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CITY COUNCIL STAFF REPORT

Meeting: October 7, 2014

Application: GPA-2013-01, GPA-2013-02, SPA-2014-01, Z-2013-01 and MCA-2014-01 (EA-2013-03); Applicant: City of Cupertino; Property Location: City-wide

Subject

Study Session on the Final Environmental Impact Report (EIR) for the proposed General Plan Amendment, Housing Element Update, and associated Rezoning.

Recommended Action

Staff recommends that the City Council receive this report and comments on the Final EIR. The Final EIR consists of the Draft EIR published in June 2014 (Attachment A), the Response to Comments (RTC) Document, published in August 2014 (Attachment B), and the Errata memo No. 1 (Attachment C).

This is a study session and no action is required at this time.

Background

On August 21, 2012, the City Council directed staff to evaluate replenishing citywide office, commercial, and hotel development allocation. During the same time frame, several property owners, including some owners within the Vallco Shopping District, approached the City about potential General Plan amendments to allow future development of their properties. In order to comprehensively evaluate citywide needs and individual sites, in early 2013, the City Council directed staff to combine these individual requests into one comprehensive General Plan Amendment.

In addition, in November 2013, the City initiated a process to update the State-mandated Housing Element of the General Plan. The Housing Element, which is a required component of the General Plan, identifies appropriate locations and policies for future housing in Cupertino. The City Council decided to combine the Housing Element Update process with the General Plan Amendment process so the City and community could fully evaluate and discuss mobility, urban design, economic development, and housing options in one comprehensive outreach and planning process.

The General Plan Amendment process has involved extensive community discussions and input provided during several public meetings, workshops, study sessions, and through online comment forms and surveys. The proposed Project considers citywide land use, urban design, mobility, and economic development choices but is not a complete revision of the City's 2000-2020 General Plan.

Environmental Impact Report

The California Environmental Quality Act (CEQA) requires that all State and local governments consider the physical changes that result as a consequence of projects over which they have discretionary authority. A Final EIR for the Project has been prepared in accordance with the requirements of the California Environmental Quality Act (CEQA). The purpose of the EIR is not to recommend approval or denial of a project but to provide information to be used in the planning and decision-making process. CEQA requires decision makers to balance the benefits of a proposed project against the environmental effects, along with other factors.

The Planning Commission had a study session on September 9, 2014. The attached staff report (Attachment D) provides additional details on the EIR and the land use alternatives studied. The proposed land use alternatives and changes to the General Plan goals, policies and strategies would require amendments to the City of Cupertino 2000-2020 General Plan adopted by the City Council on November 15, 2005.

Discussion

Planning Commission Study Session

At the Planning Commission Study Session, commissioners and members of the public asked questions and requested clarification as follows:

Planning Commission

- *Number of alternatives studied in the EIR and which alternative was the Environmentally Superior Alternative:* It was clarified that the EIR provided an analysis of four alternatives; 1) Alternative A, Alternative B, Alternative C, which was the proposed Project under CEQA, and the CEQA-required No Project Alternative. The EIR identified the No Project Alternative as the Environmentally Superior Alternative; however, as required by CEQA when the No Project Alternative is the Environmentally Superior Alternative, another alternative must be selected. Accordingly, Alternative A, which would consume the fewest resources and result in the least amount of development when compared to Alternatives B and C, was chosen as the Environmentally Superior Alternative.
- *Alternative C vs. "Preferred Project":* Clarification was requested on the difference between Alternative C and "Preferred Project." It was clarified that Alternative C was not to be the "preferred project" of the City, but rather it was the alternative that was selected to be studied in the EIR as the proposed Project because it represented the most intensive development. It was clarified that the term "preferred project" is a term-of-art when preparing program-level EIR's and only means it is the project studied in the EIR; it does not mean it has been pre-determined to be the approved plan. When the Commission and

the Council consider which alternative to select, the EIR only represents one factor to consider. Other potential factors that may determine which alternative to select include economic impacts, social and community benefits, jobs and housing etc.

- *RHNA vs. recommended housing units*: Clarification was requested on the number of housing units required by the RHNA (i.e. 1,064 units) versus the number of housing units recommended for inclusion in the Draft Housing Element. It was clarified that the Department of Housing and Community Development (HCD) typically recommends 40 percent over the required RHNA for the current planning period. Since there have been entitlements for 62 units in this planning period, the City's remaining RHNA is 1002. Therefore, it is being recommended that the City select sites with a total capacity of approximately 1,400 units.
- *Mitigation*: Staff clarified the term "mitigation" meaning that the impact would be reduced to the acceptable threshold for that particular impact. Where the impact is not brought below the acceptable threshold, the term "significant and unavoidable" is used to show the impact will remain even when mitigation is applied.
- *Plan Bay Area*: Clarification requested on whether Plan Bay Area is a controlling document. The Plan Bay Area is the long-range integrated transportation and land-use/housing strategy through 2040 for the San Francisco Bay Area pursuant to Senate Bill 375, the Sustainable Communities and Climate Protection Act. Staff clarified that the RHNA is the only regulatory portion of the Plan Bay Area.
- *Number of Housing Units by Alternative*: Clarification on the number of housing units considered in each of the alternatives was requested. Staff clarified that both the No Project Alternative and Alternative A represent no change to the existing housing units development allocation in the current 2020 General Plan. Alternatives B and C respond to the Plan Bay Area. The selection of housing sites in each alternative represent gradations of what is ultimately required by 2040, which spans a time-period comprised of three Housing Element cycles. Alternative B represents 75 percent (or a total of 3,601 units) and Alternative C represents 100 percent (or a total of 4,421 units) of the Housing Element sites required through 2040,
- *Traffic Analysis*: Clarification on the traffic study prepared for the EIR, what would happen if there are errors in the traffic study, whether the TIA considered the longer commute patterns from regionally generated traffic volumes and whether the VTA model extends to 2040. Staff clarified that the traffic study has been prepared to forecast traffic impacts accurately using the Santa Clara Valley Transportation Authority (VTA) guidelines for how to prepare traffic studies. Staff clarified that the traffic model applied is the VTA standard model that includes regional traffic in the communities that contribute to traffic in Cupertino and extends to 2040. The VTA approved methodology is the standard for all projects in Cupertino and the surrounding communities, which ensures consistency in assessing traffic impacts in the region.

- *Bus Rapid Transit (BRT):* A questions regarding the status of the BRT project was posed. Staff clarified the BRT project is not considered in the EIR and when proposed by the VTA, any changes to the City's right-of-way would need the City's approval. At this time, no proposal has been brought to the City to consider. However, a separate memo has been prepared reviewing the impacts of a dedicated bus lane for BRT (see Attachment E).
- *Sewer Capacity:* Information was requested on the sewer capacity. It was clarified that sewer capacity is not a physical impact, but the contractual limit on what has been purchased from the San Jose/Santa Clara Treatment Plant. The contractual limit could be reached many years into the buildout of the proposed Project and in the meantime it is quite possible that ongoing measures, including water conservation and green building practices would continue reducing the sewer generation rates studied in the EIR.
- *Air Quality:* Clarification was requested on whether the long-term horizon analyzed in the traffic impact analysis (TIA) considered the Environmental Protection Agency (EPA) trends and mandates with regard to fuel economy is factored into the TIA. Staff clarified the EPA standards are factored into the air quality model and not the traffic model. Assumptions regarding cleaner fuel-burning cars and more cars are considered in the long-term air quality emissions projections.
- *HCD Review Timelines:* Clarification on the deadlines and timelines for the Project regarding HCD review was requested. The deadline for the Housing Element is January 31, 2015 and there is a 120-day grace period; therefore, the City must have an adopted Housing Element by May 31, 2015. HCD is allowed a 60-day review period to review the Housing Element. For the City to have adequate time, the draft Housing Element must be sent to HCD by November.
- *Adequate Sites for the Housing Element:* Clarification was requested on what would happen if HCD determines that the sites selected do not meet HCD criteria. It was explained that the list of potential housing element sites has been selected using both HCD and City criteria. The importance of submitting the draft Housing Element to HCD early was stressed, since the dialogue regarding adequate housing sites will commence between the City and HCD during the 60-day review period. More sites than necessary to accommodate the RHNA have been identified, which will help facilitate the dialogue with HCD.
- *Schools:* Clarification on why the EIR concludes that overcrowding in schools can be alleviated through the construction of additional floors (building up), and how impact fees can be used by the school. It was also noted the schools are currently at capacity and the student generation is based on high-density housing. Staff clarified that the school districts are going to prepare a facilities plan for ongoing long-range planning. Schools constantly work on plans to alleviate overcrowding such as moving students between schools and consolidating programs as short term solutions and to avoid redistricting. The school impact fees, which are set by the schools and the state, can be applied to new facilities, but not to operations. Staff clarified that the data used to prepare the school impact analysis is from the school's demographer and the housing sites and unit types are in synch with the district's projections. However, the City cannot dictate how the impact fees are used or

make land use decisions based on impacts to schools since the impact fee is intended to mitigate school impacts (See Attachment F).

- *Public Comment:* The role of public comment in the decision making process for the project was discussed. Staff clarified that the study session was about the EIR. All comments on the environmental impacts have been addressed in the Response to Comments document and late comments memo dated 3 September, 2014 (Attachment G) and late comments memo update dated 30 September, 2014 (Attachment H). Comments on the merits of proposed Project will be addressed separately prior to public hearings on the project.
- *Baseline:* Clarification on the baseline for the buildout numbers described in the proposed Project with respect to development that is currently underway was sought. It was clarified that the development that is currently underway is part of what has already been analyzed in the 2020 General Plan and the buildout projections of the proposed Project are set at the time the Notice of Preparation for the proposed Project was issued (i.e. March 5, 2014). Staff maintains a current list of development allocation which tracks what is approved and what has been developed.
- *Impact Analysis:* It was noted that all of the environmental impact conclusions are the same, but the impacts vary by degrees based on the level of development analyzed in each alternative. Staff confirmed this is correct.
- *Errors and Omissions:* A missing footnote was identified. This has been included in the Supplemental Text Revisions of the Final EIR memo (see Attachment C).
- *Buildout Projections:* Clarification on the differing build out numbers in Chapter 4.14, Utilities and Service Systems of the Draft EIR was sought. Staff clarified that persons per household rate used in ABAG projections varies in 5 year increments, which is different than the single 2040 rate used in the EIR.

Members of the Public

- *Traffic* – Concerns were expressed by a speaker about existing traffic and increased traffic anticipated as part of the Alternatives studied in the EIR. The speaker expressed a preference for the No Project alternative or Alternative A.
- *Heart of the City* – One speaker requested that the Heart of the City be maintained and respected. Another speaker expressed concerns about development on the eastern part of the city and recommended that there should be a citywide distribution to reduce impacts. Staff clarified that sites brought forward by applicants and during the community process were all reviewed; however, the sites on the western side of the city alone either did not meet the criteria or would not be able to accommodate the Regional Housing Needs Allocation (RHNA) required by the State.
- *Schools* - There was also a comment made that school sites should be identified. Staff clarified that developments will be required to pay a school impact fee set by each school district. However, sites would have to be acquired by school districts through their facility planning process.

- *North Vallco* - A representative from Apple Inc., requested that future development adjacent to Apple Campus be considerate of their needs related to security, privacy, and traffic. He clarified that they are working closely with the Irvine Company regarding the adjacent Hamptons site. A representative from the Irvine Company stated they are cooperating with Apple on the redevelopment of the Hamptons site and would not be opposed to reduced heights directly adjacent to the Apple campus. She clarified students generated from any potential project on their site would be in the Santa Clara Unified School District and they are working with the District on possible mitigations.
- *Regional Plans* – concerns were expressed about the Plan Bay Area, the regional Bay Area document prepared by the Association of Bay Area Governments (ABAG) and the Metropolitan Transportation Commission (MTC). A resident felt that it was not a good fit for Cupertino and that the document looked too far into the future. In addition, a resident noted that she did not support the Bus Rapid Transit dedicated lanes because they would cause more delays in traffic. Staff would like to note that the General Plan and Housing Element updates do not include dedicated Bus Rapid Transit lanes since the project has not been approved. The Valley Transportation Authority (VTA) is working on this as a potential future project but has not presented any plans to the City. The project is not being reviewed at this time by the City and would require the participation and consent of the City.

Response to Comments and Text Revisions

Comments were also received after the close of the EIR public review period on August 1, 2014. While CEQA does not require that the City respond to the comments received after the close of the public review period, staff will continue to provide responses to these comments. As of September 30, 2014, eleven comment letters were received. The comment letters received after the close of the comment period did not concern new or substantially more severe significant impacts, mitigation measures, or project alternatives, or change the findings of the Draft EIR (see Attachments G & H.)

Supplemental Text Revisions

Following the publication of the RTC document on August 28, 2014, supplemental text revisions to clarify text in the Draft EIR have been made. These supplemental revisions are provided in the General Plan Amendment, Housing Element Update, and associated Rezoning Project Final Environmental Impact Report Errata No. 1. (See Attachment C)

These revisions do not result in new significant environmental impacts, do not constitute new information, and do not alter the conclusions of the environmental analysis. The Draft EIR, the RTC document and Errata No. 1 together are considered to be the Final EIR for the proposed Project. Because no new or substantially more severe significant impacts, and no new mitigation measures or alternatives that would clearly lessen the significant impacts of the Project were identified after circulation of the Draft EIR, recirculation of the EIR is not required.

Next Steps

The Environmental Review Committee (ERC) will review and make a recommendation for the EIR for the project on October 2, 2014. The ERC recommendation will be provided to the City Council at the October 7, 2014 EIR Study Session, and to the Planning Commission prior to the public hearing on October 14, 2014.

The Final EIR and General Plan Amendment, Housing Element Update, and associated Rezoning Project including zoning text amendments and Specific Plan Amendments will be presented to the Planning Commission for review and recommendation on October 14, 2014. The City Council's review on the certification of the EIR, General Plan Amendment, 2014-2022 Housing Element, and associated rezoning is expected to be on November 3, 2014, and the second reading related to the rezoning is expected to be on November 18, 2014.

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Reviewed by: Gary Chao, Assistant Director of Community Development

Approved for Submission by: Aarti Shrivastava, Assistant City Manager

Attachments:

A – General Plan Amendment, Housing Element Update, and associated Rezoning Draft Environmental Impact Report, June 18, 2014

B – General Plan Amendment, Housing Element Update, and associated Rezoning Response to Comments Document, August 29, 2014

C – Errata No. 1: Supplemental Text Revisions, October 1, 2014

D – Planning Commission Staff Report, September 9, 2014

E – Transportation Effects of BRT, March 29, 2014

F – Application of SB 50 to Consideration of Development Applications

G – Late Comments Memo from PlaceWorks, September 3, 2014

H – Late Comments Memo Updated from PlaceWorks, September 30, 2014