

Meeting Date: 5/20/2014

Report Type: Consent

Report ID: 2014-00333

Title: Agreement: Delegation of Notice of Violation Authority for Levee Encroachments Where City is Local Maintaining Agency

Location: Citywide

Recommendation: Pass a Motion authorizing the City Manager or his designee to: 1) sign an agreement with the Central Valley Flood Protection Board delegating the Department of Utilities authority to issue Notices of Violation, on behalf of the Board, for encroachments that violate State law or regulation on facilities of the State Plan of Flood Control for which the City is the local maintaining agency; and 2) issue a written notice of revocation as provided in the agreement, if deemed necessary.

Contact: Bill Busath, Engineering & Water Resources Manager, (916) 808-1434; Tony Bertrand, Supervising Engineer, (916) 808-1461, Department of Utilities

Presenter: None

Department: Department Of Utilities

Division: Flood Control And Policy

Dept ID: 14001021

Attachments:

- 1-Description/Analysis
- 2-Background
- 3-Exhibit A - Delegation Agreement
- 4-Exhibit B - Sample NOV Form

City Attorney Review

Approved as to Form
Joe Robinson
5/5/2014 4:03:17 PM

Approvals/Acknowledgements

Department Director or Designee: Dave Brent - 4/30/2014 3:33:00 PM

Description/Analysis

Issue Detail: Pursuant to recently-enacted State law, the California Central Valley Flood Protection Board (Flood Board) is initiating a pilot project to give the local levee maintenance agencies (LMAs) in the area authority to issue Notices of Violation (NOVs) to anyone encroaching on the facilities of the State Plan of Flood Control. Other LMAs included in the pilot program are the American River Flood Control District (ARFCD) and the State Department of Water Resources Maintenance Area Nine (MA9). Approval of the subject agreement (See Exhibit A – Delegation Agreement) will give the Director of Utilities the authority to delegate the issuing of NOVs to key department staff. NOVs will be issued in a format approved by the Flood Board. The State would remain responsible for prosecuting any violations. The agreement allows either the Flood Board or the LMA to revoke the agreement upon 10 days written notice.

Policy Considerations: The delegation of authority to issue NOVs is intended to improve the enforcement of State regulations protecting levees, floodways, and flood control features.

Economic Impacts: None.

Environmental Considerations: The Community Development Department, Environmental Planning Services Division has reviewed the project and has determined that the action of entering into an agreement is not a project under the California Environmental Quality Act (CEQA), Section 15378. The proposed project is an administrative activity that will not result in direct or indirect physical changes in the environment.

Sustainability: Not applicable.

Commission/Committee Action: None.

Rationale for Recommendation: Approval of this agreement will give the Department of Utilities authorization to issue NOVs for encroachments on the facilities of the State Plan of Flood Control for which the City is the LMA.

Financial Considerations: None.

Local Business Enterprise (LBE): None.

Background

The Central Valley Flood Protection Board (Flood Board) is responsible for permitting encroachments on or near State Plan of Flood Control facilities. It has become increasingly important to address the unpermitted and non-compliant encroachments affecting the flood control facilities. The first official step in the enforcement process is issuance of a Notice of Violation (NOV) to the owner of an unpermitted and non-compliant encroachment. Responsibility for maintenance of the flood control facilities has been delegated to Local Maintaining Agencies (LMAs). The City is the LMA for all levees along the Sacramento River for the section starting just upstream of I Street and ending downstream at Sutterville Road.

In order to increase the effectiveness of the Flood Board's efforts to deal with unpermitted and non-compliant encroachments, in 2013 the Flood Board obtained authority to delegate to LMAs authority to issue NOVs. To begin implementing this new authority, the Flood Board is initiating a Pilot Program with the American River Flood Control District, the State Department of Water Resources Maintenance Area 9, and the City, as the three LMAs responsible for maintenance of these flood control facilities in the Sacramento area. The Pilot Program, which is planned to run through September 2014, will allow the Flood Board to work through and streamline the combined LMA/Board Enforcement Process. Pilot Program LMAs will retain the delegated authority at the conclusion of the Pilot Program. The Flood Board also will retain its authority to issue NOVs, as well as continue the enforcement process after issuance of NOVs.

Using the new delegated authority to address the unpermitted and non-compliant encroachments throughout the flood control system will improve the LMA's and Flood Board's ability to address violations and reduce flood risk.

ENFORCEMENT DELEGATION AGREEMENT

Pursuant to Water Code §8701(b), and Title 23, California Code of Regulations, Division 1, Section 23 (in effect January 9, 2014) the Central Valley Flood Protection Board (Board) hereby delegates to the City of Sacramento Department of Utilities (City) the authority contained in Water Code § 8701(a) to issue a Notice of Violation (NOV) to any person or public agency within its jurisdiction that is responsible for taking, threatening to undertake, or maintaining any action, condition, or encroachment in violation of State law or regulation upon the facilities of the State Plan of Flood Control for which the City is the local maintaining agency. By accepting this delegation, the City agrees that any Notices of Violation issued will be in a format approved by the Board, to transmit a copy of each NOV issued within five days of issuance to the Board enforcement staff, to provide a copy of the investigatory file to Board staff upon request, and to keep Board staff regularly informed of the status of each NOV issued pursuant to this Agreement prior to transferring the NOV to Board staff for enforcement. The City also agrees to cooperate with Board staff prosecuting the violation, and, if requested by the Board, to attend any enforcement hearings that may be held before the Board.

Notwithstanding this delegation, the Board maintains full authority to independently enforce any violations at any time during the term of this Agreement.

This Agreement may be revoked by the Board or by the City upon ten (10) days written notice.

Notice to the Board to be addressed as follows: Central Valley Flood Protection Board
Attn: Executive Officer
3310 El Camino Ave., Rm 151
Sacramento, California 95821

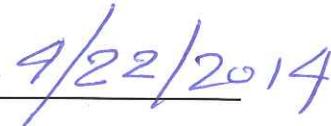
Notice to the City to be addressed as follows: City of Sacramento Department of Utilities
Attn: Director of Utilities
1359 35th Avenue
Sacramento, California 95822

The delegation of authority herein is valid upon receipt by the Board of the original executed Agreement and will remain in effect unless revoked by the Board or the City as provided above.



Jay S. Punia, P.E., Executive Officer
Central Valley Flood Protection Board

Date:



Enforcement Delegation Agreement

City of Sacramento Department of Utilities hereby accepts the delegation of enforcement authority above.

The undersigned warrants that he or she has the authority and capacity to execute this Agreement on behalf of the City of Sacramento Department of Utilities and that he or she has read and understands each provision contained herein.

Director of Utilities
City of Sacramento Department of Utilities

Date: _____

**NOTICE OF VIOLATION
ISSUED BY [LMA NAME]**

NONCOMPLIANT ENCROACHMENTS

YOUR RESPONSE IS REQUIRED BY: Month XX, 2014

Property Owner: Mr. John Doe **Date:** February 11, 2014
Mailing Address: 123 Main St **LMA NOV #:** 201X-XXX
Stockton, CA 95219 **USACE ID:**

Encroachment Location: XYZ North Street, City, CA, Zip (River Name, N,S,W or E Bank)
Latitude: xx.xxxxx, Longitude: -xxx.xxxxx

Local Maintaining Agency: LMA Name
Assessor Parcel Number: XXX-XXX-XX (Include County)

Section A – Encroachment Violation

Description: Pursuant to California Water Code (CWC) Section 8701, a local maintaining agency (LMA) may issue a notice of violation (NOV) to the person or public agency responsible for actions that may adversely affect facilities within the Central Valley Flood Protection Board's (CVFPB) jurisdiction that the LMA operates and maintains. A recent inspection by [LMA Name] staff has determined that your encroachments or actions adversely affect facilities within the CVFPB's jurisdiction.

The following actions or encroachments have been identified:

1. [List noncompliant encroachments]
- 2.
- 3.

Legal Authority: The encroachments listed above in Section A violate the following State statutes and/or federal regulations (Check all that apply):

- CWC Section 8700 – Interference with the State Plan of Flood Control, designated floodways, or streams that are regulated by the CVFPB
- CWC Section 8710 – Central Valley Flood Protection Board (CVFPB) approval required before commencement of construction
- CWC Section 8712 - No levee adopted by the CVFPB shall be altered without permission of the CVFPB
- CCR Title 23 Section 6 – Need for a Permit
- CCR Title 23 Section 21 – Conduct Subject to Enforcement
- 33 CFR 208.10 Local flood protection works; maintenance and operation of structures and facilities.

Section B - Corrective Action: CCR Title 23 requires all noncompliant and unpermitted encroachments within the levee, within 10-feet of the levee toe or located in an easement held by the Sacramento-San Joaquin Drainage District be removed. Encroachments within the floodway that are in compliance with state and federal laws require a CVFPB Encroachment Permit. Those that do not comply with state and federal laws cannot be permitted and shall be removed by the landowner at the landowner's expense. If the encroachments listed in Section A can be modified to comply with existing state and federal regulations, the encroachments may be eligible for a permit from the CVFPB.

The following corrective actions are necessary:

(Alternative 1) The above noted encroachments may be corrected without obtaining prior approval from the CVFPB. The corrections must take place prior to [Insert Date]. The corrections must include:

- [List appropriate removal and repair corrections]
-
-

OR

(Alternative 2) Prior to the commencement of any removal or repair work, you must submit a Removal and / or Repair Plan with Schedule that complies with the CWC, CCR Title 23, and CFR Title 33 for review and approval by [LMA Name] and CVFPB staff. If the proposed plan is deemed appropriate, you will receive a Notice of Authorization (NOA) agreement from CVFPB staff to be filled out and returned to CVFPB staff for approval. Your Removal and / or Repair Plan with Schedule must include the following checked items:

[The options on this list will vary case by case, and should be tailored to fit the specific NOV. Check all that apply]

- Removal of the above-noted encroachments from within the levee section, and within 10 feet of the levee toe(s). Any debris generated from the removal must be discarded at a location outside of the floodway.
- Repair plan must be in accordance with CCR Title 23, Section 120, Levees.
- An Operations Plan that outlines proper operation and maintenance of this encroachment per the conditions of Permit No. #####.
- Other: [List other Removal and / or repair]

After removal and repair, you must submit the following:

- Supply the LMA contact listed below with a post removal report, including soil compaction tests and photos of pre and post work.
- Provide LMA with pipe inspection results within the last five years for Encroachment Permit No. #####. If there are none available, you are required to have your pipe inspected and provide the inspection results to the LMA.
- If you are not the original encroachment permit owner, you must apply for a permit name change for Permit No. ##### through the CVFPB.
- Submit an encroachment permit application for the unpermitted encroachments noted above that are compliant with CCR Title 23. Include an updated plan of the encroachment.
- Other: [List other requirements]

Section C – Consequence of Non-Action or Response

You have until **Month XX, 2014** to comply with the corrective actions listed in Section B. This NOV has been referred to the CVFPB. Failure to comply will result in CVFPB staff issuing you a Cease and Desist Order and the imposition of further remedial and enforcement actions, including, but not limited to, corrections of the violation by the CVFPB at the responsible parties' expense, and penalties. The penalties can range from \$500 to \$50,000 depending on the severity of the violation.

Section D – LMA Contact

If you possess documentation from the CVFPB that allows you to maintain these violations, please provide those documents to [LMA Name] for review.

[LMA Name] Contact: If you have any questions, please contact [LMA Contact] at (xxx)-xxx-xxxx or by email at jon.smith@lma.com.

Signed,

[LMA President]
LMA Name

Attachments:

1. Figure 1- Site location
2. Figure 2 – [LMA] site visit photos (Month XX, 2014)
3. Figure 3 – CVFPB Encroachment Permit No. X

cc: Chief, Enforcement Section
Central Valley Flood Protection Board
3310 El Camino Avenue, Room 151
Sacramento, CA 95821