests from the Santos/Alviso Partnership, L.P., a California Limited Partnership, Necessary to Construct the South San Francisco Bay Shoreline Phase 1 Economic Impact Area 11 Project (Project No. 26444001), District Files 2044-13 and 2044-14 (San Jose), (District 3).

### **RECOMMENDATION:**

- A. Conduct Hearing to consider adoption of Resolution of Necessity (RON) relating to the acquisition of real property interests from Santos/Alviso Partnership, L.P., a California limited partnership, necessary to complete the South San Francisco Bay Shoreline Phase 1 Economic Impact Area 11 Project; and
- B. Adopt the Resolution 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. 26444001, by two-thirds vote (5 out of 7).

### **SUMMARY:**

The San Francisco Bay Shoreline Phase 1 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 safeguard the Alviso community of approximately 2,500 residents and 3000 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 safeguard against future sea level rise, 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 design and construction of this multi-purpose project. The Santa Clara Valley Water District (District) is the local sponsor and is responsible for obtaining necessary rights of way, acquisition of both levee and ecotone fill and relocating utilities.

---

The USACE is proceeding with design of Reaches 1, 2 and 3 and is scheduled to begin construction of Reach 1 in the fall 2019. The District must provide the necessary rights of way to the USACE before they proceed with construction of Reach 1. The main design features of Reach 1 include: a flood risk management levee, ecotone habitat, maintenance access road/recreational trail, and the restoration of Pond A12.

On July 5, 2018, the Shoreline Project received \$177.2 million under the USACE Fiscal Year 2018 Disaster Supplemental Appropriations Bill. The non-federal sponsors' total local cost share of the \$177.2 million is \$103 million, of which the District's local cost share is \$46 million. Additionally, the District has secured approximately \$4.4 million from the San Francisco Bay Restoration Authority's (Authority) first round of grant solicitations. The supplementary funding is contingent on the USACE completing construction of all flood improvements in Reach 1 and also Reaches 2, 3, 4 and 5 by January 2023. Reach 1 is tentatively scheduled to commence construction in summer of 2019 pending the acquisition of all real property required for Reach 1.

### **Acquisition of the Property Interests**

The District is proceeding with acquisition of rights of way for Reach 1. In order for USACE to construct the planned improvements for this reach, the District must acquire a 178-square foot permanent easement; and a 3,841-square foot temporary construction easement from the Property Owner, Santos/Alviso Partnership L.P. (Partnership). Property Rights needed for Reach 1 are described and depicted in the plats and legal descriptions included in Exhibits A and B of the RON (Attachment 1).

The hearing by the Board and the adoption of the RON are legal preconditions to the exercise of the District'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 proposed project. In order to provide flood protection to properties in the Project area, the District must acquire the property rights for the parcels described and depicted in the plat maps and legal descriptions in Exhibits A and B of the RON (Attachment 1) to construct flood protection improvements.
2. The proposed project is planned or 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 proposed project. The Project cannot be executed without the property rights as shown on Attachment 1 and described and depicted in the plat maps and legal descriptions in Exhibits A and B of the RON (Attachment 1).
4. A Government Code Section 7267.2(a) offer was mailed to the Partnership on October 11,

---

2018 and re-sent on October 25, 2018.

On October 11, 2018, 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. The offer package sent to the street address was returned to the District marked "Return to Sender", and the offer package sent to the P.O. Box was confirmed delivered on October 22, 2018 at 10:41 AM by certified mail.

To ensure that the package was received, on October 25, 2018, the District resent an offer package to the P.O. Box via certified mail with return receipt. On November 2, 2018 the District received confirmation that the package was delivered to and received at the P.O. Box by return receipt.

In the offer letter, the District informed Mr. Tony A. Santos, Manager of Santos Management Company, L.L.C. 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 the District from negotiating with the Partnership. The District believes it is in the best interest of Director Santos and the Board of Directors to acquire these property interests through eminent domain. During litigation, the District 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.

The RON includes direction from the Board authorizing acquisition of the subject property interests described therein by eminent domain. If the RON is adopted, the District will pursue acquisition of these property interests by eminent domain.

**FINANCIAL IMPACT:**

The Fiscal Year 2019 project budget provides sufficient funds for the appraised value of the parcel interests of \$271.32. A copy of the appraisal report is included as Attachment 3. The District 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:**

---

**File No.:** 18-0922

**Agenda Date:** 12/11/2018  
**Item No.:** 2.8.

---

Attachment 1: Resolution  
Attachment 2: Notice of Intention  
Attachment 3: Appraisal  
Attachment 4: PowerPoint

**UNCLASSIFIED MANAGER:**  
Ngoc Nguyen, 408-630-2632