

Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Albert Balagso

SUBJECT: SEE BELOW

DATE: May 11, 2009

Approved

Date 5/19/09

COUNCIL DISTRICT: 4
SNI AREA: N/A

SUBJECT: AGREEMENT WITH COUNTY OF SANTA CLARA FOR PENITENCIA CREEK TRAIL (KING ROAD TO MABURY AVENUE)

RECOMMENDATION

Approval of an agreement with the County of Santa Clara for construction, operation and maintenance of the Penitencia Creek Trail (King Road to Mabury Avenue).

OUTCOME

The City Council's action will result in a lease agreement for the construction, operation and maintenance of a City trail project upon County of Santa Clara ("County") property. Trail construction expands the Penitencia Creek Trail system, which in turn contributes to overall growth of the citywide Trail Network as defined by Goal 10 of the Green Vision.

BACKGROUND

Penitencia Creek commences in the hills within Alum Rock Park; meanders through residential neighborhoods in east San Jose, and joins the Coyote Creek at a confluence adjacent to Berryessa Road. The Reach 6 project, from Mabury Avenue to King Road, provides a short-cut along the Creek and provides access to the San Jose Flea Market, Independence High School, and commercial and residential developments.

The 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

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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.

In July 1981, City, District, and County entered into a 25-year joint use agreement for the lands of the Upper Penitencia Creek Park chain. This 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.

On August 26, 2003, the City Council approved (Item 5.3) the Mabury Park/Penitencia Creek Trail Reach 6 Master Plan ("Master Plan"). The Master Plan defined trail improvements along the west bank of the Creek, accessible from King Road and Mabury Avenue.

In February 2007, the City Council authorized the City Manager to negotiate and execute a joint use agreement (Tri-Party 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. The agreement was based on the 1981 agreement and extended the cooperation between agencies for a twenty-five (25) year period. The Tri-Party Agreement was executed on March 20, 2007 and further defined roles and responsibilities between agencies. Particular to the subject agreement, the Tri-Party Agreement acknowledges that the agencies will exchange or convey real property or easements, and the County and City will develop, operate and maintain their respectively owned land for trail purposes.

In December 2007, the City submitted a grant application to the Bay Area Ridge Trail Council (BARTC) for \$175,000. Due to funding constraints in the funding program, the City's grant award was reduced to \$150,000. On June 30, 2008, the City and the State Coastal Conservancy (grant manager for the Bay Area Ridge Trail) entered into a funding agreement. The grant agreement supports construction of the Penitencia Creek Trail project and requires that construction be completed by June 30, 2010. A subsequent memorandum will seek authorization for the Public Works Director to bid and award the construction contract. At this time, it is expected that construction will be \$180,000 including contingency. An appropriation action will be necessary as part of that memorandum.

ANALYSIS

Staff coordinated with several agencies when developing project plans partially funded through the BARTC grant. The plans defined the trail project between King Road and Mabury Avenue. The Army Corp of Engineers and District are developing a flood control plan for the area. Funding for construction of the improvements is uncertain at this time. As a result, the planned trail will include some gravel trail elements within areas where the final alignment of the Creek is unknown. This approach provides immediate public access but also minimizes the loss of investment when and if flood control work

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requires a modification to the trail alignment. Staff will make the Council aware of trail alignment changes required by the flood control work when such information is available.

The 2008 Tri-Party Agreement prescribed that the City and County would jointly implement the 1977 Master Plan, subject to availability and appropriation of funds, to design and construct recreational elements. In discussing this project with the County, it was determined that the County does not currently have the resources to jointly construct, operate, and maintain a trail at this location. As a result, the proposed agreement is structured as a lease agreement, with the City committing to the following:

- * City will construct the trail improvements within twenty-four (24) months and assumes full responsibility for operation and maintenance of City improvements.
- * The agreement will be effective for twenty-five (25) years, with a renewal provision for an additional twenty-five (25) years.
- * City may terminate agreement with one hundred and eighty (180) days written notice to County.
- * Trail improvements shall be removed by City upon termination or expiration of agreement.
- * County may terminate the agreement if City is unresponsive to material breach after a thirty (30) day cure period.
- * City will indemnify and hold County harmless from any claims or loss relating to the use of the trail.

The proposed agreement is subject to the approval of the County Board of Supervisors. County staff intends to bring forward the proposed agreement for County Board's approval in August 2009.

POLICY ALTERNATIVES

Alternative #1: Do nothing.

Pros: Execution of the lease agreement provides the City with necessary rights to construct, operate, and maintain the trail.

Cons: Development of trails has an associated general fund impact related to the provision of operations and maintenance services.

Reason for not recommending: Development of trails is consistent with Goal 10 of the Green Vision.

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

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group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

This memorandum will be posted on the City's website for the Council meeting. Additionally, staff met with the community during the outreach process for preparation of the Penitencia Creek Reach 6 Master Plan. The Trail Program website also includes a page of the trail system, with a conceptual alignment plan available for public viewing.

COORDINATION

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

FISCAL/POLICY ALIGNMENT

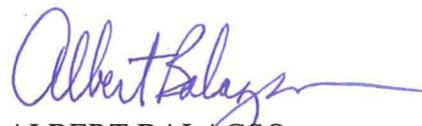
This project is consistent with the Council-approved Budget Strategy Economic Recovery section in that it will spur planning, environmental study, and design work necessary to encourage construction spending in our local economy. Development of trails is consistent with Goal 10 of the Green Vision.

COST SUMMARY/IMPLICATIONS

Approval of the lease easement agreement permits construction of a 0.34-mile trail project. The annual cost to maintain the trail is \$2,710. This figure accounts for one-third of the trail being paved, with the remainder being gravel (interim). The annual cost to patrol the trail is \$750. These costs are also to be reported in a future council memo related to the award of a construction contract. This funding was included in the 2010-2014 General Fund Forecast released on February 27, 2009.

CEQA

Mitigated Negative Declaration, PP03-04-134.


ALBERT BALAGSO
Director of Parks, Recreation and
Neighborhood Services

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