



Council Meeting: June 28, 2011

SUBJECT: Decertification of Mary Avenue Environmental Impact Report and Vacation of Project Approval; Revision of Environmental Impact Report for Mary Avenue Extension Project; Approval of Budget Modification No. 37

REPORT IN BRIEF

This report requests that the City Council take action by motion to void and set aside the Mary Avenue Extension EIR certification and the project approval made on October 28, 2008 until such time that the EIR is revised and returned pursuant to the Superior Court's writ.

On October 28, 2008, the City Council approved the Final Environmental Impact Report (EIR) for the Mary Avenue Extension Project (RTC 08-320). Sunnyvale West Neighborhood Association filed a Petition for Writ of Mandate (a legal challenge) contesting the approval and adequacy of the EIR. The Superior Court granted the Petition on November 5, 2009, on the grounds that the "baseline" used for analysis of impacts and alternatives was incorrect. The City appealed to the 6th District Court of Appeal, and on December 16, 2010, the appeals court affirmed the Superior Court decision. The City did not seek further review in the California Supreme Court, and accordingly the Order and Writ of Mandate issued by the Superior Court is final.

The City's next steps to comply with the Superior Court's Order are to vacate the certification of the Mary Avenue EIR and void the Project approval until the specific areas in the EIR identified by the Court as deficient, are revised and circulated for public review and comment. This action is required by the Court order. Accordingly, the action Council is requested to take tonight is to vacate the certification of the Mary Avenue EIR and void the project approval. After revision and circulation of the revised EIR in compliance with CEQA requirements, the Final EIR will return to the Council for review and certification prior to Council consideration of Project Approval.

Staff has identified available Valley Transportation Authority (VTA) grant funding and is processing a Request for Proposals for preparation of supplemental environmental documentation for the Mary Avenue Extension Project Development Project. A revised environmental document will be prepared, circulated, and brought before Council for consideration per the requirements of the California Environmental Quality Act and the Superior

Court writ. A budget modification is necessary to appropriate grant funding received for Mary Avenue Extension project development activities.

EXISTING POLICY

Land Use and Transportation Element R1.6, Preserve the option of extending Mary Avenue to the industrial areas north of U.S. Highway 101.

FISCAL IMPACT

Approval of a motion to set aside the Mary Avenue Extension EIR and project approval will not have a fiscal impact in and of itself. Staff will be preparing supplemental environmental documentation, for which sufficient funds have been granted by the Santa Clara Valley Transportation Authority Local Streets and County Roads Program. Budget Modification No. 37 has been prepared to appropriate \$3,725,000 of grant funding from the Santa Clara Valley Transportation Authority (VTA) Local Streets and County Roads Program to the Mary Avenue Extension Project Development Project. These funds are available for project development activities including environmental documentation and project design. Staff anticipates that revision of the EIR will cost approximately \$150,000, with the rest of the funding being available for project design.

**Budget Modification No. 37
FY 2010/2011**

			Current	Increase/ (Decrease)	Revised
Capital Projects Fund/ Subfund	General				
<u>Revenues:</u>					
Local Streets and County Roads Program			\$0	\$3,725,000	\$3,725,000
<u>Expenditures:</u>					
Mary Avenue Extension Project Development Project			\$ 0	\$ 3,725,000	\$3,725,000

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, in the Council Chambers lobby, in the Office of the City Clerk, at the Library, Senior Center, Community Center, and Department of Public Safety; posting the agenda and report on the City's Web site; and making the report available at the Library and the Office of the City Clerk.

ALTERNATIVES

1. Approve vacation of the certification for the Mary Avenue Extension EIR and void the project approval made on October 28, 2008. Direct staff to proceed to comply with the Order of the Superior Court by revising the Mary Avenue EIR and return to the Council for EIR and Project approval upon the completion of the revised EIR process.
2. Appropriate \$3,725,000 of grant funding from the Santa Clara Valley Transportation Authority Local Streets and County Roads Program to the Mary Avenue Extension Project Development Project for purposes of funding the EIR and additional engineering and project development work.
3. Approve vacation of the certification for the Mary Avenue Extension EIR and void the project approval made on October 28, 2008; and direct staff to not revise the EIR, thereby canceling the project and forfeiting grant funds.

RECOMMENDATION

Staff recommends Alternatives Nos. 1 and 2. Alternative 1 is mandatory, based on Court's Order:

Approve vacation of the certification for the Mary Avenue Extension EIR and void the project approval made on October 28, 2008; direct staff to proceed to comply with the Order of the Superior Court by revising the Mary Avenue EIR and to return to the Council for EIR and Project approval upon the completion of the revised EIR process; appropriate \$3,725,000 of grant funding from the Santa Clara Valley Transportation Authority Local Streets and County Roads Program to the Mary Avenue Extension Project Development Project for purposes of funding the EIR and additional engineering and project development work.

Reviewed by:

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Reviewed by:

Grace Leung
Director, Finance

Reviewed by:

David Kahn, City Attorney

Approved by:

Gary M. Luebbers
City Manager