



Santa Clara Valley Water District

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.

*Handout 2.5-A, Kaufman Comments

UNCLASSIFIED MANAGER:
Ngoc Nguyen 408-630-2632