



**City of East Palo Alto
Office of the City Manager**

DATE: February 23, 2006

TO: Honorable Mayor and Members of the City Council
Honorable Agency Chair and Agency Members

VIA: Alvin D. James, City Manager

FROM: Debbie Schechter, Environmental & Economic Development Coordinator

SUBJECT: Update and Next Steps Regarding the Cleanup of Contaminated Soil in the Rail Spur Right-of-Way to the East of Illinois Street

Recommendation

That the City Council and Redevelopment Agency receive this update and give direction to the City Manager to proceed with steps necessary to plan and implement the clean up of arsenic-contaminated soil in the rail spur right-of-way behind homes on the east side of Illinois Street.

Background

On November 9, 2005, the City Council and Redevelopment Agency held a Special Study Session on issues related to arsenic-contaminated soil along the Union Pacific Railroad right-of-way to the east of Illinois Street (also known as the rail spur). This study session was held in response to residents' concern that contaminated soil along the rail spur has not yet been cleaned up, despite years of discussion between the City and Union Pacific (UP). At the study session, the Council received an update on past activities, current issues, and next steps related to the cleanup of arsenic-contaminated soil along the rail spur. The staff report from the November 9, 2005 Special Study Session is included as Attachment 1.

At the Study Session, staff committed to the following next steps:

1. Continue to work with UP in the short term to remove trash and debris from the rail spur.
2. Provide information to the Council and residents about the results of soil sampling for arsenic in residential backyards.
3. Gather cost estimates for construction of the area drain concept that was acceptable to residents.

4. Develop a rough timeline of future activities necessary to make progress on the cleanup of contaminated soil.

Updates Since November 9, 2005 Study Session

Staff has continued to make progress on resolving issues related to the rail spur since the November 9, 2005 special study session, as described below:

1. Removal of trash and debris from the rail spur: Since September, City staff has been working with Union Pacific Railroad (UP) to get UP to remove trash, debris and weeds from the rail spur between Bay Road and Purdue Avenue to prevent illegal activities from occurring along the rail spur. During the weeks of November 21 and November 28, UP's contractor removed trash, debris, and weeds from the portion of the rail spur from Bay Road to Purdue Avenue, adjacent to the backyards of homes along the east side of Illinois Street. Trash and weed removal was completed on November 30th. Locked fences with gates were installed several days later at Bay Road and at Purdue Avenue. This work was overseen by the City's Code Enforcement staff. Staff have keys to access the rail spur as needed.

2. Residents' concern about arsenic in backyards: At the November 9th Special Study Session on the Rail Spur, several residents raised concerns about arsenic in their backyards. They stated that high levels of arsenic were found in their yards and that UP had promised to clean up portions of their yards. This statement was contrary to the staff report for the November 9 session, which noted that no arsenic levels of concern were found in residential backyards, and contrary to UP's proposed remedial action plan, which calls for removal of arsenic-contaminated soil only along the rail spur right-of-way.

Subsequent to the November 9, 2005 study session, staff reviewed historic files regarding the rail spur and talked with Lily Lee of USEPA, who formerly managed the rail spur project, and with representatives from the Regional Water Quality Control Board (Water Board) and UP. Here is what staff found: In September, 2001, the City contracted with Dugan Associates to sample soil in 21 backyards of greatest concern to the Water Board. These were yards where arsenic levels just east of the residents' fence line within the rail spur were slightly higher than the residential health-based standard of 20 milligrams arsenic per kilogram of soil (mg/kg). Three locations were sampled within each of the 21 backyards at depths of 0 to 18 inches below ground surface. The highest level of arsenic found was 14 mg/kg. Most samples had arsenic concentrations between 4 and 8 mg/kg. All samples taken from backyards had arsenic levels below the 20 mg/kg health-based standard that is considered safe for residential areas. Therefore, according to both the Regional Board and US EPA, soils in backyards are considered safe with respect to arsenic. Residents received the results of soil sampling in their yards and the entire soil sampling report was available in the library. In addition, in November 2001, a fact sheet summarizing the sampling results was distributed to residents. This fact sheet is included as Attachment 2.

3. Progress related to the drainage plan: In November, 2005, staff received rough estimates for the cost of constructing the drainage plan with which the City and residents agreed. Drainage was estimated to cost in the range of \$150,000 to \$200,000. In December, City staff and Union Pacific met to discuss how to move forward with the cleanup. The UP representative verbally agreed that, if the City could fund construction of the drainage, UP could incorporate the drainage plan into its bid documents and contract out the entire project, including the cleanup of the contaminated soil and the construction of the drainage (of course, this is subject to the City and UP finalizing a formal legal agreement). Subsequently, the City Manager identified a potential source of funding for drainage improvements. The City has approximately \$250,000 in Capital Improvement Funds for storm drains. In January, 2006, the City Engineer submitted preliminary design drawings for the area drains to Union Pacific so that UP can incorporate the area drains into the bid documents for the rail spur cleanup.

4. Approval of the November 2004 Draft Remedial Design Document for the rail spur: The November 2004 Draft Remedial Design Document prepared by UP is the cleanup plan with which the City and the community agreed (with the exception of the post-cleanup drainage plan). This plan requires approval by the Water Board. On February 8, 2006, the Water Board approved the cleanup plan. This means that the plan is final as far as the Water Board is concerned and must be followed. The Water Board noted in its letter that the City and UP are still finalizing details of the drainage plan. The approval letter from the Water Board is included as Attachment 3.

Next Steps

There are several steps that need to occur in order for cleanup of contaminated soil along the rail spur to occur. These steps include the following:

1. Complete the agreement between the City and UP: The Agency¹ has restarted negotiations with UP regarding an agreement for cleanup of the rail spur and transfer of UP's property rights over the rail spur to the City. This is a critical step that should be completed before UP moves forward to put the project out to bid.
2. Finalize design and bid documents: UP needs to finalize the details of the cleanup design, including incorporating the drainage design that was presented to residents. UP also needs to finalize the bid documents that will be send out to engineering firms interested in bidding on the project.
3. Solicit and review bids, select contractor: UP needs to put the project out to bid, review bids from contractors, and select the contractor to conduct the cleanup.
4. Form or formalize a drainage district: As was previously discussed at the October 3, 2005 community meeting and the November 9, 2005 special study session, the

¹ Agency legal Council has been leading discussions regarding the rail spur with UP because the property, in its' entirety, includes the portion south of Bay Road. Per Agency direction, the portion south of Bay Road is in the process of having land title issues resolved.

\$500,000 that the Agency has secured from a bond refinancing can be used to pay for the cleanup. However, the terms of the refinancing require the Agency or the City to retain the rail spur in public ownership. Accordingly, a drainage district will serve as a convenient vehicle for managing and protecting the drainage improvements to be constructed by UP while allowing residents to use the rail spur property as part of their backyards.

The City recently took over the ownership of a storm drain district from San Mateo County. This storm drain district includes most of the storm drainage improvements within the City. The boundaries of the drainage feature to be constructed as part of the rail spur cleanup will need to be delineated so that this feature can be included in the existing storm drain district.

5. Develop and enter into agreements with property owners regarding construction of side fences: As has been discussed in the past, after the rail spur cleanup has been completed, Union Pacific will reinstall or replace existing back fences on the other side of the rail spur. However, property owners will be responsible for extending their side fences to include the additional 20 feet of the rail spur. The City will require property owners to provide written agreement that they will pay for their portion of the side fencing. The City can facilitate a process to identify an economical approach for installing side fences.
6. Develop and issue use licenses to property owners on the east site of Illinois Street: The City will need to develop individual use licenses that authorize property owners on the east site of Illinois Street to use the rail spur property subject to certain limitations. Limitations are likely to include a prohibition on construction of permanent structures on the rail spur property, a requirement that property owners allow the City access to the rail spur property for maintenance of the drainage feature and related purposes. In exchange, it is proposed that property owners be allowed to take advantage, through zoning amendments to modify site standards for the residential properties abutting the rail spur, of specialized provisions to allow increased building area on their existing lots. In essence, property owners would be able, for buildability purposes, to count the area of rail spur to be incorporated into their individual backyards, into the floor area ratio and lot coverage calculations that define how much square footage can be constructed on each lot (although the rail spur area is not owned). Owners choosing to take advantage of this provision, could add square footage to their existing residences beyond what would be allowed by the size of their existing lots.

Some of these steps can occur concurrently and some may be able to take place while the cleanup is being conducted. Other steps, such as the proposed zoning amendments will require consideration by both the Planning Commission and the City Council. Staff is developing an estimated timeline for these steps.

Fiscal Impact

The City's efforts to move the rail spur cleanup forward have had little fiscal impact thus far, other than requiring considerable City staff and Agency attorney time and effort. If the Council directs staff to move forward with the cleanup of the arsenic-contaminated soil along the rail spur, the fiscal impact will be as follows:

- As part of the draft agreement with UP, the City/Agency will be required to pay UP \$500,000 in order for UP to clean up the arsenic-contaminated soil. These funds are available as part of the proceeds of a bond refinancing that the City completed in September, 2005.
- The City/Agency will be required to pay for construction of the drainage option with which the residents agreed. This cost is estimated to be in the range of an additional \$150,000 to \$200,000. Grant funds to cover this cost are available in a Capital Improvement Fund earmarked for storm drain improvements.
- Additional General Fund-related City staff, and City Attorney time expenditures will be necessary to work on the various steps needed to complete this project including, delineation of the drainage district boundaries, ordinance changes related to proposed zoning amendments, development of use licenses with each resident, outreach to residents during the actual cleanup, etc. Additional Agency legal costs will also be incurred to develop a final agreement with UP regarding project implementation, including rail spur cleanup, drainage improvement construction, resolution of right of way ownership, etc.

Attachments:

1. Staff report from November 9, 2005 Special Study Session
2. Fact sheet re arsenic sampling in backyards
3. Regional Water Quality Control Board letter of approval for rail spur cleanup plan