



Santa Clara Valley Water District

File No.: 22-1062

Agenda Date: 9/27/2022

Item No.: 6.1.

BOARD AGENDA MEMORANDUM

SUBJECT:

Authorize Acquisition of a Real Property Interest from Edward G. Ruder and Elizabeth M. Ruder, for the Coyote Creek Flood Management Measures Project, Anderson Dam Federal Energy Regulatory Commission Order Compliance Project No. 91864007, APN 467-29-026, Real Estate File No. 4021-287 (San Jose) (District 2).

RECOMMENDATION:

- A. Authorize the Chief Executive Officer to execute a Right of Way Agreement between Edward G. Ruder and Elizabeth M. Ruder and the Santa Clara Valley Water District, for acquisition of APN 467-29-026, located at 150 Arroyo Way, San Jose, CA, based upon the terms and conditions as set forth in the Agreement; and
- B. Authorize the Chief Executive Officer to accept the Grant Deed from Edward G. Ruder and Elizabeth M. Ruder.

SUMMARY:

Santa Clara Valley Water District (Valley Water) staff recommends acquisition of residential real property located at 150 Arroyo Way, in San Jose, California owned by Edward G. Ruder and Elizabeth M. Ruder according to the terms of Right of Way Agreement No. 4021-287 (Attachment 1). This property is shown on the plat and description of Grant Deed No. 4021-287 (Attachment 2). Acquisition of this property is necessary to implement flood risk reduction elements of the Coyote Creek Flood Management Measures Project (CCFMMP) including restoring portions of the property to a natural riparian corridor along Coyote Creek.

PROJECT BACKGROUND

Santa Clara Valley Water District (Valley Water) is undertaking the Anderson Dam Federal Energy Regulatory Commission (FERC) Order Compliance Project (FOCP) as a result of the February 20, 2020, directive from FERC to implement interim risk reduction measures at Anderson Dam to protect the public from risk of dam failure due to seismic activity. The approved FOCP includes four categories of actions including reservoir drawdown, construction of the Anderson Dam Tunnel Project (ADTP) (anticipated to be completed in 2024), operation and maintenance following ADTP construction, and avoidance and minimization measures (AMMs) necessary to reduce environmental and water supply impacts during implementation of FOCP. To address the higher flows from operation of the tunnel after its completion, flood management measures, identified and to be

implemented under the Coyote Creek Flood Management Measures Project (CCFMMP), were included in the FOCF to reduce flood risks within urbanized areas of San José. Specifically, the FOCF's flood management measures include possibly acquisition of properties, elevation of structures, or construction of floodwall or levees. The construction of CCFMMP is also anticipated to be completed in 2024. The overall flood risk reduction objective of CCFMMP is protecting areas of Coyote Creek against a flood event approximately equivalent to the February 2017 flood event. This goal will be met by the completion of CCFMMP.

ACQUISITION OF 150 AROYO WAY

The property located at 150 Arroyo Way has been identified as a property where flood reduction measures of acquisition and restoration to natural riparian habitat is an appropriate alternative. Valley Water obtained an appraisal of the property which established the fair market value as \$1,430,000. An offer in this amount was made to the owners on March 17, 2022.

On February 22, 2022, the Valley Water Board approved the Relocation Impact Study and Last Resort Housing Plan for the Coyote Creek Flood Protection Project and Coyote Creek Flood Management Measures Project as part of the Federal Energy Regulatory Commission Order Compliance Project, under the Anderson Dam Seismic Retrofit Project (Relocation Plan). As provided in the Relocation Plan, on August 4, 2022, Mr. and Mrs. Ruder were provided with a Conditional Entitlement Letter (CEL) (Attachment 3) outlining the relocation benefits to which they, as displaced owner/residents, are entitled. One of these benefits is a price differential payment based on the anticipated cost of a decent, safe, and sanitary comparable replacement dwelling. The amount of the price differential payment is determined to be \$412,750, as set forth in section B. Option 2. Settlement Agreement under Housing of Last Resort, in the CEL.

The final sale price of \$1,842,750, represents a final settlement for acquisition of the real property at the appraised value and settlement of the price differential payment element of the Relocation Plan.

The parties agreed that the owners can select the closing date for the acquisition of this property so long as the closing occurs not later than December 31, 2022. This will facilitate the owners locating a new residence and will not interfere with the Valley Water project.

ENVIRONMENTAL JUSTICE IMPACT:

There are beneficial Environmental Justice impacts. The intent of CCFMMP is to protect the public from dangers associated with flooding similar to the flooding event that occurred in February 2017. Acquisition of 150 Arroyo Way and relocation of the displaced owner/residents is required to achieve flood protection for all in the surrounding community. The property is not in the SB 535 Disadvantaged Communities. The SB 535 map utilizes California Communities Environmental Health Screening Tool (CalEnviroScreen) which is a screening methodology that can be used to help identify California communities that are disproportionately burdened by multiple sources of pollution. The location of the property has a CalEnviroScreen 4.0 score below 70. Areas of concern have scores between 70 and 100.

However, the property is in an area considered to be low income per the Santa Clara County Low Income Census Tracts (Poverty Zone) map. This Relocation Plan aims to mitigate any Environmental Justice impacts associated with potential relocations by outlining the parameters for providing relocation benefits to any potential affected households.

During the planning phase, Valley Water staff evaluated multiple flood protection alternatives and implementation sites, met with the community numerous times, and determined that the preferred alternatives presented to the community in June 2020 would best serve the area. The completion of the Project would directly benefit the adjacent disadvantaged communities along the full stretch of Coyote Creek between Montague Expressway and Tully Road.

Additionally, the Valley Water design team continues to coordinate with the community and key stakeholders as the project advances, by holding public meetings and soliciting community feedback.

FINANCIAL IMPACT:

The Coyote Creek Flood Management Measures Project No. 91864007 is included in the current Five-Year 2021- 25 Capital Improvement Program (CIP) and the Draft Five-Year 2022-26 CIP, and in the Board- adopted FY 2023 Budget. The purchase price of the property is \$1,842,750 and there is sufficient funding in the Project's Fiscal Year 2023 budget to encumber this purchase. The Project is funded by Water Utility Enterprise Fund (Fund 61).

CEQA:

The FOCP was determined to be exempt from CEQA review pursuant to the statutory exemption for specific actions necessary to prevent or mitigate an emergency under CEQA Guidelines §15269(c) and Public Resources Code §21080(b)(4). Valley Water filed a Notice of Exemption for FOCP with Santa Clara County Clerk-Recorder Office on June 29, 2020. This acquisition is considered part of the CCFMMP, which is included in the FOCP and continues to be exempt from CEQA pursuant to the above-cited provisions.

ATTACHMENTS:

Attachment 1: Right of Way Agreement
Attachment 2: Grant Deed No. 4021-287
Attachment 3: Conditional Entitlement Letter

UNCLASSIFIED MANAGER:

Bhavani Yerrapotu, 408-630-2735