

SENT TO COUNCIL: OCT 18 2007

by City Manager's Office



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Joseph Horwedel

SUBJECT: SEE BELOW

DATE: October 15, 2007

Approved

Paul Krutz

Date

10/18/07

SUBJECT: UPDATE ON SCOPE, SCHEDULE AND BUDGET FOR REVISION AND RECIRCULATION OF THE COYOTE VALLEY SPECIFIC PLAN DRAFT ENVIRONMENTAL IMPACT REPORT

INFORMATION

BACKGROUND

The Coyote Valley Specific Plan (CVSP) proposes the urban development of 25,000 residential units 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 José and Morgan Hill.

The CVSP Draft Environmental Impact Report (DEIR) was prepared by the City in conformance with state law, the California Environmental Quality Act (CEQA) and the City's Municipal Code. The purpose of the DEIR is to inform decision makers and the general public of the potential environmental impacts of the CVSP. The CVSP DEIR public comment period ended on June 29, 2007, after a 90-day review period, which was extended beyond the 45-day review period required by CEQA. On July 31, 2007, an informational memorandum from the Director of Planning, Building and Code Enforcement was sent to the City Council highlighting the comments and major themes received on the CVSP DEIR. The memo was focused on reporting the comments and did not respond to or analyze any of the comments.

The July 31, 2007 memo also informed the City Council that the Director of Planning, Building and Code Enforcement, in accordance with the provisions of Title 21 of the San José Municipal Code (Environmental Clearance Ordinance), determined to revise and recirculate the CVSP DEIR. This decision was made in consideration of the significance and depth of the comments received. A

revised and recirculated DEIR will provide the City with the opportunity to clarify and modify the project description, as well as address key environmental issues highlighted in the comments.

This memo provides the City Council with information regarding the scope of work, schedule and estimated budget necessary to revise and recirculate the CVSP DEIR. Staff is discussing the scope and funding issues with the Coyote Housing Group (CHG) because they are currently providing financing support to the entire CVSP effort. A future Council action will be required to allocate the funding to complete the work described in this memo.

ANALYSIS

Staff and consultants expected to get significant comments on the CVSP DEIR as it is a large and complex project of regional significance. The difference in this case is that the comments have resulted in the need to modify the project and its description, and to complete significant new technical analyses to adequately address the comments. This is the reason for revision and recirculation of the CVSP DEIR.

The CVSP DEIR comments have been evaluated and synthesized by staff and consultants. An initial work plan has been developed with a schedule and estimated budget to revise and recirculate the CVSP DEIR to address the comments received. Three key criteria have been utilized in the development of the scope of work:

- Legal Defensibility: This is the first and foremost consideration for the City given the high probability that a revised and recirculated DEIR will be challenged legally, no matter how far-reaching and complete the document.
- Efficiency and Cost Effectiveness: The DEIR revision effort involves reusing as much of the previous work as possible.
- Reasonable Analysis: The issues raised in the comment letters need to be addressed at a reasonable and appropriate level of analysis and detail to result in a legally defensible document. Staff is only proposing to complete the necessary analysis.

The following discussion provides a brief description of the scope of work required to adequately and appropriately address the most significant comments received in a revised and recirculated DEIR. This work is necessary to revise the DEIR to meet the criteria noted above, and most importantly from the City's perspective, to conform to CEQA and be legally defensible. A brief discussion of the draft schedule and budget follows the scope of work descriptions.

Project Description

As noted in the previous City Council memo dated July 31, 2007, many comments on the CVSP DEIR related to the plan itself and for CEQA purposes require clarification and elaboration of the

project description. Comments that have the greatest effect on the project description fall into the categories of development phasing, North Coyote Valley, and infrastructure components.

Development Phasing: Significant comments were received requesting information on how the development of the CVSP would be phased over time, including when specific infrastructure components would be necessary to support various increments of development. The original DEIR included the analysis of two phases: 20,000 jobs and 10,000 dwelling units, and full build-out of over 50,000 jobs and over 25,000 dwelling units. Commenters requested environmental analysis of additional phases to better understand the finer grain implementation of infrastructure needs and mitigation measures, including traffic mitigations outside the City of San José.

The CVSP Task Force is currently discussing phasing options, which will help define the phases for the revised EIR analysis. The addition of at least one more development phase to the CVSP will be analyzed in the revised and recirculated DEIR to determine the traffic impacts of such phases. The assignment of mitigation measures to specific development phases will be required to reduce those impacts to a less than significant level.

North Coyote Valley: Comments received on the effects to CVSP with partial or full development of the approved Coyote Valley Research Park (CVRP) require modification to the project description, and new and additional environmental analyses in the revised DEIR. The CVRP project is reasonably foreseeable in that it is fully entitled with land use permits and has a Development Agreement that secures 6.6 million square feet of campus industrial development (20,000 employees) north of Bailey Avenue. The implications of these comments are substantial and include redesign of the CVSP project description to preserve the CVRP entitlements.

The CVSP land use allocations need to be redistributed to take into account these entitlements. Although the CVSP would not preclude CVRP, the revised DEIR must analyze the extent to which development of CVRP, particularly its infrastructure would have on the feasibility of CVSP implementation and alter its environmental impacts. The potential environmental impacts of CVRP plus CVSP would likely be more significant than CVSP due to fewer internal trips within Coyote Valley. For reasons of full disclosure and legal defensibility, the revised DEIR must quantitatively analyze the full build out of CVRP plus a reallocated CVSP as a worst case scenario.

Infrastructure Components: Other comments related to the project description include requests for project level information regarding major infrastructure components of the CVSP. While project level detail is not necessary for a specific plan, staff is determining the appropriate level of detail of these elements for the revised EIR, recognizing that subsequent environmental studies will be needed prior to the construction of some of the infrastructure. For example, project level environmental analysis for Phase I infrastructure requires the same amount of detail as a Site Development Permit, including the precise location, size, cross-sections, extent of land disturbance,

operations and maintenance. Project level environmental clearance assumes that no further environmental analysis will be necessary because all of the potential environmental impacts and mitigation measures would have been disclosed.

While some of this information already exists, additional design work is needed by the project engineers for the following infrastructure components of the CVSP: 1) Fisher Creek (seasonal flow levels, number, and location of outfalls, etc.); 2) Coyote Lake (liner and outfall details); 3) Urban Canal; 4) Coyote Parkway; 5) groundwater recharge basins; 6) advanced recycled water treatment plant (brine disposal); and 7) solid waste transfer facility. Design details require input from some of the technical subconsultants, including the project biologists, hydrologists, geologists, and traffic consultants, as well as from City staff in multiple departments. The revised DEIR will disclose the potential impacts associated with the more detailed infrastructure information and associated mitigation measures will be identified in relation to project phasing.

Traffic Analysis

The traffic impacts of the CVSP must now be reassessed for two primary reasons: (1) to incorporate the change in the CVSP project description to include the CVRP project as currently entitled; and (2) the original traffic analysis is based upon data collected and reflective of traffic conditions in 2004-2005, so the revised DEIR requires updating traffic counts and approved project trips (background conditions). This updated traffic analysis background is required not only for the City of San José, but also for the Cities of Morgan Hill and Gilroy, as well as County of Santa Clara facilities, including San Martin.

Updated near-term and cumulative traffic analyses are required and are anticipated to result in potential new impacted intersections due to recent increases in congestion in the area as the economy has rebounded. The new cumulative analyses for traffic and other technical subjects must now take into account the City of San José General Plan Update, which was initiated by Council on June 26, 2007. All of this new traffic work adds considerable time to the overall CVSP process, as well as expense as discussed later in this memorandum.

Global Climate Change

Comment letters were received from the California State Attorney General's office and the Center for Biological Diversity regarding the global climate change discussion in the DEIR. While the Attorney General's office commended the City for including a clear and succinct global warming section in the EIR and for making an effort to quantify at least some of the project's substantial greenhouse gas emissions, the Attorney General requested a more thorough accounting of the emissions during all phases of the project. In addition, the Attorney General requested that the City make a determination as to the significance of the global climate change impact of the proposed project.

In order to address the comments included in the letters, the project's greenhouse gas emissions must be recalculated to include construction-related, natural gas, and long-term operational

emissions. The analytical approach to evaluate greenhouse gas emission levels generated by the proposed project needs to be consistent with the requirements of AB 32. Feasible mitigation measures, as required by the recently passed SB 97, need to be identified and analyzed to determine the impacts of implementing these measures. This analysis may affect the significance determination under CEQA for global climate change.

Biology

Numerous comments on the CVSP DEIR were submitted relating to biology. The most significant letter was a joint letter from the California Department of Fish and Game (DFG) and the U.S. Fish and Wildlife Service (USFWS). Their letter challenged the adequacy of almost every aspect of the Biology section of the CVSP DEIR.

Significant new and additional biological analysis is required to address the resource agencies' comments. Specifically, DFG and USFWS requested that the City undertake a new nitrogen deposition impact analysis. Although the methods and assumptions used for the nitrogen deposition analysis in the DEIR were discussed extensively with the USFWS prior to beginning the analysis for the CVSP DEIR, the USFWS and DFG nevertheless commented that the data generated by the City was not robust enough to conduct an adequate nitrogen deposition impact analysis. They asserted that the Community Multiscale Air Quality (CMAQ) modeling system, developed by the EPA should have been utilized. This model request is also different than that recently required for the Habitat Conservation Plan, now underway. Revisions to the nitrogen deposition analysis requires a considerable amount of new data to run CMAQ and further analysis to address other DFG and USFWS nitrogen deposition concerns, such as mitigation.

In regards to special status species, additional surveys by biological subconsultants for sensitive habitats and potential occurrence of sensitive plant and wildlife species are required as necessary. Furthermore, DFG and USFWS presented various data and studies related to Coyote Creek riparian corridor setbacks that require review and evaluation.

Wildlife Corridors

As mentioned in the July 31, 2007 memo, various entities asserted the analysis of terrestrial wildlife movement corridors in the DEIR to be incomplete and inaccurate. The most substantial comment letters on this subject were the joint letter from DFG and USFWS, and a letter from the DeAnza Wildlife Corridor Stewardship Team. As a result, the new information and data need to be analyzed to determine, among other issues, if animals are moving beyond the Coyote Creek riparian corridor. The key question, is whether the movement of animals under Highway 101 regional or local. The results of this evaluation will be included in the revised CVSP DEIR.

Cumulative Analysis

The cumulative analysis of all technical areas (i.e., water supply, traffic, etc.) needs to be updated to include recently approved and/or proposed projects, such as the comprehensive General Plan

Update. Just weeks before the release of the DEIR (March 2007), the California Supreme Court issued the *Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* ("Vineyard") decision. While this decision dealt mainly with water supply impacts, which were addressed in the CVSP DEIR, staff now understands that the decision also necessitates additional work for the cumulative water supply, solid waste, and wastewater treatment assessments.

Specifically, the Vineyard decision states that an EIR cannot defer analysis of the environmental effects of potential solutions to address infrastructure deficiencies to future EIRs. For example, the City-wide impacts of possible solutions to the projected shortage in Water Pollution Control Plant (WPCP) capacity can no longer be deferred to the just-initiated WPCP Master Plan process. For this reason, the solid waste and wastewater treatment sections must be revised to address the environmental impacts of providing additional landfill and WPCP capacity for the proposed development and City overall.

SCHEDULE AND BUDGET

The significant amount of work is required to revise the DEIR to address the comments in a legally defensible manner. The work is estimated to take a little over one year, resulting in the public release of the revised DEIR in November 2008 for 45 days. The time allowed for responding to comments is only 60 days with certification of the Final EIR estimated in May 2009. The major factor affecting the schedule is the eight months required to update and revise the traffic analysis, particularly due to the changes in the project description to reflect the CVRP entitlements. The schedule also includes time for outside legal peer review of the revised Administrative Draft EIR concurrently with internal City review.

The additional consultant budget estimate, between \$1.5 and \$2 million, to revise and recirculate the DEIR is reflective of the technical areas receiving the most significant comments, particularly traffic, biology and hydrology. The scope of work for the new and additional traffic analysis results in a budget estimate of over \$460,000. The work necessary to address the biology comments results in a budget estimate of almost \$190,000. Three budget line items have been added for new studies on paleontology, water pollution control plant (WPCP) and solid waste landfill capacity studies with a total estimated cost of \$105,000. The WPCP and landfill studies are cumulative citywide studies that are also required for the GP Update process and may be eligible for reimbursement.

A separate budget estimate is being prepared for additional funding for Cox, Castle & Nicholson LLP the City's outside environmental legal counsel. A budget estimate is also being prepared for the cost of a "peer" review of the ADEIR prior to recirculation and a potential Santa Clara Valley

Water District reimbursement for hydrologic modeling expenses. These cost estimates are in preparation and will be incorporated into the budget estimate when available.

NEXT STEPS

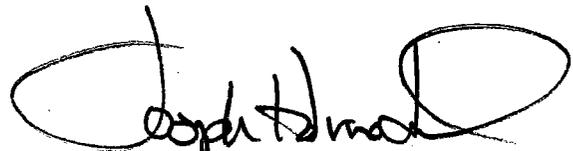
Staff is discussing the implications of the significant EIR comment letters with the authors of those letters. These communications are intended to help scope the appropriate analyses to address the issues raised in a legally defensible manner. Direct interaction with key stakeholders has been a hallmark of the Coyote Valley planning and environmental process.

Staff has authorized the EIR consultant (David J. Powers and Associates) to use existing EIR funds to continue critical path and priority work necessary for revising the DEIR for recirculation. These work items include the collection of updated traffic data, augmentation of project description, Coyote Creek riparian and wildlife corridor analysis, and coordination with the Santa Clara Valley Water District for updating the hydrologic modeling. Staff estimates that the existing funds are adequate to support approximately 60 days of additional EIR work.

Staff is also beginning to discuss the budget and time implications with the Coyote Housing Group (CHG) in preparation for a possible amendment to the existing Funding Agreement. CHG is currently providing financing support to the entire CVSP effort. A future Council action will be required to allocate the funding to complete the work described in this memo. The Funding Agreement Amendment will need to be considered by the City Council in the very near future for EIR work to continue beyond the use of existing funds.

COORDINATION

The preparation of this memo has been coordinated with the City Attorney's Office, and the City's Department of Transportation.



JOSEPH HORWEDEL, DIRECTOR
Planning, Building and Code Enforcement

