

Kensington Path Committee Draft Findings for Review at 9/22/11 committee meeting

Index Number	Project Critical Success Factor	Committee Finds a/o 9/1/11	Committee Final Findings (Consensus) ¹	Action Items	Comments
1	<p>What charter changes, if any, are required for the KPPCSD to acquire additional land? The district has broad authority.</p>	<p><i>Government Code §61060 A district shall have and may exercise all rights and powers... ..(d) To acquire any real or personal property within or outside the district, by contract or otherwise, to hold, manage, occupy, dispose of, convey, and encumber the property, and to create a leasehold interest in the property for the benefit of the district....</i></p>	<p><u>On 6/1/11 Hanson Bridgett (CSD Council) provided a legal opinion to question # 1, in which they indicate "while it is not prohibited from the district to acquire the path real estate" the district may be open to legal challenge if they do not seek a modification of their authority to do so. They go on to say that ownership of the paths in their opinion does not specifically come under parks and recreation as defined in the district charter. The process to modify that charter would be to receive authority to do so from LAFCO</u></p>	<p><u>Secure LAFCO consent prior to public comment phase to remove all possible restraints.</u></p>	<p><u>In addition to the pending clarification of the Hanson Bridgett opinion on ownership. They have also been asked to comment on the legal liability aspects of acquiring the paths from a perspective of risk and exposure.</u></p>
2	<p>What uses can KPPCSD acquired land be put to?</p>	<p>The KPPCSD has the same powers as other parks agencies such as the EBRPD:</p> <p><i>Government Code §61060 ...(e) Acquire, construct, improve, maintain, and operate recreation facilities, including, but not limited to,</i></p>	<p><u>Adopt As presented</u></p>		

Deleted: See the attached letter from district counsel and the statute:

¹ The committee goal was to achieve consensus on each critical success factor wherever possible.

		<p><i>parks and open space, in the same manner as a recreation and park district formed pursuant to the Recreation and Park District Law, Chapter 4.</i></p> <p><i>Recreation Code §5780.1 "Recreation" means any voluntary activity which contributes to the education, entertainment, or cultural, mental, moral, or physical development of the individual, group, or community that attends, observes, or participates.</i></p>			
3	<p>What rules can KPPCSD set for use of acquired land?</p>	<p><i>Recreation Code § 5786.1 (j) To adopt and enforce rules and regulations for the administration, operation, use, and maintenance of the recreation facilities, programs, and services listed...</i></p> <p>Such power includes the ability to close the paths, a power the district presently does not hold.</p>	<p><u>Adopted as presented</u></p>		
4	<p>How would KPPCSD's insurance rates change with acquisition of path parcels?</p>	<p>The final answer to that question will come clear when a decision is made what land will be entered into the inventory. The district is insured by SDRMA which has issued a statement estimating the cost</p>	<p><u>Adopt as presented with statement update that there will be a need to identify what future increases the district might expect due to general rising cost and or claims against the property.</u></p>		

		<p>to be very minimal if any increase is merited at all.</p> <p>Wendy Tucker is the SDRMA Representative. Feels SDRMA will not insure the paths if CSD does not own them.</p> <p>Indicates that adding the new parcels as paths would not have an effect on our liability cost of existing KP Recreation space.</p>			
5	What taxes would apply?	<p>The path land is presently not taxed at all. If the district acquires ownership, our best information is that the tax on assessed value would not apply. Certain minor parcel taxes, such as the Landscape & Lighting District may apply.</p>	<p><u>It was a greed that the authority here is the tax assessor and that we need to go back and ask what events could trigger a re-assessment. Also would a transfer of property to KPPCSD result in a larger tax assessment</u></p>	<p><u>Contact assessor to determine how tax assessment changes are triggered.</u></p>	
6	What might it cost to complete acquisition?	<p><u>We believe the minimum cost approach is for the County to deed the land over to the service district using County powers..</u> The County has indicated a willingness to work with the KPPCSD on the transfer. It is difficult for the sub-committee to estimate exact acquisition costs as the amount of legal staff time</p>		<p><u>Need to get transfer cost estimate</u></p>	

Deleted: The cost of acquisition could be minimal should the County decide to acquire the land under County powers and transfer it free and clear to the district

		required will vary depending on the exact nature of the transfer. ^{2 3}			
7.	What is community sentiment on the paths, and to what extent does it extend to shifting budget or increased assessment?	The Paths Sub-Committee suggests that a Town Hall Meeting on the Topic of Kensington Paths be held to help formally gauge community support for spending beyond the base amount to hold the paths.	<u>Adopt approved</u>	<u>Determine logistics for community input meeting</u>	
8.	What conditions exist on the ground for each path?	See Appendix.	<u>Adopt</u>	<u>See appendix (Inventory of each path matrix)</u>	
9.	<u>What are the most significant known issues on the paths</u>	Of the 10 primary pathways, 7 are in a condition that appears satisfactory to the public. ⁴ The paths with special conditions are: ● Path #8 has two notable problems: a failed drainage pipe, and a tree which re-routes path users onto the private steps of #59 Kenyon. ● Path #7 has significant vegetation growth and has been partially fenced by a resident to form a dog run. The path			

Deleted: As a separate issue, beyond the 10 studied paths there are a dozen additional designated path¶ parcels in Kensington which dead end or are otherwise undevelopable. It is possible that the¶ district could recapture some costs by selling this land or otherwise returning it to taxable status.

Deleted: The committee has heard from individuals that do not wish professional maintenance¶ of the paths, preferring the community spirit based effort to date. The committee has heard¶ from residents whose support of path improvements is contingent on leaving the pathways¶ largely unimproved (e.g. no concrete walkways or steps).

Deleted: What known costs or deferred maintenance exist on the path system?

Formatted: Font: Not Bold

² Legal cost of LAFCO intervention or position

³ As a separate issue, beyond the 10 studied paths there are a dozen additional designated path parcels in Kensington which dead end or are otherwise undevelopable.

⁴ Paths 1,7,8,10 could benefit from installing steps. Specifically required for path# 8

Formatted: Font: 10 pt

Formatted: Normal, Don't adjust space between Latin and Asian text, Don't adjust space between Asian text and numbers

		<p>right of way and neighboring properties are infested by bamboo, a plant which is difficult to remove, and can buckle or crack concrete.</p> <ul style="list-style-type: none"> ● Path #10 is blocked by a fence, and has a steep drop off. This <u>is estimated to</u> be the most expensive path to develop. ● Professional inspection is required on path #6, to determine if drainage pipe exists. <p>Such inspection would cost about \$500, unless a pro-bono donation is made.</p>			
10.	<u>Would any County or Federal requirements mandate a construction project be undertaken on newly acquired land</u>	<p>No, the CSD could choose to hold the land in an unimproved state. The parks code only specifies the land be used for a “lawful purpose” Because the paths provide exclusive access only to private homes, no Fed access requirements apply. County public works has indicated they have no standards that apply.</p>	<u>Requires Com Review</u>		<u>Abeyed at last meeting for re-write from nesbit</u>
11.	What laws or standards apply to construction of pathways?	<p><u>With recreational trails the best practice is to provide a variety of challenge levels within a park system. Rough dirt trails, wooden steps, pavers and concrete steps</u></p>	<u>Requires Com Review</u>		

Deleted: would

Deleted: What construction requirements come with ownership (County, State or Federal)?

Deleted: There are none. Nothing compels an owner to undertake new construction

		<u>are all legitimate and recognized trail types. There appears to be no legal barrier to building (or not building) the type of improvements anticipated on each trail site.</u>			
12.	<u>If the KPPCSD acquires a path parcel, what maintenance requirements apply?</u>	<u>What is defined as a hazard depends on the type of improvement to the path. The more developed a path the higher the expectation level. There does not appear to be no one single construction or maintenance standard that protects against a liability claim.. For certain the service district would become responsible for clearing of fire hazards.</u>	<u>Requires Com Review</u>		
13.	How do neighboring governmental owners hold or treat paths?	<p>How do neighboring governmental owners hold or treat paths?</p> <ul style="list-style-type: none"> ● City of Oakland owns 450 paths. The city reconstructs paths that have become hazardous, but does not aggressively develop unimproved paths. ● City of Berkeley owns 140 paths. The city essentially outsources path development to a volunteer group. That said, the paths prominently feature in the City's 	<u>Requires Com Review</u>		

Deleted: County Public Works has indicated they have no applicable standards: attempts are underway¶ to get that statement in writing.¶

¶

The practice at other park holding agencies is to provide a "variety" of trail types within the¶ parks system. Meaning some steep trails, some stairs, some wide paved pathways. Attached¶ is a matrix from the CCity of Portland showing a matrix of trail types used there. The district can¶ protect itself, and meet community expectations, by following best practices used elsewhere.

Deleted: What maintenance requirements come with ownership?

Deleted: The owner of the parcel will be subject to liability actions, and thus will wish to ensure unreasonable hazards do not develop. ¶

¶

What is reasonable or unreasonable depends in part on the type of improvement, with recreational trails having a low duty of care and significant protection against liability suits.¶

¶

Kensington's paths are in very similar condition to those in Oakland and Berkeley: the district¶ can look to those cities for precedent. The rough condition of paths in those cities has proven to¶ be acceptable.

		<p>pedestrian plan.</p> <p>The city sends out Americorps crews each summer for path work, and on occasion city crews help also. The city sponsors grant funding, and occasionally donates money to path development. The city master plan anticipates spending \$11,000 per year over the next 20 years to complete new construction on the path system. New paths are built with wooden stairs, with small concrete sections where the grade is steep.</p> <ul style="list-style-type: none">● City of El Cerrito has ignored their 40 or so paths. A volunteer group is engaging with the city on a change to that practice.● Unincorporated East Richmond Heights has paths in the similar condition to those in Kensington.● City of Albany maintains their paths with city funds.● City of Mill Valley has a strong path program, integrated into public safety goals for recreation,			
--	--	---	--	--	--

		<p>transportation, and hillside evacuation. The City has applied for and won significant grants to construct first quality stairways. A volunteer group has worked hard on easement and land use issues.</p> <ul style="list-style-type: none"> • The Los Angeles area has hundreds of paths in multiple jurisdictions. In the central City of Los Angeles the city takes the position that paths are like sidewalks, <i>and must be maintained by the adjacent owners.</i> <p>District ownership of the paths would make liability issues unambiguous: the district would be responsible, and homeowners would be protected.</p>			
14.	<p>What unexpected costs have neighboring governments incurred with paths?</p>	<p>A survey of public records Oakland, Berkeley, El Cerrito and Kensington revealed no significant path related liability events for any owning agency, and no records of significant crime events due to paths. A failed sewer in Oakland</p>	<p><u>Requires Com Review</u></p>		

		<p>resulted in liability to the city, as did a city crew that allegedly broke a homeowner's window during path maintenance. The City of Berkeley invoked recreational trails immunity once in the recorded history, but that action was for an incident at the City Marina, not a pathway.</p> <p>The public documents related to the above searches are available for inspection.</p>			
15.					

What funding sources are applicable to paths?

1. East Bay Regional Parks District Measure WW:

The district has been preallocated \$258,358 from this source. Eligible categories are:

- * Acquisition (including Plans, Appraisal/Title/Escrow Fees, Legal Fees & Permits)
- * Renovation of recreational facilities

2. Diablo Fire Safe Council

Provides block grants of \$5000 to facilitate fuel hazard reduction.

This is the only mentioned grant which will fund a project on non-public land.

3. Safe Routes to School (SR2S) / Safe Routes to Transit (SR2T)

These programs are meant to improve the safety of walking and cycling to school and transit, through identification of existing and new routes and construction of pedestrian and bicycle safety and traffic calming projects.

4. Transportation Enhancement Program

The Transportation Enhancement Program provides funds for the construction of

projects, beyond the scope of typical transportation projects, which enhance the transportation system. Transportation Enhancement Projects may include landscaping, bicycle facilities and streetscape improvements.

5. Regional Bicycle and Pedestrian Program (RBPP)

The RBPP was created in 2003 as part of the long range Transportation 2030 Plan developed by the Bay Area Metropolitan Transportation Commission. The program — currently funded with Congestion Mitigation and Air Quality funds — funds regionally significant pedestrian and bicycle projects, and bicycle and pedestrian projects serving schools or transit.

6. Transportation, Community and System Preservation Program

The Transportation, Community and System Preservation (TCSP) Program provides federal funding for transit oriented development, traffic calming and other projects that improve the efficiency of the transportation system, reduce the impact on the environment, and provide efficient access to jobs, services and trade centers. The program is intended to provide communities with the resources to explore the integration of their transportation system with community preservation and environmental activities. TCSP Program funds require a 20% match.

7. Recreational Trails Program

The Recreational Trails Program provides funds to states to develop and maintain recreational trails and trail-related facilities for both non-motorized and motorized recreational trail uses. Examples of trail uses include hiking, bicycling, in-line skating, equestrian use, and other non-motorized as well as motorized uses. Purchase and lease of trail construction and maintenance equipment; Construction of new trails including unpaved trails; Acquisition of easements or property for trails; State administrative costs related to this program; Operation of educational programs to promote safety...

The district can also raise money through extensions of existing assessments or introduction of a new paths related assessment. None of the funding above is eligible given the current ownership limbo.

If the KPPCSD Board decides not to adopt the paths, what are the likely results?

1. Seven to Ten path usage and maintenance would likely see no change beyond the volunteers work performed over the past year to many of obstructions, post new signage, and repair elevation transitions.
2. Without the Kensington service district sponsorship financial backing and grant funding may still become a problem.

What issues are not at stake in the KPPCSD decision?

8 of the 10 paths segments are open and in regular use, and due to the nature of public easement law cannot be closed.

Thus whatever negative issues might come up on paths (e.g. fire, theft, falls, improper tree maintenance, police burden) can happen now. The difference is who might be liable (the district, adjoining homeowners, or "nobody").

Attachments

1. Path map
2. Spreadsheet of current path conditions
3. KPPCSD charter documents
4. Excerpt from Portland Oregon Trails Guide
5. Letter from attorney on LAFO recommendation
6. Email from Special Districts Risks Management Agency SDRMA
7. Legal description of the Yale/Cambridge pathway from Moran Engineering

8. 2007 Contra Costa County path costs estimate
9. List of ownership scenarios investigated
10. Path support letters.