



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Albert Balagso

SUBJECT: SEE BELOW

DATE: 02-07-07

Approved

Ray Winer

Date

2/12/07

COUNCIL DISTRICT: 4
SNI AREA: N/A

SUBJECT: JOINT USE AGREEMENT RELATED TO THE UPPER PENITENCIA CREEK PARK AND TRAIL SYSTEM

RECOMMENDATION

Authorization of the City Manager to negotiate and execute a joint use agreement with the Santa Clara Valley Water District and the County of Santa Clara for joint use of lands along Upper Penitencia Creek, from Alum Rock Park to Coyote Creek, for flood management, water conservation, open space, and recreational purposes.

OUTCOME

The City Council's action will permit execution of an agreement to define the roles and responsibilities of each agency in the use of respective lands along the Upper Penitencia Creek. Specifically for the City of San José (City), the agreement will facilitate trail and park development per existing and future master planning efforts as well as operation and maintenance of built facilities.

BACKGROUND

The Santa Clara County (County) prepared a master plan for Penitencia Creek Park, from Alum Rock Park to Coyote Creek, dated July 18, 1977, which contemplated the joint use of County, Santa Clara Valley Water District (District), and City-owned lands on and adjacent to Upper Penitencia Creek. At the time, the District's Board of Directors and the City Council adopted formal resolutions endorsing the master plan and stating the District and City's intentions to cooperate with the County and any other interested public agencies in carrying out the master plan proposals.

Since preparation of the 1977 master plan, the City has developed a number of projects along the creek:

Date	Project Name	Limits	Project Type
June 2002	Penitencia Creek Park Chain Reach 2	Piedmont Rd to Noble Dr.	Master Plan (park & trail)
June 2003	Penitencia Creek Park Chain Reach 6	King Rd to Jackson Ave.	Master Plan (park & trail)
On-going	Penitencia Creek Park Chain Reach 2	Piedmont Rd to Noble Dr.	Park & trail development
On-going	Penitencia Creek Trail Reach 1	Noble Ave to Alum Rock Park	Master Plan (trail)

In July 1981, City, District, and County entered into a joint use agreement for the lands of the Upper Penitencia Creek Park Chain. The agreement generally defined the roles of each agency in developing the park chain.

In general, the following roles and responsibilities were defined by the 1981 agreement:

- County was to develop and maintain the built projects.
- District was to maintain the creek, develop ponds and construct flood-control improvements.
- City was to address public safety through the deployment of police and fire personnel.

ANALYSIS

The 1981 agreement expired in July 2006. The agreement included a provision for renewal; however, over the past 25 years the agencies have assumed roles and developed the park chain in a manner that requires greater clarity than offered by the expiring agreement. The new agreement will provide greater detail pertaining to the preparation of master plans, park and trail development, and roles and responsibilities for operations and maintenance.

Staff has coordinated with the District and County for the past year to ensure that an executed agreement could be in place prior to the July 2006 expiration date. Unfortunately, the District and County were delayed in negotiating terms pertaining to the replacement of built County facilities due to future District flood-control improvements. City staff monitored the discussions and ensured during the summer of 2006 that it offered support to achieve a resolution.

The City Manager seeks to negotiate and execute an agreement that specifically defines work within each reach of the Upper Penitencia Creek system. As an example, the City currently leads a planning effort for a dog park within County right of way. The agreement would define roles and responsibilities for development of the dog park, as well as its operation and maintenance once constructed.

In general, the City seeks to develop lands along the Penitencia Creek for the purposes of recreation while supporting the County's similar efforts and the District's flood-control and open-space objectives. Attachment A outlines the roles and responsibilities of each agency.

POLICY ALTERNATIVES

Alternative #1: Do nothing.

Pros: Processing of agreement and associated staff time are not required.

Cons: The City will not have an important tool in the development of a continuous trail system and park chain as envisioned, traversing over District and County right of way. An alternate agreement would be required to appropriately define roles and responsibilities for facilities that currently exist.

Reason for not recommending: This approach is inconsistent with the City's past efforts to be collaborative with the County and District on recreational projects. Additionally, the City would be unable to develop a continuous trail as defined by the Greenprint.

PUBLIC OUTREACH/INTEREST

- Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

No specific outreach has occurred in respect to this agreement. Formal outreach has occurred in development of the recreational projects that are envisioned or have been developed along Penitencia Creek.

COORDINATION

This memorandum was developed in coordination with the City's Departments of Public Works, Transportation, and Planning, Building and Code Enforcement, the Budget Office and the City Attorney's Office. Coordination also was conducted with the County of Santa Clara and Santa Clara Valley Water District staff.

FISCAL/POLICY ALIGNMENT

This project is consistent with the Council-approved Budget Strategy Economic Recovery section in that it will spur planning, environmental study, and design work necessary to encourage construction spending in our local economy.

COST SUMMARY/IMPLICATIONS

Negotiation and execution of this Joint Use Agreement does not present any new cost implications for the City. The agreement seeks to clearly define the roles and responsibilities already undertaken and funded by the City.

Future development of improvements will require City Council authorization. Projects will be clearly defined at that stage and staff will be able to provide accurate estimation of costs associated with operation and maintenance of facilities.

CEQA

CEQA: Not a project.



ALBERT BALAGSO
Director of Parks, Recreation and
Neighborhood Services

Attachment

For questions, please contact Yves Zsutty, Program Manager – Citywide Trail System, at (408) 793-5561.

Attachment A
Roles and Responsibilities

Code	Reach	From	To	Description	Responsibility	City Role
PEN01	7	Coyote Creek	King Road	Undeveloped	Private, SCVWD	None until future trail development.
PEN02	6c	King Road	Mabury Road (200' e/o King Road)	Unpaved, but used informally	City, Private, SCVWD	Litter pick up within City parcel as necessary.
PEN03	6b	Mabury Road (200' e/o King Road)	Mabury Road (400' w/o Jackson Ave)	Paved sidewalk and bike lanes	CSJ DOT	Infrastructure maintenance and litter pick-up as necessary.
PEN04	6a	Mabury Road	Jackson Avenue	Paved trail within Penitencia Creek Park	County, SCVWD	None
PEN05	5b	Jackson Avenue	Highway 680	Paved trail	County, SCVWD	None
PEN06	5a	Highway 680	Capitol Avenue	Paved trail	County, SCVWD	None
PEN07	4b	Capitol Avenue	Summerview Avenue	Paved trail and pedestrian bridge, future dog park site	County, SCVWD	None, until dog park development.
PEN08	4a	Summerview Avenue	Viceroy Avenue	Paved trail	County, SCVWD	None
PEN09	3	Viceroy Avenue Intersection		On-street crossing	CSJ DOT	CSJ-DOT to address infrastructure maintenance and litter pick-up as necessary.
	3	Viceroy Avenue (within Park)	Piedmont Road	Unpaved trail within Penitencia Creek Park	County	None
PEN10	2b	Piedmont Road	Percolation Pond #2	Compacted base rock trail and pedestrian bridge	CSJ PRNS, SCVWD	Infrastructure maintenance and litter pick-up as necessary.
PEN11	2a	Percolation Pond #2	Noble Drive	Compacted base rock trail and pedestrian bridge	CSJ PRNS, SCVWD	Infrastructure maintenance and litter pick-up as necessary.
PEN12	1	Noble Drive	Alum Rock Park Entrance	Master Plan underway	SCVWD	None, until paved trail development