




MEMORANDUM

Date: November 3, 2023

To: The Honorable Chair and Members
Pima County Board of Supervisors

From: Jan Leshor 
County Administrator

Re: **Additional Information for November 7, 2023 Agenda Items #13 and 14 - Public Hearing for Revisions to the Riparian Habitat Protection Requirements**

Background

The November 7, 2023, Board of Supervisors agenda contains two agenda items requesting the Board of Supervisors (Board) approval of revisions to the riparian habitat protection requirements. The first proposed revision is to modify the language in the Floodplain Management Ordinance (Ordinance), Title 16 of the Pima County Code (Code), that requires the Regional Flood Control District (District) to submit Riparian Habitat Mitigation Plans to the Board when a permittee proposes to pay a fee in-lieu of mitigating riparian habitat disturbances onsite or when the disturbance of Hydri-riparian or Important Riparian Habitat is more than 5% of the total riparian habitat found on the development property. The second proposed revision is to modify the Regulated Riparian Habitat Offsite Mitigation Guidelines to update the in-lieu fee amounts to account for inflation.

In June 2023, the District informally reached out to stakeholders to discuss the proposed changes and gain feedback that could be incorporated into the proposal before the formal process started. The subsequent discussion resulted in a modified proposal to spread the inflation increase over a few years. The discussion also resulted in questions regarding the overall riparian habitat protection program. In addition, during the October 18, 2023, meeting of the Flood Control District Advisory Committee (FCDAC), the District presented the proposed changes as well as the rationale for the changes. The members of the FCDAC voted unanimously to recommend the Board approve the proposed revisions.

The Arizona Revised Statutes also require the District to submit the proposed changes to the Arizona Department of Water Resources (ADWR) which serves as the state coordinating agency for the National Flood Insurance Program. Staff for ADWR reviewed the changes and confirmed they had no objections to the changes.

Submitting Plans to the Board

The riparian habitat protection chapter of the Ordinance has not been updated since 2005. When that chapter was created, the Sonoran Desert Conservation Plan (SDCP) was still in its

NOV 03 23 AM 11:06 PCD CLK OF RD 1/2

infancy. As such, Section 16.30.050 of the Ordinance was inserted requiring the Board to approve Riparian Habitat Mitigation Plans (RHMPs) for projects that disturb more than 5% of Hydroriparian, or Important Riparian Area on a site. This was similar to the SDCP goal to preserve 95% of Important Riparian Areas, which is fully in effect today. There is also a section related to Board approval of projects that propose paying a riparian mitigation fee in-lieu when more than 1/3 of an acre of riparian habitat is disturbed on a site. In-lieu fee mitigation plans are frequently placed on the Board agenda.

The RHMPs that are submitted to the Board are ministerial and informational items, since the Board does not have discretion to object or deny the plans in the Ordinance requirements are met. The mitigation plan is a condition of a Floodplain Use Permit, rather than a stand-alone approval, and the District is obligated to approve applications that are complete, timely, and meet the standards in Ordinance. Since these agenda items are essentially informational, the District is proposing to replace the language requiring Board approval with a new provision requiring the District to submit quarterly reports to the Board that provides the same information that is currently provided.

During the informal outreach period, the District did not hear any objections or concerns from stakeholder associated with this proposal. Both the Southern Arizona Home Builders Association and the Tucson Metro Chamber support the proposal and cited the increase in efficiency while preserving transparency. This revision remains the same as originally proposed.

Increasing the In-Lieu Fee for Inflation

The Offsite Riparian Habitat Mitigation Guidelines (Guidelines) were adopted by the Board in 2011. The Guidelines established a few methods to calculate the fee based on the cost of onsite mitigation, the area of disturbance, as well as the classification of the regulated riparian habitat. A Flat Fee Table and a more detailed calculator were both approved by the Board which set specific in lieu fee values for each riparian habitat class and, for the calculator by the costs of the components of a mitigation plan. The Guidelines also suggested that the mitigation fees should be revisited every few years to address inflation but did not provide any detail on how that would occur or whether the Board delegated that authority to the Chief Engineer.

Since 2011, the District has not adjusted the fee values for inflation. This has a two-fold impact on the In-Lieu Fee Program (ILF Program). The first is that over time it may have become more cost effective for a property owner or developer to pay the in-lieu fee rather than mitigate onsite since the fees are not reflective of today's costs. Second, the collected fees may not go as far for the District when acquiring, protecting, or restoring riparian areas since the District is paying today's cost.

The District proposes to use the Consumer Price Index (CPI) to adjust the fee values from the November 2011 value to a more current value. The change, as determined by the CPI, is a 34

percent increase in the current fee. In addition, the District proposes to include language in the Guidelines that authorizes the Chief Engineer to update the fees annually on July 1 using the CPI. By authorizing the District to do this administratively, the Board can ensure that the in-lieu fee remains equivalent to the actual price of onsite mitigation.

Based on feedback from stakeholders during the informal outreach period, the District has modified the proposal to phase in the inflation increase over three years to ease the cost burden on property owners who elect to pay the in-lieu fee. The first year increase to be implemented on January 1, 2024, would be 15 percent to adjust for inflation that occurred from November 2011 to July 2020. The second year increase to be implemented on July 1, 2025, would be 18 percent to account for the inflation from July 2020 to July 2023. The third year increase to be implemented on July 1, 2026, would be for any additional inflation that occurred from July 2023 to July 2026.

Riparian Habitat Protection Program Overview

During the informal outreach period, numerous stakeholders asked for information regarding the overall Riparian Habitat Protection Program (RHPP) including how much has been collected from the ILF Program, what types of projects use in-lieu fees and how the District has used this revenue.

To date, the ILF Program has collected approximately \$5.3 million. The amount includes slightly over \$3 million paid by Kinder Morgan for the pipeline project that crossed through Pima County from the Cochise County line to Mexico. Of the remainder, approximately \$400,000 was paid by sand and gravel companies, approximately \$400,000 was paid by utilities and \$150,000 was paid by local governments. The remaining approximately \$1.3 million was for other development projects including commercial, subdivision and single lot development.

Since 2015, there have been 141 RHMPs associated with development projects, with 85 of them for single lot development and 56 for commercial/subdivision development. Among the single lot development projects, 61 projects or over 70 percent, used the ILF Program, while the commercial/subdivision development projects, 26 projects or 46 percent, used the ILF Program. Additional information about the types of projects and their utilization of the in-lieu fee program are provided in the table below:

GENERAL	
Total RHMPs	141
Single Lot RHMPs	85
Subdivision RHMPs	56
ILF, ONSITE AND COMBINATION TOTALS	
Total ILFs	87

Total Onsite Mitigation	52
Total Combination ILF/Onsite	2
SINGLE LOT	
ILF, Onsite and Combinations	
ILF	61
Onsite	23
Combination	1
SUBDIVISION/COMMERCIAL	
ILF, Onsite and Combinations	
ILF	26
Onsite	29
Combination	1

Consistent with the purpose of the Ordinance and the RHPP, the District uses these funds to further protect, restore, or enhance riparian habitats. The funds have been used to restore District and County-owned property, acquire lands that contain riparian habitat in order to preserve it, enhance existing or newly acquired property by removing invasive species and installing fencing to reduce the threat of degradation due to trespass and illegal dumping, as well as for planning efforts in order secure grant funding from federal agencies such as the Natural Resources Conservation Service (NRCS) and the Environmental Protection Agency. The Community Rating System of the Federal Emergency Management Agency credits the preservation of riparian areas when it determines the County’s eligibility for reduced flood insurance rates for property owners.

To date, the District has spent approximately \$3.3 million on riparian habitat protection and enhancement activities. Of that \$3.3 million, the District has spent \$2.1 million on restoration activities including Agua Caliente Pond, Isabella Lee Preserve on the Tanque Verde Creek, two projects on the Cañada del Oro Wash, one project on the Santa Cruz River at Midvale Park, one project on the Rillito River, and numerous small projects. The District has spent approximately \$800,000 on land acquisitions for parcels in the San Pedro River watershed, Tucson Mountain washes, Black and Brawley washes, and Santa Cruz River. An additional \$400,000 has been used to remove invasive species, fence off areas with a high risk of degradation, and restoration planning activities.

The District has approximately \$2 million that remains unspent that is set aside in a restricted fund. The District plans to use these funds for additional restoration projects including:

1. \$400,000 to restore the Meander Bend area on the Santa Cruz River near Grant Road on a property that the District recently acquired.
2. \$500,000 to fence portions of Cienega Creek to limit degradation from cattle and to restore some of the areas already degraded.

3. \$800,000 to restore County and City lands in the Altar Valley. This money will be leveraged by the Altar Valley Conservation Alliance to secure funding from the NRCS to further improve the Altar Valley Watershed on private lands.
4. \$1 million for restoration activities in the Avra Valley. The District is nearing completion of an NRCS Watershed Planning project. The goal of the project is to identify restoration opportunities in Avra Valley that would qualify for NRCS funding. The District's funds would be used to leverage the federal funds.

Recommendation

The District has been successfully implementing the RHPP for over a decade. In that time, the District has identified improvements that could be made within the program so that the District can implement it more efficiently and effectively. These include modifying the Board submittal requirement for certain RHMPs and allowing the inflation rate to be administratively applied annually. I recommend that the Board approve the two agenda items to effectuate these changes.

JKL/anc

- c: Carmine DeBonis, Jr., Deputy County Administrator
Francisco Garcia, MD, MPH, Deputy County Administrator & Chief Medical Officer
Steve Holmes, Deputy County Administrator
Eric Shepp, P.E., Director, Regional Flood Control District
Brian Jones, CFM, Deputy Director, Regional Flood Control District
Michael LeBlanc, CFM, Manager, Regional Flood Control District