

From: Gregg Sakauye <[REDACTED]>
Sent: Monday, September 30, 2024 1:07 PM
To: Public Comment <publiccomment@cityoftracy.org>
Subject: Please fix the traffic lights at Corral Hollow and Valpico asap

Caution: This is an external email. Please take care when clicking links or opening attachments.

Please fix the traffic lights at Corral Hollow and Valpico asap. Traffic at that intersection with 4 way stop signs is horrible. If they (traffic lights) were determined to be ineffective, that is because they were previously programmed incorrectly. During the busiest hours, there should be a maximum of 4 cycles with straight ahead and left turn green on at the same time. If there are no cars in any of the quadrants, that side would skip its cycle. This is an easily fixable problem and it is frustrating that the opportunity is being wasted.

Best regards,
Gregg



Building Industry Association of the Greater Valley

1701 W. March Ln., Ste. F
Stockton, CA 95207
(209) 235-7831 • (209) 235-7837 fax

September 26, 2024

Honorable Mayor and Members of the City Council
of the CITY OF TRACY
333 Civic Center Plaza
Tracy, CA 95376

Re: City of Tracy Council Meeting Agenda – October 1, 2024

Nexus Studies for Proposed New Impact Fees – Comments and Objections

Dear Honorable Mayor, and Members of the City Council, and Mr. Kim:

We respectfully submit this letter on behalf of the BUILDING INDUSTRY ASSOCIATION OF THE GREAT VALLEY (“BIAGV”) and its members, outlining our numerous concerns and objections to the proposed “*Public Safety Impact Fee Nexus Study*” and the “*Program Management Impact Fee Nexus Study*” which we believe are scheduled to go to the City Council for public hearing on October 1, 2024.

We have previously commented on, and raised objections to, earlier versions of these purported “nexus studies” and we have been engaged in email correspondence with the City Staff and consultant from Harris & Associates regarding our concerns. While those communications have been constructive, we remain concerned that the “revised” version of the proposed “*Public Safety Impact Fee Nexus Study*” that was provided on August 30, 2024, remains flawed and would improperly inflate the amount of public safety impact fees that the City may lawfully charge. Similarly, the proposed “*Program Management Impact Fee Nexus Study*” has not been revised to comply with state law.

We therefore remain concerned that the newly-released versions of these purported nexus studies have NOT been adequately revised and that the deficiencies we have repeatedly pointed out still have NOT been corrected. These latest versions of the nexus studies still remain flawed and legally-deficient, and would result in the City establishing excessive and unjustified fees.. The nexus studies still fail to justify the proposed new increases in the Public Safety Impact Fees – increases of 77% to 100%.

OFFICERS

- Dave Best**
Shea Homes
- Casey Goulart**
Fitzpatrick Homes
-UC Construction
- Ryan Gerding**
Raymus Homes
- Keith Jones**
Goodfellow Bros.

BOARD OF DIRECTORS

- Greg Armbruster**
Barbosa Cabinets, Inc.
- Randy Bling**
Florsheim Homes
- Rey Chavez**
Dunn-Edwards Paints
- Reggie Conley**
The Contractors Resource
- Garrett Drebert**
Legacy Homes/MHP Builders
- Ben Farris**
2-10 Home Buyers Warranty
- Ginger Gaddi**
KB Home
- James Jimison**
AG Spanos Companies
- Brett Jolley**
McKinley, Conger, Jolley & Galarneau
- Gabriel Martinez**
Woodside Homes
- Danny O’Connell**
D.R. Horton
- Brad Slinkard**
Meritage Homes
- Jeremy White**
The Grupe Company

LIFETIME DIRECTORS

- John Anderson
- Matt Arnaiz
- Ramon Batista
- Dennis Bennett
- Tom Doucette
- Bill Filios
- Dennis Fitzpatrick
- Pam Franco
- Ray Franco
- Cathy Ghan
- Mike Hakeem
- Steve Herum
- Wayne LeBaron
- John Looper
- Terry Miles
- George Petrulakis
- Toni Raymus
- Keith Schneider
- Bob Taylor
- Dennis Wann

We particularly call out the very excessive increases of the proposed “Police Facilities” component of the nexus study. While we appreciate that the latest versions of the **“Public Safety Impact Fee Nexus Study”** appears to result in some minor reductions in the proposed rate of increase for the “police facilities” component¹, the “revised” version of the study nevertheless fails to make substantial and coherent corrections to errors in the study that we previously discussed. The revised study fails to justify **the proposed 80% increase in fees against new single family residential development**, much less the 100% increase in fees on new “high density” residential development. The City’s own documents demonstrate that the police facilities component should be less than \$0.75/SF, rather than the \$0.99/SF now suggested by the nexus study.

Accordingly, we regret that we must once again state our objections to and comments on the latest versions of these documents. We again respectfully urge City Staff, and the Council to take no action on these purported “nexus studies” and return them for further analysis and necessary corrections.

The following summarizes our major outstanding objections.

Failure to properly identify the current “existing levels of service:”

.....

A valid nexus study must accurately identify the currently-existing facilities in comparison with the currently-existing “service population.” Gov. Code § 66016.5(a): **“the nexus study shall identify the existing level of service for each public facility...”**). The existing level of service (“LOS”) for public facilities should reflect the quantity of existing facilities (e.g., by square footage of space) compared to the existing service population.² (See, e.g., *Home Builders Ass’n v. City of Lemoore* (2010) 185 Cal.App.4th 554.)

The “new” versions of the proposed studies made only minor “revisions” which did not fully address or correct the more fundamental deficiencies we have previously discussed. The revised nexus study still fails to accurately and consistently identify the current baseline as to the City’s existing “levels of service” for Public Safety facilities as of 2024. Instead, it persists in relying on an 11-year old “baseline” of facilities supposedly in existence back in 2013. There is no legal authority, nor any logic, for

¹ Table ES- 1, at page 5: New Police Fee (single family res.= \$0.99/SF v. former \$1.19/SF.

² The nexus study (p. 10) accurately states that the demand for services and facilities “is based on the City’s future “service population” The “service population” generally includes both the residential population plus the non-resident employee population (counted as fraction of the full-time residential population). However, the nexus study fails to use the City’s “service population” in its presentation of the baseline (2013) level of service or future level of service.

using anything other than a baseline of currently-existing facilities in preparing a valid nexus study.

Moreover, the new nexus study is still inconsistent with the *Public Safety Master Plan* recently adopted by the City Council in April 2024 with regard to the City's currently-existing facilities as well as those to be funded by the proposed impact fees going forward.

Excessive and unjustified fees for Police Facilities:

The proposed new nexus study wrongly claims that the City can justify an excessive **156% increase** in the impact fees to be charged to fund new Police Facilities, from \$0.39/SF single family residential to **\$0.99/SF**, despite down-sizing of proposed Main Police Station, and adding a proposed new South Tracy Police Station)

The proposed new nexus study is inconsistent with the Council-adopted "*Citywide Public Safety Master Plan Update*" ("PSMP") as to the currently-existing level of service for Police facilities as of 2023.

The PSMP reports (Figure 20, p. 20) that the City has a total of 39,600 sq.ft. of police facilities, plus 400 sq.ft of communications facilities. By contrast, the nexus study (Table 2-11 at p. 38) claims 49,404 sq.ft. total Police building sq. ft. as of 2013. That is not the existing baseline, and the nexus study improperly includes 9,800 sq.ft of space in the old (1979) police station planned for demolition. Moreover, that building was described in the 2013 study as being only 2,400 sq.ft. – not 9,800 sq.ft. Similarly, the training facility is reported as "being expanded," but as of today it has not "been" expanded.

This illustrates the problem of the nexus study going back to the 2013 study for a "baseline" is that it could be argued that all facilities are in the process of "being expanded" or "being built". That is one of the reasons – in addition to the mandates of State law – that a valid nexus study must start with a proper baseline, i.e., the current LOS. All of the convoluted manipulations of data in the nexus study regarding facilities built, moved, scheduled for replacement, etc, and attempts to credit the accumulated fee fund balances are unnecessary if the nexus study were simply revised to use the current existing LOS.

Based on its old, inflated, assumption of existing building space in 2013, the nexus study inaccurately asserts that the "existing" level of service is 0.61 sq.ft./capita – but that is erroneously based on the old 2013 data. The nexus study thus erroneously claims that its proposed new fees would not fund an increased LOS.

The analysis in the nexus study is further flawed by its reliance on the purported 2013 population (81,548) to calculate the "existing" LOS. By contrast, according to the PSMP (at Figure 22, and text at p. 3), "[t]he City's 2023 population is projected to exceed

100,000 people.”³ But, the Dept of Finance now estimates that the population of the City at the start of 2024 was 95,609.

However, if the nexus study complied with the Mitigation Fee Act and used the current existing level of service as required by Gov. Code § 66016.5(a), and if it were consistent with the Council-approved data in the PSMP, the actual resulting “**existing**” **level of service** would be far less than the LOS erroneously asserted in the nexus study. [39,600 / 100,000 population (2023) = **0.3960 sq.ft. / capita**; or 39,600 sf / 95,609 pop. = 0.414 sf./pop.]

That is far less than the exaggerated 0.61 SF /capita claimed in the nexus study.

The resulting impact fee for police facilities would be **less than \$0.75/sq.ft.** for single family residential development.

Although the revised nexus study argues (at p. 38 and Table 2-12) that the adjustments made in its “proportional cost split” would reduce the fee burden to be borne by new development based on a projected **0.536 SF /capita** level of service, even that 0.536 SF / capita LOS would still be far above the actual **existing 0.396 SF/capita** level of service -- an impermissible 35% increase above the existing LOS. As previously explained in connection with the inflated Fire facilities fees, development fees cannot be used to fund an enhanced level of service.

Failure to adequately demonstrate an alleged “nexus” to new development:

The nexus study also violates the Mitigation Fee Act, and constitutional requirements, because it fails to demonstrate the required “nexus” and “rough proportionality” between the amounts of the new proposed fees and the reasonably-anticipated impacts of new residential development on public infrastructure needs, as recently reiterated by the US Supreme Court in *Sheetz v. County of El Dorado* (April 12, 2024).

The nexus study erroneously assumes that the PSMP provided such an explanation. It does not. Ironically, the PSMP wrongly assumed that the nexus study would provide that analysis necessary to “ensure that a rational nexus exists between future development in the area and the use and need of the proposed infrastructure.” (See, PSMP at p. 5.) However, the PSMP made the contrary assumption (see p. 47), i.e., that “the City is providing a separate study ...[the Nexus Study]... to ensure that a rational nexus exists between future development in the area and the use and need of the proposed infrastructure.” Neither document provided the necessary nexus.

³ See also PSMP “Figure 19 – Population and Staffing” at page 19, showing Tracy Population in 2023 as 100,000. The nexus study claims to rely on 2-year old 2022 population estimates by Cal. DOF.

The revised nexus study (p. 25) also wrongly indicates that the “allocation” of the estimated costs of new or upgraded facilities between the needs of the existing community and anticipated needs attributed to new development has already been made – in the PSMP. The PSMP, however, does not provide evidence or analysis supporting such an allocation.

The nexus study fails to compare/contrast the needs and demands of the existing **service population** (residents and employees) to the anticipated increased demands for public safety facilities allegedly caused by various kinds of new development. It thus fails to demonstrate a reasonable nexus between the proposed new fees and the estimated, and fairly-allocated, costs of addressing public impacts actually caused by new development.

Other Objections:

The nexus study is flawed and deficient in several other regards, including its failure to identify any other justification for these fee increases:

“Reassessing” the estimated construction costs. The nexus study claims, but fails to show the extent that construction costs have “escalated” since the 2019 fee update. The Nexus Study does not provide any evidence justifying extraordinary new fee increases, on top of the previous automatic cost index adjustments.

“Reassessing” needs and adding several new facilities.” The Study notes that the fee increases are needed to fund a new police station, a dedicated training facility, and new Animal Shelter facilities that were not identified as being needed when the Police Facilities Fee was initiated in 2014 or updated in 2019. There is no evidence that these additional facilities became “necessary” solely or even largely as a result of anticipated new residential development that was not contemplated at those earlier dates. Nevertheless, the Study proposes (p. 16) that fees on new development should fund 95.4% of the police building expansion and 100% of the Animal Shelter.

Erroneous assumptions of “household density.” The Nexus Study erroneously claims that the City has “updated its assumptions” about household density, i.e., “persons per dwelling unit.” However, the more-accurate California Department of Finance [“DOF”] currently reports that the true residential density in Tracy is only **3.24 persons per household**, rather than the 3.50 estimate wrongly used in the Study. The nexus study thus erroneously over-states the true residential density by more than 8%, wrongly exaggerating the “impact” of new housing development and inflating the fees that might be justified.

Costs of “upgrading” facilities to comply with new State law. The nexus study claims that changes in State law effective in 2023 require that new City facilities be upgraded to include “electrical solar systems.” Any such costs of upgrading in order to comply with new regulatory requirements are *not* attributable to new development, and *cannot* legally be included in a development mitigation fee program. Gov. Code § 66000(g).

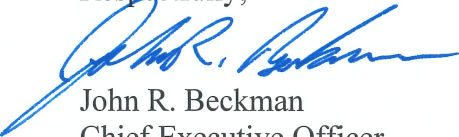
CONCLUSION

BIAGV and its members are keenly interested in the long-term development and vitality of the Tracy community, and are therefore concerned that the City's policies should not impair Tracy's ability to attract new development, particularly new housing, and that the City's fees are compliant with the requirements of State law. Especially in the midst of our widely-recognized housing crisis, BIAGV and its members have an important responsibility to assure that local agencies, including the City of Tracy, do not establish unjustified or exorbitant development fees and charges.

We invite the Council's serious consideration and responses to these concerns and objections. We reiterate our request that the Council defer action on these matters, and direct Staff to provide appropriate opportunities for constructive public outreach and stakeholder input before presenting these important matters for final action.

We would welcome an opportunity to discuss these comments and concerns with the City Staff, or Council, at your convenience. Thank you for your consideration.

Respectfully,



John R. Beckman
Chief Executive Officer