

CORRESPONDENCE

Parks and Recreation Commission

Wednesday, April 7, 2021
5:30 P.M.

Zoom Webinar



District 1	Daphna Woolfe, Chair
District 2	Andre Morrow
District 3	Lawrence Ames
District 4	Kelly Snider
District 5	Vacant
District 6	Art Maurice
District 7	Giavanna Vega
District 8	Vacant
District 9	Rudy Flores
District 10	Vacant
Citywide	George Adas, Vice Chair

Councilmember Matt Mahan,
Council Liaison

Jon Cicirelli, Director, PRNS

---Original Message-----

From: Jean Dresden

Sent: Thursday, April 1, 2021 1:45 PM

To: Meyer-Calvert, Teresa

Cc: Parks and Recreation Commission 1 <PRC1@sanjoseca.gov>; Parks and Recreation Commission 2 <PRC2@sanjoseca.gov>; Parks and Recreation Commission 3 <PRC3@sanjoseca.gov>; Parks and Recreation Commission 4 <PRC4@sanjoseca.gov>; Parks and Recreation Commission 5 <PRC5@sanjoseca.gov>; Parks and Recreation Commission 6 <PRC6@sanjoseca.gov>; Parks and Recreation Commission 7 <PRC7@sanjoseca.gov>; Parks and Recreation Commission 8 <PRC8@sanjoseca.gov>; Parks and Recreation Commission 9 <PRC9@sanjoseca.gov>; Parks and Recreation Commission 10 <PRC10@sanjoseca.gov>; PRCCW@samjoseca.gov
Subject: Urban Confluence Project Letter

[External Email]

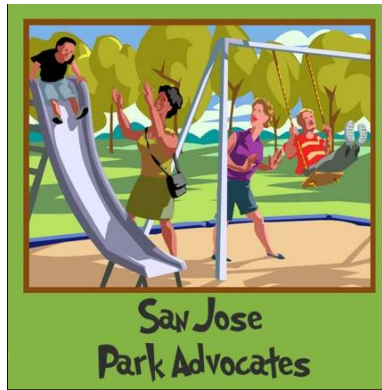
Dear Parks Commissioners:

Please find attached a copy of the letter that we sent to City staff about our questions about the Urban Confluence project and the city's actions in managing the project now and into the future. We thought that you would appreciate a copy prior to your meeting next week with these applicants.

Sincerely,

Jean Dresden

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March 31, 2021

City Manager Dave Sykes:

It is San Jose Parks Advocates' understanding that the Urban Confluence project is moving towards a late spring 2021 Council meeting for a check-in and a go-no go decision. The proponents have shared eloquently what they see as the advantages of the project.

After viewing the size and complexity of the finalist, many questions arise. The following list is not meant to be comprehensive, but it does express significant concerns about the project and its hidden costs through this list of unanswered questions. The answers should be day-lighted before the project moves forward.

This list of about 100 questions has been sorted into 20 **categories (A to V)**:

A. Equity Lens

1. How will the equity lens be applied to the project?
2. How will the project encourage equity?
3. How will people of different economic, (dis)ability, and cultural backgrounds be able to enjoy the project?
4. How will the costs to the City be minimized so as to not negatively impact communities of color, poverty, or other historic disadvantages?

B. Art Project or Structure

5. Is the Urban Confluence project a structure or a piece of art?
6. Will the California Artist's Rights Law apply? That is, if the City were to choose to remove or dismantle a display, will the City have to return the art, or store it? For how long?
7. Can structures have restaurants or other commercial activities and still be art?
8. If this art, does the artist receive a royalty from the commercial activities?

9. Does the artist have the right to reject or approve the nature, design, and operation of the commercial activities?
10. When does the artist's rights expire, if ever?

C. Structural Integrity

This is a very unusual design and outside the scope of what the City Building and Public Works staff normally evaluates for conformance to universal building code.

11. How will the City evaluate the unique structural design of project? Will the City use outside structural engineers?
12. How will the structure be evaluated for performance in wind storms? How will the project protect against having individual reeds banging into one-another, and possibly entangling?
13. How will the project be evaluated for earthquake safety? What seismic analysis will be performed? The reeds have different lengths and different resonant frequencies: will a strong quake pull apart the upper walkways and/or cause reeds to crash into one-another?
14. Will the project pay for these independent evaluations?

D. Construction Costs

This is a very large project with what looks to be significant infrastructure needs.

15. Based on what you see, is \$100 Million a reasonable ballpark estimate? \$150 Million?
16. Recognizing that the design/construction documents are not finalized, the large scale gives hint about the impacts to the park. What expenses, if any, are the City expected to provide?
For example,
Is the City expected to relocate the carousel?
Relocate and reconstruct the bathroom?
Upgrade sewage or electrical?
Relocate utilities? Upgrade or realign streets?
17. How will these expenses be paid for? Do impact fees apply?
Invoice to Urban Confluence for direct expenses? Indirect expenses?
From Park Capital Funds (C & C or Park Trust Fund) ?
Cultural Affairs Office?

E. Timing

The project is very large and will cost a great deal of money.

18. How many years will the donors be given to raise money? 2 years? 5? 10?
19. What milestones and achievement standards will be established, for example 50% by year 2 and 100% by year 5?
20. At what point in time will council give a final go/no go?
21. What criteria will staff use to give the recommendation of go/no go?
22. At what point in time will the project reach enough design and construction certainty so that Parks Department be able to restore/repair the playground that has been removed? How long will community members have to wait until the project is completed before the new playground can be installed?

23. When does this project expire? What is the sunset date for this project if it is not constructed?

F. Fundraising

24. What is the fundraising schedule?

25. From whom do the project sponsors expect to raise the \$150M plus? The City?

26. How does their fundraising schedule compare to other large \$150M fundraising campaigns for art or memorials?

27. The City previously has commissioned studies of philanthropic resources in the valley. Stanford's Center on Philanthropy and Civil Society (PACS) has studied philanthropic trends in the Silicon Valley and beyond. What do these reports and studies say about the capacity for such a large fundraising project for an art project in San Jose?

28. Anecdotally, non-profit fundraising professionals tell about the impact of large projects on their efforts, describing large projects as "sucking all the philanthropic dollars out of the community."

What is the City's view of the statement:

"Taking \$150M out of the community for this project probably means \$150M less for other charitable causes, such as The Arts, Affordable Housing, or Equity Projects. Donors can be generous, but they are not a limitless resource."

29. How does a large multi-year fundraising project impact fundraising by other local organizations with less marketing acumen or budget?

30. To what extent will smaller arts organizations be unable to survive the COVID pandemic due to philanthropic arts dollars being shifted to this project?

31. Have the project's sponsors paid for an analysis of the fundraising capacity and the impact on local arts organizations? Will the City fund an analysis?

32. Will the City be analyzing the potential impact on local non-profits if this project fundraises for the next two years, five years, ten years? Will this be shared with the Council so they may be able to decide if this single project is in the best interest of the City?

33. The City already has approved design and fundraising for a Levitt music Pavilion in St. James park priced at about \$20 Million and additional design for the rest of the park as well.

To what extent will fundraising for this large project compete with fundraising for the already Council-approved Levitt Music Pavilion and St James park plan? If unknown, how will this risk be analyzed?

G. Technology Maintenance Upgrades

The project has technology components that are key to the artistic experience. Technology evolves. Parts and software that were common 50 years ago, such as vacuum tubes and COBOL programming language, are not possible to find today.

34. How will the City handle technology upgrades as the project ages?

35. What organization will pay to upgrade the technology? The City?

36. Will the artist/designer be responsible for selecting and installing the replacement equipment or will the City?
37. Under the California artists' work protection provisions will the city be allowed to change the technology to modern equipment without the artist's/designer's permission or will the project be required to have no updates? What if the designer/artist is dead?

H. Maintenance/Routine

A large structure requires very expensive routine maintenance, due to the specialized equipment to reach heights. Examples

- washing the structure to eliminate bird guano
- annual structural inspections
- replacement of LEDs
- graffiti and vandalism at height
- security structures to prevent climbing

38. How will routine maintenance of the structure be funded?
39. Will the initial fundraising be required to endow a maintenance account? If so, for how many years?
40. What organization will provide ground-level maintenance surrounding the structure?
41. How will costs be allocated between the project sponsors and the city?

I. Maintenance/Structural

Large structures like these have complex structural components and due to their unique design may have unusual structural maintenance requirements.

42. What organization will be paying for this structural maintenance and repair?

J. Maintenance Funding

The project's leaders expressed their hope that they will raise money during the operation of the site.

43. What business enterprises are proposed?
44. What business plan or business concept has been shared?
45. What if the enterprises fail to meet expectations? How will expenses be covered?

K. Governance

The current project is led by three board members, one of whom serves as the Executive Director. They are all Caucasian, and two of whom are near 70 years old.

46. What concerns does the city have about the composition of the board attributes: age, number, ethnicity?
47. At what point might the City require a larger and more diverse board?
48. What concerns does the City have about the optics of engaging with such a small and not diverse group for such a large project that diverts parkland to a non-profit's use?

49. What is the organization's succession plan for their current small and older board?
50. Once the structure moves towards construction or operations, what will be the governance structure be?
51. What organization is expected to operate the business enterprises that the current board believes will support the ongoing operation of the site?
52. What sort of community involvement will be part of that organization?
53. Operationally:
 - Will the same board operate the enterprise and project?
 - Will the City operate the enterprise and project?
 - Will a new organization be formed to operate the project and enterprise?
54. Is a new non-profit that focuses on operations expected to be created? Will it be more diverse in age and ethnicity? Will the board be larger?
55. When will the governance structure be decided?
56. To what extent will the lack of a governance plan be a barrier to going forward?
57. When will the City start negotiations with the project sponsor's for a long-term governance plan?

L. Staff Time

The project's leaders have described their many and regular meetings with staff including those from parks, public works, planning, and the Cultural Affairs group. Several of these staff groups are cost recovery or draw from special funds, and not funded by the General Fund. A PRNS memo indicates over 850 staff hours have been expended to March 2021.

58. To what extent is the City charging for this staff time?
59. If the City is not charging the project for staff time, what City budget is paying for staff time?
60. To what extent is Park Trust Fund or Park C&C money being used to pay for staff time in PRNS, Public Works, and Planning?
61. How has the diversion of 850 hours of staff time impacted workloads for council priority projects? Has this been junior staff or executive staff time?
62. What is the dollar value, with fringe, of 850 hours of staff time?
63. How much staff time is expected as the project moves through various stages?
64. How will staff hours and profile change with each milestone?
65. To what extent will the city require compensation for the staff time?
66. Will the City be negotiating payment, retroactively, for the 850 hours of staff time?

M. Impact to City Budgets, staffs, operations

67. At what point in time will the city require the project team prepare a business plan, budget and impact to city staff/operations/budget for different stages:
 - a. fundraising, b. construction planning, c. building permit, 4. operations
68. When will an economic cost/benefit analysis be prepared along with a financial risk assessment?

N. Restaurant Concept/Long Tern Lease/City Election?

The project has indicated a plan for commercial enterprises in order to fund operations.

69. Would the commercial enterprise be offered a long-term contract with the city?
70. Or would the lease be limited to a renewable 3-year contract as presently done with Guadalupe River Conservancy and Veggielution?
71. Under what circumstances would a city election be required to write a long-term lease for this park to a commercial enterprise?
72. Under what circumstance is a non-profit owned, for profit commercial enterprise exempt from a city election to turn over dedicated parkland?
73. What if the business does not cover the operational costs? Will the non-profit entity cover the shortfall?
74. What if the restaurant/commercial enterprise fails? Will the non-profit recruit another operator?
75. Does the city have refusal rights on the selection of the restaurant operator?
76. What if the non-profit has ceased to exist? Will the city be expected to find a tenant operator and run the business enterprise?

O. Risk Management

The concept includes opportunities to climb to heights.

77. How will the design reflect best practices in safety? Suicide prevention?
78. Will the City be at risk of liability if the non-profit operator fails to institute best practices?
79. What insurance will be required of the organization?
80. How will the project protect against high-tech vandals using drones, kites, or balloons?

P. Airport Concerns

In the discussions of locations, the Audubon Society indicated that a lighted structure would attract birds flying to the structure through and in the flight path.

81. What risk is there to aircraft engines with birds attracted to the flight path?
82. Will this project be referred to the Santa Clara County Airport Land Use Commission?

Q. Environmental Concerns/EIR/CEQA

83. How will the CEQA requirement be fulfilled?
84. Will it be a full-scale EIR document?
85. Will it be supplemental to a prior EIR? If so, which one?
86. Is it expected to be an IS/MND ?
87. Will the organization pay for the CEQA documents and staff time to evaluate?

R. Relationship to Prior Lawsuits and Legal Settlements

In 1993 and 1996 there were disagreements and legal actions about the final design of the Guadalupe River from San Carlos to Julian. Long-time San Jose residents have shared their recollection that the settlements affect Arena Green West. Due to the pandemic, research has not been completed at Superior Court and Federal Court to confirm their statements. Newspaper reports are imprecise.

89. To what extent does the 1993 settlement with the Consortium of Agencies about the Guadalupe River Flood Control project affect the mitigation measures implemented at Arena Green West, and limitations commercial enterprises and structures in Arena Green West?

90. To what extent does the settlement of the 1996 lawsuit affect Arena Green West and various mitigation measures installed at Arena Green?

S. Life of the Project

All structures of this size have a life span when they must be rehabilitated or removed.

90. What is the expected life span of this project? 50 years? 100 years?

91. What if the project does not attract visitors, or becomes controversial? Can it be removed? (Like the Christopher Columbus status and the Fallon statue).

92. Will the City retain the rights to cancel the relationship with the project's donors/operators and remove the project?

93. What criteria will be used for removal? Will those criteria be within the contract?

94. What if design features can no longer be operated?

T. Modification Costs

Unusual structures sometimes develop unanticipated quirks, such as whistling or creaking sounds.

95. Will the City be able to order the donor/operator to modify the structure to eliminate these quirks?

96. Will the City or the donor/operator be responsible for the retrofitting costs?

97. How might artist rights impact the ability to correct these unattractive quirks?

U. Demolition Costs

In addition to a lifespan, structures of such unusual form can develop unusual and unanticipated stress cracks and failure points leading to the partial or complete demolition.

98. Will the City require the donors to provide sufficient funds on deposit prior to construction to demolish the structure and restore the park?

99. Roughly about how much would it cost in today's dollars to demolish the structures?

100. What would be disposal costs?

101. If the donors are not required to deposit funds prior to construction, would the donor organization be contractually obligated to raise funds to remove?

102. What if the donor organization no longer exists?

V. Conflict of Interest

Several City elected officials donated to the project.

103. Is this a conflict of interest? Are they required to recuse themselves on votes about the project? Does the size of donation make a difference?

Building a privately proposed large structure and commercial enterprise in a city park is a new endeavor generating many questions about process and procedure. We hope that these questions are helpful as you and your staff prepare your analysis for council. We look forward to the daylighting of the answers to these questions.

Sincerely,

/s/ Jean

Jean Dresden

cc.

Jennifer Maguire, Assistant City Manager

Angel Rios, Deputy City Manager

Jim Shannon, Director, Budget

Jon Cicirelli, Director PRNS

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Matt Cano, Director of Public Works

Michael Ogilvie, Director of Public Art

Parks and Recreation Commission

San Jose Light Tower Corporation