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November 14, 2018

Via E-Mail and Hand-Delivery

AGENDA ITEM No. 3

City of Santa Clara Planning Commission
1500 Warburton Avenue
Santa Clara, CA 95050
Planning@santaclaraca.gov

Re: **Comments on the Final Environmental Impact Report for Gateway Crossings Project**

Dear Honorable Planning Commission Members:

We are writing on behalf of Santa Clara County Residents for Responsible Development (“Residents”) regarding the City of Santa Clara’s September 2018 Final Environmental Impact Report (“FEIR”) prepared for the Gateway Crossings Project (“Project”) proposed by Hunter Storm Properties (“Applicant”). On May 25, 2018, we submitted comments on the Project’s Draft EIR (“DEIR Comments”). The FEIR contains the City’s responses to our DEIR Comments. However, the City’s responses and the FEIR fail to resolve all the issues we raised, as detailed below, and our comments still stand.¹ Specifically, the City failed to adequately describe the existing environmental setting upon which to measure transportation impacts and failed to properly disclose, analyze and mitigate the Project’s significant transportation impacts. The City’s conclusions are not supported by substantial evidence and fail to comply with the law. The City cannot approve the Project until it revises the EIR to comply with CEQA and recirculates the revised EIR for public review.

We prepared these comments with the assistance of traffic and transportation expert Dan Smith of Smith Engineering & Management. Mr. Smith’s comments are attached hereto as Exhibit A and are fully incorporated herein and submitted to the City herewith.

¹ We incorporate our May 25, 2018 comments, along with their attachments and exhibit, herein by reference. (“DEIR Comments”) 4271-010acp

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I. STATEMENT OF INTEREST

Santa Clara Residents is an unincorporated association of individuals and labor organizations that may be adversely affected by the potential public and worker health and safety standards and environmental impacts associated with Project development. Santa Clara Residents includes Santa Clara resident Corey Quevedo, the International Brotherhood of Electrical Workers Local 332, Plumbers & Steamfitters Local 393, Sheet Metal Workers Local 104, Sprinkler Fitters Local 483, and their members and families, and other individuals that live and/or work in the City of Santa Clara and Santa Clara County.

Individual members of Santa Clara Residents and the affiliated labor organizations live, work, recreate and raise their families in the City of Santa Clara and Santa Clara County. They would be directly affected by the Project's environmental and health and safety impacts, including the transportation impacts. Individual members may also work on the Project itself. Accordingly, they will be first in line to be exposed to any health and safety hazards that exist onsite. Santa Clara Residents have a strong interest in enforcing the State's environmental laws that encourage sustainable development and ensure a safe working environment for its members. Environmentally detrimental projects can jeopardize future jobs by making it more difficult and more expensive for business and industry to expand in the region, and by making it less desirable for businesses to locate and people to live there.

II. THE FEIR FAILS TO ADEQUATELY DISCLOSE, ANALYZE, AND MITIGATE SIGNIFICANT TRANSPORTATION AND TRAFFIC IMPACTS

CEQA requires the City to analyze the Project's direct, indirect and cumulative impacts from traffic generated by the Project. Dan Smith, a Civil and Traffic Engineer, reviewed the DEIR and the FEIR analysis and responses to comments and concluded that the City's analysis of transportation impacts is inadequate for several reasons. First, the DEIR fails to assess the Project's transportation impacts compared to the actual environmental setting, as required by CEQA. Second, the DEIR greatly underestimates the Project's actual transportation impacts by improperly taking credit for prior uses that ceased a long time ago. Finally, the DEIR fails to properly discuss and mitigate the Project's impact on public transit, as required by CEQA. The FEIR responses fail to resolve

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those issues, as explained below. In addition, the City failed to prepare a multimodal plan, as required under state law, to mitigate impacts on specific intersections.

A. The EIR Fails to Adequately Establish the Existing Setting for Transportation Impacts

In our DEIR Comments, we provided substantial evidence that the DEIR failed to establish the existing conditions, or baseline, as required under CEQA, for its transportation impact analysis. An expert traffic engineer provided evidence showing the City included in its analysis outdated and irrelevant traffic counts from R&D buildings on the site that were demolished prior to the publication of the NOP.

In its response, the City admits that the buildings were demolished before the NOP was published. The City argues that:

According to CMP and City of Santa Clara traffic study requirements and standard procedures, traffic counts must be no more than two years old at the time of the NOP. All counts used in the study comply with this requirement. The reason for the two year standard is that it has been found that traffic counts typically do not vary significantly within a two year period. No substantial development or change in the project area has occurred between 2015 and 2017, except for the vacation and demolition of the previous buildings on-site.²

This response is flawed for several reasons, as explained by Mr. Smith in his comments and as set forth in the law:

First, it is factually incorrect. Contrary to the City's statement that "all counts used in the study" are no more than two years old at the time of the NOP, Mr. Smith points out that *seven out of the nineteen PM traffic counts intersections were collected in 2014, three years before the NOP was published*. Therefore, even according to the City's own "traffic study requirements and standard procedures," the City failed to properly establish existing conditions.

² City of Santa Clara, Final Environmental Impact Report, September 2018, p. 39.
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Second, even if the City could rely on traffic counts assuming the R&D building still exists, the City's implementation of its "traffic study requirements and standard procedures" contradicts CEQA. Any agency's internal guidelines must be applied in a way that does not contradict CEQA. The City and VTA's guidelines *allow* for two-year-old traffic counts, but such traffic counts may only be used as long as they fulfil CEQA's requirement of establishing the existing conditions. As Mr. Smith shows, this is not the case here. Contrary to the City's argument that "[n]o substantial development or change in the project area has occurred between 2015 and 2017," Mr. Smith shows that, in fact, "the Project area and roadways that serve it are in an area of dynamic traffic growth that is quite the opposite of the response's attempted justification for using outdated traffic data."³ Mr. Smith shows that increased air passenger traffic in the nearby Mineta International airport, as well as considerable commercial and residential development in the area, including in neighboring cities, all contribute to increased traffic on the surrounding highways, which is not reflected in the outdated traffic counts.⁴ By using outdated traffic counts, the City fails to establish the proper baseline for the Project and violates CEQA.

B. The EIR underestimates the Project's transportation impacts

In our DEIR Comments, we showed that the DEIR greatly underestimated the project's transportation impacts. As described in our comments, even though the former R&D building on the site was demolished before the NOP was published, the DEIR improperly deducted the trips generated by the former use from the proposed Project's traffic. As Mr. Smith explains, this resulted in an 18.37 percent reduction in the net new daily trips, a 37.8 percent reduction in the AM peak trips and a 27.29 percent reduction in the PM trips actually generated by the Project.⁵

In response, the City argues:

In accordance with CMP and City of Santa Clara traffic study guidelines, in the background plus project scenario credit is given for the existing (or former) uses on the site as long as they were occupied within two years of the NOP. The logic behind this approach is that the existing buildings could be reoccupied or rebuilt without discretionary City approval. The existing

³ Exhibit A: Smith Engineering and Management comments, p. 3.

⁴ Exhibit A: Smith Engineering and Management comments, p. 2-4.

⁵ See Exhibit B to our DEIR comments, p. 2.

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buildings are assumed to be rebuilt and reoccupied in the background scenario.⁶

This response fails to support the City's analysis with substantial evidence. First, as Mr. Smith notes, there are no "existing buildings" that could be reoccupied, as the buildings were demolished *before* the NOP was published. Second, the assumption that the demolished buildings could be rebuilt without any discretionary City approval is wholly speculative and not supported by any evidence. As Mr. Smith notes, the buildings were old and obsolete, and it is extremely unlikely that they would or could be reconstructed in the same way if they needed to adhere to the present requirements of R&D buildings.

Moreover, the City's factual claim that the buildings were occupied in the two years prior to the NOP is not supported by any evidence. In fact, substantial evidence shows this was not the case: In a story about real estate developments in South San Jose that was published on June 2, 2015, a spokeswoman for BAE is quoted as stating that "BAE is moving employees from a longtime Santa Clara site—where its existing lease is expiring—to South San Jose by the end of October." According to this, in 2015, two years before the NOP was published, BAE was already in the process of vacating the buildings.⁷ The City's argument, therefore, is not supported by the evidence.

Finally, our comments also stated that the DEIR's analysis was flawed because it deducted the purported trip generation of the abandoned use from the Project's trip generation while adding the trip generation from the abandoned building back in for purposes of determining mitigation, as if it were a concurrent project in the background scenario. As Mr. Smith explained, this has the double effect of reducing the trip basis of the Project's fair share contribution to impact mitigation while artificially increasing the size of the pie of other purported fair share contributors to those mitigation fees, thereby also reducing the Project's fair share.⁸ The City failed completely to respond to this argument in the FEIR.

⁶ City of Santa Clara, Final Environmental Impact Report, September 2018, p. 40.

⁷ <https://news.theregistrysf.com/south-san-jose-submarket-gains-from-northern-demand/>

⁸ Exhibit A: Smith Engineering and Management comments, p. 5.
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C. The EIR Fails to Properly Analyze the Project's Significant Impacts on Public Transit

In our DEIR Comments, we showed that the City failed to properly analyze the Project's impacts on public transit. The City argued in the DEIR, after acknowledging that the Project will cause a three-minute delay to transit service, that "[n]either the City nor VTA has established policies or significance criteria related to transit vehicle delay."⁹ In other words, the City swept the problem under the rug. As we showed, claiming there are no significance criteria does not eliminate the requirement to analyze and identify mitigation for significant impacts where substantial evidence shows an impact will occur.

In response, the City states:

The transit analysis was completed in accordance with the methodology documented in Section 9.2 of the VTA Transportation Impact Analysis Guidelines dated October 2014. The methodology requires the analysis of project effects on transit vehicle delay and not the cumulative effect of other projects affecting transit. In addition, there is no significance criteria related to transit delay cited in the guidelines and thus, the transit analysis was included for informational purposes in the CEQA document.¹⁰

The City therefore acknowledges that VTA indeed *has* guidelines for analyzing the Project's impacts on transit vehicle delay, which necessarily includes mass vehicle transit, such as the bus and train transit systems. In addition, the City still fails to properly analyze the impact and respond to our comments, for three reasons:

First, the City fails to follow the VTA's Guidelines for transit impact analysis. The Guidelines explicitly require that "[i]f increased transit vehicle delay is found in this analysis, the Lead Agency should work with VTA to identify feasible transit priority measures near the affected facility and include contributions to any applicable projects that improve transit speed and reliability in the TIA."¹¹ The City acknowledges that the Project will result in a three-minute delay for transit.

⁹ Gateway Crossings DEIR, April 2018, p. 196.

¹⁰ City of Santa Clara, Final Environmental Impact Report, September 2018, p. 41.

¹¹ Santa Clara Valley Transportation Authority, Transportation Impact Analysis Guidelines, October 2014, P. 57.

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However, as Mr. Smith notes, there is no indication in the EIR analysis or elsewhere that the City followed the Guidelines to implement transit priority measures in the affected area to mitigate the imposed delays.¹²

Second, a three-minute delay is significant. According to a Transit Capacity and Service Manual, three minutes is a significant delay requiring an assumption that “buses on separate routes serving the same destination that arrive at a stop within 3 minutes of each other should be counted as one bus for the purposes of determining service frequency [level of service].”¹³ In addition, “while a single-occupant vehicle and a 50-passenger bus traveling on the same street may experience the same amount of delay due to on-street congestion and traffic signal delays, the person-delay experienced by the bus is 50 times as great as the single-occupant vehicle.”¹⁴ Therefore, a three-minute delay means there are less mass transit vehicles and more people significantly impacted.

Third, the City’s claim that it mitigated the impacts on transit is not supported by substantial evidence. As Mr. Smith explains, the City claims the traffic mitigation measures it employs would return delays to transit to equal or better than baseline conditions. Although the Project is contributing a ‘fair share’ toward implementation of the mitigation, the City claims the Project will mitigate the impacts. This is incorrect. Even if the Project contributed its ‘fair share,’ which we explain above is improperly calculated and underestimated, the impacts remain significant. The actual impacts and the effectiveness of the Project mitigation is therefore exaggerated and not supported by substantial evidence.

Finally, in our DEIR Comments we showed that the City completely failed to disclose the Project’s impact on rail transit. As shown in our comments, the Project will add 74 trips in the AM peak hour and 89 trips in the PM peak hour, but the DEIR failed to analyze the impact of these trips on overcrowding in Caltrain.

In response, the City acknowledges the number of trips that will be added, but argues that:

¹² Exhibit A: Smith Engineering and Management comments, p. 6.

¹³ Transportation Research Board of the The National Academies of Science, Engineering, Transit Capacity and Quality of Service Manual (Part E): http://onlinepubs.trb.org/onlinepubs/tcrp/tcrp_webdoc_6-e.pdf.

¹⁴ Id.

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Some of the Caltrain trains are known to be very crowded. However, Caltrain plans to increase service to the Santa Clara station with the Caltrain Electrification Project. This project would increase train service to six trains/hour/direction with estimated passenger service to begin in 2022. Overall, it can be concluded that the project's estimated transit demand can be accommodated by the existing and planned services with regard to the impact on trains.¹⁵

This response is not supported by substantial evidence. While Caltrain is currently working on the Electrification Project, the completion of this project is still far into the future and its actual outcomes are unknown.¹⁶ The courts have ruled that reliance on another agency's future review of environmental impacts, without evidence of the likelihood of effective mitigation by another agency, is insufficient to support a determination by the lead agency that potentially significant impacts will be mitigated.¹⁷ The City's assumption that demand will be met by Caltrain's future projects is entirely unsupported by the evidence and violates CEQA.

D. The EIR Fails to Mitigate Project's Impacts on Congestion Management Plan ("CMP") Intersections

According to the DEIR, a transportation/traffic impact is considered significant if the project would "[c]onflict with an applicable congestion management program, including, but not limited to level of service standards and travel demand measures, or other standards established by the county."¹⁸

In the Santa Clara Valley Transportation Authority (VTA) comment letter for the Project, the VTA lists three intersections that are impacted by the Project, and states as follows:

After all feasible mitigation measures are applied, the above noted CMP Intersections may remain Significant and Unavoidable Impacts. VTA requests that the City prepare a Multimodal Improvement Plan to address the Project's impacts on CMP transportation facilities. The California CMP statute requires Member Agencies to prepare Multimodal Improvement

¹⁵ City of Santa Clara, Final Environmental Impact Report, September 2018, p. 43.

¹⁶ See <https://calmod.org/>

¹⁷ *Sundstrom v. County of Mendocino* (1988) 202 Cal. App. 3d 296.

¹⁸ City of Santa Clara, Draft Environmental Impact Report, April 2018, p. 175.

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Plans for CMP facilities located within their jurisdictions that exceed, or are expected to exceed, the CMP traffic.¹⁹

In response, the City argues:

As discussed in the Draft EIR and in Responses C.12 through C.14, the project would result in significant impacts at CMP intersections and shall implement mitigation measures to mitigate the project's impacts. The impacts at CMP intersections would be mitigated to less than significant levels and, therefore, a Multimodal Improvement Plan to further reduce impacts is not warranted. The project's impacts at CMP intersections outside of the City's jurisdiction were only concluded to be significant and unavoidable because the City cannot guarantee the implementation of the improvements concurrent with the proposed project.²⁰

The City's response is not supported by substantial evidence and violates the law. As explained above, the City lacks substantial evidence to support its conclusion that transportation impacts within their jurisdiction are less than significant. The California CMP statute requires the City to prepare a Multimodal Improvement Plan for CMP facilities located within the City that exceed, or are expected to exceed, the CMP traffic. Under the CMP legislation,²¹ the VTA has the authority to oversee the CMP, a program aimed at reducing regional traffic congestion. It is not disputed that the Project will have significant impacts on CMP intersections, reducing their Level of Service below the acceptable levels set in the CMP. The fact that the impacts on these intersections are regarded as significant and unavoidable due to jurisdictional limitations does not change that the significant impact will occur. Under CEQA, a project must mitigate significant impacts through measures that are "fully enforceable through permit conditions, agreements, or other legally binding instruments."²² If the city is unable to ensure its mitigation is enforceable, it must follow the requirements under the CMP and prepare a Multimodal Improvement Plan to address the Project's significant impacts on CMP intersections.²³

¹⁹ Santa Clara Valley Transportation authority, City File No PLN2016-12318/Gateway Crossings, May 25, 2018.

²⁰ City of Santa Clara, Final Environmental Impact Report, September 2018, p. 10.

²¹ Government code § 65088

²² CEQA Guidelines § 15126.4(a)(2).

²³ Government code § 65089.4(a).

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III. CONCLUSION

The FEIR is inadequate as an environmental document because the City fails to adequately describe the existing environmental setting upon which to measure impacts and fails to properly disclose, analyze and mitigate the Project's significant transportation impacts. The City's conclusions are not supported by substantial evidence and fail to comply with the law. The City cannot approve the Project until it revises the EIR to comply with CEQA and recirculates the revised EIR for public review.

Thank you for your consideration of these comments.

Sincerely,



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CC: dfernandez@santaclaraca.gov

Attachment

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