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May 24, 2017

Via Overnight and Electronic Mail

Planning Commission
c/o Reema Mahamood
City of San Jose
Department of Planning, Building, and Code Enforcement
200 East Santa Clara St., 3rd Floor
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Via Email Only

City Clerk's Office: cityclerk@sanjoseca.gov

Re: Comments on the First Amendment to the Draft Environmental Impact Report for the 350 S. Winchester Mixed-Use Project (Volar) (File Nos. PDC15-065, PDC15-059, and PT15-069, Agenda Item 5.a)

Dear Honorable Planning Commissioners:

We write on behalf of **San Jose Residents for Responsible Development** to provide comments on Agenda Item 5.a, the First Amendment to the Draft Environmental Impact Report ("FEIR") prepared by the City of San Jose ("City"), pursuant to the California Environmental Quality Act ("CEQA"),¹ for the 350 S. Winchester Mixed-Use Project ("Project"). The Project consists of a rezone from the CG Commercial General Zoning District to the CP(PD) Planned Development Zoning District, a Planned Development Permit, and a Tentative Map to allow the demolition of 26,000 square foot commercial building and construction of a maximum 18-story (200 feet tall) mixed-use building with up to 307 residential

¹ Pub. Resources Code, §§ 21000 et seq.

units, approximately 52,200 square feet of commercial (retail/restaurant) and office uses, and four levels of below grade parking on a 0.89 gross acre site. The Project would be located at 350 S. Winchester Boulevard, approximately 550 feet south of Stevens Creek Boulevard (APN 277-33-003).

On February 21, 2017, we submitted comments on the DEIR on behalf of San Jose Residents for Responsible Development. After reviewing the FEIR, we have concluded that the City has not addressed our concerns, specifically our concerns related to land use impacts and greenhouse gas emissions.

1. The Project Conflicts with the General Plan.

The City has yet to adequately explain how the Project would comply with the General Plan. The City has created a very thorough and well-developed process for prioritizing new housing units near transit and slowly expanding to surrounding areas as those Urban Village Plans are created. The City appears willing to discard that carefully-crafted process in order to approve this Project.

The Project would be located in the future Santana Row/Valley Fair Urban Village, which is located in the City's Horizon 3 due to the lack of transit in the area. Horizon 3 is not ready for 307 residential units.² When residential construction is authorized in Horizon 3, relatively few residential units will be located in this area. The Santana Row/Valley Fair Urban Village is meant to be an employment hub.³ The Draft Santana Row/Valley Fair Urban Village Plan states that the primary objective of the Plan is to turn the Urban Village into "a job center of west San Jose."⁴

The DEIR acknowledges that the Project, as proposed, is not consistent with the site's Regional Commercial general plan designation because of its residential nature.⁵ The staff report also acknowledges that the existing land use designation "does not support residential development."⁶ Therefore, it is irrelevant that

² Because the Project is located in Horizon 3, it would need to make use of the residential Pool capacity even if it qualified as a Signature Project. (*Envision San Jose 2040*, Ch. 7, p. 18, IP-5.10.)

³ See *Envision San Jose 2040*, Appendix 5 (planning for an increase of 8,500 jobs but only 2,635 residential units in the Valley Fair/Santana Row Urban Village).

⁴ Draft Santana Row/Valley Fair Urban Village Plan, Ch. 3, p. 19.

⁵ DEIR, p. 11.

⁶ Planning Commission Staff Report for File Nos. PDC15-065, PD15-059, and PT15-069, pg. 4.

commercial buildings in a Regional Commercial designation can be 25 stories and have a floor area ratio (“FAR”) of 12.0, as mentioned multiple times in the FEIR.⁷ The Project cannot contain residential uses and still be consistent with this land use designation.

In response to our comment that the Project is inconsistent with the General Plan, the City states that the Signature Project designation allows the Project to proceed under the Urban Village designation.⁸ The General Plan sets the maximum density for Urban Village projects at 250 dwelling units per acre and a FAR of up to 10.0.⁹ There is no indication in the General Plan that a Signature Project can be taller and denser than what is allowed under the Urban Village designation. The General Plan addresses Signature Projects’ density in an Urban Village designation and states that “the appropriate minimum density is the density needed to be consistent with the Signature Project policies.”¹⁰ This implies that Signature Projects are still held to the maximum density limits of 250 dwelling units per acre and a FAR of up to 10.0. The Project will have a FAR of 11.39 and will contain 307 dwelling units on 0.89 acres, which equates to 344.94 dwelling units per acre.

There is no indication in the General Plan that Signature Projects can exist in a legal gray area where no land use designation fully applies. In fact, in order to qualify as a Signature Project, the City must find that the project conforms to the Land Use/ Transportation Diagram.¹¹

Accordingly, this Project is inconsistent with the current General Plan land use designation (Regional Commercial) and its future designation (Urban Village)

⁷ See, e.g., pp. 21, 65.

⁸ See FEIR, p. 65, Response MM10 (“Signature projects may move forward under the Urban Village land use designation.”); see also *Envision San Jose 2040*, Ch. 5, p. 7 (stating the Urban Village designation supports the development of Signature Projects “prior to preparation of the Urban Village Plan”).

⁹ See *Envision San Jose 2040*, Ch. 5, p. 7. The Draft Santana Row/Valley Fair Urban Village Plan maintains this limit of 250 dwelling units per acre. (See Ch. 3, p. 20.)

¹⁰ *Envision San Jose 2040*, Ch. 5, p. 8.

¹¹ *Envision San Jose 2040*, Ch. 7, p. 18, IP-5.10.

and the City cannot grant the Project's requested Planned Development Permit¹² and should deny the Vesting Tentative Map.¹³

2. The DEIR Contains an Inadequate Analysis of Impacts from Greenhouse Gas Emissions.

The DEIR concludes that the Project will have less than significant greenhouse gas ("GHG") emissions impacts due to its compliance with the City's GHG Reduction Strategy, which was approved by the City Council in December 2015. However, the GHG Reduction Plan was based on the land use designations in the General Plan. According to the GHG Reduction Strategy, "[t]he primary test for consistency with the Greenhouse Gas Reduction Strategy is conformance to the General Plan Land Use / Transportation Diagram and supporting policies."¹⁴ As discussed above, the Project is not in compliance with the General Plan Land Use / Transportation Diagram because it does not fully comply with either the existing Regional Commercial or the future Urban Village designation.

The FEIR claims that, "while not directly consistent with the existing land use designation," the Project is "consistent with the development assumptions in the General Plan."¹⁵ As previously discussed, the General Plan did not anticipate residential development in this area at a density of 344.94 dwelling units per acre. In fact, the General Plan anticipated that the 53 acres available for Mixed-Use Residential in the Santana Row/Valley Fair Urban Village would hold a maximum of 2,635 dwelling units.¹⁶ That is a density of 49 dwelling units per acre. Additionally, this residential development was expected to occur in Horizon 3, once light rail service was extended to this area. Without that transit service, the Project's total annual VMT will be an astounding 5,220,789 miles.¹⁷

¹² See San Jose Municipal Code Section 20.100.940(A)(1) (requiring General Plan consistency to issue a Planned Development Permit).

¹³ See Gov. Code, § 66474, subd. (a) (providing that the City should deny approval of a tentative map if it finds that the proposed map is not consistent with the General Plan).

¹⁴ See <http://www.sanjoseca.gov/documentcenter/view/9388>

¹⁵ FEIR, p. 72, Response MM23.

¹⁶ *Envision San Jose 2040*, Appendix 5.

¹⁷ DEIR, p. 150.

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Because the General Plan, and thereby the GHG Reduction Plan, did not anticipate the density and timing of this development, additional mitigation is needed to reduce GHG impacts to a less than significant level. The City should enforce the voluntary criteria contained in the GHG Reduction Plan as binding mitigation.

As demonstrated above, approving this Project would violate CEQA and be inconsistent with the General Plan. Thank you for your attention to this important matter.

Sincerely,



Natalie B. Kuffel

NBK:lj1