



The Honorable Sam Liccardo, Mayor of San José
and Members of the San José City Council
200 E Santa Clara St., San José, CA 95113
via email, sent Aug. 12, 2022

Subject: Proposed 'Repurposing' of Chartered City Parks

Dear Mayor and Councilmembers,

We in the District 6 Neighborhood Leaders Group (D6NLG), a decades-old association of involved community representatives of the numerous District 6 neighborhoods and associations, are very interested in preserving and enhancing the parks of our city. We have been following plans for proposed Emergency Interim Housing Communities (EIHCs) being considered along the Penitencia Creek. Even though this project is not in Council District 6, the discussion by Staff at the Aug. 3rd [Rules Committee meeting](#)¹ raised issues that impact parks in District 6 as well. And while the Rules Committee has yet to agendize the topic for full Council discussion, we feel that the underlying issues should be studied and resolved prior to Council considering the specific project proposal.

- We oppose the construction of any type of housing – transition, quick-build, trailer, temporary or permanent – on those properties by the Dr. Robert Gross Ponds, known by the community as “Noble Ponds Park” and by the County as Assessor Parcel Numbers 595-31-001 and 595-24-055.
- We support the immediate determination of “Noble Ponds Park” as inalienable chartered park land, which means the lands are subject to the conditions of the [City Charter](#)² Section 1700 requiring a vote of the electorate to change its use from public park.
- We recommend that council take further action to clarify San José City Charter Section 1700 and create objective measures of the definitions of “dedicated, improved, and opened to the public for public park purposes”, and that those definitions should take into account that 1) some parks may take years to be improved due to the inequities of park funding and 2) community preferences in some areas may be for a more natural and unimproved park to better enjoy wildlife and nature.
- We support the City working to find private or public non-park land to support the housing needs of unhoused individuals.
- We support the re-implementation of the Sunshine Ordinance and the Sunshine task force recommendations for robust public outreach prior to the decision on any site.

¹ <https://sanjose.legistar.com/View.ashx?M=A&ID=986755&GUID=F4DA38E6-B07B-4887-AF0A-CBB71130CAA0>
Agenda Item # C1: “Community Outreach for Quick Build Interim Housing”

² <https://www.sanjoseca.gov/home/showpublisheddocument/13907/637532449706900000>



District 6 Neighborhood Leaders Group

Background

In June 2022, the City Council voted to pursue three “quick build sites,” including the two along Noble Avenue shaded in yellow and green on this Penitencia Creek Park [Master Plan](#)³ map. This decision was

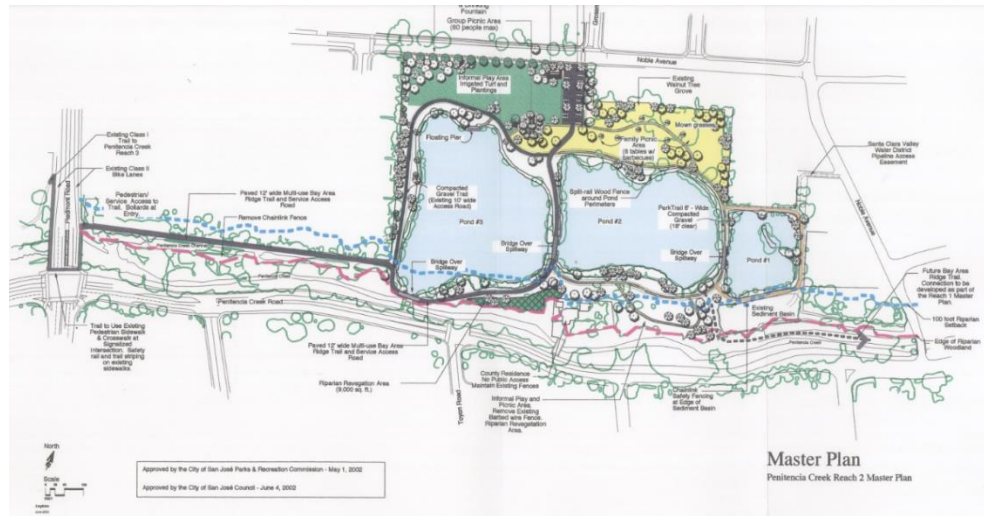
made without outreach to the affected communities. On August 3, 2022 Councilmember Cohen submitted a [referral](#)⁴ to the Joint Committee on Rules to remove “Noble Ponds” from the quick-build list, asserting that the location is a park. His referral asked for thorough outreach and a rapid determination as to whether Noble Ponds was indeed a park. City staff argued the determination and outreach should both be “yellow-lighted” and deferred to a council priority setting session. Following committee discussion, staff agreed they would work to resolve the park determination shortly.

During the meeting, City staff referenced the three criteria for chartered city parkland under Section 1700: “dedicated, improved, and opened to the public for public park purposes.” Whether these parcels meet this standard is important because, to quote Section 1700,

“Except as otherwise provided elsewhere in this Charter, the public parks of the City shall be inalienable unless otherwise authorized by the affirmative votes of the majority of the electors voting on such a proposition in each case.”

Chartered Parkland Criteria #1: Is it “Dedicated”?

Staff acknowledged the subject property was part of a joint County-City-Water District master park plan from 1977, subject of tripartite agreements that date from 1981 and renewed Feb. 27, 2007⁵ to develop the Penitencia creek chain for “park, recreation and open space, flood protection and water conservation purposes.” Further, a Master Plan for the site was



³ <https://www.sanjoseca.gov/home/showpublisheddocument/20651/636687674429930000>, adopted by Council June 4, 2002: http://www3.sanjoseca.gov/clerk/2002_CnclMins/06-04-02%20Min.htm

⁴ <https://sanjose.legistar.com/View.ashx?M=F&ID=11098396&GUID=0E1C70B5-5F81-41B2-B440-35DFEACDE5B1>

⁵ City of San José resolution no. 73660. The corresponding Water District resolution was passed Dec. 12, 2006



prepared and adopted by the City Council on June 4, 2002. For these reasons, **staff stated the parcels were “dedicated.”** (Rules, Aug 3, 2022)

Chartered Parkland Criteria #3: is it “Open to Public Use for Recreational Purposes”?

Community members testified to using the park for walking and school-based nature study, with Audubon offering bird walks. Long-time residents, including former Council member Margie Matthews⁶, reported visiting the property for more than 45 years. The parcel has “park rules” signs and a trailhead to the Penitencia Creek trail. Groups must obtain permits from PRNS Special Permit unit. **Staff agreed the parcels meet the charter standard of “open to the public for recreational purposes.”** (Rules, Aug 3, 2022)

Chartered Parkland Criteria #2: is it “Improved”?

The park is clearly improved – but just not in the traditional suburban style with a large swath of turf. Instead, this park emphasizes nature and reminds visitors of what San José looked like at the time of its first residents: the indigenous peoples. The park has been improved with modest amenities that welcome the visitor to this natural place. By design, natural areas will have less intense improvements. A formal trail / Class I bikepath leads visitors through the parcels and across the Robert Gross ponds. Gravel has been laid for walking paths along the edge of the ponds which were redesigned in the 1980s using some of the city’s land to provide a more natural shoreline to enhance the visitor experience. A “park rules” sign and one of San José’s signature (and expensive) “tombstone” park name signs greet the visitor. A fence with pedestrian openings was installed to separate the recreational area from the parking area. Trees were planted and irrigation installed during community work days that were collaborations with Our City Forest and PRNS. A water fountain was placed in the park. Picnic tables were installed according to the master plan, and then later removed after they become a source of inappropriate behavior behind the nearby residences. Due to inequitable funding for parks in residential areas built prior to the 1993 creation of the Park Trust fund, little money has been available for extensive park improvement. The inequities embedded in the Construction and Conveyance (C & C) tax further limits resources to complete the master plan. A dog park was offered, but the community expressed its preference for a natural area and an appropriate level of amenities. Given present-day water realities, it is unlikely that the large turf area envisioned in the 2002 master plan will ever be built. What is clear is that many thousands of park dollars – maintenance and capital funds – have been spent on this park. If the city’s distribution of park capital budget dollars were more equitable, additional amenities likely would have been installed. We object to the Staff position that the park is not improved “well enough.” City dollars were spent and features were installed: there is no dollar amount or other criteria established in the charter or municipal code that defines a “sufficient” level of development. **We believe that the parcels meet the charter standard of “improved.”**

⁶ see Public Comment letters, p. 5:
<https://sanjose.legistar.com/View.ashx?M=F&ID=11107731&GUID=58A9189F-5B15-4325-875C-047E67484AFD>



Some additional comments on park improvements:

- **Equity Concerns:**
This property has clearly suffered from inequitable allocation of park funding. What other properties that have been underfunded due to inequity might also fail to meet this ill-defined “improved” test? Will underserved regions of the city be further penalized by having their parklands repurposed?
- **“Access to Nature” – Less Developed by Design:**
ActivateSJ,⁷ the City’s park strategic plan, presents “Access to Nature” as one of the five guiding principles for the city’s park system. The plan cites research that shows “access to nature encourages early childhood development, reduces stress, and promotes socialization among neighbors.”⁸ A number of city parks are less developed by design – should neighbors of these parks be concerned that their park doesn’t meet some non-specific standard of improvement and thus might be subject to repurposing?
- **What About Properties Under Construction or Awaiting Funding?**
This proposal to convert a property with a 45-year history as publicly accessible open space suggests that other parks that are under development, awaiting a grant or park fees from nearby planned development, are also at risk. If this interpretation were to prevail, it would be challenging or impossible to ever again build a new park in the city. Parks don’t just “magically appear” fully developed: it takes time, often years, to acquire and assemble parcels, and carry out construction. Which neighbors should expect their parks to be eliminated?
- **Litigation Risk – and the Inevitable Accompanying Delays?**
The lack of specificity in the City Charter about the word “improved” could lead to litigation from those aggrieved by a determination that this property or some other park is not a **chartered** park and thus is available for development. We wonder whether various neighborhoods worried about the future of their more natural parks with minimal investment might join litigation. Any litigation would consume precious City resources and delay a final determination. We hope that Council could resolve this issue now.

Additional Points:

- **Housing vs. Parks – A False Choice**
Some may frame this as a discussion of prioritizing parks over the very real concerns and needs of the unhoused. **This is a false dichotomy.** We can have **both** parks and housing. The voters have spoken loudly when they approved large housing bonds. They know

⁷ <https://www.sanjoseca.gov/home/showpublisheddocument/43503/637178743945470000>

⁸ The Trust for Public Land, From Fitness Zones to the Medical Mile: How Urban Park Systems Can Best Promote Health and Wellness (2011)



there are housing needs – and so they have voted for housing bonds. They want the unhoused out of their parks. The people expect their parks to be sacrosanct. Some questions for you to consider: Will these neighbors ever vote for another housing measure if/when they know the money will be used to take their parks? Will developers who contributed park trust fees to acquire these parks ask or sue for their money back? If voters fear their parks will be converted to housing, will they ever vote for a park bond again as long as homeless housing sits on parkland?

- ***Sunshine. Transparency. Outreach***

With the onset of the Covid pandemic, many features of the Sunshine Ordinance were suspended. As the City moves to a new normal, the reasons for the Sunshine Task Force and ordinance have become apparent again. Robust public engagement *prior* to decision making was and is a community priority. As was shown with the Vista Montana/First Street site, when neighborhoods are not notified in advance, they are likely to harass and punish the newly arrived and formerly unhoused residents until they are driven away. Only in those neighborhoods that engaged in substantial outreach prior to final decision making and the arrival of new residents has there been some level of grudging acceptance. ***We urge you to return to the Sunshine Ordinance standards and to engage in community outreach as soon as staff identifies a potential property.***

Summary

The pandemic has reminded us all of the importance of parkland for our physical and mental health. The research is clear. Park usage by the community has increased. The Noble Avenue parcels at the Robert Gross ponds ***are*** chartered park land and ***are*** a part of the Penitencia Creek Park Chain. We urge you to remove these two parcels – and all other parks, in whatever stage of development – from the list of properties under consideration for housing, and instead to seek underutilized commercial or industrial properties that can be leased or purchased.

A handwritten signature in blue ink, appearing to read 'Dr. Lawrence Ames', with a long, sweeping flourish at the end.

Dr. Lawrence Ames, Chair, D6NLG

cc: Toni Taber (City Clerk); Jennifer Maguire (City Manager); Jim Ortbal (Special Projects); Jon Cicirelli (PRNS); Parks & Rec Cmsn (c/o Brooke Bayne); Jacky Morales-Ferrand (Housing); Berryessa Union School Dist.: Hugo Jinenez (Brd of Trustees) and Dr. Roxane Fuentes (Super.); Don Rocha (Santa Clara Co. Parks); Valley Water: Rick Callendar (CEO) & Richard Santos (Chair); Mayoral and Council candidates; SJ Parks Advocates; All District Leaders Group; Save Our Trails