



## PUBLIC WORKS DEPARTMENT

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### CITY COUNCIL STAFF REPORT

Meeting: May 19, 2020

#### Subject

Adoption of a Mitigated Negative Declaration, mitigation measures, and a mitigation monitoring or reporting program for Regnart Creek Trail, and authorization to execute an associated Joint Use Agreement and a land exchange with Santa Clara Valley Water District.

#### Recommended Actions

For the Regnart Creek Trail project:

1. Consider the recommendation of the Environmental Review Committee, and adopt Resolution No. 20-\_\_\_ adopting a Mitigated Negative Declaration for the Regnart Creek Trail project, adopting the mitigation measures, and adopting the Mitigation Monitoring or Reporting Program; and
2. Authorize the City Manager to execute a Joint Use Agreement with Santa Clara Valley Water District, including a proposed minor land exchange at Wilson Park; and
3. Conduct a public hearing, determine that the proposed land exchange is in the public interest, and adopt Resolution No. 20-\_\_\_ authorizing execution of a minor land exchange with Santa Clara Valley Water District.

#### Background

The Regnart Creek Trail is a 0.8-mile off-street bicycle and pedestrian facility that will be parallel to Regnart Creek along the Santa Clara Valley Water District ("Valley Water") maintenance road between Torre Ave and East Estates Drive, connecting the Library and City Hall to Wilson Park and the existing Creekside Park path. The project was ranked as a Tier 1 priority project in the 2018 Cupertino Pedestrian Transportation Plan and a Tier 2 priority project in the 2016 Cupertino Bicycle Transportation Plan.

The City Council authorized the funding of the feasibility study for the trail during the FY16/17 budget process. The feasibility study process commenced in September 2017 and the study was adopted by City Council in August 2018. The August 2018 Council action provided authorization to proceed with design and environmental clearance.

On September 17, 2019 staff presented a 65% design update to City Council, which had been performed with ongoing coordination and support from Valley Water. At that meeting, Council authorized a funding allocation for construction of \$2.1 million, plus an additional \$150,000 earmarked for landscaping and/or fencing for residents living along the trail. City Council also amended the budget to increase the funding from \$538,000 to \$813,000 to perform design and environmental clearance services.

The trail will feature:

- A decomposed granite footpath of eight-foot to 10-foot width for the entire 0.8-mile trail from Pacifica Drive to E. Estates Drive
- A single bridge connection from Wilson Park to the trail between S. Blaney Drive and E. Estates Drive
- Full improvement of trail street crossings at S. Blaney Avenue and E. Estates Drive
- Railings along the creek side of the trail from S. Blaney Avenue to E. Estates Drive and at trail head locations
- Installation of wood privacy fencing as may be desired by residents
- Privacy fencing/screening to be determined for residents near Lozano Lane and De Palma Lane
- Widening of the existing sidewalk on Pacifica Drive from Torre Avenue to Regnart Creek
- On-street bike improvements on Pacifica Drive, S. Blaney Avenue and La Mar Drive

Following the September 17, 2020 Council action, design work has proceeded. This work includes ongoing discussions with adjacent residents to incorporate landscaping and fencing treatments along their backyard fence property lines to address concerns regarding privacy and security. Staff met separately with residents of De Palma Lane and Lozano Lane in December 2019 and February 2020 to discuss their unique concerns and to work towards a satisfactory solution. A landscape architect from a trail design firm was also brought into the meetings to assist with developing concepts for these solutions. Additional meetings with De Palma Lane and Lozano residents and any others adjacent to the trail will be held at their request before design completion in order to assure that final privacy and security solutions can be incorporated into the 100% design plans for the trail. Overall, aside from a few resident requests for items such as concrete sound walls and lighting which were not authorized by City Council, it appears that the majority of residents' requests will be accommodated.

#### Environmental Review - Discussion

On February 7, 2020, the Initial Study and Draft Mitigated Negative Declaration for the Regnart Creek Trail project ("IS/MND") was issued for public review in accordance with the California Environmental Quality Act ("CEQA"). The CEQA documents included an Initial Study and draft Mitigated Negative Declaration ("IS/MND") which are attached

to this Staff Report as Attachment A and the associated technical appendices which are Attachment B.

The Initial Study concluded that with incorporation into the project of all of the identified mitigation measures, there is no substantial evidence that the Regnart Creek Trail project will have a significant effect on the environment. The mitigation measures would be adopted and incorporated into the project as part of the adoption of the MND, and would be monitored and implemented pursuant to a Mitigation Monitoring or Reporting Program (see Attachment C). The areas in which mitigation measures have been identified include:

- Biological Resources
- Cultural Resources and Tribal Cultural Resources
- Hazards and Hazardous Materials
- Noise

The opportunity to comment on the IS/MND was publicized and noticed through issuance of a Notice of Intent to Adopt a Mitigated Negative Declaration. Copies of the IS/MND were made available at the Cupertino Library and City Hall. Electronic copies were posted on the City's website. The Notice of Intent was filed with and posted by the County Clerk and a legal notice was advertised. The documents were also filed with the State Clearinghouse. Email notifications were sent to those on the Regnart Creek Trail email noticing list. Individual notices were mailed to stakeholders and adjacent property owners.

The public comment period on the CEQA documents commenced on February 7, 2020 and was noticed as concluding 30 days later on March 8, 2020 as stated in the Notice of Intent. Because March 8, 2020 fell on a Sunday, however, the City accepted public comments through Monday, March 9, 2020 consistent with the requirements of State law, and also accepted and responded to comments submitted through April 16, 2020. The Draft MND provided in the Initial Study will be updated as a Final MND. Its final sentence will be revised to reflect that the date for completion of the public comment period was March 9, 2020 (see Attachment D). Six comments were received, five from members of the public, and one from Valley Water. A written Responses to Comments document was prepared dated April 2020 (see Attachment E, Responses to Comments).

The Environmental Review Committee ("ERC") reviewed the Regnart Creek Trail CEQA documents on April 16, 2020 during a teleconference meeting. The ERC was provided with all the comments that arrived through March 9, 2020 during the formal comment period and the Responses to Comments document.

Eight additional written comments were received after March 9, 2020, seven prior to the ERC meeting and one thereafter. Two comments received during business hours on April 15, 2020 were forwarded to the ERC as part of the meeting materials. Five

additional emailed comments received through 9:00 a.m. on April 16, 2020 were forwarded to ERC members separately prior to the meeting. The ERC received a presentation, invited input, and posed questions to the project team. The ERC then voted unanimously to recommend that the City Council consider adoption of the MND.

A final emailed comment received after the meeting was copied to all ERC members. The Supplemental Responses to Comments document also includes these additional comments (see Attachment F).

The Initial Study found that with adoption and incorporation into the project of the identified mitigation measures, adoption of a Mitigated Negative Declaration is appropriate for the Regnart Creek Trail project. The ERC has unanimously endorsed that the City Council consider adoption of a Mitigated Negative Declaration for the project. A draft Resolution adopting the IS/MND is attached to this Staff Report as Attachment G. Besides adopting the MND, it also adopts and incorporates into the project all of the mitigation measures identified in the IS/MND, and adopts a Mitigation Monitoring or Reporting Program.

#### Joint Use Agreement with Valley Water - Discussion

Valley Water owns much of the land that will host the alignment and the trail features for Regnart Creek Trail. A proposed Joint Use Agreement (“JUA”) has been negotiated with Valley Water that will allow the City to install and operate trail improvements and to allow public access for trail uses on Valley Water property (see Attachment H). It will supersede and replace two existing JUAs that cover short stretches of the alignment adjacent to properties along Lozano Lane and De Palma Lane. The terms of the JUA are consistent with Valley Water’s JUAs with other cities and towns in Santa Clara County. The JUA covers all portions of the proposed alignment on Valley Water property and involves ongoing coordination between the City and Valley Water.

The JUA authorizes the City to construct, operate, maintain, repair, replace, and remove improvements and other trail amenities and provide for public access. Valley Water retains responsibility for flood protection, water resource management, and stream stewardship. The City is responsible for public safety, trash removal, and for any damage to improvements that results from the public or City’s use of the premises. Trail detours may occasionally be required for maintenance or other activities. Such activities will normally be planned well in advance, and both agencies will notify each other well in advance of planned maintenance that will require a detour. If relocation or removal of fencing or the bridge is ever required, Valley Water will provide written notice to the City to do so (a minimum of 5 days and 60 days respectively). There are no scheduled activities that would require this. The term of the agreement is 25 years and can be extended beyond that time by mutual consent of the City and Valley Water.

As a condition of the JUA, the City intends to exchange land of less than 5,000 square feet at the southwest corner of Wilson Park (the “City Land”) for land owned by Valley

Water at the south edge of Wilson Park currently used by the City for a baseball field (the “Valley Water Land”). The JUA will not be effective until the parties complete plat maps and legal descriptions of the City and Valley Water Lands and record a lot-line adjustment transferring the Valley Water Land to the City. Staff recommends that the City Council authorize execution of the proposed JUA with Valley Water.

#### Land Exchange with Valley Water – Background

Wilson Park faces onto the north bank of Regnart Creek between South Blaney Avenue and East Estates Drive. The alignment of the Regnart Creek Trail in this area will be on the south side of the creek. A bridge across the creek near the center of the Wilson Park frontage will provide a bicycle-pedestrian connection to the Trail from Wilson Park and neighborhoods to the north.

Valley Water has an existing easement from Parkside Lane to the creek channel in order to conduct creek maintenance activities. The easement is located at the southwest corner of Wilson Park, on City property that is part of Wilson Park. It crosses turf area and nearby trees and it is unimproved (i.e. without formal amenities or recreation features), since it is required to remain clear for access. The City Land to be conveyed to Valley Water under the land exchange described above will be the fee simple interest in a part of Wilson Park adjacent to Valley Water’s access easement. The Land to be conveyed to Valley Water will be less than 5,000 square feet in area.

Valley Water also has an existing maintenance access ramp on the south side of the creek for creek channel access from their maintenance road. The existing access ramp will be relocated to the north side of the creek to align with Valley Water’s easement from Parkside Lane. The ramp relocation will support Valley Water’s ability to conduct maintenance actions efficiently.

To allow Valley Water to use their easement and conduct maintenance activities, an existing 24” diameter redwood tree will be removed. It is not a protected tree under City ordinance and no replacement is required. However, the City plans to plant a new native tree within the south portion of Wilson Park near the Regnart Creek frontage to offset the removal.

#### Land Exchange with Valley Water – Discussion

At the Wilson Park frontage along Regnart Creek, Valley Water owns the creek channel itself, and owns an additional strip of land approximately 15 feet wide that parallels the top of the creek identified as Santa Clara County Assessor’s Parcel Number (“APN”) 369-04-005. The City acquired the western portion of what is now Wilson Park in 1991. In 1991-92, the City constructed the baseball fields and the related facilities. Two of the baseball fields encroach onto Valley Water property, onto APN 369-04-005 (see Attachment I).

In discussions with Valley Water, staff identified an opportunity to rectify the encroachment. Valley Water is amenable to executing a land exchange that swaps City Land for contiguous Valley Water Land in the vicinity of the encroachment. The exchange would involve equal square footage, and the area exchanged by each agency would be 5,000 square feet. With concurrence by both agencies, the exchange can be implemented relatively simply. The City would acquire Valley Water property to ensure that long-term operation of the ball fields can continue, since the fields would now be entirely on City property. Valley Water would acquire land at the southwest corner of Wilson Park, adjacent to the existing access easement in a landscaped area that does not have recreation amenities. The land acquired by Valley Water would improve access to and use of the new maintenance ramp, and support efficiency by Valley Water during their stewardship activities for Regnart Creek. A graveled route from Parkside Lane to the creek bank would provide access to the relocated maintenance ramp and an equipment staging area for future creek maintenance.

A diagram of the footprints of the City and Valley Water Lands is attached as Attachment J. A field survey is needed to precisely determine the location of the existing features. The exchange footprint may be slightly adjusted to ensure that the City's and Valley Water's goals are met, including having the ball field and fencing fall within City property, and ensuring Valley Water will have usable access to the new ramp. Once the survey is completed, a plat map and legal description will document the final footprints of the exchanged Lands.

A draft Resolution has been prepared approving the exchange (see Attachment K). The exchange is proposed as a no-fee, no-cost, mutually agreeable transaction. The City would pay for the cost of the survey and preparation of a plat map and legal description; this effort is relatively minor and within the authorized amount budgeted for the project. The associated actions described in the draft Resolution are allowable under Government Code sections 38440 and 38441.

#### Summary and Next Steps

Approval of the attached draft Resolutions would adopt a Mitigated Negative Declaration, mitigation measures, and a mitigation monitoring and reporting program for Regnart Creek Trail and would authorize implementation of a land exchange at Wilson Park with Valley Water. Approval to execute the proposed Joint Use Agreement would result in a cooperative agreement with the Valley Water that would allow the City to implement and operate the Regnart Creek Trail, most of which would occur on Valley Water property.

If the Council chooses to approve the recommended actions, the Regnart Creek Trail project will continue to completion of plans and specifications suitable for bidding. Public Works will request City Council authorization to bid and will present 100% design of the project prior to proceeding with construction. Plans and specifications will be completed in mid to late summer 2020.

Sustainability Impact

The project will support the City's sustainability and environmental policies and objectives.

Fiscal Impact

No fiscal impact.

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Prepared by: David Stillman, Transportation Manager

Reviewed by: Roger Lee, Director of Public Works

Approved for Submission by: Dianne Thompson, Assistant City Manager

Attachments:

A – Initial Study/Mitigated Negative Declaration, Regnart Creek Trail, February 2020

B – Initial Study/Mitigated Negative Declaration Appendices A-C, Regnart Creek Trail, February 2020

C – Mitigation Monitoring or Reporting Program, Regnart Creek Trail

D – Final Mitigated Negative Declaration

E – Responses to Comments, Initial Study/Mitigated Negative for Regnart Creek Trail, April 2020

F – Supplemental Responses to Comments, Initial Study/Mitigated Negative Declaration for Regnart Creek Trail, May 2020

G – Draft Resolution No. 20-\_\_\_ Adoption of Mitigated Negative Declaration, mitigation measures, and mitigation monitoring or reporting program

H – Joint Use Agreement, City-Santa Clara Valley Water District, for Regnart Creek Trail

I – Wilson Park Land Swap Area, Existing Conditions

J – Wilson Park Land Swap Area, Proposed Land Swap and Proposed Features

K – Draft Resolution No. 20-\_\_\_ Discontinuing Use of a Minor Portion of Wilson Park and Authorizing a Land Exchange with Santa Clara Valley Water District to Increase Area of Wilson Park