



Santa Clara Valley Water District Board Policy and Monitoring Committee Meeting

HQ. Bldg. Boardroom, 5700 Almaden Expressway, San Jose, California
Join Zoom Meeting: <https://valleywater.zoom.us/j/81170871803#>

SPECIAL MEETING AGENDA

**Monday, April 14, 2025
1:00 PM**

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

BOARD COMMITTEE MEMBERS:

Nai Hsueh, Chairperson
Director District 5
Tony Estremera, Vice Chairperson
Director District 6
John Varela, Member
Director District 1

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 to the public through the legislative body agenda web page 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 participate in the legislative body's meeting. Please advise the Clerk of the Board Office of any special needs by calling (408) 265-2600.

COMMITTEE LIAISONS:

Candice Kwok-Smith
Theresa Chinte
Stephanie Simunic
COB Liaison
1-408-630 -2408
ssimunic@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.

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Santa Clara Valley Water District
Board Policy and Monitoring Committee
SPECIAL MEETING
AGENDA

Monday, April 14, 2025

1:00 PM

HQ. Bldg. Boardroom

5700 Almaden Expressway, San Jose, California

Join Zoom Meeting:

<https://valleywater.zoom.us/j/81170871803#>

*****IMPORTANT NOTICES AND PARTICIPATION INSTRUCTIONS*****

Santa Clara Valley Water District (Valley Water) Board of Directors/Board Committee meetings are held as a “hybrid” meetings, conducted in-person as well as by telecommunication, and is compliant with the provisions of the Ralph M. Brown Act.

To maximize public safety while still maintaining transparency and public access, members of the public have an option to participate by teleconference/video conference or attend in-person. To observe and participate in the meeting by teleconference/video conference, please see the meeting link located at the top of the agenda. If attending in-person, you are required to comply with **Ordinance 22-03 - AN ORDINANCE OF THE SANTA CLARA VALLEY WATER DISTRICT SPECIFYING RULES OF DECORUM FOR PARTICIPATION IN BOARD AND COMMITTEE MEETINGS** located at <https://s3.us-west-2.amazonaws.com/valleywater.org.if-us-west-2/f2-live/s3fs-public/Ord.pdf>

In accordance with the requirements of Gov. Code Section 54954.3(a), members of the public wishing to address the Board/Committee during public comment or on any item listed on the agenda, may do so by filling out a Speaker Card and submitting it to the Clerk or using the “Raise Hand” tool located in the Zoom meeting application to identify yourself in order to speak, at the time the item is called. Speakers will be acknowledged by the Board/Committee Chair in the order requests are received and granted speaking access to address the Board.

- Members of the Public may test their connection to Zoom Meetings at: <https://zoom.us/test>
- Members of the Public are encouraged to review our overview on joining Valley Water Board Meetings at: <https://www.youtube.com/watch?v=TojJpYCxXm0>

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This agenda has been prepared as required by the applicable laws of the State of California, including but not limited to, Government Code Sections 54950 et. seq. and has

not been prepared with a view to informing an investment decision in any of Valley Water's bonds, notes or other obligations. Any projections, plans or other forward-looking statements included in the information in this agenda are subject to a variety of uncertainties that could cause any actual plans or results to differ materially from any such statement. The information herein is not intended to be used by investors or potential investors in considering the purchase or sale of Valley Water's bonds, notes or other obligations and investors and potential investors should rely only on information filed by Valley Water on the Municipal Securities Rulemaking Board's Electronic Municipal Market Access System for municipal securities disclosures and Valley Water's Investor Relations website, maintained on the World Wide Web at <https://emma.msrb.org/> and <https://www.valleywater.org/how-we-operate/financebudget/investor-relations>, respectively.

Under the Brown Act, members of the public are not required to provide identifying information in order to attend public meetings. Through the link below, the Zoom webinar program requests entry of a name and email address, and Valley Water is unable to modify this requirement. Members of the public not wishing to provide such identifying information are encouraged to enter "Anonymous" or some other reference under name and to enter a fictional email address (e.g., attendee@valleywater.org) in lieu of their actual address. Inputting such values will not impact your ability to access the meeting through Zoom.

Join Zoom Meeting:

<https://valleywater.zoom.us/j/81170871803>

Meeting ID: 811 708 71803

Join by Phone:

1 (669) 900-9128, 81170871803

1. CALL TO ORDER:

1.1. Roll Call.

2. TIME OPEN FOR PUBLIC COMMENT ON ANY ITEM NOT ON THE AGENDA.

Notice to the public: Members of the public who wish to address the Board/Committee on any item not listed on the agenda may do so by filling out a Speaker Card and submitting it to the Clerk or using the "Raise Hand" tool located in the Zoom meeting application to identify yourself to speak. Speakers will be acknowledged by the Board/Committee Chair in the order requests are received and granted speaking access to address the Board/Committee. Speakers' comments should be limited to three minutes or as set by the Chair. The law does not permit Board/Committee action on, or extended discussion of, any item not on the agenda except under special circumstances. If Board/Committee 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/Committee may take action on any item of business appearing on the posted agenda.

3. APPROVAL OF MINUTES:

3.1. Approval of December 6, 2024 Board Policy and Monitoring Committee (BPMC) Minutes.

25-0342

Recommendation: Approve the minutes.
Manager: Candice Kwok-Smith, 408-630-3193
Attachments: [Attachment 1: 12062024 BPMC Minutes](#)
Est. Staff Time: 5 Minutes

4. REGULAR AGENDA:

4.1. Election of Chair and Vice Chair. [25-0343](#)

Recommendation: Elect 2025 Committee Chair and Vice Chair.
Manager: Candice Kwok-Smith, 408-630-3193
Est. Staff Time: 5 Minutes

4.2. Receive Information and Provide Feedback on Safe, Clean Water and Natural Flood Protection Program Proposed Process Improvements. [25-0356](#)

Recommendation: Receive information and provide feedback on staff's proposed conceptual process improvements for the implementation of the Safe, Clean Water and Natural Flood Protection Program.
Manager: Luz Penilla, 408-630-2228
Attachments: [Attachment 1: PowerPoint](#)
Est. Staff Time: 45 Minutes

4.3. Review Proposed Changes to the Standard Rate Schedule for Services and Activities Regulated by the Water Resources Protection Ordinance and for Certain Licenses and Costs Associated with Real Property Transactions adopted in Board Resolution No. 10-86. [25-0346](#)

Recommendation: A. Review and provide input on proposed changes to the Standard Rate Schedule for Services and Activities Regulated by the Water Resources Protection Ordinance and for Certain Licenses and Costs Associated with Real Property Transactions adopted in Board Resolution No. 10-86; and
B. Recommend that the revisions to the Standard Rate Schedule be incorporated into a new Resolution and presented to the full Board for approval.

Manager: Lisa Bankosh, 408-630-2618
Attachments: [Attachment 1: SCVWD Resolution No. 10-86](#)
[Attachment 2: Prop. Changes to Standrd. Rate Schedule](#)
Est. Staff Time: 5 minutes

4.4. Proposed Updates to the Water Resources Protection Ordinance. [25-0354](#)

Recommendation: A. Review Proposed Updates to the Water Resource Protection Ordinance;
B. Provide Direction to Staff Regarding Proposed Changes;

and
C. Recommend Proposed Changes to Board for Adoption

Manager: Brian Hopper 408-630-2765

Attachments: [Attachment 1: Current WRPO](#)
[Attachment 2: Proposed Updated WRPO - Redlined](#)
[Attachment 3: PowerPoint](#)

Est. Staff Time: 40 Minutes

4.5. Discuss Board Policy and Monitoring Committee (BPMC) Work Plan [25-0344](#)
Agenda Items.
Recommendation: Discuss BPMC Work Plan.
Manager: Candice Kwok-Smith, 408-630-3193
Attachments: [Attachment 1: 2025 BPMC Work Plan](#)
Est. Staff Time: 5 Minutes

4.6. Board Policy and Monitoring Committee (BPMC) 2025 Meeting Schedule. [25-0345](#)
Recommendation: Discuss and Approve BPMC 2025 Meeting Schedule.
Manager: Candice Kwok-Smith, 408-630-3193
Attachments: [Attachment 1: BPMC Proposed 2025 Meeting Calendar](#)
Est. Staff Time: 5 Minutes

5. CLERK REVIEW AND CLARIFICATION OF COMMITTEE REQUESTS.

This is an opportunity for the Clerk to review and obtain clarification on any formally moved, seconded, and approved requests and recommendations made by the Committee during the meeting.

6. ADJOURN:

6.1. Adjourn to Regular Meeting at 1:00 p.m. on Monday, May 5, 2025.



Santa Clara Valley Water District

File No.: 25-0342

Agenda Date: 4/14/2025

Item No.: 3.1.

COMMITTEE AGENDA MEMORANDUM Board Policy and Monitoring Committee

Government Code § 84308 Applies: Yes No
(If "YES" Complete Attachment A - Gov. Code § 84308)

SUBJECT:

Approval of December 6, 2024 Board Policy and Monitoring Committee (BPMC) Minutes.

RECOMMENDATION:

Approve the minutes.

SUMMARY:

In accordance with the Ralph M. Brown Act, a summary of Committee discussions, and details of all actions taken by the Board Policy and Planning Committee, during all open and public Committee meetings, is transcribed and submitted for review and approval.

Upon Committee approval, minutes transcripts are finalized and entered into the District's historical records archives and serve as historical records of the Committee's meetings.

ENVIRONMENTAL JUSTICE AND EQUITY IMPACT:

The approval of minutes is not subject to environmental justice and equity impact analysis.

ATTACHMENTS:

Attachment 1: 12062024 BPMC Minutes

UNCLASSIFIED MANAGER:

Candice Kwok-Smith, 408-630-3193

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BOARD POLICY AND MONITORING
COMMITTEE MEETING

DRAFT MINUTES

**SPECIAL MEETING
FRIDAY, DECEMBER 6, 2024
12:00 PM**

(Paragraph numbers coincide with agenda item numbers)

1. CALL TO ORDER:

A special meeting of the Santa Clara Valley Water District (Valley Water) Board Policy and Monitoring Committee (Committee) was called to order by Chairperson Hsueh in the Valley Water Headquarters Building Boardroom at 5700 Almaden Expressway, San Jose, California, and by Zoom teleconference, at 12:00 p.m.

1.1. Roll Call.

Committee members in attendance were: District 5 Director Nai Hsueh, Chairperson presiding, and District 6 Director Tony Estremera, Vice Chairperson. District 1 Director John Varela arrived as noted below.

Staff members in attendance were: Emmanuel Aryee, Erin Baker, Sam Bogale, John Bourgeois, Mera Burton, Rick Callender, Rita Chan, Isela Chaparro, Theresa Chinte, Jen Codianne, Jessica Collins, Meenakshi Ganjoo, Jaeho Hahn, Laurel Hanchett, Chris Hakes, Diahann Hudson (Soleno), Michele King, Candice Kwok-Smith, Anna Lee, Dave Leon, Courtney Letts, Sadie Lum, Becky Manchester, Patrice McElroy, Katie Muller, Carlos Orellana, Max Overland, Peter Park, Luz Penilla, Sasa Seto, Stephanie Simunic, Charlene Sun, Darin Taylor, Tina Yoke, Bhavani Yerrapotu, Lian Xu, Beckie Zisser.

Public in attendance were: Margaret Bruce, Tess Byler and Miyko Harris-Parker, (San Francisquito Creek Joint Powers Authority) Molly Culton (Sierra Club), Arthur Keller, Trish Mulvey, Nikki Nagaya, Linda Win-Ready.

2. TIME OPEN FOR PUBLIC COMMENT ON ANY ITEM NOT ON THE AGENDA:

Chairperson Hsueh declared time open for public comment on any item not on the agenda. There was no one who wished to speak.

3. APPROVAL OF MINUTES:

3.1 Approval of October 31, 2024 Board Policy and Monitoring Committee (BPMC) Minutes.

Recommendation: **Approve the minutes.**

The BPMC considered the minutes of the October 31, 2024 BPMC meeting.

Public Comments: None.

It was moved by Director Estremera, seconded by Chairperson Hsueh, that the minutes be approved as presented.

Chairperson Hsueh moved the agenda to Item No. 4.2.

4. REGULAR AGENDA:

4.2 Review Proposed Changes to Board Governance Policies - Executive Limitations (EL) 6 - Asset Management and Related Board Appointed Officer (BAO) Interpretations.

Recommendation: **A. Review and provide input on the proposed changes to Board Governance Policies, Executive Limitations (EL) 6 – Asset Management and related BAO Interpretations; and B. Recommend that the revisions be presented to the full Board for approval.**

Rita Chan, Assistant Chief Executive Officer, reviewed the information on this item, per the attached Committee Agenda Memo and in the attachment and was available to answer questions.

Director Varela took his seat at 10:11 a.m.

Discussion ensued relating to the following:

- Item 6.4: add a reference relating to reinforcing the importance of maintaining the existing infrastructure in working conditions.
- Item 6.2: emphasize the idea of Valley Water being the leader of scientific water data.
- Items 6.7.1.3 and 6.7.1.4: timing and possible frequency reduction of property acquisition reports less than \$50,000 provided to the Board.
- Item 6.7.1: clarify “Board-approved project”.

Public Comment: None.

On a motion by Vice Chairperson Estremera, seconded by Director Varela, and unanimously approved, the discussed revisions will be incorporated and presented to the full Board for approval.

Chairperson Hsueh returned the agenda to Item 4.1.

4.1 Discuss San Francisquito Creek Flood Protection Project (Project) and Issues Related to Santa Clara Valley Water District's Participation in the San Francisquito Creek Joint Powers Authority (SFCJPA) and Provide Feedback.

Recommendation: **A. Receive an update on Project status and issues related to Santa Clara Valley Water District's participation in the SFCJPA; and B. Discuss and identify opportunities for improvement to help resolve these issues and provide feedback to staff on next steps.**

Erin Baker, Capital Engineering Manager, Design and Construction Unit 6, reviewed the information on this item, per the attached Committee Agenda Memo and in the attachment and was available to answer questions.

Public Comment: Margaret Bruce commented relating to the importance of alignment in project delivery, roles of entities involved, Key Performance Indicators, flood protection areas, and funding, audit and technology challenges faced by the SFCJPA. Tess Byler stated that she is the project manager of the SAFER Bay Project and Reach 2, most of her time is spent on Reach 2, which is the number one priority for SFCJPA. She further stated the SAFER Bay Project is already being disbursed to member cities of Menlo Park and East Palo Alto. Finally, she emphasized the importance of completing Reach 2.

Discussion ensued relating to Valley Water's commitment to the Safe Clean Water Program, how Valley Water's role has changed in the project, the absence of audits at the SFCJPA, the funding and timing issues for the project to move forward, and an election for public financing for the project.

The Committee made a recommendation to the Board to direct staff to initiate discussion with executive staff of the 5 partnering agencies to develop guiding principles for project implementation including construction and ongoing maintenance.

Chairperson Hsueh moved the agenda to Item No. 4.3.

4.3 Fair Chance and Disabled Hiring Program/Veteran's Program Update.

Recommendation: **Receive an update on Valley Water's recruitment programs geared toward expanding our applicant pools, including the Fair Chance and Disabled Hiring Programs as well as our veterans' hiring initiatives.**

Sasa Sato, Acting Program Administrator, Talent Acquisition and Career Pathways, and Laurel Hanchett, Management Analysts II, Talent Acquisition and Career Pathways, reviewed the information on this item, per the attached Committee Agenda Memo and in the attachment and were available to answer questions.

Public Comment: None.

The Committee received the information, provided positive feedback, and took no formal action.

4.4 Discuss Board Policy and Monitoring Committee (BPMC) Work Plan and Agenda Items.

Recommendation: **Discuss BPMC Work Plan.**

The Committee reviewed Work Plan items and timeline.

Public Comments: None.

The Committee received the information and took no formal action.

5. CLERK REVIEW AND CLARIFICATION OF COMMITTEE REQUESTS.

Stephanie Simunic, Assistant Deputy Clerk, Clerk of the Board of Directors, confirmed that Item 4.2, relating to EL-6 (Asset Management) the discussed revisions will be incorporated and presented to the full Board for approval. She further stated that Item 4.1 relating to the SFCJPA, the Committee made a recommendation to the Board to direct staff to initiate discussion with executive staff of the 5 partnering agencies to develop guiding principles for project implementation including construction and ongoing maintenance.

6. ADJOURN:

6.1. Adjourn.

Chairperson Hsueh adjourned the meeting at 11:44 a.m.

Date Approved:

Stephanie Simunic
Assistant Deputy Clerk II



Santa Clara Valley Water District

File No.: 25-0343

Agenda Date: 4/14/2025

Item No.: 4.1.

COMMITTEE AGENDA MEMORANDUM Board Policy and Monitoring Committee

Government Code § 84308 Applies: Yes No
(If "YES" Complete Attachment A - Gov. Code § 84308)

SUBJECT:

Election of Chair and Vice Chair.

RECOMMENDATION:

Elect 2025 Committee Chair and Vice Chair.

SUMMARY:

Per the Board Resolution, the duties of the Chair and Vice-Chair are as follows:

The officers of each Committee shall be a Chair and Vice Chair, both of whom shall be members of that Committee. The Chair and Vice Chair shall be elected by the Committee, each for a term of one year commencing on January 1 and ending on December 31 and for no more than two consecutive terms. The Committee shall elect its officers at the first meeting of the calendar year. All officers shall hold over in their respective offices after their term of office has expired until their successors have been elected and have assumed office.

The Chair shall preside at all meetings of the Committee, and he or she shall perform other such duties as the Committee may prescribe consistent with the purpose of the Committee.

The Vice-Chair shall perform the duties of the Chair in the absence or incapacity of the Chair. In case of the unexpected vacancy of the Chair, the Vice-Chair shall perform such duties as are imposed upon the Chair until such time as a new Chair is elected by the Committee.

Should the office of Chair or Vice-Chair become vacant during the term of such office, the Committee shall elect a successor from its membership at the earliest meeting at which such election would be practicable, and such election shall be for the unexpired term of such office.

ENVIRONMENTAL JUSTICE AND EQUITY IMPACT:

There are no environmental justice or equity impacts associated with this item.

ATTACHMENTS:

None.

UNCLASSIFIED MANAGER:

Candice Kwok-Smith, 408-630-3193



Santa Clara Valley Water District

File No.: 25-0356

Agenda Date: 4/14/2025

Item No.: 4.2.

COMMITTEE AGENDA MEMORANDUM **Board Policy and Monitoring Committee**

Government Code § 84308 Applies: Yes No
(If "YES" Complete Attachment A - Gov. Code § 84308)

SUBJECT:

Receive Information and Provide Feedback on Safe, Clean Water and Natural Flood Protection Program Proposed Process Improvements.

RECOMMENDATION:

Receive information and provide feedback on staff's proposed conceptual process improvements for the implementation of the Safe, Clean Water and Natural Flood Protection Program.

SUMMARY:

In November 2020, Santa Clara County voters approved Measure S, renewing Valley Water's Safe, Clean Water and Natural Flood Protection Program. The Safe, Clean Water Program (SCW Program or Program) addresses the following six community priorities:

Priority A: Ensure a Safe, Reliable Water Supply

Priority B: Reduce Toxins, Hazards, and Contaminants in Our Waterways

Priority C: Protect Our Water Supply and Dams from Earthquakes and Other Natural Disasters

Priority D: Restore Wildlife Habitat and Provide Open Space

Priority E: Provide Flood Protection to Homes, Businesses, Schools, Streets, and Highways

Priority F: Support Public Health and Public Safety for Our Community

Each priority includes specific operational and capital projects with key performance indicators (KPIs) to ensure accountability in meeting the SCW Program priorities. As changes may be required throughout the implementation of the SCW Program, Valley Water developed and followed a change control process, which outlines the differences between adjustments and modifications to the Program and identifies the different processes for implementing both.

As project costs rise due to inflation and regulatory changes, adjustments or modifications to funding allocations are often required. In compliance with the change control process, the Board has in the past held public hearings and approved staff recommendations to reduce or reallocate funding for some projects.

Board Direction

On February 11 and February 25, 2025, the Board held public hearings to consider staff's recommendation to modify the KPI for the San Francisco Bay Shoreline Protection Project E7 (Shoreline Project), to reallocate funds from Economic Impact Areas (EIA) 1-4 to EIA 11 within the Shoreline Project. After receiving comments from municipalities and the general public and extensive Board discussions, the Board did not approve the modifications and decided to hold a public hearing on the matter during next year's Capital Improvement Program (CIP) annual development cycle to align with the development of the CIP FY 2027-31 Five-Year Plan. The Board also assigned the Board Planning and Monitoring Committee (BPMC) to work with staff to review Valley Water's integrated process and develop recommendations to address concerns heard by Valley Water during the public hearing.

Proposed Conceptual Process Improvements

At the recent public hearings Valley Water held to modify planned funding for the Shoreline Project, some jurisdictions and members of the public raised concerns that they were not given sufficient advance notice or opportunities to provide input on Valley Water's proposed funding modifications. In addition, some of the public comments suggest that Valley Water's approach to evaluating funding allocation modifications and decision-making is not well understood. To address these two issues, staff is proposing the following conceptual process revisions when making funding modification recommendations.

Stakeholders Outreach

To address the first issue relating to stakeholder outreach, staff proposes extending the duration of the public hearing (similar to Valley Water's current process for setting groundwater charges) Valley Water is required to hold to consider funding modifications for SCW projects. The revised process would offer multiple opportunities for stakeholders to provide input on Valley Water's proposed funding changes. Staff proposes that Valley Water incorporate the following steps from the groundwater rate setting process into the SCW Program public hearing process, as follows:

- (a) Board study sessions and discussions on relevant issues prior to the public hearing
- (b) Notification of the public hearing
- (c) Open public hearing
- (d) During the public hearing: Engagement with the Board, Board advisory committees, municipalities, the general public, etc., as appropriate, along with staff reporting comments received to the Board
- (e) Closing of the public hearing
- (f) Board deliberations and decision-making

Criteria for Funding Modifications Recommendations

As described above, comments received during prior public hearings suggest that the public is seeking more explanation about Valley Water's rationale and criteria leading to the proposed funding modifications. Increasing the public's understanding of Valley Water's priorities and criteria used to make funding recommendations, as well as our integrated process, would facilitate more meaningful public participation and promote Valley Water's ability to fulfill its obligation to serve Santa Clara County as a whole. Therefore, staff proposes to elaborate on the criteria and processes used for recommended funding modifications at Board meetings and public hearings.

Staff proposes to better connect and utilize the current CIP planning process, long-range financial planning process, and Board strategic planning process to identify potential funding gaps for projects and proposed solutions. The potential funding gaps and proposed solutions would become inputs for the Board study sessions (as described in the revised public hearing process above) before the public hearing. The Board will have opportunities to provide feedback and directions to staff before the public hearing.

Next Steps

Following BPMC review and feedback on the concepts of improvements, staff will work on a detailed timeline reflecting the proposed concepts and return to the committee for review.

ENVIRONMENTAL JUSTICE AND EQUITY IMPACT:

There are no environmental justice and equity impacts associated with receiving information and providing feedback regarding the proposed process improvements for the Safe, Clean Water Program. This action is unlikely to or will not result in human health or environmental effects and is not associated with an equity opportunity.

ATTACHMENTS:

Attachment 1: PowerPoint

UNCLASSIFIED MANAGER:

Luz Penilla, 408-630-2228

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Safe Clean Water and Natural Flood Protection (SCW)

SCW Program Proposed Process Improvements

Presented by: **Luz Penilla, Assistant Officer** – Office of Integrated Water Management
Board Policy and Monitoring Committee, April 14, 2025



BPMC ACTIONS TODAY

3

1. Provide Feedback on Proposed SCW Program Process Improvements

Presentation Outline

4

1. Background
2. Program Feedback
3. Proposed Improvements
 - Stakeholders Outreach
 - Criteria Considered for Recommendations
4. Proposed Next Steps

Background

SCW Program

1. 2020 Voter-Approved Measure
2. Six Program Priorities
3. Project Key Performance Indicators
4. Change Control Process
 - Public & Stakeholder Engagement

Change Control Process

Adjustment

(publicly noticed meeting)

Modification

(formal public hearing)

Not Implement

(formal public hearing)

5

Program Feedback

Concerns Raised During February 2025 Public Hearings

6

1. Stakeholder Outreach

- A. Insufficient notice on funding modifications
- B. Limited public input opportunities

2. Criteria for Funding Modifications Recommendations

- A. Lack of clarity on evaluation processes

Proposed Improvements

Stakeholder Outreach

7

1. Extend duration of SCW Public Hearing

- A. Board Study Sessions & Discussions
- B. Notification of the Public Hearing
- C. Open Public Hearing
 - 1) Engagement with the Board, Advisory Committees, Municipalities, the general public, etc., as appropriate
 - 2) Staff gathers & reports feedback to the Board
- D. Close Public Hearing
- E. Board decision

Proposed Improvements

Criteria for Funding Modifications Recommendations

8

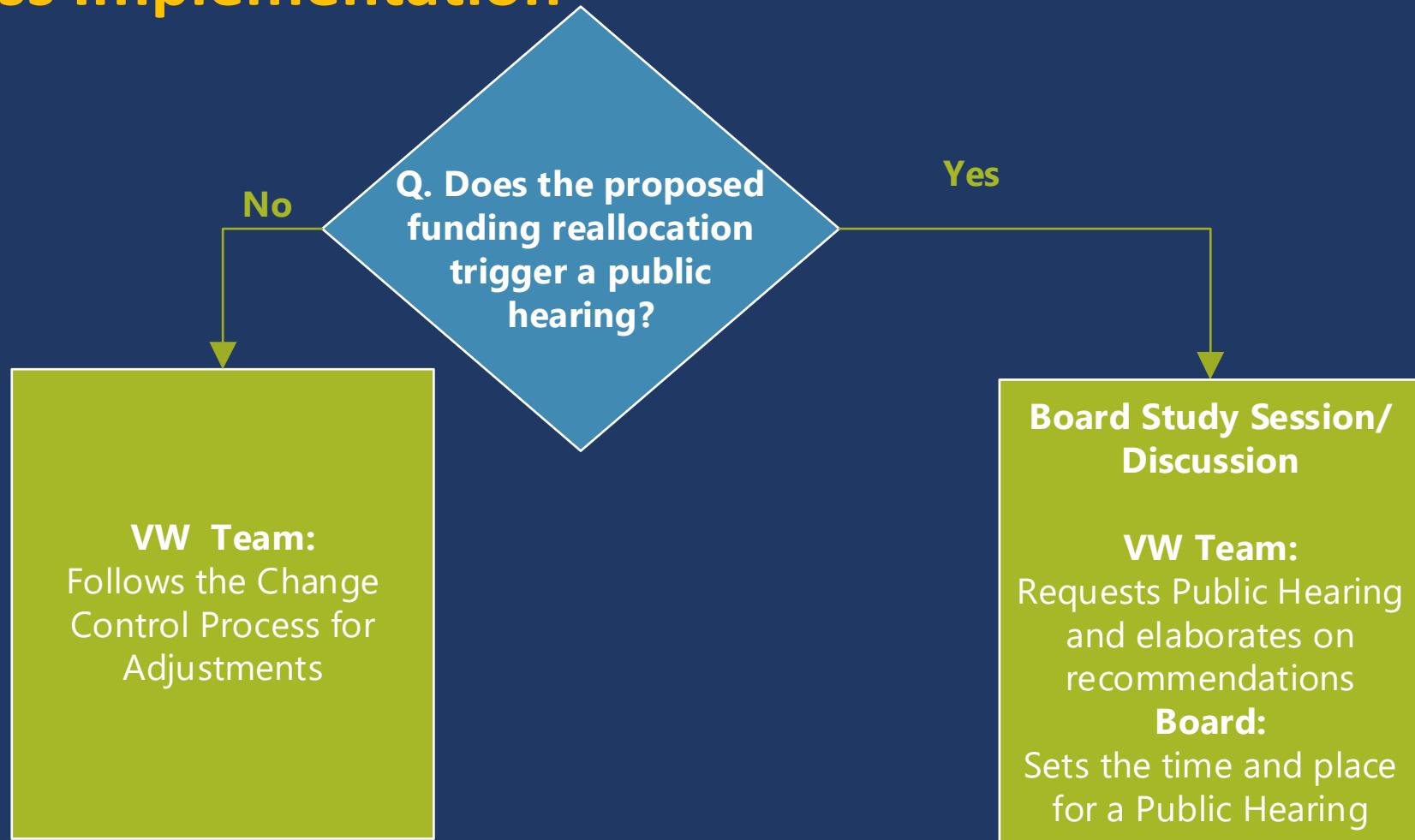
Staff to elaborate on tools and processes for funding modification recommendations

1. Stakeholder Meetings
2. Committee & Board Presentations
3. Public Hearings

Proposed Improvements

Process Implementation

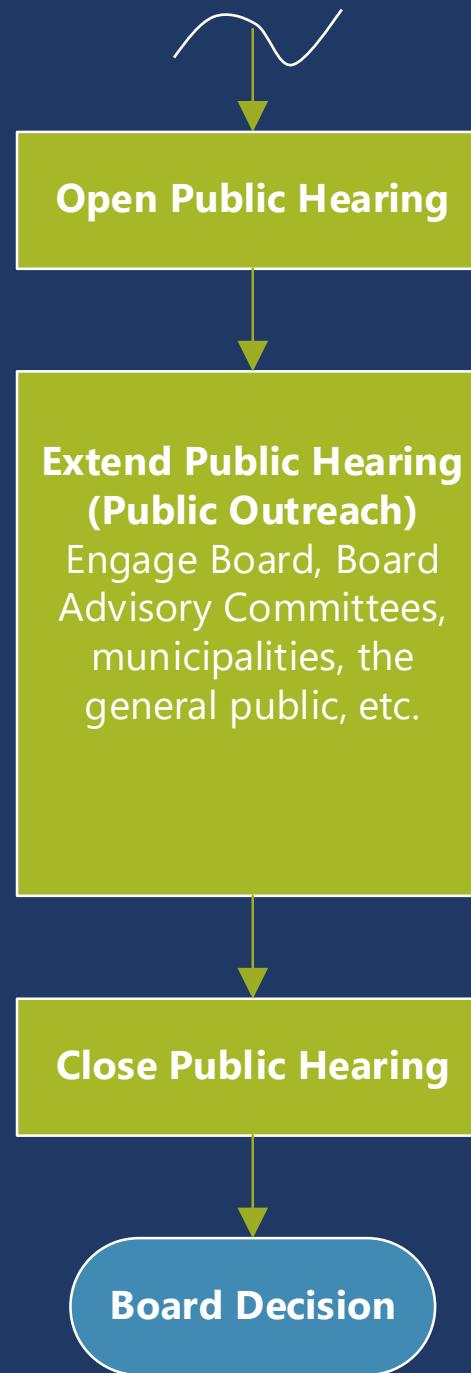
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Proposed Improvements

Process Implementation

10



Proposed Next Steps

11

May

June

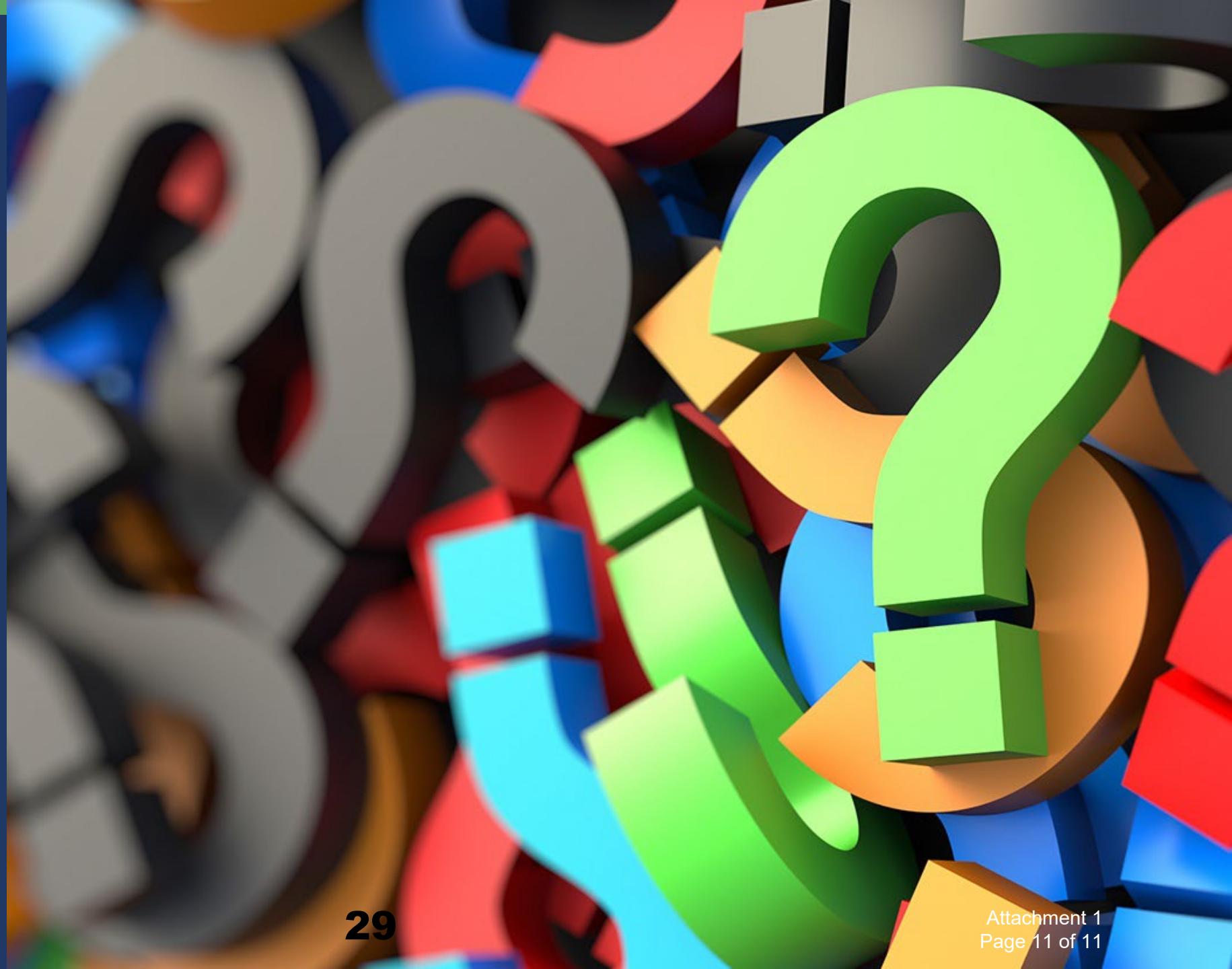
July

August

- BPMC Presentation (incorporates feedback from April)
- Incorporate BPMC (May) Feedback
- Board Presentation
- Incorporate Board Feedback and Finalize Program Enhancements
- Update Change Control Process
- Board Presentation & Approval
- Implement Process Improvements (FY26)

QUESTIONS

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Santa Clara Valley Water District

File No.: 25-0346

Agenda Date: 4/14/2025

Item No.: 4.3.

COMMITTEE AGENDA MEMORANDUM **Board Policy and Monitoring Committee**

Government Code § 84308 Applies: Yes No
(If "YES" Complete Attachment A - Gov. Code § 84308)

SUBJECT:

Review Proposed Changes to the Standard Rate Schedule for Services and Activities Regulated by the Water Resources Protection Ordinance and for Certain Licenses and Costs Associated with Real Property Transactions adopted in Board Resolution No. 10-86.

RECOMMENDATION:

- A. Review and provide input on proposed changes to the Standard Rate Schedule for Services and Activities Regulated by the Water Resources Protection Ordinance and for Certain Licenses and Costs Associated with Real Property Transactions adopted in Board Resolution No. 10-86; and
- B. Recommend that the revisions to the Standard Rate Schedule be incorporated into a new Resolution and presented to the full Board for approval.

SUMMARY:

On November 23, 2010, the Board adopted Resolution No. 10-86 Adopting a Standard Rate Schedule for Services and Activities Regulated by the Water Resources Protection Ordinance and for Certain Licenses and Costs Associated with Real Property Transactions which went into effect January 3, 2011. The Rate Schedule has not been updated since that time. Although labor rates have been updated each year, certain fixed fees that reflected staff costs in 2011 remain the same. The recommended fee update adjusts these fixed fees to reflect current labor rates.

Updating the Rate Schedule will also address recommendations in the May 2021 Board audit "Community Projects Review Unit: Opportunities to Improve Permit Processing." The audit included a recommendation to consider setting a goal for cost recovery from fees charged for permit services and a recommendation to update the current fee schedule. Staff determined that setting a specific goal for cost recovery would not be practical due to allowable exemptions that are supported by the Board, and staff cannot anticipate the annual permit requests that will be exempt or non-exempt from permit fees. However, staff recommends that certain fixed fees and deposits in the fee schedule be updated to reflect increases in administrative labor costs and then regularly update the fee schedule every 5 years. Updating the fee schedule in this manner would increase the cost recovery for those permits that are not exempt from fees.

Other staff recommended updates

- Charge a fixed fee for certain repetitive high-volume permits, including utility crossings, soil borings and temporary vehicular access, for up to two submittals (original and one resubmittal to address comments). This would provide some applicants more certainty on fees, allow staff to recover costs for applications that require more than the standard review time, and reduce administrative costs of tracking time and invoicing.
- Include new exemptions for certain public agency projects that are determined to provide Valley Water a net benefit to Valley Water's mission that exceeds the costs of a permit and for property owners performing minor work in Valley Water easements that encumber their property.
- Clarify license fee costs for temporary construction uses and encroachment remediation licenses. Temporary use and encroachment remediation license fees are proposed to be \$1.50/sq. ft./month (as recommended by Valley Water's Real Estate Services Unit), adjusted annually by 5%, until the next Standard Rate Schedule update. For proposed temporary uses longer than 2 years, an applicant must negotiate a License with our Real Estate Services Unit.
- Replace the refundable key deposit with a requirement that either Permittee's provide their own lock or our construction inspector may provide a temporary lock that does not utilize Valley Water keys. This would address security concerns, require Permittees to coordinate with our construction inspector on access, reduce staff costs to accept and refund key deposits, and reduce staff costs managing the issuance and return of keys.

ENVIRONMENTAL JUSTICE AND EQUITY IMPACT:

The Standard Rate Schedule for Services and Activities Regulated by the Water Resources Protection Ordinance and for Certain Licenses and Costs Associated with Real Property Transactions is not subject to environmental justice analysis.

ATTACHMENTS:

Attachment 1: SCVWD Resolution No. 10-86

Attachment 2: Prop. Changes to Standard Rate Schedule

UNCLASSIFIED MANAGER:

Lisa Bankosh, 408-630-2618

RESOLUTION NO. 10- 86

ADOPTING A STANDARD RATE SCHEDULE FOR SERVICES AND ACTIVITIES
REGULATED BY THE WATER RESOURCES PROTECTION ORDINANCE AND FOR
CERTAIN LICENCES AND COSTS ASSOCIATED WITH REAL PROPERTY TRANSACTIONS

Whereas, the District's Water Resource Protection Ordinance (Ordinance 06-1 as amended by Ordinance 08-1) was adopted by the Board of Directors on October 24, 2006; and

Whereas, Article 2.0 Section 2.3.1 of the Ordinance requires encroachment permit applications issued in accordance therewith to be accompanied by a filing fee in an amount established by the Board; and

Whereas, Article 2.0 Section 2.3.2 of the Ordinance also requires all applications for an environmental assessment to be accompanied by a filing fee; and

Whereas, requests for the transfer of land rights are often made with applications for encroachment permits; and

Whereas, the District has determined the fees specified in the Standard Rate Schedule reflect the reasonable costs (including employee wages, benefits, and supplies) to the District in processing permit applications, real property licenses, and other real property transactions.

Whereas, on November 3, 2010, the voters of the State of California adopted Proposition 26, Supermajority Vote to Pass New Taxes and Fees, and Section 1 (e) of Article XIII C of the California Constitution has been added and provides,

(e) As used in this Article, "tax" means any levy, charge, or exaction of any kind imposed by a local government, except the following:

(3) A charge imposed for the reasonable regulatory costs to a local government for issuing licenses and permits, performing investigations, inspections, and audits, enforcing agricultural marketing orders, and the administrative enforcement and adjudication thereof.

(4) a charge imposed for entrance to or use of local government property, or the purchase, rental or lease of local government property.

NOW, THEREFORE BE IT RESOLVED by the Board of Directors of the Santa Clara Valley Water District that:

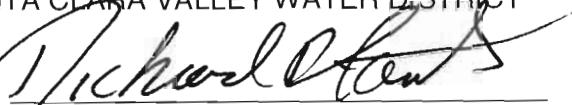
1. The Board finds that the establishment of the fees set forth in the Rate Schedule attached hereto as Exhibit A, reflect the reasonable cost to the District to administer permit and other real property transactions.
2. The establishment of such charges is statutorily exempt from review under the California Environmental Quality Act ("CEQA"), Public Resources Code Section 21080(b)(8).
3. The Board does hereby adopt the Rate Schedule in order to provide the services to process and issue permits administering the transfer of land rights.
4. The Board does hereby find that the fees specified in the Standard Rate Schedule are not taxes under the express provisions of Section 1 (e) (3) and (4) of Article XIII C of the California Constitution.

Adopting a Standard Rate Schedule for Services and Activities Regulated by the Water Resources Protection Ordinance and for Certain Licenses and Costs Associated With Real Property Transactions

5. When the CEO determines that a waiver of fees specified in the Rate Schedule is in the best interests of the District, the CEO may enter into an agreement with other public entities for a mutual waiver of like-kind permit fees.
6. The rate schedule will be effective January 3, 2011.

PASSED AND ADOPTED by the Board of Directors of Santa Clara Valley Water District by the following vote on November 23, 2010:

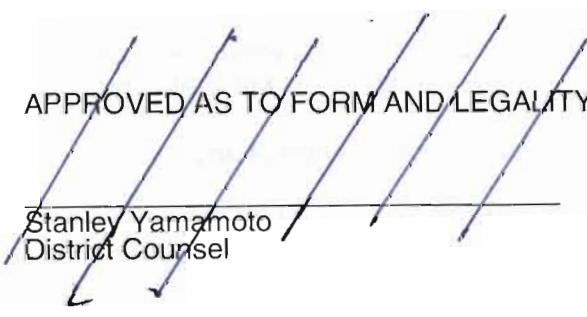
AYES: Directors J. Judge, P. Kwok, T. Estremera, R. Kamei, S. Mann, R. Santos
NOES: Directors None
ABSENT: Directors L. Wilson
ABSTAIN: Directors None

SANTA CLARA VALLEY WATER DISTRICT
By: 
RICHARD P. SANTOS
Chair/Board of Directors

ATTEST: MICHELLE L. KING

Clerk/Board of Directors

APPROVED AS TO FORM AND LEGALITY


Stanley Yamamoto
District Counsel



**Standard Rate Schedule
Effective: January 3, 2011
Exhibit A**

ENCROACHMENT PERMIT FEES

Santa Clara Valley Water District Water Resource Protection Ordinance requires that applications for an encroachment permit be accompanied by a filing fee in an amount established by the Board of Directors. **The filing fee for all encroachment permits shall be \$250.** Permit filing fees are non-refundable. Actual costs are based on billing rates for staff services. Payment may be in the form of cash, check, money order, or cashier's check.

Exceptions:

Fees are not required for:

- Preliminary assessments to determine if a permit is required
- Adopt-a-Creek permits,
- Fence cost sharing permits
- Temporary pedestrian access for environmental studies, sampling, surveying, and organized events
- Activities covered by agreements with other agencies where there is already an exchange of benefits such as public access for recreational purposes allowed through joint use agreements, and

Temporary Vehicular Access:

\$250 Inclusive of filing fee

Insurance requirements must be met and a deposit may be needed. Additional fees will be assessed if follow up inspection is required.

Construction Permits for Temporary Uses:

\$250 Inclusive of filing fee

Temporary uses that involve construction include minor grading, construction support activities, exploratory borings, and monitoring wells. A summary of charges against the permit application in excess of 2 hours will be due and payable at the time of permit issuance. Reimbursement for staff costs for environmental review, inspection and key deposit fees will be assessed and due prior to issuance of a permit. Standard rates for the use of District property are shown below based on size of area used and duration of use. Durations longer than 1 year and use of property greater than 1000 sq ft will be subject to a license at fair market value.

- **Duration up to 3 months - \$600**
- **Durations longer than 3 months up to 1 year - \$1000**
- **Monitoring wells on District property - \$1000 with \$100 annual renewal**

Construction Permits for Permanent Uses:

\$1000 Inclusive of filing fee plus reimbursement of actual review costs

Permanent uses include utilities, telecommunications, outfalls, bridges, and major modifications, including flood protection channel construction or construction affecting



Standard Rate Schedule
Effective: January 3, 2011
Exhibit A

District pipelines. Land rights must be acquired in advance of construction for major encroachments on to District property. A summary of charges against the permit application along with a request for any additional deposit will be made as the deposit is used. All fees are due and must be paid in full at the time of permit issuance. Applicant will be charged for any additional staff time spent on the project during construction.

ENVIRONMENTAL REVIEW:

\$300 initial deposit plus actual costs associated with preparation of documents and County Recorder's filing fee.

INSPECTION:

\$125 per trip: A minimum of one inspection will be charged per permit. The number of trips for major construction is determined on a case-by-case basis.

KEY DEPOSIT:

\$50 (refundable)

PERMIT EXTENSIONS OR NAME CHANGES:

\$100

AMENDMENTS:

\$100 Requests for changes or additions to permit purpose or conditions.

APPEALS:

\$100

LAND RIGHTS TRANSFERS

\$2500 initial deposit plus actual costs Actual costs are based on billing rates for staff services. Estimates for other components are noted below, actual costs may be greater.

Appraisals: **\$2500 to \$10,000**

Hazardous Substance Liability Assessment (HSLA): **\$5000**

Title report, if required: **\$450 to \$700** depending on complexity

Escrow fees: **\$450** depending on amount of transaction.

Title insurance, if required: actual cost

Recording fees: actual cost, see County Recorder's Office fee schedule

LICENSES

- **Telecommunications** - per rate schedule adopted May 25, 2010
- **Durations less than 1 year** - see rates listed under Construction Permits for Temporary Uses
- **Durations longer than 1 year** and use of property greater than 1000 sq ft will be subject to a license at fair market value.

Fee Category	Current Fee	Proposed Fee	Justification/Notes
Permit Filing Fee	\$250	\$500	<p>Required for all permits.</p> <p>Updated to reflect current administrative labor costs to log in/log out permit requests, verify applications are complete, to administer invoices, and process/track payments.</p>
Short-term Vehicular Access	\$250 + engineer review time and inspections	\$1,800	<p>One week maximum</p> <p>No modification to or construction work from VW property</p> <p>Rate includes review of two submittals, CEQA Exemption, and two inspections</p> <p>Any additional costs would be charged as actual costs*.</p>
Long-term Vehicular Access/ Temporary Construction (not including soil borings)	<p>\$250 filing fee plus</p> <ul style="list-style-type: none"> - up to 3 months: \$600 - 3 months to 1 yr: \$1,000 	Actual costs + \$1.50/sqft/month use fee	<p>Includes long-term vehicular access</p> <p>Maximum two years</p> <p>Actual costs include staff labor, documentation, filing fees or other costs incurred by Valley Water</p> <p>License is required for uses longer than two years and greater than 1000sqft</p>
Soil Borings	<p>\$250 filing fee plus</p> <ul style="list-style-type: none"> - up to 3 months: \$600 - 3 months to 1 yr: \$1,000 	\$2300 flat rate permit fee + \$1.50/sqft/month use fee	<p>Permit fee includes review of 2 submittals, CEQA Exemption, and 2 inspections</p> <p>Any additional costs would be charged as actual costs*.</p>
Monitoring Wells/Piezometers	\$1,000 + \$100 annual renewal	\$2000/well/ year permit fee + \$1.50/sqft/month use fee	<p>Permit fee includes review of two submittals, CEQA Exemption, and two inspections</p> <p>Any additional costs would be charged as actual costs*.</p> <p>License is required for uses longer than two years and greater than 1000sqft</p>
Permanent Construction Modification (not including utility)	\$1,000 including filing fee + actual costs	Actual Costs (\$3000 minimum deposit) + any needed Land Rights Transaction costs	<p>Projects proposing permanent modifications to VW right of way or facilities require significant staff time. Higher deposit reduces invoicing labor costs.</p> <p>Land rights transaction costs are additional (if applicant does not have appropriate land rights).</p>

Fee Category	Current Fee	Proposed Fee	Justification/Notes
conduit or pipeline crossings)			
Utility Conduit Crossings	\$1,000 including filing fee + actual costs	\$2300 permit fee + any needed Land Rights Transaction costs	Permit fee includes review of two submittals, CEQA Exemption, and two inspections Any additional costs would be charged as actual costs. Land rights transaction costs are additional (if applicant does not have appropriate land rights).
Water/Sewer/Storm Drain/Gas Pipeline Crossings	\$1,000 including filing fee + actual costs	\$3400 permit fee + any needed Land Rights Transaction costs	Permit fee includes review of two submittals, CEQA Exemption, and two inspections Any additional costs would be charged as actual costs. Land rights transaction costs are additional (if applicant does not have appropriate land rights).
Environmental Review	\$300 deposit plus actual costs	Actual costs	Staff has found it cumbersome to charge and keep track of various deposits, so we recommend charging actual staff labor without an initial deposit.
Inspection	\$125 per trip	\$700 + actual costs	Flat rate is based on 3 hours of inspector admin time \$700 is not required for permits charged a flat rate that includes 2 inspection trips
Permit Extension	\$100	\$225	Estimated 1 hour Engineer review time This fee assumes no additional inspections--add inspection time as needed Any additional costs would be charged as actual costs.

Fee Category	Current Fee	Proposed Fee	Justification/Notes
Permit Amendment	\$100	\$450	Estimated 2 hour Engineer review time--new plan review required This fee assumes no additional inspections--add inspection time as needed Any additional costs would be charged as actual costs.
Appeals	\$100	\$500	Recommend this be the same as the filing fee but allow refund if Board upholds the appeal.
Land Rights Transactions	Actual costs (\$2,500 deposit required)	Actual costs (\$5,000 deposit required)	Actual costs almost always exceed \$5000 so increasing the deposit will save staff labor preparing and tracking invoices. Actual estimated costs include: -Appraisals (~\$5000-\$10000) -Hazardous Substance Liability Assessments (~\$5000) -Title Report (~\$1000) -Escrow Fees (~\$500) -Fair Market Value of the Land, Title Insurance, Recording Fees, Staff Labor (TBD)
License Fees	Fair Market Value	Negotiated by Real Estate Services	\$1.50/sqft/month license fee, Fair Market Value as determined by Real Estate Services Unit, or the Rate Schedule for Telecommunication Equipment (Resolution No. 10-41) For non-telecommunication equipment requests, Real Estate Services Unit staff may determine that the cost for an appraisal of estimated fair market value may exceed the license fee and propose using the temporary use license fee value.
Encroachment Remediation License	None	\$1.50/sqft/month	Encroachment remediation licenses are only allowed for 2 year periods, not to exceed a total of 10 years, and may be terminated at any time

***Temporary Use and License Fees Increases annually by 5%.**

FEE EXEMPTIONS

Fee Category	Current Fee	Proposed Fee	Justification/Notes
1. Preliminary assessments to determine if a permit is required 2. Adopt-a-creek 3. Fence cost share 4. Temporary pedestrian access for: 5. Activities covered by agreements with other agencies where there is already an exchange of benefits such as joint use agreements for recreation or VW grant funded projects	Fee exempt	Fee exempt	No change
Proposed Exemption for underlying fee owners proposing minor work on VW easement	Temporary or Permanent Construction Fees	Fee exempt	For minor modifications (paving, landscaping, etc.) with no potential to impact VW easement rights (does not include work in creeks, major grading, structure installations, etc.). This proposed exemption allows property owners to utilize their property without paying for permits for minor work and VW facilities are not impacted.
Proposed Exemption for Public Agency or NGO Minor and Temporary Activities that have a net benefit to Valley Water's mission	Temporary Construction Fees	Fee exempt	Benefits accrued to Valley Water (as determined by CEO or designee/Permit Authority) are recommended to be exempt. For example, fuel reduction activities, habitat management, which do not result in modification to VW facilities.
Key Deposit	\$50 (refundable)	Omit	The cost to administer this is expensive without any compensation and keys are not returned or are reported "lost." Staff proposes new process of inspector daisy chaining in a temporary lock for each project.



Santa Clara Valley Water District

File No.: 25-0354

Agenda Date: 4/14/2025

Item No.: 4.4.

COMMITTEE AGENDA MEMORANDUM Board Policy and Monitoring Committee

Government Code § 84308 Applies: Yes No
(If "YES" Complete Attachment A - Gov. Code § 84308)

SUBJECT:

Proposed Updates to the Water Resources Protection Ordinance.

RECOMMENDATION:

- A. Review Proposed Updates to the Water Resource Protection Ordinance;
- B. Provide Direction to Staff Regarding Proposed Changes; and
- C. Recommend Proposed Changes to Board for Adoption

SUMMARY:

A. Background

The Santa Clara Valley Water District's Water Resources Protection Ordinance (WRPO) was established to protect Valley Water assets, including streamside lands, riparian corridors and other real property interests. The WRPO dates back to 1959 and was most recently updated in 2006 and 2008.

Like other public agencies with real property interests, Valley Water has experienced occasional encroachments upon its property by neighboring property owners. These encroachments have ranged from a fence being placed a few inches over the property line to significant improvements being built, in part, on Valley Water's property. In prior committee and Board meetings, some of these encroaching neighbors indicated that the encroachments were mistakes or were initially caused by the prior owner(s) of their properties. Some of these encroaching neighbors argued that requiring them to remove the encroachments would be difficult, expensive, or unfair.

Taking the public's concerns into account, in late 2019 the Board approved a program to remediate encroachments which allowed for short-term licensing of Valley Water property as an interim step prior to recovery of the property. Under this program, the Board recognized three categories of encroachments:

Category 1: Potential threat to public/staff health and safety or exposing Valley Water to

potential civil or criminal liability;

Category 2: Within a planned project area for capital improvements, city/county trails, mitigation or stream stewardship or impacting Valley Water's ability to operate and/or maintain an existing facility scheduled to begin in three years or less;

Category 3: Within a planned project area for capital improvements, city/county trails, mitigation or stream stewardship or impacting Valley Water's ability to operate and/or maintain an existing facility scheduled to begin in more than three years.

The framework recognized that Valley Water property deemed no longer necessary for Valley Water's mission may, upon approval of the Board of Directors, be sold at fair market value per terms set forth in the District Act.

Under this framework, properties falling under Categories 1 or 2 should be recovered by Valley Water while properties falling under Category 3 should be recovered after considering a license for an interim period. Under the licensing option, property owners with a Category 3 encroachment would have the option to apply for a license. If they can meet the licensing criteria, a temporary license could be issued for up to five two-year terms (i.e., no more than ten years).

The Board approved the following criteria for these licenses:

- The licensed area must have been encroached upon prior to October 22, 2019 (e.g., no licenses of areas not previously encroached upon);
- The applicant will be responsible for the cost of any property line survey when required by Valley Water for license issuance;
- The proposed license area must be on real property owned by Valley Water in fee title and may not conflict with any pre-existing easements; and
- The licensing must be cost neutral to Valley Water (e.g., fair market value for the property; applicant to pay administrative costs).

As part of this program, the Board also approved an appeal process wherein the denial of a license agreement or a denial of a request to renew a license for two years (within the 10-year limit) are the only decisions subject to appeal. Appeals of staff level decisions could be made to the CEO or his or her designee. Appeals of the CEO level decision could be made to the Board of Directors although the Board has the option to delegate the hearing of any such appeals to a committee of the Board.

B. Proposed Updates to the WRPO

For reference, a copy of the existing WRPO is included as Attachment 1. Proposed Updates to the WRPO are included as a redline in Attachment 2. The proposed updates fall into four categories.

1. Proposed amendments to incorporate the licensing program (new Section 3.6 and updated definitions);

2. Updating the appeals process for encroachment permits to align with the program the Board approved for license appeals (Section 2.6);
3. Recommended updates to the encroachment permit process to avoid ambiguity and increase efficiency; and
4. Non-substantive updates (e.g., changing references from “District” to “Valley Water”)

The significant updates are summarized below:

- a) Section 1.4 Definitions: Definitions were added based upon the addition of the licensing program (e.g., License, License Applicant, Licensee). Definitions were also added for Encroachment and Trespass.
- b) Section 1.6 Notice: Language added to allow for service by email.
- c) Section 2.2.1 Encroachment Permit Required: Language added clarifying that maintenance of a modification may be established through continued assertion of control. With this clarification, even where a successor property owner did not create the original encroachment, violation of the ordinance would be established through their continued assertion of control. Language is also added to clarify that a trespass may arise for use or access in the absence of an Encroachment Permit.
- d) Section 2.2.2 Exceptions: Language added to clarify that no encroachment permit is required where a license has been issued or where the Permit Authority determines that the right to access and use is established by contract or operation of law.
- e) Section 2.3.1 Application and Fees: Language added in (C) to establish that, absent good cause, an application for an encroachment permit will be untimely if submitted after Valley Water has issued a notice of violation or compliance order unless and until the applicant has fully complied with the notice or order. Language was also added in (D) to establish applications for encroachment permits are untimely where submitted after Valley Water has filed a judicial action relating to trespass or a similar cause of action (to recover possession).
- f) Section 2.3.3(A) Findings for Encroachment Permits: Language added to provide the Permit Authority additional guidance when evaluating whether to issue an encroachment permit (e.g., will either support or not be in conflict with Valley Water actions authorized by the District Act; is not the subject of a compliance order previously issued; will not result in the significant removal or damage to native vegetation or habitat. Language was also added to emphasize the Permit Authority's discretion in issuing an encroachment permit and the lack of any right to an encroachment permit.
- g) Section 2.5.1 Cause for Permit Revocation, Modification, and Suspension: Language added in new sections (F)-(H) to provide further guidance.
- h) Section 2.6.2 (B) Hearing and Decision: The appeal process was modified to align with the

appeal process the Board approved for licenses (first level appeals to CEO or designee; second level appeals to Board of Directors or to committee delegated by Board).

- i) Section 3.4 Administrative Remedies: Language added to clarify that Valley Water has the right to pursue a judicial remedy at any point during the administrative process following written notice.
- j) Section 3.4.5 Hearing - Findings and Order: Clarifying language was added regarding the hearing procedure to be followed (e.g., persons subject to compliance order shall have the right to appear in person and be represented by legal counsel; the Permit Authority shall have the burden of proof of proving a violation of the WRPO by a preponderance of the evidence; order of presentation during hearings; timeline for pre-hearing exchange of information).
- k) Section 3.4.6 Administrative Penalties: The maximum penalty of \$1,000 per day was reduced to \$500 to align with District Act Section 9.
- l) Section 3.6 License Program: New language was added setting forth:
 - o The purpose of the License Program (3.6.1);
 - o Who is eligible to apply for a license (3.6.2);
 - o The application and fees for the program (3.6.3);
 - o Valley Water's right to request an environmental review (3.6.4);
 - o The temporary nature of licenses and the limits on renewals (10 years total) (3.6.5);
 - o Considerations for License Approval (3.6.6); and
 - o Appeals of License Decisions (3.6.8).

Staff invites questions and input from the Committee on the proposed updates. If no changes are necessary, the Committee can recommend these updates to the full Board for adoption. If the Board ultimately adopts the updated WRPO, a change to the Governance Policy Executive Limitations should follow by next year to give the CEO authority to approve the license extensions authorized by the WRPO so that they will not need to be approved by the Board.

ENVIRONMENTAL JUSTICE AND EQUITY IMPACT:

There are no Environmental Justice or Equity Impacts associated with this item.

ATTACHMENTS:

Attachment 1: Current WRPO

Attachment 2: Proposed Updated WRPO - Redlined

Attachment 3: PowerPoint

UNCLASSIFIED MANAGER:

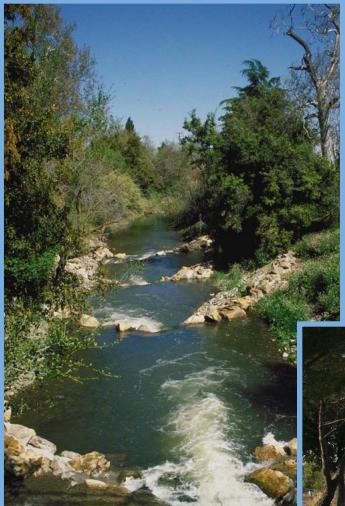
File No.: 25-0354

Agenda Date: 4/14/2025
Item No.: 4.4.

Brian Hopper 408-630-2765

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Water Resources Protection Ordinance



The *mission* of the water district is a healthy, safe, and enhanced quality of living in Santa Clara County through watershed stewardship and comprehensive management of water resources in a practical, cost-effective, and environmentally sensitive manner.



This ordinance protects water resources managed by the Santa Clara Valley Water District by regulating modifications, entry, use or access to water district facilities and/or water district easements.



**Santa Clara Valley
Water District**



5750 Almaden Expwy
San Jose, CA 95118
www.valleywater.org

WHEREAS, the Santa Clara Valley Water District (District), together with representatives of the County of Santa Clara, the cities and towns within the County (Municipal Organizations), the Guadalupe-Coyote Resource Conservation District, the San Francisco Bay Regional Water Quality Control Board, and representatives of community interests including business, environmental, agricultural, development, and property owners, formed the Santa Clara Valley Water Resources Protection Collaborative (Collaborative); and,

WHEREAS, the Collaborative members share the water and watershed resources protection goals of flood management, drinking water quality and adequate quantity, surface and groundwater quality and quantity, and habitat protection enhancement; and,

WHEREAS, the Collaborative developed a set of model guidelines and standards for land use near streams (Guidelines and Standards) to apply to activities on properties near streams in order to protect streams and streamside resources; and,

WHEREAS, each Municipal Organization agreed to take forward to their governing body the Guidelines and Standards in the manner appropriate for each jurisdiction by February 28, 2007; and,

WHEREAS, the District intends to implement the Guidelines and Standards by adopting the District's Water Resources Protection Manual; and,

WHEREAS, in order to accomplish its goals, the Collaborative recognized the importance of delineation of permit responsibility for administering the implementation of the Guidelines and Standards; and,

WHEREAS, the District recognizes that the most effective way to regulate land uses near streams on non-District properties is to incorporate the review and permitting into existing development review conducted by the Municipal Organizations; and,

WHEREAS, as of February 28, 2007, the District will require Permits only for modifications, entry, use, or access of District Facilities and/or District Easements; and,

NOW THEREFORE, THE BOARD OF DIRECTORS OF THE SANTA CLARA VALLEY WATER DISTRICT DOES ORDAIN AS FOLLOWS:

ARTICLE 1.0 GENERAL PROVISIONS

- 1.1 Reference
- 1.2 Purpose and Intent of Ordinance
- 1.3 Interpretations
- 1.4 Definitions
- 1.5 Severability
- 1.6 Notice
- 1.7 Permits Issued Before Effective Date
 - 1.7.1 Permits Involving District Facilities or Easements
 - 1.7.2 Other Permits

ARTICLE 2.0 PROTECTION OF WATER RESOURCES

- 2.1 Purpose of Article
- 2.2 Encroachment Permit Requirements
 - 2.2.1 Encroachment Permit Required
 - 2.2.2 Exceptions
- 2.3 Encroachment Permit Procedures
 - 2.3.1 Application and Fees
 - 2.3.2 Environmental Assessment
 - 2.3.3 Action on Applications
- 2.4 Time Limit for Commencing Use of Encroachment Permit
- 2.5 Permit Revocation, Modification, and Suspension
 - 2.5.1 Cause for Permit Revocation, Modification, and Suspension
 - 2.5.2 Notice of Decision to Revoke, Modify, and Suspend a Permit
- 2.6 Appeals
 - 2.6.1 Right to Appeal; Timing
 - 2.6.2 Hearing and Decision

ARTICLE 3.0 ENFORCEMENT

- 3.1 Purpose
- 3.2 Violation of Ordinance
- 3.3 Criminal and Civil Penalties
- 3.4 Administrative Remedies
 - 3.4.1 Compliance Order
 - 3.4.2 Method of Service
 - 3.4.3 Hearing
 - 3.4.4 Notice of Hearing
 - 3.4.5 Hearing - Findings and Order
 - 3.4.6 Administrative Penalties
 - 3.4.7 Administrative Costs
 - 3.4.8 Lien
- 3.5 Abatement
 - 3.5.1 Notice of Intent to Abate
 - 3.5.2 Findings; Abatement Order
 - 3.5.3 Time for Abatement; Lien

ARTICLE 4.0 DISTRICT WATER RESOURCES PROTECTION MANUAL

- 4.1 Purpose
- 4.2 Adoption of District Water Resources Protection Manual
- 4.3 Procedure to Adopt and Amend District Water Resources Protection Manual
 - 4.3.1 Notice of Public Hearing
 - 4.3.2 Adoption or Amendment to District Water Resources Protection Manual

ARTICLE 5.0 EFFECTIVE DATE, REPEAL OF ORDINANCE 83-2

- 5.1 Effective Date
- 5.2 Repeal of Ordinance 83-2

ARTICLE 1.0 GENERAL PROVISIONS

SECTION 1.1 REFERENCE

This Ordinance should be known and cited as the Water Resources Protection Ordinance of the Santa Clara Valley Water District.

SECTION 1.2 PURPOSE AND INTENT OF ORDINANCE

The intent of this Ordinance is to secure the health, safety, and welfare of the people of the District and to accomplish District purposes described in the District Act, including providing a reliable supply of healthy and clean Water; reducing the potential for flood damages; protecting and when appropriate enhancing and restoring natural resources of streams and watersheds; prohibiting injury to District property and projects; and providing additional open spaces, trails, and parks along creeks and in the watersheds when reasonable and appropriate.

SECTION 1.3 INTERPRETATIONS

The Chief Executive Officer (CEO) or designee is entitled to decide any question involving the interpretation or application of any provision of this Ordinance and/or the District Water Resources Protection Manual, except as may otherwise be provided herein. Any interpretation and application of the provisions of the Ordinance and/or the District Water Resources Protection Manual must be consistent with the purpose set forth in Section 1.2 and will be in writing. Any external party requesting an interpretation under this Section must make the request in writing to the CEO.

SECTION 1.4 DEFINITIONS

This section defines terms that have meanings specific to the interpretation of this Ordinance.

Board: The Board of Directors of the Santa Clara Valley Water District.

CEO: Chief Executive Officer of the Santa Clara Valley Water District or his/her designee.

Clerk of the Board: The Clerk of the Board of Directors of the Santa Clara Valley Water District or his/her designee.

Development: The placement or erection of any solid material or structure; grading, removing, dredging, mining, or extraction of any materials; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or installation of vegetation.

District: Santa Clara Valley Water District.

District Act: State law creating the District and enabling its powers and operation (Calif. Water Code Appendix, Ch. 60)

District Easements: Lands not owned by the District in fee title, over which the District has been granted an easement for purposes specified in the easement document.

District Facility: Lands, structures, or improvements and appurtenances owned, controlled, operated or maintained by the District for water conservation, water supply, flood protection, storm water management and treatment, environmental protection, environmental enhancement, environmental mitigation or other lawful District purpose. Examples of District facilities are groundwater recharge (percolation) ponds, reservoirs, sediment control basins, pipelines, treatment plants, pumping stations, and injection wells. Lands owned by the District in fee are considered District Facilities.

Encroachment Permit: Written permission granted by the District pursuant to this Ordinance allowing a Permittee to enter, use, temporarily access, or undertake any modification on District Facilities.

Modification: Any alteration to District Facilities, including but not limited to the activities defined under development.

Municipal Organization: The County of Santa Clara or a city or town within Santa Clara County.

Permit Authority: District employee designated by the CEO to make decisions regarding the issuance of encroachment permits.

Permittee: A Person or entity to whom an Encroachment Permit under this Ordinance has been issued.

Person: Any individual, firm, corporation, club, or governmental agency, and all associations or combinations of persons whenever acting for themselves or by any agent or employee.

Stream: A body of water that flows at least periodically or intermittently through a bed or channel having banks. The body of water may include a surface or subsurface flow that supports or has supported riparian vegetation, fish and/or aquatic life.

District Water Resources Protection

Manual: A set of requirements and supporting design guidelines including minimum standards to protect water, watershed resources, and District Facilities, modified and adopted according to Article 4 of this Ordinance.

Structure: Anything made or constructed and having its foundation or support upon or within the ground.

SECTION 1.5 SEVERABILITY

If any section or provision of this Ordinance is found to be unconstitutional or invalid, that finding will not affect the validity of the Ordinance as a whole nor any part thereof, other than the part found to be unconstitutional or invalid.

SECTION 1.6 NOTICE

Whenever a notice is required to be given under this Ordinance, unless different provisions herein are otherwise specifically made, such notice may be given either by personal delivery thereof to the Person to be notified or by deposit in the United States Mail, in a sealed envelope postage prepaid, addressed to such Person to be notified at his last-known business or residence address as the same appears in the public records or other records pertaining to the matter to which such notice is directed. Service by mail will be deemed to have been completed at the time of deposit in the post office.

SECTION 1.7 PERMITS ISSUED BEFORE EFFECTIVE DATE

1.7.1 Permits Involving District Facilities or Easements

Any permit for work on and/or use of District Facilities or Easements issued by the District prior to the effective date of this Ordinance, under District Ordinance 83-2 or a predecessor

ordinance, is subject to the provisions of Sections 2.5 and 2.6 and Article 3 of this Ordinance.

1.7.2 Other Permits

As to any permit issued by the District prior to the effective date of this Ordinance under District Ordinance 83-2 or a predecessor ordinance, other than those described in Section 1.7.1, the District will inspect work not yet complete on the effective date to ensure compliance with permit conditions.

ARTICLE 2.0 PROTECTION OF WATER RESOURCES

SECTION 2.1 PURPOSE OF ARTICLE

This Article establishes the requirement to obtain an Encroachment Permit for Modifications on District Facilities and/or District Easements. It also establishes a procedure for the administration and issuance of such Encroachment Permits.

SECTION 2.2 ENCROACHMENT PERMIT REQUIREMENTS

2.2.1 Encroachment Permit Required

No Person will do or cause to be done any Modification on or within a District Facility or District Easement, or use any such Facility or District Easement, unless an Encroachment Permit for the Modification and/or use has been issued and is in effect. An Encroachment Permit is not transferable unless its conditions provide otherwise.

2.2.2 Exceptions

- A.** An Encroachment Permit is not required for access onto District Facilities or District Easements that have been opened to and developed for public recreational purposes, or when the Permit Authority determines that the access and requirements applicable thereto have already been established by contract or by operation of law.
- B.** Where the District holds a nonexclusive easement, the owner of the underlying fee is not required to obtain an Encroachment Permit for activities not in conflict with the District easement unless the easement requires District approval for the activity or work.

SECTION 2.3 ENCROACHMENT PERMIT PROCEDURES

This Section establishes the process for obtaining an Encroachment Permit from the District.

2.3.1 Application and Fees

A. Requests for an Encroachment Permit must be filed with the Permit Authority on the application form established and maintained by that Permit Authority. All applications must be accompanied by a filing fee in an amount established by the Board.

B. An application for an Encroachment Permit must be signed by a duly authorized agent of the party proposing the Modification and/or use for which the Encroachment Permit is required.

2.3.2 Environmental Assessment

Issuance of an Encroachment Permit is subject to the requirements of the California Environmental Quality Act (CEQA).

A. For any Encroachment Permit associated with a project that will be approved or carried out by a Municipal Organization or other public entity as lead agency, the lead agency's environmental assessment for the project must include those activities covered by the Encroachment Permit. It is the responsibility of the applicant to assure that this environmental assessment is completed and provided to the District.

B. For any Encroachment Permit which is not associated with a project for which a Municipal Organization or other public entity is the lead agency, the District will be the lead agency.

C. All applications for an environmental assessment must be accompanied by a filing fee as established by the Board.

D. The environmental assessment may be undertaken by or under contract to the District and be at the applicant's expense. Once a project has been found to require an environmental assessment, no decision on an Encroachment Permit request will be made until the assessment

has been certified as complete as required by state law. The Permit Authority will take all actions required by CEQA on behalf of the District, unless otherwise provided by law.

2.3.3 Action on Applications

The Permit Authority will take all actions on the application except as provided in Section 2.6.

A. Findings for Encroachment Permits

An Encroachment Permit may be issued if the District finds, based on substantial evidence, that the proposed Modification:

1. Will not impede, restrict, retard, pollute, change the direction of the flow of water, catch or collect debris carried by such water;
2. Is located where natural flow of the storm and flood waters will not damage or carry any Structure or any part thereof downstream;
3. Will not damage, weaken, erode, cause siltation or reduce the effectiveness of the banks to withhold storm and flood waters;
4. Will be constructed to resist erosion and siltation and entry of pollutants and contaminants;
5. Will not interfere with maintenance responsibilities or Structures placed or erected for flood protection, water conservation or distribution;
6. Conforms to the requirements of the District Water Resources Protection Manual; and
7. Meets the purpose and intent of the District Act.

8. Issuance of the Encroachment Permit is in the public interest; and

9. Issuance of the Encroachment Permit will not result in conflict with or detriment to existing or planned District Facilities.

B. Conditions of Approval An Encroachment Permit will be issued subject to conditions when the conditions are required in order for the District to make the required findings for issuance. These conditions will be commensurate with the nature and magnitude of the request and may include a time limit on the life of the Encroachment Permit.

C. Notice of Action Upon the approval, conditional approval or denial of an application, the District will prepare and deliver to the applicant a written notice of the action which will be served as provided in Section 1.6 of this Ordinance.

If the application is approved, the notice will include any conditions applicable to the Encroachment Permit and a requirement that the applicant must provide a written acceptance of the Encroachment Permit and its conditions. The notice will also include a description of the appeal process described in Section 2.6.

D. Preemption Provision If an Encroachment Permit would conflict with or be preempted by state law, state law will govern but only with respect to the specific issues of conflict.

E. Applicant Acceptance of Conditions Within 30 days from the date the Notice of representative as described in Section 2.3.1 must provide the District in writing an acceptance of the conditions of the Encroachment Permit. The date the District receives the written acceptance is the effective date of the Encroachment Permit.

SECTION 2.4 TIME LIMIT FOR COMMENCING USE OF ENCROACHMENT PERMIT

Unless specific language in an Encroachment Permit otherwise provides, the Encroachment Permit expires 730 calendar days after its effective date if the permitted Modification or use has not commenced by that time. The Permit Authority may extend this time period once upon written request of the Permittee demonstrating good cause therefor.

SECTION 2.5 PERMIT REVOCATION, MODIFICATION, AND SUSPENSION

2.5.1 Cause for Permit Revocation, Modification, and Suspension

A Permit may be revoked, modified, or suspended by the District if one or more of the following is found to have occurred:

A. The Permit was issued in conflict with the provisions of any District regulation or federal and/or state law or as a result of incorrect information or the fraud or willful misrepresentation by the applicant or applicant's agent.

B. The actions undertaken pursuant to the Permit have created a discharge or threatened

discharge which presents a hazard or threat of hazard to the public health or safety or the natural environment which was not anticipated or known at the time the Permit was issued.

- C.** The structures or improvements covered by the Permit create a dangerous condition to life or property.
- D.** The Modification is not being carried out in accordance with the approved plans and/or in accordance with the specific terms of the permit.
- E.** It is necessary to remove or relocate the permitted use or improvements in order to accommodate District uses or future improvements.

2.5.2 Notice of Decision to Revoke, Modify, and Suspend a Permit

A. The Permit Authority will notify the Permittee in writing of the Permit Authority's decision to revoke, modify or suspend a permit. The notice will be served as provided in Section 1.6.

B. The notice of decision will state the grounds for revocation, modification or suspension of the permit and will notify the Permittee of the appeal process described in Section 2.6.

SECTION 2.6 APPEALS

2.6.1 Right to Appeal; Timing

An applicant or Permittee may appeal a decision made by the Permit Authority under Sections 2.3.3 and 2.5.2 of this Article. An appeal must be in writing and filed with the Clerk of the Board no later than ten (10) days following issuance of the decision from which the appeal is taken.

2.6.2 Hearing and Decision

Upon filing of a timely appeal, the Clerk of the board will, within ten (10) calendar days from the receipt of the request, set a time and place for the hearing. The hearing will be conducted by the Board of Directors and will be scheduled within 45 days of receipt of the hearing request. Upon conclusion of the hearing, the Board may continue the hearing upon the request of the appellant

or for the convenience of the Board. Upon conclusion of the hearing, the Board will issue a tentative decision on the appeal. A resolution setting forth the Board's decision and the basis therefore will be placed on the Board's agenda within 30 days. The Board's decision as set forth in the resolution is final. The Board may, by resolution, delegate its authority to hear and decide appeals to a committee of the Board or to the CEO.

ARTICLE 3.0 ENFORCEMENT

SECTION 3.1 PURPOSE

This Article defines the situations considered to be violations of this Ordinance and describes the District's process for addressing such violations.

SECTION 3.2 VIOLATION OF ORDINANCE

The following are unlawful and constitute violations of this Ordinance:

- A.** Failure to comply with Sections 2.2.1 hereof.
- B.** Failure of a Permittee to comply with any condition of an Encroachment Permit.

SECTION 3.3 CRIMINAL AND CIVIL PENALTIES

Any violation of this Ordinance as described in Section 3.2 is punishable as a misdemeanor. The prosecutor may in his or her discretion specify that the offense is an infraction. Each day of a continuing violation constitutes a separate and distinct violation. Any such violation or threatened violation may also be enjoined by civil action.

SECTION 3.4 ADMINISTRATIVE REMEDIES

In addition to any other remedy, the District may pursue administrative remedies in accordance with this Section. Use of this Section is at the sole discretion of the District.

3.4.1 Compliance Order

Whenever the Permit Authority determines that a violation of any provision of this Ordinance is occurring or exists, the Permit

Authority may issue a written compliance order to any Person responsible for the violation. The order must contain the following information: the date and location of the violation; the Section of this Ordinance violated and a description of the violation; the actions required to correct the violation; the time period after which administrative penalties will begin to accrue if compliance with the order has not been achieved; and either a copy of this Section or an explanation of the consequences of noncompliance with this Section and a description of the hearing procedure and appeal process.

3.4.2 Method of Service

The compliance order will be served as provided in Section 1.6. Where real property is involved, written notice will be mailed to the property owner at the address shown on the last equalized county assessment roll.

3.4.3 Hearing

If the Permit Authority determines that all violations have been corrected within the time specified in the compliance order, no further action will be taken under this Section 3.4. If full compliance is not achieved within the time specified, a hearing will be scheduled before the CEO.

3.4.4 Notice of Hearing

Notice of hearing on the compliance order will be given as provided in Section 1.6. The hearing will be set for a date not less than 15 days nor more than 60 days from the date of the notice hearing unless the Permit Authority determines the matter is urgent or that good cause exists for an extension of time. The hearing is intended to provide the full opportunity for any Person subject to a compliance order to object to the determination that a violation has occurred and/or that the violation has continued to exist. The failure of any Person subject to a compliance order to appear at the hearing will constitute a failure to exhaust administrative remedies.

3.4.5 Hearing - Findings and Order

A. At the hearing, the CEO will consider any written or oral evidence consistent with rule that may be established from time to time for the conduct of such hearings. Within a reasonable time following the conclusion of the hearing, the CEO will make findings and issue a determination regarding the existence of the violation and the failure of the violator or owner to take corrective

action within the required time period. The determination will include written findings and be supported by evidence received at the hearing.

B. If the CEO determines that a violation occurred which was not corrected within the time period specified in the compliance order, the CEO will issue an administrative order that imposes any or all of the following:

1. An order to correct, including a schedule for correction.
2. Administrative penalties as provided in Section 3.4.6.
3. Administrative costs as provided in Section 3.4.7.

3.4.6 Administrative Penalties

The CEO may impose administrative penalties for the violation of any provision of this Ordinance in an amount not to exceed a maximum of \$1,000 per day for each ongoing violation, except that the total administrative penalty will not exceed \$100,000 for any related series of violations. In determining the amount of the administrative penalty, the CEO may consider any or all of the following factors: duration and seriousness of the violation; number of violations by the same violator; good faith efforts to come into compliance; economic impact of the penalty on the violator, and impact of the violation on the community and environment. The CEO may suspend the imposition of applicable penalties for any period of time during which the violator has applied for necessary permits and the Encroachment Permit applications are actively pending. If the violation is not corrected as specified in the administrative order, the administrative penalties will continue to accrue as specified in the order subject to the maximum amount described in this Section.

3.4.7 Administrative Costs

The CEO may assess administrative costs against the violator upon a finding that a violation has occurred and compliance has not been achieved within the time specified in the compliance order. The administrative costs may include any and all costs incurred by the District in connection with the matter which is the subject of proceedings under Section 3.4, including but not limited to costs of investigation, preparation for the hearing, and conduct of the hearing.

3.4.8 Lien

Failure to pay the assessed administrative penalties and administrative costs specified in the administrative order of the CEO may be enforced as a personal obligation of the violator and/or if the violation is in connection with real property, a lien upon the property. The lien will have no force and effect until recorded with the County Recorder. Recordation will not occur until 90 days after the administrative order, to provide an opportunity for payment and/or judicial review of the decision. Once recorded, the lien will remain in effect until all of the administrative penalties are paid in full.

3.5 ABATEMENT

In addition to any other remedy, the District may pursue abatement under this Section 3.5 when any violation of this Ordinance constitutes a serious threat to the public health, safety, or welfare.

3.5.1 Notice of Intent to Abate

The District may include in any compliance order and notice issued under Section 3.4 notice of the District's intent to abate the violation if not corrected within the time specified in the compliance order.

3.5.2 Findings; Abatement Order

If following the hearing held under Section 3.4 the CEO finds, in addition to the findings described in Section 3.4.5B, that the continuing violation constitutes a serious threat to the public health, safety, or welfare, then the CEO may include in the administrative order notification that unless the violation is corrected within the time specified in that order, the District will abate the violation and that the abatement costs will be charged against the property owner. In addition to the notice as provided in Section 1.6, this order will be posted in a conspicuous place on the subject property.

3.5.3 Time for Abatement; Lien

Abatement will not occur until at least 90 days after issuance of the abatement order to provide time for compliance and/or judicial review of the abatement order. Costs incurred by the District for the

abatement action may be enforced as a personal obligation of the property owner and as a lien against the property, as provided in Section 3.4.8.

Abatement will not occur until at least 90 days after issuance of the abatement order to provide time for compliance and/or judicial review of the abatement order. Costs incurred by the District for the abatement action may be enforced as a personal obligation of the property owner and as a lien against the property, as provided in Section 3.4.8.

ARTICLE 4.0 DISTRICT WATER RESOURCES PROTECTION MANUAL

SECTION 4.1 PURPOSE

The purpose of this Article is to set forth the process used by the District to adopt or amend the District Water Resources Protection Manual and to describe its uses.

SECTION 4.2 ADOPTION OF DISTRICT WATER RESOURCES PROTECTION MANUAL

The Board will adopt, and may from time to time amend, a District Water Resources Protection Manual to be used as a basis for evaluation of applications for Encroachment Permits, for establishment of Encroachment Permit conditions in order to make the required findings for issuance of such Encroachment Permits. The District Water Resources Protection Manual may incorporate by reference documents promulgated by the CEO.

SECTION 4.3 PROCEDURE TO ADOPT AND AMEND DISTRICT WATER RESOURCES PROTECTION MANUAL

The Board will schedule and hold a public hearing to consider adoption of District Water Resources Protection Manual and any subsequent amendments.

4.3.1 Notice of Public Hearing

A notice of the hearing will be provided at least ten (10) days prior to the scheduled hearing. The notice will include the date, time and place of the hearing, and a general explanation of proposed content

of the District Water Resources Protection Manual or any amendments thereto. Notice will be given by first class mail to Municipal Organizations within the county and to any parties who have requested such notice, by posting the notice at the District headquarters, and by publication once in a newspaper of general circulation. The District may, in its discretion, provide additional notice beyond that specified in this Section. Failure to comply with the notice requirements in this Section, in whole or in part, will not invalidate any action taken on the matter.

4.3.2 Adoption or Amendment to District Water Resources Protection Manual

Upon the conclusion of the public hearing, the Board may adopt or amend the District Water Resources Protection Manual. Any such action will be taken by resolution.

ARTICLE 5.0 EFFECTIVE DATE, REPEAL OF ORDINANCE 83-2

SECTION 5.1 EFFECTIVE DATE

This Ordinance is effective on February 28, 2007.

SECTION 5.2 REPEAL OF ORDINANCE 83-2

On the effective date of this Ordinance, Ordinance 83-2 is repealed. Permits given and rights acquired under Ordinance 83-2 or its predecessors will remain effective, subject to the terms of this Ordinance.

PASSED AND ADOPTED BY THE BOARD OF DIRECTORS OF THE SANTA CLARA VALLEY WATER DISTRICT ON

OCTOBER 24, 2006, by the following vote:

AYES: Directors R. Kamei, T. Estremera, S. Sanchez, R. Santos, G. Zlotnick, L. Wilson

NOES: None

ABSENT: None

ABSTAIN: None

SANTA CLARA VALLEY WATER DISTRICT

By: Larry Wilson, Chair/Board of Directors

Attest: Lauren Keller, Clerk of the Board

Approved as to form and legality:

Debra Cauble, District Counsel

Contact Us

For questions about this ordinance or on the water district's permit process, please contact the **Community Projects Review Unit** at **(408) 265-2607, ext. 2253**



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ARTICLE 5.0 EFFECTIVE DATE, REPEAL OF ~~PRIOR~~ ORDINANCE-83-2

5.1 Effective Date
5.2 Repeal of Ordinance 06-1, as amended by Ordinance 08-1-83-2

ARTICLE 1.0 GENERAL PROVISIONS

SECTION 1.1 REFERENCE

This Ordinance should be known and cited as the Water Resources Protection Ordinance of the Santa Clara Valley Water District.

SECTION 1.2 PURPOSE AND INTENT OF ORDINANCE

The intent of this Ordinance is to secure the health, safety, and welfare of the people of the Santa Clara Valley Water District (Valley Water) and to accomplish DistrictValley Water purposes described in the District Act, including providing a reliable supply of healthy and clean Waterwater; reducing the potential for flood damages; protecting and when appropriate enhancing and restoring natural resources of streams and watersheds; prohibiting trespass and injury to District property and projectsValley Water lands, structures, improvements, and appurtenances; and providing for additional open spaces, trails, and parks along creeks and in the watersheds when reasonable and appropriate.

SECTION 1.3 INTERPRETATIONS

The Chief Executive Officer (CEO) or designee is entitled to decide any question involving the interpretation or application of any provision of this Ordinance and/or the District Water Resources Protection Manual, except as may otherwise be provided herein. Any interpretation and application of the provisions of the Ordinance and/or the District Water Resources Protection Manual must be consistent with the purpose set forth in Section 1.2 and will be in writing. Any external party requesting an interpretation under this Section must make the request in writing to the CEO.

SECTION 1.4 DEFINITIONS

This section defines terms that have meanings specific to the interpretation of this Ordinance.

Applicant: The party proposing the Modification and/or use for which the Encroachment Permit is required and to whom an Encroachment Permit may be issued.

Board: The Board of Directors of the Santa Clara Valley Water District.

CEO: Chief Executive Officer of the Santa Clara Valley Water District or his/her designee.

Clerk of the Board: The Clerk of the Board of Directors of the Santa Clara Valley Water District or his/her designee.

Development: The placement or erection of any solid material or structure; grading, removing, dredging, mining, or extraction of any materials; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or installation of vegetation.

District: Santa Clara Valley Water District.

District Act: State law creating the DistrictValley Water and enabling its powers and operation (Calif. Water Code Appendix, Ch. 60).

District Easements: Lands not owned by the District in fee title, over which the District has been granted an easement for purposes specified in the easement document.

District Facility: Lands, structures, or improvements and appurtenances owned, controlled, operated or maintained by the District for water conservation, water supply, flood protection, storm water management and treatment, environmental protection, environmental enhancement, environmental mitigation or other lawful District purpose. Examples of District facilities are groundwater recharge (percolation) ponds, reservoirs, sediment control basins, pipelines, treatment plants, pumping stations, and injection wells. Lands owned by the District in fee are considered District Facilities.

Encroachment: Unauthorized Modification or use of a Valley Water Facility without an Encroachment Permit or License.

Encroachment Permit: Written permission granted by ~~the District~~Valley Water pursuant to this Ordinance allowing a Permittee to enter, use, temporarily access, or undertake any modification on ~~District Facilities~~Valley Water Facilities. This may also be a construction permit (together or separately) issued where rights of possession or to enter have been established by other means.

License: Personal, revocable, non-possessory, and non-assignable written permission from Valley Water to use Valley Water Facilities.

License Applicant: Any Person applying for a License.

License Area: Any portion of a Valley Water Facility subject to a License issued by Valley Water. Valley Water Easements are not eligible for Licenses.

Licensee: Any Person who has been issued a License by Valley Water in accordance with this Ordinance.

Modification: Any alteration to ~~District~~Valley Water Facilities, including but not limited to the activities defined under ~~development~~Development.

Municipal Organization: The County of Santa Clara or a city or town within the County of Santa Clara County.

Permit Authority: ~~District~~Valley Water employee designated by the CEO to make decisions regarding the issuance of ~~encroachment permits~~Encroachment Permits and Licenses.

Permittee: A Person or entity to whom an Encroachment Permit under this Ordinance has been issued.

Person: Any individual, firm, corporation, club, or governmental agency, and all associations or combinations of persons whenever acting for themselves or by any agent or employee.

Predecessor Ordinance: Valley Water Ordinances 59-1, 74-1, 83-2, 06-1, and 08-1.

Stream: A body of water that flows at least periodically or intermittently through a bed or channel having banks. The body of water may include a surface or subsurface flow that supports or has supported riparian vegetation, fish and/or aquatic life.

Structure: Anything made or constructed and having its foundation or support upon or within the ground.

Trespass: Unauthorized access onto or use of Valley Water Facilities by Persons, including by the placement or maintenance of personal property or fixtures. Trespass does not include access or entry allowed under Section 2.2.2A or entry onto a nonexclusive easement.

Valley Water: The Santa Clara Valley Water District.

Valley Water Easements: Lands not owned by Valley Water in fee title, over which Valley Water has been granted an easement for purposes specified in the easement document.

Valley Water Facility/Facilities: Lands, structures, waters, or improvements and appurtenances owned, controlled, operated or maintained by Valley Water for water conservation, water supply, flood protection, storm water management and treatment, stream stewardship, environmental protection, environmental enhancement, environmental mitigation or other lawful Valley Water purpose. Examples of Valley Water Facilities include groundwater recharge (percolation) ponds, reservoirs, sediment control basins, pipelines, treatment plants, pumping stations, and injection wells. Valley Water Easements and lands owned by Valley Water in fee or maintained by Valley Water pursuant to agreement are considered Valley Water Facilities.

Water Resources Protection Manual: A set of requirements and supporting design guidelines including minimum standards to protect water, watershed resources, and DistrictValley Water Facilities, modified and adopted or amended according to Article 4 of this Ordinance.

Structure: Anything made or constructed and having its foundation or support upon or within the ground.

SECTION 1.5 SEVERABILITY

If any section or provision of this Ordinance is found to be unconstitutional or invalid, that finding will not affect the validity of the Ordinance as a whole nor any part thereof, other than the part found to be unconstitutional or invalid.

SECTION 1.6 NOTICE

Whenever a notice is required to be given under this Ordinance, unless different provisions herein are otherwise specifically made, such notice may be givenserved either by personal delivery thereof to the Person to be notified or by deposit in the United States Mail, in a sealed envelope postage prepaid, addressed to such Person to be notified at his last-known business or residence address as the same appears in the public records or other records pertaining to the matter to which such notice is directed. Service by mail will be deemed to have been completed at the time of deposit in the post office. Notice of Actions issued in accordance with Section 2.3.3(C) may also be served by e-mail to an e-mail address provided by an Applicant or a duly authorized agent of the Applicant on their Encroachment Permit application submitted in accordance with Section 2.3.1.

SECTION 1.7 PERMITS ISSUED BEFORE EFFECTIVE DATE

1.7.1 Permits Involving DistrictValley Water Facilities or Easements

Any permit for work on and/or use of DistrictValley Water Facilities or Valley Water Easements issued by the DistrictValley Water prior to the effective date of this Ordinance, under DistrictValley Water Ordinance 06-01, Valley Water Ordinance 83-2, or a predecessor ordinance a Predecessor Ordinance, is subject to the provisions of Sections 2.5 and 2.6 and Article 3 of this Ordinance.

1.7.2 Other Permits

As to any permit issued by ~~the District~~Valley Water prior to the effective date of this Ordinance under ~~District~~Valley Water ~~Ordinance 83-208-01 or a predecessor ordinance~~Predecessor Ordinance, other than those described in Section 1.7.1, ~~the District~~Valley Water will inspect work not yet complete on the effective date to ensure compliance with permit conditions.

ARTICLE 2.0 PROTECTION OF WATER RESOURCES

SECTION 2.1 PURPOSE OF ARTICLE

This Article establishes the requirement to obtain an Encroachment Permit ~~for Modifications on District Facilities and/or District Easements.~~ It also establishes a procedure for the administration and issuance of such Encroachment Permits.

SECTION 2.2 ENCROACHMENT PERMIT REQUIREMENTS

2.2.1 Encroachment Permit Required

~~No~~Subject to section 2.2.2 herein, no Person will ~~de~~perform or maintain, cause to be ~~done~~performed or maintained, any Modification on or within a ~~District~~Valley Water Facility or ~~District~~Valley Water Easement, or access or use any such Valley Water Facility or ~~District~~Valley Water Easement, unless an Encroachment Permit ~~for the Modification and/or use~~ has been issued under this Ordinance or a predecessor ordinancePredecessor Ordinance and is in effect. Maintenance of a Modification may be established through continued assertion of control. An Encroachment Permit is not transferable unless its conditions provide otherwise. Subject to the exceptions set forth below, in the absence of an Encroachment Permit, performing any Modification on or within a Valley Water Facility or Valley Water Easement or accessing or using any Valley Water Facility may also constitute a Trespass.

2.2.2 Exceptions

- A. An Encroachment Permit is not required for access onto ~~District~~use of Valley Water Facilities or ~~District~~Valley Water Easements that have been opened to and developed for public recreational purposes, as long as the access or use is consistent with the rules or regulations governing such public recreational access or use, or when the Permit Authority determines that the access or use, and requirements applicable thereto, have already been established by contract or by operation of law.
- B. Where the District holdsValley Water Easement is a nonexclusive easement, the owner of the underlying fee is not required to obtain an Encroachment Permit is not required for activities not in conflict with the Districtthat nonexclusive easement unless. The party engaging in such activities shall bear the burden of proof that they are not in conflict with the nonexclusive easement requires District approval.
- C. Except as otherwise required by License terms, noEncroachment Permit shall be required where a License has been issued and is in effect for use of the activity or work same Valley Water Facility and where access to and use of the Valley Water Facility complies with the License.
- D. No Encroachment Permit shall be required when the Permit Authority determines that the access or use, and requirements applicable thereto, have already been established by contract or by operation of law.

SECTION 2.3 ENCROACHMENT PERMIT PROCEDURES

This Section establishes the process for obtaining an Encroachment Permit from ~~the District~~Valley Water.

2.3.1 Application and Fees

- A.** Requests for an Encroachment Permit must be timely filed with the Permit Authority on the application form established and maintained by that Permit Authority. All applications must be accompanied by a filing fee ~~in an amount, and any other required fees, in amounts~~ established by the Board.
- B.** An application for an Encroachment Permit must be signed by the Applicant or a duly authorized agent of the ~~party proposing the Modification and/or use~~Applicant.
- C.** Submission of an application for which thean Encroachment Permit is required after Valley Water's issuance of a notice of violation or compliance order (as set forth below) shall be deemed untimely and shall constitute grounds upon which to deny the application unless and until the applicant has fully complied with such notice of violation or compliance order. Where good cause has been shown by the Applicant, the Permit Authority has discretion to excuse any failure to comply with the time requirements of this section.
- D.** Submission of an application for an Encroachment Permit following Valley Water's filing of a judicial action relating to Trespass or some similar cause of action shall be deemed untimely and shall constitute grounds upon which to deny the application.

2.3.2 Environmental Assessment

Issuance of an Encroachment Permit is subject to the requirements of the California Environmental Quality Act (CEQA).

- A.** For any Encroachment Permit associated with a project that will be approved or carried out by a Municipal Organization or other public entity as lead agency, the lead agency's environmental assessment for the project must include those activities covered by the Encroachment Permit. It is the responsibility of the applicant to assure that this environmental assessment is completed and provided to ~~the District~~Valley Water.
- B.** For any Encroachment Permit which is not associated with a project for which a Municipal Organization or other public entity is the lead agency, ~~the District~~Valley Water will be the lead agency.
- C.** All applications for an environmental assessment must be accompanied by a filing fee as established by the Board.
- D.** The environmental assessment may be undertaken by or under contract to ~~the District~~Valley Water and be at the applicant's expense. Once a project has been found to require an environmental assessment, no decision on an Encroachment Permit request will be made until the assessment has been certified as complete as required by state law. The Permit Authority will

take all actions required by CEQA on behalf of ~~the District~~Valley Water, unless otherwise provided by law.

2.3.3 Action on Applications

The Permit Authority will take all actions on the application except as provided in Section 2.6.

A. Findings for Encroachment Permits ~~An~~The Permit Authority, in his/her sole discretion, may issue ~~an~~ Encroachment Permit ~~may be issued if~~ ~~the District~~she finds, based on substantial evidence, that the ~~application is timely (or good cause has been shown for the delay) and that the~~ proposed ~~Modification, access or use:~~

1. Will not impede, restrict, retard, pollute, change the direction of the flow of water, catch or collect debris carried by such water;
2. Is located where natural flow of the ~~storm~~Stream and/or flood waters will not damage or carry any Structure or any part thereof downstream;
3. Will not damage, weaken, erode, cause siltation or reduce the effectiveness of the Stream banks to ~~withhold~~convey storm and flood waters;
4. Will be constructed to resist erosion and siltation and entry of pollutants and contaminants ~~to a~~ Stream;
5. Will not interfere with ~~the~~ maintenance responsibilities or ~~Structures placed or erected for flood protection, water conservation or distribution~~the operation of Valley Water Facilities;
6. Conforms to the ~~requirements of the District~~ Water Resources Protection Manual; Valley Water's Governance Policies, Resolutions and
7. ~~Meets the purpose and intent~~Ordinances of the ~~District Act~~Board of Directors, and all applicable state and federal laws;
7. Will either support or not be in conflict with Valley Water actions authorized by the District Act.
8. ~~Issuance of the Encroachment Permit is~~Will not result in detriment to the operations, maintenance, delivery, quantity, or quality of Valley Water water supplies;
9. Is in the public interest; ~~and~~
9. ~~Issuance of the Encroachment Permit will~~10. Is not the subject of a compliance order previously issued under Article 3.0 herein;
11. ~~Will~~ not result in conflict with or detriment to existing or ~~planned~~District potential future Valley Water Facilities; ~~and~~
12. Will not result in the significant removal or damage to native vegetation or riparian habitat.

~~While the Permit Authority has discretion to issue an Encroachment Permit where there is substantial evidence that the above conditions have been met, this shall not create any right to an Encroachment Permit, and the Permit Authority may exercise discretion not to issue an Encroachment Permit when there are reasonable grounds to do so.~~

B. Conditions of Approval An Encroachment Permit ~~will may~~ be issued subject to conditions when the conditions are required in order for ~~the District~~Valley Water to make the required findings in Section 2.3.3A for issuance. These conditions will be commensurate with the nature and magnitude of the request and may include a time limit on the life of the Encroachment Permit.

C. Notice of Action Upon the approval, conditional approval or denial of an application, ~~the District~~Valley Water will prepare and deliver to the ~~applicant~~Applicant a written ~~notice~~Notice of ~~the action~~Action, which will be served as provided in Section 1.6 of this Ordinance.

If the application is approved, the ~~notice~~Notice of Action will accompany the proposed Encroachment Permit which will include any ~~conditions~~ applicable to the Encroachment Permit ~~conditions~~ and a requirement that the ~~applicant~~Applicant must provide a written acceptance of the Encroachment Permit and its conditions. The ~~notice~~Notice of Action will ~~also~~ include a description of the appeal process described in Section 2.67 for denials of an application.

D. Preemption Provision If an Encroachment Permit would conflict with or be preempted by state law, state law will govern but only with respect to the specific issues of conflict.

E. Applicant Acceptance of Conditions Within 30 days from the date the Notice of ~~representative as described in Section 2.3.1~~Action is served, the ~~Applicant~~ must provide the ~~District~~Valley Water Permit Authority, in writing, an acceptance of the conditions of the Encroachment Permit. ~~The date the District receives by signing the written acceptance is the effective date of the proposed~~ Encroachment Permit. ~~The Encroachment Permit shall be effective upon its execution by Valley Water's Permit Authority. Where good cause has been shown by the Applicant, the Permit Authority may excuse any failure to comply with the time requirements in this section.~~

SECTION 2.4 TIME LIMIT FOR COMMENCING USE OF ENCROACHMENT PERMIT

Unless specific language in an Encroachment Permit otherwise provides, the Encroachment Permit expires ~~730~~365 calendar days after its effective date if the permitted Modification or use has not commenced by that time. The Permit Authority may extend this time period once upon written request of the Permittee demonstrating good cause therefor.

SECTION 2.5 PERMIT REVOCATION, MODIFICATION, AND SUSPENSION

2.5.1 Cause for Permit Revocation, Modification, and Suspension

A Permit may be revoked, modified, or suspended by ~~the District~~Valley Water if one or more of the following is found to have occurred:

- A.** The Permit was issued in conflict with the provisions of any ~~District~~Valley Water regulation or federal and/or state law or as a result of incorrect information or the fraud or willful misrepresentation by the ~~applicant~~Applicant or ~~applicant's~~Applicant's agent.
- B.** The actions undertaken pursuant to the Permit ~~have created a discharge or threatened discharge which presents a hazard or threat of hazard to the public health or safety or the natural environment which was not anticipated or known at the time the Permit was issued.~~
- C.** The structures or improvements covered by the Permit create a dangerous condition to life or property.

- D. The Modification is not being carried out in accordance with the approved plans and/or in accordance with the specific terms of the permit.
- E. It is necessary to remove or relocate the permitted use or improvements in order to accommodate DistrictValley Water uses or futureplanned Valley Water Facilities or improvements.
- F. New circumstances arise which reasonably warrant revocation, modification, or suspension of a Permit.
- G. Valley Water becomes aware of previously existing facts or circumstances reasonably warranting the revocation, modification, or suspension of a Permit.
- H. Due to changes in circumstances, including but not limited to Valley Water policies, local, state or federal law or changes in the physical environment, the Encroachment Permit no longer meets the findings set forth in Section 2.3.3(A).

2.5.2 Notice of Decision to Revoke, Modify, and Suspend a Permit

- A. The Permit Authority will notify the Permittee in writing of the Permit Authority's decision to revoke, modify or suspend a permit. The notice will be served as provided in Section 1.6.
- B. The notice of decision will state the grounds for revocation, modification or suspension of the permit and will notify the Permittee of the appeal process described in Section 2.6.

SECTION 2.6 APPEALS

2.6.1 Right to Appeal; Timing

An applicant or Permittee may appeal a decision made by the Permit Authority under Sections 2.3.3 and 2.5.2 of this Article. to the CEO. Appeals relating to Licenses are addressed in section 3.4.2.8 below. An appeal must be in writing and filed with the Clerk of the Board, with the applicable appeal fee, no later than ten (10) days following issuanceservice, as defined in Section 1.6, of the decision fromor Notice of Action on which the appeal is takenbased.

2.6.2 Hearing and Decision

- A. Upon filingsreceipt of a timely notice of appeal, the Clerk of the Board will, within ten (10) calendar days from the receipt of the request, set a time and place for the hearing. The hearing will be conducted by the Board of DirectorsCEO, or theirhis or her designee and will be scheduled, shall schedule a hearing within 45thirty days of receipt of the hearing request. Upon conclusion of the hearing, the Board of DirectorsCEO or theirhis/her designee will issue a written decision on the appeal. The Board'swritten decision is by the CEO or his/her designee may be appealed to the Board.
- B. Appeal to the Board: Written decisions of the CEO or his/her designee may be appealed to the Board by filing a written notice of appeal with the Clerk of the Board no later than fifteen (15) days from the date of the written decision. The Board may delegate hearing and decision of such appeal to a Board committee (regular or ad hoc). Valley Water will provide the appellant with notice of the date of such hearing. Any decision upon this appeal shall be final, and not subject to further appeal.

ARTICLE 3.0 ENFORCEMENT

SECTION 3.1 PURPOSE

This Article defines the situations considered to be violations of this Ordinance and describes ~~the District's~~Valley Water's process for addressing such violations.

SECTION 3.2 VIOLATION OF ORDINANCE

The following are unlawful and constitute violations of this Ordinance:

- A. Failure to comply with ~~Sections~~Section 2.2.1 hereof.
- B. Failure of a Permittee to comply with any condition of an Encroachment Permit.

SECTION 3.3 CRIMINAL AND CIVIL PENALTIES

Any violation of this Ordinance as described in Section 3.2 is punishable as a misdemeanor. The prosecutor may in his or her discretion specify that the offense is an infraction. Each day of a continuing violation constitutes a separate and distinct violation. Any such violation or threatened violation may also be enjoined by civil action.

SECTION 3.4 ADMINISTRATIVE REMEDIES

In addition to any other remedy, ~~the District~~Valley Water may pursue administrative remedies in accordance with this Section. Use of this Section is at the sole discretion of ~~the District~~Valley Water. At any point during the administrative process, Valley Water may elect to pursue a judicial remedy instead, following written notice. Beginning the administrative process shall not obligate Valley Water to complete it.

3.4.1 Compliance Order

Whenever the Permit Authority determines that a violation of any provision of this Ordinance is occurring or exists, the Permit Authority may ~~issue a written compliance order to any Person responsible for the violation. The order must contain the following information: the date and, but is not required to, issue a notice of potential violation to the alleged Person responsible for the ongoing violation to allow for the alleged Person responsible to voluntarily remediate a violation in a manner and time period acceptable to the Permit Authority, generally within 30 days or less depending on the severity and impact of the violation on District Facilities or to allow the alleged Person responsible for the violation to deny responsibility for the violation. If Valley Water determines the Person responsible for the ongoing violation does not voluntarily remediate the violation in a timely manner specified by the Permit Authority in the notice of potential violation, the Permit Authority may issue a written compliance order to any Person responsible for the ongoing violation. The order must contain the following information: the date of the compliance order; the date the violation was discovered; the location of the violation; the Section of this Ordinance violated and a description of the violation; the actions required to correct the violation; the time period after which administrative penalties will begin to accrue if compliance with the order has not~~

been achieved; and either a copy of this Section or an explanation of the consequences of noncompliance with this Section and a description of the hearing procedure and appeal process.

3.4.2 Method of Service

The compliance order [in Section 3.4.1](#)

-will be served as provided in Section 1.6. Where real property is involved, written notice will be mailed to the property owner at the address shown on the last equalized county assessment roll.

3.4.3 Hearing

If the Permit Authority determines that all violations have been corrected within the time specified in the compliance order, no further action will be taken under this Section 3.4. If full compliance is not achieved within the time specified, a hearing will be scheduled before the CEO.

3.4.4 Notice of Hearing

~~Notice of hearing on the compliance order will be given as provided in Section 1.6. The hearing will be set for a date not less than 15 days nor more than 60 days from the date of the notice hearing unless the Permit Authority determines the matter is urgent or that good cause exists for an extension of time. or his/her designee.~~ The hearing is intended to provide the full opportunity for any Person subject to a compliance order to object to the determination that a violation has occurred and/or that the violation has continued to exist. The failure of any Person subject to a compliance order to appear at the hearing will constitute a failure to exhaust administrative remedies.

3.4.4 Notice of Hearing

Notice of hearing on the compliance order will be served as provided in Section 1.6. The hearing will be set for a date not less than 15 days nor more than 60 days from the date the notice hearing was served unless the Permit Authority determines the matter is urgent or that good cause exists for an extension of time.

3.4.5 Hearing - Findings and Order

A. Hearing Procedure

1. Persons subject to the compliance order shall have the right to appear in person and shall have the right to representation by legal counsel. The Permit Authority shall have the right to appear through a designee and shall have the right to representation by legal counsel. Compliance with the technical rules of evidence applied in the courts shall not be required. Oral evidence shall be taken only on oath or affirmation. Hearsay evidence is admissible but shall not be sufficient alone to support a finding unless it would be admissible over objection in civil actions. Immaterial, irrelevant, or unduly repetitious evidence may be excluded. The rules of privilege shall apply.

2. The Permit Authority shall have the burden of proving the violation of the Ordinance by a preponderance of the evidence. Persons subject to the compliance order shall have the burden of proving any defenses to the violation being alleged. The Permit Authority shall present its case first followed by the Person subject to the compliance order. Thereafter, the Permit authority shall be

entitled to present rebuttal, and the Persons subject to the compliance order shall be entitled to present surrebuttal.

3. Each party to the hearing shall have the right to call, examine, and cross-examine witnesses and introduce documentary and other evidence on the issues. No less than five calendar days before the hearing, the parties shall exchange (or have exchanged) copies of any exhibits or other documents they intend to present at the hearing. Such exchange may take place by Email. There shall be no obligation, prior to the hearing, for parties to exchange exhibits or documents intended solely for impeachment or rebuttal. Failure to comply with the time requirements for exchange shall not preclude a party from introducing exhibits or documents at the hearing where good cause exists for the delay and the other party will not be prejudiced.
4. At the hearing, the CEO or his/her designee will consider any written or oral evidence consistent with rule that may be established from time to time for the conduct of such hearings. Within a reasonable time following the conclusion of the hearing, the CEO or his/her designee will make findings and issue a determination regarding the existence of the violation and the failure of the violator or owner to take corrective action within the required time period. The determination will include written findings and be supported by evidence received at the hearing.

B. If the CEO or his/her designee determines that a violation occurred which was not corrected within the time period specified in the compliance order, the CEOhe/she will issue an administrative order that imposes any or all of the following:

1. An order to correct, including a schedule for correction.
2. Administrative penalties as provided in Section 3.4.6.
3. Administrative costs as provided in Section 3.4.7.

3.4.6 Administrative Penalties

The CEO may impose administrative penalties for the violation of any provision of this Ordinance in an amount not to exceed a maximum of \$1,000500 per day for each ongoing violation, except that the total administrative penalty will not exceed \$100,000 for any related series of violations. In determining the amount of the administrative penalty, the CEO may consider any or all of the following factors: duration and seriousness of the violation; number of violations by the same violator; good faith efforts to come into compliance; economic impact of the penalty on the violator, and impact of the violation on the community and environment. The CEO may suspend the imposition of applicable penalties for any period of time during which the violator has applied for necessary permits and the Encroachment Permit applications are actively pending. If the violation is not corrected as specified in the administrative order, the administrative penalties will continue to accrue as specified in the order subject to the maximum amount described in this Section.

3.4.7 Administrative Costs

The CEO may assess administrative costs against the violator upon a finding that a violation has occurredoccurred and compliance has not been achieved within the time specified in the compliance order. The administrative costs may include any and all costs incurred by the DistrictValley Water in connection with the matter which is the subject of proceedings under Section 3.4, including but not limited to costs of investigation, preparation for the hearing, and conduct of the hearing.

3.4.8 Lien

Failure to pay the assessed administrative penalties and administrative costs specified in the administrative order of the CEO may be enforced as a personal obligation of the violator and/or if the violation is in connection with real property, a lien upon the property. The lien will have no force and effect until recorded with the County Recorder. Recordation will not occur until 90 days after the administrative order, to provide an opportunity for payment and/or judicial review of the decision. Once recorded, the lien will remain in effect until all of the administrative penalties are paid in full.

3.5 ABATEMENT

In addition to any other remedy, ~~the District~~Valley Water may pursue abatement under this Section 3.5 when any violation of this Ordinance constitutes a serious threat to the public health, safety, or welfare.

3.5.1 Notice of Intent to Abate

~~The District~~Valley Water may include in any compliance order and notice issued under Section 3.4 notice of ~~the District's~~Valley Water's intent to abate the violation if not corrected within the time specified in the compliance order.

3.5.2 Findings; Abatement Order

If following the hearing held under Section 3.4 the CEO finds, in addition to the findings described in Section 3.4.~~5B5~~, that the continuing violation constitutes a serious threat to the public health, safety, or welfare, then the CEO may include in the administrative order notification that unless the violation is corrected within the time specified in that order, ~~the District~~Valley Water will abate the violation and that the abatement costs will be charged against the property owner. In addition to the notice as provided in Section 1.6, this order will be posted in a conspicuous place on the subject property.

3.5.3 Time for Abatement; Lien

Abatement will not occur until at least 90 days after issuance of the abatement order to provide time for compliance and/or judicial review of the abatement order. Costs incurred by ~~the District~~Valley Water for the abatement action may be enforced as a personal obligation of the property owner and as a lien against the property, as provided in Section 3.4.8.

3.6 License Program

3.6.1 Purpose

Where a Person is in violation of this Ordinance or has received a notice of potential violation or Compliance Order issued in accordance with Section 3.4.1 and meets all of the requirements below, a License may be applied for to temporarily address the violation. Where there has been an Encroachment of Valley Water Facilities by a License Applicant or his/her/its predecessor in interest pre-dating October 22, 2019, temporary use of Valley Water Facilities may be authorized pursuant to a License issued pursuant to this section for a limited time. Encroachments beginning after October 22, 2019, are not eligible for a License. This section shall not apply to any use of Valley Water Facilities on which there is no existing Encroachment and shall not apply to new prospective use of Valley Water Facilities. Any such new use of Valley Water Facilities shall be addressed through the Encroachment

Permit provisions of Sections 2 above. Nothing in this section shall create any legal right to receipt of a License.

3.6.2 Eligibility

To be eligible to apply for a License, the License Applicant must meet all of the conditions set forth below:

- A. The Licensed Area must have been Encroached upon by the License Applicant or his/her/its predecessor in interest prior to October 22, 2019 (the License Applicant shall have the burden of proof on this fact);
- B. The License Applicant shall be responsible for the cost of any property line survey when required by Valley Water for issuance of the License;
- C. The proposed License Area must be on real property owned by Valley Water in fee title and may not conflict with any pre-existing easement;
- D. The application for a License must precede any administrative hearing on a compliance order as set forth in section 3.4.5 et seq. Applications submitted following the start of an administrative hearing will be deemed untimely; and
- E. Licensing will only be considered based upon the parameters set forth herein and must be cost neutral to Valley Water.

3.6.3 Application and Fees

- A. Requests for a License must be filed with the Permit Authority on the application form established and maintained by that Permit Authority. All applications must be accompanied by a filing fee as specified by Valley Water.
- B. An application for a License must be signed by the Applicant or a duly authorized agent of the Applicant.
- C. In addition to a filing fee, the Applicant shall pay all administrative fees associated with License issuance and maintenance including, but not limited to, the costs of Valley Water staff review, any environmental review, and License Area inspections (pre-issuance and post-issuance).

3.6.4 Environmental Assessment

Where Valley Water, in its sole discretion, determines that issuance of a License is subject to environmental review, the License Applicant shall be responsible for any and all fees associated with such environmental review. All applications for an environmental assessment must be accompanied by a filing fee as established by the Board. The environmental assessment may be undertaken by or under contract to Valley Water and be at the License Applicant's expense. Where Valley Water requires an environmental assessment, no decision on the License application will be made until the assessment has been completed as required by state law. The Permit Authority will take all actions required by CEQA on behalf of Valley Water, unless otherwise provided by law.

3.6.5 License Duration; Cost

The License is intended to be temporary in nature. The Permit Authority shall designate the initial term of any License to be issued pursuant to this section, so long as such initial term does not exceed two years.

Where a License is issued, the Permit Authority may, in his or her sole discretion, approve renewals of the License not to exceed two years apiece, and not to exceed ten years in total. The License shall include an annual fee representing the value of the area to be licensed as determined by Valley Water.

3.6.6 Considerations for License Approval

The Permit Authority, in his or her sole discretion, may issue or renew a License if he or she finds, based upon substantial evidence, that:

- A. The License Area is *not* within a planned project area for Valley Water Facilities, capital improvements, city trails, county trails, mitigation projects, or stream stewardship projects scheduled to begin in three years or less from the date of the application;
- B. The License Area is *not* required to be used by Valley Water within three years of the application date to operate or maintain any Valley Water Facility;
- C. The initial term of the License is not anticipated to interfere with the operation and maintenance of any Valley Water Facilities;
- D. Any License renewals are not anticipated to interfere with the operation and maintenance of any Valley Water Facilities;
- E. Issuance and/or renewal of the License is not anticipated to result in any direct or indirect increased expenses for Valley Water;
- F. Issuance and/or renewal of the License will not pose a foreseeable threat to the safety of the public or Valley Water staff or contractors; and
- G. Issuance of the License is not contrary to Valley Water interests when considering: the public cost of any work arounds, the potential use of alternative methods to perform work, or Valley Water's need to acquire suitable riparian lands elsewhere.

3.6.7 Notice of Action

Upon the approval, conditional approval, or denial of an application, Valley Water will prepare and deliver to the License Applicant a written Notice of Action, which will be served as provided in Section 1.6 of this Ordinance and which will include a description of the appeal process described in section 3.6.8 below. If the application is approved, the Notice of Action will include the proposed License for execution by the License Applicant. If a notice of denial is issued, any encroachment must be remediated unless there is a timely appeal of the denial.

3.6.8 Appeals of License Decisions

3.6.8.1 Decisions subject to appeal:

- A. Denial of License;
- B. Denial of renewal of License (subject to the limits of section 3.6.5 above); and
- C. Termination of License.

Except as set forth above, no decisions relating to the License shall be subject to appeal, including but not limited to License terms.

3.6.8.2 Right to Appeal; Timing

The License Applicant or Licensee may appeal a decision subject to appeal in section 3.6.8.1 above.

3.6.8.3 Hearing and Decision

Appeal to CEO: Decisions subject to appeal made by the Licensing Authority may be appealed to District's Chief Executive Officer (CEO). An appeal to the CEO must be in writing, accompanied by the Notice of Action, and submitted to the CEO, along with any associated appeal fee designated in District's schedule of fees, no later than ten (10) days following service, as defined in Section 1.6, of the Notice of Action, notice of any denial of renewal of License, notice of any termination of License, as appropriate.

- A. Upon receipt of a timely notice of appeal, the CEO, or his or her designee, shall schedule a hearing within thirty days. Upon conclusion of the hearing, the CEO or his/her designee will issue a written decision on the appeal. The written decision by the CEO or his/her designee may be appealed to the Board.
- B. Appeal to the Board: Written decisions of the CEO or his/her designee may be appealed to the Board by filing a written notice of appeal with the Clerk of the Board no later than fifteen (15) days from the date of the written decision. The Board may delegate hearing and decision of such appeal to a Board committee (regular or ad hoc). Valley Water will provide the appellant with notice of the date of such hearing. Any decision upon this appeal shall be final and not subject to further appeal.
- C. If there is a final decision denying the appeal, any encroachment must be remediated within ninety (90) days of the decision or any alternate deadline established by the CEO or the Board, if further appeal was made to the Board as set forth above.

ARTICLE 4.0 ~~DISTRICT~~ WATER RESOURCES PROTECTION MANUAL

SECTION 4.1 PURPOSE

The purpose of this Article is to set forth the process used by ~~the District~~ Valley Water to adopt or amend the ~~District~~ Water Resources Protection Manual and to describe its uses.

SECTION 4.2 ADOPTION OF ~~DISTRICT~~ WATER RESOURCES PROTECTION MANUAL

The Board will adopt, and may from time to time amend, a ~~District~~ Water Resources Protection Manual to be used as a basis for evaluation of applications for Encroachment Permits, for establishment of Encroachment Permit conditions in order to make the required findings for issuance of such Encroachment Permits. ~~The District, and to establish conditions for Licenses issued pursuant to this Ordinance. The~~ Water Resources Protection Manual may incorporate by reference documents promulgated by the CEO.

SECTION 4.3 PROCEDURE TO ADOPT AND AMEND ~~DISTRICT~~ WATER RESOURCES PROTECTION MANUAL

The Board will schedule and hold a public hearing to consider adoption of **District** Water Resources Protection Manual and any subsequent amendments.

4.3.1 Notice of Public Hearing

A notice of the hearing will be provided at least ten (10) days prior to the scheduled hearing. The notice will include the date, time and place of the hearing, and a general explanation of proposed content of the **District** Water Resources Protection Manual or any amendments thereto. Notice will be given by first class mail to Municipal Organizations within the county and to any parties who have requested such notice, by posting the notice at the District Valley Water headquarters, and by publication once in a newspaper of general circulation. The District Valley Water may, in its discretion, provide additional notice beyond that specified in this Section. Failure to comply with the notice requirements in this Section, in whole or in part, will not invalidate any action taken on the matter.

4.3.2 Adoption or Amendment to **District** Water Resources Protection Manual

Upon the conclusion of the public hearing, the Board may adopt or amend the **District** Water Resources Protection Manual. Any such action will be taken by resolution.

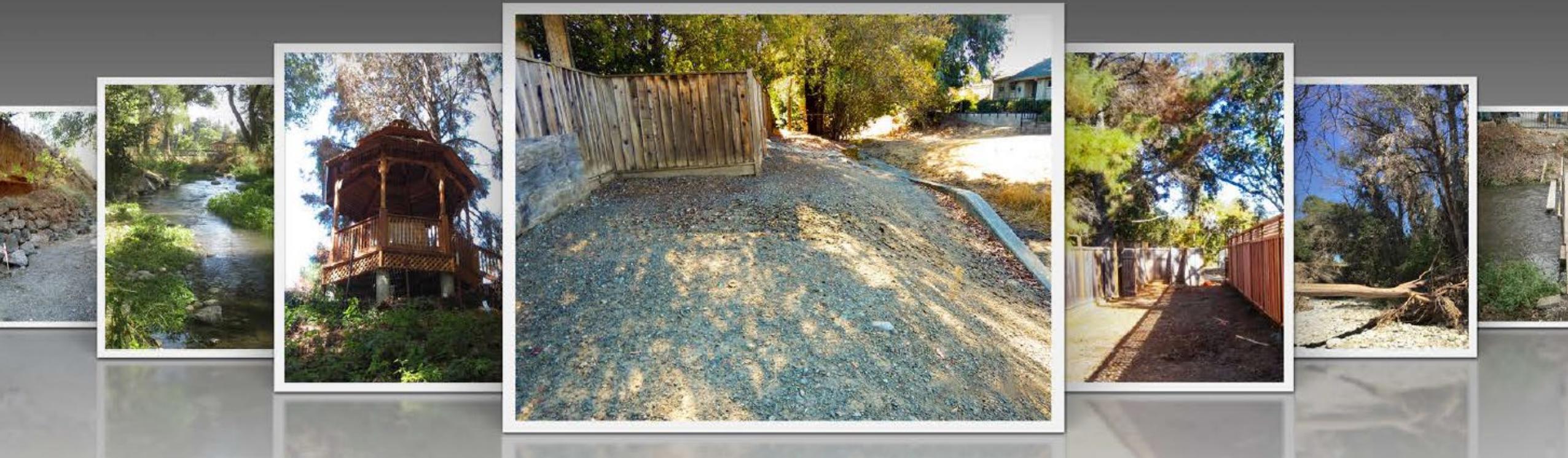
ARTICLE 5.0 EFFECTIVE DATE, REPEAL OF PRIOR ORDINANCE ~~83-2~~

SECTION 5.1 EFFECTIVE DATE

This Ordinance is effective on February 28, 2007, 20254 and is intended to supersede Ordinance 06-1 as amended by Ordinance 08-1.

SECTION 5.2 ~~PRIOR~~ REPEAL OF ORDINANCE 83-206-1, as amended by Ordinance 08-1

~~On the effective date As a result~~ On the effective date of this this Ordinance, Ordinance 06-01, Ordinance 83-2 ~~is was~~ ~~as~~ amended by Ordinance 08-1 is repealed. effective February 28, 2007. Permits given and rights acquired under Ordinance 83-2 or its predecessors a Predecessor Ordinance ~~will~~ remain effective, subject to the terms of this Ordinance.



Water Resources Protection Ordinance - Revisions

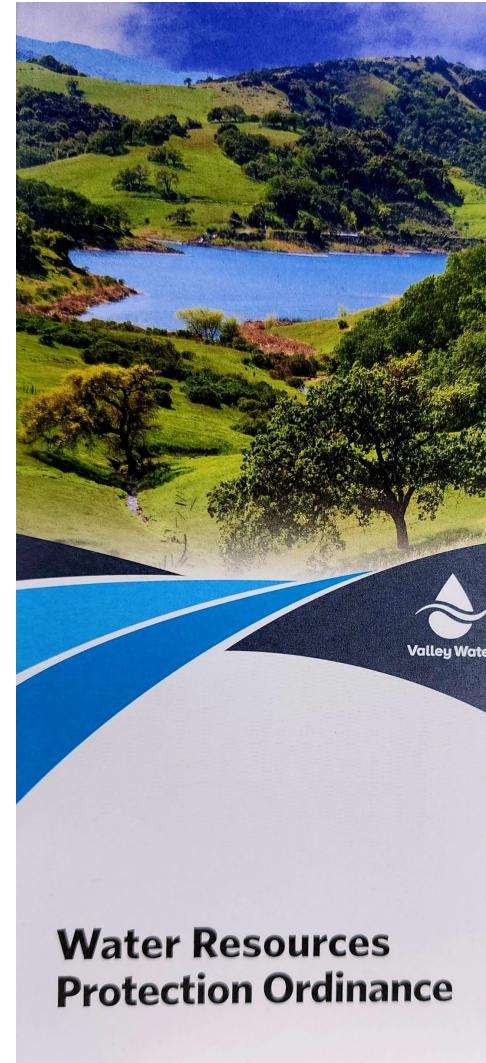
Presented by: **Lisa Bankosh**, Assistant Operating Officer, Watersheds
Board Policy and Monitoring Committee, April 14, 2025

ORDINANCE REVISIONS

2

Summary of Revisions:

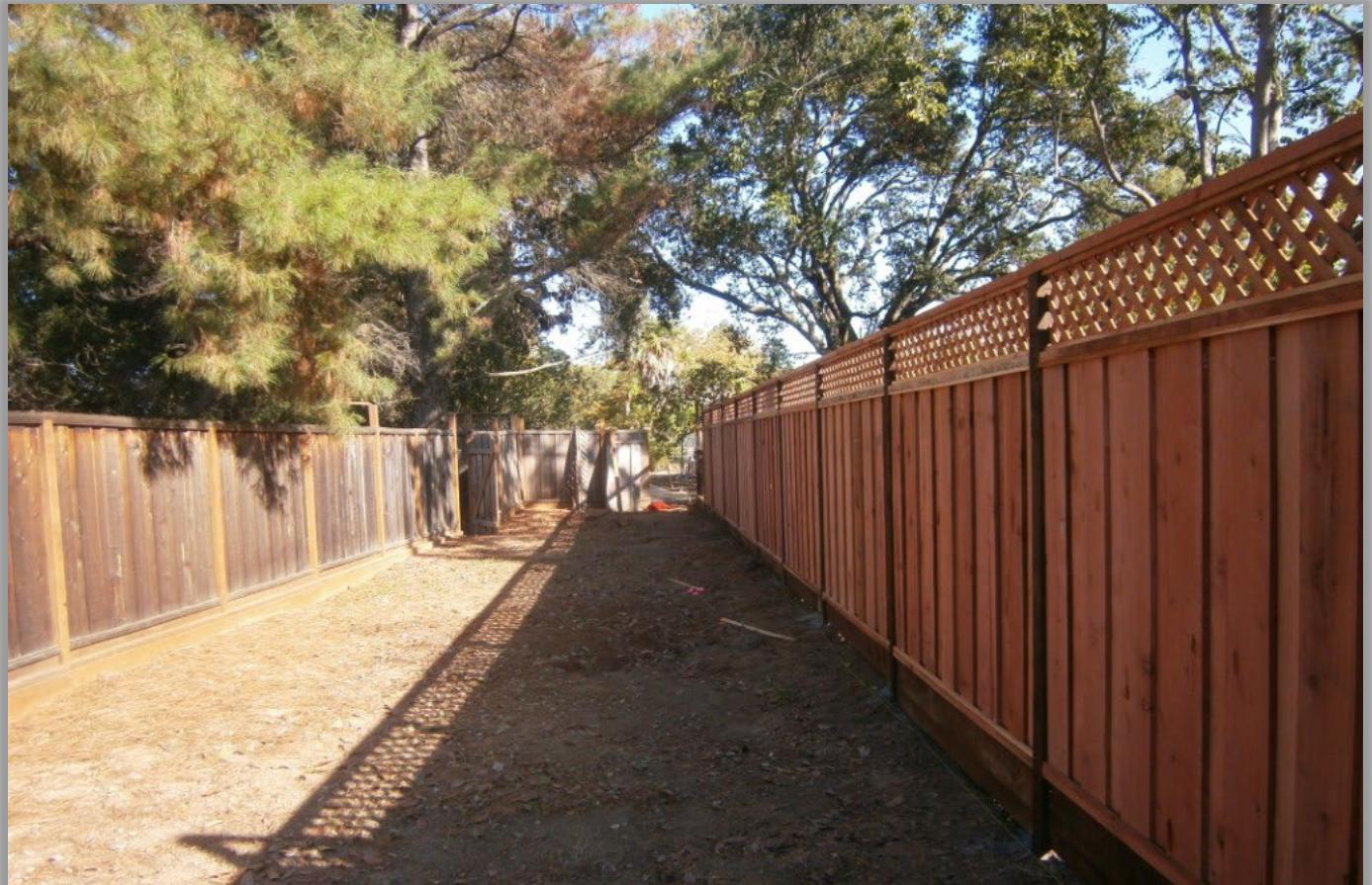
- Amendments to incorporate the licensing program
- Aligning the appeals process for encroachment permits with license appeals
- Updates to encroachment permit process to avoid ambiguity and increase efficiency
- Non-substantive updates (e.g., “District” to “Valley Water”)



ENCROACHMENT REMEDIATION REVISIONS

3

The Board approved four priority levels for addressing encroachments



Encroachment Remediation Priorities

4

Priority (Encroachment Status)	Approach to Resolution
<p>Priority 1: Encroachments that</p> <ul style="list-style-type: none">• Pose a threat to public, staff, and/or environmental health and safety• Impact Valley Water's ability to operate, inspect and/or maintain an existing facility• Impact Valley Water's ability to proceed with a project planned to begin in three years or less• Pose a high risk/probability threat to water quality, stream stability, habitat, and/or Valley Water property• Expose Valley Water to potential civil or criminal liability	<p>Resolve by recovery of public property</p> <p>*Exception: In cases where a net benefit to Valley Water exists, an equal exchange of real property rights (i.e., land swap) can be considered to resolve a difficult encroachment situation.</p>

Encroachment Remediation Priorities

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Priority (Encroachment Status)	Approach to Resolution
<p>Priority 2: Encroachments that</p> <ul style="list-style-type: none">• Impact Valley Water's ability to proceed with a project planned to begin in more than three years• Are located in areas where access is not needed to conduct regular inspections, maintenance, or where there is no quantifiable design level of service to be maintained for three or more years• Pose a low risk/probability threat to water quality, stream stability, habitat, and Valley Water property• Pose a low risk/probability of exposing Valley Water to potential civil or criminal liability	<p>Resolve by recovery of public property</p> <p>*Exception: in cases where a net benefit to Valley Water exists, an equal exchange of real property rights (i.e., land swap) can be considered to resolve a difficult encroachment situation.</p>

Encroachment Remediation Priorities

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Priority (Encroachment Status)	Approach to Resolution
<p>Priority 3: Encroachments that do not fall into Priority 1 or 2 categories, existed before October 22, 2019, and are not deemed to be surplus.</p>	<p>Resolve by recovery of public property</p> <p>*Exception: In cases where encroachment owners request and meet eligibility criteria for a 2-year interim license, certain encroachments may temporarily remain subject to applicable license terms and fees.</p>

Encroachment Remediation Priorities

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PRIORITY (Encroachment Status)	Approach to Resolution
<p>Priority 4: Valley Water property deemed no longer necessary for its mission may, upon approval of Board of Directors, be disposed of in accordance with the Santa Clara Valley Water District Act</p>	<p>Consider disposition of Valley Water property deemed to be surplus</p>

NEW: The Option of Licensing

- Property owners with a Priority 3 encroachment have the option to apply for a license
- Upon meeting licensing criteria, a temp license may be issued for up to five two-year periods



LICENSING CRITERIA

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- The licensed area must have been encroached upon prior to October 22, 2019
- The License Applicant shall be responsible for the cost of any property line survey when required by Valley Water for issuance of the License
- The proposed license area must be on real property owned by Valley Water in fee title and may not conflict with any pre-existing easement
- Licensing must be cost neutral to Valley Water



General Elements of a License Agreement

- Application fee
- Annual license fee
- Use restrictions and insurance requirements
- Waiver of damages/duty to indemnify Valley Water
- Personal and non-transferable
- Duty to disclose encroachment to potential buyer



General Elements of a License Agreement

- Automatic termination upon sale
- Can be recorded
- Additional termination provisions
- Limited two-year term with option of four additional two-year renewals
- Restoration of property by Licensee upon surrender or termination of License

License Appeal Process

12

Decisions subject to appeal:

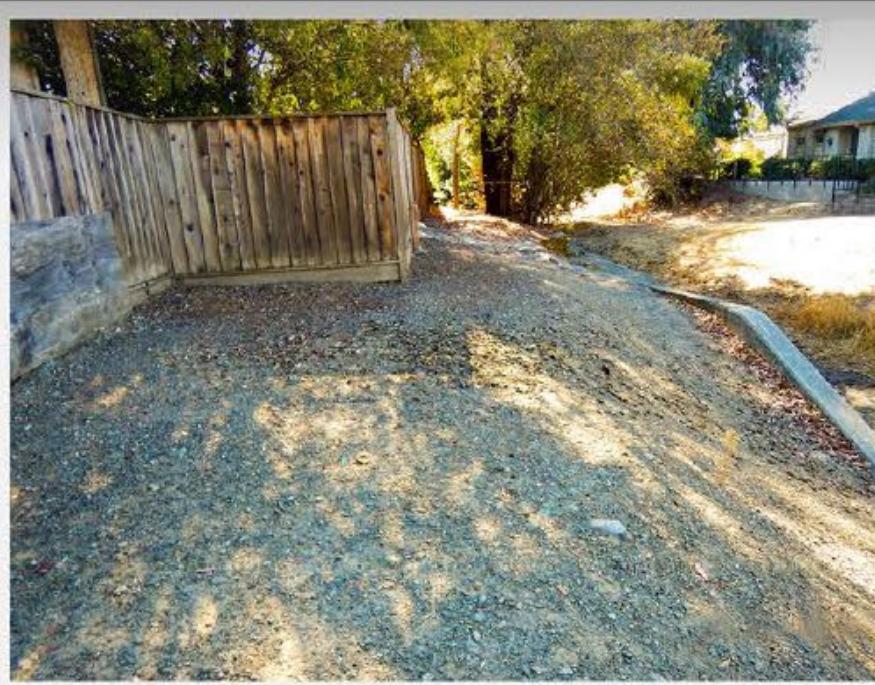
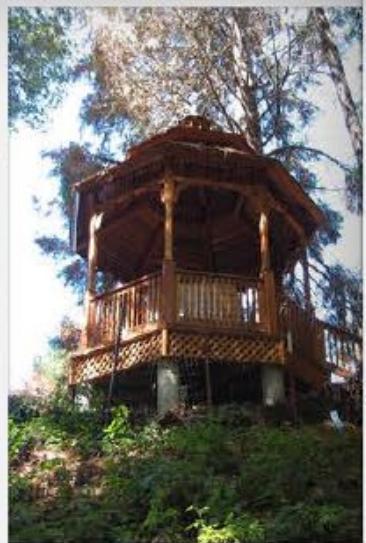
1. Denial of license agreement
2. Denial of two-year renewal of license agreement (within 10-year limit)



Appeals Process:

1. Appeal staff level decision to CEO
2. Appeal CEO level decision to Board
 - a) Board has option to delegate to committee

Questions?



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Santa Clara Valley Water District

File No.: 25-0344

Agenda Date: 4/14/2025

Item No.: 4.5.

COMMITTEE AGENDA MEMORANDUM Board Policy and Monitoring Committee

Government Code § 84308 Applies: Yes No
(If "YES" Complete Attachment A - Gov. Code § 84308)

SUBJECT:

Discuss Board Policy and Monitoring Committee (BPMC) Work Plan Agenda Items.

RECOMMENDATION:

Discuss BPMC Work Plan.

SUMMARY:

Under direction of the Clerk, Work Plans are used by Board Committees to increase Committee efficiency, provide increased public notice of intended Committee discussions, and enable improved follow-up by staff. Work Plans are dynamic documents managed by Committee Chairs and are subject to change.

ENVIRONMENTAL JUSTICE AND EQUITY IMPACT:

The review of the Committee's Work Plan is not subject to environmental justice analysis.

ATTACHMENTS:

Attachment 1: 2025 BPMC Work Plan

UNCLASSIFIED MANAGER:

Candice Kwok-Smith, 408-630-3193

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April 2025 Board Policy Monitoring Committee Meeting

Subject	Task	Mar '25	April '25	May '25	June '25	July '25	Aug-Dec '25	TBD 2025
Board Planning Process	A. Provide Support for Board Planning Activities							
	1. Develop Draft FY25-26 Board Work Plan and submit to Board for review and approval							X
	2. Planning for Board's FY25-26 Strategic Planning Workshop							X
	B. Provide Support for Board Policy Review							
	1. Update on Watershed Master Plans	X			X		X	
	2. Update on Climate Change Action Plan Implementation: Greenhouse Gas Reduction Plan (Update only, no action needed)		X		X			
	3. Water Resources Protection Ordinance Modification to include the Encroachment Licensing Program (Recommend consideration by full Board)		X					
	4. Encroachment Permit Fee Schedule Update (Recommend consideration by full Board)		X					
	5. Review Governance Policies (GP) of the Board: Executive Limitations (EL)-5, Procurement	X						
Human Resources	C. Human Resources							
	1. Annual Employee Survey Update							X
	2. Veteran's Program Update							X
Other Assignments Requested by Board	D. Other Assignments as Requested by the Board							
	1. Review Process for Stakeholder Outreach when making changes to the Safe, Clean Water and Natural Flood Protection Program.		X					
	2. Review complaint process for Board Appointed Officers (BAOs)				X			

X Item Moved or Removed

X Item Added

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Santa Clara Valley Water District

File No.: 25-0345

Agenda Date: 4/14/2025

Item No.: 4.6.

COMMITTEE AGENDA MEMORANDUM **Board Policy and Monitoring Committee**

Government Code § 84308 Applies: Yes No
(If "YES" Complete Attachment A - Gov. Code § 84308)

SUBJECT:

Board Policy and Monitoring Committee (BPMC) 2025 Meeting Schedule.

RECOMMENDATION:

Discuss and Approve BPMC 2025 Meeting Schedule.

SUMMARY:

Approve attached BPMC 2025 meeting schedule.

ENVIRONMENTAL JUSTICE AND EQUITY IMPACT:

The Committee's 2025 meeting schedule is not subject to environmental justice or impact analysis.

ATTACHMENTS:

Attachment 1: BPMC Proposed 2025 Meeting Calendar.

UNCLASSIFIED MANAGER:

Candice Kwok-Smith, 408-630-3193

**Santa Clara Valley Water District
Board Policy and Monitoring Committee
2025 Meeting Schedule for Approval**

**All meetings will take place at 1:00 p.m.
on the first Monday monthly *unless noted below**

Monday, March 3

*Monday, April 14 (moved from April 7 due to the Ag Adv Committee)

Monday, May 5

Monday, June 2

*Monday, July 14 (moved from July 7 due to the Ag Adv Committee)

Monday, August 4

*Monday, September 8 (moved from Sept 1 for Labor Day Holiday)

Monday, October 6 (TBD)

Monday, November 3

Monday, December 1