



MEMORANDUM

DATE: November 26, 2018

TO: Debby Fernandez, City of Santa Clara

FROM: Kristy Weis

SUBJECT: Gateway Crossings Project Environmental Impact Report – Late Comments Received

One late comment letter on the Gateway Crossings Project Environmental Impact Report (EIR) was received by the City between November 5, 2018 and November 14, 2018. The 45-day Draft EIR public comment period ended on May 25, 2018. This memo covers comments received between November 5 and 26, following publication of the Final EIR on September 12, 2018 and the Late Comments Memo dated November 5, 2018.

A late written comment letter on the EIR by Adams Broadwell Joseph & Cardozo dated November 14, 2018 was received by the City. A copy of this comment letter is included in Attachment A. Written comments pertaining to the adequacy of the EIR are summarized below with responses. The comments did not raise any significant new information related to new or substantially more severe significant environmental impacts than were previously identified in the Final EIR.

Summary of Comments:

- Date of traffic counts
- Baseline for traffic impacts with or without traffic from the previous BAE facility
- Request for the project to implement transit priority measures to reduce project impacts to public transit
- Request for the project to prepare a Multimodal Improvement Plan to reduce project impacts on Congestion Management Plan (CMP) intersections

Response: Similar transportation/traffic comments were raised in a previous comment letter submitted by Adams Broadwell Joseph & Cardozo dated May 24, 2018 on the Draft EIR.

As stated in Response E.20 (Final EIR page 39), traffic counts for study intersections were taken between 2015 and 2017. The summary table shown in Exhibit A of the comment letter, which was excerpted from Appendix A of the TIA, has typographical errors in the count dates. The text of the TIA and actual traffic count data sheets in Appendix G of the Draft EIR show the correct traffic count dates, all of which were

taken between 2015 and 2017, less than two years prior to the issuance of the Notice of Preparation.

The transportation analysis in the EIR evaluates the impacts of the project compared to existing, background, and cumulative conditions. As described in the Draft EIR (page 174), the traffic volumes for background conditions comprise existing traffic volumes plus traffic from other approved but not yet occupied or constructed development. The project site was previously developed (and has entitlements for) 272,840 square feet of R&D uses. The previous 272,840 square feet of R&D buildings on-site were not “old and obsolete” as asserted in the comment letter. As cited in the Draft EIR (page 25, footnote 6), BAE Systems occupied the site until as recently as April 2016. The buildings were vacated by BAE Systems because their lease had expired and the project proponent demolished the buildings to further characterize the hazardous materials conditions on the site, as stated in the Draft EIR (page 3). Refer to Response E.21 (Final EIR page 40), which explains how the project’s impacts were analyzed both with and without credit from the previous buildings on the site.

As explained in Response E.23 (Final EIR page 42), transit vehicle delay is the same as delay for all vehicles since buses use the same roads and intersections. The project will implement mitigation measures to return the delay conditions to the same as would occur without the project, as described in the Draft EIR (pages 180-207) and shown in the level of service calculations and analysis in Appendix G of the Draft EIR. Therefore, the increase in transit travel times would be similarly offset and no additional mitigation is required.

As stated in Response E.26 (Final EIR page 43), the project would generate an estimated average transit ridership of fewer than two riders per bus/train. This increase in transit ridership is not considered substantial and no mitigation is required.

As discussed in the Draft EIR (pages 180-207), the project will have a significant impact on CMP intersections. The project will pay its fair-share contribution towards applicable CMP intersection planned improvements¹, which will return the delay conditions at the intersections to the same or better without the project (as shown in the level of service calculations and analysis in Appendix G of the Draft EIR). Therefore, additional mitigation (such as a Multimodal Improvement Plan) is not required. The mitigation is enforceable because the project’s fair-share contributions are required prior to issuance of occupancy permits, as identified in the Mitigation Monitoring and Reporting Program (MMRP) for the project.

While the project’s significant impacts at CMP intersections will be mitigated to a less than significant level, the conservative conclusion of significant and unavoidable was made only because the CMP intersections are not under the jurisdiction of the City and the City cannot guarantee the implementation of the improvements concurrent with the proposed project (see Response C.15, Final EIR page 18).

¹ The planned improvements are Tier 1A improvements, which are the County’s highest priority improvements in the Comprehensive County Expressway Planning Study and will be fully funded in the near-term (Draft EIR page 181, footnote 89).

Attachment A: Late Comment Letter Received

ADAMS BROADWELL JOSEPH & CARDOZO

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

601 GATEWAY BOULEVARD, SUITE 1000
SOUTH SAN FRANCISCO, CA 94080-7037

TEL: (650) 589-1660

FAX: (650) 589-5062

nlotan@adamsbroadwell.com

SACRAMENTO OFFICE

520 CAPITOL MALL, SUITE 350
SACRAMENTO, CA 95814-4721

TEL: (916) 444-6201

FAX: (916) 444-6209

DANIEL L. CARDOZO
CHRISTINA M. CARO
THOMAS A. ENSLOW
TANYA A. GULESSERIAN
KYLE C. JONES
MARC D. JOSEPH
RACHAEL E. KOSS
NIRIT LOTAN
MILES F. MAURINO
COLLIN S. MCCARTHY

LAURA DEL CASTILLO
Of Counsel

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")
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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

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.
4271-010acp

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.

4271-010acp

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.

4271-010acp

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.

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.

4271-010acp

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.

4271-010acp

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).

4271-010acp

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,

A handwritten signature in blue ink, appearing to read 'Nirit Lotan', with a stylized flourish at the end.

Nirit Lotan

CC: dfernandez@santaclaraca.gov

Attachment

NL:acp

EXHIBIT A



SMITH ENGINEERING & MANAGEMENT

November 12, 2018

Nirit Lotan.
Adams Broadwell Joseph & Cardozo
601 Gateway Boulevard, Suite 1000
South San Francisco, CA 94080-7037

Subject: Gateway Crossings Final Environmental Impact Project (SCH # 2017022066)

Dear Ms. Lotan:

At your request, I reviewed Final Environmental Impact Report (the "FEIR") for the Gateway Crossings Project (the "Project") in the City of Santa Clara (the "City"). I previously commented on the Draft Environmental Impact Report (the "DEIR") for this Project in a letter dated May 25, 2018. My review is with respect to transportation and circulation considerations.

My qualifications to perform this review were documented in my letter of May 25, 2018 with my professional resume attached thereto. Technical comments on the FEIR follow:

The FEIR Fails to Respond Directly to My Comments

My comments on the DEIR are now labeled in the FEIR as comments E.40 through E.47. Almost universally, they are not responded to directly but rather by reference to responses to your summary of my comments. This manner of response is evasive in that it avoids responding to the full richness of the original expert comment.

Comment and Response E.40

This comment, which concerned the DEIR's failure to establish consisting existing transportation baseline conditions that existed at the time of the 2017 Notice of Preparation was responded to by reference to Responses to Comments E.19 and E.21.

Response E.19 is a four-paragraph discourse on the notion of an existing environmental setting as a baseline for measuring environmental impacts, the text of CEQA Guidelines §15125 (a), and concludes with an assertion stating the City as lead agency has broad discretion to select an alternate baseline that it, in its wisdom, deems appropriate. It further asserts that the baseline for this Project's transportation analysis is existing conditions, future background conditions and future cumulative conditions.

However, nowhere can broad discretion be said to be reasonably exercised when the purported existing traffic condition includes, at some locations, old traffic counts where the traffic from the prior use of the Project site that was vacated and demolished well prior to the date of the NOP is reflected in the counts, and counts at other locations taken after the prior use was vacated and demolished as is true in this EIR. Nowhere can broad discretion be said to be reasonably exercised when the purported future background condition includes as a supposed concurrent project the traffic from the vacated and demolished former use of the site. The City fails to support its discretion with facts and with reasonable data.

Response E.21 attempts to rationalize the use of outdated traffic counts, stating *“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.”*

This response is contrary to fact. DEIR Appendix G, unnumbered table entitled STUDY INTERSECTION COUNT SUMMARY (reproduced below), shows PM peak traffic counts at 7 of the 19 study intersections were collected in 2014 and hence were 3, not 2 years old, when the NOP was filed in 2017.

Study Intersection Count Summary

				AM		PM	
Study Int #	Node #	N/S Street	E/W Street	Date	Source	Date	Source
1	302	Coleman Avenue	Brokaw Road	03/14/17	TMC	03/14/17	TMC
2	5828	Lafayette Street	Lewis Street	03/14/17	TMC	03/14/17	TMC
3	1202	Lafayette Street	El Camino Real *	06/09/15	TMC	09/17/14	CMP
4	301	De La Cruz Boulevard	Reed Street	03/14/17	TMC	03/14/17	TMC
5	300	De La Cruz Boulevard	Martin Avenue	03/14/17	TMC	03/14/17	TMC
6	5335	De La Cruz Boulevard	Central Expressway *	10/28/15	TMC	10/02/14	CMP
7	5334	Lafayette Street	Central Expressway *	10/29/15	TMC	09/24/14	CMP
8	5332	Scott Boulevard	Central Expressway *	10/29/15	TMC	10/02/14	CMP
9	3411	Coleman Avenue	Aviation Avenue	03/23/17	TMC	03/23/17	TMC
10	4047	Coleman Avenue	Newhall Drive	03/14/17	TMC	03/14/17	TMC
11	3223	Coleman Avenue	Airport Boulevard	10/20/15	CSJ	03/14/17	TMC
12	3052	Coleman Avenue	I-880 (N) *	05/12/15	TMC	09/25/14	CMP
13	3053	Coleman Avenue	I-880 (S) *	05/12/15	TMC	09/25/14	CMP
14	3413	Coleman Avenue	Hedding Street	05/12/15	TMC	05/12/15	TMC
15	3417	Coleman Avenue	Taylor Street	05/12/15	TMC	05/12/15	TMC
16	4038	SR 87	Taylor Street	05/12/15	TMC	05/12/15	TMC
17	4069	U.S. 101	Trimble Road	03/14/17	TMC	03/14/17	TMC
18	3096	De La Cruz Boulevard	Trimble Road	10/28/15	TMC	09/24/14	CMP
19	555	Coleman Avenue	Project Entrance (Future)	--	Interpolation	--	Interpolation

TMC = turning movement count
CSJ = City of San Jose
CMP = Congestion Management Program

The response goes on to claim *“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.”*

This statement is also not supported by the evidence as is documented in several ways below.

Seven of the study intersections are along a segment of Coleman Avenue that serves as a primary access route to Mineta San Jose International Airport. In 2015 this airport served 9,799,527 annual passengers, up 414,315 or 4.41 percent from the 2014 annual passenger totals. In 2016 the annual passenger total was 10,796,725, up 997,198 or 10.2 percent from the 2015 total. By 2017 annual air passengers reached 12,480,232 up 1,683,507 or 15.6 percent above the 2016 total and up 27.4 percent from the 2015 total. By mid-2018 the airport was on pace for an annual passenger volume of 14,601,871, up 4,802,344 or 49 percent above the 2015 total.¹ With increases in annual air passenger traffic also come corresponding increases in airport-related employee and service traffic. Clearly, 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.

Other sources provide corroborating data indicating considerable active growth in the Project area in the brief period of time between 2015 and 2017. Consider statistics provided in the Valley Transportation Authority's 2017 CMP Monitoring report.

TABLE 2.2 | APPROVED RESIDENTIAL UNITS, 2012-2017

Member Agency	2012	2013	2014	2015	2016	2017
Campbell	195	12	21	273	23	24
Cupertino	0	-30	15	15	788	19
Gilroy	101	278	350	646	810	810
Los Altos	204	20	0	4	4	27
Los Altos Hills	1	7	0	3	20	0
Los Gatos	116	20	23	53	6	18
Milpitas	2,243	793	466	857	0	177
Monte Sereno	0	0	0	0	0	0
Morgan Hill	268	544	103	241	372	84
Mountain View	298	537	399	1,051	277	344
Palo Alto	1	2	311	18	38	15
San Jose	536	729	3,182	2,112	4,127	1,662
Santa Clara	48	140	1,363	572	2,512	1,117
Santa Clara County	2	8	0	0	0	0
Saratoga	321	583	0	0	0	13
Sunnyvale	0	369	1,144	73	653	952
Total	4,334	4,012	7,377	5,918	9,630	5,262

¹ Source: California Air Traffic Statistical Reports and Silicon Valley Business Journal.

TABLE 2.3 | JOB CHANGE ESTIMATES BASED ON COMMERCIAL/INDUSTRIAL APPROVALS, 2012-2017

Member Agency	2012	2013	2014	2015	2016	2017
Campbell	-140	0	9	-120	6	445
Cupertino	432	277	700	21	144	5
Gilroy	0	39	639	10	250	250
Los Altos	50	211	0	19	1	-6
Los Altos Hills	0	0	0	0	0	0
Los Gatos	70	555	23	12	2	9
Milpitas	-1,176	-399	0	0	0	18
Monte Sereno	0	0	0	0	0	0
Morgan Hill	0	57	0	968	170	133
Mountain View	798	1,151	2,304	1,698	3,017	3,017
Palo Alto	585	924	-993	1,840	1,809	1,257
San Jose	1,247	4,211	7,913	3,510	6,215	6,325
Santa Clara	2,583	3,394	13,700	14,245	5,733	2,090
Santa Clara County	0	1,071	318	1,302	0	304
Saratoga	2,524	0	0	0	0	0
Sunnyvale	80	1,179	4,031	1,631	6,900	6,167
Total	7,053	12,670	28,644	25,136	24,247	20,014

The tables show that, between the beginning of 2015 and the beginning of 2017, the City approved 3,084 dwelling units and 19,978 job sites. By the end of 2017 those totals were 4,201 dwelling units and 22,068 job sites.

The City of Santa Clara also provided input to the Vallco Special Area Specific Plan Transportation Impact Analysis, as part of a current (2018) environmental review in the City of Cupertino. The input consists of a table of Approved, Under Construction and Recently Completed development projects in Santa Clara as of January 2018. The City of Santa Clara development table lists a total of 4,915,488 square feet of office/commercial development, 288,359 square feet of retail development and 6,632 residential dwelling units.

What all of this evidence shows is that, contrary to Response E.20 which states: “no substantial development or change in the project area has occurred between 2015 and 2017,” the City of Santa Clara is a place where very active development is occurring, the roadways serving the site are highly affected by burgeoning airport traffic, and those roadways where the study intersections are located, such as Coleman Avenue, El Camino Real, De La Cruz Boulevard, Central Expressway, Hedding Street, Taylor Street and Trimble Road are sub-regional arteries that service and are affected by very active development in the neighboring cities of San Jose, Cupertino and Sunnyvale and in several instances provide connection to the regional freeway system of I-880, U.S. 101 and State Route 87. Hence, Response E.20 is not in compliance with the good faith effort to disclose impact that CEQA demands. Therefore, the response is inadequate and the defect in the DEIR pointed out in comments E.40, E.19 and E.21 must be remedied satisfactorily before the FEIR can be certified.

Comment and Response E.41 through E.43

Our comments now labeled E.41 through E.43 in the FEIR response concerned the inappropriateness of deducting the full theoretical trip generation of a use that was vacated and demolished well before the date of circulation of the NOP from the trip generation of the proposed Project and also treating the prior use of the site as if it were a concurrent project in the background (near-term future) condition. It is responded to by reference to the response to your summarization of these comments now labeled E.21 in the FEIR.

Response E.21 explains the so called “*logic*” of deducting credit for the trip generation prior buildings on site from the Project’s estimated trip generation in the Background + Project analysis is that “*the existing buildings could be built or reoccupied without discretionary City approval*” and hence “*the existing buildings are assumed to be rebuilt and reoccupied in the background scenario*”.

This response is not supported by the evidence for several reasons. First; these are not “*existing*” buildings; they are buildings that were demolished well before the date of the NOP. It is extremely unlikely that they would or could be reconstructed in kind to avoid need for City discretionary approvals. The buildings were sufficiently obsolete to be regarded as disposable. Any reconstruction for a research and development use would have to be done in spatial configurations that meet the demands of modern R&D requirements, a change that would give the City the power of discretionary approvals. Second, there is no evidence that the buildings were fully occupied within 2 years prior to the date of the NOP. It is likely that the owners began clearing tenants and the tenants began transitioning to other locations a year or more before the buildings were fully vacated and demolished.

The response is inadequate and the analysis must be redone without discounting theoretical traffic from the abandoned use from the Project trip generation and without counting theoretical traffic from the prior use as part of the background traffic scenario.

Our comment also notes that by deducting the purported trip generation of the abandoned use from the Project’s trip generation while adding the trip generation from the abandoned back in as if it were a concurrent project in the background scenario has the double effect of reducing the trip basis of the Project’s fair share contribution to impact mitigations while artificially increasing the size of the pie of other purported fair share contributors to those mitigations, thereby also reducing the Project’s fair share. Neither FEIR response E.21 nor any other FEIR response replies to this comment.

Comments E.44 and E.45 and Responses E.23 and E.24

Our comments now labeled E.44 and E.45 in the FEIR are responded to by reference to responses to your summarizations of them now labeled E.23 and E.24. They concern impacts to transit.

The response to the comment that the DEIR contains no analysis of the potential for Project trip-makers overloading individual lines, runs or trains² is replied-to without

² See Caltrain 2018 Passenger Count Key Findings at
<http://www.caltrain.com/AssetFactory.aspx?did=11794>

analysis by the unsupported assertion that there is available capacity, or if not, that VTA and Caltrain will add more buses and trains. This conclusory statement is not supported by any evidence.

The second part of the comments concerned the DEIR's summary dismissal of the Project's traffic delay impacts to transit operations, on the grounds that the City and VTA lack established policies or significance criteria for such impacts. Response E.24 now discloses that VTA *does* have a methodology for analyzing a Project's traffic delay transit impacts and argues it did analyze impacts according to those procedures.

VTA guidelines with regard to delay to transit vehicles read in part *"If 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."*

The EIR does acknowledge delay to transit vehicles of about 3 minutes. In a proper analysis according to the guidelines this delay must be acknowledged as an impact and transit priority measures must be added. There is no evidence the City worked with VTA to implement transit priority measures in the affected area to mitigate the delays.

With regard to mitigating the impact on transit, a deficiency in the FEIR argument is that the FEIR now claims that the traffic mitigation measures it does disclose would return delays to transit to equal or better than baseline conditions and that the delays caused by other baseline projects don't matter. The problem with this is that the subject Project is only contributing a *'fair share'* toward implementation of the mitigations but claiming for itself the *'totality'* of the mitigation measure's beneficial effects. Either the other concurrent projects in the baseline paying fair shares get no credit for the mitigation or, in aggregate, they claim credit for the beneficial effects of the mitigation 10 times over. The response is not sensible and inadequate.

Comment and Response E.46

This comment concerned the analysis of Alternatives to the Project. Response E.46 implies that the comment constituted advice to the City regarding choices between the Project and the Environmentally Superior Alternative and that, since no challenges to the DEIR analysis were raised, no response is necessary. Like other responses to our comments, Response E.46 is evasive and incorrect. Comment E.46 specifically states the following: *"The DEIR traffic analysis does not include a freeway segment analysis for the Cumulative + Project condition"* (emphasis added). This is a specific comment on the adequacy of the alternatives analysis that must be responded to; not advocacy of a particular alternative to the Project.

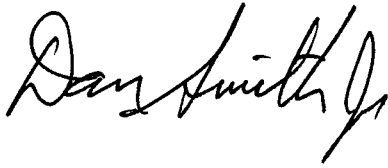
Conclusion

This completes my comments on the Gateway Crossings Mixed Use Development FEIR. The responses are conclusory and not supported by the evidence, the DEIR remains unrevised with respect to my comments and the FEIR is inadequate and unsuited for certification under CEQA.

Ms. Nirit Lotan
Adams Broadwell Joseph & Cardozo
November 12, 2018
Page 7

Sincerely,

Smith Engineering & Management
A California Corporation



Daniel T. Smith Jr., P.E.



SMITH ENGINEERING & MANAGEMENT

DANIEL T. SMITH, Jr.
President

EDUCATION

Bachelor of Science, Engineering and Applied Science, Yale University, 1967
Master of Science, Transportation Planning, University of California, Berkeley, 1968

PROFESSIONAL REGISTRATION

California No. 21913 (Civil) Nevada No. 7969 (Civil) Washington No. 29337 (Civil)
California No. 938 (Traffic) Arizona No. 22131 (Civil)

PROFESSIONAL EXPERIENCE

Smith Engineering & Management, 1993 to present. President.
DKS Associates, 1979 to 1993. Founder, Vice President, Principal Transportation Engineer.
De Leuw, Cather & Company, 1968 to 1979. Senior Transportation Planner.
Personal specialties and project experience include:

Litigation Consulting. Consultation, investigations and expert witness testimony in highway design, transit design and traffic engineering including condemnations involving transportation access issues; traffic accidents involving highway design or traffic engineering factors including specialties in bicyclist-involved and speed bump matters; land use and development matters involving access and transportation impacts; parking and other traffic matters.

Bicycle Facilities. Project manager to develop an FHWA manual for bicycle facility design and planning, on bikeway plans for Del Mar, (Calif.), the UC Davis and the City of Davis. Consultant to bikeway plans for Eugene, Oregon, Washington, D.C., Buffalo, New York, and Skokie, Illinois. Consultant to U.S. Bureau of Reclamation for development of hydraulically efficient, bicycle safe drainage inlets. Consultant on FHWA research on effective retrofits of undercrossing and overcrossing structures for bicyclists, pedestrians, and handicapped.

Urban Corridor Studies/Alternatives Analysis. Principal-in-charge for State Route (SR) 102 Feasibility Study, a 35-mile freeway alignment study north of Sacramento. Consultant on I-280 Interstate Transfer Concept Program, San Francisco, an AA/EIS for completion of I-280, demolition of Embarcadero freeway, substitute light rail and commuter rail projects. Principal-in-charge, SR 238 corridor freeway/expressway design/environmental study, Hayward (Calif.) Project manager, Sacramento Northeast Area multi-modal transportation corridor study. Transportation planner for I-80N West Terminal Study, and Harbor Drive Traffic Study, Portland, Oregon. Project manager for design of surface segment of Woodward Corridor LRT, Detroit, Michigan. Directed staff on I-80 National Strategic Corridor Study (Sacramento-San Francisco), US 101-Sonoma freeway operations study, SR 92 freeway operations study, I-880 freeway operations study, SR 152 alignment studies, Sacramento RTD light rail systems study, Tasman Corridor LRT AA/EIS, Fremont-Warm Springs BART extension plan/EIR, SRs 70/99 freeway alternatives study, and Richmond Parkway (SR 93) design study.

Area Transportation Plans. Principal-in charge for transportation element of City of Los Angeles General Plan Framework, shaping nations largest city two decades into 21'st century. Project manager for the transportation element of 300-acre Mission Bay development in downtown San Francisco. Mission Bay involves 7 million gsf office/commercial space, 8,500 dwelling units, and community facilities. Transportation features include relocation of commuter rail station; extension of MUNI-Metro LRT; a multi-modal terminal for LRT, commuter rail and local bus; removal of a quarter mile elevated freeway; replacement by new ramps and a boulevard; an internal roadway network overcoming constraints imposed by an internal tidal basin; freeway structures and rail facilities; and concept plans for 20,000 structured parking spaces. Principal-in-charge for circulation plan to accommodate 9 million gsf of office/commercial growth in downtown Bellevue (Wash.). Principal-in-charge for 64 acre, 2 million gsf multi-use complex for FMC adjacent to San Jose International Airport. Project manager for transportation element of

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5311 Lowry Road, Union City, CA 94587 tel: 510.489.9477 fax: 510.489.9478

Sacramento Capitol Area Plan for the state governmental complex, and for Downtown Sacramento Redevelopment Plan. Project manager for Napa (Calif.) General Plan Circulation Element and Downtown Riverfront Redevelopment Plan, on parking program for downtown Walnut Creek, on downtown transportation plan for San Mateo and redevelopment plan for downtown Mountain View (Calif.), for traffic circulation and safety plans for California cities of Davis, Pleasant Hill and Hayward, and for Salem, Oregon.

Special Event Facilities. Evaluations and design studies for football/baseball stadiums, indoor sports arenas, horse and motor racing facilities, theme parks, fairgrounds and convention centers, ski complexes and destination resorts throughout western United States.

Transportation Centers. Project manager for Daly City Intermodal Study which developed a \$7 million surface bus terminal, traffic access, parking and pedestrian circulation improvements at the Daly City BART station plus development of functional plans for a new BART station at Colma. Project manager for design of multi-modal terminal (commuter rail, light rail, bus) at Mission Bay, San Francisco. In Santa Clarita Long Range Transit Development Program, responsible for plan to relocate system's existing timed-transfer hub and development of three satellite transfer hubs. Performed airport ground transportation system evaluations for San Francisco International, Oakland International, Sea-Tac International, Oakland International, Los Angeles International, and San Diego Lindberg. Also prepared parking programs and facilities for large area plans and individual sites.

Campus Transportation. Campus transportation planning assignments for UC Davis, UC Berkeley, UC Santa Cruz and UC San Francisco Medical Center campuses; San Francisco State University; University of San Francisco; and the University of Alaska and others. Also developed master plans for institutional campuses including medical centers, headquarters complexes and research & development facilities.

Transportation System Management & Traffic Restraint. Project manager on FHWA program to develop techniques and guidelines for neighborhood street traffic limitation and for Berkeley, (Calif.), Neighborhood Traffic Study that pioneered application of traffic restraint techniques in the U.S. Developed residential traffic plans for Menlo Park, Santa Monica, Santa Cruz, Mill Valley, Oakland, Palo Alto, Piedmont, Redwood City, San Mateo County, Pasadena, Santa Ana and others. Participated in development of photo/radar speed enforcement and experimented with speed humps. Co-author of Institute of Transportation Engineers reference publication on neighborhood traffic control.

MEMBERSHIPS

Institute of Transportation Engineers

Transportation Research Board

PUBLICATIONS AND AWARDS

Residential Street Design and Traffic Control, with W. Homburger et al. Prentice Hall, 1989.

Co-recipient, Progressive Architecture Citation, *Mission Bay Master Plan*, with I.M. Pei WRT Associated, 1984.

Residential Traffic Management, State of the Art Report, U.S. Department of Transportation, 1979.

Improving The Residential Street Environment, with Donald Appleyard et al., U.S. Dept. of Transportation, 1979.

Co-recipient, Progressive Architecture Award, *Livable Urban Streets, San Francisco Bay Area and London*, with Donald Appleyard, 1979.

Bikeways, State of the Art - 1974, U.S. Dept. of Transportation, 1974.

Location and Safety Criteria For Bicycle Facilities, U.S. Dept. of Transportation, 1976.