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City of San José
Department of Planning, Building and Code Enforcement
Attn: Dipa Chundur
200 East Santa Clara Street, 3rd Floor Tower
San José, CA 95113

Re: Comments on Revised Notice of Preparation of a Draft Environmental Impact Report for 4300 Stevens Creek Boulevard Mixed Use Project (Project Nos. PDC16-036, PD17-014, PT17-023)

To Whom It May Concern:

Thank you for the opportunity to comment on the January 2018 Revised Notice of Preparation of a Draft Environmental Impact Report (EIR) for the 4300 Stevens Creek Boulevard Mixed-Use Project on behalf of our client, the City of Santa Clara.

We understand the project involves demolition and removal of the five existing one- and two-story buildings and other improvements currently on the site, to be replaced with four main buildings: an office/retail building of unspecified height with 300,000 square feet of office space and 7,000 square feet of retail, a parking garage building of unspecified height to accommodate approximately 1,238 parking spaces, an eight-story residential building with 289 units and 11,000 – 15,000 square feet of ground floor retail, and a second eight-story residential building with 293 residential units. The project proposes rezoning the site from CG – Commercial General to a Commercial Pedestrian Planned Development Zoning District to allow a mixed use project and subdivision of three existing parcels.

We also understand that the project is located within the Stevens Creek Urban Village area and is subject to the policies and design guidance provided in the Stevens Creek Boulevard Urban Village Plan. Based on our understanding of the project, we offer the following comments on the scope of the environmental analysis.

At the outset, we note that San Jose did not prepare an EIR for its approval of the Urban Village Plans, and instead relied on a consistency determination with the Envision San Jose 2040 General Plan EIR. 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 Urban Village Plans to the future planning processes associated with developing those Plans. As discussed in our August 8, 2017 comment letter on the Urban Village Plan approval, these discretionary decisions include decisions relating to architecture, building 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. Because these issues were not analyzed as part of the Urban Village Plan approval process, any potentially significant environmental impacts related to implementing these discretionary decisions as part of this project's approval must be identified and analyzed as part of the project EIR.

1. Aesthetic Impacts

The NOP is unclear about how tall the proposed four buildings will be. On page 6 of the NOP, it states that two buildings (residential/retail Building C and residential Building D) will be eight-stories, with the heights of the other two buildings unspecified. However, on page 9, the NOP states the project buildings will vary in height from one- to four-stories, but that only one building will be eight-stories. The EIR must include an accurate description of the proposed project building heights and analyze aesthetic impacts based on the maximum heights proposed for the project.

Envision San Jose 2040 did not establish allowed heights within the Stevens Creek Urban Village. As such, the EIR prepared for the General Plan did not include an analysis of the aesthetic impacts related to an increase in allowable heights in the area. The Urban Village Plan identifies maximum building heights for the project site of 120 feet tall; however, as stated above, that approval relied on a consistency determination with the EIR prepared for Envision San Jose 2040 and provided no analysis of impacts specific to the Urban Village Plan. As such, the aesthetic impacts of allowing development up to 120 feet in this area has not been analyzed.

The 120-foot height limit allowed under the Urban Village Plan represents a marked contrast with the existing one- and two-story buildings on the site, and the visual impact this proposed development with buildings up to 8-stories in height will have on uses located directly across the street in Santa Clara must be analyzed. The project EIR must provide an analysis of the interface between this new high density development and the lower density existing development in the project vicinity.

In addition, the analysis of aesthetic impacts should be expanded to include consideration of the potential for the project to have shadow impacts, as well as ground level wind impacts, as a result of the proposed building heights.

2. Transportation Impacts

The NOP states that the project is located immediately adjacent to Stevens Creek Boulevard and approximately 2 miles west of the I-880/I-280 interchange, and that a traffic impact analysis will be prepared to identify impacts of the project on the existing local and regional transportation system.

As part of the Urban Village approvals, the City of San Jose acknowledged that “many of the streetscape and circulation improvements identified” in the Urban Village 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 Stevens Creek Urban Village Plan, p. 12.) Rather than addressing these funding shortfalls at the time in adopted the Plans, San Jose stated its intention 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 Urban Village Plans, p. 24.) Specifically, City of San Jose staff had proposed preparing one or more EIRs to address impacts of the Urban Village Plans 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.

To date, these analyses of traffic impacts associated with development of uses under the Urban Villages have not been completed. Thus, the EIR conducted for this project will need to focus on project impacts, as well as cumulative traffic impacts of development within the project area. The EIR will also need to 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.

Further, to the extent the project would have impacts at intersections designated under San Jose's Protected Intersection Policy, we caution that reliance on that Policy to determine that a project with impacts at an intersection operating at below LOS D is nevertheless consistent with the City's General Plan, the Policy does not excuse the City from its duty under CEQA to consider and adopt feasible mitigation measures to address significant transportation impacts at the protected intersection. (CEQA Guidelines, § 15021, subd. (a)(2).) We also request that the EIR specifically identify any offsetting improvements required pursuant to its reliance on the Protected Intersection Policy, and clearly explain how fees under the Protected Intersection Policy will be calculated.

3. Air Quality Impacts

The NOP states that the EIR will evaluate the operational and construction air quality impacts of the proposed project on nearby sensitive receptors, in accordance with current BAAQMD CEQA Guidelines and thresholds, and will also address the effects of any toxic air contaminants on future residents of the site consistent with City policy.

We request that the EIR include an analysis of project-specific and cumulative health risk impacts association with both construction and operational toxic air contaminant emissions. Due to the size of the project and likely increased number of daily vehicle trips, the EIR must disclose operational emissions and convert those operational emissions into "cancer risk" or "micrograms per cubic meter" to evaluate the emissions within the context of BAAQMD's criteria for operational TAC emissions impacts.

The project includes a rezone of the site to Commercial Pedestrian Planned Development (CP-PD), which allows numerous commercial uses that are known to generate high levels of TAC emissions, such as dry cleaners. (See San Jose City Code, § 20.40.100 [Table 20-90].) As such, the EIR should include an analysis of the impacts of these potential uses.

4. Greenhouse Gas Impacts

The NOP states that the analysis of greenhouse gas emissions will address the project's consistency with the City's Greenhouse Gas Reduction Strategy. The City's current

Greenhouse Gas Reduction Strategy only provides measures to achieve the City’s greenhouse gas reduction goals through 2020. To the extent this project will be built out over a number of years, the EIR must analyze the potential for impacts beyond 2020 and consider additional mitigation measures to address these impacts. As the Supreme Court recently affirmed, CEQA analyses must stay in step with evolving scientific knowledge and state regulatory schemes on climate change. (*Cleveland Nat. Forest Foundation v. San Diego Assn. of Governments* (2017) 3 Cal.5th 497, 519.) Thus, projects that will be built after 2020 must analyze consistency with at least the State’s 2030 greenhouse gas reduction goals to provide a good-faith CEQA analysis.

Further, while compliance with a regulatory program designed to reduce greenhouse gas emissions is one of the methods the Supreme Court suggested as a “potential option” for lead agencies to evaluate a project’s impacts on greenhouse gas emissions, relying on this approach requires substantiation. (*Center for Biological Diversity v. California Department of Fish and Wildlife* (2015) 62 Cal.4th 204, 230.) The EIR must do more than list the Greenhouse Gas Reduction Strategies with which the project will be consistent; it must also explain how implementing the particular requirements in the City’s Greenhouse Gas Reduction Strategy ensure that the project’s incremental contribution to the cumulative effect of greenhouse gas emissions is not cumulatively considerable.

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On behalf of the City of Santa Clara, we appreciate the opportunity to comment on the scope of the Draft EIR for 4300 Stevens Creek Boulevard Mixed-Use Project. Santa Clara looks forward to working with San Jose as it examines the project’s environmental impacts.

Very truly yours,

For
Fina A. Thomas

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