



# Santa Clara Valley Water District

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**File No.:** 20-1023

**Agenda Date:** 1/12/2021

**Item No.:** 3.5.

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## BOARD AGENDA MEMORANDUM

### **SUBJECT:**

Deny Claim of Hacienda Creek Senior Apartments.

### **RECOMMENDATION:**

Deny the claim.

### **SUMMARY:**

Valley Water received a claim on September 24, 2020 from Community Director, Paul Truong on behalf of Hacienda Creek Senior Apartments. According to the claim, there was an accumulation of trash, on land owned by Valley Water adjacent to the apartment complex, leading to a fire on September 21. While extinguishing the fire, SJ firefighters damaged the apartment complex' fence. The claim alleges that the fire was due to Valley Water's failure to clean the area. The claimant on behalf of Hacienda Creek Senior Apartments, is seeking to recover \$833.42 (\$680 for iron fence repair and \$153.42 for a fire extinguisher recharge).

Risk Management has investigated this matter. Risk Manager conducted a site visit to assess the claim's validity on October 21, 2020. Risk Management confirmed damage to the fence and that the fire most likely started by an unhoused individual or individuals in an encampment near the apartment complex.

The California Government Tort Claims Act provides sovereign immunity to public entities. A public entity is not liable for an injury, whether such injury arises out of an act or omission of the public entity or a public employee or any other person, except as otherwise provided by statute. The Act provides sovereign immunity where the government would otherwise be liable under the general principles of tort law, such as negligence.

Homelessness is a problem that is endemic to the Silicon Valley and many other areas. Valley Water owns large portions of land and cannot be responsible as the guarantor of homeless conduct on its land. Here, Valley Water had no notice that there was a homeless person living on its land. Even if Valley Water had notice, it has no police power and no means to evict the homeless, absent calling the San Jose Police Department.

Staff has determined that there is no negligence on the part of Valley Water. Therefore, there is no

liability on the part of Valley Water, and staff recommends that the claim be denied.

**FINANCIAL IMPACT:**

There is no financial impact associated with this item.

**CEQA:**

The recommended action does not constitute a project under CEQA because it does not have a potential for resulting in direct or reasonably foreseeable indirect physical change in the environment.

**ATTACHMENTS:**

Attachment 1: Claim

**UNCLASSIFIED MANAGER:**

Stan Yamamoto, 408-630-2755