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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,

A handwritten signature in blue ink, appearing to be "Tina A. Thomas". The signature is stylized and includes a large flourish. To the left of the signature, the letters "FOI" are handwritten in blue ink.

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