

RESOLUTION NO. 75043

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN JOSE ADOPTING FINDINGS FOR PURPOSES OF AND PURSUANT TO THE PROVISIONS OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT OF 1970 IN CONNECTION WITH APPROVAL OF A SALES AGREEMENT TRANSFERRING PROPERTY TO THE SANTA CLARA VALLEY WATER DISTRICT

WHEREAS, the City of San Jose ("City") has declared the approximate 5,140 square foot (0.118 acre) City-owned real property (Assessor's Parcel Number 264-48-001) located on the west side of McLellan Avenue at Edwards Avenue (the "Subject Property") surplus to the needs of the City and intends to approve a sales agreement transferring the Subject Property to the Santa Clara Valley Water District ("District"); and

WHEREAS, the District intends to realign the Guadalupe River in this general location, as part of the Guadalupe River Flood Control Project, and the Subject Property would be located within the realigned river as the Guadalupe River Floor Control Project is proposed; and

WHEREAS, the District, as a lead agency under the California Environmental Quality Act of 1970, together with implementing guidelines promulgated thereunder, all as amended to date (collectively, "CEQA"), prepared an environmental impact report under CEQA for the flood control work on the Guadalupe River, from Highway 101 to Highway 880 and Interstate 280 to Blossom Hill Road; and

WHEREAS, the final environmental impact report prepared for the Guadalupe River Flood Control Project (the "Final EIR"), as that project is more specifically described in that Final EIR (the "Project") was certified by the Board of the District on August 15, 2001; and

WHEREAS, on August 15, 2001, the Board of the District adopted its Resolution No. 2001-51 "Adopting Certain Findings for Flood Control Work on Guadalupe River from Highway 101 to Interstate 880 and Interstate 280 to Blossom Hill Road" as required by CEQA, including a mitigation monitoring and reporting program and a statement of overriding considerations, and also approved the Project in its Resolution No.2001-51; and

WHEREAS, prior to approving the sales agreement transferring the Subject Property to the District, the City Council, as a responsible agency under CEQA, desires to make certain findings pursuant to 14 California Code of Regulations, Sections 15091 and 15096, promulgated under CEQA.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of San José as follows:

1. City has reviewed the information contained in the Final EIR that is relevant to its approval of the property sales agreement, and has reviewed the CEQA findings

contained in Resolution No. 2001-51 adopted by the Board of the District for the Project, including without limitation the Mitigation Monitoring and Reporting Program and the Statement of Overriding Considerations contained therein, all as relevant to its approval of the property sales agreement, and, based thereon, as well as on any and all testimony received by the City Council at its hearing on the Subject Property sales agreement, the City Council hereby concludes all of the following:

- a) The District has already adopted the mitigation measures recommended in the Final EIR, the District has authority to implement those mitigation measures or to seek any required approvals for those mitigation measures, and City has no direct authority to implement the mitigation measures identified in the Final EIR and Resolution No. 2001-51; and
- b) City has reviewed and considered the Final EIR and finds that the Final EIR is adequate for its use as a responsible agency decision-making body for its consideration of the property sales agreement for the Subject Property to the District; and
- c) Approval of the property sales agreement by City is within the scope of the activities evaluated in the Final EIR in that right of way acquisitions necessary for the Project are covered in the Final EIR, and the proposed acquisition of the Subject Property is consistent with the Project as described in the Final EIR, the Final EIR, and Resolution No, 2001-51; and
- d) Since the Final EIR was finalized, there have been no substantial changes to the Project and no substantial changes in Project circumstances that would require major revisions to the Final EIR due to the involvement of new significant environmental effects or an increase in the severity of previously identified significant impacts, and there is no new information of substantial importance that would change the conclusions set forth in the Final EIR; and
- e) City has not identified any feasible alternative or additional feasible mitigation measures within its powers that would substantially lessen or avoid any significant effect that the Project would have on the environment; and

2. Therefore, based upon all of the foregoing, City hereby adopts said findings within Resolution No. 2001-51 as a responsible agency under CEQA to the fullest possible extent that said findings are relevant to City's decision to approve the sales agreement for the Subject Property.

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BE IT FURTHER RESOLVED that the Director of Planning is hereby directed to prepare a Notice of Determination under CEQA and cause the same to be filed with the County Clerk of the County of Santa Clara promptly following the City Council's approval action on the Subject Property sales agreement with the District.

ADOPTED this 23rd day of June, 2009, by the following vote:

AYES: CAMPOS, CHIRCO, CHU, CONSTANT, HERRERA,
KALRA, LICCARDO, NGUYEN, OLIVERIO, PYLE, REED.

NOES: NONE.

ABSENT: NONE.

DISQUALIFIED: NONE.

CHUCK REED
Mayor

ATTEST:

LEE PRICE, MMC
City Clerk