



SAN JOAQUIN RIVER CONSERVANCY

Board Briefing Memorandum

July 5, 2017

TO: San Joaquin River Conservancy
Governing Board

FROM : Melinda S. Marks, Executive Officer

SUBJECT: **Briefing on the Progress of the City of Fresno's Analyses of Possible Alternative 5B to Potentially Incorporate in the River West Fresno, Eaton Trail Extension Environmental Impact Report**

SUMMARY:

At the June 7, 2017, meeting the Board requested staff to report on the City of Fresno's progress in delivering additional analyses to potentially incorporate an additional alternative, Alternative 5B, in the Conservancy's River West Fresno, Eaton Trail Extension Environmental Impact Report (EIR).

As of the date of this memorandum, the City has executed a contract for services with Blair, Church and Flynn Consulting Engineers (BC&F) and issued a Notice to Proceed on June 28. BC&F will prepare a preliminary design for the possible Alternative 5B site improvements, including a public vehicle access road, pedestrian walkway, vault toilet restroom, parking area, and other visitor amenities common to the other access alternatives. The City funded the \$49,690 agreement using its Measure C funds¹. The scope of work does not include additional assessments of waste contamination; BC&F will rely on existing available site assessments referenced in the Conservancy's Draft EIR and other reports. BC&F will work closely with the environmental consultant, and must submit a schematic design report and construction cost estimate to the City and Conservancy by July 24.

On June 15, the City Council approved a contract with AECOM Inc. to perform the California Environmental Quality Act (CEQA) analyses of the possible added alternative. The City allocated \$97,000 from the City's Measure C funds for the AECOM agreement and associated City services. The agreement was fully executed on June 30, 2017. By July 24, AECOM must prepare an administrative draft of the revised portion of the Draft EIR.

The City held a kick off meeting with the consultants and Conservancy staff on June 28.

In accordance with CEQA, the Conservancy must maintain independent judgement and oversight of the City-sponsored work. The City and Conservancy developed a Memorandum of Understanding (MOU) to memorialize their working relationship and legal responsibilities

¹ Measure C is a county-wide sales tax for transportation purposes, including regional multi-modal trails.

(attached). City staff must submit the proposed MOU to the City Council for approval. The item has been tentatively scheduled for the July 20 Council meeting.

In the pending MOU, the Conservancy explicitly maintains its Lead Agency status and the right and obligation to exercise independent judgement over the content and possible public release of a partially revised Draft EIR. Conservancy staff and legal counsel must review and accept the administrative draft prior to providing it to the Board, and will be focusing on maintaining the integrity of the EIR documentation and process, and compliance with CEQA. The possible addition of Alternative 5B and resulting recirculation are the result of the Board's acceptance of a request by Mayor Brand of the City of Fresno, intended to provide an additional option for public access to the trail project. In this instance recirculation is not otherwise required by CEQA, and the Board has discretion over whether to recirculate.

AECOM will prepare a partial revised Draft EIR for recirculation and a 45-day public and agency review period. The revised and added text of the Draft EIR will be that necessary to analyze possible Alternative 5B and will be clearly marked. New technical studies, including BC&F's report, will be analyzed in the recirculated portion of the Draft EIR and appended to it.

After staff and legal counsel review, the design report and administrative draft of the revised portion of the Draft EIR will be submitted to the Conservancy Board for its determination as to whether to include the possible Alternative 5B among the alternatives being considered in the EIR and recirculate the relevant portions of the Draft EIR. If accepted for by the Board for recirculation, the 45-day comment period must close by September 30 in order to stay on schedule to certify the EIR by the Board's December meeting. The Conservancy's funding and contract for professional services to complete the EIR expire December 31, 2017.

Upon recirculation of the partially revised Draft EIR, reviewers must focus their comments on the new information. In the Final EIR, AECOM will respond to the comments received as of April 15, 2017, for the original Draft EIR, as well as comments received as a result of partial recirculation.

DISCUSSION:

The original, circulated River West Fresno, Eaton Trail Extension Draft EIR is available on the Conservancy's website, www.sjrc.ca.gov. Background information on the City-sponsored studies is available on the website in the approved minutes of the May 3, 2017, Board meeting, and in the staff report for Item G-1 presented at the June 7, 2017, meeting.

Route 5B is among five configurations or routes (5A through 5E) that were suggested to the Conservancy by the City in August 2015 to provide access to the proposed River West Fresno, Eaton Trail Extension Project. The Conservancy and its consultant, AECOM, subsequently studied the configurations in a constraints analysis documented in the circulated Draft EIR and appendices. All of the routes are affected to some extent by past landfill operations and have portions that are privately owned (i.e., the land must be acquired from willing sellers); other significant constraints included providing access for emergency vehicles, and safely accommodating public vehicles, pedestrians and bicyclists. The constraints analysis in the Draft EIR resulted in the determination that a hybrid of routes 5D and 5E would have the fewest constraints relating to access road feasibility, hazards, and hazardous materials; the potential environmental impacts of this "Alternative 5" were analyzed in the Draft EIR.

At the May 3, 2017, Board meeting the Board approved acceptance of the City's offer to conduct further investigations of Route 5B for the River West Fresno, Eaton Trail Extension EIR, subject to the Board's subsequent review and approval to recirculate the revised Draft EIR. The City had indicated that the private owner of land affected by Route 5B was supportive of the studies. In making its motion, the Board agreed to accept the supplemental study in an effort to consider more opportunities for access. Explicitly, the Board's action did not signify any deficiency in the existing Draft EIR, and was not intended to eliminate any of the other alternatives presented in the Draft EIR.

The consultants, under day-to-day management of the City and review and approval of Conservancy staff and legal counsel, will work diligently to complete satisfactory work products within the remaining weeks, while maintaining the integrity of the Conservancy's CEQA documentation and process.

Attachment

MEMORANDUM OF UNDERSTANDING
BETWEEN THE CITY OF FRESNO AND THE
STATE OF CALIFORNIA, SAN JOAQUIN RIVER CONSERVANCY

ADDITIONAL ENVIRONMENTAL IMPACT ANALYSES BY AECOM, RIVER WEST FRESNO,
EATON TRAIL EXTENSION ENVIRONMENTAL IMPACT REPORT

This Memorandum of Understanding is made and effective as of June __, 2017, by and between the State of California, San Joaquin River Conservancy (Conservancy) and the City of Fresno (City).

WHEREAS, in compliance with the California Environmental Quality Act (CEQA) the Conservancy, as lead agency, is directing the preparation of the River West Fresno, Eaton Trail Extension Environmental Impact Report (EIR) through its contract with AECOM, Inc. (AECOM); and

WHEREAS, on February 15, 2017, the Conservancy released a Draft EIR (hereinafter, the original Draft EIR) for agency and public review, with the comment period ending April 15, 2017; and

WHEREAS, the original Draft EIR contains a description of the proposed River West Fresno, Eaton Trail Extension Project (proposed Project), an analysis of the environmental impacts of the proposed Project, and describes and analyzes the potential environmental impacts of a range of reasonable alternatives to the proposed Project, specifically, two alternative trail alignments, two alternative public vehicle access routes and parking locations, one alternative without vehicle access, and a No Project alternative; and

WHEREAS, the original Draft EIR and its technical appendices present a constraints analysis of five possible public vehicle access and parking configurations in the vicinity of the intersection of Palm Avenue and Nees Avenue in the city of Fresno, and, as the result of that constraints analysis, presents the description and environmental impact analysis of Alternative 5, Palm and Nees Access; and

WHEREAS, the City proposes to provide the Conservancy additional feasibility and environmental impact analyses of one possible access route and parking area studied in the constraints analysis, closely aligned to the configuration shown as Route 5B in the original Draft EIR; and

WHEREAS, at its meeting of May 3, 2017, the Conservancy Board conditionally accepted the City's offer to fund and contract with consultants to perform such additional studies as necessary to incorporate a new potential alternative, Alternative 5B, into the River West Fresno, Eaton Trail Extension EIR and CEQA compliance process, including recirculation of limited portions the Draft EIR, as revised; and

WHEREAS, the Conservancy Board, at its discretion, conditionally accepted the City's offer on the basis that it presents the potential to provide additional or alternative public access to the proposed Project; and, in the approved motion for acceptance, the Board stipulated that their action could not be construed to imply any deficiency in the original Draft EIR or the Conservancy's CEQA compliance, and that the City's work must not interfere with or delay completion of the entire EIR process by December 31, 2017; and

WHEREAS, on June 15, 2017, the Fresno City Council approved funding and authorized a professional services agreement with AECOM to perform the services necessary to develop potential Alternative 5B and incorporate it in the Conservancy's EIR; and

WHEREAS, in accordance with CEQA Guidelines Section 15084, a Draft EIR must be prepared directly by or under contract to the Lead Agency. The Lead Agency may choose one of the following arrangements or a combination of them for preparing a draft EIR: (1) Preparing the draft EIR directly with its own staff; (2) Contracting with another entity, public or private, to prepare the draft EIR; (3) Accepting a draft prepared by the applicant, a consultant retained by the applicant, or any other person; (4) Executing a third party contract or Memorandum of Understanding with the applicant to govern the preparation of a draft EIR by an independent contractor; and/or (5) Using a previously prepared EIR.²

NOW THEREFORE, the City and Conservancy hereby formalize and define their respective roles and responsibilities to collaborate and cooperate in the preparation of additional analyses to potentially incorporate Alternative 5b in the River West Fresno, Eaton Trail Extension EIR and CEQA compliance process, by agreeing as follows:

1. The Conservancy is the Lead Agency and retains all rights and responsibilities associated with discretionary decision-making with regard to the EIR, the proposed Project, and project alternatives.
2. The Conservancy is a third-party beneficiary of the contract between the City and AECOM, which is attached hereto as **Exhibit A**. The City and AECOM shall perform all work at the direction of the Conservancy as Lead Agency, as required by CEQA. The Conservancy shall provide general direction for the City's and AECOM's work. The City shall provide the Conservancy with draft copies of all documents to be made public as part of the City's contract with AECOM and shall give the Conservancy adequate time and opportunity to review and approve such documents before they are finalized and made public by the City and AECOM. In the event the Conservancy finds the additional analysis should be included in the Draft EIR, the Conservancy shall provide overall direction as to how the partial recirculation of portions of the Draft EIR, as revised, shall occur.

² In *Friends of La Vina v. County of Los Angeles*, the California Supreme Court has confirmed that an EIR can be drafted by someone other than the Lead Agency, as long as the Lead Agency sufficiently exercises independent judgment over the environmental analysis and exposition that constitute the EIR. (232 Cal.App.1446 at 1455 (1991))”

3. The City's agreement with AECOM is specific to tasks associated with analysis of potential Alternative 5B. AECOM's scope of work for the City contract is not intended to overlap, replicate, or replace AECOM's scope of work under its contract with the Conservancy.
4. The City shall provide day-to-day oversight, direction, quality control, and management of AECOM's services under its contract to the City. The City is solely responsible for financial and budgetary management of its contract with AECOM. The City or AECOM shall provide copies of all AECOM invoices to the Conservancy.
5. Conservancy staff shall be provided the opportunity to attend any meetings held by the City and/or AECOM with City executives, elected officials, community members, stakeholders, landowners, and other interested third parties.
6. The parties acknowledge that the Conservancy, as Lead Agency, must independently review the additional analysis provided by the City for the potential Alternative 5B prior to determining whether it is appropriate to utilize such analysis in the EIR. At its sole discretion, the Conservancy Board may approve, or may deny, the inclusion of revised portions of the Draft EIR and otherwise incorporating the proposed Alternative 5B into its EIR and process. The Conservancy Board reserves to itself the opportunity to review the draft documents proposed to be recirculated as a part of the revised Draft EIR, and to determine at its meeting of August 9, 2017, whether the new information prepared by AECOM and otherwise provided by the City presents a viable new alternative worthy of public consideration and recirculation of all or portions of the Draft EIR, as revised and whether the addition of a new alternative and associated process will allow completion of the EIR by December 31, 2017. The additional analyses prepared by the City and AECOM shall be provided to Conservancy staff for review not later than July 24, 2017, and refined for submittal to the Conservancy Board not later than July 31, 2017. If, for any reason, the information and analyses are not timely completed or approved by the Conservancy for incorporation in the Conservancy's EIR, the City may pursue other processes contemplated under CEQA to allow future study and consideration of the alternative.
7. AECOM's services under the Conservancy's contract must be performed not later than December 31, 2017. Any services provided to the City by AECOM to analyze potential Alternative 5B shall not interfere with AECOM's timely completion of all work required under its contract with the Conservancy.
8. All documents and records produced by the City and AECOM as a part of the work associated with the City's contract with AECOM, are owned by the Conservancy as well as the City, and are part of the administrative record. Upon completion of the work,

copies of all records and documents referenced in the City/AECOM contract Section 5(b), attached as Exhibit A, shall be provided to the Conservancy.

9. This Memorandum of Understanding shall continue in effect until March 31, 2018, unless terminated or amended in writing, by mutual agreement of both parties.

In witness whereof, the parties have executed this Memorandum of Understanding as of the date first above written.

STATE OF CALIFORNIA, SAN JOAQUIN RIVER CONSERVANCY

Melinda S. Marks, Executive Officer

Date

Approved as to Legal Form:

Michael L. Crow, Deputy Attorney General

Date

CITY OF FRESNO

Scott Mozier, Public Works Director

Date

Douglas T. Sloan, City of Fresno Attorney

Date