

Proposed Regnart Creek Trail Neighborhood Concerns to be Addressed

Cost/Benefit Analysis:

1. What is the problem the City is trying to solve? The proposed trail is less about solving a problem but more about creating an improvement for both cyclists and pedestrians. If constructed, it would provide separation from vehicle traffic that would not be possible on the street. The trail is consistent with *General Plan: Community Vision 2015-2040* Policy M-1.3: Regional Trail Development, Policy M-2.3: Connectivity, and Policy M-5.3: Connections to Trails. In this neighborhood all streets have pedestrian sidewalks and is safe to walk and bike. How many Bicyclists are currently using the streets and do you have record of incidents involving cyclists? The City has bicycle count data throughout the city and a record of all reported bicycle, pedestrian and vehicle collisions. This information can be provided if more specificity is given with the request.
2. How many bicyclists and pedestrians are expected to use the proposed trail? No estimate of number of users has been performed, and any estimate would necessarily contain so many assumptions and variables as to be essentially meaningless. What is known is that there are many connections such as the Civic Center/Library, Wilson Park, Creekside Park and vicinity to schools and therefore it is very reasonable that the trail would be well utilized. Without knowing how many will use the trail, the project is fiscally irresponsible. Why wasn't a demand study a part of the Feasibility Study? New technology using imaging and sensors can provide reliable indicators of current usage by pedestrians and bikes over a long, measured period of time and is much more accurate than eyeball counts. See above response.
3. Provide statistics from Sheriff department about bike and pedestrian accidents/collisions on the neighborhood street which are proclaimed as unsafe and Regnart Creek being suggested as a solution or alternate. Provide safety/risk analysis between existing streets and proposed trail. No street has been proclaimed unsafe. To assist with this question, please specify which streets bike and pedestrian accident data is being requested. Staff is unclear on what a "safety/risk analysis" would entail.
4. Has a Cost-Benefit analysis been done for this project? No. Users/trail cost/benefits versus using the existing streets? While there may be a method to perform a cost-benefit analysis, the assumptions that would need to be made would make it difficult to make the analysis completely objective. The benefits of the proposed trail are mix of both objective and subjective criteria. .
5. The Proposed Regnart Creek Trail (RCT) started as \$660,000 project in 2016 bike ped plan and now the estimated cost is around \$3 million. What would be the real cost when design is complete? Real costs will only be known when the trail is bid in a competitive market and the project completed. How much higher is it expected to go? The current cost of engineering, design and construction is estimated at \$2.4 million with the information that is known to date.
6. What will be the ongoing expenses, maintenance cost, patrol/sheriff cost, insurance premiums and liability costs for the trail? Ongoing maintenance is anticipated to cost up to \$20,000/year. These costs include routine maintenance and the anticipated temporary removal of the railings as may be required by Valley Water. Sheriff patrol will be integrated into their current funded effort. Staff has inquired with the City's risk manager on the liability issue. We were told by our risk manager that many cities have similar trails, and the risk manager didn't expect that a trail would have any impact on insurance rates.
7. How does the city justify spending \$3 million dollars on .8 miles of trail with pitfalls when the city has many other High Priority CIP projects including Tier 1 projects in Bike ped plan 2016 and in the meantime the city is facing long time structural deficit and contemplating borrowing \$30 Million to do other important projects? The Council has authorized up to \$530,000 for the trail (feasibility study, design, and environmental clearance) portion of the project. The decision to fund construction will be weighed against other priorities by Council. The Council is scheduled to adopt a CIP budget for FY19/20 on June 18, 2019. Public comment regarding how Council should consider these priorities is welcome.

Safety Issues:

For Users:

1. Railing is required next to the channel when the slope is steeper than 3:1 per Water District letter and AASHTO guidelines. This point is noted in both Regnart Creek Feasibility Study (Page 47) and Junipero Serra Feasibility Study. Regnart Creek has slopes steeper than 3:1 and railings are a must. Common sense dictates to install a safety barrier on the banks of the creek with fast moving water, eroded banks, and when the creek is 10-12 feet deep. A higher level of safety is required when it is reasonably expected that there will be children using this path. How does the city propose to keep the children safe for whom this path is proposed as a safe route to school? **City staff is engaged with discussion with Valley Water regarding railing and it is likely that railing will be provided along the entire trail.** With no trail lighting, it would be challenging to see the trail edges in low light, increasing the risk of an accident. **Lighting is not being proposed for the trail as the trail will be closed from dusk to dawn with signage. This closure during the evening is similar to our public parks.**
2. This expensive trail is promoted as safe routes to school as an off-street alternate to existing safe streets with the widest sidewalks in the neighborhood. However, the trail is 0.8 miles of non-contiguous path and requires crossing several busy streets to enter and exit, the riskiest being the introduction of new mid street crossing at Blaney. Currently, the flow of students biking and walking to schools in the neighborhood is distributed throughout Blaney and several safe neighborhood tributaries, unlike the proposed trail which funnels the kids and bicyclists in one place (new crossing at Blaney) affecting the traffic flow mid street increasing the probability of collisions. Research shows most bike accidents happen at the crossings versus when bicyclists rides perpendicular to cars. The hazardous crossing on Blaney as a proposed trail connector – is an accident waiting to happen - This puts the children and bikers in blind spots and in the midst of oncoming traffic during the busiest commute times with speeding cars and corporate buses. Neither trail users nor drivers have what is deemed a safe triangular view of cross traffic. This could be a potential hazard for a serious accident involving a car and a biker or pedestrian. Please provide Traffic study results in Blaney. **The crossings at Blaney Avenue and at East Estates Drive are areas of focus. Accordingly, applicable safety standards coupled with sound and reasonable engineering practices are being applied in the proposed design. Staff is unclear on what “traffic study” is being requested.**
3. Per AASHTO, “The appropriate paved width for a shared use path is dependent on the context, volume, and mix of users. The minimum paved width for a two-directional shared use path is 10 feet.” This is required for bi directional bicycle and pedestrian traffic to avoid risk of conflict between bicyclists and pedestrians. The city is proposing 8 feet paved path with 2 feet shoulders throughout the trail that is narrow and should be only used in exceptions (low usage). This creates a risk of collusion and injury between bicyclists and pedestrians. **NO STUDY HAS BEEN DONE TO DETERMINE LEVEL OF SERVICE ON THIS TRAIL** in determining the appropriate width of a pathway given existing or anticipated user volumes and mixes and topography (next to deep creek). Why? Standard engineering models exist to determine trail and bridge widths. $Q=v \cdot d$, or Flow rate is equal to traffic velocity times traffic density, as adjusted for clearance and gradient. The standards referenced allow for engineering judgement depending on a variety of factors. The proposed trail has fairly level topography and good site lines. **Trails between 8 and 10 feet wide are ubiquitous throughout the County and have been shown to function satisfactorily. These real world demonstrations of functionality are a more reliable indicator of level of service than engineering formulas alone.**
4. Parents and students have been assured that RCT is a safe route to school and safety railings protecting the children will be installed to protect them from a steep fall into the creek. The same info has been given to School Board members and in PTAs on the basis on which the endorsement was sought. How does the city propose to dispel this misleading information in light of recent developments announced in the walk shop on March 30th? The risk is real. A man walking his dog is now permanently paralyzed because he fell into the Saratoga Creek. As stated above, **City staff is engaged with discussion with Valley Water regarding railing. It is likely that railing will be provided along the entire trail.**

For Homeowner Safety:

5. As per water district letter dated August 21st, 2018, "Suggest the city staff assess sheriff and police availability for recommended patrol and seek commitment through an agreement with police that they can provide this level of support. We have found, county wide, that Police departments are strapped for resources and cannot provide consistent patrolling." Is city planning to enter into an agreement with sheriff department for patrolling the trails round the clock? Burglaries and crime are on the rise as shown by the sheriff's presentation to the Cupertino public safety forum Oct 2018. A resident has recently been told by a Cupertino Sheriff that their house will be a great target for criminal elements once the trail opens. How does the city assure our safety? Is the City committing resources to patrolling the trail during day and night? **The Sheriff is responsible for ensuring the safety of the trail during day and night. The City is committed to ensuring that this occurs.**
6. Who is responsible for the cleanup and maintenance of the trail? Especially during fall and winter when fruits, branches and leaves drop from trees over fences and the trail gets slippery. **The City will maintain the trail. There will also be a Joint Use Agreement with Valley Water that will specify maintenance responsibilities.**
7. The entrance to Creekside park from East Estates Drive has a tall sound wall to protect the resident's private properties and for noise mitigation. Why is the city planning to use private property fences as safety barriers to users of the trail instead of providing them with similar barrier? This is not acceptable. Is the city planning to provide a solid wall or secondary fencing to protect the homes of the residents? **The wall leading into Creekside Park is not typical of creek trail walls; however, any type of wall is on the table for discussion with residents. As residents discuss their wall preference with City staff during our various meeting opportunities, staff will evaluate and make a recommendation to meet the residents' requests as may be practicable. Council does have discretion to fund a solid wall.**
8. The city is proposing a trail in front of Lozano and De Palma lanes which is unprecedented and is not easy to mitigate. We are not aware of any such trails in the county. Can the city show examples where this has been done in the county before? The installation of a trail in such close proximity to the homes do not meet existing city guidelines for setbacks from property lines. Privacy and enjoyment of one's property is a universal right, yet the City proposes to make an exception to those on Lozano and DePalma Lane, as some have remarked, "take one for the team". This is a dangerous precedent of encroachment; one the city should avoid. **The City is in ongoing discussions with the residents along De Palma Lane and Lozano Lane regarding privacy and screening treatments, and will work continuously with these residents to seek a mutually agreeable solution.**

Standards Issues:

1. In order to build a safe, multi-use Class 1 bidirectional path for bicyclists and pedestrians next to a deep creek steeper than 3:1, you need a safety railing and a minimum paved width of 10 feet with 2-foot shoulder on either side per AASHTO standard (this 10-foot guideline was also noted in Junipero Serra feasibility Study). The consultant refers to Caltrans 8 feet minimum for Class 1, but that is used as an exception and does not apply when the path is laid next to deep channel steeper than 3:1 or contiguous obstructions like fences or railings. For Regnart Creek AASHTO standard should be followed based on topography and intensity of use. Guidelines/Standards exist for the protection of the citizenry who will eventually use these trails. A guideline is to be respected, not willfully ignored, and used to show that the cities are acting in good faith towards their community. Why is it not being followed especially when this trail is supposed to be primarily as safe route to schools? Do not set a bad precedence when designing trails in city and endangering children. **As stated above, City staff is engaged with discussion with Valley Water regarding railing. It is likely that railing will be provided along the entire trail.**
2. Per Caltrans HDM and AASHTO, if the paved path is used by maintenance vehicles the tread width should be greater than 10 feet in order to protect the tread edges from damage. The damaged edges would increase the safety risk for bicyclists and in addition increase maintenance cost. Why is the city knowingly proposing 8 feet tread when the standards call for greater than 10 feet when used by maintenance vehicles? **To minimize this concern, the shoulders adjacent to the proposed trail are being designed to support this edge. Regardless, the City will be responsible for maintaining the integrity of the trail.**
3. The feasibility study shows a tread width of 10 feet throughout the trail (See Page 41 Figures 6.9 - 6.12). Now the City is offering 8 feet tread. What happened to the 2 feet? The current design is worse than what was

shown in the feasibility study that was approved by previous council. From Pacifica Dr. to Blaney Ave. the proposed trail width is predominantly 10-foot wide two-way trail with 2' shoulders on either side. From Blaney Ave. to E. Estates Dr. the trail, due to available space, allows only for an 8-foot paved two-way trail with 2-foot shoulders on each side.

4. Railings are required next to the channel when the slope is steeper than 3:1 per AASHTO guidelines. This point is noted in both Regnart Creek Feasibility Study (See Page 47) and Junipero Serra feasibility Study. Why is it not followed for railings? As stated above, City staff is engaged with discussion with Water District regarding railing. It is likely that railing will be provided along the entire trail.
5. Minimum 5 feet setback from private properties is required. San Jose has this standard. The feasibility study calls for UD 1.1.4 (3.5 feet). Why is the city proposing 2 feet setback and that too without a barrier or fence for the residents? We need 5 feet setback from Private property fences. (City of Cupertino is a party to Santa Clara County Uniform Interjurisdictional Trail design guidelines 1999). There is no requirement for 5-foot setback from private properties. Trails with less setback exist countywide. Along Regnart Creek, there is insufficient room for a 5-foot setback from private property in most places. More space will be provided when it is available.

Privacy Issues:

1. Privacy is of utmost importance for peaceful living of homeowners. The city Government is expected to provide privacy screens, setbacks, hedges, and noise mitigation to protect the homeowners. The city would not allow homeowners to build properties violating setbacks or without privacy features. Why is the city not following their own guidelines when developing trails in such close proximity to 82 dwelling units? The proposed trail is not in violation of setback requirements. The City is working individually with all homeowners to address and mitigate concerns regarding privacy and noise and will recommend any practicable requests of the residents into the proposed design.
2. UD 1.1.4 (as noted in feasibility study) requires an optimum setback of 10 feet and a minimum set back of 3.5 feet from private properties. San Jose city provides 5 feet minimum. The proposed setback of 2 feet is not acceptable to homeowners. The City of Cupertino should adopt a minimum of 5 feet guideline as adopted by its neighboring cities. As stated above, there is no "requirement" regarding setback. Comment noted.
3. What is the privacy buffer with vegetation that will be provided for the privacy of homeowners? Tall Italian cypress trees? How are these irrigated and maintained? The City is interested in accommodating project improvements that would resident increase privacy. Each property owner has been (and is still being) given the opportunity and the discretion to choose what type of buffer is desired. Staff will evaluate these requests, and if practicable, will be recommended into the project design.
4. Noise - The trail path is so close to the private properties. How does city plan to mitigate noise pollution? Is this addressed in the environmental impact study? What is the status of the EIR? Residents were promised we would be kept informed, yet there have been no updates, progress reports nor information released. How is the Blaney crossing addressed as an environmental impact? Will the slowdown in traffic divert and increase traffic through the neighborhoods? Noise from trail users will be considered and addressed in the environmental document. Regarding traffic, it is not anticipated that there will be any significant slowdown in traffic. It would take vehicles longer to divert to other streets instead of yielding to a crossing pedestrian.
5. The trail alignment is at a higher grading compared to many homes providing no privacy for home owners. How is the city planning to provide privacy for the home owners? Must all the residents keep their window coverings closed all the time? How is that positive to a home's value? We will become a three-quarter mile of cave dwellers. The City is working individually with all homeowners to address and mitigate concerns regarding privacy and noise. Trail users will generally be no more visible to homes than pedestrians using the sidewalk in front of the home. Staff will evaluate resident requests for privacy improvements, and if practicable, will be recommended into the project design

Liability Issues

1. Why doesn't the City address liability and insurance issues related to RCT? **As stated above, staff has inquired with the City's risk manager on this issue. Many cities have similar trails, and the risk manager did not expect that this proposed trail would have any impact on insurance rates.**
2. The City is proposing a trail by using private property fences as safety barriers for trail users and in addition not providing minimum setback of at least 5 feet. This exposes the home owners to significant liability and lawsuits if the users of the trail collide with homeowner fencing, slip on wet leaves or fallen fruit. How does the City guarantee liability to homeowners for property damage and bodily injury to users and property owners? The City is indemnifying the Water District. The City should also indemnify the homeowners who are adjacent to the trail. Recently, a rock was thrown through a second story window along RCT. Will the City take responsibility for property damage? Is the City committing resources to patrolling the trail during day and night? **The Sheriff has indicated that they will do routine daily patrols and will always be able to respond quickly.**
3. The SCVWD who is the land owner has always maintained railings impedes their maintenance work and is not a viable option. The City staff and some bike ped commissioners have constantly misled and perpetuated misleading information about railings and trail width to parents, students and citizens. Now that the railing is not allowed, the trail width is narrow for shared use path. The city is exposed to liability for providing misleading information to public to get the trail approved. **As stated above, City staff is engaged with discussion with Valley Water regarding railing. It is likely that railing will be provided along the entire trail.**
4. The City is deliberately proposing a narrow width of 8 feet paved trail next to a deep creek steeper than 3:1 violating widely accepted safety standards. This creates liability for the city for knowingly violating the standards and endangering young children who are being encouraged to use it as safe routes to schools. **This question has been answered above.**
5. California had extreme fire danger during the past year. There are dry bushes at the creek during summer months. Opening the trail to public will elevate fire danger to densely constructed homes and additional liability to homeowners. What does the city propose to do to reduce fire danger? Has the fire chief been consulted? How are access to fire trucks impacted by the installation of the trail? **The trail will have no impact to fire truck access. There is no more risk of fire than any other location within the City that is open to the public. Valley Water regularly performs weed abatement to keep vegetation under control.**
6. Is the city planning to take liability for property damage for homeowners adjacent to the proposed creek trail especially when this trail is not providing adequate setbacks to private properties? **No. The City will repair damage to walls and fences within the trail limits, but will not take responsibility to private property damage.**

Ethical / Other Issues

1. Who else was considered for the design and EIR other than HMM, and isn't it a conflict for them to conduct the survey and also this work? The Feasibility prepared by HMM Engineering contained numerous errors, reflected unsatisfactory due diligence, yet they were selected for further work. **There is no conflict with selecting HMM. The City has a Master Agreement with HMM and can select them as a qualified consultant. Selecting them for the design is cost-effective for the City due to their familiarity with the project.**
2. The Regnart Creek was removed from General Plan in 2005. It was proposed as a trail in 2016 Bike plan. The residents (82 homes directly on the creek) in the area were made aware of this only in Sept 2017 when the first walk shop was announced and after the consultants were already contracted for the feasibility study and were ready with preliminary design of trail, walls and fences. The staff and the consultant were from day one advocating for the trail and the designs they presented while brushing off the residents and their concerns. Why weren't residents along RCT notified, prior to any feasibility plan being authorized, that the proposed trail was being reconsidered despite the fact that RCT was removed from the General Plan by Amendment in 2005, and never reinstated back by Amendment? **The Regnart Creek Trail was included in the 2016 Bicycle Transportation Plan and 2018 Pedestrian Transportation Plans, which were the result of a public outreach process, discussed at many Bicycle Pedestrian Commission meetings and adopted by City Council. No**

preliminary design was done prior to the first walkshop. Displays were prepared to highlight potential improvements and to aid in the discussion.

3. Did the City prepare its own comparison between the Draft and Final Feasibility study? If so, why hasn't it been made public. There was a Draft Study taken to Council on August 21, 2018. Upon approval by City Council, this became the Final Study.
4. Why wasn't a survey and soils test conducted first to understand the characteristics of the trail before embarking on the feasibility and marketing campaign? Why weren't updated as-builts designs from the Water District reviewed and erroneous trail attributes given to the City Council and public? Surveys and soil tests are done as part of the engineering phase, not the feasibility phase, since they are not needed to determine feasibility. The Water District has the discretion to release their as-builts to the public. The City has released all information that has been collected or verified by the City.
5. Why didn't the Bike/Ped Commission provide feedback on Feasibility study and hold meetings to allow residents to express their concerns with RCT before going to council? Outreach for the Regnart Creek Trail was specifically agendized and discussed at the March 2018 BPC meeting. Bicycle Transportation Plan progress, including Regnart Creek Trail, was also discussed at the July 2018 BPC meeting.
6. Where is the scope of RCT feasibility study as approved by the council? Provide access to it. Scope is available and can be provided on request.
7. Why wasn't the residents/public contacted for input the moment this trail was surfaced again (June 2016), instead of 15 or so months after the planning and evangelist phase began (Sept 2017)? The Regnart Creek Trail was included in the 2016 Bicycle Transportation Plan, which was the result of a public outreach process, discussed at many Bicycle Pedestrian Commission meetings and adopted at public hearing by City Council.