

County of Santa Clara

Parks and Recreation Department

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January 10, 2011

Honorable Mayor and City Council
San Jose City Hall
200 East Santa Clara St.
San Jose, CA 95112

Re: Proposed Maintenance District # 23 (Berryessa Road from I-680 to Piedmont Road)

Honorable Mayor and City Council:

The Engineer's Report (Report) in support of the City's proposed assessment of the County's Penitencia Creek Park property (County Property) for maintenance costs of the lushly landscaped road median fails to meet the constitutional requirement to identify a special benefit of the median's landscape to the County's Property, nor does the report describe the basis for apportioning the costs based on such benefit.

The County's Property consists of two parcels, which the Report further divides into an A (developed portion of the parcels) and B (undeveloped, rear portion of the parcels). The benefits articulated in the City's report do not relate to parkland, the benefits relate to people who are residing on or near the medians who desire quality of life, and respite from the visual and audible clutter inherent in the transportation corridor they complement. Frankly, that is identical to the benefits parks bring to people, quiet respite from traffic, noise and visual clutter. Therefore, the County respectfully disagrees with the Engineer's Report that there is any benefit to the "B" parcels, which are the undeveloped properties in the rear. There is no commercial or revenue motive in having people visit the B portion of these properties; they are not occupied, and the County is not benefitting in any material sense from the neighbors' increased visits.

None of the special benefits identified on page 6 of the report benefit this type of property:

- #1 is a statement of fact, not an identified benefit to real property;
- #2 through #5 relate to livability and desirability, none of which are relevant to publicly owned park property;
- #4 relates only to private property, by its own terms, again promoting desirability and attractiveness (the County's property is not privately owned or operated for any private benefit);

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- # 5 relates to weed and disease abatement, which is a value that the County promotes relative to its parkland, but not by the planting of exotic landscape in road medians, instead by preserving and promoting the expansion of native habitat.

Parkland is the quintessence of the very qualities that the Engineer's Report is trying to attribute to the medians. If anything, the parkland is a benefit to the neighborhood in a much more significant way than a lushly landscape median. The County's parkland mission is to provide trails, passive recreation and enjoyment of nature. Similar to the Santa Clara Valley Water District's publicly owned properties described on page 6 of the Report, the County's Property has no habitable building, is devoted to public use, and does not benefit from any of the special benefits described in the Report. The assessment for the undeveloped portions of the County's Property should therefore be 0, or Institutional Unoccupied.

Arguably, the engineer makes the case that the City's Berryessa Community Center is a "commercial use" and so the medians make the commercial use more attractive. Again, it is public property that may have some revenue generating potential, but this is very different from a private commercial use and our analysis is that there is insufficient rationale for the Engineer's conclusion in the Report. The Report conclusively states that the public property with revenue generating potential will be apportioned the same benefits as a private property holder on the road's frontage, so the developed portion of the County's Property is apportioned a full 1.0 share in the assessment. We appreciate the City paying a share based on the Engineer's Report and asserted benefit, however the assessment should end with the City's operations at the site.

Additionally, the Report offers little if any rationale allocating the cost as it relates to the articulated benefit for the various formulas allocated to each category of property – Institutional Unoccupied, Institutional Occupied, etc. Staff did not understand why the undeveloped County Property is defined as Institutional Occupied and what the justification is for a 0.2 share for the Institutional Occupied category versus 0, 0.4, 0.6 or 0.1? The basis for allocating benefits on any particular formula is not described or differentiated.

The County does not deem the Engineer's Report to be legally sufficient to support the proposed assessment of the County's property. The County respectfully requests that the City reconsider the special benefits articulated and attributed to the County's Property, and articulate the basis for apportioning the benefit by different formulas to different properties. The County's property is only benefitted to the limited extent of the City's Community Center operations, and if that use should cease and the buildings go unused or be demolished, the assessment will be reapportioned commensurate with the loss of that benefit.

Sincerely,



Julie Mark, Acting Director
Parks and Recreation Department

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