



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Katy Allen

SUBJECT: SEE BELOW

DATE: 06-04-07

Approved

Katy Allen

Date

6/10/07

COUNCIL DISTRICT: Citywide

SUBJECT: FEMA LEVEE RECERTIFICATION AND FLOODPLAIN REMAPPING

RECOMMENDATION

Adoption of a resolution authorizing the Director of Public Works to sign the "Letter of Agreement and Request for Provisionally Accredited Levee Designation and Agreement to Provide Adequate Compliance with the Code of Federal Regulations, Title 44, Section 65.10 (44 CFR 65.10)" or "PAL Agreement" on behalf of the City for the Coyote Creek Levee extending from Trimble Road to the Water Pollution Control Plant.

OUTCOME

Approval of the recommendation will provide City staff a 24-month period to acquire and/or assemble the required documentation to be submitted to FEMA in coordination with the Santa Clara Valley Water District (Water District) and the City of Milpitas.

BACKGROUND

Since 1982, the City of San José has been an active participant in Federal Emergency Management Agency's (FEMA) National Flood Insurance Program (NFIP). Periodically, FEMA will provide updated Flood Insurance Rate Maps (FIRMs or flood maps) to a participating NFIP community. In 2005, FEMA initiated its Map Modernization Program in Santa Clara County with the main goal of converting all paper flood maps to digital format. While undertaking this effort, FEMA revised its major goal to include a provision that communities provide verification that all structures, which influence flood protection, comply with current FEMA standards. Structures include levee systems and levee-like structures, such as road and railway embankments, which act to block the passage of water.

FEMA held two outreach meetings that were attended by affected Santa Clara County jurisdictions, which include the cities of San José, Campbell, Gilroy, Los Gatos, Milpitas, Mountain View, Palo Alto and Santa Clara. At the first outreach meeting held on January 10, 2007, FEMA presented the levee mapping process, certification requirements and mapping schedule. At the second outreach meeting held on May 1, 2007, FEMA provided a list of all levees within the County that may be eligible for the Provisionally Accredited Levee (PAL) designation. Per FEMA guidelines, a levee is PAL-eligible if: 1) the levee can be certified to provide 100-year flood protection and 2) the levee owner and/or impacted community can and will provide follow-up documentation, such as hydrologic modeling and maintenance and operations records, within 24 months.

The list of all levee systems and levee-like structures for San José is attached as Exhibit A and the map with their locations is attached as Exhibit B. In addition, the City received FEMA's official notification letter on May 4, 2007. This notification letter initiated a formal 90-day period where the levee owner and a representative of each impacted community can either submit full levee certification or sign and return the "Letter of Agreement and Request for PAL Designation and Agreement to Provide Adequate Compliance with the Code of Federal Regulations, Title 44, Section 65.10 (44 CFR 65.10)" or "PAL Agreement" (Exhibit C) for each eligible levee before August 2, 2007.

At the conclusion of the 90-day period (August 2, 2007), FEMA will review all submitted certifications and PAL Agreements and determine which levees should be fully accredited on the new, countywide digital flood maps. For all levees for which neither acceptable full certification nor PAL Agreements are received, FEMA will perform analyses and prepare floodplain mapping of the 100-year floodplains subject to inundation behind the levee. Property owners newly mapped in a 100-year floodplain will be required to carry flood insurance for building(s) on their property and will be subject to flood construction requirements for new construction or proposed improvements to existing building(s) on their property.

ANALYSIS

The revised FEMA provision to verify that levees meet current FEMA standards affected four (4) existing levee systems and thirteen (13) levee-like structures within the City of San José. Staff, however, is only recommending one (1) levee system to be analyzed because the other three (3) are either anticipated to be fully accredited or it will be cost prohibitive to construct the necessary physical improvements to comply with the FEMA standards. In addition, while the thirteen (13) levee-like structures are not eligible for PAL designation, preliminary information indicate that no change to the floodplain mapping is expected in these areas.

San José Levee Systems

In San José, there are four (4) levee systems listed by FEMA that require verification that they provide 100-year flood protection. It is important to note that these levee systems although

located in San José, are operated and maintained by the Water District. These are listed as follows:

1. **Guadalupe River (Highway 101 to Highway 237):** Flood protection improvements were completed by the Water District in 2005 and full accreditation is anticipated. No change to the floodplain mapping is expected in the areas affected by this levee system and a PAL agreement is not necessary.
2. **Thompson Creek (Aborn Road to Quimby Road):** Full accreditation for this levee system is anticipated. No change to the floodplain mapping is expected in the areas affected by this levee system and a PAL agreement is not necessary.
3. **Coyote Creek (Trimble Road to the Water Pollution Control Plant):** Although, flood protection improvements were completed by the Water District in 1995, a PAL agreement is required to update the levee certification. In addition, a portion of this levee system is within the City of Milpitas. Staff is working with the Water District and the City of Milpitas on a detailed workplan and possible cost-sharing agreement to accomplish FEMA's requirements.
4. **San Tomas Aquino Creek (San Tomas Aquino Road to Westmont Avenue):** San Tomas Aquino Creek was designed and constructed in the 1970s to convey the 100-year flood flow with one (1) foot of "freeboard" (factor of safety above the flood level for purposes of floodplain management), consistent with the standards of the time. The creek continues to provide this level of protection. However, in 1986, FEMA established a new freeboard standard of three (3) feet. Therefore, a PAL agreement is not recommended as extensive physical improvements would be necessary to reconstruct this levee system to meet today's FEMA standards. Consequently, FEMA will analyze this area as if the levee system does not exist and will revise the flood maps accordingly. Staff is currently researching the potential number of properties adjacent to San Tomas Aquino Creek that may be added into the 100-year floodplain and may be required to carry flood insurance along with other potential properties in the City of Campbell..

San José Levee-Like Structures

There are 13 levee-like structures listed as "not certifiable" since these structures are roadway or railway embankments that were not originally designed to provide any flood protection. These structures are not operated nor maintained by the Water District and in many cases are City-owned streets.

However, since these structures are high ground areas and expected flood depths behind these structures will not realistically cause the structures to fail, FEMA's mapping consultant has tentatively stated that these structures will be taken out of the list. Based on this preliminary feedback, no change to the floodplain mapping is expected in the areas affected by these levee-like structures.

Mapping Schedule

Below is the estimated schedule provided by FEMA on this mapping process:

<i>May 2007</i>	City receives FEMA's official levee notification letter and start of 90-day PAL period where levee owner and community submits full levee certification <u>or</u> sign and return PAL Agreement
<i>Prior to August 2, 2007</i>	End of 90-day PAL period and FEMA deadline for return of signed PAL Agreement
<i>August 2007</i>	FEMA releases revised countywide digital flood maps and start of 30-day City comment period
<i>September 2007</i>	FEMA holds final community coordination meeting to solicit comments and discuss formal map adoption process
<i>February 2008</i>	FEMA releases "Letter of Final Determination" (LFD) which establishes the effective date of the countywide digital flood maps
<i>August 2008</i>	Scheduled effective date of countywide digital flood maps
<i>August 2009</i>	Deadline for levee owner and/or impacted community to submit PAL documentation

PUBLIC OUTREACH/INTEREST

- Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criteria 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criteria 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

While this action does not meet any of the above criteria, staff has been coordinating this mapping effort with the Water District and the City of Milpitas (where applicable) and will prepare a public outreach plan to include: (1) written notification to affected property owners; (2) Department of Public Works website posting; and (3) community meeting(s), if necessary. This memorandum will be posted on the City's website for the June 26, 2007 Council agenda.

COORDINATION

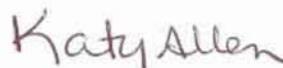
This memorandum has been coordinated with the Planning, Building and Code Enforcement Department, City Manager's Budget Office, City Attorney's Office and regular updates were provided to the City Manager's Office. In addition, staff is coordinating with the Water District and the City of Milpitas.

COST SUMMARY/IMPLICATIONS

There is a potential cost implication in entering into a cost-sharing agreement with the Water District and the City of Milpitas to provide the PAL documentation for Coyote Creek. Staff will be working cooperatively with the Water District and the City of Milpitas to determine an equitable cost distribution. A subsequent Council approval will be requested by staff to enter into a cost-sharing agreement with the Water District and the City of Milpitas. If in the future the Council does not approve the terms of the cost-sharing agreement and, subsequently, the City fails to provide complete levee documentation to FEMA within the designated timeframe of 24 months, areas in North San José affected by the Coyote Creek levees will be added into the 100-year floodplain and property owners may be required to carry flood insurance.

CEQA

CEQA: Not a project.



KATY ALLEN

Director, Public Works Department

For questions please contact TIMM BORDEN, DEPUTY DIRECTOR, at 408-535-8300.

PD:ML:MA

Attachments

EXHIBIT A

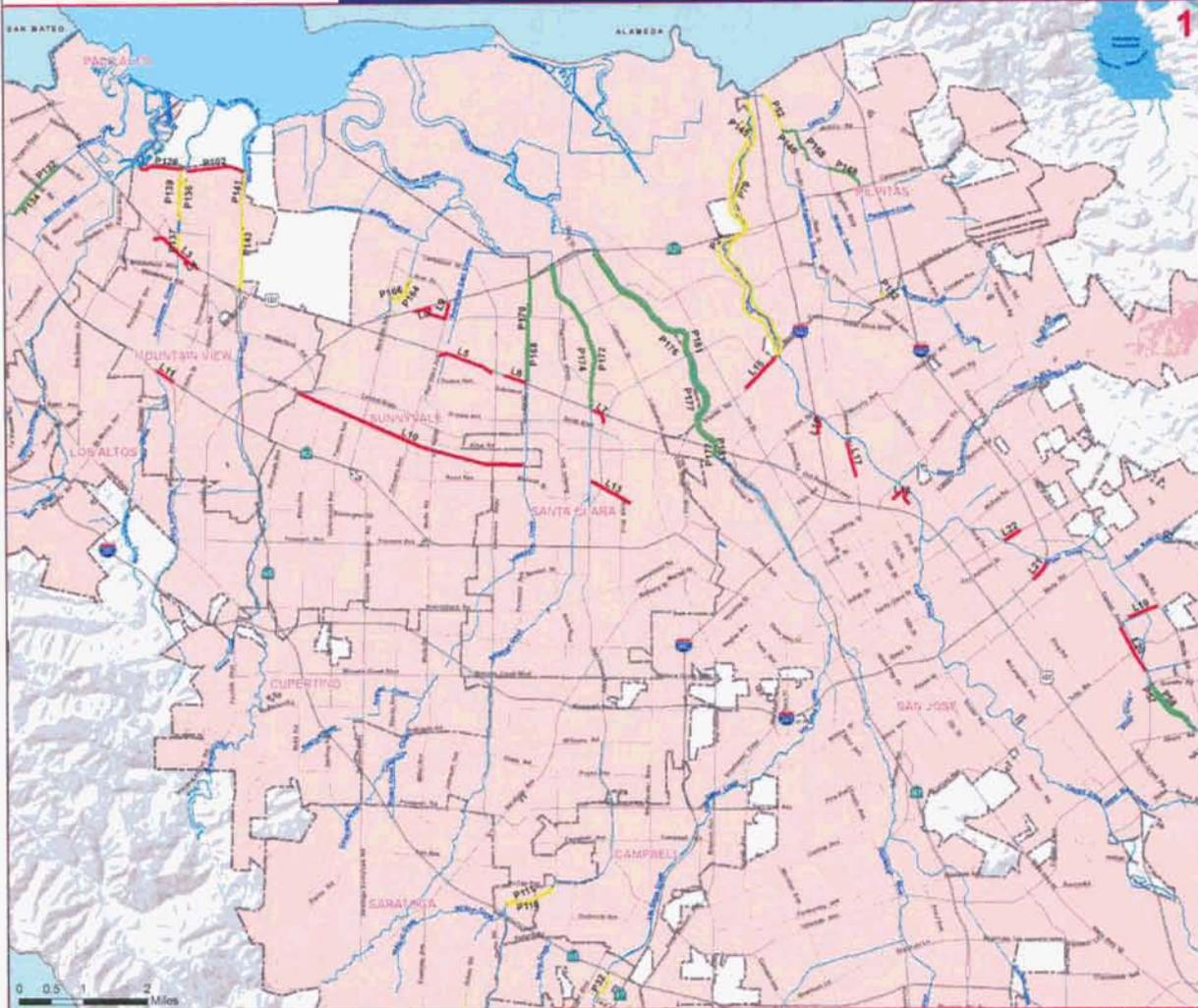
San José Levee Status

April 26, 2007

Levee ID	Type	USACE Program Levee	Community	Levee Status *	Flooding Source	Organization	Comment
P145	Levee	Y	San Jose	May be PAL B Eligible	Coyote Creek	SCVWD	May be eligible for PAL agreement
P24	Levee	Y	San Jose	May be PAL B Eligible	Coyote Creek	SCVWD	May be eligible for PAL agreement
P110	Levee	N	San Jose & Campbell	May be PAL A Eligible	San Thomas Aquinos Creek	SCVWD	May be eligible for PAL agreement
P111	Levee	N	San Jose & Campbell	May be PAL A Eligible	San Thomas Aquinos Creek	SCVWD	May be eligible for PAL agreement
P176	Levee	Y	San Jose	Levee is certified and full accreditation planned	Guadalupe River	SCVWD	Levee is certified and full accreditation planned
P177	Levee	Y	San Jose	Levee is certified and full accreditation planned	Guadalupe River	SCVWD	Levee is certified and full accreditation planned
P181	Levee	Y	San Jose	Levee is certified and full accreditation planned	Guadalupe River	SCVWD	Levee is certified and full accreditation planned
P57	Levee	N	San Jose	Levee is certified and full accreditation planned	Thompson Creek	SCVWD	Levee is certified and full accreditation planned
P58	Levee	N	San Jose	Levee is certified and full accreditation planned	Thompson Creek	SCVWD	Levee is certified and full accreditation planned
L15	Levee like		San Jose	Not Certifiable	Guadalupe River		Road embankment
L16	Levee like		San Jose	Not Certifiable	Coyote Creek		Road embankment
L17	Levee like		San Jose	Not Certifiable	Coyote Creek		Road embankment
L18	Levee like		San Jose	Not Certifiable	Coyote Creek		Road embankment
L19	Levee like		San Jose	Not Certifiable	Thompson Creek		Road embankment
L20	Levee like		San Jose	Not Certifiable	Thompson Creek		Road embankment
L21	Levee like		San Jose	Not Certifiable	Silver Creek		Road embankment
L22	Levee like		San Jose	Not Certifiable	Silver Creek		Road embankment
L23	Levee like		San Jose	Not Certifiable	Unknown		Road embankment
L24	Levee like		San Jose	Not Certifiable	Unknown		Road embankment
L25	Levee like		San Jose	Not Certifiable	Unknown		Road embankment
L26	Levee like		San Jose	Not Certifiable	Coyote Creek		Road embankment
L27	Levee like		San Jose	Not Certifiable	Coyote Creek		Road embankment

* May be PAL A Eligible: Levees not in USACE program that are shown as providing base flood protection on an effective FIRM or LOMR, and may be eligible for PAL

May be PAL B Eligible: Levees in the USACE program that are shown as providing base flood protection on an effective FIRM or LOMR, and may be eligible for PAL



Legend

Levees

- Levee is certified and full accreditation planned
- - - Certification pending resolution of O&M deficiencies
- May be PAL eligible
- - - May be PAL eligible pending resolution of O&M deficiencies
- - - Not certifiable against 1% annual chance flood

NOTE: This map only depicts the location of levees currently shown as providing protection against the 1% annual chance (100 year) flood on an effective Flood Insurance Rate Map (FIRM) or Letter Of Map Revision (LOMR)

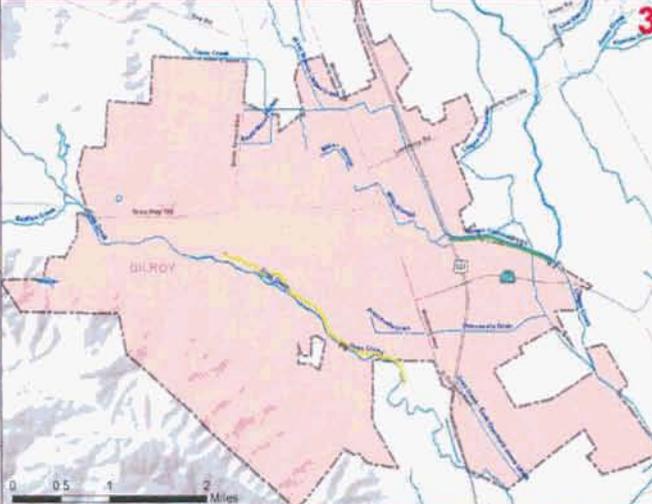


EXHIBIT C

Letter of Agreement and Request for Provisionally Accredited Levee (PAL) Designation and Agreement to Provide Adequate Compliance with the Code of Federal Regulations, Title 44, Section 65.10 (44 CFR 65.10)

PAL Agreement Form

We, the undersigned, have received a letter from FEMA dated May 1, 2007 with an enclosed "Levee Status Map" and "Levee Status Table" and two enclosed documents titled "Title 44 of the Code of Federal Regulations (CFR), Section 65.10 (44 CFR 65.10)" and "Requirements of 44 CFR Section 65.10: Mapping of Areas Protected by Levee Systems." We understand that FEMA is in the process of providing an updated Flood Insurance Rate Map for Santa Clara County, CA and that the flood hazards around levee(s) identified on the *Levee Status Map* and *Levee Status Table* with ID numbers P____, P____, P____, P____, P____ will be remapped to reflect that these levees have been designated a PAL. This/these levee(s) or levee system(s) is/are also known as _____

To the best of our knowledge, the levee(s) identified above meet the criteria of 44 CFR 65.10 and has/have been maintained in accordance with an adopted operation and maintenance plan. For Scenario A (non-USACE Program) levees, this must be evidenced by an attached Operation and Maintenance Plan and records of levee maintenance and operation, as well as Test Records of Mechanized Interior Drainage System. We hereby submit to FEMA within 90 days (before August 2, 2007) our agreement to provide FEMA with all the necessary information to show that the levee(s) identified above comply with 44 CFR 65.10. We understand that this documentation will be provided before August 2, 2009. Providing the information described in 44 CFR 65.10 will allow FEMA to move forward with the flood mapping for Santa Clara County. We fully understand that if complete documentation of compliance with 44 CFR 65.10 is not provided within the designated timeframe of 24 months, FEMA will initiate a revision to the Flood Insurance Rate Map for Santa Clara County to redesignate the area as floodprone.

Levee Owner Representative (signature): _____ Date: _____

Levee Owner Representative (print name): _____

Community CEO (signature): _____ Date: _____

Community CEO (print name): _____

Other, if applicable (signature): _____ Date: _____

Other, if applicable (print name): _____

Required Attachments for Scenario A (non-USACE Program) Levees only:

- Operation and Maintenance Plan and Records
- Test Records of Mechanized Interior Drainage System

Instructions for Completing this Form:

- On this PAL Agreement Form, fill-in the levee ID numbers and levee(s) name/description for which the Provisionally Accredited Levee (PAL) designation is requested. A separate PAL Agreement Form is recommended for each unique levee owner/levee system. Make copies of this blank form to request PAL designation for multiple levee systems, as necessary.
- This document is available on-line (in a PDF format that can be filled-in electronically) via the link named "Generic PAL Agreement Form for Region IX" at http://rnc.mapmodteam.com/rnc9/Fact_Sheets.htm