

T|L|G Thomas Law Group

TINA A. THOMAS
AMY R. HIGUERA
CHRISTOPHER J. BUTCHER

NICHOLAS S. AVDIS
LESLIE Z. WALKER
Of Counsel

www.thomaslaw.com

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,

A large black rectangular redaction box covering the signature of Tina A. Thomas.

Tina A. Thomas

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

From: Dave Poeschel

Sent: Tuesday, February 27, 2018 10:54 AM

To: The Office of Mayor Sam Liccardo; District1; District2; District3; District4; District5; District 6; District7; District8; District9; District 10; City Clerk

Cc: Mackenzie Mossing

Subject: Re: 9/27/2018 Council Agenda Item 10.2 Vehicle Miles Travelled (VMT) Policy

Dear Honorable Mayor Liccardo and City Council Members,

The Sierra Club Loma Prieta Chapter and Santa Clara Valley Audubon strongly supports item 3. B. contained in the February 23 memo from Councilmembers Jimenez and Rocha to evaluate whether it would be more desirable for the City, instead of project applicants, to hire consultants to prepare transportation and VMT analysis for EIRs, with costs charged to project applicants, see attached.

Thank You,

David Poeschel, Sierra Club Loma Prieta Chapter Open Space Committee Chair



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Councilmembers Jimenez
and Rocha

SUBJECT: VMT POLICY

DATE: February 23, 2018

Approved

 Date
PH

2-23-18

RECOMMENDATIONS

Approve the staff recommendation with the following modifications:

1. Clarify that the fee listed for commercial development in table 2 on page 14 of the proposed policy 5-1 is intended to apply to both commercial and industrial development;
2. Alter the VMT threshold of significance for Industrial Employment Uses to 15 percent below existing regional VMT per employee;
3. As part of Phase 2, direct staff to take the following actions:
 - a. Develop potential criteria for measuring “overriding benefits” and prepare a list of example benefits that could be proposed;
 - b. Evaluate whether it would be more desirable for the City, instead of project applicants, to hire consultants to prepare transportation and VMT analysis for EIRs, with costs charged to project applicants;
 - c. Provide analysis of options for making the override eligibility criteria consistent between residential projects and commercial and industrial projects. (These criteria are described at the bottom of page 13 and the top of page 14 in the proposed policy 5-1.) Staff should evaluate the implications both of making the override eligibility criteria for commercial and industrial more restrictive, to align with the current residential criteria, as well as making the residential criteria less restrictive, to align with the current commercial and industrial criteria.

ANALYSIS

Planning, Transportation, and Public Works Department staff have done an excellent job analyzing the implications of this significant policy change and distilling the key considerations into this comprehensive report. We are grateful for your work and are pleased that San José is leading the County in the effort to conform with SB 743. With this memo, we would like to propose a few amendments and clarifications, as well as ask for some additional staff analysis as part of Phase 2.

First, table 2 on page 14 of the draft policy 5-1 sets a value for transportation system improvements that are to be required of commercial development with immitigable VMT impacts. We understand that staff's intention is to apply this contribution amount to both commercial and industrial projects, even

though industrial projects are not mentioned in the table. For purposes of clarity, we would like to note staff's intent that the contribution would apply to both types of development.

Second, we propose aligning the thresholds of significance for industrial development with the thresholds for general employment uses. This is a crucial opportunity for the City to meet the aggressive VMT and greenhouse gas reduction goals prescribed in our General Plan. Reducing vehicle miles traveled 40% by 2040 will require significant changes in mode share, which can only be achieved through land use planning that complements and facilitates the use of transit and active transportation. To ensure that our General Plan goals are met, all project types – residential, commercial, and industrial – must reduce vehicle miles traveled, and a 15% reduction from the staff recommended baselines for each of these project types is a good start.

Finally, as part of Phase 2 of this process, we recommend that staff explore some additional policy options. The first is to develop a way to measure “overriding benefits” provided by a development proposal to justify approval of a statement of overriding considerations. This can help the Council weigh the proposed benefits against anticipated negative impacts in a more concrete and empirical way, and, with a possible list of example “menu items,” provide project applicants greater certainty by proactively identifying Council and City priorities that would justify overrides.

The second is to align San José's practice with that of other cities, and, rather than allow project applicants to hire their own consultants to analyze traffic and VMT impacts, have the City hire the consultants.

The third would be to align the override eligibility criteria to be consistent between residential development and commercial and industrial development. Currently the override eligibility criteria are more permissive for commercial and industrial development than for residential development. Given the importance of reducing greenhouse gas emissions, one might reasonably question whether the commercial and industrial standards should be aligned with the residential standards, and given the intense need for housing, one might question whether the residential standards should be aligned with the commercial and industrial standards. We don't have a sufficient understanding of the implications yet to decide whether the standards for either should be changed, but we do think it's worth asking staff to evaluate options and return for additional Council review.

Thank you again to City staff for helping us understand this policy change and bring us closer to achieving the very aggressive goals in our General Plan.



February 27th, 2018

Re: 9/27/2018 Council Agenda Item 10.2 Vehicle Miles Travelled (VMT) Policy

Dear Honorable Mayor Liccardo and City Council Members,

The Sierra Club Loma Prieta Chapter and Santa Clara Valley Audubon strongly supports item 3. B. contained in the February 23 memo (attached) from Councilmembers Jimenez and Rocha to evaluate whether it would be more desirable for the City, instead of project applicants, to hire consultants to prepare transportation and VMT analysis for EIRs, with costs charged to project applicants.

Currently there is considerable confusion in the public and the development communities as to the application of VMT policy and we believe it is very important for the City of San Jose, as the third largest city in California, to be able to set a consistent standard. Adopting the Councilmembers' recommendation would go a long way toward accomplishing that and we urge your favorable reception.

Thank you to Councilmembers Jimenez and Rocha for this thoughtful request and thank you all for considering this matter,

[REDACTED]

David W. Poeschel
Open Space Committee Chair
Sierra Club Loma Prieta Chapter

[REDACTED]

Mackenzie Mossing
Environmental Advocacy Associate
Santa Clara Valley Audubon Society

From: Randy Shingai
Sent: Monday, February 26, 2018 1:01 PM
To: City Clerk
Subject: Comments on 2/27/18 Council Agenda Item 10.2

1. With the change from LOS to VMT, projects such as "road diets" and bus-only lanes will effectively receive no scrutiny. There should be some mechanism to make sure that these projects are worthwhile with respect to level of service.

2. I agree the Councilmembers Jiminez and Rocha on the selection of environmental consultants. Allowing applicants to provide their own consultants seems unseemly.

3. If the proposed transportation changes are taken from the Governor's Office of Planning and Research's "Proposed Updates to the CEQA Guidelines, November 2017", the rest of the document should be adopted by the City. Since the document is described as a "comprehensive package" it is meant to be followed in its entirety. In particular the new guidelines for water supply, energy impacts and greenhouse gas emissions should be followed along with the new transportation guidelines. The relationships and interdependencies in the new guidelines will be damaged if elements of the new model are blended with elements of the old.



February 26, 2018

Mayor Sam Liccardo and City Council
City of San Jose
200 East Santa Clara Street
San Jose, CA 95113

Re: Vehicle Miles Traveled (VMT) Transportation Policy Analysis – Council Item 10.2

Honorable Mayor Liccardo and City Council:

On behalf of The Silicon Valley Organization (The SVO), I am writing to support the new transportation impact policy analysis shift to Vehicle Miles Traveled (VMT) to comply with Senate Bill 743. By way of background, we are the Silicon Valley's premier business advocacy organization representing 1,400+ companies that employ nearly 300,000 workers and we represent our membership as the region's largest Chamber of Commerce.

In 2013, the State of California passed and adopted Senate Bill 743 (SB 743) which created a new regulatory framework so that local municipalities can no longer use "automobile delay" as a consideration when conducting a transportation analysis under the California Environmental Quality Act (CEQA). SB 743 has changed the guidelines on how municipalities can assess transportation impacts under CEQA and to better support "smart growth". The SVO supports a "smart growth" vision, through the proposed VMT policy, by streamlining a development project's transportation impact analysis under CEQA. This policy encourages higher density projects to be developed along transit lines, with the desired outcome of reducing automobile travel throughout the city.

Furthermore, we strongly encourage the city council to utilize VMT as the sole method of transportation policy analysis and transition completely away from any LOS analysis. This will allow our members to better understand how the city will assess a project's transportation impacts through a comprehensive, well-defined process. As the city transitions to VMT, it is certain to be a cumbersome process and we welcome the opportunity to provide feedback throughout the city's VMT policy implementation phase.

The SVO urges Mayor Liccardo and Council to approve council agenda item 10.2 and support city staff's recommendations for the policy transition to VMT. If you have any questions about The SVO's position, please contact Eddie Truong, Director of Public Policy & Advocacy, at [REDACTED].

Sincerely,

[REDACTED]

Matthew R. Mahood
President & CEO

Executive Committee

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February 23, 2018

To: Mayor Liccardo, Vice Mayor Carrasco, and Members of the Council,

RE: General Plan Text Amendment and Related Changes: Transportation Analysis Policy to Comply with Senate Bill 743.

We are writing to provide guidance to council members and city staff about issues that need to be addressed in this policy change. While we are strongly in support of policies that will lead to a denser, more transit-oriented city and region, we are also concerned that the city has not fully anticipated the impact of this policy on displacement and development. We believe that the proposed policy change could have significant negative impacts on communities of concern if certain provisions are not made to protect these populations in the future. We are submitting this letter to offer policy suggestions to help mitigate these issues.

We want to note that Department of Transportation staff has been helpful throughout this process and has maintain continued engagement with us as we work to improve the policy. We appreciate the thoughtful and considered attention that DOT has shown to the equity concerns in this issue.

Overriding benefits standard

As has been noted by other transit advocates, the City's current standard for overriding benefits could create a loophole that would allow large scale developments to be able to obtain ministerial approval from City Council without fully mitigating their local transportation impacts. For projects that are seen as being helpful to either the city's tax base or to a particular council constituency, it could be difficult to define "overriding benefits" as other concerns may take precedence. We believe that there needs to concrete standards for what constitutes "overriding benefits."

Disparate impact of development pressures

Working Partnerships USA has been engaged in conversations with DOT staff about the likely impact of this policy on development and displacement patterns in the city. Based on maps provided by the department, it appears that areas that would be exempt from CEQA analysis because of their proximity to transit correspond with areas of the city with lower-incomes and more households of color than areas that would be not be exempt. Part of that is self-evident due to historical patterns of development in the city that have made low-density single family areas cost more than high-density areas which have only recently become more attractive.

This brings up a common concern that planners throughout the country are dealing with, which is how to support and promote dense, transit-oriented development without causing gentrification (the process through which low-income populations are replaced by higher-income populations) and/or

displacement (the process through which low-income individuals are forced to leave neighborhoods due to higher housing costs, evictions, harassment, or neglect). In the academic literature, the role of transportation policies and investments has become clearer¹². It is now generally acknowledged that, in the long term, large transportation investments in low-income areas will tend to increase nearby housing costs thereby driving displacement pressures³. That in itself is not at issue here. What is before the council is whether this policy, as it stands, will help or hinder the ability of households with lower incomes to be able to remain in the communities in which these transit/housing investments will be made. In cities where strong anti-displacement policies combined with large stocks of rent-restricted affordable housing, the impact of development can be mitigated to the point at which it has marginal impacts, but that is not currently the case in San Jose.

In the staff memorandum to council, staff stated that the overall cost of housing and transportation tends to go down when transit investments are made in dense areas. However, this can only occur if the following anti-displacement policies are adopted:

- Supporting Ellis Act reform to help protect rent-controlled housing stock; supporting 100% re-control of demolished rent-controlled buildings.
- Strengthen inclusionary policy to incentivize on-site building combined with in-lieu fee options that reflect the true cost of building affordable housing off-site.
- Stronger rent control tied to the cost of living to ensure that rents do not rise faster than family incomes.
- Working with the housing department to put in place the next generation of anti-displacement policies. We are involved in that process and we hope to see them adopted by council.

Without these anti-displacement measures in place, this policy has the potential to exacerbate instead of improving the affordability crisis for working families⁴. If we are going to pass these policies to meet our environmental goals, we need to make sure that we are not displacing our working families further out of the region at the same time.

Potential abuse of General Plan Amendment process

The current version of the policy change allows for a LOS analysis for General Plan Amendments. GPAs are likely to be needed to accommodate large development projects like the proposed Google development or tech developments in North San Jose. These projects will bring tens of thousands of jobs to San Jose including a likely net increase of tens of thousands trips and vehicle miles traveled.

¹ "Gentrification, Displacement, and the Role of Public Investment" Miriam Zuk, Ariel Bierbaum, Karen Chapple, Karolina Gorska, Anastasia Loukaitou-Sideris, University of California, Berkeley Gentrification, Displacement, and the Role of Public Investment: http://www.urbandisplacement.org/sites/default/files/images/zuk_et_all_2017.pdf

² "If you build it, will they have to leave?" Stan Paul, University of California, Los Angeles Newsroom <http://newsroom.ucla.edu/releases/if-you-build-it-will-they-have-to-leave>

³ "The High Line's Next Balancing Act" Laura Bliss, Citylab: https://www.citylab.com/solutions/2017/02/the-high-lines-next-balancing-act-fair-and-affordable-development/515391/?utm_source=nl_link3_020717

⁴ "It's Not Always a Bad Thing for Rents to Rise With Transit Growth" Yonah Freemark <https://www.citylab.com/equity/2014/05/its-not-always-bad-thing-rents-rise-transit-growth/9100/>

Based on their location in the below-threshold exempt areas, these developments would only be subject to the Local Transportation Analysis that could be overridden by ministerial approval. This dynamic, in which city staff could recommend mitigations and place a cost on them, but be overridden by council due to concerns around the need for tax revenue or other priorities will weaken the ability of the City to fully address the transportation impacts of mega-developments.

Recommendations:

1. Overriding benefits standard
 - a. We support the recommendations made in the October 4, 2017 SPUR Letter and in the February 7, 2018 Greenbelt/Transform/Friends of Caltrain letter which pushed for a clear list of overriding benefits to ensure that this standard truly addresses the impact of unmitigated VMT.
 - b. Adding relocation and/or right-to-return as an overriding benefit in cases in which a market rate project demolishes a non-rent-restricted but naturally affordable existing housing site.
2. Disparate impact of development pressures
 - a. Displacement impact to be incorporated as part of the Local Transportation Analysis.
 - b. Stating intent to work with housing department to determine impacts of developments in areas at risk of displacement.
3. Potential abuse of the General Plan Amendment process
 - a. We propose that staff and council set a standard that any proposed project on land that has had a general plan amendment (within a reasonable time period) be subject to LOS analysis even if it is in the below-threshold area.

While we understand that staff has worked to finalize this policy in accordance with SB 743, we hope that the city will consider the recommendations above and incorporate them into the text of the policy. With regards to anti-displacement policies city-wide, we look forward to working with city staff in the transportation and housing departments to tackle this issue together.

Thank you for your consideration,

Aboubacar Ndiaye
Research and Policy Associate





2001 Gateway Place, Suite 101E
San Jose, California 95110
(408)501-7864 svlg.org

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January 16 2018

Mayor Liccardo and San Jose City Council
San Jose City Hall
200 E. Santa Clara Street
San Jose, CA 95113

RE: Support for Level of Service (LOS) to Vehicle Miles Traveled Transition

Dear Mayor Liccardo and City Council,

On behalf of the Leadership Group, I write in support of the City of San Jose as it transitions from the Level of Service (LOS) method of measuring traffic to the Vehicle Miles Traveled (VMT) as required by California State law. VMT will allow San Jose and other cities within California to make more informed planning decisions that will benefit our health, environment and traffic congestion.

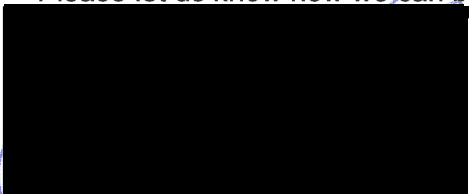
By way of background, the Silicon Valley Leadership Group, founded in 1978 by David Packard of Hewlett-Packard, represents more than 375 of Silicon Valley's most respected employers in issues, programs and campaigns that affect the economic quality of life in Silicon Valley. Collectively, Leadership Group members provide nearly one out of every three private sector jobs in Silicon Valley.

The Leadership Group supports the following in respect to the new policy:

- **A comprehensive transition that is understandable for all parties involved:**
 - o LOS has been used for Transportation Analysis for CEQA over the past 47 years. Transitioning to a new tool may be cumbersome for developers and companies to comprehend within the next few months. We encourage the City to continue its work with developers, corporations and stakeholders to ensure a policy moves forward that is understandable and does not make development more difficult or complex.
- **Continue working with stakeholders on additional development fees and mitigation costs:**
 - o As the policy moves forward, work with stakeholders to ensure a thorough discussion of fees takes place and is well understood by the development community. The Leadership Group is happy to participate in any meetings that take place on this item.
- **Work regionally to enact policies that allow San Jose to remain competitive:**
 - o The policies adopted by the City of San Jose have the potential to improve the health, environment and congestion caused by future development. However, moving forward alone may reduce San Jose's potential to remain competitive. Working with neighboring cities to address regional impacts will allow the City of San Jose to remain competitive and address development that impacts more than one jurisdiction. We support the City of San Jose's goal to work with cities within the region to ensure standards are similar across the board.

Transitioning to VMT from LOS will allow San Jose to better plan for the future. We are encouraged to see staff creating new policies that do not hinder development while protecting bicyclists, pedestrians, commuters and the environment. We applaud the efforts of San Jose's staff to include all stakeholders in such an important conversation for the future of San Jose and the State of California.

Please let us know how we can be helpful as this process moves forward.



Carl Guardino
President & CEO
Silicon Valley Leadership Group



**FRIENDS
OF
CALTRAIN**



February 23, 2018

Re: February 27, 2018 San Jose City Council Item 10.2, Support for San Jose VMT policy

Dear Mayor Liccardo and City Councilmembers:

The City of San Jose is preparing to make a big shift in the way it plans transportation and building projects making it much easier to provide transit, active transportation, and infill development, in line with the city's policy goals. As supporters of sustainable transportation and smart growth, we strongly support the proposed change as a general matter and the specific aspects of the proposal, while including some suggestions for consideration.

I. We applaud San Jose for moving forward with the VMT Policy proposal.

Historically, the California Environmental Quality Act, a law intended to protect the environment, has resulted in outcomes that are unfortunately detrimental to the environment, by discouraging walking, bicycling, and transit, and reducing infill developments that improve accessibility among jobs, housing, and services, and reduce greenhouse gas emissions and air pollution.

The recent state law, SB743, changes how the transportation impact of buildings and projects is evaluated under CEQA, which requires cities and agencies to assess the impact of projects and plans on the environment, and to mitigate those impacts where feasible. See:

<http://resources.ca.gov/ceqa/docs/update2018/notice-of-proposed-rulemaking.pdf>.

Historically, transportation impact has been assessed by vehicle delay, using "level of service," to assess delay at intersections. But the concept that cars idling at stoplights is a major driver of pollution has been debunked by research. The new law changes the measurement to "vehicle miles traveled", which is much more closely correlated to the environmental hazards of particle pollution and greenhouse gas emissions. See:

<http://usa.streetsblog.org/2017/07/06/urban-myth-busting-congestion-idling-and-carbon-emissions/>

Using vehicle delay as a measurement has several consequences that result in worse environmental and health outcomes. Using this measure, transportation projects like bike lanes and bus lanes that slow solo drivers are seen as harmful to the environment even though they are likely to reduce pollution. A common remedy to "mitigate" intersection congestion is to widen roadways, making walking, bicycling, and transit less safe and attractive to use, encouraging driving and fostering even more congestion. The other major remedy is to reduce infill development in places that already have buildings and cars, and to encourage greenfield development in places that don't yet have traffic.

Research shows that this illogic - locate new buildings far from existing buildings to improve traffic flow - doesn't provide the hoped for mobility benefits. Studies show that infill development can result in slower driving - but still improve access, because people have more destinations reachable within a short distance, and need to spend less time driving. See:

http://mtc.ca.gov/sites/default/files/CGanson_MTC_Planning_Innovations_743_6-8-17.pdf

II. Comments on specific aspects of the VMT proposal

Streamlined projects. We applaud San Jose for being one of the leaders in the Bay Area and the state to pursue this change, following San Francisco and Oakland. And we support San Jose's discretionary choices about how to streamline projects including small infill projects, projects in areas with high-quality transit that support increased use of sustainable transportation, local-serving retail facilities that can help shorten trips, and transportation projects that reduce VMT. We are eager to see helpful infill and sustainable transportation projects benefit from a streamlined process.

Extraordinary/overriding benefits requirement. We strongly support the draft proposal requiring that projects exceeding VMT thresholds after mitigation only be approved if, among other considerations, they demonstrate "extraordinary benefits" (more recently called "overriding benefits," although the term extraordinary benefits better fits the concept). These high-VMT projects will actively damage San Jose's efforts to reach climate change goals, so they shouldn't proceed unless they achieve something extraordinary.

We suggest that the final version of this policy incorporate concrete standards for determining if a project provides overriding benefits. While this may be difficult in some circumstances, some criteria do lend themselves to review, such as jobs per acre. We suggest an extraordinary project would rank in the top 5 percent compared to similar projects elsewhere.

The October 4, 2017 letter from SPUR on the VMT proposal outlines some useful criteria for measuring extraordinary/overriding benefits such as jobs per acre (a higher density of jobs gets San Jose closer to its jobs goals), the benefits provided by the land prior to development (such as habitat or recreational value), and the value of public improvements that will be provided as mitigations.

We understand that in the policy being replaced, violating a General Plan LOS standard was simply not allowed at all. This means this suggestion of putting some "teeth" in the extraordinary benefit concept, by giving examples of criteria to be used, is in line with, if not easier, than the prior policy. We understand there is also some resistance to further defining this concept as San Jose develops its CEQA policy. However, staff are very clear that there is some discretion in how they define CEQA standards for the VMT policy – that same discretion should appropriately be applied in providing helpful criteria for making a finding of extraordinary benefit.

It may also be helpful, if a comprehensive and exclusive set of criteria for determining overriding is difficult to determine, to include criteria such as the ones we propose here without determining that they constitute the sole means of determining “overriding” benefit. These criteria could be officially incorporated into analysis during the planned Phase 2 of the VMT policy shift if additional time is needed for their development.

Fair Share VMT fee calculated based on mileage. We support the decision to assess a Fair Share VMT fee based on mileage created by the project rather than on a daily trip basis. This funding will help address the impacts created by the projects with significant impacts and treat them appropriately with the fee calibrated to the impact, instead of one-size-fits-all. This will further encourage projects to reduce their VMT.

Revision during Phase 2. The VMT switch includes a 2-year-long Phase 2 following the change in CEQA that would change the City’s planning, not just its CEQA process. We support using this time to consider revisions to the VMT policy, in order to make it even more environmentally sound as well as more convenient to all concerned.

Control of environmental review. San Jose handles environmental review differently from most Bay Area cities - rather than charging applicants so it can contract with consultants to write reviews, as most cities do, San Jose allows applicants to hire the consultants to write the initial draft documents that San Jose reviews and converts into EIRs. Developer control over consultants creates an obvious concern about whether consultants feel responsible to San Jose voters or developers who control their payment.

We understand there has been some reconsideration of this system. We suggest as a pilot step, the transportation and VMT analysis should be prepared in this manner by consultants hired by the City, with costs charged to applicants. This will ensure a fair evaluation of VMT, and the City can always reconsider this during the Phase 2 re-evaluation.

Alternative locations analysis should emphasize TOD locations. The staff proposal appropriately suggests alternative locations should be considered as part of the alternatives analysis for projects with VMT levels that exceed thresholds. We suggest Transit-Oriented Development locations be given priority when considering alternative locations and when possible that the project description made compatible with TOD. For example, projects should be described according to their purposes (e.g., 20,000 square feet of commercial office space) not their design (a one-story tilt-up office with lots of parking). That will make TOD alternatives more appropriate for study.

When to begin applying the VMT policy. This significant improvement to City policy should come into effect as soon as possible, so we support the staff proposal to implement this policy effective at the end of March. We applaud staff for making the change to implement the policy soon.

Conclusion

Going forward, we also support and encourage neighboring cities countywide agencies, including VTA, to make this shift. And in the coming years, we encourage the region to replace the old, LOS-driven, car-centric transportation funding mechanisms with new county and corridor-based transportation fees that can be used for multi-modal improvements with goals to reduce vehicle miles traveled.

Thank you for your consideration,

Chris Lepe
Senior Community Planner
TransForm

Brian Schmidt
Program Director
Greenbelt Alliance

Adina Levin
Executive Director
Friends of Caltrain

February 6, 2018

Jim Ortbal, Director of Transportation
Rosalynn Hughey, Acting Director of Planning, Building and Code Enforcement
John Cicirelli, Acting Director of Public Works
City of San José
200 East Santa Clara Street
San José, CA 95113

Dear Mr. Ortbal, Ms. Hughey and Mr. Cicirelli:

On behalf of the Santa Clara Valley Transportation Authority (VTA), I am writing to offer VTA's comments on the City of San José's proposed new Transportation Analysis Policy to align with Senate Bill (SB) 743. VTA would like to thank the City for consulting with VTA staff frequently during this process, particularly over the past six to nine months as the draft policy has taken shape.

As a Congestion Management Agency (CMA), transit provider, and Lead Agency for transit and highway capital projects, VTA will play a critical role in Santa Clara County in guiding the transition from Level of Service (LOS) to Vehicle Miles Traveled (VMT). VTA recognizes the important role the City of San José is playing by being the first jurisdiction in Santa Clara County to update its policies in accordance with SB 743.

VTA supports the overall direction of the City's new Transportation Analysis Policy, including the switch from LOS to VMT in the City's California Environmental Quality Act (CEQA) practices as well as the reduction in emphasis on LOS in local transportation analysis. This direction supports the vision and ambitious mode-shift goals in the City's Envision San José 2040 General Plan. The City's new direction also aligns with many VTA goals, such as promoting more intense, mixed-use development near transit, facilitating the development of multimodal transportation networks, and supporting the reduction of Greenhouse Gas emissions.

VTA would like to offer the following specific comments related to the City's proposed Transportation Analysis Policy:

- **Screening Projects for VMT Analysis – Effects on Transit, Bike and Pedestrian Modes:** VTA supports the proposed streamlining of CEQA analysis for development projects that a) are in planned growth areas, b) have low VMT, c) are near high-quality transit, d) have transit-supportive project density and appropriate amounts of parking, and e) do not negatively impact transit, bike or pedestrian infrastructure. VTA believes that not harming transit, bike or pedestrian infrastructure is a critical point that is sometimes overlooked in environmental review of development projects (for instance, projects covered by area plans with programmatic environmental clearance). VTA requests that the City define more clearly what would constitute a negative impact to transit, bike or pedestrian infrastructure. VTA recommends that the City build a step into its

development review process to flag any development in proximity to an existing or planned transit corridor, station, stop, or right-of-way. Furthermore, VTA believes that if a development project is found to negatively impact transit, bike or pedestrian infrastructure during the screening stage (i.e., when determining whether a VMT analysis is required), that information should be disclosed in the CEQA document.

- **Analysis for CEQA, City and Congestion Management Program (CMP) Purposes:** VTA notes that as the City shifts the emphasis of its analysis for CEQA and City purposes, its policy needs to continue to address consistency with the Santa Clara County CMP maintained by VTA. CMPs are established through a separate state law (California Government Code 65088-89, 1991) than CEQA, and this law currently requires that CMPs maintain a standard for automobile Level of Service. The City of San José is one of the 16 Member Agencies of the Santa Clara County CMP. VTA notes that the City's proposed Policy 5-1 (page 5) references compliance with the CMP. VTA encourages City staff to consult with VTA to ensure that analysis meets CMP requirements as the new policy is implemented.
- **Consistency between City of San José VMT Policy and VTA Countywide Guidance:** VTA has for many years maintained a set of policies and guidelines that specify how LOS analysis, as well as other transportation analysis (e.g., pedestrian, bicycle and transit analysis) should be performed for CMP purposes in Santa Clara County. The local jurisdictions in Santa Clara County have supported this countywide guidance and have generally found it to be beneficial in promoting consistency across jurisdictions.

Since the adoption of SB 743 in September 2013, local jurisdictions across the county have expressed their desire to see a consistent approach to VMT analysis as this law is implemented. VTA has recently begun an effort to work with all its local jurisdictions to develop consistent methodologies for estimating baseline VMT, project VMT, and VMT reductions from mitigation measures. As VTA works with local jurisdictions (including the City of San José), it is possible that this countywide effort will require the City of San José to update its policy and/or practices to align with the new countywide approach. As noted in the staff report for the February 7, 2018 Planning Commission hearing (page 15), "future updates to this Council Policy 5-1 will also reflect the outcomes of the VTA-led countywide VMT effort that began in late Fall 2017." VTA supports such updates and looks forward to working with City staff.

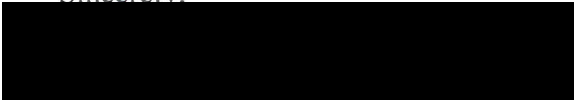
- **Designation of Infill Opportunity Zones (IOZs):** VTA is aware that the City is planning to designate a number of IOZs that are in planned growth areas in the City's General Plan and are Transit Priority Areas (TPAs) within the Sustainable Communities Strategy (Plan Bay Area 2040). VTA notes that the City's proposed IOZs are based on a map of TPAs established by the Metropolitan Transportation Commission (MTC) in 2017 with the adoption of Plan Bay Area 2040. However, this TPA map does not reflect all VTA bus routes with 15-minute or better peak period frequency. Therefore, the City's current IOZ proposal is conservative in terms of how many CMP intersections it covers.

The City and other stakeholders should be aware that the map of IOZs, and therefore the list of which intersections will require CMP LOS analysis, may change in the future with changes to the VTA transit network. As noted in the staff report for the February 7, 2018 Planning Commission hearing (page 13), “staff will bring updates to IOZs areas to the City Council for approval... The first update is anticipated with implementation of the VTA’s Next Network service plan and the Berryessa BART extension.” VTA will work with City staff to assist in mapping and confirming these IOZ updates.

- **City’s Phase 2 Effort and VTA/City Coordination:** VTA understands that the proposed new Transportation Analysis Policy represents “Phase 1” of the City’s update, and that the Council may direct staff to refine the policy in a second phase of work. As noted above, this Phase 2 effort can provide an opportunity for the City to adjust its practices to match any countywide guidance that VTA develops. This Phase 2 effort could also include an update of the City’s Baseline VMT and Threshold VMT figures, if further examination of the transportation modeling reveals that these figures need to be updated. VTA also understands that City staff is proposing to include a research “feedback loop” in which the City’s VMT sketch tool could be updated based on research and empirical data collection from development sites. VTA supports this Phase 2 effort and the proposed research feedback loop, as ways to strengthen the City of San José’s policy, support VTA’s countywide efforts, and bolster implementation around the state.

VTA looks forward to continuing to work with the City as it implements its new Transportation Analysis Policy and as VTA leads a countywide effort on the LOS-to-VMT transition. Please do not hesitate to contact me at (408) 321-7093 or Robert Swierk at (408) 321-5949 if you have any questions or would like to arrange a meeting.

Sincerely,



Chris Augenstein, AICP
Director, Planning & Programming

cc: City of San José: Michael Liw, Meenaxi Panakkal, Jared Hart, Jessica Zenk, Karen Mack
VTA: Jim Lawson, Casey Emoto, Scott Haywood, Robert Swierk