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*Via Email and Hand Delivery*

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City of Dublin  
Planning Commission  
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**Re: Comments on Zeiss Innovation Center Supplemental Mitigated Negative Declaration/Initial Study, PLPA-2017-00025**

Honorable Members of the City of Dublin Planning Commission:

This letter is submitted on behalf of **Laborers International Union of North America, Local Union 304**, and its members living in and near the City of Dublin (collectively "LIUNA") regarding the Supplemental Mitigated Negative Declaration/Initial Study ("SMND") prepared for the Zeiss Innovation Center (the "Project") (PLPA-2017-00025).

After reviewing the SMND together with our team of expert consultants, it is evident that the Project meets all of the criteria for requiring the preparation of an Environmental Impact Report ("EIR") rather than a Supplemental MND. The SMND fails as an informational document, and fails to fully analyze and mitigate the Project's significant environmental impacts. LIUNA requests that the City address the significant environmental impacts described below in an EIR prior to considering approval of the Project.

LIUNA submits the expert comments of wildlife biologist Dr. Shawn Smallwood. Dr. Smallwood's expert comments and resume are attached hereto as Exhibit A. LIUNA submits herewith comments from air quality expert James Clark, Ph.D. Dr. Clark's comments and resume are attached hereto as Exhibit B. LIUNA also submits comments from expert transportation analyst Daniel Smith, Jr., P.E., a registered civil and traffic engineer. Mr. Smith's

expert comments and resume are attached hereto as Exhibit C. Finally, LIUNA also submits the expert comments of toxics expert Heidi Bauer, which are attached hereto as Exhibit D.

These experts and our own independent review demonstrate that the SMND is inadequate and under CEQA, and that that an EIR should be prepared prior to Project approval to analyze all impacts and require implementation of all feasible mitigation measures.

## **I. PROJECT DESCRIPTION**

Carl Zeiss, Inc. proposes to develop the Zeiss Innovation Center in east Dublin, on the northeast corner of Dublin Boulevard and Arnold Road on 11.36 net acres of land. SMND, p. 1. The Project site is currently vacant. *Id.* Seasonal wetlands make up 1.03 acres of the project site. *Id.*

The Project would be developed in two phases. Phase 1 would consist of a three-story, 208,650 gross square feet research and development (“R&D”) building and 663 surface parking spaces. SMND, p. 4. Phase 2 could include an additional five-story, 224,440 gross square foot R&D building, and a five-story parking garage with 1,229 spaces. *Id.* At build out, the Project would include two low-to-mid-rise research and development (“R&D”) buildings, one three stories and one five stories, totaling 433,090 gross square feet, and 1,396 parking spaces. SMND, p. 4. The buildings will be used for research, development and testing, light assembly and dry laboratories, and supporting office spaces. *Id.* The Project will accommodate approximately 1,500 employees upon completion. *Id.*

## **II. PRIOR CEQA DOCUMENTS**

### **A. 1993 East Dublin EIR**

Twenty-five years ago, in May of 1993, the Dublin City Council certified an Environmental Impact Report for the Eastern Dublin General Plan Amendment and Specific Plan (“Eastern Dublin EIR”). SMND, p. 2. The EIR as certified included an Addendum to the East Dublin EIR that assessed a reduced development project alternative. *Id.* The City Council approved the General Permit Amendment and Specific Plan for the reduced area alternative. *Id.* According to the SMND, the East Dublin EIR evaluated the potential environmental effects of urbanizing Eastern Dublin over a 20 to 30 year period. *Id.*

As part of the certification of the Eastern Dublin EIR, the Dublin City Council adopted a statement of overriding considerations for the following impacts: cumulative traffic, extension of community facilities, regional air quality, noise, and visual. The East Dublin contains mitigation measures that are to be applied to any development within the project area, which includes the Project.

### **B. Cisco Systems MND**

Fifteen years ago, in 2003, the Dublin City Council certified a Mitigated Negative Declaration for a proposed Cisco Systems project. *Id.* Prior to entitlement, Cisco withdrew their application. *Id.* However, the property owner moved forward with the General Plan and Eastern Dublin Specific Plan amendments for the project site. *Id.* As a result, in 2003, the City Council amended the General Plan and the East Dublin Specific Plan from High Density Residential to Campus Office and adopted the Cisco IS/MND (“Cisco MND”). *Id.* The Cisco MND assumed 430,090 square feet of office and Research and Development space to accommodate 3,000 employees. *Id.*

### III. LEGAL STANDARD

After an EIR, Negative Declaration, or MND is prepared for a project, a supplemental or subsequent EIR is only required when one of the following occurs:

- Substantial changes are proposed in the project that will require major revisions to the prior CEQA document;
- Substantial changes occur in circumstances under which the project is being undertaken that will require major revisions to the previous CEQA document; or
- New information of substantial importance to the project that was not known and could not have been known when the prior CEQA document was approved becomes available.

Pub. Res. Code § 21166; 14 CCR § 15162.

If, because of new information or changed circumstances a new or more substantial impact was not previously studied, then a further EIR is required if the change “may produce a significant environmental effect.” *Friends of the College of San Mateo Gardens v. San Mateo Comm. Coll.*, 1 Cal.5<sup>th</sup> 937 at 958 (2016). This is determined under the “fair argument” standard, meaning that an EIR is required if there is any substantial evidence that changes in circumstances or new information not previously available demonstrates that the project may have a significant environmental impact. *Id.*

Here, new information and changes in circumstances may produce significant environmental impacts that must be analyzed and mitigated in an EIR.

### IV. ANALYSIS

#### A. The SMND Fails to Fully Analyze and Mitigate the Project’s New Significant Biological Impacts.

Neither the East Dublin EIR, nor the Cisco MND identified any biological resources on site. SMND, p. 4. The SMND acknowledges that:

Recent surveys (2017) of the site have identified wetlands and certain protected plant species as located on the site. The proposed project may cause significant impacts on

these resources. Therefore, a Supplemental MND has been prepared to analyze these impacts and include mitigation measures to reduce these impacts to less than significant.

*Id.*

Wildlife biologist Dr. Shawn Smallwood, Ph.D., concludes that the Project may have a significant impact on even more species than those identified in the SMND, and that the mitigation measures proposed in the SMND are not sufficient to fully mitigate the Project's impacts on biological resources. In addition, Dr. Smallwood concludes that the Project may have a significant impact on wildlife movement, and may have significant cumulative impacts. An EIR is required because Dr. Smallwood's expert comments constitute substantial evidence that the Project may have significant and unmitigated impacts on biological resources. Dr. Smallwood's expert comments and resume are attached hereto as Exhibit A.

### **1. The Project May Have Significant Impacts on Special Status Species.**

Dr. Smallwood concludes that the biological analysis conducted as part of the SMND is woefully incomplete and inadequate.

According to Dr. Smallwood, the SMND mischaracterizes the species' habitat requirements for numerous species in order to come to determinations of unlikely occurrence or no potential for occurrence of any species other than western burrowing owl and loggerhead shrike. Smallwood, p. 5.

**Burrowing Owl.** According to the SMND, "the project area is not currently inhabited by Western burrowing owls." SMND, p. 26. As Dr. Smallwood points out, however, "A single site visit can determine presence of burrowing owls, but it cannot be used to determine absence." Smallwood, p. 5. In order to assess the Project's potential impacts to burrowing owls, detection surveys should have been conducted in accordance with California Department of Fish & Wildlife's Burrowing Owl Guidance Document (2012). *Id.* All but five of CDFW's 39 standards for detection were not followed. *Id.* Looking on eBird.org, Dr. Smallwood noted that a burrowing owl was reported as being spotted on the Project site. Smallwood, p. 10, Table 3.

**Ferruginous hawk.** According to the SMND, ferruginous hawk occurrence is "unlikely" because "[t]he Project Area is within a developed area, and lacks the open habitat required by this species for foraging and nesting. The lack of foraging habitat or nesting structures as well as a lack of connectivity with other open grasslands makes the Project Area unlikely to support this species." Dr. Smallwood disagrees. Smallwood, p. 10. According to Dr. Smallwood, Ferruginous hawks will forage where they can. *Id.* "As more of their habitat has been converted to human uses, ferruginous hawks have had to make use of smaller and more isolated patches of habitat." *Id.* at 10-11. He concludes that there is no reason to rule out use of the Project site by ferruginous hawks. *Id.* at 11.

**Northern harrier.** The SMND concludes that Northern harrier occurrence is "unlikely"

because “[m]arsh and grassland habitat suitable for this species is not present within the Project Area.” As Dr. Smallwood points out, the site is composed entirely of grassland suitable for the species. *Id.* at 11. Dr. Smallwood “would characterize the site as classic northern harrier habitat.” *Id.*

**White-tailed kite.** The SMND concludes that white-tailed kites occurrence is “unlikely” because the “Project Area is located in a predominantly developed area, and typical open grassland habitat used for foraging is not present.” According to Dr. Smallwood, “[t]his assessment is absurd. White-tailed kites are well known for foraging on sites just like this one.” *Id.*

**California horned lark.** The SMND concludes that California horned lark occurrence is “unlikely. According to Dr. Smallwood, the Project site is covered by grassland cover typical or where he has documented horned larks many times. *Id.*

**Tricolored blackbird.** The SMND concludes that tricolored blackbird occurrence has “no potential” because the “Project Area does not have any suitable habitat such as: marsh or thickets of willow, to support nesting or foraging of this species.” According to Dr. Smallwood, tricolored blackbirds forage on grasslands, such as the Project site. *Id.* at 12.

**Bald Eagle.** The SMND concludes that Bald eagle occurrence has “no potential” because “There are no rivers, streams, lakes or other waterbodies to provide foraging habitat for this species within the Project Area.” Dr. Smallwood has “many times watched bald eagles foraging over grasslands far from any water body in the Altamont Pass over the last several decades,” and “visits [to the Project site] by juvenile bald eagles would not surprise” Dr. Smallwood. *Id.*

**Bell’s Sparrow.** The SMND concludes that Bell’s Sparrow occurrence has “no potential” because “[t]he Project Area consists of mainly nonnative grasses. No breeding or foraging habitat exists within the Project Area to support this species.” Dr. Smallwood disagrees that Bell’s Sparrow, or any other species of wildlife in California is incapable of foraging in anything other than native grasslands. Smallwood, p. 13.

**Peregrine falcon.** The SMND concludes that the Peregrine falcon occurrence has “no potential” because the “Project Area and immediate vicinity do not consist of any wetland, lake, river or other water body necessary to support this species.” This statement is clearly erroneous as the Project site includes over 1 acre of wetlands. According to Dr. Smallwood, this is an overly narrow habitat description. *Id.* “Peregrine falcons also nest on buildings and they forage over grasslands. They have been reported multiple times in the local area on eBird.” *Id.*

**Yellow-billed magpie.** According to the SMND, yellow-billed magpie occurrence has “no potential” because the “Project Area is located in a predominantly developed area, and typical open grassland habitat used for foraging is not present. The lack of trees this species uses for cover is also absent.” According to Dr. Smallwood, “there is absolutely no reason to reject

the notion that the species would make use of the proposed project site. eBird also includes reports of yellow-billed magpie near the project site. WRA's conclusion is wrong and misleading." *Id.* at 13.

**Red-tailed hawk.** Dr. Smallwood was able to visit the Project site, during which he personally observed the presence of a number of species. In particular, Dr. Smallwood observed a red-tailed hawk, which is protected by the California Department of Fish and Wildlife Code § 3503.5. Smallwood, p. 2. Impacts to this species are not analyzed in any prior CEQA document. Dr. Smallwood's expert observations constitute substantial evidence that the Project may have an adverse impact so Red-Tailed Hawks.

Dr. Smallwood's expert opinion constitutes substantial evidence that the Project may have a significant impact on each of the species discussed above. An EIR must be prepared to analyze and mitigate these potentially significant impacts.

## **2. The Project May Have Significant Impacts on Animals as a Result of Window Collisions.**

Dr. Smallwood also indicates that the Project will have potential impacts on birds colliding with the Project's clear glass windows. Smallwood, p. 14. "Wildlife will be killed and injured by the windows of the Zeiss Innovation Center." *Id.* at 27. "Wetlands and trees are depicted just far enough from the glass façades to enable birds alighting from them to gain sufficient speed upon arrival at the windows that they will not survive the ensuing collisions. The building as planned would contribute to an ongoing national catastrophe in bird collision deaths caused by poorly planned incorporation of windows into building designs." *Id.* at 14. Window collisions are often characterized as either the second or third largest source of anthropogenic-caused bird mortality, yet the SMND made no attempt to analyze this potentially significant impact. An EIR is required to fully analyze and mitigate this impact.

In order to mitigate these potential impacts to birds, Dr. Smallwood recommends the following mitigation measures:

- Marking windows
- Managing outdoor landscape vegetation
- Managing indoor landscape vegetation
- Managing nocturnal lighting
- Designing to minimize transparency through two parallel facades
- Designing to minimize views of interior plants
- Landscaping to increase distances between windows and trees and shrubs

Smallwood, p. 21.

Dr. Smallwood also suggests adherence to available guidelines on building design intended to minimize collisions hazards to birds, such as those by the American Bird Conservancy ("ABC"). Smallwood, p. 22. ABC recommends: (1) minimizing use of glass; (2)

placing glass behind some type of screening (grilles, shutters, exterior shades); (3) using glass with inherent properties to reduce collisions, such as patterns, window films, decals or tape; and (4) turning off lights during migration seasons. *Id.*

As additional mitigation, Dr. Smallwood recommends requiring funding to wildlife rehabilitation facilities:

Wildlife will be killed and injured by the windows of the Zeiss Innovation Center. The impacts to injured wildlife can be rectified by helping to pay the costs of wildlife rehabilitation facilities, which operate on volunteer support and inadequate budgets.

Smallwood, p. 27. Dr. Smallwood proposes a number of options the City should consider in determining how to appropriately compensate for the Project's potential biological impacts. *Id.* at p. 28. These and other feasible mitigation measures must be considered in an EIR.

### **3. The Project May Have Cumulative Impacts on Biological Resources.**

CEQA documents, such as the SMND, must discuss cumulative impacts, and mitigate significant cumulative impacts. 14 CCR § 15130(a). This requirement flows from CEQA section 21083, which requires a finding that a project may have a significant effect on the environment if "the possible effects of a project are individually limited but cumulatively considerable. . . . 'Cumulatively considerable' means that the incremental effects of an individual project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects." A legally adequate cumulative impacts analysis views a particular project over time and in conjunction with other related past, present, and reasonably foreseeable probable future projects whose impacts might compound or interrelate with those of the project at hand.

While acknowledging new Project-related biological impacts, the SMND fails to analyze the Project's potentially significant cumulative biological impacts. Instead, the SMND concludes, without evidence, that:

The implementation of the proposed project, with mitigation, would not result in any new cumulative impacts or increase the severity of a previously identified significant cumulative impact as previously analyzed in the Eastern Dublin EIR and Cisco Systems IS/MND, and no other CEQA standards for supplemental review are met.

SMND, p. 86.

The problem with this analysis, as it applies to biological resources, is that the SMND itself acknowledges that the Project's biological impacts are new, so they could not have possibly been analyzed cumulatively in the East Dublin EIR or the Cisco MND.

The question that CEQA requires the City to address - and that the SMND fails to address - is: will the Project's impacts be significant when combined with other past, current, and probable future projects. By failing to provide this basic information, the SMND's cumulative biological impact analysis is not supported by substantial evidence.

Dr. Smallwood also points out that the SMND's cumulative impact analysis is flawed. According to the SMND, an impact is cumulatively considerable only when it has not been fully mitigated. Dr. Smallwood states:

The Initial Study presents a false standard for determining whether a project's impacts will be cumulatively considerable. It implies that a given project impact is cumulatively considerable only when the project impact has not been fully mitigated. The Initial Study further implies that the impact would be cumulatively considerable only if the same impact caused by one or more other projects failed to fully mitigate the impact. In essence, the Initial Study implies that cumulative impacts are really residual impacts left over by inadequate project mitigation.

Smallwood, p. 22.

Dr. Smallwood describes the importance of the Project site to wildlife, given the lack of habitat surrounding the Project site:

A strip mall occurs to the south, large buildings to the east and north, and to the west the field has been graded flat in preparation for some new development. Many of the animals on the proposed project site will have no refuge to which they can escape once ground is broken for the Center. Black-tailed jackrabbits and desert cottontails will be unable to run for cover to the north, south, east or west; they likely end up as road fatalities. Birds on the site will find increasingly less grassland habitat to move into once they have to leave the proposed project site.

Smallwood, p. 3.

Moreover, circumstances for biological species has changed dramatically since the East Dublin EIR was prepared in 1994. *Id.* at 23. Many of the special-status species observed by Dr. Smallwood on his site visit, or reported by members of the public on eBird.org lacked special status in 1994 "because cumulative impacts increased since then, changing the status of these species." *Id.* Dr. Smallwood cites the yellow-billed magpie as an example:

The Eastern Dublin Specific Plan EIR could not have anticipated the widespread damage that West Nile Virus caused to yellow-billed magpie, driving the species' numbers to the brink of extinction. In 1995 yellow-billed magpies were ubiquitous within their geographic range, including in Dublin, but now each and every project that removes more yellow-billed magpie habitat also generates, in combination with West Nile Virus, a cumulative impact on the species.



*Id.*

Because of these changed circumstance, an EIR is required to analyze and mitigate the Project's potentially significant cumulative biological impacts.

**B. The SMND Includes Improperly Deferred Mitigation Measures.**

CEQA disallows deferring the formulation of mitigation measures to post-approval studies. 14 CCR § 15126.4(a)(1)(B); *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 308-309. An agency may only defer the formulation of mitigation measures when it possesses “‘meaningful information’ reasonably justifying an expectation of compliance.” *Sundstrom* at 308; *see also Sacramento Old City Association v. City Council of Sacramento* (1991) 229 Cal.App.3d 1011, 1028-29 (mitigation measures may be deferred only “for kinds of impacts for which mitigation is known to be feasible”). A lead agency is precluded from making the required CEQA findings unless the record shows that all uncertainties regarding the mitigation of impacts have been resolved; an agency may not rely on mitigation measures of uncertain efficacy or feasibility. *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 727 (finding groundwater purchase agreement inadequate mitigation because there was no evidence that replacement water was available). This approach helps “insure the integrity of the process of decisionmaking by precluding stubborn problems or serious criticism from being swept under the rug.” *Concerned Citizens of Costa Mesa, Inc. v. 32nd Dist. Agricultural Assn.* (1986) 42 Cal.3d 929, 935.

Moreover, “mitigation measure[s] [that do] no more than require a report be prepared and followed” do not provide adequate information for informed decisionmaking under CEQA. *Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777, 794; Guidelines § 15126.4(a)(1)(B). By deferring the development of specific mitigation measures, the City has effectively precluded public input into the development of those measures. CEQA prohibits this approach. As explained by the court in *Communities for a Better Env’t v. Richmond* (2010) 184 Cal.App.4th 70, 92:

[R]eliance on tentative plans for future mitigation after completion of the CEQA process significantly undermines CEQA’s goals of full disclosure and informed decisionmaking; and[,] consequently, these mitigation plans have been overturned on judicial review as constituting improper deferral of environmental assessment.

Mitigation Measure BIO-4 (“MM BIO-4”) requires, in part, that the Project applicant “obtain agency approval of a wetland mitigation plan that ensures no-net-loss of wetland and waters habitat.” SMND, p. 30. The wetland mitigation plan is required to include:

measures for avoidance, minimization, and compensation for wetland impacts. Avoidance and minimization measures may include the designation of buffers around wetland features to be avoided, or project design measures. Compensation measures

shall include the preservation and/or creation of wetland or waters. The final mitigation ratios (the amount of wetlands and waters created or preserved compared to the amount of impacted) shall be determined by the applicable resource agency(s).

*Id.* It must also include:

- a) Descriptions of the wetland types, and their expected functions and values;
- b) Performance standards and monitoring protocol to ensure the success of the mitigation wetlands over a period to be determined by the resource agencies;
- c) Engineering plans showing the location, size and configuration of wetlands to be created or restored;
- d) An implementation schedule showing that construction or preservation of mitigation areas shall commence prior to or concurrently with the initiation of construction; and
- e) A description of legal protection measures for the preserved wetlands (i.e., dedication of fee title, conservation easement, and/or an endowment held by an approved conservation organization, government agency or mitigation bank).

*Id.*

MM BIO-4 constitutes just the type of deferred mitigation CEQA prohibits. Here, the SMND defers the preparation of a wetland mitigation plan until after completion of CEQA review, without imposing any substantive standards, without providing for any public review, and subject only to “applicable resource agency(s)” approval.

In addition, there is no evidence that the MM BIO-4 is feasible because there is no evidence that there are sufficient wetlands in the watershed to preserve or create wetlands within the impacted watershed. This is particularly true given that the amount of wetlands and waters created or preserved will not be determined until after the Project is approved. Moreover, interested parties are precluded from commenting on the adequacy of the wetland mitigation plan, even though CEQA requires that they be permitted to do so.

Deferral of mitigation is also impermissible if it removes the CEQA decision-making body from its decision-making role. The City may not delegate the formulation and approval of mitigation measures to address environmental impacts because an agency’s legislative body must ultimately review and vouch for all environmental analysis mandated by CEQA. *Sundstrom v County of Mendocino* (1988) 202 Cal.App.3d 296, 306-308. Thus, the SMND may not rely on programs to be developed and implemented later without approval by the City. Yet that is precisely what MM BIO-4 does.

Here, the lead agency has improperly delegated its legal responsibility of determining what constitutes adequate mitigation to unnamed “resources agency(s).” MM BIO-4 calls for a wetland mitigation plan that is prepared by the Project Application, and approved by “applicable resource agency(s).” The “resource agency(s)” will determine the final mitigation ratios (the amount of wetlands and water created or preserved compared to the amount impacted). *Id.* It is

also up to the resource agency as to whether the wetland mitigation plan is sufficient to mitigate the Project's impacts.

The SMND may not rely on the wetland mitigation plan to be developed, approved, and implemented later without any approval by the City, at some future time after the Project has been approved. Without valid mitigation, the Project's significant impact on wetlands remains significant.

**C. New Information and Changes in Circumstances Require Preparation of an EIR to Analyze and Mitigate the Project's GHG Impacts.**

Neither the East Dublin EIR nor the Cisco MND analyze greenhouse gas ("GHG") impacts. SMND, p. 41. The SMND similarly contains no analysis of the Project's GHG emissions or impacts. The SMND claims that "Greenhouse gas emissions and climate change is not required to be analyzed under CEQA standards for supplemental or subsequent EIRs unless it constitutes 'new information of substantial important, which was not known and could not have been known at the time the previous EIR was certified as complete.'" *Id.* The SMND then claims that, since the impact of greenhouse gases on climate change was known at the time of the certification of the East Dublin EIR and Cisco MND, no supplemental analysis of GHGs is required, even though the impact was never analyzed in the prior CEQA documents. *Id.* The SMND is wrong.

The need to analyze GHGs at all is a changed circumstance. At the time the East Dublin EIR and the Cisco MND were prepared, GHGs were not part of the CEQA analysis. It was not until the Legislature's 2006 adoption of the California Global Warming Solutions Act of 2006 (Health & Safety Code § 38500, et seq), three years after the Cisco MND was adopted, that the "Legislature [ ] expressly acknowledged that greenhouse gases have a significant environmental effect." It was not until January 2008, that a White Paper was issued by the California Air Pollution Control Officers Association entitled "CEQA and Climate Change: Evaluating and Addressing Greenhouse Gas Emissions from Projects Subject to the California Environmental Quality Act (Jan. 2008)" discussing "different approaches for making a determination whether a project's greenhouse gas emissions would be significant or less than significant."

Particularly important, it was not until 2010 that the Bay Area Air Quality Management District ("BAAQMD") adopted CEQA thresholds of significance for GHG impacts. These air quality thresholds are treated as dispositive in evaluating the significance of a project's air quality impacts. See, e.g. *Schenck v. County of Sonoma* (2011) 198 Cal.App.4th 949, 960 (County applies BAAQMD's "published CEQA quantitative criteria" and "threshold level of cumulative significance"). See also *Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98, 110-111 ("A 'threshold of significance' for a given environmental effect is simply that level at which the lead agency finds the effects of the project to be significant

BAAQMD has determined that a project may have significant greenhouse gas (GHG)

emissions if it will generate more than 1,100 metric tons of carbon dioxide equivalents per year (1,100 MT of CO<sub>2</sub>e/yr). BAAQMD CEQA Guidelines (2010), p. 3-2 (attached hereto as Exhibit E). BAAQMD has published a table of project types and sizes that may generate more than 1,100 MT of GHG per year. *Id.* According to the BAAQMD screening table, a general office building with 53,000 square feet of space is large enough that it may have a significant GHG impact. *Id.* The Project is more than eight times the screening level. Given this new information, and the previous failure to analyze the Project's GHG impacts,<sup>1</sup> an EIR must be prepared to fully analyze and mitigate the Project's potentially significant GHG impacts.

**D. Changed Circumstances Have Occurred and New Information is Available Which Requires Preparation of an EIR as a Result of a New or More Serious Significant Air Quality Impacts.**

Air Quality Expert Dr. James Clark concludes that the Project will have a significant construction-related NO<sub>x</sub> impact during the first phase of the Project. The SMND claims that the "air quality impacts of the proposed project are within the scope of the project impacts covered by the Cisco MND and the Eastern Dublin EIR." SMND, p. 20. This conclusion, however, is not supported by any evidence. No analysis was conducted of the Project's construction or operational emissions. As a result, there is no evidence that the Project's emissions would be equal to or less than those of the Cisco project. In contrast, Dr. Clark's expert comments constitute substantial evidence that the Project will have a significant construction-related NO<sub>x</sub> impact. Clark, p. 5-6. Dr. Clark's comments are attached hereto as Exhibit B. An EIR is required to analyze this impact and propose feasible mitigation measures.

In addition, since the release of the Cisco MND, new sensitive receptors have been identified within the zone of influence for the Project. Clark, p. 6. Sensitive receptors include hospitals, schools, daycare facilities, among others, and are places where occupants are more susceptible to the adverse effect of exposure to toxic chemicals, pesticides, and other pollutants. *Id.* Dr. Clark identified two sensitive receptors that were not identified in the SMND. First, the La Petite Academy is a daycare facility located at 3 Sybase Drive, approximately 1,000 feet east of the Project site. *Id.* Second is the James Dougherty Elementary School located at 5301 Hibernia Dr., approximately 1,600 feet north east of the Project site. *Id.* In addition, the SMND discloses that "[p]roperties west of the project site are undergoing development as residential uses (Boulevard)." SMND, p. 2.

None of these sensitive receptors is mentioned in the SMND or analyzed, but each constitutes a changed circumstance that may result in a significant impact as a result of the

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<sup>1</sup> The City's failure to even conduct an analysis of the Project's GHG emissions, let alone mitigate those impacts, is particularly egregious, given the efforts made by the City in recent years to combat greenhouse gases, including with the adoption of a Climate Action Plan and the adoption of the US Mayors' Climate Protection Agreement. *See*, <http://dublinca.gov/1657/Climate-Action-Information> (accessed Feb. 12, 2018)

Project exposing these sensitive receptors to air pollution. Because these changed circumstances may result in a significant impact, an EIR is required.

**E. Changed Circumstances Have Occurred that Result in a New Significant Cumulative Traffic Impact, Requiring Preparation of and EIR.**

The SMND relies on traffic information from 15 and 25 years ago. The Traffic Consistency Analysis that was prepared for the SMND provides an updated analysis of traffic expected to be generated by the Project, but it does not provide an updated analysis of the traffic that currently exists. For that, the SMND relies on the traffic conditions and projections from 15 and 25 years ago. According to traffic engineer Dan Smith, the Project may have a more significant cumulative traffic impact due to changed circumstances and new information. Dan Smith's expert comments are attached hereto as Exhibit C.

Traffic on nearby freeways is much heavier now than it was 25 years ago when the East Dublin EIR was prepared. Smith, p. 3. For example, the East Dublin EIR indicates that existing daily traffic volume on the I-580 between Hacienda and Tassajara interchanges was 135,000 vehicles, and projected that it would reach 184,000 vehicles in 2010, and 189,000 vehicles at full buildout. *Id.* (citing East Dublin EIR, Figure 3.3-E). Yet Caltrans data for this same location from 2016 indicates a traffic volume of 213,000 vehicles.<sup>2</sup> *Id.* The vehicle count at this location when the Cisco MND was prepared was 177,000. The current traffic volume is 12.7 percent greater than the projected build-out volume in the East Dublin EIR. *Id.* at 4.

Similarly, the East Dublin EIR indicates that between the Hacienda and Dougherty/Hopyard interchanges, I-580 had an existing daily traffic volume of 135,000, would have a 2010 volume of 191,000, and a build-out volume of 194,000 vehicles. *Id.* Yet Caltrans data from 2016 indicates that the traffic volume at this location was actually 233,000 vehicles per day. *Id.* This is 20.1 percent higher than the traffic projected in the East Dublin EIR. The vehicle count at this location when the Cisco MND was prepared was 183,000. *Id.*

Given the significantly higher traffic volumes than predicted in the East Dublin EIR and the Cisco MND, and the underestimated traffic generated from the Project, the Project may have a significant traffic impact that has not been previously analyzed. An EIR must be prepared to analyze this potentially significant impact. Smith, p. 7.

**F. Changed Circumstances Have Occurred and New Information is Available Which Requires Preparation of an EIR as a Result of a New or More Significant Hazards Impact.**

The Cisco MND has no value to the current analysis of the Project site's toxic contamination. Toxics expert Heidi Bauer concludes that the Project may have a significant

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<sup>2</sup> Data available at [www.ca.gov/trafficops/census/](http://www.ca.gov/trafficops/census/).

impact from soil and groundwater contamination. Mrs. Bauer's expert comments are attached hereto as Exhibit D.

The Project site previously functioned as a US Naval facility (Camp Shoemaker) from the early 1940's up until about 1949. Of interest to the subject site is two former fuel stations located on the property; one in the northwest portion of the property and one in the southwest of the property. Parcel 15A also contained an inflammable storage building, public works office and shop, transportation shop and barracks, and another unidentified building (Lowney 2000). A former laundry and boiler room was located on the adjacent parcel to the east (Parcel 15B). The Zeiss Innovation Center is being proposed on the former Parcel 15A site. Bauer, p. 1.

Between 1998 and 2000, in response to directives from the Regional Water Quality Control Board and in preparation for the Cisco MND, several soil, soil vapor, and groundwater investigations were conducted. The main areas of concern for the project (Parcel 15A) is the area of the former fuel stations piping and associated leaking underground storage tanks (LUSTs), the upgradient/sidegradient (Parcel 15B) which shows elevated PCE levels likely from the former laundry, the possible contaminated fill from incinerator ash used throughout the property and the presence of an unknown tar-like substance on Parcel 15. Bauer, p. 2.

The SMND contains no new or updated analysis of the contamination below the Project site, instead relying completely on data from prior to 2001. As detailed in the expert comments of toxics expert Heidi Bauer:

The data relied on in the Zeiss IS/MND (Zeiss IS/ MND, 2017) in the Hazards and Hazardous Materials Section is no longer appropriate for use. The latest data collected for this site is 18-20 years old. The site subsurface in the area of the water table is dynamic and contaminant concentrations in the vadose and saturated zones change with the groundwater table fluctuation and also with the direction of groundwater flow.

Bauer, p. 5.

Because the groundwater flow direction is towards the southwest, Contaminant concentrations that were detected above the ESL from the north portion of the site likely migrated southwest and therefore could be found in other portions of the site not previously investigated." Bauer, p. 5.

"The environmental history of this site, including the unknown impacts from the uninvestigated site soils, combined with the existing elevated concentrations of contaminants above the ESLs in the groundwater can potentially create a significant environmental health threat to worker safety, the public and future employees at the project site." Bauer, p. 6. Because of the changed circumstances, an EIR is required to analyze and mitigate this potentially significant impact.

#### **G. The Project Requires a Water Supply Assessment.**

Under SB 610, projections about water availability must be developed before certain large development projects that will be served by a public water system can be approved. Water Code §§ 10910-10915. The public water system identified as the water provided for a proposed project must prepare a water supply assessment that is then included in an EIR or negative declaration. *Madera Oversight Coalition v. County of Madera* (2011) 199 Cal.App.4th 48, 96. SB 610 applies when a project subject to CEQA meets any of the criteria in Water Code section 10912. These criteria include a business establishment employing more than 1,000 people and a commercial office building employing more than 1,000 people or having more than 250,000 square feet of floor space.

Here, the Project will accommodate 1,500 employees, in buildings totaling 433,090 square feet. SMND, p. 3, 4. The Project will also be served by the Dublin San Ramon Services District, which is a public water system. SMND, p. 80. As a result, a Water Supply Assessment must be prepared and included in the SMND. Water Code §§ 10910-10915; *Madera Oversight Coalition v. County of Madera* (2011) 199 Cal.App.4th 48, 96. This is particularly important in light of the frequent drought conditions that have plagued the area in recent years.

A Water Supply Assessment was not included in the SMND. As a result, LIUNA is concerned that a WSA has not been prepared for the project, as required by SB 610. If there is no WSA for the Project, one must be prepared and circulated with the SMND.

## V. CONCLUSION

For the foregoing reasons, LIUNA believes the SMND is deficient and inadequate. LIUNA urges the City to make the above changes, and recirculate the revised SMND or an EIR to the public for review. Thank you for your attention to these comments.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Rebecca L. Davis', with a long horizontal flourish extending to the right.

Rebecca L. Davis  
Lozeau | Drury LLP