



Santa Clara Valley Water District Board of Directors Meeting

District Headquarters Board Room
5700 Almaden Expressway
San Jose, CA 95050

***AMENDED/APPENDED AGENDA**

**Tuesday, October 18, 2016
5:00 PM**

***ITEMS AMENDED AND/OR APPENDED SINCE THE ORIGINAL PUBLICATION OF THIS
AGENDA ARE IDENTIFIED BY AN ASTERISK (*) HEREIN**

District Mission: Provide Silicon Valley safe, clean water for a healthy life, environment and economy.

DISTRICT BOARD OF DIRECTORS

Barbara Keegan, Chair - District 2
John L. Varela, Vice Chair - District 1
Richard P. Santos - District 3
Linda J. LeZotte - District 4
Nai Hsueh - District 5
Tony Estremera - District 6
Gary Kremen - District 7

All public records relating to an open session item on this agenda, which are not exempt from disclosure pursuant to the California Public Records Act, that are distributed to a majority of the legislative body will be available for public inspection at the Office of the Clerk of the Board at the Santa Clara Valley Water District Headquarters Building, 5700 Almaden Expressway, San Jose, CA 95118, at the same time that the public records are distributed or made available to the legislative body. Santa Clara Valley Water District will make reasonable efforts to accommodate persons with disabilities wishing to attend Board of Directors' meeting. Please advise the Clerk of the Board Office of any special needs by calling (408) 265-2600.

NORMA CAMACHO
Interim Chief Executive Officer

MICHELE L. KING, CMC
Clerk of the Board
(408) 265-2600
Fax (408) 266-0271
www.valleywater.org

Note: The finalized Board Agenda, exception items and supplemental items will be posted prior to the meeting in accordance with the Brown Act.

**Santa Clara Valley Water District
Board of Directors**

***AMENDED/APPEDED
AGENDA**

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Tuesday, October 18, 2016

5:00 PM

District Headquarters Board Room

1. CALL TO ORDER:

1.1. Roll Call.

2. TIME CERTAIN:

5:00 PM

Notice to the Public: The Board of Directors meets in Closed Session in accordance with the Ralph M. Brown Act. Following the conclusion of Closed Session discussion, the Board will return for the remaining items on the regular meeting agenda.

- *2.1. CLOSED SESSION
PUBLIC EMPLOYEE PERFORMANCE EVALUATION
Pursuant to Government Code Section 54957(b)(1)
Title: Clerk of the Board, CEO and District Counsel

[16-0817](#)

6:00 PM

- *2.2. District Counsel Report.
- *2.3. Pledge of Allegiance/National Anthem.
*PREVIOUSLY LISTED AS ITEM 1.2
- *2.4. Time Open for Public Comment on any Item not on the Agenda.
*PREVIOUSLY LISTED AS ITEM 1.3
Notice to the public: This item is reserved for persons desiring to address the Board on any matter not on this agenda. Members of the public who wish to address the Board on any item not listed on the agenda should complete a Speaker Card and present it to the Clerk of the Board. The Board Chair will call individuals to the podium in turn. Speakers comments should be limited to three minutes or as set by the Chair. The law does not permit Board action on, or extended discussion of, any item not on the agenda except under special circumstances. If Board action is requested, the matter may be placed on a future agenda. All comments that require a response will be referred to staff for a reply in writing. The Board may take action on any item of business appearing on the posted agenda.

*2.5. Riparian Ordinance and Encroachment Policy Discussion.

[16-0748](#)

*PREVIOUSLY LISTED AS ITEM 2.1

Recommendation: A. Review information and provide direction regarding protection of riparian corridors; and

B. Review Alternatives and Provide Direction for Addressing Unauthorized Encroachment on Santa Clara Valley Water District's Property.

Manager: Ngoc Nguyen 408-630-2632

Attachments: [Attachment 1: Policies Related to Riparian Corridors](#)
[Attachment 2: CSJ Council Policy on Riparian Corridor](#)
[Attachment 3: Existing Unauthorized Encroachment Process](#)
[Attachment 4: Flowchart of Alternate Process - Unauthorized Enc](#)
[Attachment 5: Evaluation of Options](#)
[Attachment 6: PowerPoint](#)

Est. Staff Time: 3 Hours

3. ADJOURN:

3.1. Clerk Review and Clarification of Board Requests.

3.2. Adjourn to Regular Meeting at 6:00 p.m., on October 25, 2016, in the Santa Clara Valley Water District Headquarters Building Boardroom, 5700 Almaden Expressway, San Jose, California.

File No.: 16-0817

Agenda Date: 10/18/2016
Item No.: *2.1.

NON-EXHIBIT/CLOSED SESSION ITEM

SUBJECT:

CLOSED SESSION
PUBLIC EMPLOYEE PERFORMANCE EVALUATION
Pursuant to Government Code Section 54957(b)(1)
Title: Clerk of the Board, CEO and District Counsel

File No.: 16-0748

Agenda Date: 10/18/2016

Item No.: *2.5.

BOARD AGENDA MEMORANDUM

SUBJECT:

Riparian Ordinance and Encroachment Policy Discussion.

RECOMMENDATION:

- A. Review information and provide direction regarding protection of riparian corridors; and
- B. Review Alternatives and Provide Direction for Addressing Unauthorized Encroachment on Santa Clara Valley Water District's Property.

SUMMARY:

As requested by the Board, this item presents information on existing riparian corridor plans and policies in Santa Clara County. Additionally, as directed by the Board at the May 24, 2016 Board meeting, this item includes alternatives to facilitate policy discussions on unauthorized encroachment of District's property.

I. Existing Riparian Corridor Plans and Policies

The value of a riparian corridor is often expressed by the benefits a healthy, sufficiently wide riparian corridor can provide. The riparian corridor (defined as the stream corridor plus the adjacent riparian area and vegetation) provides benefits for water supply (e.g., in-stream recharge, and groundwater recharge), flood protection (e.g., floodplains), and stream stewardship (e.g., fisheries, vegetation, and wildlife habitat and corridors). Additional benefits attributed to the corridor and any buffer areas include opportunities for improved water quality and stormwater infiltration, and space for public trails and recreation.

With over 800 miles of streams in Santa Clara County, having a shared understanding of the value and need for riparian corridors and buffer areas is crucial as the County continues to see an influx in population and development. The District is just one organization that influences this aspect of the landscape. The impact on stream corridors of decisions by land use agencies, the cities and the County of Santa Clara, cannot be overstated. When it comes to working in or adjacent to riparian areas, whether for District purposes or for developments approved by cities, protection of the riparian corridor should be considered. This discussion presents information on riparian corridor plans and policies in effect at the various municipalities in the county and existing District efforts to promote riparian corridor protection.

Municipal plans and policies

As of 2016, all land use agencies in Santa Clara County include riparian corridor protection in their plans and policies. General Plans include goals and strategies to protect existing riparian corridors but few include language to provide buffers, setbacks or enhancement opportunities. Few municipalities have ordinances or codes to implement General Plan goals and policies relative to setbacks or buffers with exception of City of San Jose. Attachment 1 presents a summary of policies related to riparian corridors in Santa Clara County.

The City of San Jose developed a riparian corridor policy in 1994 that includes guidance for specific setbacks and buffers for different stream types along with a variety of exceptions. In recognition of the variability in implementing the guidance policy, City of San Jose staff presented an item to the City's Transportation and Environment Committee in March 2016, which analyzed the existing riparian corridor policy and recommended an approach to developing policy and ordinance changes for enhanced protection of riparian corridors. Recommendations included 1) an amendment to the zoning code to require a "single-family house permit" for proposed single family home developments that are within 100 feet of a riparian corridor (this would help ensure riparian corridor protection for all development projects); and 2) a new city council policy to provide guidance for riparian corridor protection. The riparian Policy and Ordinance went to Planning Commission on May 25th and Council on August 23rd. A copy of City of San Jose Council Policy on Riparian Corridor Protection is included (Attachment 2). The ordinance (Title 20 Zoning Code changes) will be effective in October 2016.

The Council Policy guidelines supplement the riparian corridor protection provided by the Santa Clara Valley Habitat Plan and other City policies that may provide riparian protection. The policy establishes minimum setbacks from riparian corridors based on land use, notably 100 feet for new development, with greater setbacks for active recreational uses with noise and lighting, and reduced setbacks for agricultural crops, grazing and for trails.

Santa Clara Valley Habitat Plan

The Santa Clara Valley Habitat Plan (VHP) is a joint habitat conservation plan and natural community conservation plan for designated areas in Santa Clara County. The VHP "provides a framework for promoting the protection and recovery of natural resources, including endangered species, while streamlining the permitting process for planned development, infrastructure, and maintenance activities." Accounting for approximately two-thirds of the land area in the County, including all of Coyote Watershed, the VHP is the primary driver for protecting lands adjacent to streams and for mitigating impacts through its reserve system. The VHP includes requirements to maintain from 35 to 150 foot setbacks depending on the: category of stream, percentage slope and location (urban/rural). There are exemptions and exceptions to the setbacks (example: the setback does not apply to parcels less than 0.5 acre in size). The VHP is managed by the Santa Clara Valley Habitat Agency, and includes the following members: Santa Clara Valley Water District, County of Santa

Clara, City of San Jose, City of Morgan Hill, City of Gilroy, and Santa Clara Valley Transportation Authority.

Guidelines and Standards for Land Use near Streams

To clarify and streamline local permitting for streamside activities, representatives from the District, cities, county, business, agriculture, streamside property owners and environmental interests established the Water Resources Protection Collaborative in 2002. In 2007, most municipalities adopted "Guidelines and Standards for Land Use near Streams: A Manual of Tools, Standards, and Procedures to Protect Streams and Streamside Resource in Santa Clara County" (Guidelines and Standards). The Guidelines and Standards include specific criteria directed toward protection of the existing corridor and statements that buffer areas should be adopted by jurisdictions and restoration opportunities should be identified and considered.

District efforts to provide riparian corridor protection

The District regulates use of District property through the Water Resources Protection Ordinance (WRPO) using the Water Resources Protection Manual (WRPM). The WRPM includes guidance to protect the riparian corridor that mirrors the Guidelines and Standards. However, much of the 800 miles of streams in the County and their associated riparian lands are privately owned and without public ownership or conservation easements.

Though the District is not a land use agency, the District's Community Project Review Unit, provides comments on development proposals, CEQA documents, and General Plans that include recommendations for riparian corridor protection, maximizing riparian setbacks to the extent practical, and restoration/enhancement of the riparian corridor when appropriate.

II. District Authority and Alternatives to Facilitate Policy Discussions on Unauthorized Encroachment on District Property

Relevant District Authority

District Act: The District Act authorizes the Santa Clara Valley Water District to:

- Provide comprehensive water management for all beneficial uses and protection from flooding within Santa Clara County.
- Enhance, protect, and restore streams, riparian corridors, and natural resources in connection with carrying out the purposes of the Act.

Board Governance Policy:

- E-4.1 states that the District shall protect and restore creek, bay and other aquatic

ecosystems.

- EL-6.5.1 requires the District to proactively identify, preserve, and protect District property to ensure its use consistent with the District mission.
- EL-6.5.2 requires the District to resolve encroachments on District property.

District Water Resources Protection Ordinance: the District adopted the WRPO in 2006 replacing ordinances that served to protect District assets dating from 1959. The intent of the WRPO is, in part, to protect District assets, including streamside lands, riparian corridors and other real property interests. Other purposes include reducing the potential for flood damages; protecting, and when appropriate, enhancing and restoring natural resources of streams and watersheds; and providing additional open spaces, trails, and parks along creeks and in the watersheds when reasonable and appropriate. An encroachment permit issued pursuant to the WRPO allows a permittee to enter, use, temporarily access, or undertake any modification on District Facilities..

Current District Practices for Resolving Unauthorized Encroachment on District Property

The District has been protecting public lands by remediating encroachments on a discreet basis for over 40 years and specifically, since 2006, has remediated over 250 encroachments throughout the County of Santa Clara without legal action or use of the WRPO Administrative Process. There are currently 67 open encroachment cases and all are in a riparian corridor or on levees. Of those open cases, two have gone to litigation (Arroyo de Arguello along Calabazas Creek); five are pending outcomes from the Administrative Hearing process (Tonino Drive along Guadalupe River); and the remaining 60 have not yet reached their compliance deadline.

In 2015, a District-wide team was formed to develop the “District-Wide Encroachment Remediation and Prevention Program” implementing the best practices gleaned from the process of remediating encroachments prior to 2015. The main objectives of this program are to:

- Ensure public property owned by the District is not subject to private use without permits/lease or rental agreements where applicable.
- Identify encroachments and proceed with appropriate corrective measures.
- Ensure District process for encroachment compliance is thoroughly integrated with other applicable District processes and projects.
- Ensure District process for encroachment compliance is fair, effective, efficient, consistent and respectful of community members.
- Inform/educate the public, key external stakeholders, the Board and staff of public property rights and the District’s strategy to prevent encroachments.
- Prevent future encroachments by leveraging outreach, education, mobilizing community partners and engaging key external/internal stakeholders

Once a suspected unauthorized encroachment of District’s property has been identified and prioritized for remediation, staff works with the party involved to vacate the land. Depending on the circumstances of the encroachment, (length of time, usage, etc.), the process can take a few months to a couple of years and includes the following general steps:

1. Confirm suspected encroachment by field survey of the property lines by a land-surveying crew;
2. Inform the appropriate party(ies) of the unauthorized encroachment and identify a timeline to correct the unauthorized use;
3. Meet with affected property owners to discuss the unauthorized use, District uses for the land, available options and District assistance to achieve compliance; and
4. Correct unauthorized encroachment of District's property.

Suspected encroachments are identified by field observation, neighbor complaints, drawings submitted by permit applicants, GIS aerial mapping and capital project mapping. For each encroachment case, a series of questions are asked and answered to determine how the encroachment is to be prioritized.

Question No. 1: Is the land to be used for any of the following?

- a) **Safety/hazard protection** (Has unsafe structures on District property or within FEMA-designated flood zone; is below the top of bank; or on a levee; is causing erosion or slope instability; or water quality impairment; is in the vicinity of identified hazardous trees; or has potential to damage District pipelines or otherwise expose District to liability)
- b) **A project in the District's current Five-Year Capital Improvement Plan (CIP)**
- c) **Maintenance access** (Is blocking access or otherwise impacting the District's ability to provide flood protection, maintenance activities, to operate or maintain an existing facility or imposing alternative access to a facility)
- d) **Mitigation in the next five years** (CIP within five years, SMP plantings within two years)

If the answer to any of the above questions is **YES**, then the unauthorized encroachment shall be removed in accordance with WRPO.

Question No. 2: Is the land useful for District purposes including future flood protection, maintenance or mitigation?

If the answer is **YES**, then the unauthorized encroachments is removed in accordance with WRPO.

If the answer is **NO**, then the District may consider determining if the property is excess land and available for purchase by other public agencies or interested private parties.

Attachment 3 is a flowchart of the current process for addressing unauthorized encroachment on District's property.

Alternate Process for Addressing Unauthorized Encroachment on Santa Clara Valley Water

District's Property

Recently, in pursuing encroachment cases along Calabazas Creek, Guadalupe River, and Saratoga Creek, a number of property owners have voiced strong disagreements to the Board and staff about the approach being implemented. Some property owners claimed that encroachment on District's land occurred by the previous owners many decades ago and they did not have any knowledge about the encroachment issue until recently notified by District staff. Some property owners claimed that they had a verbal agreement many decades ago with previous District staff about their use of District land in exchange for District access through their properties for District staff to conduct creek maintenance work. Some claimed that there is an understanding with previous District staff that the District land could be encompassed for private use provided that they maintain the property and the integrity of the creek, and protect the banks.

Those property owners are questioning why the District has changed its approach and the need for taking back District's land. They have requested the Board to consider other options in addressing encroachment on District's land. Currently, hearings on encroachment issues are being handled at Board meetings on a case-by-case basis. At the May 24, 2016 Board meeting, the Board decided to halt all hearings on encroachment and directed staff to provide additional options for addressing encroachments on District's land.

Staff has identified an alternate process for addressing encroachments. For each encroachment case, a series of questions are answered to determine when the District may consider issuing a lease/license or exchanging similar stream-side lands. The underline text is utilized to highlight the proposed changes from the existing process. Attachment 4 is a flowchart of an alternative process for addressing unauthorized encroachments.

Question No. 1: Is the land to be used for any of the following?

- a) **Safety/hazard protection** (Same as the current process stated above)
- b) **A project in the District's current Five-Year Capital Improvement Plan (CIP). The land is needed at the completion of the design phase.**
- c) **Maintenance access** (Same as the current process)
- e) **Mitigation in the in the next five years** (Included in Five-Year CIP with mitigation plantings scheduled to begin in two years, SMP plantings within two years)

If the answer to any of the above questions is **YES**, then the unauthorized encroachments shall be removed.

If the answer to all of the above in Question No. 1 is **NO**, then go to Question No. 2.

Question No. 2: Is the land useful for District purposes including:

- a) **Future flood protection or maintenance project, or**

b) Future mitigation

If the answer to 2.a. is **YES**, then the ~~unauthorized encroachments shall be removed in accordance with WRPO.~~ District may consider licensing or leasing the property.

If the answer to 2.b is **YES**, then the District may consider licensing/leasing the property at or swapping the property with similar streamside lands.

If the answer to all of the above in Question 2 is **NO**, then go to Question No. 3.

Question No 3: Is the land within the existing riparian corridor?

If the answer to Question No. 3 is **YES**, then the District may consider licensing or leasing.

If the answer to the above in Question No. 3 is **NO**, then the District may consider licensing or leasing it, or determine if the property is excess land and available for purchase by other public agencies or interested private parties.

A lease/license will be at fair market value on the condition that District will terminate a lease/license when there is a District use or project or when property ownership changes. The duration of a lease/license depends on the District's needs to use the land. If the land is needed for a capital improvement project, the District will need to take the land back at the completion of the design phase so that it can advertise for construction of the project. If the land if needed for SMP mitigation planting, the District will need to take the land back at least one year prior to the actual planting work.

An exchange of similar stream-side land with land where unauthorized encroachment is located can be considered if there is no possibility of a future use or capital improvement project on District's land. The lands in the exchange will need to have equal market and ecological value.

The advantages and disadvantages of each land management option are shown on Attachment 5.

Considerations for the Option of Leasing Land

There are challenges in establishing criteria under which an encroachment may be licensed/leased. Some of those criteria are identified in this paragraph:

Eligibility: Determine if the lease option is limited to existing encroachments or to those that may occur in the future. Tracking existing encroachments is impractical because an encroachment is not confirmed until a field survey is complete. Similarly, the pool of suspected encroachments is limited to approximate identification means. Because a field survey is not conducted unless prioritized and a District purpose is identified as discussed under Question 1 or 2 above, the availability of the license/lease option may revert to focusing on and questioning the District purpose and need for the property.

Identify any limitation on size of potential lease: Determine if there are any limitations on the size of

encroachment that may be licensed/leased based on square footage or distance for the property line.

Duration: Determine when the lease must be terminated. Options include a fixed duration, when the adjacent property is sold, or when a District capital project or use is identified.

Water Resources Protection Ordinance Revision

In developing the District-Wide Encroachment Remediation and Prevention Program, proposed revisions to the WRPO were identified that would, among others, modify the process under which ordinance violations are addressed. These revisions would:

- Clarify that unauthorized access or entry including the placement of personal property or fixtures onto District facilities as a trespass; and
- Clarify that commission of a trespass is a violation of the ordinance.

These revisions will give the District greater flexibility in how it may remedy encroachments.

The Board may also wish to reconsider hearing appeals for permit denials. Under the current WRPO, all encroachment permit appeals are heard by the full Board unless the Board delegates that authority to a Board committee or the CEO. The WRPO can be modified so that all appeals are heard by the CEO, or his/her delegate, instead.

III. Next Steps

Upon receiving direction from the Board, staff will resume proceeding with encroachment cases. With this direction, staff will also return to the Board with proposed ordinance revisions for consideration.

FINANCIAL IMPACT:

No direct financial impact related to discussing the agenda topic of riparian corridors and options to manage unauthorized encroachments.

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: Policies Related to Riparian Corridors in Santa Clara County
- Attachment 2: CSJ Council Policy on Riparian Corridor
- Attachment 3: Existing Unauthorized Encroachment Process
- Attachment 4: Flowchart of Alternate Process - Unauthorized Encroachments
- Attachment 5: Evaluation of Options
- Attachment 6: PowerPoint

File No.: 16-0748

Agenda Date: 10/18/2016
Item No.: *2.5.

UNCLASSIFIED MANAGER:
Ngoc Nguyen 408-630-2632

Policies Related to Riparian Corridors in Santa Clara County

Agency	Policy Number	Policy Language
Campbell	Policy CNR-3.1 Riparian Corridor Preservation	Preserve the aesthetic and habitat value of riparian corridors
County of Santa Clara	Policy C-RC 31	Areas of habitat richest in biodiversity and necessary for preserving threatened or endangered species should be formally designated to receive greatest priority for preservation, including baylands and riparian areas, serpentine areas, and other habitat types of major significance.
Cupertino	Policy 5-27 Natural Water Courses	Retain and restore creek beds, riparian corridors, watercourses and associated vegetation in their natural state to protect wildlife habitat and recreation potential and assist groundwater percolation. Encourage land acquisition or dedication of such areas.
Gilroy	Policy 20.02 Creek Protection	Protect the ecological, aesthetic and recreational value of the creeks that flow through the Gilroy Planning Area from urban encroachment and degradation. Ensure that new development preserves the function of natural drainages, including small canyons and seasonal creeks. The easements and setbacks adjacent to these creeks shall be maintained in open space. Access to creeks should be of sufficient width to accommodate trails, flood control access, and protection of riparian habitat.
Los Altos	Policy 2.3	Protect creeks, creekside areas and riparian habitat in their natural state while ensuring public safety and preserving a valuable natural resource.
Los Altos Hills	Policy 1.3	Preserve the integrity of riparian corridors as unique and environmentally sensitive resources.
Los Gatos	Policy ENV-5.3	Cooperate with the Santa Clara Valley Water District and other agencies to protect watersheds and riparian habitats from degradation.
	Policy ENV-3.1	Preserve riparian corridors and riparian habitats and avoid disturbances to these areas.
Milpitas	4.d-P-4	Where consistent with other policies, preserve, create, or restore riparian corridors and wetlands. Where possible, set back development from these areas sufficiently to maximize habitat values.
Monte Sereno	Policy OSC 6.1	Encourage the preservation of riparian habitat in a natural state by not allowing the culverting of existing creeks and requiring appropriate setbacks from creekbeds.
Morgan Hill	Policy 5a	Encourage reclamation of degraded streams and riparian areas
Mountain View	Resolution No. 17144	Adopted Guidelines and Standards for Land Use Near Streams of the Santa Clara Valley Water Resources

Policies Related to Riparian Corridors in Santa Clara County

Agency	Policy Number	Policy Language
		Protection Collaborative
Palo Alto	Policy N-10	Work with the Santa Clara Valley Water District and other relevant regional agencies to enhance riparian corridors and provide adequate flood control by use of low impact restoration strategies.
	Policy N-11	Preserve the integrity of riparian corridors.
San Jose	Title 20 CSJ Municipal Code (Zoning Code)	CSJ Zoning Code supplements the riparian corridor protection provided by the Santa Clara Valley Habitat Plan and other City policies that may provide riparian protection. The Zoning Code establishes minimum setbacks from riparian corridors based on land use, notably 100 feet for new development, with greater setbacks for active recreational uses with noise and lighting, reduced setbacks for agricultural crops and grazing and for trails.
Santa Clara	Resolution No. 07-7391	Adopted Water Resources Protection Collaborative Guidelines Manual
Saratoga	Policy OSC 11.2	Through the development and CEQA process, preserve, protect, and maintain riparian habitats and creek corridors. This includes requiring biological surveys of parcels of land that could contain sensitive species or their habitats prior to allowing development on these parcels.
Sunnyvale	Zoning code, 19.81.010	Purpose of this chapter is to promote the health, safety and general welfare by establishing a streamside development review process and enhance and protect land use near streams.
	Ord. 2837-07 § 1	Incorporates Guidelines for Land Use Near Streams into guidelines of zoning code.

RESOLUTION NO. 77917

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE APPROVING A NEW COUNCIL POLICY, ENTITLED "RIPARIAN CORRIDOR PROTECTION AND BIRD-SAFE DESIGN POLICY"

WHEREAS, the Envision San José 2040 General Plan (General Plan) contains goals, policies, and actions for the protection of riparian corridors and birds, including but not limited to:

- (1) General Plan Policy ER 2.2 that states, "Ensure that a 100-foot setback from riparian habitat is the standard to be achieved in all but a limited number of instances, only where no significant environmental impacts would occur";
- (2) General Plan Action ER 2.6, that states, "Develop a City Council Policy based on the City's Riparian Corridor Policy Study and the Santa Clara Valley Habitat Conservation Plan/Natural Communities Conservation Plan to successfully implement the riparian goals and policies of the Envision General Plan, which recognizes that a 100-foot setback is the standard to be achieved in all but a limited number of instances, where no significant environmental impacts would occur";
- (3) General Plan Policy ER 7.1 that states, "In the area north of Highway [State Route] 237 design and construct buildings and structures using bird-friendly design and practices to reduce the potential for bird strikes for species associated with the baylands or the riparian habitats of lower Coyote Creek"; and

WHEREAS, in response to stakeholder interest in enhancing protection of riparian corridors and birds, the City Council directed staff to prepare a new Council Policy to provide additional guidance for developments proposed within or in proximity to riparian corridors, and to include guidance on bird-safe building design for the area north of State Route 237 as referenced in the General Plan; and

WHEREAS, the City Council desires to establish a new City Council Policy No. 6-34 entitled "Riparian Corridor Protection and Bird-safe Design Policy"; and

WHEREAS, pursuant to the provisions of the California Environmental Quality Act, together with related state and local implementation guidelines, including Title 21 of the San José Municipal Code (collectively, "CEQA"), the City Council's action has been found to be within the scope of the Envision San José 2040 General Plan, and the environmental impacts of the proposed project have been adequately described by the Envision San José 2040 General Plan Environmental Impact Report, adopted by City Council Resolution No. 76041 on November 1, 2011; and the Envision San José 2040 General Plan Supplemental Environmental Impact Report, adopted by City Council Resolution 77617 on December 15, 2015;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE THAT:

A new Council Policy entitled, "Riparian Corridor Protection and Bird-Safe Design," which policy is attached hereto as Exhibit A and incorporated by reference as if fully set forth herein, is hereby approved.

ADOPTED this 23rd day of August, 2016, by the following vote:

AYES: CARRASCO, HERRERA, JONES, KALRA, KHAMIS,
M. NGUYEN, T. NGUYEN, OLIVERIO, PERALEZ,
ROCHA; LICCARDO.

NOES: NONE.

ABSENT: NONE.

DISQUALIFIED: NONE.



SAM LICCARDO
Mayor

ATTEST:



TONI J. TABER, CMC
City Clerk

EXHIBIT A

City of San José, California

COUNCIL POLICY

TITLE RIPARIAN CORRIDOR PROTECTION AND BIRD-SAFE DESIGN	PAGE Page 1 of 8	POLICY NUMBER 6-34
EFFECTIVE DATE: August 23, 2016	REVISED DATE	
APPROVED BY COUNCIL ACTION: 08-23-16, Item 4.2(b)		

PURPOSE

The purpose of this Council Policy (Policy) is to provide guidance consistent with the goals, policies, and actions of the City's Envision San José 2040 General Plan (General Plan) for:

- 1) protecting, preserving, or restoring riparian habitat;
- 2) limiting the creation of new impervious surface within Riparian Corridor setbacks to minimize flooding from urban runoff, and control erosion; and
- 3) encouraging bird-safe design in baylands and riparian habitats of lower Coyote Creek, north of State Route 237.

This Policy's guidelines supplement the regulations for Riparian Corridor protection in the Council-adopted Santa Clara Valley Habitat Conservation Plan/Natural Community Conservation Plan (Habitat Plan) (Chapter 18.40 of Title 18 of the San José Municipal Code), the Zoning Code (Title 20 of the San José Municipal Code), and other existing City policies that may provide for riparian protection and bird-safe design.

DEFINITIONS

"**Riparian Project**" means any development or activity that is located within 300 feet of a Riparian Corridor's top of bank or vegetative edge, whichever is greater, and that requires approval of a Development Permit as defined in Chapter 20.200 of Title 20 of the San José Municipal Code (the Zoning Code), except that projects that only require approval of a Single-Family House Permit under the provisions of the Zoning Code are not subject to this Policy.

The definitions set forth in Chapter 20.200 of Title 20 the San José Municipal Code, will govern the construction of the provisions of this Policy, except where the context otherwise requires.

COUNCIL POLICY

RES NO 77917

TITLE RIPARIAN CORRIDOR PROTECTION AND BIRD-SAFE DESIGN	PAGE Page 2 of 8	POLICY NUMBER 6-34
EFFECTIVE DATE: August 23, 2016	REVISED DATE	
APPROVED BY COUNCIL ACTION: 08-23-16, Item 4.2(b)		

BACKGROUND

San José has more than 30 streams¹ that form approximately 136 miles of Riparian Corridors. These riparian resources preserve greenery, benefit water quality, provide possible habitat, and facilitate trail networks along these waterways. The City has policies and requirements for the protection of riparian resources, habitat, flood safety, and bird-safe design in the General Plan, the Habitat Plan, the San José Municipal Code, and other City Council Policies.

The Riparian Corridor Policy Study, revised in 1999 (Policy Study) analyzed numerous streams and Riparian Corridors found within San José and provided detailed policy recommendations on how various types of development should be designed to protect and preserve the City's Riparian Corridors. The General Plan incorporates by reference the policy recommendations in the Policy Study for protecting Riparian Corridors. The General Plan goals, policies, and implementing actions further riparian protection, including establishment of a standard of a 100-foot Riparian Corridor setback, with an exception for projects where no significant environmental impact will occur. The Policy Study provides guidance for a range of Riparian Corridor setbacks, based on types of land uses, activities, development, and physical attributes of a Riparian Project's site.

The Habitat Plan provides a regulatory framework for the protection and recovery of natural resources, including endangered species other than fish, while streamlining the permitting process for development, construction of infrastructure, and maintenance activities. The Habitat Plan generally requires at least a 100-foot setback for projects covered by the Habitat Plan. However, under the Habitat Plan, a reduced setback may be allowed for small parcels, or on sites near unmapped streams, and a greater setback may be required for development on steeply sloping sites. The Habitat Plan provides a number of options for minimum required setbacks, including an allowance for reduction of the otherwise required minimum setback based on the extent to which meeting the required setback would result in demonstrable hardship (i.e. denies an owner any economically viable use of the land or adversely affects recognized real property interest).

¹ A map identifying the streams covered by this Policy is included in the Riparian Corridor Policy Study, revised 1999 (Policy Study), a copy of which is available on the City of San José Planning, Building and Code Enforcement website.

COUNCIL POLICY

RES NO 77917

TITLE RIPARIAN CORRIDOR PROTECTION AND BIRD-SAFE DESIGN	PAGE Page 3 of 8	POLICY NUMBER 6-34
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The City also has policies in the General Plan and regulations in the San José Municipal Code to address flood safety. The General Plan additionally includes a goal of encouraging bird-safe design in the area north of State Route 237 (see Attachment A), and City staff has developed a factsheet entitled “Bird-Friendly Building Design” and a “Bird-Friendly Building Design Checklist”.

POLICY

This Council Policy provides guidance for how Riparian Projects should be designed to protect and preserve the City’s Riparian Corridors.

This Council Policy also provides guidance for the bird-friendly design of buildings and structures in the baylands and riparian habitats of lower Coyote Creek, north of State Route 237, as depicted on a map created by the City, as may be updated from time to time to show more current information (see Attachment A).

This Council Policy should be implemented in compliance with applicable local, State, and Federal agencies’ laws and regulations.

A. Riparian Guidance

Riparian Projects in the City of San José are subject to the following design guidelines:

- 1) Riparian Projects should be designed and implemented to minimize intrusion into Riparian Corridors. Land use related operational issues that could affect Riparian Corridors may need to be addressed through conditions in Development Permits. Consistent with recommendations from the Policy Study, the following general guidelines for setbacks from Riparian Corridors should be included in Riparian Projects:

Land Use Type	Minimum² setback - in feet³	Comments
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² These setback and buffer widths are intended to provide general guidance for site design. For actual setback and buffer dimensions, the specific setback sections in Chapter 3 of the Policy Study should be consulted. Averaging of setbacks is discouraged.

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New Buildings in Existing Urban Infill Areas	100	
New Residential Buildings	100	These include single-family and two-family buildings as well as attached-unit buildings.
Commercial / Institutional Buildings	100	Loading docks and other major activity areas should be oriented away from riparian corridors.
Parking Facilities	100	<ul style="list-style-type: none"> - Paved areas should be oriented so as not to drain directly to creeks. - Storm drain systems and parking surfaces should be cleaned and maintained regularly.
Roads - 2 lanes; 2 lane collectors or arterials; and 4 lanes and greater	100	
New and Existing Agriculture / Horticultural		
- Crop and horticultural	25	Herbicide, pesticide, and fertilizer use should not be allowed to impact water quality and wildlife.
- Equipment / chemical storage	300	Storage areas should not drain into creeks, rivers, and streams.
- Grazing activities	10	Fence Riparian Corridor, to exclude grazing activities.
Public Recreation		
- Multi-use trails on natural channels (pedestrian/equestrian/bicycle trail)	10	Set trails back where opportunities exist (e.g. in parks, or as part of new development).
- Multi-use trails on flood control channels (pedestrian/equestrian/bicycle	N/A	Trails may enter Riparian Corridor where necessary for continuity. Maintenance roads along top of

³ Setback is measured from the outside dripline of the Riparian Corridor vegetation or top-of-bank, whichever is greater.

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trail)		bank should be used for motorized vehicle circulation.
- Pedestrian-only trail	0	Trails may enter Riparian Corridor where necessary for continuity.
- Passive recreational uses	0	
- Active recreational uses	100	Night-lighted facilities should have a larger setback – 200 to 300 feet is preferred.
- Active recreational uses <ul style="list-style-type: none"> • Lighting and mechanical noise generating sources 	200	Physically screen Riparian Corridor where feasible under site conditional and operational constraints. Night-time light sources should not be visible (a technical report may be required).
- Golf course fairways, greens and tees (public and private)	100	These should be designed to collect and treat run-off.
- Interpretive nodes/paths/stream crossings	-	These may be located at 500 linear feet or greater intervals.
Hazardous Material, herbicide, pesticide, fertilizer use and storage	100	Toxic substances should be stored and used to avoid drainage and drift to riparian habitats.

2) A reduced setback may be considered under limited circumstances such as:

- a. Developments located within the boundaries of the Downtown area, as those boundaries are defined in the General Plan.
- b. Urban infill locations where most properties are developed and are located on parcels that are equal to or less than one (1) acre.
- c. Sites adjacent to small lower order tributaries whose riparian influences do not extend to the 100-foot setback.
- d. Sites with unique geometric characteristics and / or disproportionately long riparian frontages in relation to the width of the minimum Riparian Corridor setback.

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- e. Pre-existing one- or two-family residential lots, or typical yard area, but only where a frontage road is infeasible to buffer Riparian Corridors from these and the Building Setbacks are consistent with all Riparian Corridor setback requirements.
 - f. Sites that are being redeveloped with uses that are similar to the existing uses or are more compatible with the Riparian Corridor than the existing use, and where the intensity of the new development will have significantly less environmental impacts on the Riparian Corridor than the existing development.
 - g. Instances where implementation of the project includes measures that can protect and enhance the riparian value more than the minimum setback.
 - h. Recreational facilities deemed to be a critical need and for which alternative site locations are limited.
 - i. Utility or equipment installations or replacements that involve no significant disturbance to the Riparian Corridor during construction and operation, and generate only incidental human activity.
 - j. The existence of legal uses within the minimum setback.
 - k. The extent to which meeting the required setback would result in demonstrable hardship (i.e. denies an owner any economically viable use of the land or adversely affects recognized real property interest).
 - l. The extent to which meeting the minimum setback would require deviations from, exception to or variances from other established policies, legal requirements, or standards.
- 3) Applicants requesting reduction in setbacks may be required to submit a report by a qualified biologist, stream hydrologist and/or other appropriate qualified professional certifying the existence of some or all of the following conditions:
- a. There is no reasonable alternative for the proposed Riparian Project that avoids or reduces the encroachment into the Setback Area.

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- b. The reduced setback will not significantly reduce or adversely impact the Riparian Corridor.
- c. The proposed uses are not fundamentally incompatible with riparian habitats (see Chapter 3, Section IB Incompatible Land Uses of the Policy Study).
- d. There is no evidence of stream bank erosion or previous attempts to stabilize the stream banks that could be negatively affected by the proposed development within the Setback Area.
- e. The granting of the exception will not be detrimental or injurious to adjacent and/or downstream properties.

4) Materials and Lighting

- a. New development should use materials and lighting that are designed and constructed to reduce light and glare impacts to Riparian Corridors. For example, the use of bright colors, and glossy, reflective, **see through** or glare-producing Building and material finishes is discouraged on Buildings and Structures.
- b. Lighting should not be directed into Riparian Corridors.

5) Restoration and rehabilitation of Riparian Corridors are strongly encouraged to be included in Riparian Project design and implementation.

- 6) Project design and implementation should include erosion-control measures in conformance with the City Council Policies 6-29 and 8-14 (Stormwater Policies) to avoid soil erosion and to minimize runoff. Projects that are not subject to the Stormwater Policies should incorporate basic site-design measures such as limiting disturbances of Riparian Corridor areas, conserving natural areas through the protection or planting of riparian-compatible vegetation, minimizing impervious surfaces, directing runoff to areas outside of and away from Riparian Corridors, and locating trash storage away from Riparian Corridors.

B. Bird-Safe Design Guidance

Design of Buildings and Structures in the area depicted on Attachment A should:

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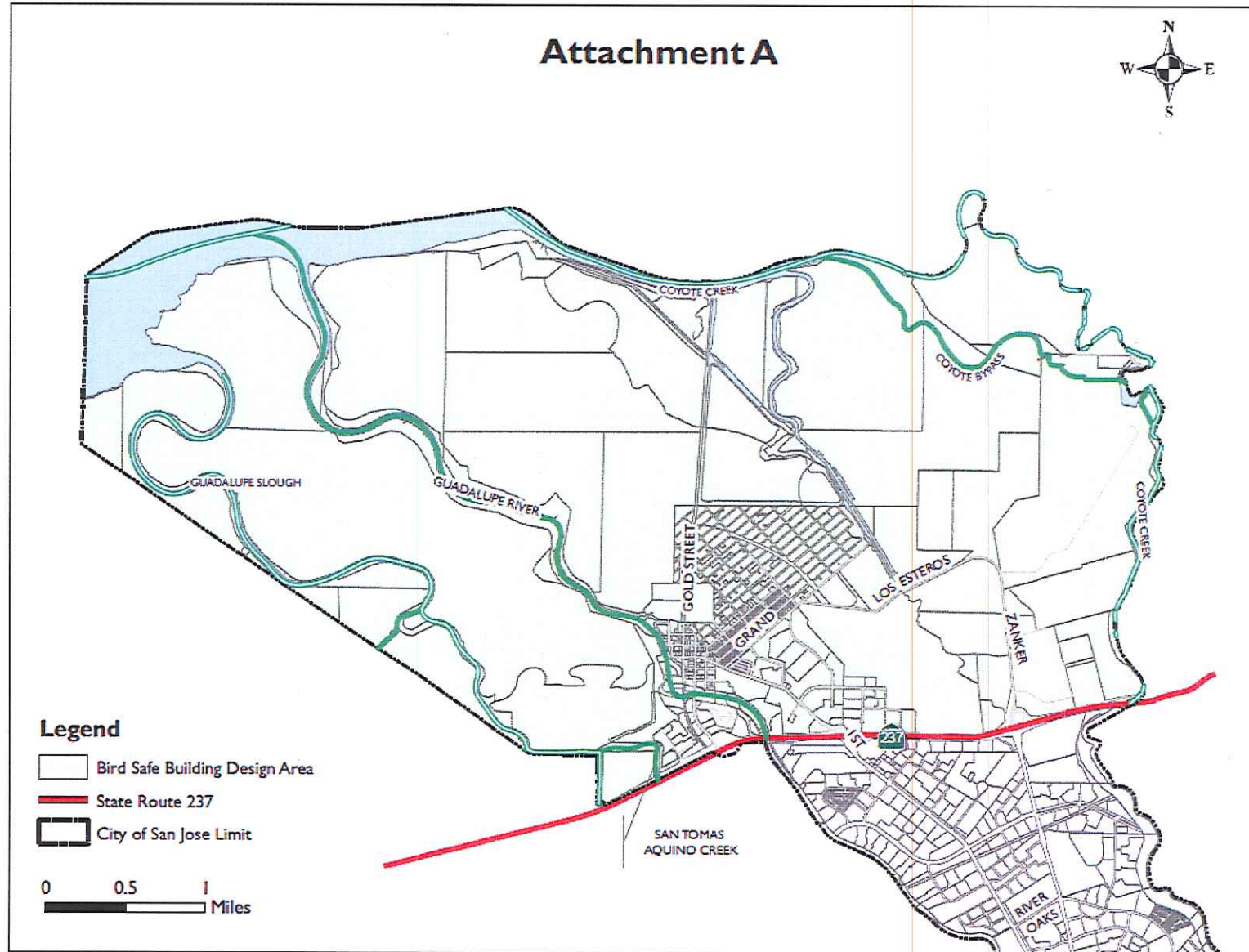
- 1) Avoid mirrors and large areas of reflective glass.
- 2) Avoid transparent glass skyways, walkways, or entryways, free-standing glass walls, and transparent Building corners.
- 3) Avoid funneling open space to a Building façade.
- 4) Strategically place landscaping to reduce reflection and views of foliage inside or through glass.
- 5) Avoid or minimize up-lighting and spotlights.
- 6) Turn non-emergency lighting off, or shield it, at night to minimize light from Buildings that is visible to birds, especially during bird migration season (February - May and August - November).

Applicants seeking a Development Permit for a Riparian Corridor Projects in the area depicted on Attachment A should be required to continue to submit the checklist entitled, "Bird-Friendly Building Design Checklist".

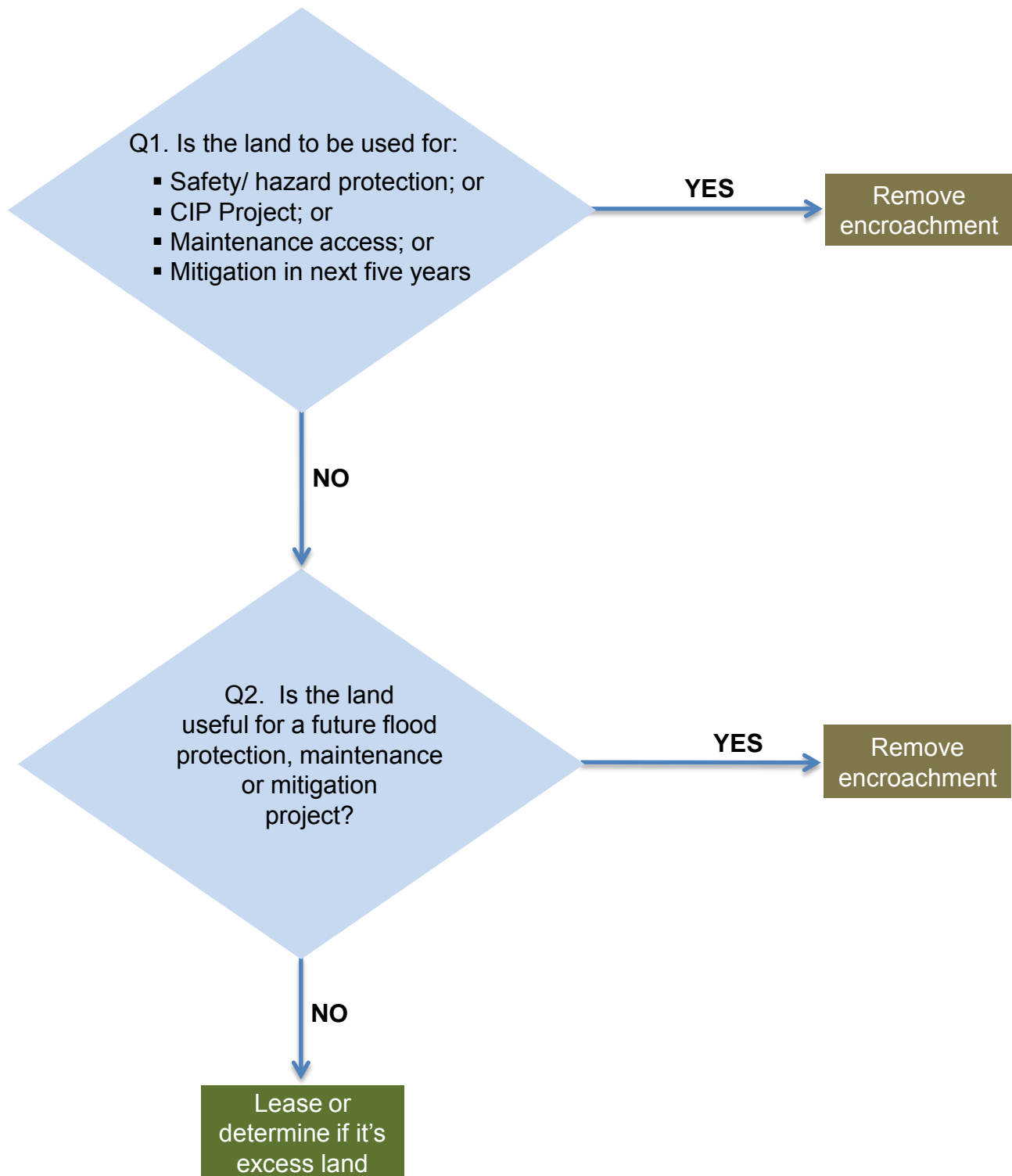
C. References

Additional City documents that may be referenced for guidance for riparian protection and bird-safe design include, but are not limited to the following:

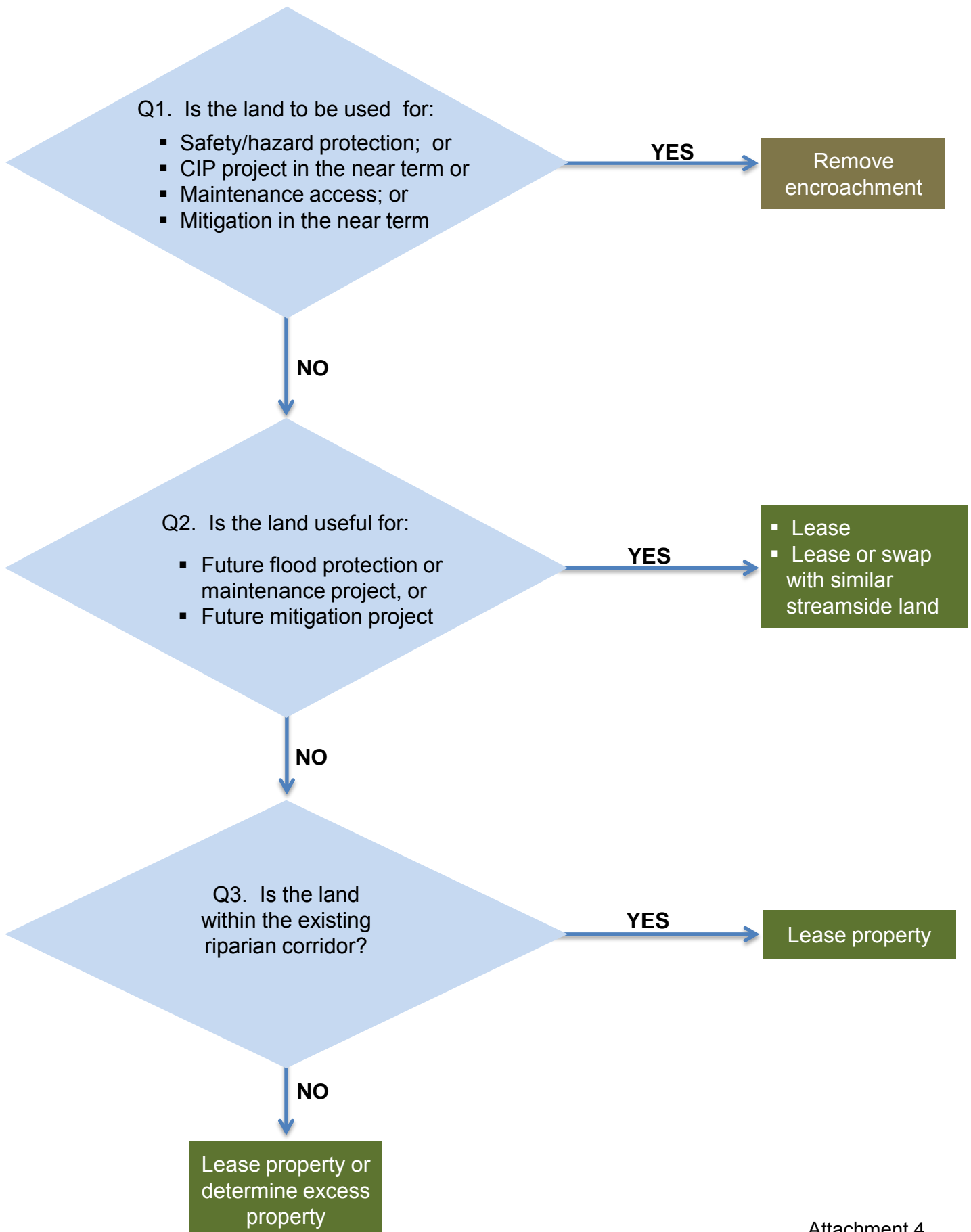
- 1) Riparian Corridor Policy Study, approved by City Council, May 17, 1994, and Revised March 1999;
- 2) City Council Policy 4-3: Outdoor Lighting on Private Developments;
- 3) City Council Policy 6-29: Post-Construction Urban Runoff Management; and
- 4) City Council Policy 8-14: Post-Construction Hydromodification.



Flowchart of Existing Process for Addressing Unauthorized Encroachments



Flowchart of Alternate Process for Addressing Unauthorized Encroachments



**EVALUATION OF OPTIONS TO MANAGE
UNAUTHORIZED ENCROACHMENTS ON DISTRICT'S LAND**

Management Options	Advantages	Disadvantages
1. Eliminate unauthorized encroachments on District's lands.	<ul style="list-style-type: none"> a. Consistent with District Act, policies, Water Resources Protection Collaborative, Water Resources Protection Manual, Valley Habitat Plan. b. Consistent with District practice of using public lands for public purposes. c. Lands are immediately available for District use for emergencies, unforeseen activities, access, and stream maintenance mitigation purposes. d. Consistent with District advocacy for protecting riparian corridors and maximizing riparian setbacks to the extent practical, and restoring and enhancing the riparian corridor when appropriate. e. Additional riparian buffers will contribute to improving water quality f. Equitable treatment of all residents regarding encroachment on District lands. g. Demonstrate good will in working with environmental groups and non-governmental organizations (NGO) in advocating stream stewardship goals. 	<ul style="list-style-type: none"> a. Cost for property owners to remove personal improvements on District lands. b. Complaints by property owners of unfair action by the District when the current owners did not verify their property boundaries when they purchased the property. c. Complaints by property owners that District staff knew about encroachment issues and did not act until now, and that they were allowed to use District lands in exchange for taking care of the lands and allowing District access through their properties to conduct creek maintenance. d. Additional staff time and expenses in cases where adjacent property owners refuse to vacate their personal properties on District lands.
2. Allow encroachments by leasing at fair market values on the condition that the District will terminate the lease when a District use or project is identified or when the property ownership changes.	<ul style="list-style-type: none"> a. Demonstrate goodwill in working with property owners by allowing personal use of District lands to continue. b. Formalizes encroachment on District lands and ensures there is no gift of public funds. c. Reduce potential litigation. 	<ul style="list-style-type: none"> a. Encourage practice of using public lands for private purposes. b. Inconsistent with District recommendation of protecting riparian corridors and maximizing riparian setbacks to the extent practical and restoring and enhancing the riparian corridor when appropriate. c. Complaints about preferential treatment in allowing only some property owners use of District lands relative to others that have

**EVALUATION OF OPTIONS TO MANAGE
UNAUTHORIZED ENCROACHMENTS ON DISTRICT'S LAND**

Management Options	Advantages	Disadvantages
		<p>remediated encroachments.</p> <p>d. Continued encroachment within riparian buffers would render land unavailable to the general public, as for trails.</p> <p>e. Continued encroachment would prevent habitat improvement for a large variety of plant and animal species.</p> <p>f. Expenditure of public funds in additional staff time to manage leases. Additional District resources to ensure that new encroachments are not encouraged and do not occur.</p> <p>g. Unfair advantage to encroaching property owners with the funds available to lease property over encroaching property owners with less means available.</p>
3. Exchange similar stream-side land with land where unauthorized encroachment on District land is located.	<p>a. Achieve no net-loss in streamside riparian buffers in the county.</p> <p>b. Demonstrate goodwill in working with property owners to resolve personal use of District lands.</p> <p>c. Eliminate personal use of District lands.</p>	<p>a. Expenditure of public funds in additional staff time to process exchange of lands.</p> <p>b. Very low availability of commensurable riparian lands.</p> <p>c. Potential harm to root systems of adjacent streamside trees.</p>
4. If determined excess, sell the land to the adjacent property owner(s)	<p>a. Demonstrate goodwill in working with property owners to resolve personal use of District lands.</p> <p>b. Revenue source for the District.</p>	

Riparian Ordinance & Encroachment Policy Discussion

October 18, 2016



Riparian Ordinance & Encroachment Policy

1. Overview of existing plans & policies in Santa Clara County
2. Alternatives for addressing unauthorized encroachments on District's property



Riparian Corridor Plans & Policies

All agencies in Santa Clara County have plans & policies re: riparian corridor

- ▶ County and Cities
 - ▶ General Plans
 - ▶ Ordinances & municipal codes
 - ▶ Guidelines and Standards for Land Use Near Streams
- ▶ Santa Clara Valley Habitat Plan
- ▶ District's Water Resources Protection Ordinance



City of San Jose adopts a new ordinance

City of San Jose Council Riparian Policy & Ordinance:

- ▶ Adopted on 8/23/16 & becomes effective in October 2016
- ▶ Establishes minimum setbacks based on land use
- ▶ Specifies 100-foot setback for new development



District's efforts

- ▶ Preserve water resources through District capital projects & operations
- ▶ Apply Water Resources Protection Ordinance to manage District's properties
- ▶ Provide recommendations on development proposals & general plans



District authority on encroachments

- ▶ District Act
- ▶ Board Governance Policies
 - ▶ E-4.1: Protect and restore creek, bay, and other aquatic ecosystems
 - ▶ EL-6.5.1: Proactively identify, preserve & protect District's property
 - ▶ EL-6.5.2: Resolve encroachments on District's property
- ▶ Water Resources Protection Ordinance



Program for addressing encroachments

Objectives:

- ▶ Be consistent with District mission & policies
- ▶ Be fair, effective, consistent and respectful of community
- ▶ Implement corrective measures
- ▶ Build community awareness



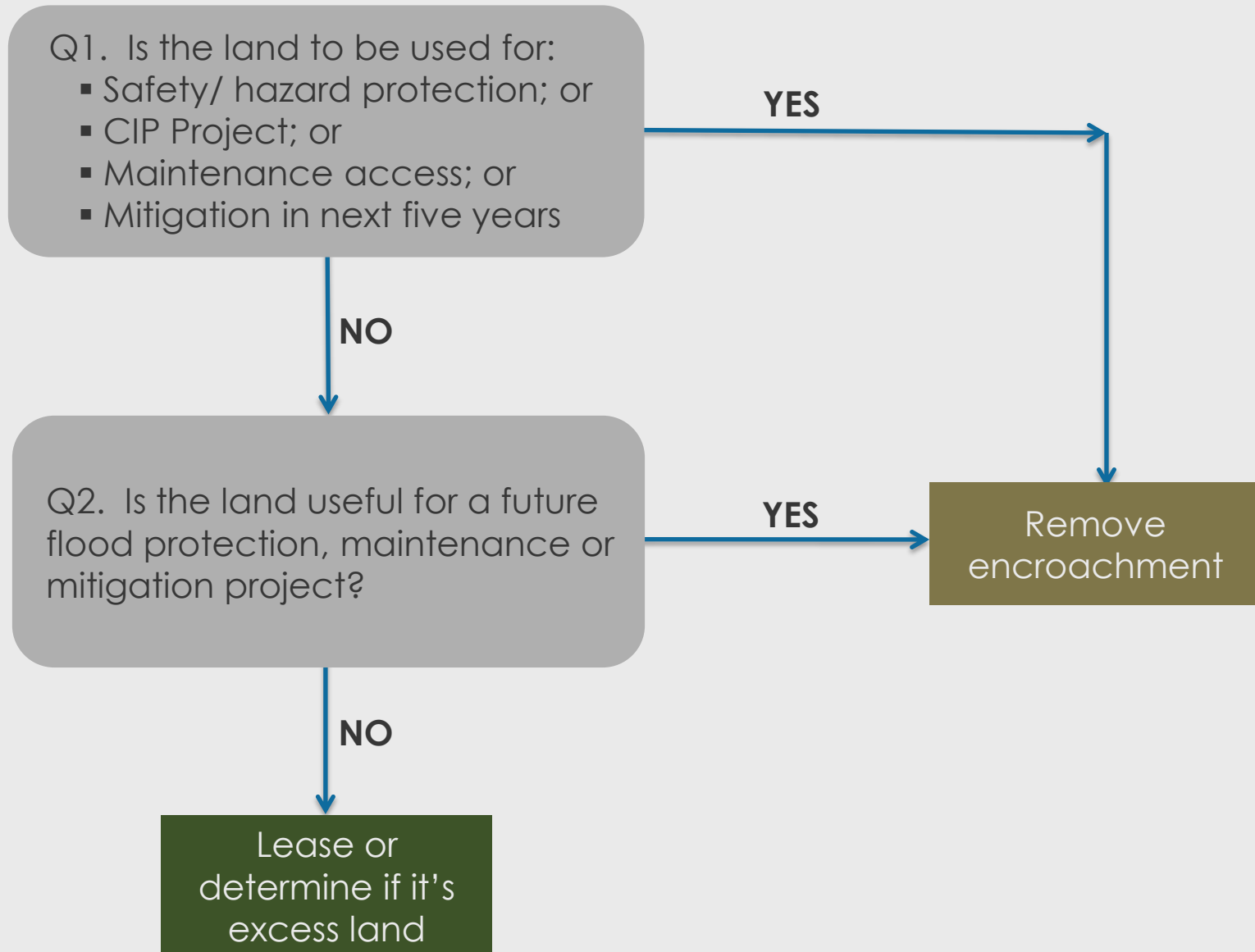
Current District practices

- ▶ Identify & prioritize encroachment
- ▶ Notify property owner(s)
- ▶ Confirm property lines with field survey
- ▶ Meet with property owner(s)
- ▶ Notify timeline for corrective measures
- ▶ Implement correction measures

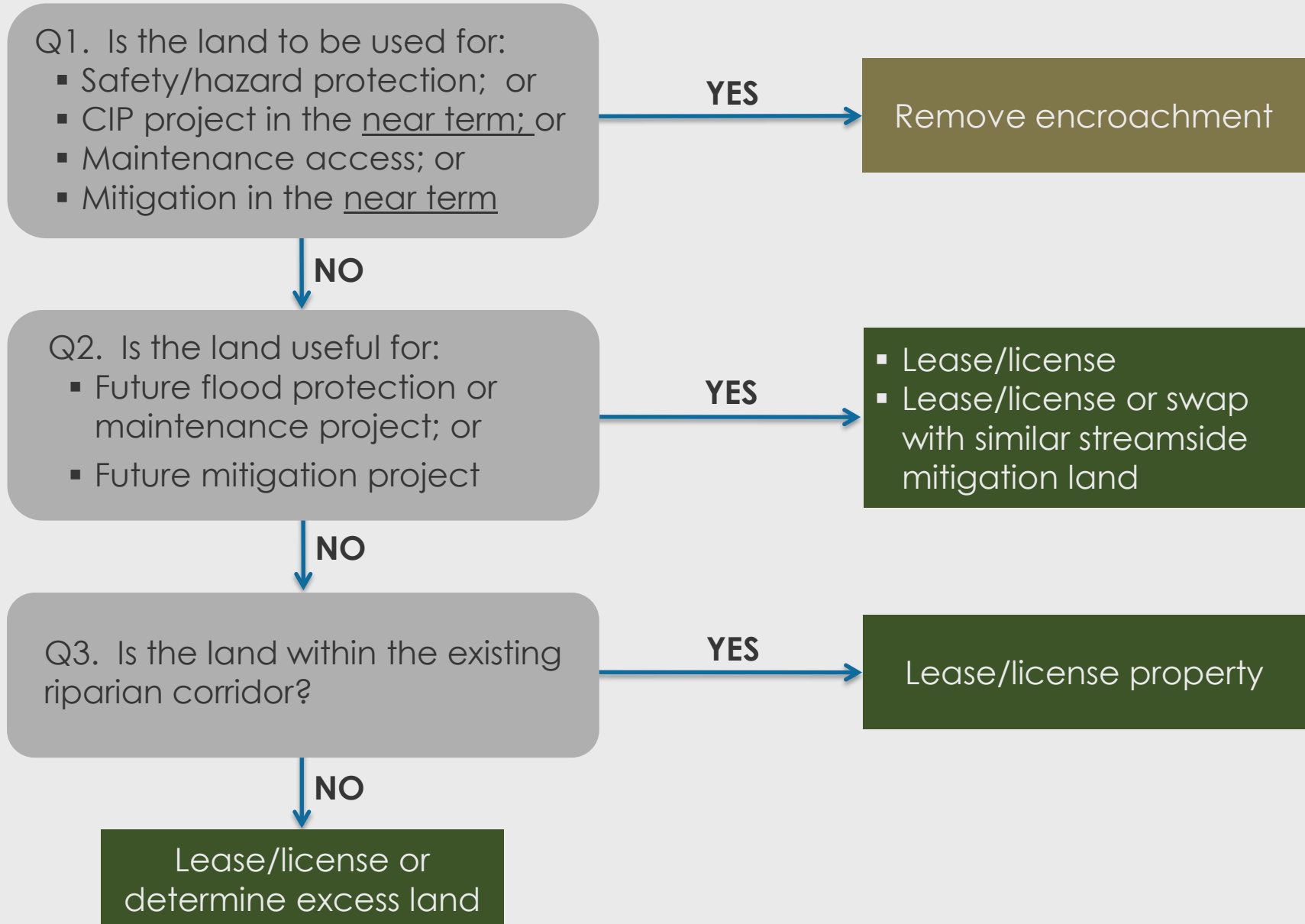
District practices similar to other agencies



Current process to address encroachments



Alternate process to address encroachments



Advantages of leasing/licensing

- ▶ Demonstrate goodwill
- ▶ No gift of public funds
- ▶ Reduce potential litigation

Disadvantages of leasing/licensing

- ▶ Encourage practice of using public lands for private purposes
- ▶ Inconsistent with District recommendation of protecting riparian corridors & setbacks
- ▶ Complaints about preferential treatment
- ▶ Lands unavailable for general public use
- ▶ Prevent habitat improvement for plant and animal species

Disadvantages of leasing/licensing (cont)

- ▶ Additional public funds to manage leases
- ▶ Additional resources to prevent new encroachments
- ▶ Unfair advantage to encroaching property owners with the funds available to lease property



Option of leasing/licensing

Need to define criteria for:

- ▶ Eligibility
- ▶ Limitation on size of potential lease
- ▶ Duration

Next steps

Upon direction from the Board, staff will resume proceeding with encroachment cases



Board Discussion & Direction