



Santa Clara Valley Water District
City of San José



JOINT MEMORANDUM

File No.: 18-1072

Agenda Date: 12/12/2018
Item No.: 6

SUBJECT:

Update on City and District Efforts Regarding Creek Health and Safety Along Waterways.

RECOMMENDATION:

That the District Board and the City Council receive information regarding the respective roles, responsibilities, and coordinated efforts with respect to creek health and waterway safety issues.

SUMMARY:

The Santa Clara Valley Water District (District) and the City of San José (City) have a shared goal of improving the health of creeks within their jurisdictions. Of the 800 miles of creek within populated areas of the county, the District manages 278 miles of creeks for flood protection and stewardship purposes; the remainder are in other public entity or private ownership. The District's Safe, Clean Water and Natural Flood Protection Program was developed through community collaboration and resulted in a parcel tax ballot measure being passed by an overwhelming majority. Reducing toxins, hazards and contaminants in our waterways is one of the important priorities in this program. The City of San José has significant responsibilities under the Municipal Regional Stormwater Permit to reduce the amount of pollutants, such as trash and bacteria, that flow into creeks and federal waters. These shared goals have resulted in a partnership between the two agencies in addressing homeless encampments located near creeks.

The 2017 Santa Clara County Homeless Census and Survey found that there were over 7,000 homeless individuals living within the County, with over 4,000 living in San José. Of the individuals experiencing homelessness, 74 percent are unsheltered and a portion

are living in the riparian areas along urban creeks. Impacts of encampments on the riparian environment include trash and debris, excavation, vegetation removal, erosion, fire, hazardous materials and bio-waste, and impacts to fish and wildlife through poaching and habitat destruction. Santa Clara County creeks are unique, as many are densely vegetated. These areas offer habitat to wildlife and recreational opportunities to the public. The District and the City are committed to working collaboratively to reduce homeless encampments along creeks within San José through a Memorandum of Agreement (MOA). Both agencies partner with nonprofit agencies to engage volunteers for clean-ups and with each other to fund Downtown Streets Team.

Regulatory Background

The City of San José and the District are co-permittees under the Municipal Regional Stormwater Permit, which is issued by the San Francisco Bay Regional Water Quality Control Board. Its purpose is to regulate the discharge of pollution into the creeks through stormwater. The Permit requires the City to reduce trash discharge into receiving waters to 70 percent below 2009 levels by July 1, 2017 and 80 percent below by July 1, 2019.

Through implementation of its Long-Term Trash Load Reduction Plan, the City exceeded the 2017 target, and as of July 1, 2018, it has achieved an 88.3 percent trash load reduction. In achieving this reduction, the City employed strategies such as installation of 21 large trash capture devices in the storm sewer system, creek cleanup efforts, ordinances that regulate expanded polystyrene food containers and single-use carryout plastic bags, and implementation of a Direct Discharge Trash Control Plan.

“Direct discharge” refers to trash that is put directly into creeks, such as through illegal dumping or homeless encampments. The City’s Direct Discharge Trash Control Plan, approved in 2016, sets out a strategy to manage discharge of waste from homeless encampments in creek corridors. Through implementation of this plan, the City receives a 15 percent trash load reduction offset, which contributes to the overall 88.3 percent reduction that the City has achieved. The Direct Discharge Plan sets out a four-phase process for reducing trash from homeless encampments, as follows:

- Phase 1: City contractors such as HomeFirst, PATH, and Downtown Streets Team provide outreach and social service referrals to encampment residents. They work to engage individuals and offer them services and evaluate them for housing opportunities.
- Phase 2: The Encampment Abatement Program (which includes staff from the City, District and contractors) and Watershed Protection Team (comprised of Park Rangers) post sites for cleanup, dismantle encampments, and remove large structures and debris.
- Phase 3: Volunteer organizations and Downtown Streets Team coordinate the removal of residual trash from dismantled encampments.
- Phase 4: Park Rangers and San José police officers patrol creeks for illegal activity and work to minimize re-encampment. Physical barriers such as fences,

gates and boulders are also installed.

The goals of the program are to offer services and shelter to homeless individuals, reduce the discharge of trash into creeks, and minimize re-encampment along creek corridors.

While the District does not have specific trash reduction targets under the Stormwater Permit, the District manages four trash booms, that catch floating trash, and cleans trash hot spots. The District also supports the City as well as other cities in encampment cleanup efforts to address this significant source of trash to the creeks.

Baykeeper Lawsuit

San Francisco Baykeeper, an environmental nonprofit, filed suit against the City in 2015 alleging that the City was not in compliance with provisions of the federal Clean Water Act and its Stormwater Permit because trash and bacteria were infiltrating into the City's Storm Sewer System and discharging into creeks. In 2016, the City settled the lawsuit through a negotiated consent decree. The consent decree terms require the City to:

- Comply with the trash provisions of the current Stormwater Permit;
- Rehabilitate, replace, or repair 65 miles of high-risk sanitary sewer system pipes;
- Monitor fecal indicator bacteria in creeks;
- Comply with green infrastructure planning as required in the Stormwater Permit;
- Appropriate, contingent upon the receipt of sufficient new revenues, \$100 million over a ten-year period for green infrastructure or treatment control projects.

The long-term capital investment contemplated by the consent decree is contingent upon significant new revenues. The Council's allocation plan for Measure T, an infrastructure bond approved by San Jose voters in November 2018, identifies \$25 million for clean water projects, such as green stormwater infrastructure. Measure T presents an opportunity to make progress on the projects contemplated by the consent decree. City staff will return to the City Council on February 12, 2019 with a detailed strategy on moving forward with Measure T projects.

Outreach and Abatement

The District and the City work in partnership on encampment abatements on City and District land within San José. The two agencies have a Memorandum of Agreement (MOA) that establishes a framework for cooperation and outlines the roles each agency will fulfill in carrying out abatements. The table below briefly summarizes those roles.

Table 1: Abatement Responsibilities of the City and the District

City Responsibilities	District Responsibilities
<ul style="list-style-type: none"> • Coordinate homeless outreach and support services in advance and on the day of encampment cleanups. • Execute encampment notification and posting • Provide personnel for sorting personal property from trash according to City guidelines during the cleanup • Provide personnel for personal property documentation, bagging, transportation and storage • Provide security during the cleanup • Provide waste disposal authorizations allowing the District or its contractor to dispose of trash from the cleanup. 	<ul style="list-style-type: none"> • Provide cleanup crews and supervision sufficient to conduct the cleanup. • Transport the trash collected at the cleanup to appropriate disposal sites. • Provide cleanup supplies, including personal protective gear and portable sanitary facilities • Provide heavy equipment such as compactors, bobcats, and other machinery as needed. • Ensure permit coverage for cleanups, which includes obtaining appropriate permits for performing maintenance work in and around waterways.

In Fiscal Year 2017-18, the City and the District conducted 499 joint cleanups along creeks and removed 799 tons of trash. The MOA between the two agencies established a model for the District to partner with other cities to work jointly on encampment cleanup efforts.

In Fiscal Year 2018-19, the City has budgeted \$1.5 million in City funding for its encampment response team. The District has budgeted \$927,000 for encampment response in the current fiscal year. In addition to other funding sources for creek protection, the District's voter approved special parcel tax (Safe, Clean Water and Natural Flood Protection Measure B) provided \$5.8 million in funding specifically for encampment cleanup with a performance indicator of 52 cleanups a year. The demand continues to increase, from 131 cleanups in FY14 to over 400 in FY17 and has significantly impacted the District's budgeted funding. The demand has exceeded the 15-year funding allocation for this priority under the District's Safe, Clean Water program.

Also under the agreement, District staff and City staff jointly monitor creeks for trash accumulation points. Five of these “trash rafts” are prioritized and removed by the District crews each year.

The City and the District are in the process of developing a new MOA. The City’s Housing staff is updating the encampment abatement procedures to be more comprehensive and to address feedback from homeless advocates. The City will work with the District to incorporate the revised procedures into the new MOA. City staff have been directed by the City Council to bring the new MOA and accompanying procedures to Council for review in January. City staff have also been directed to evaluate whether departmental responsibility for abatements within the City should be shifted or reorganized.

Engaging the Community

The City and the District carry out numerous volunteer and community engagement efforts related to creek health. Both agencies partner to fund the Downtown Streets Team. This effort began when the District provided matching funds for an Environmental Protection Agency grant that the City obtained to address trash and encampments in the creeks. The Downtown Streets Team is a nonprofit, addressing homelessness by having homeless volunteers pick up trash on streets or in creeks, while providing necessities including a stipend, vital health services and case management. The City and the District recently executed a new agreement to continue funding these efforts.

The District supports volunteer trash cleanups by coordinating two annual events, the National River Cleanup day and Coastal Cleanup Day, training volunteers, supplying personal protective equipment and tools, and disposing of collected trash. On Coastal Cleanup Day 2018, 1,900 volunteers removed 60,000 pounds of trash from 75 miles of creeks in Santa Clara County. The District also manages an Adopt-A-Creek program. Currently, 142 sites are adopted, with groups committing to host a minimum of two cleanup events a year.

The City partners with Keep Coyote Creek Beautiful and South Bay Clean Creeks Coalition for projects that mitigate the impacts of trash on Coyote Creek and Guadalupe River. Together, these groups conducted 47 volunteer creek cleanups and removed 68 tons of trash and debris from the City’s waterways in Fiscal Year 2017-18. The District supports community groups that perform cleanups using volunteers and provide education on litter and trash issues through grants and partnerships. Grants or partnerships related to trash and litter have been awarded to organizations including the South Bay Clean Creeks Coalition, San Francisco Bay Wildlife Society, the Santa Clara County Creeks Coalition, Keep Coyote Creek Beautiful, San Jose Parks Foundation, Downtown Streets Team, Valley Transportation Authority, and Save the Bay.

The District conducts school outreach, much of it focused on pollution prevention and litter prevention. In addition, both the City and the District support the Watershed Watch

Campaign that conducts outreach on litter issues and partner on the City's campaign on litter outreach with the San Jose Earthquakes.

Safety and Enforcement

With its law enforcement function, the City takes responsibility for protecting public safety and conducting enforcement along creek corridors. Phase 4 of the City's Direct Discharge Trash Control Plan calls for regular enforcement patrols to discourage re-encampment once an encampment site has been cleaned up within a creek corridor. Formerly, Park Rangers patrolled the creeks as part of the Watershed Protection Team. Starting in October, due to safety concerns, the City implemented joint patrols between park rangers and police officers in Direct Discharge project areas. Each patrol consists of two police officers and one Park Ranger. Their purpose is to patrol for criminal activity and attempt to minimize re-encampment.

The joint patrols are an interim approach to enforcement along creeks, pending City Council consideration of changes to the Park Ranger service delivery model. Working with the District and other stakeholders, City staff has developed recommendations on this topic that will be brought forward to City Council early next year.

The District has previously partnered with the City of San Jose in funding Park Rangers to prevent re-encampment along creeks. The District is not currently funding Park Ranger positions; however, District staff has participated in the Park Ranger working group led by the City over the last few months to help determine the future of the Park Ranger program. The District has an agreement with the California Department of Fish and Wildlife to fund a Game Warden, however, the Game Warden position for Santa Clara County is currently not filled due to staffing shortages at the agency which has reduced enforcement of environmental crimes along waterways.

Safety has become an increased concern for field staff and volunteers conducting encampment or trash cleanups. Increasing safety concerns have required police officers to be present during volunteer cleanups. Safety hazards include discovery of firearms and other weapons, pathogens from human waste and needles, hazardous waste and aggressive dogs.

Abatement Challenges and Housing Opportunities

In 2016, the Santa Clara Valley Water District Board of Directors (Board) formed a Homeless Encampment Ad Hoc Committee to address the overall issue of homelessness germane to the District's flood protection and stream stewardship mission. Work by the committee includes analyzing surplus properties for possible use by others for housing, making District rental properties available to Santa Clara County's Office of Supportive Housing, and funding nonprofit groups for cleanups. The Committee will be considering alternatives to address the shortfalls in funding identified above.

The City is pursuing cross-agency collaboration on the issue of homelessness with the County of Santa Clara. The San José City Manager's Office and Santa Clara County

Executive's Office recently established a City-County working group made up of 16 department directors to foster better working relationships, establish a common set of metrics, and coordinate and align the County and City services that respond to our homeless residents. The first round of meetings was held on September 10, 2018 and November 15, 2018, with smaller group meetings occurring to dive deeper into specific issues. Meetings will continue bimonthly.

The City and District participate in the Zero Litter Initiative which has included coordination with the Valley Transportation Authority and Caltrans on litter and homeless encampment issues.

The Board and the City Council also participate in local, state and federal legislative advocacy on policies that prevent and reduce homelessness. Both agencies supported Santa Clara County's \$950 million affordable housing bond, Measure A, which voters overwhelmingly approved in November 2016.

FINANCIAL IMPACT:

There is no financial impact associated with this item.

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:

None.

UNCLASSIFIED MANAGER:

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