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May ____, 2005

Chairperson David Robertson
and Members of the Planning Commission
City of Davis
23 Russell Blvd.
Davis, CA 95616

Re: Covell Village

Dear Mr. Robertson:

At its hearing on May 18, 2005, the Commission asked City staff to respond to certain questions that came up during the course of the hearing. The information requested by the Commission included (1) the City's compliance with certain laws concerning verification of water supplies, (2) the proximity of the site to the Old Davis Landfill, and (2) payment of an in-lieu fee for agricultural mitigation.

We believe the EIR contains ample information on these issues. For the Commission's benefit, we offer the following summary of this information.

A. Water Supply

The Commission asked staff to provide additional information on the extent to which the City has complied with State laws designed to ensure adequate water supplies are available for new development.

The Legislature enacted these laws in recent years in order to ensure that local agencies have sufficient information about the availability of water supplies at the time they make decisions whether to approve projects. In 2001, the California Legislature passed Senate Bills 221 and 610, amending provisions of state law to create a greater degree of linkage between new development and water supply for new development.

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SB 610 requires the preparation of a water supply assessment for any new residential subdivision of more than 500 units. (Water Code, § 10910.) The water supply assessment addresses the ability of the water supplier to provide water for its existing and expected future demands as well as the anticipated needs of the proposed new development. SB 610 requires the preparation of the water supply assessment as part of the CEQA process for the project.

SB 221 requires the local agency to obtain a written verification of adequate water supply. (Government Code, § 66473.7.) The verification must be provided prior to the approval of the final subdivision map for the project. The agency cannot approve the final map absent such a verification.

The City has complied with SB 610. The City of Davis is both the land-use decision-maker and the local “public water system.” In November 2004, the City Department of Public Works, as the water purveyor, prepared a water supply assessment for Covell Village, in accordance with the requirements of Water Code section 10910. The City included the water supply assessment in the Draft EIR. (See Draft EIR, Appendix K.) The Department of Public Works concluded Covell Village would need to develop one or two new wells in the deep aquifer to meet its peak demands at build-out. (Draft EIR, Appendix K, page 5.) The development agreement requires Covell Village to develop a deep-aquifer well at the outset of the project. At this time, it is not known whether a second well will be required. If and when a second well is required, the project will contribute to the cost of the second well through payment of fees. Mitigation measure 4.12-5 ensures that wells will be developed as needed as the project builds out. The analysis indicates the deep-aquifer contains sufficient water to meet the needs of the project. Thus, there will be no adverse effects on the City’s ability to serve its other existing and planned future water customers. (Id. at pp. 12-13.)

By preparing a water supply assessment and circulating the assessment for public review as part of the draft EIR, the City has complied with Water Code section 10911, subdivision (b).

If the City approves the project, then the City must “determine, based on the entire record, whether projected water supplies will be sufficient to satisfy the demands of the project, in addition to existing and planned future uses.” (Water Code, § 10911, subd. (c).) The water supply assessment, together with the information in the EIR (Draft EIR, pp. 4.12-33 - 4.12-34), provides the evidence necessary to make this determination. Because the City is requiring Covell Village to develop the additional well capacity to serve the projected needs of the project, Public Works has already determined that the

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water supply is sufficient. (See Water Code, § 10911, subd. (c) (a formal “finding” is not required unless the Council determines the water supply to be insufficient).)

Questions have also been raised regarding SB 221. This statute is tied, not to the CEQA process, but to the approval of subdivision maps. SB 221 provides that “any tentative map that includes a subdivision” must include a condition “requir[ing] that a sufficient water supply shall be available.” (Government Code, § 66473.7, subd. (b)(1).) Upon request, the “public water system” must provide a “written verification” of its ability or inability to provide a water supply to meet projected demand associated with the subdivision. (Government Code, § 66473.7, subd. (b).)

Covell Village has not applied for a tentative map. For this reason, SB 221 is not relevant to the application before the City. When Covell Village applies for a tentative map in accordance with the terms of its development agreement, the tentative map must include a condition requiring verification of the availability of water supply prior to final map approval.¹ The City, acting as “public water system” will be responsible for issuing the verification at that time.

With regard to potential future surface water supply, the City and UC Davis completed a Joint Water Supply Feasibility Study in 2002, to evaluate long-term water supply options for the City and University, including the possibility of incorporating surface water. That document indicates that a water rights application to appropriate water from the Sacramento River was filed in 1994, and the City and UC Davis continue the lengthy process of pursuing their rights under that application. (Joint Water Supply Feasibility Study, p. 1-7.) The City is about to begin the process of preparing an EIR/EIS to support these water rights applications, but does not expect to certify the document until at least 2007. (Staff Presentation, Meeting of the Natural Resources Commission, April 25, 2005.) If the State Water Resources Control Board grants the water rights, construction of the conveyance project will begin around 2015. (*Ibid.*) Thus, while the City continues to diligently pursue this option, it is premature to discuss construction of a pipeline to convey surface water that has not yet been appropriated by for use by the City of Davis. In any event, Covell Village does not depend on the development of such

^{1/} Government Code section 65867.5 requires that a development agreement including a subdivision of 500 or more dwelling units must include a provision that any tentative map prepared for the subdivision will comply with the water supply verification requirements of Government Code section 66473.7. The Covell Village Development Agreement should be revised to include such a provision.

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surface water supplies..

B. Former Davis Landfill

Two questions were asked regarding the proximity of Covell Village to the Old City Landfill site: (1) whether State law requires a buffer between the landfill and the Covell Village project, and (2) whether there is a potential for migration of vinyl chloride from the landfill to the Covell Village project.

1. Landfill buffer

One commenter at the hearing on May 18, 2005, said she had heard there is a state law prohibiting residential development within 100 feet of a former landfill site. The commenter was most likely referring to a regulation governing post-closure land uses of a former landfill site. (See FEIR, Volume II, p. 423 (comment 77-9 from Ms. Samitz).)

As stated in the FEIR, however, “the Title 27 Disposal Site Postclosure Land Use regulations for construction within 1,000 feet of a disposal site do not apply to the Covell Village property.” (FEIR, p. 4-99.) The FEIR explained:

As stated in the Site Boundary Issues section of the California Integrated Waste Management Board (CIWMB) Local Agency Enforcement (LEA) Advisory #51 dated July 22, 1998, ‘Any property located outside the parcel containing the solid waste is not subject to the postclosure land use requirements of 27 CCR 21190, even if the outside property is within 1,000 feet of the waste footprint 927 CCR 21190(c).’

(*Ibid.*; see also FEIR pp. 2-76 to 2-78.)

We have independently researched whether any other State law or regulation requires a buffer around a landfill. We have not found any other law or regulation containing such a requirement. In short, the only regulation we know of – 27 CCR 21190 – does not apply.

2. Vinyl chloride

One commenter expressed the concern that residents of Covell Village may be exposed to vinyl chloride migrating from the landfill. As the Final EIR states, however, “vinyl chloride has not been detected in either groundwater or vapor samples collected

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from the monitoring wells located on the Covell Village property.” (FEIR, p. 4-60.)

The commenter’s concern may be based on a statement in the 1997 Covell Center EIR indicating that vinyl chloride may have migrated from the landfill. The City Public Works Department and GEOCON Consultants have determined, however, that this statement in the 1997 EIR is incorrect. As the Final EIR explains, “the source document referenced in the 1997 EIR . . . does not corroborate the statement that vinyl chloride was detected on the Covell Village property.” (*Ibid.*) The City monitors groundwater in and around the landfill site, as required by the Regional Water Quality Control Board. Monitoring data indicates the Covell Village site is not affected by the landfill. (See Final EIR, pp. 2-106 - 2-107.)

3. Agricultural Mitigation

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Thank you for your consideration of this information.

Very truly yours,

Whitman F. Manley

Cc: Bill Emlen
Harriet Steiner