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Agenda Items: ID#20-00778 (10:00 A.M.)

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CITY OF FRESNO
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FRESNO CITY COUNCIL



Late Submission Information Packet

Agenda Related Item(s) – ID#20-00778 (10:00 A.M.)

Item(s)

HEARING to consider Annexation Application No. P19-02239, Plan Amendment/Rezone Application No. P19-02237, Vesting Tentative Tract Map No. 6234/UGM, and related Environmental Assessment No. T-6234/P19-02237/P19-02239, for property located on the west side of N. Hayes Avenue between W. Ashlan and W. Shields Avenues (Council District 1) – Planning and Development Department.

Contents: Letter from Jeffrey Reid

Supplemental Information:

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June 23, 2020

Via Email to all Council Members

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c/o City Clerk Yvonne Spence, CRM MMC
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**Re: Proposed Ad Hoc Traffic Signal Exactions
Regarding Vesting Tentative Tract Map No. 6234**

Dear Council Members:

I represent Mr. Edward D. Fanucchi, the applicant for the above referenced matter that is scheduled for a 10:00 A.M. public hearing at your June 25, 2020 regular meeting, under Agenda Item ID-20-00778 (the "Project").

I am writing to address the extent of traffic signal installations that the Staff intends to mandate upon this Project, based on the Revised Conditions issued by the Public Works Department by letter of June 3, 2020.

The staff is recommending that this Project be mandated to install a total of four traffic signals, even though the Planning Commission previously unanimously recommended removal of two of the specified traffic signals from the Project's conditions of approval.¹ The purpose of this letter is to request that you uphold that recommendation of the Planning Commission to remove those two signals as a condition upon this Project. That request is further supported by the analysis set forth below.

The signals at issue are proposed at Hayes and Shields Avenues and at Polk and Shields Avenues.² It is important to emphasize that the CEQA compliance document

¹ The Planning Commission's recommendations is confirmed in Planning Commission Resolution No. 1367.

² The proposed conditions of approval also mandate the installation of traffic signals at Hayes and Dakota Avenue, and Polk and Dakota Avenue. The applicant does not object to either of those two requirements. At the Planning Commission hearing, the City Staff recommended requiring two other traffic signals, for a total of six such installations. The proposal for a total of six traffic signal installations was modified by a June 3, 2020 Memo of the Public Works Department. The current staff report, at page 19, states that June 3, 2020 recommendation to delete the requirement of signals at Ashlan and Bryan Avenues and Ashlan and Hayes Avenues was in response to the Planning Commission's recommendation to remove the signals at Hayes and Shields Avenues and Polk and Shields Avenues. However, the two signals removed by the June 3, 2020 memo were already otherwise imposed as conditions on other projects. Therefore, removing those

prepared for the Project confirms that the Project is not creating a direct impact at those two intersections. Furthermore, the Traffic Impact Analysis (TIA) that the CEQA document relies upon shows that the Project's contributions to any cumulative impacts at these intersections are relatively small, contributing during the critical AM peak hour 2.92% of future growth in traffic at Polk and Shields, and 14.26% of future growth in traffic at Hayes and Shields. (See MND Table 3.17-9 at page 3-100)³. Given these circumstances, the payment of the City's TSMI traffic signalization fee is complete mitigation. In these circumstances, the economic burden of fronting the costs of these two signals (in addition to two others), and waiting several years to potentially receive future reimbursement payments from future home buyers, is an unsupported and an unreasonable exaction.

Table 3.17-3 of the Initial Study/Mitigated Negative Declaration (MND), at MND page 3-89, confirms the lack of a direct Project impact to these intersections. It finds that both intersections, with the addition of the Project, will operate at a level of service (LOS) standard of C in the AM Peak Hour condition. In the PM Peak, Hayes and Shields will operate at LOS B, and Polk and Shields will operate at LOS A.

The MND's analysis of traffic impacts relies upon the TIA.⁴ However, those two documents differ with respect to the mitigations needed to fully mitigate the cumulative impacts of the Project to these intersections in the Near-Term condition and Cumulative Year 2035 condition.

The TIA findings for the New Term Plus Project are summarized in Table 3.17-5 of the MND, at its page 3-91. It shows there are no cumulative impacts at the Polk and Shields intersection, because the LOS is not below the LOS D threshold. It finds that there are cumulative impacts at the Hayes and Shields Avenue intersection. However,

as conditions on this Project does not reduce the burdens imposed on this Project. Nor does it respond the Planning Commissions actions to recommend removal of signals at Hayes and Shields and Polk and Shields Avenues, because it fails to address the reasons and analysis that supported that recommendation.

³ The PowerPoint Presentation the Staff prepared for the upcoming hearing states that the Project contributes 12% of projected trips at Polk and Shields (versus the 2% referenced in the MND). It also states that the Project contributes 2% of the projected trips at Hayes and Shields (versus the 14.26% referenced in the MND). As noted above the 2% and 14.26% numbers are set forth Table 3.17-9 at page 3-100 of the MND, and are based on AM peak conditions. The PowerPoint does not provide any source reference to its alternative numbers. It is not, however, based on the analysis in the MND that is being used to justify these exactions.

⁴ See MND Page 3-84. The TIA was prepared by JLB Traffic Engineering, and is included as appendix F to the MND. It is requested that a copy of that TIA be included in the administrative record of this matter.

it documents that such conditions are mitigated to a level of less than significant by installation of a four way stop.⁵

The TIA findings for the Cumulative Year 2035 Project are summarized in Table 3.17-7 of the MND at its page 3-94. It shows cumulative impacts at the Hayes and Shields Avenue intersection remain fully mitigated by the four way stop. However, in this timeframe, the cumulative impacts at the Polk and Shields intersection will require signalization. However, as noted previously, the Project's contribution of trips to the Polk and Shields intersections in this period is a meager 2.92%.

Despite these TIA findings, the staff propose to impose a requirement that this Project install traffic signals at these intersections, without any explanation for why the mitigations proposed by the TIA are inadequate, or why payment of a traffic signal fee (where the Project contributes a mere 2.93% of trips in the cumulative condition) is inadequate mitigation. While cumulative impacts do need to be mitigated, the City's TSMI fee program for traffic signalization is a sufficient mechanism to fully mitigate such impacts. That arrangement is particularly most appropriate where, as here, the Project's contributions to a cumulative impact are relatively a small.

The record in this matter is clear that the Public Works Department is not justifying the intended impositions of these two traffic signals based on the traffic impact analysis. Because those proposed requirements are not justified as CEQA mitigation measures, their imposition is an ad hoc exaction, which must be roughly proportional in nature and extent to the impact of the proposed development and demonstrated by an individualized assessment. In this instance, a sufficient individualized assessment to mandate signalization of these intersections does not exist. In addition, in all events the requirement is disproportionate to the extent of the Project's impacts. Rights to receive reimbursement future TSMI fee payors does not resolve the disproportionate nature of the imposition.

For the foregoing reasons, the Planning Commission recommended that the requirement for this Project to install traffic signals Hayes and Shields Avenues and at Polk and Shields Avenues be removed from the Project's conditions and the proposed mitigation measures.

We respectfully request that your Council uphold that Planning Commission recommendation, and find that the payment of the TSMI fee for those two intersections is sufficient mitigation for the cumulative impacts of this Project to those intersections.

⁵ The traffic impacts analysis of the MND is based on the traditional level of service analysis that historically governed CEQA process. While VMT is the new standard that applies effective July 1, 2020, the CEQA guidelines confirm that the LOS analysis included in the Mitigated Negative Declaration remains appropriate. That is because the MND has been made available for public review prior to the July 1, 2020 effective date of the new VMT guidelines. (See CEQA Guidelines Section 157007(c)).

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Sincerely,
McCormick, BARSTOW, SHEPPARD,
WAITE & CAR RUTH LLP


Jeffrey M. Reid

cc: Mr. Edward D. Fanucchi, Esq.
Ms. Bonique Emerson
Jennifer Clark, Planning Director