

MINUTES
SAN FRANCISQUITO CREEK
JOINT POWERS AUTHORITY BOARD
28 July 2005

Chairperson Zlotnick called the meeting to order at 6:00 p.m. at the City of Palo Alto Council Chambers, 250 Hamilton Avenue, Palo Alto, California.

1. Roll Call

Members Present: Chairperson Zlotnick, Santa Clara Valley Water District
Director Mossar, City of Palo Alto
Director Abrica, City of East Palo Alto
Director Lee Duboc, City of Menlo Park
Director Gordon, San Mateo County Flood Control District

Alternates Present: Director Fergusson, City of Menlo Park

Members Absent: None

Associate Members Pam Sturner, Watershed Council
Michael Fox, Stanford University

Present:

JPA Staff Present: Cynthia D'Agosta, Executive Director
Kevin Murray, Staff

Legal Counsel Present: Greg Stepanicich

Others Present: Debra O'Leary, City of East Palo/COE Liaison; Glenn Roberts, City of Palo Alto; Art Kraemer Palo Alto Resident; Vivian Blomenkamp, P.A. League of Women Voters; John Schaefer, Palo Alto Resident; Beau Goldie, Santa Clara Valley Water District; Neil Cullen, San Mateo County Flood Control District; Jason Green, Palo Alto Daily News

- 2. REPORT OUT ON CLOSED SESSION** – Approval of Executive Director's FY 2005-06 Salary and FY 2004-05 Merit Bonus will be taken up at the August 8th Study Session. The meeting will start as a regular meeting to take the report and recommendation of the personnel committee and then go into a study session immediately thereafter.

Ms. D'Agosta stated the meeting will take place from 4:30 – 6:00 p.m. on August 8th at the Menlo Park Community Center.

3. APPROVAL OF THE June 23, 2005 SPECIAL MEETING MINUTES

The Board considered approval of the meeting minutes from June 23rd. Director Mossar moved approval, Director Gordon seconded, and the minutes were approved 5-0.

4. APPROVAL OF AGENDA

The Board considered approval of the agenda for July 28th. Director Abrica moved approval, Director Gordon seconded, and the agenda was approved 4-0.

Ms. D'Agosta noted a correction to the agenda. Although the agenda is posted to the website, study session materials were not posted ahead of time.

5. CONSENT CALENDAR

None

6. PUBLIC COMMENT – *Public comment on items not on the agenda.*

None

7. ADJOURNED TO STUDY SESSION

- a. History/review of project and agency process
- b. Review of Corps of Engineers process, project structure and funding
- c. Components of Recon & Feasibility Phase
- d. Current project development (readiness to enter Feasibility Phase):
 - Agreements required
 - Project management
 - Public process in Feasibility Phase
 - Agency management of Feasibility Phase
- e. Schedule, member staff, and Board involvement through October

Chairperson Zlotnick adjourned the meeting to a study session at 6:06 p.m.

Ms. D'Agosta presented a review how the JPA got to where it is, both with the Agency and the project, then looked at the Corps of Engineers (COE) process diagram to understand how the JPA was moving to complete the Reconnaissance Phase (Recon), and from there talked about what needed to be accomplished to be able to sign the Feasibility Cost Share Agreement (FCSA), and move into the feasibility phase.

The JPA was formed in 1999 through the signing of Joint Powers Agreement, and was a voluntary formation of the five members who sit on the Board. The Agency has no capital improvements budget, a limited operational budget of approximately \$350,000 per year, and an approved staff of three. The JPA is the local sponsor for the COE project, and as such is responsible for signing all agreements including the FCSA. In addition, the JPA coordinates all project and related watershed actions amongst member agencies, legislative representatives, the public, regulatory agencies, and other regional planning efforts.

The COE has attempted to build projects to resolve flooding on San Francisquito Creek in the past, unsuccessfully. The project can only be successful if planned collectively. One entity attempting to act alone could cause catastrophic consequences for other entities in the watershed, and would not pass regulatory review. The challenges the Agency had encountered or began to discover with the project included: 1) Physical limitations – build out in urban areas left little room for

channel modifications and improvements in many places. Verticality of the banks and sinuosity of the creek, made installation of floodwalls difficult and expensive; 2) Habitat – federally protected species would influence project options; 3) People – 70% of the channel was privately owned, most without public easements; 4) Time – constituents are anxious to act now, but the level of detail needed to collectively plan the project and secure federal funding took time; and 5) Property – land values in the region were very high, and local sponsors were responsible for all real estate costs. There would likely need to be a series of components implemented to address flooding issues, such as upland detention, diversions, and channel capacity improvements. The COE would determine the recommended project that had the highest benefit to cost ratio, which could provide something less than the 100-year flood protection. The local sponsor had the option to “buy-up” to whatever protection level it desired, but the additional expense was not eligible for federal funding.

Ms. D’Agosta referred to the flowchart of standard components and timelines of COE projects. The diagram, as well as other informational pieces on the COE process are located on the JPA web sites at: www.cityofpaloalto.org/jpa/

Ms. D’Agosta reviewed the Recon Phase with the Board. She stated the Recon Phase was the initial investigation by the COE to determine if there was a federal interest in conducting a project, and it developed a methodology for conducting the second phase, which was Feasibility. The Recon Phase concluded with:

- A certified 905(b) report, which was received in April 2005
- A Letter of Intent from local sponsor (LOI), which was done in January 2005
- The development of the Project Management Plan (PMP)
- The Feasibility Cost Share Agreement (FCSA)

The PMP was the document that provided the structure and schedule of the Feasibility Phase. The JPA Management Team received a first draft of the PMP in July 2005, then reviewed and replied to the COE team. The next draft will be presented to the JPA on August 8, 2005. Negotiations of the tasks, costs and responsibilities within the PMP will continue with the COE through August 2005.

The general components of the PMP included a list of tasks, costs estimates, public information involvement, product review standards, and coordination and communication with the master schedule, which would all be completed within the PMP. For instance, the tasks were things like geotechnical studies, hydrology and hydraulics, mapping, and cultural and biological resources. Ms. D’Agosta encouraged the Board get with their Public Works Department staff to talk about the pathways each would take with those tasks.

Ms. D’Agosta indicated there were a number of things that were not part of the PMP, but the JPA needed to complete as an Agency. They included a Three-Party Sub-Agreement between the JPA, the San Mateo County Flood Control District (SMCFCD), and the Santa Clara Valley Water District (SCVWD). Both the SMCFCD and the SCVWD have committed \$1.5 million each (\$3 million total) to fund the Feasibility Phase of the project. The Agreement was needed so the JPA

could structure how the funding is handled, and it needed to be in place prior to signing the FCSA.

The Member Participation Agreement (MPA) was another sub-agreement that was required, but was not as time sensitive as the Three-Party Agreement and did not have to be signed before the FCSA. More details on both agreements would be discussed on August 8th. The schedule of the JPA Board and Management Team proposed bringing together the legal counsels of all the member agencies to convene and review all agreements.

Ms. D'Agosta asked the Board and staff to: 1) Reserve August 8, 2005, for a Special Study Session; 2) Review with staff the agreements and tasks; 3) Be able to accept the PMP and FCSA in September/October; 4) Assist with scheduling special meetings with legal counsel and city councils; and 5) Approve, support and participate in the information dissemination process over the next two months.

Ms. D'Agosta pointed out key meeting dates between July and September. There is a special Study Session scheduled for August 8, 2005, a joint Study Session with city councils the latter part of August, and the JPA's annual meeting was scheduled for September 22, 2005. It was hoped the FCSA would be ready to sign at that time, but could be extended to early October.

The Feasibility Cost Share Agreement outlined how the various tasks of the Feasibility Phase were funded. Negotiations between the JPA and COE would determine which partner was responsible for each task. Local contributions can be done in the form cash to the COE, payment to consultants, or contribution of staff time or services. The goal was to have the FCSA signed by the end of September or early October to coincide with the signing of the President's federal budget. A request has been submitted to Congress for \$300,000 in funding for the project within the COE budget of FY 2006. A signed Feasibility Cost Share Agreement would further demonstrate the local sponsor's readiness.

Ms. D'Agosta reviewed the Feasibility Phase and how the Board would proceed through that. It required a FCSA between the JPA and the COE, and was a 50-50 cost share split between the two parties. Two county member agencies of the JPA have agreed to fund this phase up to \$1.5 million each for a total sponsor share of \$3 million. The current estimate in the PMP for the Feasibility Phase was \$4 million. It was a three to four year process, which depended primarily on the annual Congressional Appropriations to COE. Staff had been advised of situations where they might not get the funding request. The goal of the Feasibility Phase was to examine all the alternatives for the project and end with a locally accepted preferred plan. Once there was a locally accepted preferred plan the next step was to sign the design agreement and move on.

Director Mossar asked when the Board would see the PMP.

Ms. D'Agosta said it was currently an internal document only and is being reviewed by staff.

Director Mossar said there was a missing step. She could not vote to authorize the Chairperson to sign the agreement until her board, the City Council, authorized her to do so. She said the study session was important, but it was not; however, a form for those bodies to take action. How would the Board get their colleagues to understand where the JPA was, how it got there, and where it was going.

Ms. D'Agosta said after August 8th, staff would have the second version of the Draft PMP to review, which would need to be returned to the COE between August 22-26, 2005. She did not know whether it needed to go back to all the councils or just to the two funding councils.

Mr. Greg Stepanicich, JPA Legal Counsel said for any type of project, each member agency's board had to approve participation and give direction.

Chairperson Zlotnick said the funding would only be coming from two agencies.

Mr. Stepanicich said that was correct although the contract and legally the obligation, was on the JPA.

Ms. D'Agosta said originally her understanding was the Board had to go back to Councils if there was an expenditure on part of the Board or Council. The reason for sub-agreements was to support the document and in her estimation, the Board was pushing to have the FCSA signed to demonstrate local sponsor willingness. Local sponsor was typically one or two entities, maybe three. Here there were seven agencies. Maybe something other than signing of the FCSA could be done to signify the readiness of the local sponsor.

Director Mossar asked whether it was possible for the JPA Board on September 22nd to make a recommendation to the governing bodies of our member agencies that the agreement be signed and then be able to report to the various officials.

Mr. Stepanicich said that was fine.

Director Mossar said it was also a way to take it to our governing bodies as a recommendation from the JPA. Otherwise it would come as a recommendation from staff, which was a funny place for it to come from.

Ms. D'Agosta said it would also give the JPA an opportunity to have reviewed it with the legal counsels as well.

Chairperson Zlotnick asked if the Member Participation Agreements was the same as the sub-agreements.

Mr. Stepanicich said the MPA would come after the PMP was finalized.

Chairperson Zlotnick clarified there was a separate three-party financing agreement

Mr. Stepanicich said that was correct.

Chairperson Zlotnick said from the presentation it sounded as if some discussions had begun on the three-party agreement or was it just between Ms. D'Agosta and Mr. Stepanicich.

Ms. D'Agosta said she had discussions with Mr. Stepanicich about what was required. The management team level has been asked to come up with models since the program changed in December 2004, when the team went straight to the GI project.

Chairperson Zlotnick commented on taking the information back to the member agencies. He questioned whether the agreement would be voluntary in the sense that if there was a commitment to the COE, would the agreements amongst the individual entities be voluntary or not; however, the JPA was the local sponsor.

Ms. D'Agosta said all the details had not been worked out. It was limited to agreeing to perform a task in the PMP, but by structure of the JPA if something were to happen with one of the funding agencies, and they were not able to fulfill the requirements for the FCSA, the JPA would be responsible.

Chairperson Zlotnick said that was why it was so important the JPA committed the \$3 million up front. He asked if an appropriations request made for \$300,000 was the 2006-07 federal budget.

Ms. D'Agosta said the COE's fiscal year worked differently than what most everyone was accustomed to in terms of their appropriations.

Chairperson Zlotnick clarified that whatever the COE was working on right now on behalf of the JPA was being paid for by the previous year's appropriations.

Ms. D'Agosta said that was correct.

Chairperson Zlotnick asked if staff was confident they would not run out of resources before the end of their fiscal year in October, and whether the current request for \$300,000 would be spent in October 2005.

Ms. D'Agosta said she was told it would likely come in January 2006. The budget would be signed on October 1st, but they do not get it for two to three months.

Chairperson Zlotnick asked if the \$300,000 was for the 2005-06 budget.

Ms. D'Agosta said it was called the 2006 budget, but it started in October 2005.

Chairperson Zlotnick said the \$300,000 would be the first installment of federal money towards the FCSA of approximately \$2 million.

Ms. D'Agosta said that was correct.

Chairperson Zlotnick asked whether the notion of asking for X amount of dollars, getting Y, and ending up with Z had to do with reprogramming where money was shuffled around.

Ms. D'Agosta said that had not happened in the Recon Phase and did not know if that changed in feasibility and beyond.

Beau Goldie, Santa Clara Valley Water District said the COE was changing their ability to do reprogramming. It would be a lot more stringent in the future than it had been in the past. The likelihood of them being able to reprogram money and get it back once it had been programmed out, would probably not happen.

Chairperson Zlotnick asked why the goal was to have the FCSA signed to coincide with the signing of the President's budget.

Ms. D'Agosta said the signing of the President's budget was not a real deadline. It had been advised from a district lobbyist as a goal to set, and a demonstration of the local sponsor's readiness. She said if the JPA was ready on September 22nd to have a Board recommendation to City Council's that would go forward in a letter and phone calls as a sign of "readiness."

Director Mossar said that would demonstrate the local sponsor's readiness.

Chairperson Zlotnick felt it would be useful to have an understanding of what the agencies had done that was applicable and would save time and money. [toward PMP]

Ms. D'Agosta said the first draft of the PMP had been reviewed by the Management Team and each member had been asked to go back and look at that and come forward with what it was they could do. Anything that had been done in the past could not receive credit.

Chairperson Zlotnick said he was not referring to money credit. It did not have to be done as part of the task, but would shorten time of doing studies.

Ms. D'Agosta said that was correct. It was all under way in negotiations with the PMP now. The next draft received between August 8th and 22nd was when the member agencies needed to identify previous work and willingness to take on new tasks.

Chairperson Zlotnick said it would be nice after going through the analysis to say instead of being a three to four year process, it would be a two to three year process, based on previous work, all of it being subject to what appropriation levels they could get.

Ms. D'Agosta said COE staff was in touch with SCVWD staff that did the hydraulic model, and the management team was trying to put them in touch with the cultural research people at Stanford to really understand what that level of research was.

Chairperson Zlotnick said he did not want to lose that. It was an important message for the community to know that the work the members had been doing had been of value.

Director Mossar said staff member Glenn Roberts did some thinking about scheduling relative to the different boards and councils, and would like to have the recommendation from the JPA Board brought to the member agencies for approval at a meeting in early October.

Ms. D'Agosta said she would need to call upon some of the Board members to get that on agendas.

Director Duboc asked whether a Letter of Intent signed by the Board would be available to present to the councils.

Chairperson Zlotnick said it would be a recommendation to sign the FCSA

Director Duboc asked if that would take place at the next meeting.

Ms. D'Agosta said it would be at the meeting of September 22nd.

Chairperson Zlotnick said he shared Director Mossar's concern that the sooner the Board could get copies of the PMP, the better it would be to work with the member agencies.

Director Mossar said she could not imagine taking action on something she did not fully understand, and when taken to the member agencies they would ask what's going on.

Chairperson Zlotnick asked if made sense to schedule a tentative study session prior to September 22nd.

Ms. D'Agosta said she was not certain how that would work in terms of the COE document not being made public.

Chairperson Zlotnick asked when the PMP would become a public document.

Director Mossar said the Board could not sign the FCSA if the PMP was not publicly vetted.

Ms. D'Agosta said the PMP and FCSA were partnered documents. The COE could finalize the PMP and have it back to the Board the last week of August. She has asked for clarification on whether to document must be approved before publicly released.

Chairperson Zlotnick said it would come to the Board, and then a study session scheduled the first week in September.

Director Mossar said the three City Council study session were slated for September 15th. At that study session the contents of the PMP could be presented. As a Board Member, she did not want to find out at a study session with her colleagues what was in the PMP.

Ms. D'Agosta said the member agencies staff had the first draft of the PMP and was reviewing it. The document could be reviewed with staff or herself. It just could not be done publicly.

Director Gordon said the JPA Board did not operate in secret. As a public body the timeline had to account for the fact the Board needed to see and have an opportunity to review the final public document.

Director Mossar said there would be plenty of public comment, and the Board should and would be interested in hearing from them.

Chairperson Zlotnick said he was concerned about the three City Council study session.

Director Mossar said that was a concept that was put forward.

Chairperson Zlotnick said the JPA Board should schedule a study session for the 1st or 2nd week in September.

Director Mossar clarified the JPA Board would hold a study session, followed by its regular meeting where a recommendation would be made and presented with materials/PMP at a three City Council study session, and then the individual member agencies vote on approving that recommendation.

Director Gordon suggested scheduling the all council study session the week of September 26th. The Board would then come back and vote at the October meeting.

Ms. D'Agosta said in late August the Board would receive the final document from the COE. A study session would be scheduled in early September, and on the 22nd the JPA would make a recommendation based on the document. A three City Council study session would be scheduled the last week in September or in early October.

Chairperson Zlotnick said he did not understand why the study session could not be held two days before the JPA meeting.

Mr. Stepanicich said it could be done with a sufficient description for Brown Act purposes on the agenda.

Director Abrica clarified it would be the first three City Council study session of the JPA.

Director Mossar said agendizing a meeting for five agencies seemed impossible; however, getting three City Councils together seemed possible and worth pursuing. They could hear the same information and each others questions. At that meeting,

every board member of the SCVWD and the appropriate County board would be invited to attend.

Director Abrica clarified that all member Councils/Boards would be invited.

Director Mossar said yes, but was agendized as a meeting of the City Councils of Menlo Park, Palo Alto, and East Palo Alto.

Director Duboc asked where the tidal flooding fit in.

Ms. D'Agosta said it would be addressed under Board Matters.

Art Kraemer, Palo Alto resident asked whether the public would have an opportunity to review the PMP document.

Chairperson Zlotnick said once it became public it would be posted on the website.

Ms. D'Agosta reminded that the PMP had been described to staff as a living document that would be modified over the next three to four years.

RECONVENE SPECIAL MEETING

Chairperson Zlotnick reconvened the meeting at 6:59 p.m.

- 8. BOARD AND ASSOCIATE MEMBER REPORTS** - *Agendized reports from Board and/or Associate Members requesting Board action.*
None

- 9. BOARD AND ASSOCIATE MEMBER MATTERS** - *Non-agendized comments, requests, or announcements by Board and/or Associate members, no action may be taken.*

Ms. D'Agosta said Stanford had begun to participate in the management team meetings, which was very helpful.

Pam Sturner, Watershed Council talked about the newly formed Stream Keeper Training, which was a volunteer creek monitoring group that were trained to spot pollution, blockages and erosion, as well as wildlife on the creek.

Ms. D'Agosta said at the May 26, 2005 meeting, the JPA Board directed her to contact Redwood City and see if they were interested in looking at their tidal issues in the project given the flood plan map. She met with a number of City staff, who took the issue back to their city manager and council representative, who determined not to participate in the JPA's project.

Director Mossar said that made clear the project's northern boundary.

Chairperson Zlotnick asked staff to do a write up explaining what was asked of Redwood City, how they responded, and any implications for it.

Director Duboc asked whether the JPA would keep in communication with Redwood City down the road, as people sometimes changed their mind.

Ms. D'Agosta said the San Mateo County Flood Control District worked with Redwood City on a regular basis and that staff was in touch with them. She would include them on her notification list of projects.

Chairperson Zlotnick suggested one of the reasons for the write up was so it could be shared with legislative representatives for the area.

10. ADJOURNMENT

Chairperson Zlotnick adjourned the meeting at 7:02 p.m.