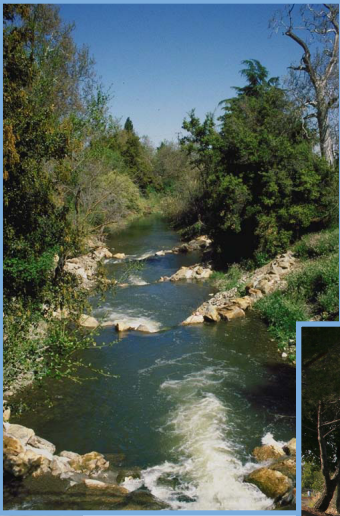


Water Resources Protection Ordinance



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**SM

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:

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- 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**

