



Santa Clara Valley Water District

File No.: 18-0158

Agenda Date: 8/28/2018

Item No.: 2.6.

BOARD AGENDA MEMORANDUM

SUBJECT:

Revised Encroachment Remediation Program.

RECOMMENDATION:

- A. Receive information on the Proposed Revised Encroachment Remediation Program, including a licensing option as an interim measure to resolving encroachments; and
- B. Adopt the Revised Encroachment Remediation Program.

SUMMARY:

Relevant District Authority

Board Governance Policy:

- E-4.1.1: Preserve creeks, bay and ecosystems through environmental stewardship.
- EL-6.5.1: Proactively identify, preserve and protect District property to ensure its use is consistent with the District mission
- EL -6.5.2: Resolve encroachments on District property

District Water Resources Protection Ordinance:

The District adopted the current Water Resources Protection Ordinance (WRPO) in 2006 replacing ordinances that served to protect District assets dating back to 1959. The intent of the WRPO is, in part, to protect District assets, including streamside lands, riparian corridors and other real property interests.

History of Resolving Encroachments on District Property

The District has been protecting public lands by resolving encroachments for over 40 years and specifically, since 2006, has remediated over 250 encroachments of various sizes and severity throughout the county. And yet, there are still an estimated 900+ suspected encroachments that staff has recently identified using aerial mapping.

In the early 1960-70's as more neighborhoods were established in the county, developers and property owners were not always inclined to install fences along creekside property lines - allowing the new home owner to enjoy the scenery and experience of the natural environment. Over the years, use of District land by private land-owners became more prevalent. Due to the lack of knowledge of the extent of the issue, the cost of field surveys, available District resources, and complacency over the relative harm, the practice was often not addressed.

However, climate conditions, our awareness of the environmental and regulatory agency requirements have affected the District's approach to managing encroachments over the last decade. These concerns have compelled the District to consider pro-active identification and removal of encroachments to maintain facilities in a safe and effective manner.

Climate Conditions: The period between late 2011 and 2014 is referred to as the driest in California history. The drought continued through 2016 and eventually created severe conditions for both native and non-native trees, causing many to fall victim to disease, fungus, pests and other fatal conditions.

In 2014, the District was directly impacted when a large oak tree fell through an encroaching fence on District property along Calabazas Creek. Unfortunately, many top-of-bank encroachments along this stretch of creek prevented District staff from accessing this tree through District right of way. In addition, these top-of-bank encroachments had contributed to severe erosion in this area and severely limited the available land to mitigate for impacts incurred by an erosion repair project completed by the District in 2011.

As a result of this incident, and the awareness that the drought could impact other trees on District property, staff began to explore a more proactive and comprehensive approach to ensure access, when needed, to conduct District operational and maintenance business. In this time period, the District acquired aerial mapping and property line overlays (GIS) that allowed staff to see approximate property lines and residential improvements installed beyond those boundaries. Prior to the aerial mapping, suspected encroachments were reported by field staff or neighbors and addressed individually as they were reported.

Environmental Awareness: It was not always apparent that the ecosystem was a sensitive, intricate and interdependent system.

The Guidelines and Standards for Land Use Near Streams, developed by a collaborative of the District, the County of Santa Clara, all the cities within the County, as well as other stakeholders, states:

A stream is more than just a channel for rainwater in its passage to the Bay. It is a complex, living system where the characteristics of the streambed - its composition, shape, and elevation drop - interact with the dissolved nutrients and organic matter in flowing water to create a dynamic environment rich with plant, animal, and fish life. This high-moisture environment, which covers only a small percentage of the County's watershed, provides food and shelter for a greater variety of wildlife than any other habitat type. This zone is also critical

as a migration corridor for many animals, especially where nearby development acts as a barrier to overland travel.

We are now aware that residential improvements such as structures, fences, concrete patios, artificial lighting, fertilizer and pesticides, invasive plants and backyard runoff from watering systems have an impact on the wildlife, groundwater recharge, native plant habitat, water quality and bank stability of our creeks.

As the environmental awareness of the community continues to grow, the District continues to incorporate this awareness into its mission and day-to-day operations. Identifying and removing encroachments in the early phases of a project often provide the District with greater opportunity to pursue more environmentally friendly solutions to erosion control and flood prevention. Proactively remediating encroachments and restoring riparian areas to their natural states are an integral part to the District's commitment to environmental stewardship.

Mitigation Requirements: In addition to climate impact and environmental awareness, regulatory requirements have increased; affecting the design and performance of flood/erosion control, vegetation management and capital improvement projects. The District must now mitigate for any disturbance of the creek area including, soil disturbance, tree trimming or removal, and other maintenance work. In addition to meeting mitigation obligations for capital projects, mitigation is required for many ongoing operational and maintenance activities.

As a result of on-going obligations, it is becoming increasingly difficult to find available land for revegetation mitigation. The District required 14 acres of land to mitigate for stream maintenance work alone between 2014 and 2017. Though the District has just recently received approval to include removal of invasive plants for mitigation credit, staff estimates that there is only enough readily available and accessible District land to mitigate for approximately three more years of operations and maintenance work. After this accessible land has been exhausted, the District must look for other ways to mitigate which could include land purchase or reclaimed lands from encroachments. Because the District is required to provide watershed-specific mitigation, the West Valley and Lower Peninsula watersheds are of greatest concern at this time. District land available for planting in these watersheds is at a minimum, while suspected encroachments in these areas are also much higher than other regions.

Encroachment Remediation Program

In 2015, the Board adopted specific encroachment resolution language into their asset management policy and a District-wide team was formed to develop the "District-Wide Encroachment Remediation Program" implementing the best practices gleaned from the process of remediating the long-standing, neighborhood encroachments along Calabazas and Regnart Creeks. The main objective of this program has evolved over the past couple of years to ensure that the District process for encroachment resolution is fair, policy driven and consistent while at the same time, respectful of community members. This process includes prioritizing areas of safety concerns, blocked access to project areas and mitigation sites. In addition, this process includes community outreach and collaboration as well as public education and a communication plan designed to increase

environmental impact awareness of creekside property owners and provide early notification of possible encroachment issues.

Recent Board Actions

At the May 24, 2016 Board meeting, property owners along Saratoga Creek expressed their concerns regarding the District's request that encroaching fences be moved back to the property line. Considering these concerns, the Board asked staff to research possible options for addressing encroachments and present these options to the Board. In addition, the Board asked staff to place remediation efforts on hold until a policy decision was reached.

At the October 18, 2016 Board meeting, staff presented the option of licensing District property as a potential interim step in resolving unauthorized encroachments on District's property. The Board considered the concept of licensing and asked staff to work with the Board's Policy and Planning Committee (BPPC) to formulate a recommendation to present to the full Board.

Staff met with the BPPC on December 7, 2016, February 1, 2017, October 23, 2017, November 27, 2017, January 22, 2018 and February 26, 2018 and presented information and options on the proposed Revised Encroachment Remediation Program and licensing option. The recommendations in this presentation are the product of discussions with the BPPC over two years. The BPPC fully supports this revised program.

In addition, the BPPC requested that the licensing option of this program be cost-neutral. If approved, staff will develop the licensing option to be cost neutral.

Additional Option for Encroachment Resolution Process

Through the research requested by the Board, an option to license encroachments on District property under certain circumstances has been identified. The proposed license would be issued at a fair market value rental rate for a limited amount of time as an interim step in resolving encroachments. Among other things, these licenses would serve to: limit how the District's property could be used; provide protection to the District in the form of indemnity; prohibit transfers to future owners or renters; and set forth a formal procedure for recovery of the District's property upon termination or expiration of the license. In addition to property rental fees for the private use of District property, it is anticipated that license fees would include cost recovery fees for staff time in the same manner as permit fees assessed under the WRPO.

NEXT STEPS:

Subject to Board approval, staff will revise the Encroachment Remediation Program to include the proposed addition of licensing District land as an optional interim step in resolving encroachments and develop a process to incorporate the monitoring of these licenses. The eligibility criteria for the licenses are summarized in Attachment-1. Depending on the number of licenses issued and the complexity of monitoring the use of District property, additional resources may be needed at a future date to implement the licensing option. In addition, staff will resume resolving encroachments in

cases that do not meet the eligibility criteria.

If the Board wants the licenses approved under this program be approved by the Chief Executive Officer rather than having to be approved by the Board itself at a public meeting, there may be a need to modify the Executive Limitations in the Governance Policy depending upon the program elements settled upon. Currently, Executive Limitation 6.7.9 holds as follows:

6.7.9. The disposition is a revocable license or right-of-entry that grants non-possessory real property interests so long as the term of any such license or right-of-entry does not exceed two years or the District reserves the right to revoke any such license or right-of-entry at will, and any such license or right-of-entry does not grant the right to construct any permanent improvement on District real property that is incompatible with District purposes. (Emphasis added)

If the Board opts for a license option that exceeds two years, the Executive Limitations section will need to be modified at a future meeting if the Board wants the CEO have the authority to approve these licenses. If the license option is for less than two years but includes limitations on how or when the District can revoke it (e.g., only where an emergency arises or only where an actual project need or conflict accelerates the need for the property), the Executive Limitations section will need to be modified if the Board wants the CEO have the authority to approve these licenses.

Proposed 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 will be addressed as a separate Board item.

FINANCIAL IMPACT:

There is no financial impact associated with this item.

CEQA:

The recommended action is a ministerial action and thus is not subject to the requirements of CEQA.

ATTACHMENTS:

Attachment 1: Encroachment Remediation Program Overview

Attachment 2: PowerPoint

Handout 2.1-A: Mossing, Irvin, Kaufman, McLaughlin, Ruthruff

UNCLASSIFIED MANAGER:

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