



# Memorandum

**TO:** HONORABLE MAYOR AND  
CITY COUNCIL

**FROM:** Albert Balagso

**SUBJECT:** SEE BELOW

**DATE:** 02-01-10

Approved

Date

2-5-10

**COUNCIL DISTRICT:** 4

**SUBJECT: GRANT APPLICATION FOR THE PENITENCIA CREEK REACH 1  
(DOREL DRIVE TO NOBLE DRIVE) TRAIL PROJECT**

## RECOMMENDATION

Adopt a resolution authorizing the City Manager, or designee, to:

1. Submit a grant application in the amount not to exceed \$300,000 to the Santa Clara Valley Water District (Water District) under the 2010 Trail and Open Space Grant program for the Penitencia Creek Reach 1 (Dorel Drive to Noble Drive) Trail project ("Project"); and
2. Accept any grant funds awarded to the City and negotiate and execute all necessary documents related to any grant funding from the District to the City for the Project.

## OUTCOME

City Council approval of the recommended actions will authorize the City Manager, or designee, to apply for 2010 Trail and Open Space grant funding, accept any grant funding, and negotiate and execute a grant agreement (and other necessary documents) with the Water District for the Project. The Project involves construction of the Penitencia Creek Trail between Dorel Drive and Noble Drive that will provide the community with defined pedestrian and bicycle access along the creek and extends existing reaches of the developing trail system.

Grant guidelines require the City to provide a local match of \$100,000, which is 25% of the total Project cost of \$400,000. If the City is awarded grant funds in the full amount requested and upon appropriation of funds to advance and match the grant funds through the annual budget process or a separate council action, the City anticipates having sufficient funds to construct the Project. As part of the bidding process, staff will return to City Council to appropriate necessary funding, and seek authorization for the award of a construction contract.

## **EXECUTIVE SUMMARY**

The 2010 Trail and Open Space Grant program provides grant funding for trail projects that result in new trail mileage in Santa Clara County. This program is administered by the Santa Clara Valley Water District and the funding is from a special tax which was passed by voters in Santa Clara County in 2000. Penitencia Creek Reach 1 Trail between Dorel Drive and Noble Drive offers the City an excellent opportunity to submit an application and obtain \$300,000 or 75% of the estimated cost of \$400,000 from this grant program. The Project will result in the construction of the trail segment that will provide the community with a defined pedestrian and bicycle access along the creek and extends existing reaches of the developing Penitencia Creek trail system.

## **BACKGROUND**

On October 31, 2006, the City Council approved the master plan for the Penitencia Creek Trail from Alum Rock Park to Noble Drive (Reach 1). This Council action seeks to advance development of a portion of this alignment, where the scope of work aligns well with the grant program's funding limits.

On October 30, 2007, the City Council adopted the Green Vision, a 15-year plan to transform San José into a world center of Clean Technology innovation, promote cutting-edge sustainable practices, and demonstrate that the goals of economic growth, environmental stewardship and fiscal responsibility are inextricably linked. Goal 10 of the Vision is to provide a 100-mile network of interconnected trail systems.

On December 8, 2009, the City Council adopted an update to the Greenprint, a 20-Year Strategic Plan for Parks and Community Facilities and Programs. The plan identified a goal of developing a 100-mile trail network. The Penitencia Creek Trail system is identified as one of the 32 trail systems located in the City that will lead to achieving this goal.

The Trail and Open Space grant program is part of the Clean, Safe Creeks and Natural Flood Protection Special Tax Funded Program which was passed by voters in Santa Clara County as a Special Tax in 2000. The Water District Board of Directors has identified access to open spaces, trails and parks along creeks and in the watersheds as a core outcome for this funding source. The objective of the trails element of the special tax is to provide public access to 70 miles of trails or open space.

Approximately \$920,000 from the Trail and Open Space grant program is available annually over the 15 year program for the development of trails. The 2010 Request for Proposals (RFP) is the third round of the grant program and a minimum of \$1 million is available.

**ANALYSIS**

**Trail and Open Space Grant Program**

The Trail and Open Space Grant Program (Program) is an element of the District’s Clean, Safe Creeks and Natural Flood Protection Program. The Fiscal Year 2010 grant program is the third grant round to utilize special tax funds for the development of access to trails and open space, and to increase public access to, and enjoyment of, public areas for increased recreational opportunities in Santa Clara County.

The following are minimum requirements to be eligible for grant funding under the Program:

- Project must include a new creek side trail or a significant link to support the creek side trail network
- Project cannot inhibit Water District access to the proposed project site
- Project must have a minimum of 25% local funding match for the Project

The Program’s requirement to deliver projects that add new trail mileage limits the potential of City projects eligible for grant funding under the Program. Although the City has a number of “interim” trails that would benefit from the construction of paved trail improvements, they are already recognized by the City and the Water District as trails that are open to the public. Consequently, the Program requirements limit the candidates for this funding program to projects that are in the pre-construction stages or have not been developed in a temporary or permanent basis.

Staff has evaluated a number of possible City projects currently in the design phase to see if they would be eligible for grant funding under the Program. Unfortunately, most City projects currently in the design phase do not meet the minimum grant requirements and are ineligible:

<b>Project Name</b>	<b>Status/Cost Estimate</b>	<b>Reason for not submitting application</b>
Bay Trail Reach 9B	Construction documents in progress; bridge is anticipated to cost over \$5 million.	The level of funding required for construction far exceeds the available funds through the Program.
Coyote Creek (Story Rd to Phelan Ave)	Construction documents prepared to the 35% stage.	Completing construction documents is estimated to cost \$381,000 which exceeds the available funding, and does not result in an open trail.
Guadalupe River Trail (Branham Ln to Chynoweth Ave)	Construction documents are in early stage of development and have not obtained appropriate CEQA clearance.	The construction documents are based upon future flood control work that has not yet been initiated by the Water District and Army Corps.
Guadalupe Creek / Almaden Expressway Pedestrian Bridge	Construction documents in progress; bridge is anticipated to cost over \$5 million.	The level of funding required for construction far exceeds the available funds through the Program.

<b>Project Name</b>	<b>Status/Cost Estimate</b>	<b>Reason for not submitting application</b>
Lower Guadalupe River – Hetch-Hetchy Ramp Structure	Construction documents are at a 95% stage, ramp is estimated to cost \$2.4 million.	The level of funding required for construction far exceeds the available funds through the Program.

**Penitencia Creek Trail**

Staff believes Penitencia Creek Reach 1 (Dorel Drive to Noble Drive) Trail meets the minimum requirements under the Program and is a good candidate for grant funding. Construction documents for Penitencia Creek Trail are under development at this time. The Project is along a creek and is part of an existing trail system that is substantially developed. The Project will be developed on City or Water District-owned property and will not deter Water District access to the creek for seasonal maintenance or future flood control improvements as currently understood.

Construction of the trail segment from Dorel Avenue to Noble Drive is estimated to cost approximately \$400,000. A more precise engineer’s estimate will be prepared upon completion of construction documents, which is anticipated by May 2010.

The Program requires a 25% match from a local funding source. In the event the City is awarded the requested grant, staff will return to the City Council and will likely recommend the use of Park Trust Funds (“PTF”) to meet the local grant match requirement. The Project is located within an area that could benefit residents who paid parkland fees. Since grant funds will be provided on a reimbursement basis, the City will need to advance funds for the project. Staff would recommend the use of money from the PTF that is eligible for the Project and the Council District 4 Construction and Conveyance Tax Fund to advance funds for the Project. Reimbursements from the Water District will be deposited back into the respective funds that provided the advance.

In the event that the Water District awards grant funding for the Project, the City will be required to enter into a written grant agreement that will commit the City to the following:

Requirement	Addressed in the following manner:
The City shall complete the project and submit final documentation within 5 years of Trail Grant Agreement.	Once funded, the Project will be managed by a team of Department of Public Works professionals that develop trail projects in a timely manner on a regular basis.
Where applicable, the City will comply with all applicable laws and regulations affecting development projects, including, but not limited to, legal requirements for construction contracts, building codes, health and safety codes, and disabled access laws.	The Project design is consistent with all known government regulations.

Requirement	Addressed in the following manner:
The City shall complete CEQA within one year from the date of grant award.	CEQA was secured as part of the Council-adopted master plan (October 31, 2006).
The City shall operate and maintain the Project for a period of no less than 25 years.	The Greenprint defines the Penitencia Creek Trail alignment as a long-term element of the city's park system. The Water District's current plan for flood control along the creek includes a flood wall structure on the residential side of the roadway. This approach will not impact the trail alignment.
The City must certify adequate control and land tenure for the Project site.	Development of the trail will occur on City or Water District property. The City will process a Joint Trail Agreement as authorized by the Collaborative Action Plan for any required right of way.
The City shall use the property only for the purpose for which the grant was made.	The master planning process determined that the land is ideal for trail development. If awarded grant funds, the City will comply with the grant requirement for use of the property.

As part of the grant application process, the City is required to adopt a resolution (see attachment) in substantially the same form as the sample resolution provided in the grant guidelines and to make certain commitments, assurances, and certifications described in this memorandum and the resolution.

**EVALUATION AND FOLLOW UP**

If the City is awarded the grant for the Project, staff will seek the required appropriation actions including appropriation of matching funds from the City Council as well as the authorization for the award of a construction contract at a later date.

**POLICY ALTERNATIVES**

***Alternative #1: Do Nothing***

**Pros:** Does not require staff time in the preparation of an application package.

**Cons:** Inconsistent with City Council's approach of seeking grant funds to develop projects when feasible.

**Reason for not recommending:** The project is well suited for this funding source and the City would lose an opportunity to seek and receive local grant funding that will help build this Project.

### **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)**

The proposed Council action does not meet any of the above criteria. However, this memorandum will be posted on the City Council's Agenda website prior to the February 23, 2010 City Council meeting.

### **COORDINATION**

This memorandum has been coordinated with the City Attorney's Office, the City Manager's Budget Office, the Planning, Building and Code Enforcement Department, and the Public Works Department.

### **FISCAL/POLICY ALIGNMENT**

This Project is consistent with the Council-approved Budget Strategy Economic Recovery section in that it will spur construction spending in our local economy.

The Project is referenced in the Council-adopted Greenprint Update (December 8, 2009, item 5.2). Delivery of the Project supports Goal 10 of the Council-adopted Green Vision (October 30, 2007, item 9.1) to provide a 100-mile Trail Network by 2022.

### **COST SUMMARY/IMPLICATIONS**

Based on the most recent cost estimates, a total of \$400,000 is anticipated to be required to complete the Project. The Grant application is seeking 75% or \$300,000 funding for the Project. The grant program requires a 25% local match (\$100,000). Staff will likely recommend that this match be allocated from funds collected within the three mile nexus of the Project in the Park Trust Fund. The Program awards are expected to be approved by the Water District board in June 2010. Upon award of the grant, these funds would be recommended to be appropriated as part of the 2010-2011 Budget process or through a future City Council memorandum.

HONORABLE MAYOR AND CITY COUNCIL

02-01-10

Subject: Grant Application for Penitencia Creek Reach 1(Dorel Drive to Noble Avenue) Trail Project

Page 7

Construction of the Project will result in a 0.35 mile trail. The annual cost to maintain the trail would be \$4,220 and the cost for Park Rangers to patrol the trail segment would be \$770. This funding was included in the Preliminary 2011-2015 General Fund Forecast released on October 30, 2009.

**BUDGET REFERENCE**

Not Applicable

**CEQA**

Mitigated Negative Declaration, File No. PP06-111



ALBERT BALAGSO  
Director of Parks, Recreation and  
Neighborhood Services

For questions please contact Yves Zsutty, Park (Trail) Manager, at 408-793-5561.

Attachment

**Attachment: Sample Resolution**

**2000 Clean, Safe Creeks and Natural Flood Protection Program  
TRAIL AND OPEN SPACE GRANT**

**Resolution No: \_\_\_\_\_**

**RESOLUTION OF THE SAN JOSE CITY COUNCIL**

**APPROVING THE CITY OF SAN JOSE TO APPLY FOR GRANT FUNDS FOR THE  
TRAILS AND OPENSACE GRANT PROGRAM UNDER THE CLEAN, SAFE CREEKS  
AND NATURAL FLOOD PROTECTION PROGRAM OF 2000**

WHEREAS, the Santa Clara Valley Water District has enacted the Trails and Open Space Grant Program, which provides funds for the acquisition and development of neighborhood, community, and regional parks and recreation lands and facilities; and

WHEREAS, the Santa Clara Valley Water District's Watershed planning Unit has been delegated the responsibility for the administration of the grant program, setting up necessary procedures; and

WHEREAS, said procedures established by the Santa Clara Valley Water District require San José City Council to certify by resolution the approval of City of San José to apply for Trails and Open Space Grant Program funds, and

WHEREAS, THE CITY OF SAN JOSE will enter into an Agreement with the Contract with the Santa Clara Valley Water District;

NOW, THEREFORE, BE IT RESOLVED that the SAN JOSE CITY COUNCIL hereby:

1. Approves the filing of an Application for local assistance funds from the Trails and Open Space Grant Program under the Clean, Safe Creeks and Natural Flood Protection Program of 2000; and
2. Certifies that the CITY OF SAN JOSE has or will have sufficient funds to operate and maintain the Project(s); and
3. Certifies that the CITY OF SAN JOSE has reviewed, understands and agrees to the Special Provisions, General Provisions and Financial Provisions contained in the Agreement; and
4. Appoints the CITY MANAGER OR DESIGNEE as agent to conduct all negotiations, execute and submit all documents including, but not limited to Applications, agreements, payment requests and so on, which may be necessary for the completion of Project(s).

Approved and Adopted on the \_\_\_\_ day of \_\_\_\_\_, 2010.

I, the undersigned, hereby certify that the foregoing Resolution was duly adopted by the SAN JOSE CITY COUNCIL following a roll call vote:

Ayes:

Noes:

Absent:

\_\_\_\_\_  
(Clerk)