



Cox, Castle & Nicholson LLP
555 California Street, 10th Floor
San Francisco, California 94104-1513
P 415.392.4200 F 415.392.4250

Anne E. Mudge
415.262.5107
amudge@coxcastle.com

File No. 54188

June 29, 2007

VIA FACSIMILE AND E-MAIL

Mr. Darryl Boyd
Department of Planning, Building and Code Enforcement
City of San Jose
200 East Santa Clara Street, 3rd Floor
San Jose, CA 95113

**Re: Comments on Coyote Valley Specific Plan Draft Environmental Impact Report;
File No. GP06-02-04//SCH # 2005062017**

Dear Mr. Boyd:

On behalf of the Coyote Housing Group, LLC (“CHG”), thank you for the opportunity to comment on the Coyote Valley Specific Plan (“CVSP”) Draft Environmental Impact Report (“Draft EIR”). In the attached chart, we provide specific comments with references on a page-by-page basis to facilitate your review. This letter highlights some of the broader issues that we believe merit your consideration as you prepare the Final EIR.

1. The EIR Should Clarify that the Project Description Includes Adoption of the Specific Plan and Zoning Prior to Meeting the Prerequisite Conditions.

The EIR should more clearly explain the City’s intent to amend the General Plan to allow for the adoption of the CVSP and Coyote Valley-specific zoning prior to meeting the prerequisite conditions. As it currently reads, the Draft EIR is not always clear whether the project as described allows adoption of the CVSP and zoning *before* the prerequisites are met. For example, at page 7, under Section 1.4 PROJECT OBJECTIVES, the Draft EIR states “the following are prerequisites to the adoption of the CVSP, the Planned Community Designation and any residential zoning approvals for property in the North and Mid-Coyote Valley: (1) [the 5,000 jobs first trigger] and (2) [the fiscal condition trigger].” Although this is a necessary summary of current General Plan policies, it appears to the reader that these are the “project objectives”. The Draft EIR then introduces the Council’s 16 Expected Outcomes but does not state that the project proposes to amend the General Plan to allow for the adoption of the Coyote Valley Specific Plan prior to satisfaction of the prerequisite conditions. It would be helpful if this were stated at the beginning of Section 1.4.

Section 1.5 USES OF THE EIR (p. 9) states for the first time that one of the potential uses of the Draft EIR is for adoption of the Coyote Valley Specific Plan, Prezonings and Rezonings, among others. One of the items listed is an “Amendment to the San Jose 2020 General

Plan text to allow the City Council to adopt the CVSP prior to meeting the Prerequisite Conditions". However, it would be more clear to the reader if the Draft EIR stated after each of the bullet points regarding adoption of the Specific Plan, rezoning and rezonings that these possible actions are expected to occur prior to satisfaction of the prerequisite conditions. Moreover, this intent should be stated clearly and consistently throughout the document, and should be expanded on page 9 to include the proposal to also use this EIR for the adoption of a development agreement(s), if applicable, and expansion of the Urban Service Area prior to meeting the prerequisite conditions.¹

On page 25, the Draft EIR fully explains to the reader for the first time that although the current General Plan precludes the adoption of the CVSP before the triggers are met, amendments to the General Plan are proposed that would allow the "incorporation" of the Coyote Valley Planned Community into the General Plan, "while retaining the Prerequisite Conditions for development of the CVSP." The EIR should clarify that the proposed General Plan text amendments that would allow for the "incorporation" of the Coyote Valley Planned Community (as a land use designation) into the General Plan, *also* would allow the adoption of the Coyote Valley Specific Plan and zoning prior to meeting the prerequisite conditions.

Another source of confusion is that, although the Draft EIR contains some analysis of impacts within the Bailey-over-the-Hill alignment area (see Section 4.6.2.5 and 4.6.3.8), improvements to Bailey-over-the-Hill are not part of the Project Description, nor are they required as mitigation for the CVSP. However, the Draft EIR contains analysis of potential impacts resulting from the possible future construction of a realignment of the Bailey-over-the-Hill Road, including biological, visual and geological impacts, among others, which the Draft EIR concludes are significant (see, for example, Section 4.6.3.8 at p. 289 and Section 4.7.2.4 at p. 322). Given that these improvements are not proposed or required under the CVSP, however, it is confusing to the reader and unclear why the Draft EIR includes this discussion at all. For purposes of clarity, the Project Description and other discussions of Bailey-over-the-Hill improvements should at least clearly state that the Bailey-over-the-Hill improvements are not included as part of the Project (see Sections 1.5.2 (p. 11), 2.1.7.3 (p. 29) and 4.2.2.2 (p. 148)), nor are they required as mitigation, and explain for what purpose these improvements are discussed in the Draft EIR.

2. The EIR Should Reference a Development Agreement as a Potential Land Use Approval to Be Evaluated.

The list of land use approvals for which the EIR may be relied upon at pp. 1 & 9 should include a development agreement. A development agreement will be an essential component of the overall CVSP project because of the long-term nature of the project, the high commitment of private financial resources necessary to implement the Specific Plan, and the resulting need for certainty and stability in the land use entitlement process.

¹ The Draft EIR currently states that, "Although the CVSP form-based zoning code has not yet been prepared, it will apply the principles of the City's existing residential, commercial, and industrial design guidelines." (p. 93) This text should be changed to say that the zoning code is anticipated to be completed and ready for adoption prior to certification of this EIR and concurrent with adoption of the Specific Plan.

3. The EIR Should Evaluate a Range of Phasing Scenarios.

The Draft EIR should evaluate a range of potential phasing scenarios in addition to the two phasing scenarios already examined to provide a clearer picture of how the project may develop over time and what are the relative impacts of different buildout scenarios. The two scenarios already evaluated are: (1) the full parallel build-out of jobs and houses scenario (3 – 5 years) which assumes concurrent build-out of infrastructure (see, for example, p. 143) and (2) the partial parallel build-out of 20,000 jobs and 10,000 housing units, with partial completion of roadway improvements and core infrastructure (see, for example, p. 166). The Draft EIR states on p. 143 that the relatively quick build out scenario (3 – 5 years) “provides the best basis for defining transportation needs within the specific plan area”.

The Draft EIR states in Section 4.2.2 (p. 143) that additional long-range traffic scenarios were considered and that “These included two scenarios that are directly related to VTA’s South County Circulation Study . . .” in addition to the partial parallel build-out scenario. The Draft EIR further states “This set of long-range cumulative scenarios ensures that the projected traffic impacts of the CVSP were evaluated in conjunction with a reasonable range of future land use development projections for neighboring jurisdictions.” It is unclear, however, whether these are phasing scenarios and, if so, they do not appear to have been incorporated into other sections of the document.

While the Draft EIR contains a short discussion at p. 46 regarding “five different jobs/housing phasing scenarios,” it does not provide specific information about the environmental impacts of these scenarios (except with respect to full parallel build-out and the partial parallel build-out of 20,000 jobs and 10,000 housing units). In all scenarios, detail should be provided about *when* infrastructure will be needed in relation to increments of development.

As described above, because the Draft EIR already assumes parallel build out of jobs and housing in these basic scenarios, the statement that the EIR “does not include analysis to adequately assess the potential environmental impacts of broader changes to the triggers outside of a comprehensive update of the San Jose 2020 General Plan” (p. 46) does not appear to be correct.² As discussed above, the Draft EIR’s detailed environmental analysis in fact assumes a potential change to the prerequisite conditions, including changes to these conditions that would allow “the appropriate number of jobs” to be “constructed in a parallel timeline to maintain a jobs/housing balance in Coyote Valley” (p. 25) as well as a change to the trigger calling for partial parallel build-out of CVSP of 20,000 jobs and 10,000 housing units. While the City Council is free to decide whether and when it wants to make further adjustments to the prerequisite conditions, this EIR should not pre-judge its own adequacy for that purpose when the EIR already analyzes CVSP build-out under both a full parallel build-out of jobs/housing scenario, as well as a partial parallel build-out of up to 20,000 jobs and 10,000 houses scenario.

² The Draft EIR states further: “[T]he project description assumes the existing General Plan triggers will remain essentially the same due to existing General Plan policy of modifying the Coyote Valley Urban Reserve Prerequisite Conditions only during a comprehensive update of the General Plan involving a community task force similar to the San Jose 2020 General Plan update process.” (p. 46)

4. The Draft EIR Should Clarify the Scope of Its Environmental Review in Terms of Its Project Level and Programmatic Level of Environmental Analysis.

We understand that the City intended the Draft EIR to evaluate the CVSP at a project-specific level to the greatest extent possible. (pp. 11 & 91) Because we know the Draft EIR was meant to analyze the CVSP at a project-specific level, some of the Draft EIR's statements regarding the scope of its environmental review should be clarified.

For example, it is clear that the EIR is intended to serve as a project-level EIR for the Specific Plan and its related land use approvals listed in Section 1.5.1. Thus, the Draft EIR states that it provides "environmental review for the adoption of the CVSP and its initial implementation through the pre/rezoning and annexation processes as described in Section 1.5.1, above." (p. 11) (Section 1.5.1 includes adoption of the CVSP, amendments to the General Plan Land Use/Transportation Diagram designations and associated text amendments, rezoning and annexation of the unincorporated CVSP Development Area to the City of San Jose, and rezoning of incorporated land in the Coyote Valley.)

On the other hand, the Draft EIR states later that a "determination will be made on a case-by-case basis if further environmental review for the CVSP components listed below will be required before they can be approved or constructed, and it is unknown at this time when these components may be required to accommodate the proposed urban development." (p. 11) According to the Draft EIR, "Subsequent project-specific environmental review will be required as appropriate and necessary prior to approval or construction of these components." (p. 11) The Draft EIR then sets forth a list of "project components," which includes, for example, "subdivision/tentative maps"; "construction of all necessary fire stations, parks, libraries, and schools required by the project"; "construction of all necessary infrastructure (both within the CVSP Area and off-site) for the project within Coyote Valley including the transportation (vehicle, transit, pedestrian, and bicycle), storm drainage, floodplain, and utility systems". (p. 11)

The EIR should clarify that the City has already performed parcel-specific environmental analysis on approximately 2,185 acres of the total 3,800 acre CVSP Development Area and that as to these parcels, subsequent environmental review is not anticipated to be required. As the Draft EIR explains, the City mailed notice forms to all properties subject to development under the CVSP. Of the 286 properties notified, the City's environmental consultants were granted access to a total of 151 properties, or approximately 2,185 acres of the total 3,800 acre CVSP Development Area. Properties to which access was granted were studied in detail on a site-specific level for sensitive biological resources (*e.g.*, field investigations related to wetlands, riparian areas, sensitive species), cultural and historical resources (*e.g.*, archaeological and architectural fieldwork), hydrology (*e.g.*, a review of hydrologic impacts due to urbanization and a review of proposed drainage and flood control systems), as well as geologic and hazardous conditions (*e.g.*, fault exploration, seismic studies, and an environmental assessment and soil quality evaluation). (*See* Appendices to Draft EIR.)

The EIR should more clearly acknowledge that very detailed environmental information has already been gathered on many properties within the CVSP area. To help illustrate the Draft EIR's project-level analysis, the EIR should include a matrix setting forth which properties have been environmentally evaluated for development and the extent to which those properties were environmentally reviewed. Much of the data included in the appendices that relate to site-specific impacts can help in this regard. The Draft EIR should explain that the EIR is intended to be a project-level EIR pursuant to CEQA Guideline 15161 for the CVSP and for those parcels which were the subject of extensive field survey work. The Draft EIR should then explain that the EIR could be considered a programmatic-level EIR pursuant to CEQA Guideline 15168 for development on those parcels, and only those parcels, where no field survey work occurred, and for those components of the Project (or separate but related projects) that may occur later in time or as part of another discretionary approval, such as the Advanced Recycled Water Treatment plant.

In addition, it appears that some of the other properties within the CVSP area that were not surveyed by the City as part of the CVSP investigation, and are therefore not included in the set of 151 properties cited in the Draft EIR, may have already been environmentally evaluated and either cleared or partially cleared for development. For example, in 2000 the City certified an Environmental Impact Report for development on approximately 385 acres in North Coyote Valley as part of the Coyote Valley Research Park project. Presumably, this information was used by the City to prepare the Draft EIR for the CVSP. Other individual proposed project sites within the CVSP area also may have received at least some environmental clearance or started work on reaching that environmental clearance. For example, one property within the area has been permitted for office/industrial development and has already been graded and padded for development. Another sizeable property is currently working with the US Army Corps of Engineers on a wetlands delineation. The Draft EIR should clarify on p. 91 that the City is permitted to use this and other available information to determine the extent to which the CVSP would require additional project-level analysis for these sites. It is permissible under CEQA for a lead agency to use existing available information regarding current site conditions to inform its own EIR or other CEQA document. *E.g.*, CEQA Guidelines 15147, 15148, 15151. Information on these parcels should also be included in the suggested matrix.

Because much of the development within the CVSP area has been evaluated at a detailed, project-level of analysis, the Draft EIR should revise statements indicating that future development components of the project "will" require subsequent environmental review to say that certain components "may" require subsequent environmental review. For example, Section 4.5.2.2 of the Draft EIR states that "[a]t the time urban development is proposed and access to these properties is secured, additional analysis and potentially additional environmental review, will be required." (p. 229) This language should specify instead that "additional environmental review *may* be required."

5. The Draft EIR Should Clarify the Discussion Regarding Agricultural Impact Mitigation Policies and the Status of Agricultural Lands Within the CVSP Area.

The Draft EIR's discussion regarding "prime farmland" within the CVSP area should be corrected and clarified. The Draft EIR currently states that the CVSP Area "consists primarily of 'Prime Farmland.'" (p. 102) CEQA identifies prime agricultural land "as defined by the United States Department of Agriculture land inventory and monitoring criteria, as modified for California." Pub. Res. Code § 21060.1(a). The Department of Land Resource Protection within the California Department of Conservation defines "prime farmland" as land that has been used for irrigated agricultural production at some time *during the four years* prior to the mapping date. See Dep't of Land Resource Protection, Dep't of Conservation, *Farmland Mapping and Monitoring Program Overview* <available at http://www.consrv.ca.gov/DLRP/fmmp/overview/prime_farmland_fmmp.htm> (last visited June 21, 2007).

The Draft EIR, however, states that for lands to be "prime," they "must have been used for irrigated agricultural production at some time during the *six years* prior to the mapping date." (p. 102 (emphasis added)) The EIR should use the correct definition of "prime farmland." Additional evidence should also be provided to demonstrate that land identified as "prime farmland" were in fact used for irrigated production within the past four years. The status of prime farmlands within the CVSP Area should be determined on a parcel-by-parcel basis.

The discussion of "mitigation for loss of agricultural lands" should also be clarified. With respect to the "creation of new farmlands" policy and Mitigation Measure LU-10.1, the Draft EIR states that "mitigation for the conversion of farmland to urban uses would consist of replacing the lost farmland acreage on a one-to-one (1:1) basis in conjunction with the issuance of development permits or construction contracts." (p. 113) The Draft EIR goes on to suggest, however, that creation of new farmland is not a feasible mitigation measure. (p. 114.) The Draft EIR then discusses the protection of existing farmland as a potential mitigation but explains that "the protection of other existing farmland . . . is not considered by the City of San Jose as adequate mitigation," notwithstanding the fact that "such actions do benefit agriculture by preventing the conversion of otherwise vulnerable farmland to non-agricultural uses." (p. 113) Despite concluding that it is not adequate mitigation, the Draft EIR nonetheless sets forth certain actions that could "qualify as mitigation," including acquiring land outright and recording an agricultural easement, negotiating with property owners to allow recordation of an agricultural easement, or project applicants participating in an agricultural mitigation program established by the City. However, no mitigation measure or ratio is provided for the "protection of existing farmlands," and it is not clear whether the EIR is proposing that the City adopt protection of existing farmlands as a mitigation measure in proposed Mitigation Measure LU-10.1. The Draft EIR should clarify the City's approach to these agricultural policies and their applicability to the CVSP project.

6. The Draft EIR Should Evaluate the Potential Demolition of Historic Resources Necessary to Implement the CVSP.

The Draft EIR assumes the preservation of all potentially significant historic structures within the CVSP Area. For example, the Draft EIR states: “[T]he analysis in this EIR assumes that any structures that are found to be historical resources as defined by CEQA Guidelines Section 15064.5(a) will be preserved or otherwise protected from demolition and any substantial adverse change in their historic significance.” (p. 230)

CHG is not aware of any specific buildings that may be considered for demolition. However, in an abundance of caution, and because it may turn out to be infeasible to preserve or relocate all of these structures, the Draft EIR should analyze impacts related to the potential demolition of any of these structures and suggest mitigation measures for impacts related to such demolition, as well as conclusions regarding significance even after mitigation.

7. The Draft EIR’s Chapter on Global Climate Change Should Be Modified To Discuss the Potential Significance of the Project’s Contribution to Cumulative Greenhouse Gas Emissions Under CEQA.

A recent letter from the Attorney General regarding global climate change suggests that lead agencies have an obligation to set standards of significance for a project’s potential impacts related to global climate change. (Letter from Attorney General’s Office to City of San Jose, dated June 19, 2007.) This letter also suggests that lead agencies have obligations to quantify, to the extent possible, a project’s contribution to greenhouse gas emissions, and to impose feasible mitigation measures. The Draft EIR’s Global Climate Change Chapter should be revised to address these issues and to suggest feasible mitigation measures to address the project’s cumulative contributions to greenhouse gas emissions.

8. The Water Supply Analysis Should Be Clarified to Indicate that Specific Reliable Sources Have Been Identified.

The Draft EIR’s chapter on Water Supply Impacts notes in the introduction that “subsequent environmental review will be required once specific water sources are identified.” (p. 421) This statement should be clarified to reflect the fact that specific reliable sources of water have in fact been identified. The chapter immediately thereafter identifies the four preferred “supply sources” to provide water to the CVSP Area. These supply sources include: (1) the withdrawal of groundwater from the Coyote Valley Sub-basin; (2) the installation of groundwater recharge basins in the Greenbelt; (3) the construction of an Advanced Recycled Water Treatment Plan; and (4) withdrawal of groundwater from the Santa Clara Valley Sub-basin. (p. 421) The Draft EIR should clearly explain that specific sources have been identified and have been determined to be sufficient to serve the project along with anticipated development and are reasonably likely to be available. Section 4.16 of the Draft EIR should cross-reference Section 4.11 with respect to the issue of the identified sources of supply and the fact that such sources have been determined to be reasonably available and sufficient to serve the project through 2030.

