

**Response to Grand Jury Report “Santa Clara County Civil Grand Jury Report – Part 3
Alviso Slough Restoration Project - \$22M Restores Boating But
Threatens the Environment”**

Finding 1a

Environmental Enhancement projects are selected at the discretion of the Board. Board End policy E-3.2 “to improve watersheds, streams, and the natural resources therein.” The Alviso Slough Restoration Project is not an Environmental Enhancement project because it clearly does not improve watersheds, streams, and the natural resources therein.

Response: Respondent partially disagrees with the finding

When the proposed project was originally presented to the Board for consideration in 2002, it was described as an environmental enhancement project by certain external biological experts. Since that time, there has been an evolution in the understanding of the Board’s Environmental Enhancement Policy (E-3.2). Furthermore, additional studies undertaken as part of the project planning have clarified that predicted environmental enhancements associated with the project would not be realized.

The Board will be re-examining its current Policy E-3.2 in a work study session planned for September 2009. The policy discussion will address possible categorization of enhancement projects to more clearly define their character and intent. Possible categories could include environmental enhancements, restoration/preservation enhancements, recreational enhancements, and/or enhancements that improve public access.

Finding 1b

The Alviso Slough Restoration Project is intended to restore to artificial pre-1983 conditions and as such, is not an appropriate project for the District.

Response: Respondent partially disagrees with the finding

One of the original stated objectives of the proposed project was to restore the slough to pre-1983 conditions. In the fall of 2009, the Board will provide an opportunity for public comments, and will consider the potential benefits of the project prior to determining whether to proceed with the project.

Recommendation 1

Environmental Enhancements should have a known budget and long-term plan that are reviewed annually. This should be done in connection with flood control or water supply projects and included in their planning.

Response: The recommendation has been implemented

Environmental Enhancements opportunities are considered by the Board, and, upon Board approval, are included in the District's 5-year Capital Improvement Program (CIP). The Board annually reviews and approves the 5-year CIP, and annually approves the budget for all active capital and operations projects.

Finding 2a

Under the recommended Alternative 5 they expect to dredge approximately 10 feet below the existing level. Approximately 200,000 cubic yards of sediment would be removed, plus 25 acres of vegetation across a 0.6 mile stretch. It will take 300 days of trucking to landfills.

Response: Respondent agrees with the finding

The Board has not taken any action to approve the project or any of the six project alternatives developed and evaluated by staff.

Finding 2b

Heavy metal, particularly mercury, contamination would occur due to the nature of the proposed work and result in damage to the environment. State and Federal protected endangered species would be impacted by the environmental changes brought about upon completion of the project.

Response: Respondent partially disagrees with the finding

Mercury is a potential environmental issue to be considered along with all other potential impacts to the environment that may affect state or federal endangered species. Discussion of impacts and proposed mitigation measures are included in the California Environmental Quality Act (CEQA) document that was released for public review and comment in June 2008. This document will be the basis for acquiring all necessary regulatory permits to construct a project, should the Board decide to approve the project. If impacts cannot be reduced to less than significant levels, statements of over-riding consideration will be proposed and the Board will consider whether the project benefits outweigh the impacts that cannot be fully mitigated.

Finding 2c

Deepening and widening the channel would make some boating feasible. However, it will be severely limited and access to and from the Bay may be limited to high tide.

Response: Respondent partially disagrees with the finding

Existing boating conditions throughout San Francisco Bay are already limited with regards to access to and from bayside ports due to tidal fluctuations. The deepening and widening of the channel will not severely limit access to and from the Bay.

Finding 2d

The Alviso Slough Restoration Project proposes major changes in the drainage channel that could alter the present geometry of the tidal prism which in turn could expose the area to tidal flooding.

Response: Respondent disagrees wholly with the finding

The Project area is currently in the tidal flood hazard zone as defined by the Federal Emergency Management Agency (FEMA). Implementation of any of the proposed project alternatives would not change the area's vulnerability to tidal flooding because the change to the tidal prism is of such a small volume that it is negligible in terms of any effect on downstream channel geometry.

Finding 2e

The South Bay Salt Pond Restoration Program, will slowly bring in salt water and use natural "scouring" to restore the slough to something closer to its original state. No dredging is involved in this project. It will take more time to achieve the Slough project objectives but with minimal environmental risk.

Response: Respondent partially disagrees with the finding

Respondent agrees that the implementation of the South Bay Salt Pond Restoration Program (SBSP) will slowly bring in salt water and restore the slough over a 50-year period. However, this effort carries its own potential environmental risks, as documented in the SBSP Phase I EIR. The SBSP Program has proposed the construction and operation of the Pond A8 Notch as a pilot project, to study the impacts of introducing a tidal connection between salt ponds and channels. As the notch is operated, the movement of water by tidal influence may scour and transport sediments that may contain mercury and other legacy contaminants. The migration of such contaminants into or out of Ponds A5, A7, and A8 will be closely monitored, as will the scour, transport, and potential re-settling of sediments in the slough. The latter activities have the potential to impact endangered species in the slough. The SBSP Phase I EIR documented these potential impacts and stated that adaptive management techniques would be applied to minimize the potential environmental impacts.

Recommendation 2

The District should demonstrate to the public that proposed Environmental Enhancements actually enhance the environment.

Response: The recommendation has not yet been implemented, but will be implemented in the future

The Board will be re-examining its current Ends Policy related to environmental enhancements in a work study session scheduled for September 2009.

Finding 3a

The District has already spent \$2.5M for the initial planning that was originally budgeted for the full project.

Response: Respondent agrees with the finding

When the project was first initiated in 2004, staff's estimated total project cost of \$2.6M was based on very preliminary information. As the project's planning phase got underway, the extent of necessary biological review and assessment of possible impacts in this very sensitive ecosystem was better defined. In early 2006, staff determined that completion of the planning phase alone would cost over \$2M; the budgeted monies for this endeavor have been spent responsibly to fully evaluate various project alternatives and their environmental impacts.

Finding 3b

Alviso Slough Restoration Project costs are estimated to be over \$22 million, which would be followed by yearly maintenance costs of around \$3.6 million for many decades.

Response: Respondent wholly disagrees with the finding

The Board has not taken any action to approve the project or any project alternative. There are six project alternatives. Their estimated capital costs range from \$0 to \$22 million, and their estimated annual operations and maintenance costs range from \$0 to \$3.6 million. However, actual maintenance costs can vary depending on conditions and changing requirements. For example, the construction and successful operation of the South Bay Salt Pond Restoration Program's Pond A8 notch may, over time, work in concert with the Alviso Slough Restoration Project through natural tidal scour, thus reducing annual maintenance costs for the proposed Alviso Slough Restoration Project.

Recommendation 3

When a project is sent to staff for planning and investigation, a maximum budget should be set and staff instructed to return if it appears the budget will be exceeded by more than 10% or its schedule will be delayed more than six months, or its scope changes significantly.

Response: The recommendation has been implemented

Staff presents quarterly monitoring reports to the Board on key capital projects at regularly scheduled and noticed Board meetings. These reports provide updates to the Board on project scope, costs, and schedule changes, and give both the Board and the public an opportunity to express any concerns or issues.

Finding 4a

In general, Board policy is to give higher priority to projects where there is potential for major loss of property or life. Major property loss has occurred and has potential to recur in several unfunded flood projects such as the Upper Llagas, Canoas Creek, Ross Creek, San Francisquito Creek.

Response: Respondent partially disagrees with the finding

The District uses a priority system in each of the five watersheds that evaluates 10 criteria with different weighting factors for each. The criteria and weighting factors were developed with the participation of the five Flood Control and Watershed Advisory Committees. Fifty percent of the weighting is given to the average annual damages that occur in a 1% (100 year) flood event, so the property damage is the highest consideration. However, of the four projects noted, two are already in the District budget (Upper Llagas Creek and San Francisquito Creek) and all are high priority projects for their watershed. In addition, another high priority for the District is the South San Francisco Bay Shoreline Project, which is addressing tidal flooding in Alviso and other bayfront communities. This is a federally-sponsored project that the District, as local sponsor, has consistently supported with funding and technical support.

As with many agencies, the District alone cannot fully fund all priority projects, and actively pursues matching funds from state or federal agencies that supplement local dollars to progress its flood protection program. While this often results in more time to complete projects, it is an important way to provide more flood protection than could be achieved with only local funds.

Recommendation 4a

The District should provide a comprehensive plan covering flood control, water supply, environmental enhancement, and ongoing operations,. This plan should cover funding and prioritization between these areas.

Response: The recommendation has been implemented

The District's annual budget sets forth a plan to provide flood protection, water supply, environmental enhancements, and ongoing operations. In the development of the annual budget, the operations projects and capital projects are prioritized and funded appropriately. Board budget workshops are publicly-noticed meetings, giving members of the public the opportunity to voice their concerns or support for the annual budget.

Finding 4b

The Upper Llagas Project, initially approved in 1954, is the oldest and most under-funded project in the district, and may still face a funding shortfall. Morgan Hill and San Martin have had repetitive flooding and damage since 1954.

Response: Respondent agrees with the finding

To complete both the Lower and Upper Llagas Flood Protection Projects the District partnered with the federal government. Within the federal family, the project has changed hands twice. The project was originally an effort by the Soil Conservation Service, which later became the Natural Resources Conservation Service (NRCS). This effort resulted in the construction of the Lower Llagas Creek project. In 1999, the District worked with our Congressional delegates to transfer the Upper Llagas Project to the U.S. Army Corps of Engineers after NRCS could no longer secure adequate funding to progress that project. Since the Corps of Engineers took on the Upper Llagas Creek Project, annual Congressional appropriations have not been consistent or at the necessary level to make good progress. The District and its Board have, and continue to actively lobby our Congressional delegates for annual funding for this project.

Some flood protection projects in Santa Clara County date even farther back than the Upper Llagas Project. In the Flood Control Act of 1941, Congress authorized the Guadalupe River and Adjacent Streams study, which included the Guadalupe River and tributaries, Coyote Creek and tributaries, San Francisquito Creek, and Matadero Creek. Early studies of these waterways were delayed for several reasons including World War II and the Korean War. A portion of Coyote Creek flood protection work was completed in 1996, 55 years after initial authorization. Portions of the Guadalupe River were completed in 2004, more than 60 years after initial authorization. San Francisquito Creek and upstream portions of Coyote Creek and the Guadalupe River remain to be completed.

Recommendation 4b

The SCVWD should cease funding the Alviso Slough Restoration Project and instead ensure that areas with obvious potential flood damage are addressed first.

Response: The recommendation requires further analysis

The Board is scheduled to make a decision on whether to proceed with the Alviso Slough Restoration Project by December 2009.

Finding 4c

The District has just completed the Lower Guadalupe project providing fluvial flood protection for Alviso and other areas of San Jose at a cost of \$83M.

Response: Respondent agrees with the finding

Recommendation 4c

No Recommendation

Finding 5

The Alviso Slough Restoration Project is supported largely by the Alviso community and related government agencies, such as the City of San Jose and Santa Clara County, who will not be paying for it.

Response: Respondent partially disagrees with the finding

It is not unusual for multiple agencies to support projects undertaken by another agency, yet not contribute financially. The Alviso community would contribute to funding a project, if approved by the Board, through ad valorem property taxes received by the District. Additional financial participation from other agencies may be possible in the future, however, there is not currently any at this time.

Recommendation 5

The Board should establish a policy to ensure that politics and local interests do not interfere with project prioritization.

Response: The recommendation will not be implemented because it is not warranted or is not reasonable

There is an objective prioritization process that staff utilizes when developing project priority recommendations. However, as is typical with a transparent process, the District's Board of Directors then seeks extensive public input, including from one or more of the District's advisory committees, the 15 cities in Santa Clara County and the County of Santa Clara, and interested public. The Board then utilizes all available information and opinions when making final decisions on project priorities as part of our formal public review of the CIP. This approach is consistent with Government Code (Section 65403) that specifies certain procedures for Special Districts that choose to formally adopt their CIP, as the District has chosen to do for the last 5 years. Finally, Board Policy GP-2.3 states that the board will inform itself, individually and collectively, through extensive outreach to determine community interests and through continuing education on issues relevant to the District.