



Agenda Report

19-1631

Agenda Date: 1/29/2019

REPORT TO COUNCIL

SUBJECT

Update on Settlement Agreements with the City of San José regarding development projects (e.g., Santana West and CityPlace)

BACKGROUND

The purpose of this informational report is to provide an update on the following three (3) settlement agreements that the City of Santa Clara (Santa Clara) has with the City of San Jose (San Jose): 1) 2006 North San Jose Settlement Agreement, 2) 2018 City Place Settlement Agreement, and 3) 2018 Santana West Settlement Agreement.

As a year has passed since Santa Clara and San Jose reached a settlement over disputes related to the City Place and Santana West developments, staff is providing this update to inform the Council of recent changes that may be of interest to the Council or the general public.

This report will provide a brief background of the three settlement agreements, the key terms and timelines associated with each agreement, and the status of the key items which includes progress that both Santa Clara and San Jose have made towards fulfilling the key terms.

2006 North San Jose Settlement Agreement

In 2005, San Jose approved the North San Jose project, EIR, and Development Policy (collectively referred to as North San Jose), which includes 32,000 residential units, 26.7 million square feet of new industrial uses, and 1.7 million square feet of retail/commercial uses within northern San Jose. This 4,700 acre area is primarily bounded by Highway 237 to the north, the Guadalupe River and Highway 87 to the west, Coyote Creek to the east, and Interstate 880 to the south. In November 2006, Santa Clara entered into a settlement agreement with San Jose regarding litigation related to the North San Jose project. Additionally, the County of Santa Clara (County) and the City of Milpitas filed separate litigation actions against San Jose related to North San Jose and additional settlement agreements with these entities were executed with San Jose.

Included within the North San Jose EIR is a transportation improvement program that was projected to cost \$519 million in 2005 dollars. A North San Jose Traffic Impact Fee was created in 2005 to provide the majority of the funding necessary to complete the transportation improvements. Additionally, to ensure that the jobs and housing planned with North San Jose developed in parallel, North San Jose was structured into four (4) discrete project phases as shown below. As currently structured, a subsequent North San Jose phase is not available for development until the previous phase has been completed.

Table 1 - North San Jose Project Phasing - Original

Original Policy Phasing	Development Allowed
Phase 1	7 million sf Industrial 8,000 residential units
Phase 2	7 million sf Industrial 8,000 residential units
Phase 3	7 million sf Industrial 8,000 residential units
Phase 4	5.7 million sf Industrial 8,000 residential units

The 2006 Settlement Agreement between Santa Clara and San Jose covers two main topics: 1) Schools and 2) Traffic. Key terms include:

- Schools:
 - San Jose to pay \$25,000 to the Santa Clara Unified School District (School District) to fund a pupil (i.e. student) generation study
 - San Jose and the School District to complete a school facility plan to determine possible school site locations in North San Jose
- Traffic:
 - With Phase 1 of North San Jose, San Jose to fund and complete the widening of Montague Expressway to 8-lanes from Lick Mill Boulevard to Trade Zone Boulevard.
 - San Jose to provide funding and coordinate with the County regarding early design work for a proposed Montague/Mission/101 Interchange project.

2018 City Place and Santana West Settlement Agreements

On January 12, 2018, Santa Clara and San Jose reached a settlement over legal disputes regarding the City Place development in Santa Clara and the Santana West development in San Jose. Two separate settlement agreements were executed for both projects, signed by both cities, and also included the respective private developers associated with both development projects.

2018 City Place Settlement Agreement

This settlement agreement pertains to the City Place development (City Place) in Santa Clara located at 5155 Stars & Stripes Drive on 239 acres of City-owned property adjacent to Levi's Stadium. City Place includes 5.7 million square feet of office, 1.5 million square feet of retail uses, 1,360 residential units, 700 hotel rooms, a 30-acre public park, and other public open space areas. Santa Clara, San Jose, and the Related Companies (developer for the City Place) are the parties within the settlement agreement. Key terms include:

- San Jose agreed to dismiss its appeal of the November 2017 San Mateo County Superior Court judgment upholding the City Place EIR.
- Related Companies to pay San Jose:
 - \$4.5 million for the first phase (1.5 million square feet) of City Place for traffic

- improvements in North San Jose
- Up to \$10 million (less credits for first phase traffic improvement expenditures) as the second phase (1.5 million square feet) commences
- \$5 million in 15 years, with credits available for market rate and affordable housing production in Santa Clara
- The Agreement also includes supportive language for Santa Clara's future City Place Multimodal Improvement Plan in addition to San Jose's desire to modify its North San Jose Development Policies to add additional housing.
- Both Santa Clara and San Jose agree to meet regularly to discuss development and traffic issues, particularly those in North San Jose.

2018 Santana West Settlement Agreement

This settlement agreement pertains to the Santana West development (Santana West), located in San Jose at the corner of Winchester Boulevard and Olsen Drive, within the Valley Fair/Santana Row Urban Village. Santana West includes 970,000 square feet of office space and 29,000 square feet of retail space on a 13 acre site. Santa Clara, San Jose, and Federal Realty Investment Trust (developer for Santana West) are parties to this settlement agreement. Key terms include:

- San Jose to implement \$2.5 million in identified traffic improvements within and adjacent to Stevens Creek Boulevard (within San Jose) before the issuance of occupancy for the first 300,000 square feet of rentable space within Santana West.
- San Jose (at their discretion) to add Class II and/or Class III bicycle boulevard treatments along Cypress Avenue from Stevens Creek Boulevard to Williams Road.
- San Jose to provide Santa Clara \$1.2 million in identified traffic calming improvements and traffic equipment upgrades before the issuance of occupancy for the first 300,000 square feet of rentable space within Santana West.
- San Jose agrees to use fees from Santana West to fund \$1.2 million in traffic improvements which include a feasibility study for potential pedestrian/bicycle grade separations at intersections on Stevens Creek Boulevard at Santana Row and Winchester Boulevard in addition to providing adaptive signal traffic equipment to Santa Clara along certain transportation corridors.
- San Jose to pay Santa Clara \$5 million for affordable housing and transportation improvements upon issuance of a grading or building permit for Santana West or by July 1, 2022.
- San Jose to collect fees pursuant to its Protected Intersection Policy for intersections that will also impact traffic in Santa Clara. Such fees will be directed towards transportation improvements that will alleviate traffic congestion in the City of Santa Clara that results from development in San Jose.
- Santa Clara and San Jose agree to work together to address traffic issues along the Stevens Creek corridor.

DISCUSSION

Below is an update on the three Settlement Agreements.

2006 North San Jose Settlement Agreement - Update

Status Update on Key Settlement Terms

For this settlement agreement, the schools related items have been satisfied. Regarding traffic, while Montague Expressway has been widened from First Street to Trade Zone Boulevard, the section between Lick Mill Boulevard to Trade Zone Boulevard has not been fully widened. In addition, for the Montague/Mission/101 Interchange project, early preliminary design work has been completed; however, final design and funding from San Jose has not been completed.

2018 North San Jose Proposed Changes

In the fall of 2018, San Jose informed Santa Clara about upcoming proposed changes to North San Jose that their City Council is scheduled to hear in the spring of 2019. The primary driver behind the changes involves advancing additional residential units from Phase 2 to Phase 1. Currently, in Phase 1 of North San Jose, the level of industrial development has not triggered North San Jose to advance from Phase 1 to Phase 2. To advance additional residential units in the near term, San Jose proposes to collapse North San Jose from four (4) phases into two (2) phases as shown in the Table 2 below.

Table 2 - North San Jose Project Phasing - Proposed

Original Policy Phasing	Development Allowed
Phase A	14 million sf Industrial 16,000 residential units
Phase B	12.7 million sf Industrial 16,000 residential units

Staff is reviewing the traffic analysis and will provide comments during San Jose’s environmental review process for the proposed changes to North San Jose. Based on an initial review, staff believes that these changes will affect the timing of when the North San Jose’s traffic improvements are completed. As we understand, San Jose does not intend to alter the level or scope of traffic improvements, the completion date for certain items will likely occur at a later time due to the 4 phases being collapsed into 2 phases.

It is important to note that included within the 2018 City Place Settlement Agreement is language that states that *“Santa Clara shall make good faith efforts to support any modifications to the NSJ ADP that accelerate the construction of housing units, so long as such modifications include revision of the timing, nature, and scope of related traffic improvements where necessary to serve the acceleration of housing under the NSJ ADP.”* Staff is reviewing the proposed changes to North San Jose to ensure compliance with the 2018 City Place Settlement Agreement.

2018 City Place Settlement Agreement - Update

Currently, staff is working with Related California on the City Place project to advance the project into early construction activities. It is anticipated that in early/mid 2019, pending approval from outside regulatory agencies such as the State of California Regional Water Quality Control Board, construction will begin at the project site. The construction being contemplated is related to early traffic improvement and utility relocation work necessary to advance future on-site building construction. Per the 2016 City approvals (i.e. Development Agreement, Master Community Plan, etc.) for the City Place Project, the development will be further advanced by the City’s Community Development Department with Development Area Plans (DAP) for each project phase. Staff will

ensure that City's approvals of the DAP are consistent with the Related Companies' commitments with the 2018 City Place Settlement Agreement.

2018 Santana West Settlement Agreement - Update

Project Update

As the key terms with this settlement agreement pertain to proposed permitted construction activity within the Santana West development, staff is actively monitoring the construction permitting progress of the Santana West project. Currently, no grading or building permit has been issued for this project. Staff will continue to monitor the permitting timelines and activities for this project to ensure that the project is consistent with the terms of the 2018 Santana West Settlement Agreement.

Stevens Creek Corridor Coordination

In July 2018, staff attended the first Stevens Creek corridor meeting between San Jose, Cupertino, and the Santa Clara Valley Transportation Authority. As reported to the City Council on August 28, 2018, staff began these coordination efforts to share information amongst the affected cities and agencies to address traffic issues along this key transportation corridor. Staff continues to meet with the affected agencies and will provide updates to the Council as discussions progress.

Additional San Jose Projects along Stevens Creeks Boulevard

Staff monitors and provides relevant comments to new development projects proposed in San Jose along the Stevens Creek Boulevard corridor. As an example, staff provided a comment letter (Attachment 1) for a proposed mixed-use development at 4300 Stevens Creek Boulevard in San Jose. The intent of staff's review and comments are to ensure that projects along the Stevens Creek Boulevard corridor adhere to the terms and conditions specified in the 2018 Santana West Settlement Agreement.

It is important to note that the City has provided three additional letters (Attachment 2) to San Jose specifically requesting clarification about recent changes made to San Jose's Transportation Analysis Policy regarding its elimination of the Protected Intersection program. Specifically, the City has asked for clarification regarding how elimination of this developer funding source for traffic improvements will affect San Jose's compliance with the 2018 Santana West Settlement Agreement. San Jose has not provided responses to any of the letters. Staff will continue to coordinate with the City Manager's Office and City Attorney's Office regarding the clarification required.

ENVIRONMENTAL REVIEW

The action being considered does not constitute a "project" within the meaning of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines section 15378(b)(5) in that this is a governmental organizational or administrative activity that will not result in direct or indirect changes to the environment.

FISCAL IMPACT

There is no additional cost to the City other than administrative staff time and expense.

COORDINATION

This report has been coordinated with the Finance Department, City Attorney's Office, and Community Development Department.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall Council Chambers. A complete agenda packet is available on the City's website and in the City Clerk's Office at least 72 hours prior to a Regular Meeting and 24 hours prior to a Special Meeting. A hard copy of any agenda report may be requested by contacting the City Clerk's Office at (408) 615-2220, email clerk@santaclaraca.gov <<mailto:clerk@santaclaraca.gov>> or at the public information desk at any City of Santa Clara public library.

RECOMMENDATION

Note and file this report regarding City of San Jose Settlement Agreements.

Reviewed by: Craig Mobeck, Director of Public Works

Approved by: Deanna J. Santana, City Manager

ATTACHMENTS

1. City of Santa Clara Comment Letter on 4300 Stevens Creek Boulevard dated October 15, 2018
2. Three City of Santa Clara Letters regarding San Jose Traffic Policy Changes

City of San Jose, Planning Division
Attn: David Keyon, Senior Planner
200 East Santa Clara Street, 3rd Floor
San Jose, CA 95113

October 15, 2018

Re: Comments on Draft Environmental Impact Report (EIR) for the 4300 Stevens
Creek Boulevard Mixed-Use Project

Dear David Keyon:

Thank you for including the City of Santa Clara in the environmental review process for the 4300 Stevens Creek Boulevard Mixed-Use Project ("Project"). City staff has reviewed the Environmental Impact Report (EIR) prepared for 1) a proposed Planned Development Rezoning to allow the development of a mixed use project with approximately 315,000 square feet of office/commercial space and up to 582 residential units 2) a Planned Development Permit to allow the demolition of five existing buildings totaling approximately 105,980 square feet, the removal of approximately 68 ordinance-sized trees, development of four buildings including a six-story approximately 233,000 square foot office building, a six-story parking garage, an eight-story mixed-use building containing approximately 10,000 square feet of ground floor commercial/retail and up to 289 residential units, and an eight-story residential building with approximately 293 residential units (including up to 88 affordable units), and development of an approximately 1.4-acre landscaped promenade.

The following comments are provided following our review of the EIR.

Transportation/Traffic

The proposed midblock crosswalk across Stevens Creek Boulevard, landscaped median island and bulbouts will impact properties in Santa Clara and potentially corridor operations along Stevens Creek Boulevard. The northern portion of Stevens Creek Boulevard is located within the City of Santa Clara's jurisdiction and will require our approval which has not been obtained. The installation of the median island, bulbouts and crosswalk will impact operations of the auto dealership on the northside which may cascade into the adjacent residential area immediately north. The median island will also limit access and circulation to properties on the north side of Stevens Creek. Consequently, the City does not support the installation of the median island in the City of Santa Clara as described above and this improvement should be removed from the project description.

The intersection of Winchester Boulevard and Stevens Creek Boulevard goes from 80.3 secs of Delay at LOS F to 98.0 secs of Delay at LOS F under cumulative conditions, causing a critical change in delay of 34.6 seconds and a V/C change of 8.9%. This should be identified as a significant impact. As this is a protected intersection, we understand that San Jose will not propose capacity-increasing mitigation; however, San Jose cannot avoid its obligation to adopt feasible mitigation measures for significant impacts at protected intersections. Santa Clara requests that San Jose

David Keyon, Senior Planner
October 15, 2018
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identify the offsetting improvements that will be required pursuant to the Protected Intersection Policy, and explain how fees will be collected and programmed toward funding of improvements along the Stevens Creek Boulevard corridor per the terms of the Santana West Settlement Agreement with Santa Clara.

We concur with the conclusion in the EIR that the Project should pay a fairshare to the County towards the 8 lane widening of San Tomas Expressway at Saratoga Avenue due to impacts at this intersection.

We concur with the conclusion in the EIR that the Project should pay a fairshare to the County towards the 8 lane widening of San Tomas Expressway at Stevens Creek due to impacts at this intersection.

The EIR states that the project is eligible for a 20 percent reduced parking requirement due to its location in the Stevens Creek Urban Village area. With the reduced parking requirements, there is the potential for parking shortages and cars spilling out into adjacent residential areas and along Stevens Creek Boulevard, affecting nearby businesses in Santa Clara. The project should be required to conduct regular parking surveys as part of TDM monitoring to identify parking issues. Corresponding, the project should be required to mitigate parking issues if they occur.

Aesthetic Impacts

As previously requested in the comments submitted on the NOP from the Thomas Law Group on behalf of the City of Santa Clara on February 9, 2018, the analysis of aesthetic impacts should be expanded to include consideration of the potential for the project to have shadow impacts as a result of the proposed building heights. Please conduct a shadow analysis.

Please revise the EIR and technical reports per the comments above. Should you have any questions regarding this letter, please contact Reena Brilliot, Planning Manager, via email at rbrilliot@SantaClaraCA.gov or phone at 408-615-2452.

Best regards,



Andrew Crabtree
Director of Community Development

T|L|G Thomas Law Group

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February 14, 2018

City of San José
Rosalynn Hughey
Planning Director
200 East Santa Clara Street, 3rd Floor Tower
San José, CA 95113

**Re: General Plan Amendment to Reflect New City Council Transportation
Analysis Policy 5-1 (Project Nos. GPT17-009/PP17-082)**

Dear Ms. Hughey:

On behalf of our client, the City of Santa Clara, we write to request information regarding the proposed update to the City of San Jose's transportation analysis policies and related approvals considered by the Planning Commission on February 7, 2018. Under Senate Bill 743, the metric for analyzing transportation impacts under the California Environmental Quality Act (CEQA) will shift from a standard based on level of services (LOS) to one based on vehicle miles traveled (VMT). We understand that San Jose is considering amendments to the text of the General Plan to reflect these changes under SB 743 by incorporating new City Council Transportation Analysis Policy 5-1, as well as amendments to existing Policy 5-3 related to "Protected Intersections," and designation of Infill Opportunity Zones (IOZ) that will be exempt from consideration of LOS to align San Jose's participation in the regional Congestion Management Program (CMP) with San Jose's new Policy 5-1.

As you are aware, on January 12, 2018, the City of Santa Clara, City of San Jose, and Federal Realty Investment Trust (Federal) entered into a settlement agreement and release concerning Santa Clara County Superior Court Case Number 16CV302300, entitled *City of Santa Clara v. City of San Jose, et al.* (which was later transferred to San Mateo County Superior Court). Pursuant to the settlement agreement and release, the City of Santa Clara

dismissed the action on January 16, 2018, and released the City of San Jose and Federal from all known and unknown claims arising under CEQA concerning the Santana West Project.

Among other requirements of the settlement agreement and release, the City of San Jose is obligated to collect transportation impact funds pursuant to all applicable fee programs for development in the Stevens Creek Corridor. Furthermore, the City of San Jose expressly committed “to collect fees pursuant to its Protected Intersection Policy for intersections that will also impact traffic in the City of Santa Clara.” (Settlement Agreement & Release, ¶ 7.) The City of Santa Clara is concerned that by adopting Policy 5-1, the City of San Jose would stop collecting fees pursuant to its Protected Intersection Policy for intersections that will impact traffic in the City of Santa Clara. Furthermore, while the City of Santa Clara recognizes that Policy 5-1 implements an alternative fee, Santa Clara is concerned that this alternative fee will be substantially less than the fees that would otherwise be required pursuant to the City of San Jose’s Protected Intersection Policy.

Santa Clara submits this letter to request written clarification regarding the intent of Policy 5-1 as it relates to intersections that will impact traffic in the City of Santa Clara. Per recent staff level discussions, it is our understanding that San Jose initially did not intend to continue implementing its Protected Intersection Policy. However, we understand that San Jose has reconsidered this position, and San Jose staff has stated it will maintain the Protected Intersection Policy and continue to collect fees, as required by the settlement agreement. We would like written confirmation of this position.

In addition, Santa Clara requests that San Jose provide detailed responses to the following questions:

- (1) Will the Santana West project still be required to pay a transportation system improvement fee pursuant to Policy 5-3 in order to address traffic congestion at the Stevens Creek Boulevard and Winchester Boulevard?
 - a. Or, is it San Jose’s position that, as an IOZ intersection not subject to LOS, the payment of the Policy 5-3 fee is no longer necessary to support the finding that the Santana West project is consistent with the City of San Jose’s General Plan?

- (2) For projects that have been approved based on certified EIRs, such as the Santana West project, are the projects required to pay the full amount of the Policy 5-3 transportation system improvement fee, notwithstanding approval of Policy 5-1, unless events occur that trigger the requirement for a subsequent MND or EIR pursuant to Public Resources Code section 21166?
- a. Or, does San Jose have the discretion to allow a previously approved project to pay fees based on Policy 5-1 instead of Policy 5-3 even if events requiring a subsequent MND or EIR pursuant to Public Resources Code section 21166 have not occurred?
- (3) For projects that are subject to Policy 5-1, what is the basis for the fee amount set forth in Appendix B to Policy 5-1 (i.e. \$3,200 [commercial] and \$2,300 [residential]) and how will the fee be calculated? It is critical for the City of Santa Clara to understand how the fee will be calculated to better understand the potential implication of this policy on the settlement agreement and release as well as the availability of City of San Jose funding to address transportation issues within (and outside) its boundaries.
- a. Is the City of San Jose's intent to require average VMT per resident/employee/user to be estimated for a project and, if the project's estimated average VMT exceeds the Policy 5-1 significance threshold, then the VMT fee will be calculated by multiplying the number of miles over the threshold per resident/employee/user by the anticipated number of residents/employees/users of the project by the applicable fee (i.e. \$3,200 [commercial] and \$2,300 [residential])?
- (4) What areas of the City of San Jose are excluded from the VMT analysis required under Policy 5-1?
- a. Attachment D to the Planning Commission materials suggests that "25 percent of the City" may be covered by the City of San Jose's proposed "screening criteria" to determine whether a VMT analysis is required.

- b. The City of Santa Clara requests that the City of San Jose provide a map showing the areas of the City of San Jose that are generally screened from preparing a VMT analysis pursuant to Policy 5-1.

- (5) Cumulatively, a substantial amount of future development within the City of San Jose appears to be screened from the need to undertake future VMT analysis. How does the City of San Jose intend to fund transportation improvements and transportation maintenance projects that are necessary in order to address transportation impacts resulting from such cumulative development?

In addition to addressing the above questions, given these proposed changes to San Jose transportation impact policies, Santa Clara requests confirmation that fees for the transportation impacts identified in the environmental impact report for the Santana West project will still be paid in full for the project. As the City of San Jose is aware, under the Protected Intersection Policy, “[t]he total value of improvements proposed to be constructed by a particular project having significant LOS impacts on a Protected Intersection will be determined initially by multiplying \$2,000 by the total number of peak hour project trips generated by the project, after all vehicular traffic credits have been assigned.” (Protected Intersection Policy, App. A.)¹ The \$2,000 per peak hour trip fee referenced above concerns projects impacting only one protected intersection and does not include the annual fee increase. For projects impacting two or more protected intersections, such as Santana West, the per peak hour trip fee is \$4,533 through June 30, 2018. A cost escalation of 3.5 percent will automatically apply as of July 1, 2018.

Pursuant to the Traffic Impact Analysis prepared by the City of San Jose for the Santana West Project, “[b]ased on the ITE trip generation rates and applicable reductions, it is estimated that the proposed project would generate ... 1,390 trips (1,240 inbound and 150 outbound) occurring during the AM peak hour...” (Santana West Development Project Transportation Impact Analysis, p. 49; see also *id.* at p. 50 [Table 7].) As a result, pursuant

¹While the Protected Intersection Policy allows a project with more than 400 trips to calculate a different fee per trip, that fee must be determined during the CEQA process for the project. Because no per trip fee was established as part of the CEQA process for Santana West, it is subject to the fee that would otherwise apply to projects with less than 400 peak-hour trips.

to the City of San Jose's Protected Intersection Policy, the Santana West Development Project must fund transportation improvements equal to \$6,300,870 (\$4,533 x 1,390).

If the City of San Jose does not intend to require the Santana West Development Project developer to fund transportation improvements pursuant to the Protected Intersection Policy equal to the Project's full \$6,300,870 obligation, then the City of Santa Clara requests the City of San Jose identify an alternative source of funds.

We understand that the City Council will consider adopting the new Policy 5-1 on February 27, 2018, and would appreciate a prompt response to allow the City of Santa Clara time to consider its options prior to the City Council hearing on this new policy.

Very truly yours,



Tina A. Thomas

cc: Brian Doyle, City Attorney, City of Santa Clara
Deanna Santana, City Manager, City of Santa Clara

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March 1, 2018

Rosalynn Hughey
San José Planning Director
City of San José
200 E. Santa Clara St.
San José, CA 95113

Re: Appeals from the Environmental Determinations made by the City Council for the Santana Row and Winchester Boulevard Urban Village Plans (GP17-0008; Item 10.4 on the August 8, 2017 San José City Council Agenda) and the Stevens Creek Urban Village Plan (GP17-0009; Item 10.5 on the August 8, 2017 San José City Council Agenda)

Dear Ms. Hughey:

This letter is to confirm our understanding that the San José City Council's August 8, 2017 actions to approve the Stevens Creek, Winchester, and Santana Row/Valley Fair Urban Village Plans (collectively the "Tri-Village Plans"), based on "Determinations of Consistency" with prior environmental review done for the Envision San José 2040 General Plan, are not final until the City of San José hears the administrative appeals of these actions, which were filed by the City of Santa Clara on August 11, 2017. (San José Municipal Code section 21.04.140, subdivision E.10 ["If the city council finds that the environmental clearance determination comports with CEQA and this title, it shall uphold the environmental clearance determination and may then immediately take action upon the related project. If the city council finds that the environmental clearance determination does not comport with CEQA and this title, it may require the director to re-examine and process such environmental clearance determination and shall not take any approval actions on the related project".])

To date, we have not received notice that a hearing date on Santa Clara's appeals has been set before the City Council. If we do not receive notice either denying the appeals or setting a hearing date within ten (10) days from the date of this letter, we will assume that the appeals have been denied, and proceed based on our understanding that the approvals will then be deemed final.

The California Environmental Quality Act ("CEQA") provides that a 30-day statute of limitations for CEQA-based challenges begins upon filing of the Notice of Determination ("NOD"). If an NOD is not properly posted, the limitations period is 180 days from the disputed approval. (Pub.

Resources Code, § 21167.) Further, an NOD must be posted within five business days of an approval becoming final. (Pub. Resources Code, § 21152.) Based on the above, if the appeals are deemed denied based on San José's failure to set a hearing date and a new NOD is not posted within five days of the deemed final approval, Santa Clara will proceed with the understanding that the 180-day statute of limitations period will begin on the date of the deemed final approval.

Santa Clara looks forward to receiving a notice for the appeal hearing before the San José City Council.

Sincerely,



FOL
Tina A. Thomas

cc: Richard Doyle, San José City Attorney
Dave Sykes, San José City Manager
Toni Tabor, San José City Clerk
Brian Doyle, Santa Clara City Attorney
Deanna Santana, Santa Clara City Manager
Manuel Pineda, Santa Clara Assistant City Manager

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Sent by electronic and regular mail

November 7, 2018

City of San José
Rosalynn Hughey
Planning Director
200 East Santa Clara Street, 3rd Floor Tower
San José, CA 95113

**Re: Third Request for Information re City Council Transportation Analysis
Policies 5-1 and 5-3 and Consistency with Terms of the Santana West
Settlement Agreement**

Dear Ms. Hughey:

This letter is our third request for information regarding amendments to existing Policy 5-3 related to “Protected Intersections,” approved by the San Jose City Council on February 27, 2018. On February 14, 2018 and April 27, 2018, our office wrote to you on behalf of our client, the City of Santa Clara, to request written clarification regarding the intent of Policy 5-1 as it relates to intersections that will impact traffic in the City of Santa Clara. We included several specific information requests regarding implementation of the new policy, in addition to a request for confirmation that fees for the transportation impacts identified in the environmental impact report prepared for the Santana West project will still be paid in full by the developer.

The City of San Jose is obligated to collect transportation impact funds pursuant to all applicable fee programs for development in the Stevens Creek Corridor under the terms of the settlement agreement entered into by the City of Santa Clara, City of San Jose, and Federal Realty Investment Trust (Federal) on January 12, 2018, concerning the litigation in *City of Santa Clara v. City of San Jose, et al.* (San Mateo County Superior Court Case No. 17-CIV-00547) (Settlement Agreement). Importantly, in the Settlement Agreement,

the City of San Jose expressly committed “to collect fees pursuant to its Protected Intersection Policy for intersections that will also impact traffic in the City of Santa Clara.” (Settlement Agreement, ¶ 7.)

As stated in our prior letters, the City of Santa Clara is concerned that by adopting Policy 5-1, the City of San Jose intends to stop collecting fees pursuant to its Protected Intersection Policy for intersections that will impact traffic in the City of Santa Clara. Furthermore, while Policy 5-1 implements an alternative fee, Santa Clara is concerned that this alternative fee will be substantially less than the fees that would otherwise be required pursuant to the Protected Intersection Policy.

We understand that the City of San Jose is now beginning to analyze traffic impacts of proposed projects using Policy 5-1 and the Transportation Analysis Handbook adopted by the City in April 2018 to apply the vehicle miles traveled (VMT) metric as the threshold to determine significance of those impacts. Despite our letters and numerous inquiries from Santa Clara City staff members about the timing of a response to those letters, San Jose has provided no response to any of these inquiries to date. It therefore remains unclear whether San Jose intends to continue to collect fees under its Protected Intersection Policy pursuant to the terms of the Settlement Agreement as it implements Policy 5-1. If the City of San Jose does not intend to collect fees in the full amount for the Santana West Development Project or any other project that will have traffic impacts affecting Santa Clara, then the City of Santa Clara requests the City of San Jose disclose that intent and identify an alternative source of funds. Again, we would appreciate a prompt written response to allow the City of Santa Clara to consider its options for enforcing the terms of the Settlement Agreement.

Very truly yours,



Tina A. Thomas

cc: Brian Doyle, City Attorney, City of Santa Clara
Deanna Santana, City Manager, City of Santa Clara
Richard Doyle, City Attorney, City of San Jose
Dave Sykes, City Manager, City of San Jose