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Memorandum by City Manager's Office

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Joseph Horwedel

SUBJECT: SEE BELOW

DATE: July 31, 2007

Approved

Date

8/1/07

**SUBJECT: HIGHLIGHTS OF COMMENTS RECEIVED ON COYOTE VALLEY
SPECIFIC PLAN (CVSP) DRAFT ENVIRONMENTAL IMPACT REPORT
(DEIR)**

INFORMATION

Executive Summary

This Information Memorandum summarizes the status of the Coyote Valley Specific Plan Draft Environmental Report (CVSP DEIR) and informs the City Council and public of the Planning, Building and Code Enforcement Director's determination to revise and recirculate the DEIR. This memo highlights some of the key issues as raised by the public in their comments on the DEIR, but is not a response to these issues.

CVSP Overview

The CVSP DEIR was prepared by the City in conformance with state law [California Environmental Quality Act (CEQA)]. The purpose of the DEIR is to inform decision makers and the general public of the potential environmental impacts of the CVSP. CVSP proposes the urban development of 25,000 residential uses and 50,000 new driving industry jobs on approximately 3,400 acres in northern and mid-Coyote Valley. The CVSP would create a new pedestrian and transit oriented mixed-use community with a projected population of 70,000 to 80,000 people at build out. The project includes all of the necessary public infrastructure (streets, sewers, etc.) and services (parks, schools, etc.). The project also includes a proposed strategy to implement the South Coyote Greenbelt on an area of approximately 3,600 acres that is intended to be a permanent non-urban buffer between San Jose and Morgan Hill.

Extended Comment Period Granted

The CVSP DEIR public review and comment period ended on June 29, 2007. The DEIR review period was originally scheduled for 60 days, which is beyond the 45-day review period required by CEQA. In response to requests from the County of Santa Clara and others, the City extended

the review period even longer to 90 days. The extension was communicated within the first two weeks of the review period.

Commenters - Overview

The City received over 1300 pages of comments and attachments from about 80 different agencies, organizations or individuals as listed on Attachment 1. Many of the commenters requested significant additional analysis, information, or changes to the plan, raised substantive issues, and/or provided new information and studies that were not available when the DEIR was being prepared. For example, some comments are supplemented with new research data, such as the biological data on wildlife connectivity provided by biologists and De Anza College students. All of the comments received have been posted on the City's CVSP web site in PDF format (http://www.sanjoseca.gov/coyotevalley/DEIR_Comments.htm).

CEQA requires the City as the "Lead Agency" to evaluate comments on environmental issues received from persons who reviewed the DEIR. The City is required to recirculate a DEIR when significant new information, such as changes in the project or environmental setting or additional material data or other information, is added to the DEIR. New information is considered significant if it changes the DEIR in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect or a feasible way to mitigate or avoid such an effect, including a feasible alternative.

Not surprisingly for a project of this magnitude, the CVSP DEIR generated an extraordinary level of interest, as suggested by both the amount of comments received and the apparent level of effort expended in preparing those comments. There were several substantial sets of comments submitted, including a joint letter from the United States Fish & Wildlife Service & California Department of Fish & Game (65 pages), Guadalupe-Coyote Resource Conservation District (54 pages), Greenbelt Alliance and their attorneys (143 pages), Sierra Club (65 pages), and Coyote Housing Group and City of Salinas (40 pages each). However, the single biggest package was over 450 pages of comments, including attachments, from the County of Santa Clara. The County hired various consulting experts to prepare technical critiques of the DEIR, including TYLin (traffic), EMC Planning (biology), and Balanced Hydrologics (hydrology).

Some comments were submitted by environmental law firms retained by various groups. As a new first for DEIR comments in this jurisdiction, a letter was received from the California Attorney General's office focusing on global climate change.

Prior to circulation of the DEIR, the City convened regular monthly meetings with many of the federal and state regulatory permitting agencies that submitted comments. It is anticipated that CVSP will require federal wetlands permits from the Army Corps of Engineers, and therefore, a federal Environmental Impact Statement (EIS) will be needed in addition to the EIR. It is possible procedurally to combine them in a joint document. City staff and consultants also spent a significant amount of time coordinating with the Santa Clara Valley Water District (SCVWD) on water issues, particularly the water supply analysis.

Major Themes/Highlights of Comments

The primary purpose of an EIR is to provide public agencies and the public with detailed information about the effects that a proposed project is likely to have on the environment, identify possible ways to minimize the significant effects, and describe reasonable alternatives to the project. The CVSP DEIR fulfilled the intent of the CEQA/EIR process by providing detailed environmental information and facilitating public discourse and participation in the CVSP process. Staff and consultants have completed an initial review and assessment of the comments.

The amount, tone, extent and depth of the comments received are unprecedented in the experience of staff and consultants. Many of the comments indicate a lack of clarity about the CVSP project description in addition to providing comments about environmental impacts. The comments provide the City with an opportunity to clarify the CVSP as a project and identify modifications that may eliminate or reduce environmental impacts and avoid or lessen the need for mitigation measures.

Other than a few animal species not assessed, there were no comments that identified environmental issues that were simply not addressed in the DEIR. Most of the comments focused on disagreement with the analytical approach or methodology, took issue with impact conclusions or suggested there were missing or incomplete mitigation measures. These comments may generate new studies or clarifications of the previous analyses.

In addition, as stated in the DEIR, consultants were granted access to approximately 60 percent of the Development Area to complete various field tests and surveys, while aerial photo interpretation or drive-by or windshield surveys were completed for the inaccessible properties. Many commenters stated that analyses in numerous areas (e.g., cultural, biological, hazardous materials) are inadequate due to the acknowledgment that approximately 40 percent of the Development Area acreage was not fully accessible during the preparation of the technical studies.

A varying number of comments were submitted on virtually all of the DEIR potential impact categories. The following discussion provides highlights of the most significant comments received on select technical areas.

Project Description/Phasing

Many comments on the DEIR relate to the plan itself. Sections 1.0 and 2.0 of the DEIR describe the uses of the EIR, the level of environmental review provided by the document, and the project description. The City received several comments related to both sections. The comments indicated that there was confusion over what activities are covered at a “program level” opposed to what activities are covered at a “project level.” There were also significant comments requesting additional information in the project description, including how the development of CVSP would be phased over time. This, in turn, generated numerous questions regarding the extent of future environmental analyses that must be undertaken to implement the plan.

Further concerns were expressed regarding the potential impacts resulting from the seemingly inconsistent multiple uses of the Coyote Greenbelt as presented in the DEIR project description

(Section 2.1.12). Particularly, commenters did not understand the function of the Greenbelt, and stated that the Greenbelt could not support multiple uses such as agriculture and biological habitat mitigation if, as acknowledged in the DEIR, the Greenbelt is currently the most developed part of Coyote Valley.

The comments pertaining to the project description present an opportunity to revise, clarify, and complete numerous aspects related to the plan itself. The level of environmental review covered in the document, as well as the many aspects of the plan itself, including financing, phasing, and the Greenbelt Strategy, can be revised and/or addressed in the revised and recirculated DEIR.

Biology

The most significant comments were made on the biological section of the DEIR, both in length and substance. Numerous comments critiqued virtually every aspect of the biological analyses, including nitrogen deposition, wildlife connectivity, riparian corridors, and mitigation ratios for special status plant and animal species. Furthermore, many of the comments were accompanied by data collected in the area and/or references to various studies, all of which will be carefully reviewed and evaluated. As with all professional studies, the possibility of disagreement among experts will also be considered.

Nitrogen Deposition. The DEIR analyzes the potential indirect impacts from increased nitrogen deposition on serpentine grassland habitat and the Bay checkerspot butterfly, which is a key biological issue. Serpentine grassland is considered a very sensitive biological community and most of the foothills surrounding CVSP are designated as Critical Habitat. The methods and assumptions used for the nitrogen deposition analysis in the DEIR were discussed with the USFWS and based on the Biological Opinions issued by the USFWS for the Coyote Valley Research Park and Metcalf Energy Center projects. The USFWS and DFG commented that the data generated by the City was not robust enough to conduct an adequate nitrogen deposition impact analysis and that the Community Multiscale Air Quality (CMAQ) modeling system, developed by the EPA should have been utilized. The USFWS recently advised the Santa Clara Valley HCP/NCCP program that they will not be requiring CMAQ modeling for the HCP/NCCP.

Wildlife Connectivity. In addition, various entities found the analysis of terrestrial wildlife movement corridors in Section 4.6.2.4 of the DEIR to be incomplete and inaccurate. For instance, through biological technical studies the DEIR found that Highway 101 constitutes a significant barrier to wildlife movement in Coyote Valley. The DeAnza Wildlife Corridor Stewardship Team disputed the DEIR's findings with their own data using formal tracking techniques, digital field cameras located at Highway 101 culverts, and observational data from various agencies.

Special Status Species. The DEIR also includes impact analysis and mitigation for special status plant and animal species based on the technical analysis completed for the document. The USFWS and the DFG found the analysis and mitigation for almost all plant and animal species to be inadequate. Their criticism ranged from lack of information and data to inappropriate and/or inadequate mitigation.

Riparian Corridor Setback. The DEIR states in Section 3.1.3.18 that the CVSP would be developed consistent with the City's Riparian Corridor Policy Study. As such, all-urban development proposed as part of the project on the east side of Monterey Road would be constructed outside of the 100-foot riparian setback of Coyote Creek. Among other agencies, the Santa Clara County Parks and Recreation Department considered the DEIR's analysis of riparian corridor setbacks to be incomplete because they consider the Citywide setback inadequate for Coyote Creek. Local and regulatory agencies recommended a "performance-based" riparian corridor policy where setbacks would vary, sometimes beyond the City's 100-foot setback.

Traffic

A considerable number of the comments received focused on transportation and traffic. As mentioned, a lack of a phasing plan that links jobs and housing development to the completion of necessary infrastructure was of considerable concern to many of the entities that commented. Among other traffic subsections, the near term analysis, regional traffic mitigation measures, and analysis of Bailey-over-the-Hill were all criticized in the comment letters.

Phasing. The DEIR analyzed traffic impacts of full CVSP build out using the VTA's regional traffic model. Regarding the phasing of traffic infrastructure, the DEIR analyzes a partial build-out of 20,000 jobs and 10,000 housing units, but does not include a formal phasing plan. As a result, some entities commented that there is a lack of information with reference to what infrastructure would need to be in place during different phases of project implementation. For example, the law firm of Shute, Mihaly and Weinberger LLP, representing Greenbelt Alliance; states that the City cannot legally support project level approvals without identifying which transportation projects have to be in place prior to industrial development. A revised and recirculated DEIR would clarify this issue.

Near Term Analysis. The DEIR's near term traffic analysis assumed that the CVSP would build out within 3-5 years to ensure that traffic impacts and mitigations are fully disclosed and understood. Some local agencies questioned the adequacy of the analysis for the area outside of the CVSP. For example, the City of Morgan Hill commented that additional near term analysis is needed to evaluate freeway mainline and ramp operations.

Regional Traffic Mitigation Measures. Mitigation related to the near term analysis on freeway impacts on Highway 101 was also criticized by agencies in south Santa Clara County. The DEIR identifies that the project would result in significant traffic impacts on up to eight freeway segments of Highway 101. The DEIR offers mitigation by stating that a project could be required to make a fair share contribution towards Highway 101 improvements if a regional funding plan is developed in conjunction with the forthcoming VTA *South County Circulation Study*. Individual letters, as well as a joint letter from the south county agencies expressed that the mitigation measures for freeway impacts proposed in the DEIR are inadequate in that a regional funding commitment does not exist by any of the local agencies.

Bailey-over-the-Hill. The CVSP project description states that Bailey Avenue would be extended as a four-lane arterial over the Santa Teresa Hills northwesterly to connect with McKean Road and ultimately with the southern end of Almaden Expressway, as shown in the City of San Jose's 2020 General Plan Land Use/Transportation Diagram. The DEIR analyzes

the two alternative alignments at a programmatic level. The CVSP is responsible for any improvements to Bailey Avenue. Various comment letters stated that the analysis of Bailey-over-the-Hill was confusing, incomplete and/or inadequate. For example, the County of Santa Clara Roads and Airports Department stated that analysis of Bailey-over-the-Hill was flawed because the traffic study incorrectly analyzed Bailey-over-the-Hill. A revised and recirculated DEIR would clarify this issue.

Hydrology, Water Quality, and Water Supply

A significant volume of comments was received concerning various aspects of the DEIR's analysis of hydrology, water quality, and water supply. For example, Section 4.8 of the DEIR analyzes the issues of drainage, flooding, water quality, hydromodification, and groundwater. Among many comments, the Santa Clara Valley Water District (SCVWD) stated that they believe the groundwater quantity and groundwater quality analysis should be reframed. According to the SCVWD, the DEIR relies on future unplanned and unbudgeted SCVWD actions to conclude that the project will have a less than significant impact on groundwater.

Subsection 4.11.2.3, *Identification of Water Supply Sources*, analyzes and recommends a water supply master plan for the project that includes four preferred sources of water through build-out. Additionally, section 4.16 of the DEIR describes the physical impacts of using the identified water sources and mitigation measures. However, various entities contended that the analysis was incomplete. For instance, the law firm of Shute, Mihaly and Weinberger, representing Greenbelt Alliance, stated that among other flaws, the DEIR did not adequately describe baseline water conditions in Coyote Valley, nor did it fully address the environmental impact of the possible construction of an Advanced Recycled Water Treatment Facility.

Conversion of Agricultural Land

Section 4.1 of the DEIR analyzes the acreage of agricultural land in the Development Area and includes a sub-section focusing on mitigation for the loss of agricultural lands. Some entities commenting on the DEIR disagree with the methodology used for determining the acreage of prime agricultural farmland. In general, people found the DEIR's analysis of agricultural lands confusing, incomplete, and inadequate. For instance, the Local Agency Formation Commission of Santa Clara County (LAFCO) commented that the DEIR is inadequate for their purposes as a Responsible Agency because there is no "firm understanding of how the City will mitigate for the loss of agricultural resources."

Alternatives

The DEIR analyzes five alternatives: no project, two reduced scale alternatives, the Greenbelt Alliance "Getting it Right" plan, and an alternative location. A number of entities found the analysis to be insufficient for reasons ranging from disagreement with the identified environmentally superior alternative to a desire for more alternatives to be analyzed. Additionally, both Cisco Systems and Coyote Valley Research Park LLC (CVRP) commented that the DEIR failed to explore an alternative that analyzed the implementation of the CVRP project in conjunction with the CVSP, because of the vested development rights under the CVRP development agreement.

Global Warming

Global warming is a rapidly emerging subject in regards to CEQA, and as yet there is no adopted regulatory standard or threshold, or court decision that identifies when a project's greenhouse gas emissions are considered significant. The DEIR includes a section on global warming, which analyzes the topic and quantifies CVSP's contribution to global climate change. The analysis concludes that it would be speculative to determine if CVSP's impact to global climate change is significant or not significant because there are currently no numerical thresholds for such an impact. Many entities, including the California State Attorney General's office, disagreed with this conclusion. Commenters argued that the DEIR needed to reach a conclusion of significance relating to global climate change and offer mitigation for the project's impacts.

Determination to Revise and Recirculate

After considering the comments received, the Director of Planning, Building and Code Enforcement in accordance with the provisions of Title 21 of the San Jose Municipal Code (Environmental Clearance Ordinance), has determined to revise and recirculate the CVSP DEIR. A revised and recirculated DEIR provides the City with the opportunity to clarify and modify the project description, as well as address key environmental issues with additional technical studies as deemed appropriate and necessary. A fully integrated document that responds holistically to plan comments and impact comments together will be more informative and comport with CEQA more effectively than a mere question and answer response to comments format. The City is not required to provide written responses to the comments received if the entire DEIR document is revised and recirculated. The regulatory presumption is that the recirculated DEIR has been revised based on the information contained in the comments and reflects a response to those comments.

Next Steps

The next steps for recirculation of the CVSP DEIR result from the implications of the comments received. With regard to the scope of the effort, staff and consultants are currently determining the need to do additional technical analyses. Staff is scheduling meetings with some of the major commenters to better understand the implications of their comments for additional work. Staff is assessing the implications of this additional work to the project schedule, particularly for the Task Force. Staff and consultants are re-exploring the opportunities, advantages and efficiencies for preparing a joint EIR/EIS document, which could optimize coordination with the regulatory permit agencies. Lastly, it is expected that the Funding Agreement with the Coyote Housing Group would need to be amended to provide for the additional financial resources necessary to complete the new work.

The first task, which is already underway, is to flesh-out the CVSP project description by clearly identifying and clarifying project components, potential plan modifications, phasing scenarios and financing mechanisms, etc. The completion of this task will allow better precision in the determination of the scope of work necessary to revise and recirculate the DEIR, such as additional technical analysis. But no matter how much additional analysis and consideration of the public comments is undertaken by the City, in all likelihood the City will still receive

comments that a revised and recirculated DEIR document is inadequate due to the large scope of the effort and the varying interests involved. However, the City will be in a better position to defend challenges to the CVSP EIR if there is a record of appropriate consideration of the public comments.

Regardless of the outcome of the above tasks, it is clear that the level of additional work and analyses necessary to prepare a revised DEIR will be substantial. At a minimum, extensive effort will be required to flesh-out the project description (including phasing scenarios), as well as to address issues related to the following areas: traffic, biology, water quality/hydrology, water supply, urban services, global warming, and agricultural land. This effort will have a significant effect on the current schedule, with the extent of the delay to be determined as part of the above tasks.

Coordination

The preparation of this memo was coordinated with the Office of the City Attorney.

A handwritten signature in black ink, appearing to read "Joseph Horwedel", written in a cursive style.

JOSEPH HORWEDEL, DIRECTOR
Planning, Building and Code Enforcement

ATTACHMENTS

1. List of Commenters

C: CVSP Task Force, Property Owners and Community e-mail database

ATTACHMENT 1.
 CVSP DEIR LIST OF COMMENTERS

FEDERAL & STATE AGENCIES
California Attorney General
Caltrans
California Dept. of Conservation
Regional Water Quality Control Board
California Dept. of Toxic Substances Control
Northwest Information Center
Public Utilities Commission
US Environmental Protection Agency
US Fish & Wildlife Service
California Dept. of Fish & Game
REGIONAL & LOCAL AGENCIES
Bay Area Air Quality Management District
Caltrain/Peninsula Corridor Joint Powers Board
Transportation Agency of Monterey County
South County Regional Wastewater Authority
Santa Clara Valley Water District
Santa Clara County
Santa Clara County – Local Agency Formation Commission
Santa Clara County Open Space Authority
City of Gilroy
City of Morgan Hill
Guadalupe-Coyote Resource Conservation District
Monterey Bay Air Pollution Control District
San José Park & Recreation Commission
San José Historic Landmarks Commission
VTA
San Benito County
Morgan Hill Unified School District
City of Salinas
South Valley Agencies Joint Letter
ORGANIZATIONS
Almaden Valley Community Assoc.
California Native Plant Society
Center for Biological Diversity
Committee for Green Foothills
DeAnza Wildlife Corridor Stewardship Team
Friends of Coyote Valley Greenbelt
Greenbelt Alliance #1
Greenbelt Alliance #2 (Law firm of Shute, Mihaly & Weinberger LLP)

Morgan Hill Chamber of Commerce
PAC SJ
San José Downtown Association
Santa Clara Valley Audubon Society
Save Open Space - Gilroy
Sierra Club - Loma Prieta Chapter
Silicon Valley Bicycle Coalition
Silicon Valley Land Conservancy
INDIVIDUALS & COMPANIES
Albion Environmental, Inc.
Berg & Berg
Boigon, Shanna
Bone, Ken
Boydston, Robert
Carmichael, Danielle
Carr, Brian
Caruso, Salvatore
Cisco Technology, Inc. (Law firm of Cox, Castle & Nicholson LLP)
Coyote Housing Group (Law firm of Cox, Castle & Nicholson LLP)
Coyote Valley Research Park (Law firm of Bingham McCutchen LLP)
Dahlin Group
Danielson, Russ
DeSmet, Richard
Diamond, Tanya
Edgerton, Craig
Engell, John
Erickson, Sue
Ferraro, Patrick
Foster, Thomas
Great Oaks Water Company
Hinze, Dorothy
Jigour, Verna
Klinkowski, Christine
Lucas, Libby
Matteoni, Norm
McFarlin, Joanne
Nadeau, Jack
Niederer, Christal
Owen, Edward and Helen
Phillips, Julie
Roberts, Diana
Spencer, Charles
Spencer, Linda
Union Pacific Railroad (Law firm of Steefel, Levitt & Weiss)
Waters, Michelle
Wood, Garey
Yoshioka, Glenn