



SUPPLEMENTAL

COUNCIL AGENDA: 10-31-06
ITEM: 5.3

Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Albert Balagso

SUBJECT: SEE BELOW

DATE: 10-26-06

Approved

Date

10-27-06

**SUBJECT: APPROVAL OF A MASTER PLAN FOR PENITENCIA CREEK TRAIL
REACH I**

SUPPLEMENTAL

REASON FOR SUPPLEMENTAL MEMORANDUM

The Mitigated Negative Declaration and the associated Council Resolution for the Penitencia Creek Trail Reach 1 Master Plan were inadvertently left off of the original memo to the Mayor and City Council. They are attached to this supplemental memorandum.

ANALYSIS

The Mitigated Negative Declaration and the associated Council Resolution for the Penitencia Creek Trail Reach 1 Master Plan are attached to this memorandum.

ALBERT BALAGSO
Acting Director, Parks, Recreation and
Neighborhood Services Department

**DRAFT
MITIGATED NEGATIVE DECLARATION**

The Director of Planning, Building and Code Enforcement has reviewed the proposed project described below to determine whether it could have a significant effect on the environment as a result of project completion. "Significant effect on the environment" means a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance.

NAME OF PROJECT: Penitencia Creek Trail Reach 1

PROJECT FILE NUMBER: PP06-111

PROJECT DESCRIPTION: Master Plan for development of a 0.5-mile raised concrete path along the north side of Penitencia Creek Road, for pedestrian use. The path would vary from four- to six-feet in width. A six-foot wide path would extend from Noble Avenue to Dorel Drive, which would be reduced to four feet in width east of Dorel Drive. Regulatory signage and accessible ramp improvements at intersections are included.

PROJECT LOCATION & ASSESSORS PARCEL NO.: North side of Penitencia Creek Road, between Nobel Ave. and Alum Rock Park.

COUNCIL DISTRICT: 4

APPLICANT CONTACT INFORMATION: City of San Jose, Department of Public Works;
Jan Palajac (408) 535-8350. Jan.Palajac@sanjoseca.gov

FINDING

The Director of Planning, Building & Code Enforcement finds the project described above will not have a significant effect on the environment in that the attached initial study identifies one or more potentially significant effects on the environment for which the project applicant, before public release of this draft Mitigated Negative Declaration, has made or agrees to make project revisions that clearly mitigate the effects to a less than significant level.

MITIGATION MEASURES INCLUDED IN THE PROJECT TO REDUCE POTENTIALLY SIGNIFICANT EFFECTS TO A LESS THAN SIGNIFICANT LEVEL

AESTHETICS – The project will not significantly impact the visual or aesthetic characteristics of the area, since it will be located adjacent to, and appear as an extension of, an existing road. Design measures will insure that the trail retain a rural, rustic appearance consistent with the existing neighborhood and terrain. No new light sources are proposed as part of the trail. Signs associated with this projected shall be of appropriate size and design that does not restrict or impair views as required in a designated scenic corridor. The project would have a less-than-significant impact on aesthetics, since the trail would be designed with specific measures to blend with the surrounding environment and be consistent with Reach 2 of the trail.

AGRICULTURE RESOURCES – The project will not have a significant impact on this resource, therefore no mitigation is required.

AIR QUALITY – The following standard dust control measures will reduce potential construction impacts on nearby properties.

- Water all active construction areas at least twice daily and more often during windy periods; active areas adjacent to existing land uses shall be kept damp at all times, or shall be treated with non-toxic stabilizers or dust palliatives.
- Cover all trucks hauling soil, sand, and other loose materials *or* require all trucks to maintain at least two feet of freeboard.
- Pave, apply water three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas, and staging areas at construction sites.
- Sweep daily (with water sweepers) all paved access roads, parking areas, and staging areas at construction sites; water sweepers shall vacuum up excess water to avoid runoff-related impacts to water quality.
- Sweep streets daily (with water sweepers) if visible soil material is carried onto adjacent public streets.

BIOLOGICAL RESOURCES – Within the project area, the City proposes the construction of an approximately 0.5-mile long pedestrian trail within, or immediately adjacent to, the dripline of the Penitencia Creek riparian woodland. Based on the project plans, approximately 1,900 linear feet of the trail would be located within the corridor. The trail would require the removal of 16 riparian trees. Construction activities for the trail would directly impact riparian vegetation in these areas, from the removal and limbing of riparian trees within the woodland. The project is estimated to result in the loss of 13,504 square feet (0.31 acre) of riparian vegetation.

Impacts to Riparian Vegetation

Direct Impacts

The City of San Jose Parks, Recreation and Neighborhood Services shall secure all necessary permits from the regulatory agencies and implement a mitigation program that includes the following features:

Riparian revegetation to compensate for direct removal of 0.31 acre of riparian woodland and four large sized sycamore trees, totaling 1.10 acres. The riparian mitigation shall provide a 3:1 habitat replacement ratio for impacts to the riparian woodland. In addition, the mitigation shall provide a

10:1 tree replacement ratio for the large-sized sycamore trees. To compensate for the removal of the four sycamore trees, 40 trees shall be planted approximately 15 feet o.c. within a 0.17-acre riparian mitigation area. The total riparian mitigation area shall be 1.10 acres. Revegetation shall occur adjacent to the creek on City-owned land; a minimum of 1.1 acres of suitable floodplain lands that are now non-native grassland are suitable for revegetation.

Prepare and implement the revegetation plan for barrier plantings and riparian plantings. The plan shall specify the detailed location of all plantings, the use of locally native riparian plant species and specify a 5-year maintenance and monitoring program. The plan shall specify monitoring of the revegetation areas a minimum of once a year and annual reports submitted to the Environmental Principal Planner in the City of San Jose Planning, Building and Code Enforcement and applicable regulatory agencies at the end of each monitoring year. The reports shall identify the plant survival rate, maintenance actions at the site and include photographs documenting the status of the revegetation. During each year of the 5-year monitoring periods, plantings shall achieve a minimum 80% survival rate for the revegetation to be deemed successful. Remedial measures (such as replacement plantings, an increase in maintenance, or changes to the irrigation regime) shall be implemented if the success criterion is not achieved in any of the five monitoring years. Plant species recommended for the revegetation are listed in Table 3.

Table 3 Recommended Planting List for Riparian Woodland Revegetation Areas		
Common Name	Scientific Name	Average Spacing
Riparian Plantings		
Coast Live Oak	<i>Quercus agrifolia</i>	15' o.c.
Blue Elderberry	<i>Sambucus mexicana</i>	15' o.c.
Valley Oak	<i>Quercus lobata</i>	15' o.c.
Western Sycamore	<i>Platanus racemosa</i>	15' o.c.*
California Rose	<i>Rosa californica</i>	8' o.c.
Flowering Currant	<i>Ribes sanguineum</i>	8' o.c.
Toyon	<i>Heteromeles arbutifolia</i>	8' o.c.
Coffee Berry	<i>Rhamnus californica</i>	8' o.c.
Coyote Brush	<i>Baccharis pilularis</i>	8' o.c.
*See specific mitigation ratio for Sycamore trees.		

Indirect Impacts

Additionally, the City will install three-foot high fencing (i.e., open, split-rail type, or similar) between the trail *and open areas* of the riparian corridor to create a physical barrier between the trail and the adjacent riverine wetlands and open water habitats to protect habitat and public safety. Specific areas

include the open area just east of Noble Avenue and other areas where there is potential for people to access the creek or enter proposed mitigation areas.

Direct and Indirect Impacts to Nesting Birds in the Riparian Habitat

Construction shall be scheduled to occur outside the nesting season for sensitive riparian bird species; the nesting season spans February through July. If this is not feasible, have a qualified biologist conduct preconstruction surveys for nesting birds along the trail corridor no more than 30 days prior to onset of tree removal and construction. If nesting sensitive bird species are observed, the qualified biologist shall determine an appropriate buffer zone around the nest, and construction within the buffer zone shall be postponed until all young have fledged, as determined by monitoring by a qualified biologist.

Direct and Indirect Impacts to California Red-legged Frog, Foothill Yellow-legged Frog, Western Pond Turtle

No direct impacts to California red-legged frog, foothill yellow-legged frog, and western pond turtle are expected to occur from this trail project, since no major work would occur within the creek channel, no in stream wetland vegetation or overhanging vegetation would be removed, and no creek diversions are proposed. The trail would not cross the creek and would be shielded from the creek by existing and proposed vegetation, therefore the daytime recreational use of the trail is not expected to have long-term impacts to these species. Degradation of the riparian habitat by increased human use may cause cumulative impacts to these species, but with the implementation of identified mitigation, this impact would be reduced to a less-than-significant level.

Table 4 Summary of Impacts to Special Status Wildlife Species and Mitigation			
Wildlife Resource	Impact Type	Impact Potential Type P = Potential NP = No Potential	Mitigation Proposed
Potential Steelhead Spawning or Rearing Habitat	Direct impact to open water	NP	None
	Indirect impact to of sedimentation, erosion to open water	P	Construction BMPs
	Direct impact to shaded riverine aquatic habitat	NP	Revegetation
California Red-legged Frog, Foothill Yellow-legged Frog, Pond Turtle	Potential take of individuals during construction	NP	None
	Direct impacts to riparian habitat	P	Revegetation
Riparian Nesting Birds	Potential abandonment of nests, chicks	P	Preconstruction surveys
	Indirect impact from night lighting	NP	No night lighting proposed
	Direct impact of loss of riparian trees and vegetation	P	Revegetation

Direct and Indirect Impacts to Steelhead Trout

The project does not propose work within the creek channel, and no creek diversions would be placed for construction, therefore no direct impacts to steelhead trout are expected from the project. Potential indirect impacts that may occur include sedimentation to the creek. Field review determined that the proposed removal of riparian trees and vegetation would not result in loss of shaded riverine habitat, since the trees are set back from the edge of the creek and do not currently provide shade directly to the creek. Indirect impacts can be reduced to a less-than-significant level by implementation of mitigation identified for the riparian habitat and for water quality protection.

Impacts to Trees in the Project Area

To mitigate potential damage to retained trees, trees shall be safeguarded during construction through the following measures:

- A certified arborist shall monitor all tree pruning, root cutting, and other disturbance to trees during construction of the project.
- Damage to any tree during construction shall be reported to the City's Environmental Principal Planner, and the contractor or owner shall treat the tree for damage in the manner specified by the Environmental Principal Planner.
- No construction equipment, vehicles or materials shall be stored, parked or standing within the tree dripline; and
- Drains and filling around the base of trees shall be done only after consultation with a certified arborist and then only to the extent authorized by the arborist shall be installed according to city specifications so as to avoid harm to trees due to excess watering; and
- Wires, signs and other similar items shall not be attached to trees; and
- Cutting and filling around the around the base of trees shall be done only after consultation with a certified arborist and then only to the extent authorized by the arborist; and
- No paint thinner, paint, plaster or other liquid or solid excess or waste construction materials or wastewater shall be dumped on the ground or into any grate between the dripline and the base of the tree or uphill from any tree where certain substances might reach the roots through a leaching process; and
- Barricades shall be constructed around the trunks of trees as specified by a certified arborist so as to prevent injury to trees making them susceptible to disease causing organisms; and
- Wherever cuts are made in the ground near the roots of trees, appropriate measures shall be taken to prevent exposed soil from drying out and causing damage to tree roots.

Water Quality Impacts

The City of San Jose Parks, Recreation and Neighborhood Services shall incorporate construction Best Management Practices (BMP's) to preclude erosion or sediments from entering the creek during and after construction of the trail. The following BMP's shall be implemented during all phases of construction on the project site:

- Conduct construction activities during the dry season;

- Divert concentrated runoff away from channel banks;
- Minimize vegetation removal;
- Identify with construction fencing all areas that require clearing, grading revegetation or otherwise disturbed;
- Stabilize disturbed soils to minimize erosion and sediment input to the creek;
- Implement erosion control measures to prevent sediment from entering the creek channel, including the use of silt fencing or fiber rolls to trap sediments;
- Conduct erosion control seeding of all disturbed areas as soon as practicable after disturbance following construction;
- Monitor the effectiveness of the erosion control measures during the first year's rainy season and implement remedial measures (e.g., reseeding, repair of silt fencing) if sedimentation or erosion is noted.

CULTURAL RESOURCES – No surface evidence of cultural resources was found during field surveys of the trail alignment, however the following mitigation measures will be implemented:

- Retain a qualified archaeologist to monitor earthmoving activities in the general zone of Scl-207 if excavation is required that will extend more than a foot below the existing surface. In the event that any cultural materials are discovered, the project archeologist shall designate an area where work should be stopped until the presence of additional deposit is verified. If additional midden deposit is identified inside areas to be graded for the project, the project archeologist shall submit a program of mitigation of impacts submitted to the Director of Planning, Building, and Code Enforcement for consideration and approval.
- If any cultural materials are exposed or discovered during either site preparation or subsurface construction activities, operations shall be halted within 25 feet of the find and a qualified archaeologist retained for evaluation and further recommendations. Potential recommendations could include evaluation, collection, recordation, analysis, and reporting of any significant cultural materials. If the find is determined to be significant, a mitigation program shall be prepared and submitted to the Director of Planning, Building, and Code Enforcement for consideration and approval.
- Pursuant to Section 7050.5 of the Health and Safety Code, and Section 5097.94 of the Public Resources Code of the State of California in the event of the discovery of human remains during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The Santa Clara County Coroner shall be notified and shall make a determination as to whether the remains are Native American. If the Coroner determines that the remains are not subject to their authority, the Coroner shall notify the Native American Heritage Commission to attempt to identify descendants of the deceased Native American. If no satisfactory agreement can be reached as to the disposition of the remains pursuant to this State law, then the land owner shall re-inter the human remains and items associated with Native American burials on the property in a location not subject to further subsurface disturbance.

- Treatment of any Native American burials exposed during construction shall be conducted in accordance with the State of California Public Resources Code in consultation with the Native American Heritage Commission.

GEOLOGY AND SOILS – The final trail shall be designed and constructed in accordance with the specific recommendations of a design-level geotechnical investigation. Prior to the issuance of a Public Works Clearance for the project, a design-level geotechnical analysis shall be prepared to the satisfaction of the Director of the Department of Public Works. The geotechnical investigation shall include the following analysis:

- Evaluation of soil liquefaction and lateral spreading potential and identification of appropriate measures to remediate these conditions.
- Delineation of areas of slope instability and identification of appropriate mitigation, such as retaining walls, rock bolting, or other measures to remediate these conditions.
- Identification of the proper size and spacing the helical pier footings proposed for a portion of the trail

HAZARDS AND HAZARDOUS MATERIALS – The project would have no impacts associated with hazards and hazardous materials, therefore no mitigation is required .

HYDROLOGY AND WATER QUALITY – The project has the potential to impact water quality, therefore the following mitigation is proposed:

- A hydrological study shall be prepared during final trail design, and appropriate measures included to assure that the project would not substantially impede or redirect flood flows. This study and development of any required measures shall be coordinated with the SCVWD.
- At the final design stage, the City Department of Parks, Recreation and Neighborhood Services shall evaluate the existing outlets to Penitencia Creek along the proposed trail to assure the facilities are adequate.
- At the final design stage, the City Department of Parks, Recreation and Neighborhood Services shall identify and include site design measures, post-construction structural controls, and BMPs for reducing the volume of storm water runoff and the contamination in storm water runoff as permanent features of the project. A sufficient number of post-construction treatment measures shall be incorporated into the project in compliance with provision C.3 of the City of San Jose's NPDES permit and all other applicable local, state, and federal requirements.
- During the construction phase, the San Jose Department of Parks, Recreation and Neighborhood Services shall develop, implement, and maintain a Storm Water Pollution Prevention Plan (SWPPP) to control the discharge of storm water pollutants including sediments associated with construction activities. Such measures could include, but are not limited to, the following:
 - Restrict grading to the dry season or meet City requirements for grading during the rainy season;
 - Use BMPs to retain sediment on the project site;

- Place burlap bags filled with drain rock around storm drains to route sediment and other debris away from drains and drainages;
 - Provide temporary cover of disturbed surfaces to help control erosion during construction;
 - Provide permanent cover to stabilize the disturbed surfaces after construction;
- The City shall file a Notice of Intent (NOI) with the State Water Resources Control Board, in conformance with state regulations, and prepare an erosion control plan to include BMPs specified in the California Storm Water Best Management Practice handbook

LAND USE AND PLANNING – The project will not have a significant impact on land use, therefore no mitigation is required.

MINERAL RESOURCES – The project will not have a significant impact on this resource, therefore no mitigation is required.

NOISE – Noise resulting from construction activity could impact nearby residences, therefore the following standard noise mitigation measures are proposed:

- Limit construction hours to Monday through Friday, between 7 AM and 7 PM for any activities within 500 feet of residential uses, in accordance with local ordinance.
- Equip all internal combustion engine-driven equipment with intake and exhaust mufflers that are in good condition and appropriate for the equipment type.
- Strictly prohibit idling of internal combustion engines.
- Utilize “quiet” air compressors and other stationary noise sources where the technology exists.
- Designate a “noise disturbance coordinator” that will be responsible for responding to any complaints regarding noise. The disturbance coordinator will determine the cause of the noise complaint and require that reasonable measures are implemented to correct the problem. A telephone number for the disturbance coordinator shall be conspicuously posted at the construction site and included in the notice to neighbors regarding the construction schedule. The City shall be responsible for designating the noise coordinator and the contractor will be responsible for posting the phone number and providing construction schedule notices

POPULATION AND HOUSING – The proposed trail would not induce population growth, nor would it displace existing housing or persons.

PUBLIC SERVICES – The project will not increase demand for Police or Fire Department services therefore no mitigation is required.

RECREATION – The project will provide additional recreational opportunities by providing a connection between the existing Penitencia Creek trail and Alum Rock park. The project is expected to meet an existing need for recreational opportunities and will have a positive impact on recreational resources.

TRANSPORTATION / TRAFFIC – The project would not result in adverse traffic impacts, therefore no mitigation is required.

UTILITIES AND SERVICE SYSTEMS – The project is not expected to require an expansion in wastewater, storm drainage, water, or solid waste facilities, or otherwise impact utilities or services.

MANDATORY FINDINGS OF SIGNIFICANCE – The project will not substantially reduce the habitat of a fish or wildlife species, be cumulatively considerable, or have a substantial adverse effect on human beings, therefore no additional mitigation is required.

PUBLIC REVIEW PERIOD

Before 5:00 p.m. on August 28, 2006, any person may:

- (1) Review the Draft Mitigated Negative Declaration (MND) as an informational document only; or
- (2) Submit written comments regarding the information, analysis, and mitigation measures in the Draft MND. Before the MND is adopted, Planning staff will prepare written responses to any comments, and revise the Draft MND, if necessary, to reflect any concerns raised during the public review period. All written comments will be included as part of the Final MND; or
- (3) File a formal written protest of the determination that the project would not have a significant effect on the environment. This formal protest must be filed in the Department of Planning, Building and Code Enforcement, 200 East Santa Clara Street, San José CA 95113-1905 and include a \$100 filing fee. The written protest should make a “fair argument” based on substantial evidence that the project will have one or more significant effects on the environment. If a valid written protest is filed with the Director of Planning, Building & Code Enforcement within the noticed public review period, the Director may (1) adopt the Mitigated Negative Declaration and set a noticed public hearing on the protest before the Planning Commission, (2) require the project applicant to prepare an environmental impact report and refund the filing fee to the protestant, or (3) require the Draft MND to be revised and undergo additional noticed public review, and refund the filing fee to the protestant.

Joseph Horwedel, Acting Director
Planning, Building and Code Enforcement

Circulated on: July 29, 2006

/s/ Michael Rhoades

Deputy

Adopted on: _____

Deputy

Revised 8/26/05 JAC

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN JOSE APPROVING THE PENITENCIA CREEK TRAIL REACH 1 MASTER PLAN PROJECT, FOR WHICH AN INITIAL STUDY/MITIGATED NEGATIVE DECLARATION WAS PREPARED IN ACCORDANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, AND ADOPTING A MITIGATION MONITORING AND REPORTING PROGRAM

WHEREAS, prior to the adoption of this Resolution, the Planning Director of the City of San Jose prepared an Initial Study and adopted a Mitigated Negative Declaration for the Penitencia Creek Trail Reach 1 Master Plan Project (Planning File No. PP06-111) in accordance with the requirements of the California Environmental Quality Act of 1970, as amended ("CEQA"), and state and local guidelines implementing CEQA; and

WHEREAS, the Penitencia Creek Trail Reach 1 Master Plan Project ("Project") analyzed under the Initial Study/Mitigated Negative Declaration consisted of the development of a .5 mile raised concrete path along the north side of Penitencia Creek Rd for pedestrian use, located along Penitencia Creek between Noble Ave. and the entrance to Alum Rock Park, in San José, California; and

WHEREAS, the Initial Study/Mitigated Negative Declaration concluded that implementation of the Project could result in a number of significant effects on the environment and identified mitigation measures that would reduce the significant effects to a less-than-significant level; and

WHEREAS, in connection with the approval of a project involving the preparation of an initial study/mitigated negative declaration that identifies one or more significant environmental effects, CEQA requires the decision-making body of the lead agency to incorporate feasible mitigation measures that would reduce those significant environment effects to a less-than-significant level; and

WHEREAS, whenever a lead agency approves a project requiring the implementation of measures to mitigate or avoid significant effects on the environment, CEQA also requires a lead agency to adopt a Mitigation Monitoring and Reporting Program to ensure compliance with the mitigation measures during project implementation; and

WHEREAS, the City of San Jose is the lead agency on the Project, and the City Council is the decision-making body for the proposed Project; and

WHEREAS, the City Council has reviewed and considered the Initial Study/Mitigated Negative Declaration and related Mitigation Monitoring and Reporting Program for the Project and intends to take actions on the Project in compliance with CEQA and state and local guidelines implementing CEQA; and

WHEREAS, the Initial Study/Mitigated Negative Declaration and the Mitigation Monitoring and Reporting Program for the Project are, by this reference, incorporated into this Resolution as if fully set forth herein; and

WHEREAS, the Project will not individually or cumulatively have an adverse effect on wildlife resources, as defined in Section 711.2 of the California Department of Fish and Game Code.

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SAN JOSE AS FOLLOWS:

THAT THE CITY COUNCIL does hereby make the following findings: (1) it has independently reviewed and analyzed the Initial Study/Mitigated Negative Declaration and other information in the record and has considered the information contained therein, prior to acting upon or approving the Project, (2) the Initial Study/Mitigated Negative Declaration prepared for the Project has been completed in compliance with CEQA and consistent with state and local guidelines implementing CEQA, and (3) the Initial Study/Mitigated Negative Declaration represents the independent judgment and analysis of the City as lead agency for the Project. The City Council designates the Director of Public Works at the Director's Office at 801 North First Street, Room 320, San Jose, California 95110, as the custodian of documents and records of proceedings on which this decision is based.

THAT THE CITY COUNCIL does hereby approve construction of the Project (Planning File No. 06-111) and adopt the Mitigation Monitoring and Reporting Program prepared for the Project. The Initial Study/Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program are: (1) on file in the Office of the Director of Planning, located at 801 North First Street, Room 400, San Jose, California 95110 and (2) available for inspection by any interested person.

ADOPTED this day of , 2006, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

VACANT:

RON GONZALES
Mayor

ATTEST:

LEE PRICE, CMC
City Clerk