COUNCIL AGENDA: 08-31-10
ITEM: 7.3

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: Lee Price, MMC
City Clerk

SUBJECT: **STORMWATER PERMIT IMPLEMENTATION**

DATE: 08-17-10

RECOMMENDATION

As recommended by the Transportation and Environment Committee on August 16, 2010 and outlined in the attached memo previously submitted to the Transportation and Environment Committee:

(a) Accept the status report on Stormwater Permit Implementation including:
   (1) Storm Drain Inlet Marking Program
   (2) Trash Reduction Efforts
   (3) Regional Coordination

(b) Direct the City Attorney's office to prepare an ordinance amending Chapters 15.14, 20.95, and 20.100 of the San José Municipal Code as needed to address provisions in the Municipal Regional Stormwater National Pollutant Discharge Elimination System (NPDES) Permit (Stormwater Permit) related to legal controls on: operation and maintenance of stormwater treatment systems and construction sites.

T&E AGENDA: 08-16-10
ITEM: d (2)

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: TRANSPORTATION AND ENVIRONMENT COMMITTEE

FROM: John Stufflebean
Katy Allen
Joseph Horwedel

SUBJECT: **STORMWATER PERMIT IMPLEMENTATION**

DATE: 07-30-10

Approved

Date 8/4/10

COUNCIL DISTRICT: City-Wide

RECOMMENDATION

A. Accept this status report on Stormwater Permit Implementation including:
   a. Storm Drain Inlet Marking Program
   b. Trash Reduction Efforts
   c. Regional Coordination

B. Recommend full Council consideration, at the August 31 meeting, that the City Council direct the City Attorney's Office to prepare an ordinance amending Chapters 15.14, 20.95, and 20.100 of the San José Municipal Code as needed to address provisions in the Municipal Regional Stormwater National Pollutant Discharge Elimination System (NPDES) Permit (Stormwater Permit) related to legal controls on: operation and maintenance of stormwater treatment systems and construction sites.

OUTCOME

Discussion of this report will inform the Committee on implementation efforts to comply with the requirements of the Stormwater Permit, and continue to protect local creeks and the Bay from priority pollutants. Forwarding the recommendation to Council for direction to the City Attorney on an ordinance amending the Municipal Code will facilitate the development of appropriate legal mechanisms for implementation of Stormwater Permit requirements.

EXECUTIVE SUMMARY

The Stormwater Permit became effective December 1, 2009, and remains in effect through November 30, 2014. It specifies actions necessary to reduce the discharge of pollutants in stormwater to the maximum extent practicable and effectively prohibit non-stormwater discharges into the municipal storm sewer system to protect local creeks and the Bay. On

February 1, 2010, staff provided the Transportation and Environment (T&E) Committee with an update on the adopted Stormwater Permit requirements, including critical areas of concern. Since the adoption of the Stormwater Permit in October 2009, staff from throughout the City have been working to adjust existing programs and implement new programs to meet the Stormwater Permit requirements.

This report provides a status update on critical implementation areas including:

- Storm Drain Inlet Marking
- Creek Hot Spots and Trash Reduction
- Construction Site and Post Construction Stormwater Treatment System Inspection Programs
- Regional Coordination Efforts

The Stormwater Permit requires the City to mark and maintain at least 80 percent of the approximately 29,000 municipally-maintained storm drain inlets with an appropriate stormwater pollution prevention message by June 2014. Since 1990, most of the City's inlets have been painted at least twice with a stenciled "No Dumping" message, but this type of marking does not provide long-term legibility. After comparing more durable inlet marking options, such as adhesive plastic curb markers, metal plates, and thermoplastic markers, staff found that thermoplastic markers provided the best balance between initial cost and long-term durability and legibility. To date, approximately 6,500 thermoplastic inlet markers have been installed. To meet the Stormwater Permit requirements, the Department of Transportation (DOT) maintenance crews will continue this effort by installing approximately 4,500 markers per year during the next four years.

The Trash Load Reduction provision in the Permit requires annual clean up of 32 creek Trash Hot Spots and establishes phased goals to dramatically reduce trash loads from the storm sewer system by 40% by 2014, 70% by 2017, and 100% by 2022. Staff engaged local watershed stakeholders to identify San José's 32 Hot Spots and has initiated clean-up and assessment efforts. An information memo on the Creek Trash Hot Spots was submitted to the City Council on June 11, 2010. San Jose's list of 32 Hot Spots was included in a countywide hot spot report complied by Santa Clara Valley Urban Runoff Pollution Prevention Program (SCVURPPP) and submitted to the Water Board by the permit's July 1, 2010 deadline.

Intercepting trash in the storm sewer system is an integral part of the City's short-term and long-term trash strategy to meet the bold reduction goals prescribed in the Stormwater Permit. Early efforts piloting trash capture devices have produced preliminary information on trash loading that will be expanded upon in the next year to develop estimates of baseline trash loading to the stormwater system. Similarly, staff is preparing to test larger devices, such as hydrodynamic separators, designed to treat relatively large land areas. These larger devices are installed in the storm sewer lines and separate trash from stormwater flows into holding areas where it can be removed and disposed of. While these larger devices will require significant capital investment initially, potential advantages are reduced overall maintenance costs, the ability to treat large

land areas with one device, and better ability to track the amount of material prevented from entering the creek.

In addition to capturing trash in the storm sewer system and reviewing opportunities for increased maintenance activities to remove trash, source reduction initiatives, such as the potential actions on single use bags, expanded polystyrene, or other common litter items will also be important opportunities within the City's trash load reduction strategy.

The Stormwater Permit also requires the City to have adequate legal authority to implement specified industrial and commercial, illicit discharge, and construction site inspection and enforcement programs. The Stormwater Permit's Construction Site Control provision requires the City to have legal authority to require all construction sites to implement best management practices to control construction site discharge of pollutants including sediment. Additionally, the Stormwater Permit regulations for New Development require the City to implement a program that inspects and verifies that new post-construction stormwater treatment systems are correctly installed, and properly operated and maintained for the life of the development project.

Finally, there are several requirements that are being implemented on a regional level. Staff has been working closely with regional partners, co-permittees, and the Water Board staff on two key initiatives:

- "Special Project" Categories Report for New and Redevelopment Stormwater Treatment
- Feasibility Criteria for Pilot Stormwater Diversions

As reported to the Committee in February 2010, establishing a "Special Projects" category for development projects is of particular importance to San José. It is anticipated that Special Projects designations will afford greater flexibility in meeting the stormwater treatment requirements for certain high-density urban infill projects by reducing Low Impact Development (LID) treatment requirements or allowing the use of measures other than LID. Staff has been working on a regional level to ensure that the Special Projects categories balance the Stormwater Permit's LID goals with the City's Smart Growth objectives. A report formally proposing a "Special Projects" category is due to the Water Board by December 1, 2010.

The permit provisions for mercury and Polychlorinated Biphenyls (PCBs) require the implementation of five pilot projects throughout the Bay area to divert stormwater flows to a wastewater treatment facility (one must be in Santa Clara County). Diversions are to be performed at stormwater pump stations with dry weather or first flush water diverted into the Sanitary Sewer system for treatment at a wastewater treatment facility. The purpose of this requirement is to evaluate the PCBs and mercury loads reduced from the diversion. Both pollutants are strongly associated with particles, and wastewater treatment plants are efficient at removing particles and pollutants associated with them. By September 2010, permittees must identify feasibility criteria for selecting potential pilot diversion projects.

Staff will continue to provide status updates to the Committee on critical implementation areas. The first Annual Report under the new Stormwater Permit is due to the Water Board in

September 2010. This report will provide a comprehensive description of the City's implementation efforts and accomplishments and is scheduled for Council acceptance on August 31, 2010.

BACKGROUND

Water enters the City's storm sewer system through approximately 29,000 storm drain inlets. Stormwater flows are conveyed without treatment to local creeks and streams and ultimately to San Francisco Bay. This water is comprised of rainfall, irrigation water, and other water used outdoors. It collects pollutants as it flows across rooftops, sidewalks, driveways, streets, and landscaping.

The Federal Clean Water Act requires the City to operate under the NPDES municipal stormwater permit for the discharge of stormwater to surface waters via the City's storm sewer collection system. On October 14, 2009, the San Francisco Regional Water Quality Control Board (Water Board) adopted the Municipal Regional Stormwater NPDES Permit for the San Francisco Bay Region.

The Stormwater Permit became effective December 1, 2009, and remains in effect through November 30, 2014. It specifies actions necessary to reduce the discharge of pollutants in stormwater to the maximum extent practicable and effectively prohibit non-stormwater discharges into the municipal storm sewer system to protect local creeks and the Bay.

On February 1, 2010, staff provided the T&E Committee with an update on the adopted Stormwater Permit requirements, including critical areas of concern.

ANALYSIS

Since the adoption of the Stormwater Permit in October 2009, staff from throughout the City have been working to adjust existing programs and implement new programs to meet the Stormwater Permit requirements. A few key completed program requirements include:

Council Policy 8-14 Update	On February 24, 2010, the City Council approved revisions to the Post Construction Hydromodification Management policy.
Watershed Enforcement Response Plan	A revision of Watershed Enforcement's Enforcement Response Plan (WERP) was completed by March 1, 2010. The WERP outlines the procedures followed by City staff to identify, document, and respond to violations of the San José Municipal Code (SJMC) relating to stormwater and urban runoff pollution.
Creek Trash Hot Spots	San José's list of 32 Trash Hot Spots was submitted to the

	Water Board by July 1, 2010. Efforts to clean and conduct assessments of the Hot Spots are currently underway and scheduled for completion by the end November 2010.
Pump Station Inventory	Staff has completed the inventory of the City's 28 stormwater pump stations; including location, discharge water body, and other pump station specifications including discharge rates and wet well capacity. ESD and DOT staff developed plans for dry season monitoring at 13 of these pump stations, and will complete monitoring by September 30, 2010.

The Stormwater Permit requirements impact many areas of City operations and programming. Staff from multiple City departments continue to work on permit implementation efforts. This report highlights critical elements that are currently underway or are due in the coming months.

Storm Drain Inlet Marking

The Stormwater Permit requires the City to mark and maintain at least 80 percent of the approximately 29,000 municipally-maintained storm drain inlets with an appropriate stormwater pollution prevention message by June 2014. Since 1990, most of the City's inlets have been painted at least twice with a stenciled "No Dumping" message, but this type of marking does not provide long-term legibility. Painted stencils were competitively priced during the initial purchase and installation, but require ongoing funding for frequent repainting to maintain legibility.

Metal plates cast with "No Dumping" message were installed adjacent to storm drain inlets in conjunction with Americans with Disabilities Act (ADA) curb ramp upgrades as part of a pilot program. While these metal plates are sturdy and are permanent, they would require removal and repouring of concrete, which makes this approach cost prohibitive on a citywide basis. Furthermore, staff found that the "No Dumping" message was less visible with this approach.

After comparing more durable inlet marking options, such as adhesive plastic curb markers, metal plates, and thermoplastic markers, staff found that thermoplastic markers provided the best balance between initial cost and long-term durability and legibility. In anticipation of the Stormwater Permit's inlet marking requirements, staff began testing and monitoring durability of the thermoplastic markers in 2007. These markers remained legible over time, and based on manufacturer's claims, should last up to 10 years. Approximately 6,500 thermoplastic markers were installed during the past three years. To meet the Stormwater Permit requirements, the City will continue this effort by installing approximately 4,500 markers per year during the next four years. Inlet marking will continue to be generally deployed by watershed, with an opportunity to prioritize areas with a history of illegal dumping.

Previously, thermoplastic marker installation occurred through traffic striping contractors. As this effort moves forward, DOT crews will install the markers. Based on preliminary cost comparisons, the use of City crews is expected to considerably reduce the per-unit installation

cost. The total estimated cost to purchase and install the thermoplastic markers is $125,000 annually.

Trash Reduction Efforts

The Trash Load Reduction provision requires annual clean up of in-creek Trash Hot Spots and establishes phased goals to reduce trash loads from the storm sewer system by 40% by 2014, 70% by 2017, and 100% by 2022.

Staff engaged local watershed stakeholders to identify San José's 32 Hot Spots and has initiated clean-up and assessment efforts. An information memo on the Creek Trash Hot Spots was submitted to the City Council on June 11, 2010. San Jose's list of 32 Hot Spots included in a countywide hot spot report complied by Santa Clara Valley Urban Runoff Pollution Prevention Program (SCVURPPP) and submitted to the Water Board by the permit's July 1, 2010 deadline. The complete list of San José Hot Spots is included in Attachment A.

Trash Reduction

Intercepting trash in the storm sewer system will be an integral part of the City's short-term and long-term trash strategy to meet the bold reduction goals established in the Stormwater Permit. San Jose's early efforts piloting trash capture devices have produced preliminary information on trash loading that will be expanded upon in the next year to develop estimates of baseline trash loading to the stormwater system.

In partnership with the City of Sunnyvale and the SCVURPPP, the City installed 87 Catch Basin Insert Screens to learn more about the effectiveness and operational constraints of trash capture devices. Preliminary findings show that the devices are effective at trapping materials before they enter storm drain laterals, but they require significantly increased maintenance to maintain effectiveness and prevent flooding. Staff has evaluated the material trapped by the 87 capture devices currently installed in the system to quantify and compare trash loading rates among various land use types. This information will be used to prioritize future device installation to optimize capture efficiency and to help track load reductions as additional control measures are implemented.

Staff is working to identify locations to install and test larger devices, such as hydrodynamic separators, designed to treat relatively large land areas. These larger devices are installed in the storm sewer lines closer to the discharge point, and separate trash from stormwater flows by various means. While these larger devices will require significant initial capital investment, they offer the potential advantages of reduced overall maintenance costs, the ability to treat large land areas with one device, and improved tracking of the amount of material prevented from entering the creek. Potential sites have been identified and construction and installation is targeted for completing during this dry season. The identified locations are located near school facilities. Staff has met with the affected school districts to share information about the project and scheduling in order to minimize disruptions to the schools.

Costs for purchase and installation of trash capture devices will vary based on type of device, installation location, and the land area the device will treat. Each installation will be designed and managed by Public Works and will be competitively bid. Funding for the initial locations is available in the current Operating Budget. These devices will be operated and maintained by DOT staff.

As discussed in the February staff report, the San Francisco Estuary Partnership (SFEP) has secured a $5,000,000 ARRA-funded grant, administered through the State Revolving Fund to pilot the installation of trash capture devices in the San Francisco Bay Region. Participating municipalities are allocated funds from the grant according to population and amount of commercial land area, and may use those funds to choose from a list of approved trash capture devices. San Jose's allocation of approximately $660,000 will be used to fund the purchase of additional trash capture devices. Staff has been working closely with the SFEP to implement this grant project, and anticipate bringing a participation agreement to the City Council for consideration in early August.

In addition to capturing trash in the storm sewer system and reviewing opportunities to remove trash through increased maintenance activities, source reduction initiatives such as the potential actions on single use bags, expanded polystyrene, or other highly littered items will also be important opportunities in the City's trash load reduction strategy. The short term trash reduction strategy will be developed in conjunction with the baseline trash loading estimate. A comprehensive trash reduction strategy will be developed during FY 2010-2011.

Construction Site and Post Construction Stormwater Treatment System Inspection Programs

Construction Site Stormwater Management

The Stormwater Permit requires that the City have legal authority to require all construction sites to implement best management practices to control construction site discharge of pollutants including sediment. This new requirement is not limited to sites that require a development permit and applies to all sites on which grading or soil disturbing activities are occurring, regardless of project size. It is recommended that the City Attorney be directed to develop proposed amendments to the Municipal Code as are needed to provide appropriate legal mechanisms for requiring implementation of best management practices on all construction sites, regardless of site size.

Staff is not recommending a substantive change in the City's programmatic approach to stormwater control on construction sites, which employs escalated enforcement and education to achieve compliance. The City's approach to regulating stormwater management at construction sites is summarized below:

Type of Project	Programmatic Approach	Impact of Recommendation
Land disturbance of 1 acre or more	Monthly inspection.	No change.
Land disturbance less than an acre and categorized as high priority	Monthly inspection.	No change.

Type of Project	Programmatic Approach	Impact of Recommendation
due to factors such as soil erosion potential or soil type, proximity to water body, site slope, etc.		
Smaller projects requiring only a building permit	Inspection based on complaints received, referrals, or field observations.	Staff will work with the Permit Center to make information available, and conduct outreach to contractors, on the Best Management Practices (BMPs) needed to protect water quality. Consistent with current practice, an inspection is conducted based on complaint reported, referral, or field observation.

Staff is also not recommending that the Municipal Code be amended to create additional permitting requirements for the larger and more complex projects that are already regulated under the Statewide Construction General Permit or are subject to City grading permit requirements. Similarly, a permitting scheme is not recommended for projects not now subject to the Statewide Permit or City grading permit. Instead it is recommended that code changes focus on mechanisms that would allow staff to more effectively enforce existing requirements for the larger more complex sites and simple requirements for smaller sites, such as protecting storm drains and covering exposed materials on-site. The recommended Code changes are expected to create minimal additional overall project costs.

Post Construction Stormwater Treatment Systems
Chapter 20.95 of the Municipal Code specifies the current City requirements for post-construction stormwater management features, such as mechanical treatment devices, bioretention swales, or media filters. Additionally, the Stormwater Permit regulations for New Development and Redevelopment require the City to implement a program that inspects and verifies that new post-construction stormwater management features are correctly installed, and properly operated and maintained for the life of the development project. The City is generally required to inspect each post-construction stormwater facility at least once every five years.

The Municipal Code currently specifies that all property owners must maintain any post-construction stormwater management feature. However, based on experience inspecting these treatment systems for the past several years, staff is recommending that the Municipal Code be updated to require property owners maintain maintenance records for post-construction treatment systems for five years and make such records available during an inspection. This change is consistent with record keeping requirements of other inspection programs.

Operations and maintenance costs for the post construction stormwater management features are the responsibility of the property owner, and vary significantly depending on the treatment system. For example, landscape-based stormwater features can be maintained through normal landscape maintenance activities. Proprietary filtration systems, however, often require maintenance by an approved vendor.

The recommended revisions to the Municipal Code will enable more effective enforcement of stormwater pollutant controls on construction sites and improve efficiency of inspecting post-construction stormwater treatment systems and hydromodification controls. The City actively inspects construction sites and stormwater treatment systems through its grading permitting and Watershed Enforcement program. No additional enforcement staffing needs are anticipated as a result of the recommended Municipal Code revisions.

Regional Coordination Efforts

New and Redevelopment Special Projects for Stormwater Treatment
A particularly important component of the Stormwater Permit is the requirement that development projects of a certain size utilize Low Impact Development (LID) treatment measures to treat stormwater runoff beginning December 1, 2011. These measures include harvesting and re-use of stormwater, or treatment of stormwater via infiltration, evapotransporation, or biotreatment. With the exception of stormwater harvesting, these techniques are generally landscaped-based measures rather than underground mechanical measures that have traditionally been utilized in more urban, infill settings.

The Stormwater Permit recognizes that when considered at a watershed scale, certain types of Smart Growth, high-density, and transit-oriented developments have inherent environmental and sustainability benefits including the reduction of new impervious surfaces and automobile-related pollutants. Additionally, the use of some of the LID techniques in an urban setting may be challenging due to the land area needed to accommodate the landscaped-based measures.

Therefore, the Stormwater Permit allows permittees to submit for Water Board approval a list of types of projects that may be allowed to utilize some amount of non-LID treatment measures. These "Special Projects" designations will afford greater flexibility in meeting the stormwater treatment requirements for certain high-density urban infill projects by allowing alternatives to the use of LID measures for stormwater treatment, or by reducing LID treatment requirements.

San José has been participating in a Special Projects Work Group composed of Bay Area Stormwater Management Agencies Association (BASMAA) representatives. The Work Group has developed working definitions of project types initially proposed as Special Project categories, and has initiated discussion with Water Board staff about these categories. Generally, the projects being considered include high-density infill projects typical of recent development in Downtown San José. Additionally, higher density residential and mixed-use projects proximate to transit (transit-oriented development), small lot-line to lot-line infill projects, and widening of existing roadways are being considered.

Over the course of the next four months, the Work Group will further refine proposed Special Projects criteria. Discussions with other stakeholders such as the Association of Bay Area Governments, Metropolitan Transportation Commission, Building Industry Association, and Smart Growth and environmental advocates will inform the refinement of those categories. The City's goal is to ensure that the Special Projects provision in the Stormwater Permit balances the Permit's LID goals with the City's Smart Growth objectives.

The regional report formally proposing what a "Special Projects" category is due to the Water Board by December 1, 2010. The formal proposal will define specific criteria for each project type (i.e. size, location, minimum density), substantiate the water quality and other environmental benefits these types of projects yield, and will identify the technical and institutional barriers to treating all project runoff with LID measures as defined in the Stormwater Permit.

Pollutants of Concern
The Stormwater Permit has multiple requirements for focused efforts intended to reduce transport of pollutants of concern through the storm sewer system into the Bay. These requirements are primarily met through participation in established regional and County-wide programs. Provisions for reductions of Mercury and PCBs are aimed at implementing controls that will pilot test strategies to meet the regional regulatory frameworks for these two pollutants. These frameworks, in the form of Total Maximum Daily Loads (TMDLs), represent the maximum amounts of these pollutants that San Francisco Bay can receive while still protecting designated beneficial uses of the Bay. There are currently TMDLs approved for Mercury in the Guadalupe River Watershed and San Francisco Bay, and a TMDL for PCBs in the Bay is awaiting final Environmental Protection Agency (EPA) approval.

There are several major regional efforts underway to address mercury and PCBs in urban runoff:

- a feasibility assessment of stormwater diversions from pump stations into the sanitary sewer system;
- a multi-faceted effort focused on sediment and pollutant control through BMP evaluation funded through an EPA Water Quality Improvement Fund grant; and
- a San Francisco Estuary Partnership (SFEP) grant funded study of PCBs in caulk from buildings as a potentially significant source of PCBs to stormwater, which will include development evaluation of control measures to reduce any such inputs.

Staff has been actively participating in these regional studies, the last two of which are in planning stages.

Feasibility of Stormwater Pump Station Diversion
The permit provisions for mercury and PCBs require the implementation of five diversion projects throughout the Bay area (one must be in Santa Clara County). Diversions are to be performed at stormwater pump stations with dry weather or first flush water diverted into the sanitary sewer system for treatment at a wastewater treatment facility. The purpose of this requirement is to evaluate the PCBs and mercury loads reduced from the diversion. Both pollutants strongly adhere to particles and wastewater treatment plants are efficient at removing

particles and the pollutants associated with them. By September 2010, permittees must complete a feasibility assessment of diversions including:

1. Selection criteria leading to the identification of five candidate and five alternate pump stations where diversions will occur;
2. Time schedules for conducting pilot studies; and
3. A proposed method for distributing mercury and PCBs load reductions to participating wastewater and stormwater agencies.

The feasibility assessment for the region is being led and coordinated through BASMAA. There are many concerns about diversion of stormwater to the San José/Santa Clara Water Pollution Control Plant and San José's sanitary collection system including effects of diverted stormwater on wastewater treatment processes, collection system operations and maintenance implications, as well as legal and funding considerations. Staff from ESD, DPW, and DOT is discussing these and other issues with representatives from Sunnyvale and Palo Alto treatment plants to evaluate possible options in Santa Clara County. Staff is also participating directly in BASMAA and Bay Area Clean Water Agencies (the regional association representing waste water treatment plants) discussions on the issues and feasibility evaluation.

EVALUATION AND FOLLOW-UP

As the City continues with permit implementation, staff will provide regular reports to the Committee and City Council, including bringing forward a multi-year Stormwater Permit Implementation Plan in fall 2010. Progress is reported to the City Council and the Water Board in September of each year in the Stormwater Permit Annual Report.

PUBLIC OUTREACH/INTEREST

- ☐ **Criteria 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)**

This recommendation does not meet any of the criteria listed above. Staff has coordinated with key stakeholders in the development of the list of creek Trash Hot Spots, and key schools located

by where the City will be installing large trash capture devices. Additionally, staff has been working through the Developer and Construction Roundtables facilitated by Planning, Building, and Code Enforcement and Public Works to inform them of various Stormwater Permit and General Construction Permit requirements. Most recently, the City co-hosted a Water Board training on the General Construction Permit in San Jose, and specifically encouraged attendance by the local development and construction community (more than 100 participants attended). Any recommended Municipal Code changes will be available for public review and comment prior to consideration by the City Council and staff plans to continue outreach specific to the ordinance development to the roundtables mentioned above, as well as to a construction contractors roundtable facilitated by the Building Division which is scheduled for early August.

COORDINATION

The Environmental Services Department is coordinating implementation of the Stormwater Permit. This report has been coordinated with the departments of Transportation; Parks, Recreation and Neighborhood Services; the City Attorney's Office; and the City Manager's Budget Office.

COST SUMMARY/IMPLICATIONS

Costs for hot spot clean-up and assessment, trash reduction projects, and storm drain inlet marking are included in ESD's FY 2009-2010 Adopted Operating Budget. Additionally, specific budget proposals for trash reduction efforts and other stormwater program initiatives were included in the 2010-2011 Proposed Operating Budget for City Council consideration.

CEQA

Not a project, PP10-068 (c) - revisions to an existing policy

/s/
JOHN STUFFLEBEAN
Director, Environmental Services

/s/
KATY ALLEN
Director, Public Works

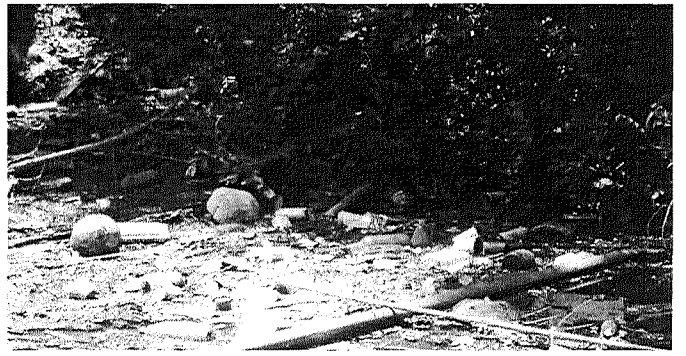
/s/
JOSEPH HORWEDEL
Director, Planning, Building and Code Enforcement

For questions please contact Melody Tovar, Deputy Director, Environmental Services Department Watershed Protection Division, at (408) 277-3892.

	Coyote Creek upstream of US 101 (adjacent to Watson Park)
	Coyote Creek downstream of the confluence with Lower Silver Creek (adjacent to Watson Park)
ek	Lower Silver Creek, downstream of outfall at east end of Plata Arroyo Park (adjacent to Calle de Plata cul-de-sac)
ek	Lower Silver Creek upstream and downstream of pedestrian bridge (adjacent to Calle de Plata)
k	Thompson Creek downstream of the confluence with Quimby Creek.
	Coyote Creek downstream of E. Santa Clara St. (adjacent to Roosevelt Park),
	Coyote Creek 100 yards downstream of E. Santa Clara St. (adjacent to Roosevelt Park)
	Coyote Creek upstream of E. William St. (adjacent to William Street Park)
	Coyote Creek, upstream and downstream of Story Rd. bridge crossing (near Happy Hollow Park and Zoo)
	Coyote Creek, Kelley Park Picnic Area (300 ft upstream of Happy Hollow Park and Zoo)
	Coyote Creek, adjacent to Kelley Park at Phelan Ave. (near Yerba Buena High School)
	Coyote Creek upstream and downstream of Singleton Rd. (near Coyote Creek Trail)
	Coyote Creek downstream of O'Toole Ave. (north of E. Brokaw Rd and west of Interstate 880)
r	Guadalupe River upstream of W. Hedding St.,
r	Guadalupe River upstream of Interstate 880
r	Guadalupe River, 800 ft. north of Coleman Ave.
r	Guadalupe River upstream of W. Taylor St.
r	Guadalupe River, downstream of W. Taylor St.
r	Guadalupe River, 700 ft. north of W. Taylor
r	Guadalupe River downstream of W. Hedding St.
r	Guadalupe River downstream of Coleman Ave.
k	Los Gatos Creek downstream of W. Santa Clara St.
r	Guadalupe River at the confluence with Los Gatos Creek (adjacent to Arena Green)
r	Guadalupe River downstream W. Julian St.
r	Guadalupe River downstream of W. San Carlos St. (adjacent to San Jose Center for the Performing Arts)
r	Guadalupe River upstream Woz Way to Interstate 280
r	Guadalupe River upstream and downstream of pedestrian bridge

SJC12 Kelly Park

SJC22 Coleman Ave.



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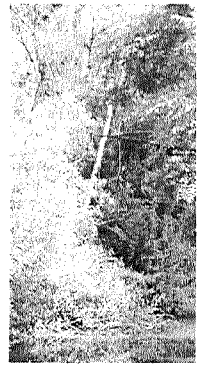

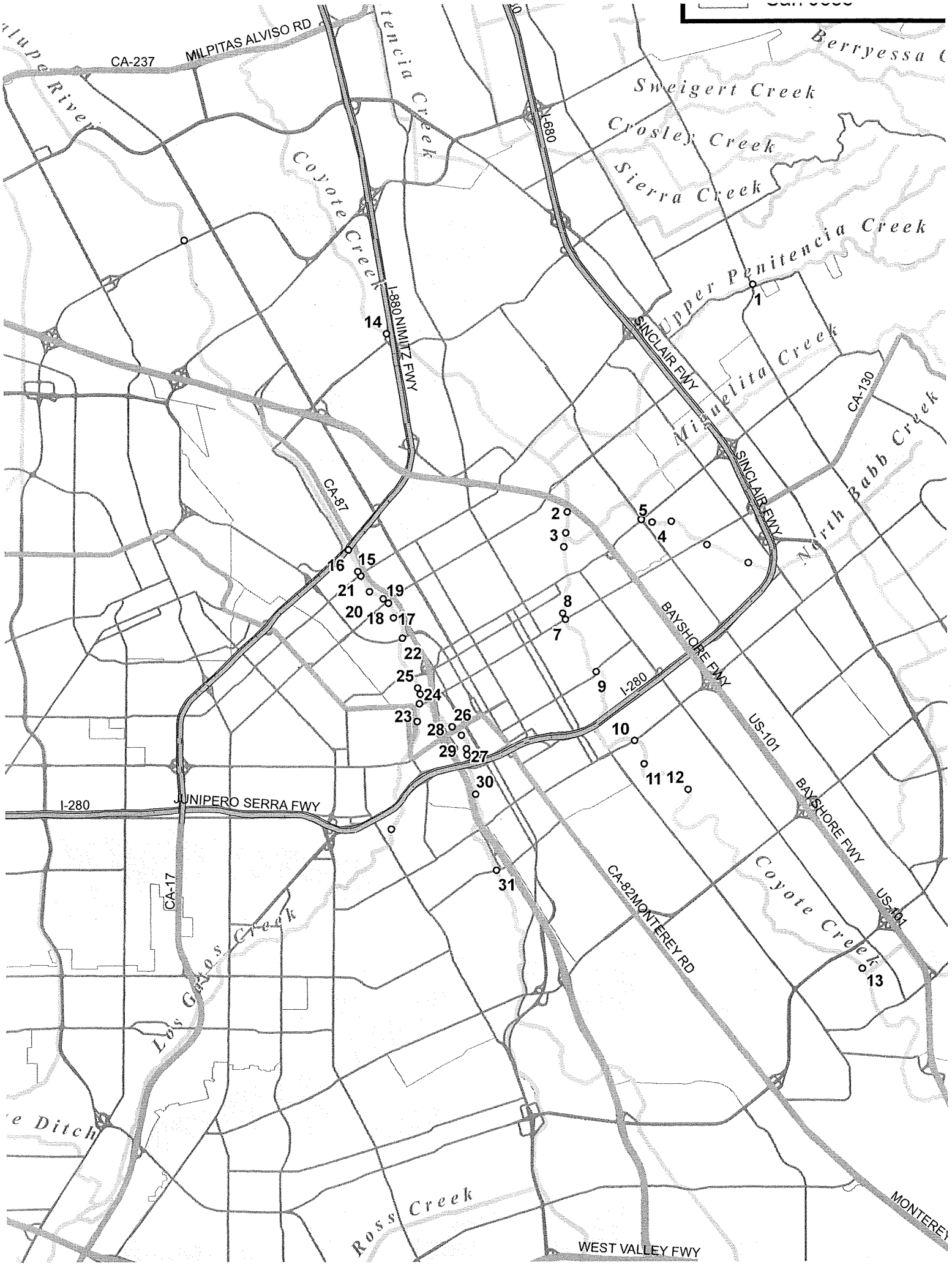
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T & E COMMITTEE: 08-16-10
ITEM: d (2)

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: TRANSPORTATION AND ENVIRONMENT COMMITTEE

FROM: Councilmember Sam Liccardo

SUBJECT: SEE BELOW

DATE: August 16, 2010

APPROVE 7-16-10

SUBJECT: "HOT SPOTS" CREEK TEAM AND STORM WATER PERMIT IMPLEMENTATION

RECOMMENDATION:
Approve the staff recommendations, and also return to the Transportation and Environment Committee to discuss the following issues:

1. Direct City staff to explore with the Santa Clara Valley Water District identify whether any viable funding sources –including Water District's "Clean Safe Creeks" bond money and the City's storm sewer service revenues—might exist for a pilot partnership with the Palo Alto Downtown Streets Team (or similar nonprofit) to create opportunities for ongoing creek cleanup by previously homeless men and women.
2. Direct the City Attorney to provide a confidential supplemental memorandum to Council further refining the analysis of its April 2, 2010 memorandum, specifically responding to the following questions, focusing on the potential use of storm sewer fees to fund a pilot "Hot Spots Creeks Team" concept:
    a. The City's NPDES storm water permit contains a "Trash Load Reduction" provision that requires annual clean up of 32 creek Trash Hot Spots, and establishes phased goals to reduce trash loads from the storm sewer system by 40% in 2014, increasing thereafter. Since the storm sewer fee was created solely to address the NPDES permit requirement of the federal Clean Water Act, shouldn't this "Trash Load Reduction" requirement necessarily place creek cleanups within the realm of the relevant "municipal separate storm sewer system" ("MS4") for the purposes of a Proposition 218 analysis? Why or why not?
    b. If we are able to identify and generally track the sources of trash loads in the creeks to the dozens of homeless encampments along the Coyote Creek or Guadalupe River, does that increase or decrease the likelihood that the clean-up of trash at those encampments will fall within the ambit of services that can be funded by storm sewer fees?
    c. Is there anything within the federal Clean Water Act, enabling regulations, or relevant case law that explicitly includes or excludes creeks and rivers in/from the scope of MS4 subject to the NPDES permit?

d. Has the State Water Resources Control Board issued any opinions or findings relating to the appropriate scope of MS4 that would assist us in determining whether storm water fees appropriately could be appropriately used for creek cleanups?

3. Nothing about this recommendation shall be deemed to waive attorney-client privilege of the City Attorney's current or subsequent advice to Council on this matter.

BACKGROUND

The Palo Alto Downtown Streets Team is a nonprofit organization that has won national acclaim for its innovative means of employing previously homeless residents in productive endeavors to clean and beautify the streetscape of downtown Palo Alto. Founded in 2005, the DST employs homeless men and women to work under janitorial contracts in exchange for housing and food vouchers. As members succeed in basic tasks, they take on increasing responsibilities, with a goal of eventually transitioning to full-time employment and housing. The group has had considerable success in helping homeless residents get back on their feet.

I have reached out to the Downtown Streets Team to see if a similar concept could work within San José's creeks system. We discussed back-of-the envelope calculations for managing a pilot project, and the costs would roughly amount to a modest $100,000 per year for ongoing creek maintenance and cleanup. The enormous potential benefits of such a program for our homeless, our safety, and our environment appear worthy of closer examination.