



Memorandum

TO: RULES COMMITTEE

FROM: Del D. Borgsdorf

SUBJECT: SEE BELOW

DATE: August 20, 2004

**SUBJECT: RESPONSE TO CORRESPONDENCE RECEIVED REGARDING
AUDIT OF McKEAN ROAD YOUTH SPORTS FACILITY PROJECT**

RECOMMENDATION

Accept the City Manager's response to correspondence received regarding McKean Road youth Sports Facility Project.

BACKGROUND

On August 5, 2004, Ms. Nancy Pyle forwarded a letter to the Mayor, Council Offices, and City Auditor Jerry Silva (Attachment 1). The letter requests an audit on the McKean Road Youth Sports Facility Project and states that there is no legal or financial oversight, along with an absence of agreements, taking place between Almaden Youth Association (AYA) and the City. Vice Mayor Dando forwarded Ms. Pyle's letter to me on August 12, 2004. Upon receipt of this correspondence, I requested that the Directors of Finance, Budget Office, and Planning, Building and Code Enforcement review and provide a response to me on this matter.

On August 13, 2004, Vice Mayor Dando advised the City Manager's Office that this item would appear on the August 18, 2004 Rules Committee agenda under category "Rules Committee Reviews, Recommendations and Approvals." On August 18, 2004, the Rules Committee directed staff to return on August 25, 2004 with a response to Ms. Nancy Pyle's letter.

ANALYSIS

The purpose of this memo is to respond to Ms. Pyle's letter and to provide information on the Project's (1) History, (2) General Plan Amendment, and (3) Funding.

A City team made up of staff from the City Manager's Office, Department of Park, Recreation and Neighborhood Services, City Attorney's Office, Department of Public Works, and Department of Planning, Building, and Code Enforcement is responsible for moving the

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Project forward. At this time, the Project is on schedule and review of the below information demonstrates that the appropriate accounting controls and legal authorization is in place.

History of the Project

Years ago, Council District 10's community identified a need for youth sports fields to address the growing population of south Almaden and the popularity of soccer. The community's discussions did not take the form of a specific project until November 2002, when the City met with the AYA to discuss the preparation of the necessary environmental documentation under the California Environmental Quality Act (CEQA). Action before November 2002 revolves around site identification and preliminary planning efforts.

The City has progressively advanced the environmental analysis and, on August 13, 2004, this effort culminated into the circulation of a Draft Environmental Impact Report (DEIR). Due to a high level of interest in the Project, the level of technical analysis, especially regarding water availability and quality, has been extremely detailed. It is not unusual for the CEQA process to take in excess of a year when significant issues of community concern are present. This document is available on the City's website (http://www.sanjoseca.gov/planning/eir/McKEAN_RD_SPORTS_COMPLEX/Mckean%20RD/_TOC.pdf).

General Plan Amendment

The General Plan Amendment for the Project is scheduled for City Council consideration on December 7, 2004. Both the CEQA and General Plan Amendment process have included a number of community meetings and will conclude in public hearings before the Planning Commission and City Council.

A Principal Planner in the Department of Planning, Building and Code Enforcement is responsible for management of the project schedule. Actions leading to the CEQA review, EIR and General Plan Amendment followed legal and business practices required for the Project.

Project Funding

The letter is not correct in stating that neither agreements are in place nor that appropriate project oversight has been provided. The Project funds leading to the development of a DEIR are accounted for in four categories and amount to \$594,000:

- General Fund grant (\$50,000);
- CD 10 Construction and Conveyance Fund Grant (\$100,000);
- City contract for EIR preparation (\$294,000); and,
- Healthy Neighborhoods Venture Fund Grant (\$150,000).

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The table below provides background information on each funding category and the authority for which staff proceeded. Text has been bolded to highlight when agreements were executed or their status.

Table 1: Summary of Funding for McKean Road Youth Sports Facility Project

CATEGORY 1: General Fund Grant (\$50,000)	
DATE	ACTION
September 24, 2002	City Council approval of grant
October 3, 2002	Grant Agreement signed by City and AYA
October 24, 2002	Check processed to provide funds to AYA
June 30, 2003	Term of grant: One year with extensions as needed to complete performance
August 10, 2004	Expenditure documentation provided to City from AYA
Projected: September 1, 2004	Grant closed by PRNS
CATEGORY 2: Council District 10 Construction and Conveyance Fund Grant (\$100,000)	
DATE	ACTION
March 18, 2003	City Council approval of grant
April 28, 2003	Grant Agreement signed by City and AYA
May 1, 2003	Check processed to provide funds to AYA
June 30, 2004	Term of grant: One year with extensions as needed to complete performance
August 10, 2004	Expenditure documentation provided to City from AYA
Projected: September 1, 2004	Grant closed by PRNS
CATEGORY 3: City Contract for EIR (\$294,000)	
DATE	ACTION
November 8, 2002	Notice of Preparation issued
May 6, 2003	First Draft EIR Circulated
November 25, 2003	City Council approval of contract and funding
November 25, 2003	Contract signed by RBF
August 13, 2004	\$179,630 paid to date for contract services
August 13, 2004	Second Draft EIR Circulated
August 2004	AYA Reimbursement Agreement in process (\$100,000)
CATEGORY 4: Healthy Neighborhoods Venture Fund Grant (\$150,000)	
DATE	ACTION
June 17, 2003	City Council approval of grant
August 2004	Grant agreement under negotiation with AYA. No funds will be granted until services are completed.

The table above shows that \$150,000 worth of grants to AYA was executed (Categories 1 and 2).¹ Grants have been allocated for preliminary planning efforts (Category 1) and for the development of the environmental documentation (Category 2). It is important to note that these grants followed the City's grant process that requires signed agreements and documentation of the expenditure of funds for the planning of the Project. The City has requested closure of Category 1 and 2 grants based upon completion of the grant process in

¹ In the 1995-1996 Mayor's Budget Message, staff was directed to execute a grant agreement in the amount of \$25,000. The grant agreement was executed on March 12, 1998. Documentation on this grant agreement is limited because it has passed the City's Retention Schedule [41-ADM-113, Grant Files, Retention of 3 years].

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accordance with City procedures. Both of these grants are administered through the Department of Parks, Recreation and Neighborhood Services.

In November 2003, the City Council approved a contract for \$294,000 with RBF Consulting for completion of the Environmental Impact Report (Category 3). Source of funds for the agreement were the Council District 10 Construction and Conveyance Tax Fund and the Contingency Reserve Fund. As part of Council's action, it directed staff to ensure, at a future date, that the AYA pay back the Contingency Reserve Fund in the amount of \$100,000. This directive is being managed, and is in process, through negotiations toward a Reimbursement Agreement between the City and AYA. It is important to note that funds for this purpose have not been transferred to AYA, nor is this a loan to AYA, as stated in the correspondence. The contract for environmental analysis is being managed by the Planning, Building and Code Enforcement Department and \$179,630 has been paid for contract services through May 31, 2004.

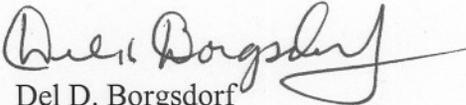
The City Council approved a Healthy Neighborhood Venture Fund (HNVF) grant of \$150,000 to AYA for the Project (Category 4). Unlike the previous grant agreements in which funds are provided upfront to the grantee with the expenditure documentation at the conclusion of the grant time period, HNMF funds are provided on a reimbursement basis only upon the provision of expenditure documentation. The agreement for this grant has not been executed at this time, however the term of the grant award has been extended to June of 2005. The Department of Parks, Recreation, and Neighborhood Services will administer this grant.

PUBLIC OUTREACH

Not applicable. However, both the CEQA and General Plan Amendment process have included a number of community meetings, with upcoming public hearings before the Planning Commission and City Council. Public Hearings were also held regarding the Healthy Neighborhood Venture Fund grant process.

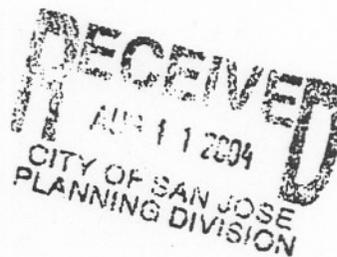
COORDINATION

This report has been coordinated with the City Attorney's Office and the Departments of Planning, Building and Code Enforcement and Parks, Recreation and Neighborhood Services.


Del D. Borgsdorf
City Manager

RECEIVED

AUG 09 2004



August 5, 2005

Honorable Ron Gonzales and the San Jose City Council
801 North First Street
Sixth Floor
San Jose, CA 95110

RE: Audit of McKean Road Youth Sports Facility Project

Dear Mayor Gonzales and City Councilmembers,

I am deeply concerned about the much needed youth sports complex on McKean Road in the South Almaden Valley Urban Reserve. Our children deserve to have a safe place in which to participate in sports activities. Time to complete this decade-old project is long overdue.

Unfortunately, it appears as if no one is being held accountable for completing this project and that the City is committing hundreds of thousands of dollars to it with no legal or financial oversight mechanism. Therefore, **I am formally requesting that the City of San Jose undertake an expedited audit of this project.**

As you know, recent newspaper articles regarding this facility have exposed that no one seems to be responsible for the project. Who is in charge? How can our children count on the project ever being finished if no one is responsible for completing it? How can taxpayers hold anyone accountable for the excruciatingly long timetable as well as the expenditure of tax dollars if no one is in charge?

On July 15th and 29th, the *Almaden Resident* published two articles regarding the building of the sports complex in the Almaden Valley and the financial relationship between the City of San Jose and the Almaden Youth Association (AYA)—a local non-profit organization dedicated to building the sports complex in District 10. After conducting an investigation for almost three months, the newspaper could not determine who is in charge or how the public's tax money was being spent.

The *Almaden Resident* reported that the city has appropriated \$594,000 for this project. The city's money to AYA consisted of grants totaling \$250,000 and one loan of \$100,000. The newspaper reported that the city attorney confirmed that no contracts for these monies had yet been signed. The AYA attorney confirmed that the city had simply handed over the money without the paperwork.

What has become clear in this particular case is that accounting controls, audit trails, and legal authorization that accompanies those controls are either missing or not being properly followed. Routine business practice requires paperwork to provide legal authorization for financial transactions and to establish an audit trail. Without contracts for the grants and the loan, the city cannot carry out its fiduciary responsibilities to ensure

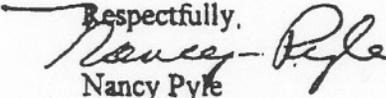
Attachment 1

that money is used efficiently, effectively, and faithfully for the benefit of the taxpayers of San Jose and the residents and athletes of District 10.

As you may know, I'm now completing my eight-year tenure as a trustee for the San Jose/Evergreen Valley College Board where I sit on the budget, land use and audit committees. Adequate accounting controls must be in place to ensure that we live up to our fiduciary responsibilities not only with taxpayers' money but also live up to the promises we make to the students we serve.

The allegations of playing hide-and-seek with accounting for the public money and the long overdue completion of such an important project for our youth are substantial. From my read of the articles and the accompanying documentation, which the Almaden Resident has made publicly available at its office, it appears that an audit investigation would be in order to determine who is responsible for this public project, the extent to which the taxpayer money is being used efficiently, effectively, and faithfully, and the extent to which proper accounting controls have been followed.

Respectfully,



Nancy Pyle

Trustee

San Jose/Evergreen Community College District

cc: Hon. Linda LeZotte
Hon. Forrest Williams
Hon. Cindy Chavez
Hon. Chuck Reed
Hon. Nora Campos
Hon. Ken Yeager
Hon. Terry Gregory
Hon. Dave Cortese
Hon. Judy Cuirco
Hon Pat Dando
San Jose Auditor Jerry Silva