

CHAPTER 8

SCVWD ORDINANCE 83-2

8A. INTRODUCTION AND BACKGROUND

Santa Clara Valley Water District was created by an act of the California State Legislature which is identified as the Santa Clara Valley Water District Act (SCVWD Act).

The SCVWD Act identifies the District's purpose and authority. These purposes are:

- to protect Santa Clara County from flood and storm water;
- to provide comprehensive conservation and management of flood, storm and recycled waters for all beneficial uses;
- to increase and prevent the waste of the water supply in the District
- to enhance, protect and restore stream, riparian corridors, and natural resources in connection with other purposes of water supply and flood protection;

The mission of the 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.

8B. SANTA CLARA VALLEY WATER DISTRICT ORDINANCE 83-2

The SCVWD enacts ordinances to carry out its mission. The first ordinance (Ordinance 59-1), which required a permit for construction activities near a stream, was adopted in 1960. This ordinance was revised in 1974 and again in 1983 (Ordinance 83-2).

The intent of this ordinance is to secure the health, safety and welfare of people by facilitating prudent floodplain management, protecting water quality, securing maintenance of watercourses and prohibiting injury to District property and facilities. The Ordinance also defines the District's permitting jurisdiction on streams and describes the requirements and procedure to obtain a permit for construction or encroachment activities on a stream.

8C. SCVWD PERMIT REQUIREMENTS

The District's jurisdiction on a watercourse begins at a point where the upstream watershed area is 320 acres (one-half square mile).

The District currently requires construction/encroachment permits for:

- Construction of structures or grading within a floodway, between the banks of a watercourse, within 50 feet of top of bank, on a levee or on a District project
- Excavation or deposition of any material within a floodway, between the banks of a watercourse, on a levee or on a District project
- Construction of any outlet for discharging drainage waters within a floodway, within the banks of a watercourse or a District project
- Planting of any form of flora upon or within the banks of a watercourse
- Trespassing on District property or exclusive easements except where such areas have been opened and developed for public use

Factors Considered in Review of Projects

The factors currently considered in the review of a project adjacent to a District facility are those that directly impact the facility. The District may investigate factors such as whether the proposed work will:

- Impede, restrict, retard, pollute or change the direction of the flow of water
- Catch or collect debris carried by such water;
- Be located where natural flow of the storm and flood waters will damage or carry any structure or any part thereof downstream;
- Damage, weaken, erode, or reduce the effectiveness of the banks to withhold storm and flood waters;
- Resist erosion and siltation and prevent entry of pollutants and contaminants into water supply;
- Interfere with maintenance responsibility or with structures placed or erected for flood protection, water conservation, or distribution.

Other Elements of 83-2

The ordinance places prohibitions on the pollution of water supplies whether in stream, reservoirs, groundwater or conduits. Also, the ordinance establishes the responsibility of a property owner to maintain the stream as it flows through his/her property and establishes some criteria for the District in its role and responsibility for flood control.

8D. SCVWD PERMIT PROCESS

SCVWD currently uses the following procedures when it reviews and issues permits:

1. Preliminary project consultation is preferred and can occur at any time.
2. Provide engineered improvement plans or other project drawings and description of the activity to be performed.
3. Provide a cover letter requesting a permit and providing a project explanation, any time constraints and contact information.
4. Allow 3 to 4 weeks review time.
5. There is no cost for the permit.

8E. REVISION OF ORDINANCE 83-2

It is anticipated that SCVWD will be initiating a revision to Ordinance 83-2 in the fall of 2005. The goal is to incorporate the Proposed Guidelines and Standards for Land Use Near Stream and related permitting tools to ensure a clear, consistent approach to streamside permitting throughout the County.

8F. TEXT OF ORDINANCE 83-2

The text of the SCVWD Act and Ordinance 83-2 are available on the SCVWD's website www.valleywater.org/About_Us/index.shtm and www.valleywater.org/Business_Info_and_Permits/index.shtm respectively.

The SCVWD Act text:
www.valleywater.org/About_Us/index.shtm

Ordinance 83-2 text:
www.valleywater.org/Business_Info_and_Permits/index.shtm

SCVWD ORDINANCE 83-2

ORDINANCE NO. 83-2

AN ORDINANCE OF SANTA CLARA VALLEY WATER DISTRICT DEFINING LIMITS OF FLOOD CONTROL RESPONSIBILITY; PROVIDING FOR MAINTENANCE OF WATERCOURSES; FOR JOINT USE OF PROJECTS, AND FOR DEDICATIONS; PROHIBITING POLLUTION OF DISTRICT WATER SUPPLIES AND INJURY TO DISTRICT PROJECTS, AS DEFINED, AND ENCROACHMENT UPON OR INTERFERENCE WITH WATERCOURSES EXCEPT BY PERMIT; PROVIDING PENALTIES FOR VIOLATION HEREOF; AND REPEALING ORDINANCE 74-1

The Board of Directors of Santa Clara Valley Water District do ordain as follows:

SECTION 1

INTENT

It is the intent of this Ordinance to secure the health, safety and welfare of the people of the District by prudent floodplain management, by protecting the quality of District water supplies, and by securing maintenance of watercourses and prohibiting injury to District property and projects and harmful amendment of watercourses.

It is further the intent of this Ordinance to provide a definition of the general limits of watercourses on which the District may request rights of way for flood control purposes and construction of flood control facilities.

It is further the intent of this Ordinance to insure that the repeal of Ordinance 74-1, accomplished hereby, shall not affect permits heretofore given and rights of every nature heretofore established pursuant to said Ordinance 74-1.

SECTION 2

DEFINITIONS

- 2.1 ``Bank or Banks of a Watercourse'' means the sides of a watercourse the top of which shall be the topographic line roughly parallel to stream center line where the side slopes intersect the plane of ground traversed by the watercourse. Where banks do not distinguishably end, the surrounding country being extensions of the banks, the top of such banks shall be as determined by the District.
- 2.2 ``Board'' means the Board of Directors of the Santa Clara Valley Water District.
- 2.3 ``Design Flood'' means the selected flood against which protection is provided, or eventually will be provided, by means of flood protective or control works.
- 2.4 ``Designated Floodway'' means the channel of a stream and that portion of the adjoining floodplain required to reasonably provide for passage of the design flood.
- 2.5 ``District'' means Santa Clara Valley Water District.
- 2.6 ``District Project'' means any facility, structure or improvement of the District including, without limitation, lands, facilities, structures or improvements and appurtenances thereto owned or controlled by the District for water conservation, water utility, flood control or any lawful District purpose.
- 2.7 ``Levee'' means an elongated embankment constructed where required to contain flooding.
- 2.8 ``Pollution'' means impairment of water quality to a degree which adversely and unreasonably affects a beneficial use of the water.
- 2.9 ``Structure'' means anything made or constructed and having its foundation or support upon or within the ground.
- 2.10 ``Watercourse'' means an elongated channel or depression, whether natural or man-made, in which water does or may flow and may include the overflow area, if any, of such channel or depression. For the purposes of this Ordinance ``watercourse'' includes such channels or depressions, although the same may be by reason of size of area drained not deemed to be a flood control facility.

SECTION 3**MAINTENANCE BY OWNER**

Every owner of a watercourse whether a person, firm, corporation, or governmental agency, or such owner's lessee or tenant, shall keep and maintain the same in a condition which will not contribute to pollution as prohibited by Section 6.1 hereof and which will not unreasonably change or retard the flow of the water; and every owner of a structure within or directly affecting a watercourse shall maintain the safe condition and function of the same.

SECTION 4**DISCHARGE OF DRAINAGE**

The County of Santa Clara, any municipality and any agency or person within the District shall have the right to discharge drainage water of non-polluting quality directly into watercourses, except water supply canals and percolation facilities, of the District subject only to the approval procedure set forth in this Ordinance.

SECTION 5**FLOOD CONTROL RESPONSIBILITY**

- 5.1 The responsibility of this District for the control of flood and storm water is an obligation to make efficient use of its funds in the areas of study, planning and acquisition and to act lawfully in designing, constructing and maintaining such works as the Board shall approve. The responsibility of the District does not and cannot extend to an affirmative obligation to take specific measures of any nature not mandated by governing legislation or judicial order. This Ordinance may not be deemed an imposition of a duty upon the District other than as specified above and no assertion of public liability shall be based thereon. Nothing in this Ordinance shall be deemed to be or construed as a warranty or assurance that flooding and flood damage will not or cannot occur anywhere in the District. However, the District will provide flood control service in an emergency to the extent of its resources and ability. The District accepts an obligation to design, construct and maintain its works in such manner as to avoid or minimize harmful disturbance of the natural environment.
- 5.2 Construction and maintenance, or acceptance and maintenance, of flood control works and control of flood and storm waters by the District shall be subject to the following:
- A. The District will so act in a reach or portion of a watercourse only if it has sufficient legal title or right of way therein.
 - B. Artificial channels of any kind, regardless of the size of tributary watershed, are excluded from District responsibility unless the same are constructed by the District or are approved and adopted by the Board.
 - C. A reach or portion of a natural watercourse will not be deemed within District flood control jurisdiction unless the tributary watershed area upstream of such reach or portion is in excess of 320 acres (one-half square mile); provided, that such area may be either greater or less than 320 acres pursuant to agreement with the city or county having jurisdiction.
- 5.3 A watercourse or reach or portion thereof over which the District is not deemed to have flood control jurisdiction by reason of the exclusions specified in Subparagraphs B and C of Section 5.2 above is deemed a local drainage facility.
- 5.4 Flood control facilities serving a watershed area of 320 acres (one-half square mile or more) shall have a design capacity to safely convey the one percent flood ("100-year flood") plus freeboard. The standard, however, may be lowered to be consistent with land use designations of city or county land use master plans. Freeboard design criteria shall be established by the District based upon accepted engineering practices.

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5.5 Storm water drainage facilities serving a watershed area less than 320 acres (one-half square mile) and qualifying under agreement per paragraph 5.2c shall have a design capacity to convey the ten percent flood ("10-year flood") plus freeboard. Freeboard design criteria water drainage facilities referred to in this section are the major collectors and are not deemed to include storm sewers used to drain urban developed sites. The design of storm sewers rests with the local agency having jurisdiction of the urban development served. In drainage areas less than 320 acres, where urban development exists or may occur, the drainage facilities should be designed to provide for the conveyance or detention of the flood flows in excess of the ten percent flood up to the one percent flood in the streets or open space areas so that development is not subject to flooding by such excess flood flows. Otherwise, the structures must be flood-proofed, as prescribed by Federal Emergency Management Agency regulations, or the storm water drainage facility must be designed as provided in Section 5.4 above.

SECTION 6 PROHIBITIONS

- 6.1 The pollution of the water supplies of the District, whether in surface streams, reservoirs or conduits of any kind, or of groundwater, by any direct or indirect means whatever, including the deposit of polluting matter of any kind upon the banks of a watercourse, lake or reservoir where the same may reach or affect such water supplies, and including the discharge of polluting storm waters or sanitary sewage, is prohibited.
- 6.2 Without having first secured a permit pursuant to Section 7 hereof, or other written approval from the District, it shall be unlawful after the effective date of this Ordinance for any person, firm, corporation, the County of Santa Clara, the Government of the United States and agencies thereof, the Government of the State of California and agencies thereof, or any municipal corporation or district to do or cause to be done any of the following:
- A. Construct or place any structure or perform any grading within a designated floodway between the banks of a watercourse, or within 50 feet of the top of such banks.
 - B. Construct, place or maintain any structure or perform any grading upon a levee or on a District project.
 - C. Excavate within a designated floodway, upon a levee, or upon or between the banks of a watercourse, or District project.
 - D. Deposit material of any kind within a designated floodway, upon a levee, or District project, or upon or within the banks of a watercourse.
 - E. Construct or place any outlet for discharging drainage waters within a designated floodway, upon or within the banks of a watercourse, or District project.
 - F. Plant any form of flora upon or within the banks of a watercourse or a District project.
 - G. Trespass in any manner whatsoever including the driving of vehicles on any property in which the District owns a fee simple interest or on which the District owns an exclusive easement for flood control, drainage or water conservation or distribution purposes, except such areas as have been opened to and developed for public recreational or other use.
- 6.3 Permits shall not be withheld upon unreasonable or insubstantial grounds.

SECTION 7
PERMIT PROCEDURE

- 7.1 Any person, firm, corporation or public agency, except those filing maps pursuant to the State Subdivision Map Act or local ordinances adopted pursuant thereto, desiring to do any of the acts for which a permit is required pursuant to this Ordinance shall make application for such permit to the District. Said applications shall contain such information as the District shall reasonably require.
- 7.2 Any public agency, or any person, firm or corporation filing a map pursuant to the State Subdivision Map Act or local ordinance adopted pursuant thereto, desiring to do any of the acts for which a permit is required pursuant to this Ordinance shall, in lieu of the application procedure set forth above, submit engineered improvement plans to the District.
- 7.3 Upon receipt of such application for permit or engineered improvement plans or additional information as herein set forth, the District shall make such investigations as are necessary to determine, among other things, whether or not the proposed work or activities intended will impede, restrict, retard, pollute, change the direction of the flow of water, catch or collect debris carried by such water; is located where natural flow of the storm and flood waters will damage or carry any structure or any part thereof downstream; or will damage, weaken, erode, or reduce the effectiveness of the banks to withhold storm and flood waters, to resist erosion and siltation and entry of pollutants and contaminants, or interfere with maintenance responsibility or with structures placed or erected for flood control, water conservation or distribution. In order to make said investigation, the District may return said application or improvement plans to the applicant for additional information as may be required to complete the investigation. After investigation the District shall approve conditionally, or disapprove the application or improvement plans on the basis of such investigations. If a permit is granted, it shall state the conditions subject to which it is granted.
- 7.4 Within fifteen (15) days of District receipt of such application for permit or engineered improvement plans or additional information, the District shall respond, acknowledging the same and advising the applicant of any reason beyond the District's control why action thereon cannot be taken within thirty (30) days of said District receipt. Where no such notification of anticipated delay and the reason therefor is given by the District, the District shall act upon every application for permit, or engineered improvement plans or additional information within thirty (30) days of its receipt.
- 7.5 In the event an applicant is aggrieved by the action of the District, or by reason of the requirements of this Ordinance, the applicant may within fifteen (15) days from date of decision of the District, make an appeal in writing to the Board. The Clerk of said Board shall set a time for hearing on such appeal within three (3) weeks from the date of receipt of said appeal, and shall mail or deliver notification to the appellant of said date at least two (2) weeks prior to the date so set. The appellant may waive such notification and seek a hearing at the next meeting of the Board. At the hearing of such appeal, it will be incumbent upon the appellant to show to the satisfaction of the Board that the work or activities so proposed will not violate Section 7.3 of this Ordinance.

SECTION 8

JOINT USE

The use of District projects jointly with a public agency, subject to conditions established by resolution of the Board, is favored wherever such joint use is possible and conformable to the District's public duty.

SECTION 9

REQUEST FOR DEDICATIONS AND CONSTRUCTION

In order to permit the provision of flood control services by the District, the District will request, wherever equitable and appropriate, that the city or the county having jurisdiction secure flood control dedications to the District from landowners seeking a change of land use. Where equitable and appropriate, the District may also request that the city or the county having jurisdiction secure from such landowners construction of flood control measures as determined by the District. Such requests shall be pursuant to and in accordance with the master plans, ordinances, resolutions, procedures and conditions established by such city or county.

SECTION 10

VALIDITY

Should any Section or provision of this Ordinance be found to be unconstitutional or invalid, such decision shall not affect the validity of the Ordinance as a whole or any part thereof, other than the part decided to be unconstitutional or invalid.

SECTION 11

ORDINANCE 74-1 REPEALED

Ordinance 74-1 of this District is hereby repealed; provided that permits heretofore given and rights of every nature heretofore acquired under said Ordinance 74-1 shall remain unaffected.