



AGENDA REPORT SUMMARY

Meeting Date: December 12, 2023

Subject Storm Water Master Plan Implementation (Status Update); find that information gathering into funding sources to support implementation of the Master Plan would be exempt from review under CEQA pursuant to CEQA Guidelines Sections 15061(b)(3), 15306, and 15308, and that the circumstances in Section 15300.2 do not apply.

Prepared by: Environmental Services Division in Public Works

Reviewed by: Aida Fairman, Public Works Director

Approved by: Gabriel Engeland, City Manager

Attachment(s):

None

Initiated by:

Staff

Previous Council Consideration:

April 26, 2016 – Adoption of Stormwater Master Plan

April 23, 2019 – Public Hearing for Proposed Storm Drainage Fee

June 25, 2019 – Received results of Storm Drainage Fee Ballot

November 15, 2019 – MRP 3.0: Overview of New Requirements

Fiscal Impact:

There is no fiscal impact associated with the creation of this report. Should the City Council authorize the establishment of Benefit Assessment Districts (BAD) for stormwater projects with only private benefit, budget impacts are possible.

The City has executed a professional agreement with NBS for professional services regarding the feasibility of developing assessment districts for completing localized Green Stormwater Infrastructure (GSI) projects. NBS will help outline critical stormwater projects and provide impacted residents with resources to establish assessment districts. This contract was budgeted in the current fiscal year budget.

The cost for the administration of assessment districts is not included in the approved budget and is not part of the agreement with NBS.

Reviewed By:

City Manager

GE

City Attorney

JH

Finance Director

JD



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Environmental Review:

Exploring funding options for implementing GSI projects and maintaining regulatory compliance with the Municipal Regional Permit is exempt from review under the California Environmental Quality Act (“CEQA”) pursuant to CEQA Guidelines Sections 15061(b)(3) (Commonsense Exemption), 15306 (Information Collection), and 15308 (Actions Taken by Regulatory Agencies for the Protection of the Environment), in that the proposed action is merely to explore a funding mechanism for work not yet approved, adopted, or funded; and such funds ultimately approved and collected would be used merely to support the City’s efforts in maintaining compliance with state and federal law intended to protect water quality; the action will not involve construction activities or relaxation of standards allowing for environmental degradation; and none of the circumstances stated in CEQA Guidelines Section 15300.2 applies.

Policy Questions for Council Consideration:

- Does the City Council wish to explore BADs to equitably fund stormwater projects that only provide private benefit?
- What are the most appropriate funding source(s) for stormwater projects that provide only private benefit?

Summary:

- The purpose of this staff report is to provide a status update to the City Council on the Stormwater Master Plan implementation and to provide the City Council with options to establish funding for stormwater infrastructure improvements that provide private benefit.

Staff Recommendation:

Provide direction to staff to create a plan to establish benefit assessment districts for private benefit. Staff will return for council approval of the plan.



Subject: Storm Water Master Plan Implementation (Status Update)

Purpose

Provide a status update to City Council on the Stormwater Master Plan implementation and to provide options to City Council with options to establish funding for stormwater infrastructure improvements.

Background

Council adopted a Stormwater Master Plan (SWMP) in 2016 that identifies priority stormwater Capital Improvement Program (CIP) projects and potential funding sources, including establishing a property related stormwater fee, establishing a Mello-Roos District, and/or establishing Benefit Assessment Districts (BAD). In 2019, City staff pursued a stormwater fee through a mail-in ballot, and 56% of residents voted against the fee.

To date, the City has not pursued the establishment of the other funding sources listed in the SWMP. The implementation of the Stormwater Master Plan (SWMP) is currently funded through the General Fund, a limited funding source used by several departments for critical City functions and Council priorities. As a result of limited available funds and construction inflation due to the pandemic and other factors in recent years, the City has been unable to fund its high-priority stormwater infrastructure CIP projects identified in the SWMP.

With recent increased severe storms only anticipated to exacerbate due to climate change, the City is experiencing increased citizen complaints/concerns regarding stormwater management making it clear that alternative funding is necessary. However, the complaints are usually around projects that provide no or limited public benefit, and instead provide private benefit to individual property owners. Establishing consistent funding for stormwater management is a challenge, as there are no mandated stormwater utility fees for property owners. The City should consider establishing a funding process for resident drainage issues that is based on the number of residents that the issue impacts.

The City is responsible for maintaining and enhancing water quality through the management of the local Municipal Separate Storm Sewer System or MS4. This includes the network of stormwater conveyance facilities that deliver stormwater runoff to the four creeks in Los Altos that terminate at San Francisco Bay. This MS4 is governed by the NPDES Municipal Regional Permit and the State Construction General Permit for development projects disturbing over an acre. Both permits are overseen by the Regional and State Water Quality Control Boards, which update and reissue the Municipal Regional Permit on a 5-year basis.

The Stormwater Master Plan illustrates the measures and specific actions for ensuring permit compliance. A large portion of this plan includes the identification of priority drainage storm infrastructure CIP projects. Taken together, these projects are considered to be a public benefit and



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improvements are being funded through the City’s General Fund and other available funding sources.

Schaaf & Wheeler Consulting Civil Engineers performed field investigation and records research to prepare the 2016 Storm Water Master Plan. At that time, it was clear that the capital and regulatory requirements exceeded the amount available for stormwater in the General Fund. The plan was then updated with a funding component outlining potential funding alternatives to include funding options for projects that provided only private benefit. The potential funding sources include:

Potential Funding for Stormwater Capital Improvement Projects

- **Property Related Fee** – This option was already attempted and voted against in 2019.
- **Community Facilities District (CFD) pursuant to Mello-Roos Community Facilities Act** - Bonds would be issued to pay for projects, and O&M would also be covered through a special tax levy. Requires two-thirds of registered voters to agree within CFD boundaries.
- **Benefit Assessment Districts** – Projects only benefit those in the watershed or established benefit assessment districts. Funded like Mello-Roos, but assessments are proportional to resident benefit. It requires a majority vote among affected property owners.

Stormwater is a valuable resource impacting public health and safety, and the City of Los Altos is responsible for maintaining its Municipal Separate Storm Sewer System (MS4) through compliance with the National Pollutant Discharge Elimination System (NPDES) and Construction General Permits. (MRP) on a 5-year basis.

In 2022, MRP 3.0 was adopted, which included extensively updated and new requirements that will increase future compliance costs. The newly adopted MRP 3.0 includes several new provisions and extensive updates to existing provisions requiring additional funding. As climate change intensifies storm events and regulatory requirements are updated to mitigate impacts, it is imperative that the City identifies a funding alternative for GSI projects and permit compliance.

Discussion/Analysis

The City Council expressed interest in exploring options to develop a dedicated revenue source for stormwater.

Stormwater management can vary greatly depending on basin characteristics such as size, shape, slope, surface types, soil quality, climate, and existing infrastructure and water bodies. As a result, the GSI and conveyance infrastructure needed to mitigate for development also varies significantly by location. Some drainage issues only affect one or two residences, in which case, property-specific implementation of low-impact design features should be sufficient. In contrast, some



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drainage issues can impact most properties in a basin in which a larger area analysis and associated basin management plan may be necessary. In either situation, as rain events become more severe with climate change, Los Altos residents and stormwater staff need a clear path forward for mitigating these issues and fairly funding the solutions. This discussion will identify and compare funding options identified in the SWMP to determine the most equitable solution.

The SWMP recognizes three different components in the Stormwater Program requiring funding:

1. **Capital Improvements** – Funding of larger stormwater CIP projects identified in the SWMP. This is the most expensive item, and it has been challenging to allocate a budget from the general fund as it competes with other departments and mandated regulatory requirements. In recent years, when high-priority CIP projects get general fund allocation, they have been unable to award the contracts because bids came in too high. This has most likely been a result of construction material and pandemic inflation. However, utilizing the general fund for CIP stormwater projects is not preferred as the projects are basin-specific and do not benefit or impact all City residents.
2. **System Operation and Maintenance (O&M) and Permit Compliance Costs** – This includes O&M of the system infrastructure as well as regulatory compliance with the MRP. Compliance with the MRP annually uses the majority of the operational stormwater budget so that the City can maintain regulatory compliance with their NPDES permit and, ultimately, the Clean Water Act.
3. **Operating Expenditures** – These are the smaller expenditures for problem-spot maintenance conducted as needed.

Each of the areas identified in the SWMP need to be funded in order for the City to maintain and operate an effective stormwater system. However, because residents did not approve a ballot measure to fund each area of operation, stormwater projects are identified based on the public benefit in order to comply with state mandates, the stormwater permit, and other applicable regulations. The City is not identifying and moving forward capital projects that would provide only private benefit, as sufficient funding does not exist. Since the adoption of the SWMP, the City still only utilizes a portion of the General Fund for stormwater permit compliance, CIP projects, and system operation and maintenance. In 2019, the City attempted to secure alternative funding by putting out a ballot measure for a property-based stormwater fee. The ballot received only 44% of the yes votes and was unsuccessful. Additionally, the process to put the measure on the ballot utilized a large amount of staff time and stormwater resources. Following the unsuccessful Ballot for a Property-Related Fee in 2019, residents clearly see these stormwater issues differently based on their location and local hydrology and if stormwater impacts their property.



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Property-related fees, Mello-Roos Community Facilities Districts, and Benefit Assessment Districts are the three options explored for meeting CIP Stormwater project costs to fund projects that provide only private benefit, since the ballot measure failed.

The formation of a Community Facilities District (CFD) pursuant to the Mello-Roos Community Facilities Act of 1982. Bonds would be issued to residents to pay for stormwater projects and O&M through a tax levy. These bond levies would be calculated equally throughout the district and can vary annually due to inflation or new district members. However, this option requires two-thirds of registered voters to agree within CFD boundaries. Consequently, this could result in a similar outcome to the Property-Related Fee, and thus, the creation of the CFD would constitute misuse of General Fund dollars.

The Benefit Assessment Districts option aims to assign costs directly proportional to the benefit a specific property encounters. Therefore, stormwater improvement would be project-based in a contiguous watershed or Assessment District Boundary. The benefit assessment district is like Mello-Roos CFDs, except Mello-Roos CFDs can include more general infrastructure or services that do not necessarily benefit all properties within the CFD, such as community parks or libraries. Also, the Mello-Roos district does not have to be contiguous, and costs are generally calculated equally rather than based on resident benefit.

A benefit assessment district establishes property assessments based on the specific benefit the project will have on the property. These assessments are determined through a Professional Engineers report and mostly remain constant after members have voted. The assessments can slightly increase with inflation, but larger increases are subject to another round of voting. Even though a benefit assessment district still requires a vote pursuant to Prop 218, the method is preferred to instead of the Mello Roos and the Property-Related Fee because it targets a much smaller group of residents and ensures they are paying proportionally to the benefit they are receiving. Also, establishing benefit assessment districts and associated projects would most likely be citizen-initiated, making district members more likely to vote for the project. The City already has a document titled “Process for Assessment District Projects” and an associated webpage: <https://www.losaltosca.gov/publicworks/page/assessment-district-projects>

The process of forming benefit assessment districts requires that residents establish a spokesperson that demonstrates a “significant level of interest” (80% of affected property owners) through an informal petition. Once demonstrated, City staff shall set up a meeting with property owners and prepare a conceptual design and preliminary cost estimates. Staff then present the project cost and information and regauge resident interest. If the majority of affected residents are still interested, a formal petition is circulated, and if 70% of properties within the project area show support, the formation of the assessment district goes to the City Council. If passed, a bond and design



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engineer/consultant are likely to be retained to carry out the comprehensive design and assessment per property through the development of the Engineers Report. The Engineers Report then goes to Council, and if approved, the project is put out to bid, and ballots are sent out to each property owner with their assessment costs. However, if the engineering report assessments are lower than the lowest bid, then either the City must provide the additional cost or new assessments must be sent out and voted on. A public hearing and ballot counting is then scheduled, and if an affirmative vote representing greater than 50% of the financial burden of the assessment is obtained, then Council can award the contract. Although this process already seems to be clearly outlined and accessible on the City website, it is currently not being utilized by residents for stormwater improvements.

After the unsuccessful ballot measures of collecting stormwater funds in 2019, the City has received numerous drainage complaints, typically during or following large storm events. In most instances, staff perform site inspections, and the findings are that solving the drainage issue with an infrastructure or Low Impact Development (LID) project would only benefit a handful of residents and does not constitute an equitable use of the general fund allocated to stormwater. Staff explains to the reporting citizen on the lack of stormwater funding and unsuccessful ballot efforts in 2019. Staff determines that the most equitable solution to address localized drainage issues is to have residents fund the improvements at their own expense. Furthermore, staff provides information on the application for a City permit and the design standards if the reporting resident volunteers to perform the improvements at their own expense. Alternatively, the City also informs them that they can provide a drainage management plan stamped by a civil engineer to complete the drainage improvements on their own property through a building permit and refers them to the SCVURPPP C.3. Handbook for design guidelines.

Recommendation

Provide direction to staff to create a plan to establish benefit assessment districts for private benefit. Staff will return for council approval of the plan