



City of Sunnyvale

Agenda Item-No Attachments (PDF)

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REPORT TO COUNCIL

SUBJECT

Recreational Hunting and Safe Access to Open Space (Study Issue)

BACKGROUND

Recently, a member of the community reported safety concerns associated with recreational duck hunting that is occurring in the Moffett Channel. The Channel is a waterway that runs from approximately the back of the SMaRT Station, along the east side of the City's wastewater treatment pond, and into San Francisco Bay, where it joins the Guadalupe Slough (see map, Attachment 1). The levees adjoining the channel are frequently used for recreation by walkers, joggers, and bicyclists. Concerns involve discharge of weapons and safety of the other recreational users who frequent the area. As a result of the safety concerns raised before Council, it was ranked as a Council Study Issue (DPS 14-01). The Study Issue paper is presented as Attachment 4.

Jurisdictional boundaries and land ownership are complicated in this part of the Bay. The Moffett Channel was constructed many years ago by the Leslie Salt Company as part of its salt works in the area. During the 1950s, the City of Sunnyvale purchased the salt pond on the west side of the Channel for use as a sewage treatment pond. The Leslie Salt Company (Cargill) continued to own the Moffett Channel and the adjoining salt pond on the east side of the channel (Pond A4) until the early 2000s, when the Santa Clara Valley Water District acquired the property for habitat restoration. The southern portion of the Moffett Channel is located within the Sunnyvale city limits. The northern part of the channel crosses into the jurisdiction of the City of San Jose. The Guadalupe Slough, which is owned by the State of California, is entirely within San Jose. Sunnyvale's Treatment Pond 1 is mostly located in Sunnyvale but a large part of Treatment Pond 2 is actually located within the San Jose city limits.

The Don Edwards-San Francisco Bay National Wildlife Refuge is located on federally-owned land west of Sunnyvale's sewage treatment pond. The Wildlife Refuge is popular with duck hunters during duck hunting season (exact dates vary, but it generally starts around the third week in October and lasts for 100 days). Hunters access the Wildlife Refuge from various points, including via access roads adjacent to the Sunnyvale Water Pollution Control Plant (Carl Road.). This specific area is open for hunting seven days a week during the hunting season. Some duck hunters, however, are also hunting in the Moffett Channel, which is outside of the boundaries of the Wildlife Refuge.

The Parks and Recreation Commission reviewed a draft of this report at their meeting on July 9, 2014. The Commission voted unanimously to recommend approval of Alternative 1.

EXISTING POLICY

General Plan, *Safety and Noise*, Policy SN-3.2 - Control conduct recognized as threatening to life and property.

Sunnyvale Municipal Code:

9.44.010 - *Discharge of firearm within city limits.*

9.62.020(i) - *Misuse of park property.*

ENVIRONMENTAL REVIEW

N/A

DISCUSSION

Public Safety staff made numerous trips out to the area under discussion, including with the member of the community who raised these concerns, in order to better understand the issues and where they are occurring.

Staff met and consulted with members of the California Department of Fish and Wildlife (CDFW) to obtain historical and background information, including enforcement history. The current problems involve hunters who hunt in the Moffett Channel and the Guadalupe Slough rather than going into the National Wildlife Refuge area to hunt (area known as Alviso Pond A3W). Hunters using the Alviso Pond A3W have to check in at designated stations and hunt from designated blinds. Hunters in the Moffett Channel and the Guadalupe Slough hunt from boats or on foot (see map, Attachment 1). Members of the CDFW have indicated they have seen the numbers of hunters in this area significantly increase over the past few years. The past two hunting seasons, CDFW made 75 contacts with hunters, resulting in 12 violations observed. A majority of these violations were for hunting without a license, discharge of a firearm across a levee, and discharge of a firearm within city limits. CDFW officials believe the increase is due to the fact that hunters have determined it is easier to go out to the Moffett Channel and Guadalupe Slough rather than going out to the designated check-in stations to hunt from the Alviso Pond A3W blinds.

Because the Moffett Channel is considered a navigable waterway, it is under the exclusive jurisdiction of the state with regard to the rights of the public to use the waterway for hunting and fishing. Staff from DPS and the Office of the City Attorney discussed the situation with the CDFW Assistant Chief Counsel. The Assistant Chief Counsel opined that the City cannot restrict hunting in the channel and made several suggestions with regard to curtailing problematic activities of hunters. The CDFW Assistant Chief Counsel stated that if the City of Sunnyvale desired to have all hunting banned within the Moffett Channel, the Sunnyvale City Council would have to petition the California Fish and Game Commission. The petition would need to describe in detail the scope of the problem and persuade the commission that the only solution to this problem is to ban hunting within the City. This would require further investigation and documentation by city staff.

Hunters are not allowed to hunt from the levees, within the City of Sunnyvale, as that is a violation of Sunnyvale Municipal Code (SMC) sections 9.44.010 (Discharge of firearms prohibited) and 9.62.020 (i) (Misuse of park property). Additionally, hunters within the Moffett Channel are prohibited from discharging their firearms if they are within 150 feet of the tower located on the levee near City Treatment Pond 2, per state Fish & Game Code (FGC) section 3004(a).

According to employees at the Water Pollution Control Plant (WPCP), they hear pellets striking the roof of the City buildings in that area during hunting season, which would indicate that hunters are also using the portion of the Moffett Channel that runs east-west directly behind the WPCP. Hunting

in this area would also be a violation of FGC section 3004(a) if it occurs within 150 feet of the building.

Hunters may also discharge their weapons within Sunnyvale city limits from the federally-owned Alviso Pond A3W, within the Don Edwards National Wildlife Refuge, where duck hunting is specifically allowed and regulated by state and federal law. However, if hunters on that land fire their weapons in an easterly direction, towards City Treatment Pond 1, they would violate FGC section 3004(b), as they would be firing their weapons across a levee.

California Fish and Game Code section 2016 prohibits hunters from discharging any firearm or taking or destroying any mammal or bird, including any waterfowl from city property, regardless of where the hunting took place so long as signs are posted forbidding trespass or hunting, or both. The Code also specifies acceptable sizing for the signs and intervals at which the signs are to be posted along all exterior boundaries and at all roads and trails entering those lands. Posting of such signs would be recommended as it would allow enforcement of this Code.

The only area in which Sunnyvale would not have enforcement authority would be in the instance of a hunter in Guadalupe Slough firing in a southerly direction, in the direction of the City Treatment Ponds and levees. While still a violation to discharge a weapon across a levee, enforcement action would need to be taken by CDFW or City of San Jose officials. In these situations, Sunnyvale officials would need to contact CDFW or San Jose officials and request enforcement action.

FISCAL IMPACT

Staff estimates that the cost to replace or refurbish old signs and to add news signs to effectively mark and advertise the relative codes and city limit boundaries is approximately \$3,500. This expense can be absorbed in the operating budget for the Department of Public Works.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, at the Sunnyvale Senior Center, Community Center and Department of Public Safety; and by making the agenda and report available at the Sunnyvale Public Library, the Office of the City Clerk and on the City's website.

The Parks and Recreation Commission reviewed a draft of this report at their meeting on July 9, 2014. (Attachment 5 - Meeting Minutes.)

ALTERNATIVES

1. Acknowledge staff's operational approach to this issue by increasing and improving signage in the area, in combination with coordinated enforcement efforts with CDFW and the City of San Jose during hunting season. Staff will update the Council on the outcome of these efforts through an information only report or the City Manager's Bi-Weekly Report.
2. Sponsor a 2015 Study Issue to explore petitioning the California Fish and Game Commission to ban all hunting within the city limits of Sunnyvale.
3. Provide other direction.

STAFF AND COMMISSION RECOMMENDATION

Alternative 1: Acknowledge staff's operational approach to this issue by increasing and improving

signage in the area, in combination with coordinated enforcement efforts with CDFW and the City of San Jose during hunting season. Staff will update the Council on the outcome of these efforts through an information only report or the City Manager's Bi-Weekly Report.

The Parks and Recreation Commission voted unanimously to recommend Alternative 1.

Prepared by: Dave Pitts, Deputy Chief

Reviewed by: Frank Grgurina, Director, Department of Public Safety

Reviewed by: Robert A. Walker, Assistant City Manager

Approved by: Deanna J. Santana, City Manager

ATTACHMENTS

1. Map of Area
2. Map with City Limits
3. Map with current signage
4. Study Issue Paper, DPS 14-01, *Recreational Hunting and Safe Access to Open Space*
5. Parks and Recreation Commission Meeting Minutes of July 9, 2014