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City of San Jose
Mayor and City Council
200 E. Santa Clara St.
San José, CA 95113

Re: Stevens Creek, Santana Row, and Winchester Boulevard Urban Village Plans

Dear Mayor and Councilmembers:

Thank you for the opportunity to comment on the draft Stevens Creek, Santana Row, and Winchester Boulevard Urban Village Plans on behalf of our client, the City of Santa Clara. Santa Clara is understandably concerned with the greatly increased level of planned development within the Urban Villages and how it will impact the residents of Santa Clara. Santa Clara has expressed its desire to work collaboratively with San Jose to ensure that implementation of the Urban Village Plans aligns with the goals and objectives of both communities. Santa Clara appreciates San Jose's stated interest in establishing a multi-city regional working group to discuss key land use and transportation issues affecting the region.

However, we are troubled by the staff recommendation that the City Council rely on the Envision San Jose 2040 Program Environmental Impact Report (PEIR) and Supplemental PEIR, as well as the previously adopted Addendum to the Envision San Jose 2040 PEIR and Supplemental PEIR (collectively "San Jose's Prior Programmatic Environmental Review"), to satisfy its obligations pursuant to the California Environmental Quality Act (CEQA). As discussed in detail below, San Jose's Prior Programmatic Environmental Review does not adequately disclose and analyze the environmental impacts associated with the proposed Urban Village Plans.

The Urban Village Plans (and not the Envision San Jose 2040 Plan) establish localized policies relating to the types, density, and intensity of land uses within the Plan areas. This is the first time such decisions will be made. Thus, environmental review of the City's prior planning documents does not cover these new decisions and the general programmatic conclusions set forth in the Envision San Jose 2040 PEIR are insufficient to assess the potential impacts.

The staff report suggests that analysis of the potential impacts can be part of a post-Plan approval EIR. However, to comply with CEQA and ensure that the public is informed of potential impacts associated with the Urban Villages, the City of San Jose must prepare an EIR *before*

approving the Urban Village Plans. The EIR conducted for the Urban Village Plans will need to focus on the cumulative traffic impacts of development within the Plan areas, and identify clear and specific mitigation obligations with identified funding mechanisms to address environmental impacts affecting not only San Jose, but also its neighbors in Santa Clara. And CEQA requires that this be done before San Jose moves forward to adopt the Plans. Therefore, we respectfully request that the City of San Jose City Council continue the hearing on the Urban Village Plans and direct City of San Jose staff to prepare an EIR.

I. San Jose’s Prior Programmatic Environmental Review Does Not Adequately Analyze Potential Environmental Impacts of the Proposed Urban Village Plans.

Program EIRs are used for a series of related actions that can be characterized as one large project. “If a program EIR is sufficiently comprehensive, the lead agency may dispense with further environmental review for later activities within the program that are adequately covered in the program EIR.” (*Center for Sierra Nevada Conservation v. County of El Dorado* (2012) 202 Cal.App.4th 1156, 1171, citing CEQA Guidelines, § 15168, subd. (c).) “Thus, ‘a program EIR may serve as the EIR for a subsequently proposed project *to the extent it contemplates and adequately analyzes the potential environmental impacts of the project ...* .’” (*Ibid*, quoting *Citizens for Responsible Equitable Environmental Development v. City of San Diego Redevelopment Agency* (2005) 134 Cal.App.4th 598, 615 (emphasis added).)

Envision San Jose 2040 deferred numerous area-specific considerations to the Urban Village planning process. As stated in Envision San Jose 2040, “Urban Village Plans identify appropriate uses, densities, and connections throughout the Urban Village area. They also consider how and where parks, schools, libraries, open space, retail, and other amenities should be incorporated.” (Envision San Jose 2040, Chap. 7, p. 3; see also *id.*, Chap. 5, p. 23 [Urban Village Plans will articulate and evaluate “[s]pecific allowable uses” within their boundaries].) The Urban Village Plans also establish “standards for [] architecture, height, and massing” as well as policies relating to “building scale, relationship to the street, and setbacks...” (Envision San Jose 2040, Policies CD 1.14, CD-7.4.) As discussed further below, these types of land use decisions, addressed for the first time in the Urban Village Plans, have the potential to result in numerous significant environmental impacts that were not contemplated or adequately analyzed in San Jose’s Prior Programmatic Environmental Review. Therefore, the City of San Jose must complete an EIR for the Urban Village Plans prior to approval of the Plans.

A. The Urban Village Plans have the Potential to Result in Significant Aesthetic Impacts that were not Adequately Analyzed in San Jose’s Prior Programmatic Environmental Review.

Because Envision San Jose 2040 did not establish allowed heights within the Stevens Creek, Santana Row, and Winchester Boulevard Urban Village Plan areas, the Envision San Jose 2040 PEIR necessarily did not contemplate or adequately analyze the potential aesthetic impacts

associated with the height limits now proposed in the Urban Village Plans. In fact, the Envision San Jose 2040 PEIR and San Jose's Prior Programmatic Environmental Review illustrate that the planning decisions now being made as part of the Urban Village Plans have the potential to result in new significant aesthetic impacts that require review.

For example, the Envision San Jose 2040 PEIR states that I-280 is considered a "scenic route" by the City of San Jose and that portions of Saratoga Avenue (within the Santana Row Urban Village Plan area) and Steven Creek Boulevard (within the Stevens Creek Urban Village Plan area) are considered "gateways." (Envision San Jose 2040 PEIR, p. 717, 723; see also *id.* at p. 722 [defining Stevens Creek Boulevard as a "[k]ey roadway[] with views of hillside areas"].) The Envision San Jose 2040 PEIR also acknowledges that "[w]here tall structures are constructed immediately adjacent to gateways and freeways, there is the possibility that important views could be partially obscured for motorists, bicyclists, and pedestrians." (*Id.* at p. 722.) For these reasons, the Envision San Jose 2040 PEIR states that "development along these throughways and corridors should be designed to preserve and enhance natural and man-made vistas." (*Id.* at p. 717.) As the Urban Village Plans establish allowed height and massing standards that may impact views from scenic routes and gateways, the potential impacts of these new policies must be analyzed in an EIR.

Additionally, the Urban Village Plans are the planning documents creating specific policies concerning the interface between new high density development and the lower density residential neighborhoods. The Envision San Jose 2040 PEIR acknowledges the importance of a sensitive transition at these interfaces "to protect the quality and integrity of the neighborhoods..." (*Id.* at p. 156.) An EIR is required to evaluate whether the proposed Urban Village Plan heights, densities, setbacks, and related policies are sensitive to the need to protect the quality and integrity of adjacent neighborhoods. For example, the Stevens Creek Urban Village Plan identifies maximum building heights along Stevens Creek Boulevard of up to 150 feet at the intersection of Stevens Creek Boulevard and Saratoga Avenue, with most other buildings along the corridor ranging from 120 to 85 feet tall. This represents a marked contrast with the existing one- and two-story buildings along Stevens Creek Boulevard, and the visual impact this proposed development will have on uses located directly across the street in Santa Clara must be analyzed.

Lastly, Mayor Sam Liccardo and Councilmembers Chappie Jones and Dev Davis have recommended that the Plans "should allow for increased heights *above the approved village heights* if a project provides substantial additional urban village amenities." (June 23, 2017 Memoranda, p. 2 (emphasis added).) To the extent this recommendation is considered for approval by the City of San Jose City Council, an EIR must evaluate potential aesthetic impacts associated with permitting unlimited height exceedances based on undefined "substantial urban village amenities."

B. The Urban Village Plans have the Potential to Result in Significant Transportation and Circulation Impacts that were not Adequately Analyzed in San Jose's Prior Programmatic Environmental Review.

The Envision San Jose 2040 PEIR properly acknowledges that impacts related to vehicle miles traveled (VMT) directly relate to the City of San Jose's decisions concerning "land use types, density/intensity, and development patterns" (Envision San Jose 2040 PEIR, p. 258.) As discussed above, the Urban Village Plans, and not the City of San Jose's Envision San Jose 2040 Plan, establish localized policies relating to types, density, and intensive of land uses within the Plan areas. Furthermore, the Urban Village Plan areas include a wide variety of street types from residential streets to grand boulevards. (See Envision San Jose 2040, Chap. 5, pp. 29-31 [defining street types within the City of San Jose].) Localized traffic impacts of potential projects necessarily vary depending on the types of streets immediately surrounding the project sites. (See, e.g., Envision San Jose 2040 PEIR, p. 269.) Thus, the City of San Jose's decisions relating to where to promote various land uses and densities within the Urban Villages will directly affect localized traffic impacts associated with the Plans.

The Envision San Jose 2040 PEIR does not attempt to analyze these localized traffic impacts. As explained in the Addendum to the Envision San Jose 2040 PEIR, "[t]he City's TDF model is intended for use as a 'macro analysis tool' to project probable future conditions. Therefore, the TDF model is best used when comparing alternative future scenarios, and is *not designed to answer "micro analysis level" operational questions* typically addressed in detailed transportation impact analyses (TIAs)." (Envision San Jose 2040 PEIR Addendum, p. 79 (emphasis added).) The Urban Village Plans provide localized planning concepts that can and should be analyzed at a more detailed level than the "macro" analysis included in the Envision San Jose 2040 PEIR.

Moreover, the Urban Village Plans further refine the types of uses that are allowed and anticipated within the Plan areas. For example, within the Stevens Creek Urban Village, the City of San Jose proposes to define "commercial uses" to include hotels. Virtually every land use category within the Stevens Creek Urban Village authorizes "commercial uses." Thus, the City of San Jose appears to be authorizing hotels to be constructed anywhere within the Stevens Creek Urban Village. While Envision San Jose 2040 contemplated hotels as an allowed use within the Urban Village Commercial designation, it did not contemplate hotels within other land use designations included within the Stevens Creek Urban Village Plan area. Traffic patterns associated with hotel projects differ significantly from other types of commercial development. For this reason, potential traffic impacts associated with authorizing hotel projects within every

land use designation included in the Stevens Creek Urban Village Plan area should be evaluated in an EIR prior to approval of the Plan.

Additionally, the Urban Village Plans contemplate changes to the roadway network. As explained in the June 5, 2017 Planning Commission Staff Report on the Winchester Boulevard and Santana Row Urban Village Plans, the “Urban Village Plans contain conceptual road configurations *that will require traffic analysis before solidifying a final street design.*” (June 5, 2017 Planning Commission Staff Report, p. 4.) The staff report suggests this traffic analysis can be part of a post-Plan approval EIR. (*Ibid.*) However, to comply with CEQA, it is critical that the City of San Jose consider potential traffic impacts associated with the “conceptual road configurations” prior to approving these configurations as part of the Urban Village Plans. (See, *infra*, Section II for further discussion of timing of CEQA review and improper piecemealing.)

Finally, the Envision San Jose 2040 PEIR concludes that implementation of the General Plan will result in significant and unavoidable impacts on congested roadways. The EIR notes that increasing roadway capacity may be considered “logical mitigation” but states that the City of San Jose does “not envision continually widening streets and expanding intersections to the detriment of neighborhoods and other transportation modes.” (Envision San Jose 2040 PEIR, p. 302.) Thus, at the programmatic level, the Envision San Jose 2040 PEIR rejects capacity increasing mitigation as generally not environmentally preferable or “economically or physically feasible.” (*Ibid.*) The City of Santa Clara agrees that capacity increasing mitigation measures are not always appropriate. However, a specific evaluation of whether *any* capacity increasing mitigation measures are appropriate and feasible within the Urban Village Plan areas should be undertaken as part of an EIR for the Plans. General programmatic conclusions set forth in the Envision San Jose 2040 PEIR are insufficient to conclude that mitigation measures, including potentially feasible capacity increasing measures, are not appropriate and feasible to mitigate congestion-related impacts within the Urban Villages.

As previously stated, the EIR conducted for the Urban Village Plans will need to focus on the cumulative traffic impacts of development within the Plan areas, and identify clear and specific mitigation obligations with identified funding mechanisms to address environmental impacts affecting not only San Jose, but also its neighbors in Santa Clara.

C. The City of San Jose Must Analyze Whether the Urban Village Plans will Result in Any Other Significant Environmental Impacts Associated with the Area-Specific Land Use Designations and Policies included in the Plans.

The City of Santa Clara is particularly concerned with aesthetic and traffic impacts of the Urban Village Plans because these impacts are likely to affect the City of Santa Clara and its residents most directly. However, the Urban Villages are likely to have additional impacts that must be considered.

For example, proximity to sensitive receptors is a critical factor in evaluating air quality impacts. Because Envision San Jose 2040 did not identify the land use designations, heights or densities within the Urban Village Plan areas, the General Plan EIR necessarily did not consider potential localized impacts associated with proximity between existing sensitive receptors and the Urban Village Plans' proposed land use designations. Before approving specific levels of density and intensity within the Urban Village Plan areas, the City of San Jose should evaluate potential air quality impacts associated with site-specific land use designations included in the Plans. Without undertaking this analysis, neither the City of San Jose City Council nor the public will fully understand potential health risks associated with the land use policies included within the Plans.

The EIR prepared for the Urban Village Plans should consider all potential impacts of the Urban Villages to ensure that the City of San Jose, neighboring jurisdictions, and the public are fully informed about the potential environmental risks and benefits associated with the Plans.

II. Proceeding with Approval of the Urban Village Plans prior to Completion of Environmental Review Would Constitute Improper "Piecemealing" Under CEQA.

City of San Jose staff proposes preparing one or more EIRs addressing the impacts of the Urban Village Plans *after* the Plans are approved, evidencing an understanding that the Plans will in fact have impacts that were not previously considered. Specifically, City of San Jose staff has suggested that an EIR (or EIRs) will be prepared in the future as part of the City of San Jose's process to (1) develop funding mechanisms to implement the Urban Village Plans, and (2) evaluate traffic impacts associated with projects developed consistent with the Urban Village Plans. Post hoc environmental analysis of the Urban Village Plans as part of these future planning actions violates the requirements of CEQA. (CEQA Guidelines, § 15003, subd. (h) ["The lead agency must consider the whole of an action, not simply its constituent parts, when determining whether it will have a significant environmental effect."].)

The requirement to complete CEQA review *prior to approving* a land use plan is particularly critical in the context of these Urban Village Plans. For example, the City of San Jose has repeatedly acknowledged that "many of the streetscape and circulation improvements identified" in the Plans require yet-to-be established funding mechanisms for construction and/or maintenance of public infrastructure improvements because "existing funding mechanisms by themselves will not be adequate to implement many of the identified improvements and amenities." (See, e.g., Santana Row Urban Village Plan, p. 5; Stevens Creek Urban Village Plan, p. 12.) Rather than addressing these funding shortfalls now, the City of San Jose intends to adopt the Urban Village Plans and then amend the Plans "in near future as the preferred implementation mechanism becomes defined." (June 27, 2017 Planning Commission Staff Report regarding the Winchester Boulevard and Santana Row Urban Village Plans, p. 24.)

Deferring preparation of funding mechanisms required to implement the Urban Village Plans has significant potential environmental consequences because the City of San Jose's "residential pool policy" allows qualifying development projects within the Urban Village Plan areas to be

developed immediately after the Plans are adopted. (*Id.* at pp. 2-3.) As a result, by approving the Urban Village Plans in advance of developing required funding mechanisms, the City of San Jose may allow residential and mixed-use development projects including up to 5,000 new residential units within these areas *before* the City of San Jose has determined the fair share funding requirements that should be imposed on such projects to fully fund improvements and amenities proposed within the Urban Village Plans. (*Ibid.*)

Additionally, Mayor Liccardo has stated that an “areawide ‘Transportation Demand Management Plan’” is necessary within the Urban Village Plan areas in order to “decrease the number of added car trips” associated with new development. (June 23, 2017 Memoranda, p. 6.) City of San Jose staff has recommended that the City of San Jose analyze the traffic impacts of the Urban Village Plans and prepare the Transportation Demand Management Plan “*after* the approval of the Urban Village Plan.” (June 27, 2017 Planning Commission Staff Report regarding the Winchester Boulevard and Santana Row Urban Village Plans, pp. 5-6.) City of San Jose staff seems to suggest that developing these funding and transportation plans after approval will not violate the requirements of CEQA because the Urban Villages are included in Plan Horizon 3. (*Ibid.*) However, as explained above, qualifying residential and mixed-use projects can move forward immediately after Plan approval under the City’s residential pool policy. Thus, deferring development of traffic mitigation may allow some projects to move forward before the localized traffic impacts of the Urban Village Plans are properly analyzed and mitigated pursuant to CEQA.

The fact that project-specific CEQA review may be required for projects developed within the Urban Village Plan areas does not support the conclusions the Urban Village Plans do not require further CEQA review before they are adopted. (See *Muzzy Ranch Co. v. Solano County Airport Land Use Com.* (2007) 41 Cal.4th 372, 383 [adoption of airport land use plan held to be a project even though it directly authorized no new development]; *Fullerton Joint Union High School Dist. v. State Bd. of Education* (1982) 32 Cal.3d 779, 795 [adoption of school district succession plan held to be a project even though “further decisions must be made before schools are actually constructed ...”]; *Bozung v. Local Agency Formation Com.* (1975) 13 Cal.3d 263, 279, 282 [regional agency’s approval of annexation by city held to be a project even though further approvals, including zoning changes, would be needed for property development to occur].) Moreover, the City of San Jose has previously stated that development projects consistent with the General Plan and Urban Village Plans are anticipated to “tier from [the Envision San Jose 2040] PEIR, allowing the process to move forward more efficiently.” (Envision San Jose 2040 PEIR, p. 156.) Thus, there is no assurance that any further CEQA review will be conducted before, at least some, residential and mixed-use projects are approved under the Urban Village Plans.

Finally, the need for environmental review of the Urban Village Plans is set forth in numerous policies in Envision San Jose 2040. These policies directing the preparation of Urban Village

Plans are the equivalent of mitigation measures; Envision San Jose 2040 “incorporates policies and actions to implement the identified mitigation and avoidance measures for future projects that are consistent with the General Plan.” (Envision San Jose 2040, p. 134.) For example, in analyzing potential land use impacts associated with Envision San Jose 2040, the Envision San Jose 2040 PEIR identifies a series of policies relating to creation of Urban Village Plans that “[r]educe or avoid possible impacts from high intensity development” including but not limited to the following:

- Policy IP-5.4: Prepare and implement Urban Village Plans carefully, with sensitivity to concerns of the surrounding community, and property owners and developers who propose redevelopment of properties within the Urban Village areas.
- Policy CD-1.14: Use the Urban Village planning process to establish standards for their architecture, height, and massing.
- Policy CD-1.15: Consider the relationship between street design, use of the public right-of-way, and the form and uses of adjoining development. Address this relationship in the Urban Village Planning process.
- Policy CD-4.8: Include development standards in Urban Village Plans that establish streetscape consistency in terms of street sections, street-level massing, setbacks, building facades, and building heights.
- Policy CD-7.1: Support intensive development and uses within Urban Villages and Corridors, while ensuring an appropriate interface with lower-intensity development in surrounding areas and the protection of appropriate historic resources.
- Policy CD-7.4: Identify a vision for urban design character consistent with development standards, including but not limited to building scale, relationship to the street, and setbacks, as part of the Urban Village planning process.
- Policy CD-7.6: Consider retail, parks, school, libraries, day care, entertainment, plazas, public gathering space, private community gathering facilities, and other neighborhood-serving uses as part of the Urban Village planning process.

Because Envision San Jose 2040 treats the Urban Village Plans as a form of mitigation to address potential impacts addressed by the above policies, the Urban Village Plans are similar to

the oak woodland management plan addressed in *Center for Sierra Nevada Conservation, supra*, 202 Cal.App.4th 1156. In that case, the County of El Dorado prepared a program EIR for its general plan. The general plan anticipated preparation of an oak woodland management plan to mitigate tree impacts of future projects developed consistent with the general plan. The county ultimately adopted an oak woodland management plan based, in part, on the conclusion that preparation of the plan was anticipated in the general plan and, therefore, covered by the general plan program EIR. The Third District Court of Appeal disagreed. The court explained that “[a]lthough the 2004 program EIR did anticipate the development of an oak woodland management plan and fee program, it did not provide the County with guidance in making the discretionary choices that served as the basis for the plan or fee program. Specifically, the program EIR did not set the fee rate, how the acreage subject to the Option B fee rate should be measured, or how the offsite oak woodland losses would be mitigated by the fees. Thus, the County could not rely on the 2004 program EIR for its conclusion that the adoption of the oak woodland management plan and fee program will have no greater adverse environmental effect than that already anticipated in the 2004 program EIR...” (*Id.* at p. 1162.)

The same conclusion applies here. While Envision San Jose 2040 anticipated development of future Urban Village Plans, it left a substantial number of discretionary decisions relating to the policies and land use decisions included in the Plans to the future planning processes associated with developing the Plans. As discussed throughout this letter, these discretionary decisions include decisions relating to architecture, height, massing, street design, use of the public right-of-way, the form and uses of adjoining development, setbacks, locations of public facilities and neighborhood-serving uses, and other issues ensuring an appropriate interface with lower-intensity development in surrounding areas. Thus, as in *Center for Sierra Nevada Conservation*, the City of San Jose cannot rely on San Jose’s Prior Programmatic Environmental Review to avoid preparation of an EIR (or EIRs) evaluating potentially significant environmental impacts that may result from implementing the Urban Village Plans.

The First Amendment to the Draft PEIR (First Amendment) stated that “[t]he Urban Village planning process will allow the adjoining community to participate in creation of *appropriate standards* for that specific Urban Village regarding heights, setbacks, and the types of allowed uses.” (First Amendment, p. 200 (emphasis added); see also Stevens Creek Urban Village Plan Staff Report (May 24, 2017), p. 7 [“[h]igher FAR’s and building heights were designated in specific areas that were identified as optimal for new commercial development”] (emphasis added).) Only after the environmental impacts of the Urban Village Plans are fully analyzed and publicly disclosed will it be possible to make informed decisions concerning the “appropriate” or “optimal” standards to apply to these areas. (CEQA Guidelines, § 15003, subd. (d) [Preparing an EIR will “demonstrate to an apprehensive citizenry that the agency has, in fact, analyzed and considered the ecological implications of its action.”].)

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Envision San Jose 2040 contemplates that the Urban Village Plans would require CEQA review. For example, Policy IP-5.2 states that “completion of an Urban Village Plan will be followed by completion of environmental review as *required for adoption of the Plan*.” (Envision San Jose 2040, Chap. 7, p. 16 (emphasis added).) Moreover, the First Amendment reiterates that “[t]he impacts of the proposed development or redevelopment will be assessed during the development of the Urban Village Plan, during the legally required CEQA process, and through the project approval.” (First Amendment, pp. 70, 253.) City of San Jose staff’s current recommendation to adopt the Stevens Creek, Santana Row, and Winchester Boulevard Urban Village Plans without undergoing further CEQA review is, therefore not only inconsistent with CEQA, but also the City’s own General Plan.

For all of the above reasons, we request that the City of San Jose prepare an EIR to properly analyze the environmental impacts of the proposed Urban Village Plans. We look forward to the opportunity to review and comment on the EIR for the Urban Village Plans.

Sincerely,



Tina A. Thomas

cc: Brian Doyle, Santa Clara City Attorney