

EXHIBIT 21-A

DRAFT ORDINANCE NO. 181

AN ORDINANCE OF THE BOARD OF DIRECTORS OF THE MONTEREY PENINSULA WATER MANAGEMENT DISTRICT AMENDING DISTRICT RULES AND REGULATIONS TO MODIFY THE EXTENT OF THE CARMEL RIVER RIPARIAN CORRIDOR (AMENDING RULES 11, 123, and 127)

FINDINGS

WHEREAS, the Board of Directors of the Monterey Peninsula Water Management District (District) finds as follows:

1. The California Legislature has charged the District with the integrated management of water resources and problems affecting the Monterey Peninsula and the Carmel River basin.
2. On July 26, 1983, the District approved Ordinance 10, which added District Rules to implement the Carmel River Management Plan to promote the balanced uses of these resources; protect the water course, the watershed, public ways, life and property in a portion of the Carmel River; promote the restoration of river banks and scenic resources; reduce environmental degradation; and enhance the fish and wildlife habitat.
3. On October 29, 1984, the District adopted Resolution 84-26 making findings, a statement of overriding considerations, and certifying the Final Environmental Impact Report for the Carmel River Management Plan (CRMP) and Boronda Erosion Control Project.
4. On August 11, 1986, the District adopted Resolution 86-17 to approve Phase 3 of the Schulte Project and an Addendum to the CRMP EIR.
5. On August 8, 1988, the District approved a Negative Declaration on the Scarlett Restoration Project.
6. On July 20, 1992, the District approved the Valley Hills Restoration Project and filed a Notice of Determination.
7. On August 17, 1992, the District approved the deDampierre Restoration Project and filed a Notice of Determination.
8. On June 21, 1993, the District adopted Ordinance 69 amending its Rules and Regulations to continue implementing certain Carmel River management activities.
9. On August 18, 1997, the District approved an Addendum for the Red Rocks and All Saints Projects and added mitigation measures to the CRMP EIR to protect California red-legged frogs.
10. On August 21, 2000, the District approved an Addendum for Repairs to the Valley Hills and Schulte Restoration Projects.
11. On February 22, 2018, the District approved an Addendum for the Rancho San Carlos Road Streambank Stabilization Project.

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12. Ordinance 10 and 69 apply to activities in the Carmel River within a defined Riparian Corridor between the Pacific Ocean and the eastern end of Camp Stephani at the confluence of Klondike Creek with the main stem, approximately 15.4 River Miles upstream of the Pacific Ocean. Between 1984 and the present, the District has regularly approved River Work Permits in accordance with the Rules adopted by the District to protect the Riverbed and banks of the Carmel River.

13. The Carmel River undergoes periodic and sudden changes from drought, flood and other factors, some of which originate outside of the Riparian Corridor defined under Ordinance 10. The District desires to protect and restore all the riparian resources of the Carmel River and its surrounding environs and to update its Rules for the Carmel River to reflect changes in the river environment and the need to better manage the resources of the Carmel River.

14. The District finds that changes to the river and watershed upstream of the confluence with Klondike Creek due to human activities have or can significantly affect riverfront properties and the streamside environment within the Riparian Corridor. To better protect the resources of the river, the District desires to extend the definition of the Riparian Corridor and apply the District Rules concerning activities in the Riparian Corridor to the main stem of the Carmel River between the Pacific Ocean and the boundary of the Ventana Wilderness.

15. The District finds that such an extension would not have adverse impacts to the environment with proposed mitigation measures.

16. In compliance with the California Environmental Quality Act, Section 15153, the District has determined that the Final Environmental Impact Report for the Carmel River Management Plan (CRMP) and Boronda Erosion Control Project adequately describes potential impacts and mitigation measures and that a Mitigated Negative Declaration should be prepared for an extension of the CRMP.

17. On February 21, 2019, the District authorized staff to publish a Notice of Intent to adopt a Mitigated Negative Declaration to modify the extent of the Carmel River Riparian Corridor.

18. On February 21, 2019, the District held a Public Hearing to receive comment on the Mitigated Negative Declaration and first reading of proposed Ordinance 181.

19. On April 15, 2019, the District held a Public Hearing to receive comment on the first reading of a revised proposed Ordinance 181.

20. On _____, the District held a Public Hearing to approve the Mitigated Negative Declaration and Ordinance 181.

21. The following District Rules shall be amended by this ordinance: Rule Nos. 11, 123, and 127.

NOW THEREFORE, be it ordained as follows:

ORDINANCE

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Section One: Short Title

This ordinance shall be known as the "2019 Carmel River Riparian Corridor Ordinance Update" of the Monterey Peninsula Water Management District.

Section Two: Statement of Purpose

The purpose of the ordinance is to protect and restore the natural values and beneficial uses of the Carmel River and its Riparian Corridor, including: (1) protection of existing riparian vegetation; (2) protection from riverbank erosion; (3) protection of aquatic and wildlife habitats; (4) protection of water quality; and (5) protection of open space and aesthetic values.

Section Three: Scope

This ordinance amends existing District Rules and Regulations to modify the definition of the Riparian Corridor, extend District Rules for Carmel River main stem activities to the area between the Pacific Ocean and the Ventana Wilderness boundary, and clarify staff functions with regards to District activities carried out in the Carmel River.

Section Four: District Rules Modifications and Additions

The Rules and Regulations of the Monterey Peninsula Water Management District shall be amended as follows:

The following Rules shall be amended as shown in bold italics (***bold italics***) and strikeout (~~strikethrough~~).

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Rule No. 11 - DEFINITIONS

RIPARIAN CORRIDOR – shall mean:

- a. All that area which comprises the Riverbed and riverbanks of the Carmel River which lies ~~within the boundaries of the Carmel River Management Zone (Zone No. 3), and~~ between the Pacific Ocean and the Ventana Wilderness boundary.

- b. All those areas which lie within 25 lineal feet of the ~~Riverbank Assessment Line, excepting however, all lands which lie outside of the Zone No. 3 boundary, and exempting lawns, Landscaping and cultivated areas as shown on the spring 1983 aerial photographs taken by California American Water pursuant to the agreement with the District in accord with Rule 123 A~~ 10% chance flood between the Pacific Ocean and the Ventana Wilderness boundary. In those areas where the 10% chance flood is not defined, a constructive line shall be determined by the District Engineer using a generally accepted method of determining the extent of the 10% chance flood. Lawns, landscaping, and cultivated areas as shown on the June 2017 aerial photographs on file with the District are exempt unless a lawn, landscaping, or cultivated area is the subject of a violation of the District Rules as of the day of adoption of this Ordinance.

Added by Ordinance No. 10 (7/26/83); amended by Ordinance 181 (Month/Day/2019)

~~RIVERBANK ASSESSMENT LINE—“Riverbank Assessment Line” shall mean the waterline of the Carmel River during the flow with a recurrence interval of ten (10) years (ten year flood), as determined for the Federal Insurance Administration by Nolte and Associates; the waterline shall be determined by the step-backwater method described in the United States Geologic Survey Water Supply Paper 1968-A, 1966, “Definition of Stage-Discharge Relationship in Natural Channels by Step-backwater Analysis”, by J.F. Bailey and H.A. Ray. In those areas where the Riverbank Assessment Line cannot be determined through use of the foregoing criteria, a constructive Riverbank Assessment Line shall be determined by the General Manager based upon interpreting the spring 1983 aerial photographs.~~

Added by Ordinance No. 10 (7/26/83); deleted by Ordinance 181 (month/day/2019)

~~RIVERBED – “Riverbed” shall mean the more or less permanent and natural hollow, path or channel over which the 10% chance flow regular or usual waters of the Carmel River flow with a occurs recurring or annual interval. The term “channel” includes the riverbanks and shall be synonymous with the term “Riverbed”. The 10% chance flow shall be determined using a generally accepted method of statistical hydrology, such as described in USGS Bulletin 17-B, using historically gaged Carmel River flows. The waterline of the 10% chance flow shall be determined by applying the standard step backwater method using a computer simulation program such as HEC-RAS developed by the U.S. Army Corps of Engineers. Where the lateral extent of the Riverbed cannot be determined using the foregoing criteria, a constructive limit of the Riparian Corridor shall be determined by the District Engineer based upon historical analysis of aerial photographs and other data as appropriate.~~

Added by Ordinance No. 10 (7/26/83); amended by Ordinance 181 (month/day/2019)

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RULE 123 RIVER MANAGEMENT ACTIVITIES

The following activities fall within the purview of the Carmel River Management Plan and may be undertaken by the District as discretionary acts to the extent that funds are reasonably available.

A. EROSION PROTECTION AND PREVENTION

1. Formulation of Standards

Develop technical standards and a structural master plan to guide all riverbank and channel modification projects. Guidelines may (a) set the optimum channel width and bank steepness to depth relationships, (b) address coordination requirements among nearby property owners, (c) evaluate the cost and effectiveness of alternative bank stabilization solutions, (d) establish preferred solutions, (e) define acceptable circumstances and processes for sediment ~~removal~~ management, (f) set general engineering requirements for material and design, (g) establish requirements for covering, replanting and maintaining works once completed. Standards shall be reviewed to reflect experience gained during implementation of the program, and (h) establish aesthetic requirements for erosion works.

2. Annual Review

Review aerial photos as required to remain familiar with the changing environment of the river ~~taken each spring; regularly inspect the Riverbed walk the entire alluvial reach of the river from Camp Steffani to the Carmel River lagoon.~~ Review areas that may be subject to erosion during high flows ~~the next storm season.~~

3. Removal of Hazardous Trees

Identify trees that appear to be diseased or likely to fall into the river. Attempt to effect removal or modification or replacement of such trees where their removal or modification does not conflict with ~~the~~ shade or wildlife requirements.

4. Snag Removal

Remove or modify snags and debris from the channel that increase the risk of bank erosion at high flows, ~~or secure with cables where appropriate.~~

5. Technical Assistance

Provide technical assistance through staff as follows:

a. Permits

Coordinate issuance of ~~R~~iver ~~W~~ork ~~P~~ermits with the requirements of the County of Monterey, the California Department of Fish and Wildlife Game, ~~and~~ the U.S. Army Corps of Engineers, the Regional Water Quality Control Board, and any other agency that regulates activities in the Riverbed.

b. Design of Works

Provide design, engineering and construction supervision upon request to landowners proposing riverbank or channel protection projects.

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- c. Landowners
Assist landowners to ~~acquire rights of way and assist groups of landowners to select~~ carry out appropriate projects by providing information on standards and costs.
 - d. Government
Monitor the availability of outside funding and review proposed legislation affecting the program or the interests of the Carmel River.
 - e. Funding
Participate in specific ~~R~~iver ~~w~~orks projects as feasible and desired by the Board. Financial participation may be partial or full at the discretion of the Board.
6. Project Sponsor
Administer grant funds, donations, and District projects with multiple property owner participation.
 7. Construction
Construct riverbank and channel works.
 8. Maintenance of Works
Operate and maintain District projects and works related to riverbank and ~~R~~iverbed erosion along the Carmel River.

B. MAINTENANCE OF VEGETATION

1. Monitoring
Review ~~annual~~-aerial photos, ~~and~~ conduct inspections of the ~~R~~iparian ~~e~~Corridor and use other monitoring data to determine changes in the health of the riparian vegetation and stability of riverbanks. Maintain records a file of photos and maps showing changes in the ~~R~~iparian ~~e~~Corridor.
2. Planting and Revegetation
Replant areas as needed and prioritize areas for planting. Costs of planting may be borne fully or partially by the District.
3. Technical Assistance
As District resources and priorities allow, Pprovide technical assistance through staff as follows:
 - a. Permits
Assist individuals seeking permits to revegetate and change the vegetation type along the ~~R~~iparian ~~e~~Corridor.
 - b. Design
Provide design, engineering, and construction support upon request to

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landowners proposing irrigation systems for watering riparian vegetation in the corridor.

4. Construction of Irrigation Systems
Design District ~~i~~rrigation ~~s~~ystem standards and specifications and identify reaches where such irrigation is necessary to the health of the ~~r~~iparian ~~e~~Corridor. Prioritize areas for irrigation. Irrigation development and construction costs may be borne fully or partially by the District at the discretion of the Board.
5. Operations and Maintenance
Monitor and maintain District ~~i~~rrigation ~~s~~ystems. Operation should integrate monitoring of plant health.
6. Channel Clearing
Monitor reaches where vegetation *or debris* has become established in the ~~Riverbed~~~~low flow channel or on gravel bars~~. *If feasible, M*aintain *an* adequate *clearance within the Riverbed* channel capacity to *safely pass debris or* reduce *the risk of erosion due to* ~~or prevent~~*blockages that could cause* damage to *streambanks* ~~property~~ and riparian habitat due to storm flows with *in the Riverbed* ~~a magnitude that is less than or equal to the once in ten (10) year runoff event~~.

C. INSPECTION

1. Erosion Protection Works
Inspect bank work and channel modification projects to obtain compliance with standards and permit conditions.
2. Vegetation Removal
Monitor activities along the river to prevent unauthorized *vegetation removal*, grading, and works.

D. EDUCATION

1. Erosion Works and Prevention
Educate landowners and the general public regarding river management and erosion prevention. Initiate forums with landowners to provide information on the cost, effectiveness and liabilities of bank modification.
2. Vegetation
Assist property owners to encourage planting of desirable species and to discourage removal of *native* vegetation. Provide information on desirable species, spacing and maintenance.
3. Grading
Develop and distribute information on grading.
4. Regulation
Develop and distribute standards and conditions to be met in ~~r~~iver ~~w~~ork

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~~p~~Permits and emergency ~~r~~River ~~w~~Work ~~p~~Permits pursuant to Rule 127. Distribute information as to those activities which may be undertaken without a ~~r~~River ~~w~~Work ~~p~~Permit, and activities which are defined as "minor works" pursuant to Rule 127.

E. RESEARCH

Research stream geomorphology, erosion potential, fishery and vegetation to understand the system dynamics and to maintain appropriate standards.

F. EASEMENTS AND AGREEMENTS

Accept and acquire easements or agreements needed to provide right-of-way for ~~i~~Irrigation ~~s~~Systems and access to undertake works, and accept other property interests deeded to the District.

G. EMERGENCY

Provide emergency response to remove *or modify* snags and to minimize damage where the river is causing erosion or threatening to erode.

H. *PERIODICALLY REVIEW AND UPDATE MAPS SHOWING THE LIMITS OF THE RIPARIAN CORRIDOR*

Develop and periodically update a geo-referenced set of maps showing property lines, the 10-year flowline, and the limits of the Riparian Corridor.

I. OTHER RELATED ACTIVITIES

Manage the ~~r~~Riparian ~~e~~Corridor, examine sedimentation from non-riparian drainage areas and evaluate culvert design at tributary junctions in conjunction with the Monterey County Department of Public Works. Monitor existing trails for impact upon the ~~r~~Riparian ~~e~~Corridor. Develop and propose trail standards. Accept river management funds, grants, and deeds from public and private sources.

*Added by Ordinance No. 10 (7/26/83); amended by Ordinance No. 22 (3/11/85); Ordinance No. 69 (6/21/93); **Ordinance 181** (month/day/2019)*

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RULE 127 - PERMIT PROCESS

A. RIVER WORK PERMITS

1. Applications for River Work Permits shall be made to the Monterey Peninsula Water Management District on forms supplied by District staff and shall be accompanied by plans showing appropriate Site, improvement and engineering information as may be required by District staff. The fee prescribed by Rule 60 shall be required for any River Work Permit.
2. Any application which appears to propose an activity regulated pursuant to the National Flood Insurance Program, including but not limited to:
 - a. grading or changes in land forms that might alter channel hydraulics or the configuration of the floodway, or
 - b. levees or other flood control works that might alter channel hydraulics or the configuration of the floodway, shall be referred for review and comment to the Monterey County Water Resources Agency.
3. ~~A public hearing shall be held by the General Manager or District Engineer on the application after the Within 30 days of receipt of application, District Staff shall determines whether that the information submitted by the Applicant is sufficient to consider the matter. If the Application is not sufficient, District Staff shall identify what additional information is required and inform the Applicant to submit the additional information (normally within 30 days of notification of the deficiencies). ; not less than ten (10) calendar days prior to the public hearing the District shall give notice of the hearing by one publication in a newspaper of general circulation and by posting notice in conspicuous places close to the properties affected by the application. The General Manager or his delegee shall have sole discretion as to where to post such notice, and a failure to post shall not invalidate the proceedings. The General Manager or his delegee shall also give notice of such hearing by mailing postage prepaid a notice of the time and place of such hearing to persons owning property adjacent to the exterior boundaries of the area actually occupied by the use for which the River Work Permit was applied. Addresses shall be used from the last equalized assessment roll, or alternatively, from such other records of the Assessor or the Tax Collector as contain more recent addresses in the opinion of the General Manager. No hearing shall be required of non-controversial minor works.~~
4. The Board of Directors shall by resolution promulgate upon advice of the Carmel River Advisory Committee a list of “minor works.” ~~for which Permits, in the absence of controversy, may be granted by the General Manager upon payment of the fee prescribed by Rule 60 without published notice or public hearing.~~ Minor work permits and regular River Work Permits which have been issued shall be prominently posted in the Monterey Peninsula Water Management District office, and shall not become effective until seven (7) days after issuance. Such ~~P~~ermits may be appealed to the Board pursuant to Rule 127-C of this ~~R~~egulation. Holders

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of a minor work ~~P~~permit may undertake such work immediately upon issuance of the ~~P~~permit (~~but before the Permit becomes effective~~), provided however, that each Applicant for a minor work ~~P~~permit who undertakes work prior to the effective date of such ~~P~~permit agrees in writing to proceed during that seven-day period at his own risk, and agrees to indemnify and hold harmless the Monterey Peninsula Water Management District for any damage which may result, and agrees to comply with any Board order should the ~~P~~permit be denied or conditioned on appeal.

5. In order to grant a regular River Work Permit, an emergency work ~~P~~permit, or a minor work ~~P~~permit, the General Manager or the District Engineer shall make the following findings based upon facts apparent from the ~~D~~District files, the ~~P~~permit application or other relevant facts ~~presented at the hearing~~:
 - a. the work allowed by the proposed permit does not appear to adversely affect adjoining or other properties;
 - b. the work allowed does not degrade habitat value and appears to be visually compatible with the natural appearance of the river channel, banks and Riparian Corridor;
 - c. the work allowed appears to be appropriate for the intended purpose, and be consistent with technical standards and plans set by the ~~District Carmel River Advisory Committee~~;
 - ~~e~~.d. the work allowed will not contribute to adverse levels of downcutting;
 - ~~e~~.e. the establishment, maintenance or operation of the use or work applied for does not appear under the circumstances of the particular case, to be detrimental to health, safety, peace, morals, comfort, and general welfare of persons residing or working in the neighborhood or to the general welfare of the District, and;
 - f. the work permitted appears either to comply with, or be exempt from the requirements of the National Flood Insurance Program; and
 - ~~e~~.g. the work permitted will not adversely affect traditional or cultural values of California Native American tribes.-
6. The General Manager or the District Engineer may designate conditions in connection with the ~~P~~permit to secure the purposes of this ~~R~~Regulation, in addition to any standard ~~P~~permit conditions which may be required by the Board. The General Manager or the District Engineer may also require bond and guarantees to assure compliance with the conditions.

Each permit shall briefly set forth or refer to the information used to develop permit conditions~~evidence supporting the findings~~.
7. Each ~~P~~permit issued by the General Manager or the District Engineer shall become effective seven (7) days after the date such ~~P~~permit was issued and

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remain valid until the date of expiration stated on the Ppermit; or if no date of expiration is stated, or otherwise specified, all such Ppermits shall expire one year from the date of granting said Ppermit.

8. When a property owner wishes to maintain the river channel and/or riverbank on a regular basis, a River Work Permit may be issued by the General Manager or District Engineer upon the approval of an appropriate management plan. Permits granted for such ongoing activity under this Rule shall state this basis for termination as follows:

“This Ppermit shall terminate on the date set forth below; and if no date of termination is set, shall terminate one year after the repeal of this Rule or Regulation.”

9. Each permit shall be publicly posted at the District office for a period of not less than 21 days and shall be made available for public viewing through other District communication platforms, such as on the District’s internet web site.

B. EMERGENCY RIVER WORK PERMITS

Emergency riverbank or Riverbed protection or channel modification measures performed under this Regulation shall require a subsequent emergency River Work Permit from the General Manager or District Engineer. An application for such a Ppermit shall be submitted within ten (10) calendar days after commencement of such measures. The fee prescribed by Rule 60 shall be required for any emergency River Work Permit. The intent of such a subsequent emergency River Work Permit is to ensure that any emergency bank and bed protection measures conform to or will be brought into conformance with the technical standards promulgated in accord with this Regulation. To the extent practicable, emergency River Work Permits shall be administered and granted in accordance with Rule 127-A above, and may also be appealed to the Board in accord with Rule 127-C. Standards shall be developed and distributed summarizing the design concepts that will be required in emergency Ppermits. Persons undertaking emergency River Works without prior approval shall bear sole responsibility for the adequacy and safety of such work, and shall be deemed to proceed at their own risk. The District, upon later review of the emergency River Work Permit, reserves the right to require removal or modification of such works to that measure compatible with the structural management plan.

C. PERMIT APPEALS

Determinations of the General Manager or the District Engineer may be appealed to the Board of Directors pursuant to Rule 70, “Appeals” upon payment of the fee specified in Rule 60.

*Rule added by Ordinance No. 10 (7/26/83); amended by Ordinance No. 22 (3/11/85); Ordinance No. 14 (11/12/84); Ordinance No. 69 (6/21/93); Ordinance No. 120 (3/21/2005); Ordinance No. 125 (9/18/2006); **Ordinance 181** (Month/Day/2019)*

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Section Five: Publication and Application

The provisions of this ordinance shall cause the republication and amendment of *Rules 11, 123, and 127 of* the permanent Rules and Regulations of the Monterey Peninsula Water Management District. This ordinance shall be read in conjunction with and complement those provisions of the District's Rules and Regulations, provided, however that the provisions enacted by this measure shall take precedence and supersede any contradictory provision of those rules. Section titles and captions are provided for convenience and shall not be construed to limit the application of the text.

Section Six: Effective Date and Sunset

This ordinance shall be given effect at 12:01 a.m., Month Day, 2019.

This ordinance shall not have a sunset date.

Section Seven: Severability

If any subdivision, paragraph, sentence, clause or phrase of this ordinance is, for any reason, held to be invalid or unenforceable by a court of competent jurisdiction, such invalidity or unenforceability shall not affect the validity or enforcement of the remaining portions of this ordinance, or of any other provisions of the Monterey Peninsula Water Management District Rules and Regulations. ~~It~~ It is the District's express intent that each remaining portion would have been adopted irrespective of the fact that one or more subdivisions, paragraphs, sentences, clauses, or phrases be declared invalid or unenforceable.

On motion of Director _____ and second by Director _____, the foregoing ordinance is duly adopted this ____ day of _____, 2019, by the following votes:

AYES

NAYS:

ABSENT:

I, David J. Stoldt, Secretary to the Board of Directors of the Monterey Peninsula Water Management District, hereby certify that the foregoing is a full, true and correct copy of an ordinance duly adopted on this ____ day of _____, 2019, and now is of record in my office.

Witness my hand and seal of the Board of Directors this ____ day of _____ 2019.
