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Via E-Mail

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**Re: Comment on the Cambria Hotel Project
(PLPA-2019-00020, PLPA-2019-00044)**

Dear Commissioners:

I am writing on behalf of the **Laborers International Union of North America, Local Union No. 304 ("LIUNA")** and its members living and/or working in and around the City of Dublin ("LIUNA") regarding the Cambria Hotel Project ("Project") (PLPA-2019-00020, PLPA-2019-00044) proposed by Applicant Jerry Hunt of VP-RPG Dublin, LLC ("Applicant"). The City of Dublin ("City") is proposing to approve the Site Development Review Permit and the Minor Use Permit of the Project without review under the California Environmental Quality Act ("CEQA"), Pub. Res. Code section 21000, et seq., based on the assertion that the Project's potential impacts were studied in the Downtown Dublin Specific Plan Environmental Impact Report ("DDSP EIR") approved in December 2010. The City contends that under CEQA Guidelines section 15182, no further environmental review is required. Given the nature of the Project, LIUNA disagrees and requests that the Planning Commission deny approval and direct staff to prepare an EIR to analyze the significant environmental impacts of the Project and to propose all feasible mitigation measures and alternatives to reduce those impacts.

This comment has been prepared with the assistance of Certified Industrial Hygienist Francis Offerman, PE, CIH, wildlife biologist Shawn Smallwood, Ph.D, environmental consulting firm SWAPE, and traffic expert Daniel T. Smith Jr., P.E. Mr. Offerman's comment and curriculum vitae are attached as Exhibit A hereto and are incorporated herein by reference and entirety. Dr. Smallwood's comment and curriculum vitae are attached as Exhibit B and are incorporated herein by reference and entirety. SWAPE's comment and curriculum vitae are

attached as Exhibit C hereto and are incorporated herein by reference in their entirety. Mr. Smith's comment and curriculum vitae are attached as Exhibit D hereto and are incorporated herein by reference as well.

I. PROJECT BACKGROUND

Applicant proposes to demolish the existing parking lot located south of the existing Corrie Center office building at 7950 Dublin Boulevard and construct a six-story hotel with four stories comprised of a total of 138 rooms and two stories of parking comprised of 277 parking spaces. The Project is located at 7950 Dublin Boulevard, APNs: 941-1500-037-00 and 941-1500-036-02.

II. STANDING

Members of LIUNA Local 304 live, work, and/or recreate in the vicinity of the Project Site. These members will suffer the impacts of a poorly executed or inadequately mitigated Project, just as would the members of any nearby homeowners association, community group or environmental group. LIUNA Local 304 members live and work in areas that will be affected by traffic, noise, air pollution, wildlife impacts and greenhouse gas ("GHG") emissions generated by the Project. Therefore, LIUNA Local 304 and its members have a direct interest in ensuring that the Project is adequately analyzed and that its environmental and public health impacts are mitigated to the fullest extent possible.

III. LEGAL STANDARDS

CEQA mandates that "the long-term protection of the environment . . . shall be the guiding criterion in public decisions" throughout California. Pub. Res. Code § 21001(d). To achieve its objectives of environmental protection, CEQA has a three-tiered structure. CEQA Guidelines § 15002(k); *Committee to Save the Hollywoodland Specific Plan v. City of Los Angeles* (2008) 161 Cal.App.4th 1168, 1185-86 ("*Hollywoodland*"). First, if a project falls into an exempt category, or it can be seen with certainty that the activity in question will not have a significant effect on the environment, no further agency evaluation is required. *Id.* Second, if there is a possibility the project will have a significant effect on the environment, the agency must perform an initial threshold study. *Id.*; CEQA Guidelines § 15063(a). If the study indicates that there is no substantial evidence that the project or any of its aspects may cause a significant effect on the environment the agency may issue a negative declaration. *Id.*, CEQA Guidelines §§ 15063(b)(2), 15070. Finally, if the project will have a significant effect on the environment, an environmental impact report ("EIR") is required. *Id.* Here, the City is attempting to bypass CEQA entirely by claiming that the project is exempt per Section 15182 because the "potential impacts associated with the proposed project were studied in the DDSP EIR."

CEQA Guidelines section 15182 provides that "[c]ertain residential, commercial, and mixed-use projects that are consistent with a specific plan . . . are exempt from CEQA" CEQA Guidelines § 15182(a). Residential or mixed-use projects, or projects with a floor plan

area ratio of at least 0.75 on commercially zoned property, are exempt from CEQA only if the project satisfies 3 criteria:

- (A) It is located within a transit priority area as defined in Public Resources Code section 21099(a)(7);
- (B) It is consistent with a specific plan for which an environmental impact report was certified; and
- (C) It is consistent with the general use designation, density, building intensity, and applicable policies specified for the project area in either a sustainable communities strategy or an alternative planning strategy for which the State Air Resources Board has accepted the determination that the sustainable communities strategy or the alternative planning strategy would achieve the applicable greenhouse gas emissions reduction targets.

Id., § 15182(b)(1). However, if one of the events in CEQA Guidelines section 15162 occurs, additional environmental review is required. *Id.*, § 15182(b)(2). CEQA Guidelines section 15162 provides that if an EIR has been certified for a project, a subsequent EIR should not be prepared unless one of the following occurs:

- (1) Substantial changes are proposed in the project which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;
- (2) Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR or Negative Declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or
- (3) New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the Negative Declaration was adopted, shows any of the following:
 - (A) The project will have one or more significant effects not discussed in the previous EIR or negative declaration;
 - (B) Significant effects previously examined will be substantially more severe than shown in the previous EIR;
 - (C) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible, and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or
 - (D) Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.

Id. § 15162(a).

Here, the Project is not consistent with the DDSPP, and there is substantial evidence of new information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the DDSPP EIR was certified as complete in 2010, including that the Project will have one or more significant effects not discussed in the previous EIR, substantial changed circumstances will now require major revisions to the EIR due to a substantial increase in the severity of significant effects, and mitigation measures that are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment.

III. DISCUSSION

A. The Project is Not Consistent with the DDSPP Because the DDRSP and its Accompanying EIR Did Not Address and Expressly Deferred Specific Project-Level Impacts.

One of the three conditions under CEQA Guidelines section 15182 in which a project can be exempt from CEQA review is if a project is consistent with a specific plan for which an EIR was certified. Here, the Project is inconsistent with the DDSPP because the DDSPP and the DDSPP EIR expressly defer specific project-level environmental review requirements. The need for these subsequent Project-specific reviews is part and parcel of the DDRSP. The City's failure to comply with these requirements results in the Project's inconsistency with those parts of the DDSPP, and the City can therefore not rely on the DDSPP to exempt the Project from a project-level environmental review.

i. The Project is inconsistent with the DDSPP's provision that individual projects be subject to project-level BAAQMD emission thresholds.

For construction emissions, the DDSPP EIR states that “[f]uture individual projects under the DDSPP would be subject to new project-level emissions thresholds in the BAAQMD Draft CEQA Guidelines, if adopted. Through the environmental review process for individual projects, additional mitigation may also be required to further reduce emissions and potential impacts on a project-by-project basis.” DDSPP EIR, p. 3-32. However, the Project's Hearing Notice states “Pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines Section 15182, potential impacts associated with the proposed project were studied in the DDSPP EIR and its Addendums and, therefore, no further environmental review is required for this project.” City of Dublin Public Hearing Notice, March 24, 2020. This conclusion is unsubstantiated since the DDSPP EIR did not quantify or evaluate the Project's emissions. As adopted in 2010 and since updated in 2017, the BAAQMD CEQA Guidelines, as well as the DDSPP EIR, require proposed individual projects to compare their expected emissions to the relevant thresholds of significance. *See* “California Environmental Quality Act Air Quality Guidelines.” BAAQMD, adopted 2010, updated May 2017, available at: https://www.baaqmd.gov/~media/files/planning-and-research/ceqa/ceqa_guidelines_may2017-pdf.pdf?la=en, p. 2-2, Table 2-1. By failing to

compare the Project's estimated emissions to the relevant BAAQMD thresholds, the City fails to demonstrate consistency with the DDSP.

The DDSP EIR additionally states that "future development within the project area would be required to comply with BAAQMD Regulation 8, Rule 3 (Architectural Coatings)," which would in part "ensure that the proposed [DDSP] would have a less than significant impact during short-term construction activities." DDSP EIR, p. 3-32. The City fails to address BAAQMD Regulation 8, Rule 3 (Architectural Coatings), and therefore the Project is further inconsistent with the DDSP.

ii. The Project is inconsistent with the DDSP's provision for project-by-project analysis of greenhouse gas emissions.

The DDSP EIR states that, with regard to greenhouse gas ("GHG") emissions, "[f]uture projects within the City, including within the project area, would be reviewed on a project-by-project basis to ensure their compliance with the City's policies and to determine if any impacts would occur beyond those already identified in this EIR." DDSP EIR, p. 3-42. As stated above, the Project relies on the DDSP EIR for environmental review pursuant to CEQA Guidelines section 15182. However, without a project-level analysis of the Project's GHG emissions, the City cannot ensure its compliance with the City's policies or if the Project would have any GHG impacts occurring beyond those identified in the DDSP EIR, and therefore the Project is inconsistent with the DDSP.

B. There is Substantial Evidence of New Information of Substantial Importance, Which was Not Known and Could Not Have Been Known with the Exercise of Reasonable Diligence at the Time the DDSP EIR was Certified as Complete Showing the Project Will Have a Significant Health Risk Impact from its Indoor Air Quality Not Discussed in the DDSP EIR.

Certified Industrial Hygienist, Francis "Bud" Offermann, PE, CIH, conducted a review of the proposed Project and relevant documents regarding the Project's indoor air emissions. Indoor Environmental Engineering Comments (March 19, 2020) (Exhibit A). Mr. Offermann concludes that it is likely that the Project will expose future hotel employees of the Project to significant impacts related to indoor air quality, and in particular, emissions of the cancer-causing chemical formaldehyde. Mr. Offermann's calculations are based on new information from a study published in 2019 on formaldehyde emissions. Mr. Offermann is a leading expert on indoor air quality and has published extensively on the topic. *See* attached CV.

Mr. Offermann explains that many composite wood products used in modern hotel construction contain formaldehyde-based glues which off-gas formaldehyde over a very long time period. He states, "The primary source of formaldehyde indoors is composite wood products manufactured with urea-formaldehyde resins, such as plywood, medium density fiberboard, and particleboard. These materials are commonly used in building construction for flooring, cabinetry, baseboards, window shades, interior doors, and window and door trims." Ex.

A, pp. 2-3.

Formaldehyde is a known human carcinogen. Mr. Offermann states that the employees of the Project are expected to experience significant work-day exposures. *Id.*, p. 4. This exposure of employees would result in “significant cancer risks resulting from exposures to formaldehyde released by the building materials and furnishing commonly found in offices, warehouses, residences and hotels.” *Id.*, p. 3. Assuming they work eight hour days, five days per week, an employee would be exposed to a cancer risk of approximately 16.4 per million, assuming all materials are compliant with the California Air Resources Board’s formaldehyde airborne toxics control measure. *Id.*, p. 4. This is more than the Bay Area Air Quality Management District (BAAQMD) CEQA significance threshold for airborne cancer risk of 10 per million. *Id.*

Mr. Offermann also notes that the high cancer risk that may be posed by the Project’s indoor air emissions likely will be exacerbated by the additional cancer risk that exists as a result of the Project’s location near roadways with moderate to high traffic (i.e. I-580, Dublin Boulevard, and San Ramon Boulevard) and the high levels of PM_{2.5} already present in the ambient air. *Id.*, p. 10. No analysis has been conducted of the significant cumulative health impacts that will result to employees working at the Project.

Mr. Offermann concludes that this significant environmental impact should be analyzed in an EIR and mitigation measures should be imposed to reduce the risk of formaldehyde exposure. *Id.*, p. 4. Mr. Offermann identifies mitigation measures that are available to reduce these significant health risks, including the installation of air filters and a requirement that the applicant use only composite wood materials (e.g. hardwood plywood, medium density fiberboard, particleboard) for all interior finish systems that are made with CARB approved no-added formaldehyde (NAF) resins or ultra-low emitting formaldehyde (ULEF) resins in the buildings’ interiors. *Id.*, pp. 11-12.

Mr. Offermann relies in part on the study by Chan et al. published in 2019 to calculate of the Projects emissions. This study analyzed the indoor concentrations of formaldehyde for homes built between 2011 and 2015, and since only Phase 2 composite wood products were permitted for sale after July 2012, most of the homes in the Chan study were constructed with CARB Phase 2 compliant materials. *See id.*, p. 3. The Chan study shows that homes built after 2009 with CARB Phase 2 Formaldehyde ATCM materials had lower indoor formaldehyde concentrations of 22.4 µg/m³ (18.2 ppb) as compared to a median of 36 µg/m³ found in the 2007 California New Home Study. *See id.* While these buildings had a lower median formaldehyde concentration and cancer risk, the median lifetime cancer risk for homes built with CARB Phase 2 compliant composite wood products still greatly exceeded the OEHHA 10 in a million cancer risk threshold. *Id.* Mr. Offermann relies in part on the indoor formaldehyde concentrations determined in the 2019 Chan study to conclude that the Project will have similar indoor concentrations of formaldehyde as observed in the Chan study and exceed the CEQA significance threshold for airborne cancer risk because the building materials and furnishings commonly found in homes that release formaldehyde are also found in hotels. The 2019 Chan study and resulting finding that a project’s compliance with CARB Phase 2 compliant materials

is not enough to get a project below the cancer risk threshold is new information that was not previously available of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the DDSF EIR was certified as complete, showing that the Project will have a significant health risk impact from its indoor air quality not discussed in the DDSF EIR. Therefore, the City must prepare a subsequent EIR for the Project.

The City has a duty to investigate issues relating to a project's potential environmental impacts, especially those issues raised by an expert's comments. *See Cty. Sanitation Dist. No. 2 v. Cty. of Kern*, (2005) 127 Cal.App.4th 1544, 1597–98 (“under CEQA, the lead agency bears a burden to investigate potential environmental impacts”). In addition to assessing the Project's potential health impacts to workers, Mr. Offermann identifies the investigatory path that the City should be following in developing an EIR to more precisely evaluate the Projects' future formaldehyde emissions and establishing mitigation measures that reduce the cancer risk below the BAAQMD level. Ex. A, pp. 4-9. Such an analysis would be similar in form to the air quality modeling and traffic modeling typically conducted as part of a CEQA review.

The failure to address the project's formaldehyde emissions is contrary to the California Supreme Court's decision in *California Building Industry Ass'n v. Bay Area Air Quality Mgmt. Dist.* (2015) 62 Cal.4th 369, 386 (“*CBIA*”). At issue in *CBIA* was whether the Air District could enact CEQA guidelines that advised lead agencies that they must analyze the impacts of adjacent environmental conditions on a project. The Supreme Court held that CEQA does not generally require lead agencies to consider the environment's effects on a project. *CBIA*, 62 Cal.4th at 800-801. However, to the extent a project may exacerbate existing adverse environmental conditions at or near a project site, those would still have to be considered pursuant to CEQA. *Id.* at 801 (“CEQA calls upon an agency to evaluate existing conditions in order to assess whether a project could exacerbate hazards that are already present”). In so holding, the Court expressly held that CEQA's statutory language required lead agencies to disclose and analyze “impacts on **a project's users or residents** that arise **from the project's effects** on the environment.” *Id.* at 800 (emphasis added).

The carcinogenic formaldehyde emissions identified by Mr. Offermann are not an existing environmental condition. Those emissions to the air will be from the Project. Employees will be users of the hotel. Currently, there is presumably little if any formaldehyde emissions at the site. Once the project is built, emissions will begin at levels that pose significant health risks. Rather than excusing the City from addressing the impacts of carcinogens emitted into the indoor air from the project, the Supreme Court in *CBIA* expressly finds that this type of effect by the project on the environment and a “project's users and residents” must be addressed in the CEQA process.

The Supreme Court's reasoning is well-grounded in CEQA's statutory language. CEQA expressly includes a project's effects on human beings as an effect on the environment that must be addressed in an environmental review. “Section 21083(b)(3)'s express language, for example, requires a finding of a ‘significant effect on the environment’ (§ 21083(b)) whenever the

‘environmental effects of a project will cause substantial adverse effects *on human beings*, either directly or indirectly.’” *CBIA*, 62 Cal.4th at 800 (emphasis in original). Likewise, “the Legislature has made clear—in declarations accompanying CEQA’s enactment—that public health and safety are of great importance in the statutory scheme.” *Id.*, citing e.g., §§ 21000, subds. (b), (c), (d), (g), 21001, subds. (b), (d). It goes without saying that the hundreds of future employees of the project are human beings and the health and safety of those workers is as important to CEQA’s safeguards as nearby residents currently living near the project site.

C. There is Substantial Evidence of New Information of Substantial Importance, Which was Not Known and Could Not Have Been Known with the Exercise of Reasonable Diligence at the Time the DDSP EIR was Certified as Complete Showing the Project Will Have a Significant Impact on Biological Resources that was Not Discussed in the DDSP EIR.

Ecologist Shawn Smallwood, Ph.D., conducted a review of the proposed Project and relevant documents regarding the Project’s impacts on biological resources. Shawn Smallwood Comments (March 24, 2020) (Exhibit B). The DDSP EIR explicitly did not analyze impacts to biological resources because the DDSP project site is an urban infill area and biological resources do not exist on the project site and/or are not considered to cause a significant environmental impact. *See* DDSP EIR, p. 4-7. However, as Dr. Smallwood explains, substantial evidence of new information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the DDSP EIR was certified as complete shows the Project may have a significant impact on biological resources that was not discussed in the DDSP EIR.

Within the last year, the scientific community confirmed that human actions are cumulatively contributing to the rapid decline of birds across North America. Rosenberg et al. (2019) quantified a 29% decline of overall bird abundances across North America over the last 48 years. One of the leading causes of bird mortality contributing to this decline is collisions with windows, and Dr. Smallwood indicates that the Project, as proposed, will result in significant impacts on birds colliding with the Project’s clear glass windows. Ex. B, p. 9. Specifically, Dr. Smallwood predicts “69 bird deaths per year” due to the Project. *Id.* Project illustrations show extensive use of glass in the façade of the Project’s building. Based on the proposed commercial floor space, including the hotel and club retail, Dr. Smallwood estimates the Project would include 892 m² of glass windows. *Id.* Since 2016, recent advances in structural glass engineering have contributed to a worldwide 20% increase in glass manufacturing for building construction. *Id.*, p. 2. Increasing window-to-wall ratios and glass facades have also become popular, which is a major feature of the Project. Making matters worse, this feature could potentially introduce an ecological trap to the many thousands of birds flying across the junction of east-west and north-south migration routes along the valley structures in which Downtown Dublin is situated. *Id.*

On September 27, 2019, California Governor Gavin Newsom signed AB 454, reinstating as state law the recently repealed federal Migratory Bird Treaty Act (“MBTA”). As a result,

California Fish and Game Code section 3513 makes it unlawful to take or possess any migratory nongame bird as designated in the MBTA. The Project's glass windows inserted into the aerosphere would annually kill birds of many species protected by California's new version of the MBTA, resulting in a potentially significant impact. *Id.*, p. 5.

On March 18, 2019, the tricolored blackbird was listed as threatened under the California Endangered Species Act ("CESA"). *See* State and Federally Listed Endangered and Threatened Animals of California, p. 11, available at <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=109405&inline>. eBird records reveal that the tricolored blackbird has been observed west and east of Dublin, so therefore likely flies across Dublin during dispersal and migration. Ex. B, p. 4, 5. The Project's glass windows, which will be in the tricolored blackbird' aerosphere, would likely kill some of them, resulting in a potentially significant impact on that threatened species. *Id.*, p. 5.

As Dr. Smallwood states, reports of scientific investigations published since 2010 have informed the scientific community of the magnitude of impacts on North American birds, of the factors contributing to bird-window collisions, and how to mitigate collision risk. *Id.* Further, most of the studies contributing to the current understanding of the use of structural glass were reported in the scientific literature since 2010, and the most comprehensive and informed guidelines on building design and landscaping to minimize impacts were produced after 2010. All of this information, including California's adoption of the MBTA and the change in the tricolored blackbird's listing status, was not known at the time the DDSP EIR was certified and could not have been known because the information came out after the DDSP EIR was certified. Based on this information, Dr. Smallwood's analysis provides substantial evidence of a new significant impact that was not known and could not have been known at the time the DDSP EIR was certified, and therefore a project-level EIR is required.

D. There is Substantial Evidence of New Information of Substantial Importance, Which was Not Known and Could Not Have Been Known with the Exercise of Reasonable Diligence at the Time the DDSP EIR was Certified as Complete Showing the Project Will Have a Significant Impact on Air Quality from Construction Emissions that was Not Discussed in the DDSP EIR.

Environmental consulting firm SWAPE conducted a review of the proposed Project and relevant documents regarding the Project's air quality impacts. SWAPE Comments (March 25, 2020) (Exhibit C). The DDSP EIR explicitly stated that for construction emissions, individual projects within the DDSP would be subject to new project-level emission thresholds in the BAAQMD Draft CEQA Guidelines, if adopted, and that through the environmental review process for individual projects, additional mitigation may be required to further reduce emissions and potential impacts on a project-by-project basis. *See* DDSP EIR, p. 3-32. As stated above, BAAQMD adopted and updated the Draft CEQA Guidelines after the certification of the DDSP EIR and there is no evidence that the City conducted a project-level emissions analysis for the Project. In an effort to determine the Project's construction emissions, SWAPE prepared a CalEEMod model for the Project, using the Project-specific information provided in the Project's

documentation.

Maximum Daily Construction Emissions (lbs/day)	
Model	VOC/ROG
SWAPE	54.8
BAAQMD Regional Threshold (lbs/day)	54
<i>Threshold Exceeded?</i>	<i>Yes</i>

When modeled, the Project's construction-related VOC emissions exceed the BAAQMD significance threshold of 54 lbs/day, resulting in a significant impact. Ex. C, p. 5. SWAPE's analysis provides substantial evidence of a significant impact not discussed in the previous DDSP EIR because SWAPE's analysis is new information, which was not known and could not have been known at the time the DDSP EIR was certified because the BAAQMD CEQA Guidelines had not yet been adopted. The City can therefore not rely on CEQA Guidelines section 15182 to exempt the Project from a project-level EIR.

E. There is Substantial Evidence of New Information of Substantial Importance, Which was Not Known and Could Not Have Been Known with the Exercise of Reasonable Diligence at the Time the DDSP EIR was Certified as Complete Showing the Project Will Have a Significant Health Risk Impacts that were Not Discussed in the DDSP EIR.

The DDSP EIR states that the development of any new stationary sources of TACs associated with the DDSP project area would be subject to BAAQMD rules and regulations and permitting requirements. DDSP EIR, p. 3-37. However, there is no evidence that the City evaluated the Project's potential health risk impacts. In an effort to demonstrate the potential risk posed by the Project to nearby sensitive receptors, SWAPE prepared a screening-level health risk assessment ("HRA"). SWAPE used AERSCREEN, the leading screening-level air quality dispersion model. Ex. C, pp. 7-10. SWAPE used a sensitive receptor distance of 50 meters (the distance to the closest sensitive receptor) and analyzed impacts to individuals at different stages of life based on OEHHA guidance. *Id.*, pp. 7-9.

SWAPE calculates that the Project's construction and operation may pose cancer risks to adults, children, infants, and during the 3rd trimester of pregnancy of approximately 15, 98, 290, and 22 in one million, well above the BAAQMD significance threshold of 10 in one million. *Id.*, pp. 9-10. The excess cancer risk over the course of a residential lifetime calculated by SWAPE is 430 in one million, also exceeding the BAAQMD threshold of 10 in one million. *Id.*, p. 10.

SWAPE's analysis provides substantial evidence of a significant impact not discussed in the previous DDSP EIR because SWAPE's analysis is new information, which was not known and could not have been known at the time the DDSP EIR was certified because the BAAQMD CEQA significance thresholds had not yet been adopted and the DDSP EIR required project-level analysis of TACs. The City can therefore not rely on CEQA Guidelines section 15182 to

exempt the Project from a project-level EIR.

F. There is Substantial Evidence of New Information of Substantial Importance, Which was Not Known and Could Not Have Been Known with the Exercise of Reasonable Diligence at the Time the DDSP EIR was Certified as Complete Showing the Project Will Have a Significant Greenhouse Gas Impacts that were Not Discussed in the DDSP EIR.

The DDSP EIR states that future projects within the City, including those within the DDSP, are to be reviewed on a project-by-project basis to ensure they comply with the City's greenhouse gas ("GHG") policies in order to determine if any impacts would occur beyond those already identified in the DDSP EIR. DDSP EIR, p. 3-42. With regards to GHG significance criteria, the City elected to use their own GHG significance criterion "until such a time as a state or regional threshold is adopted by a competent agency." *Id.*, p. 3-44. As stated above, there is no evidence that the City reviewed the Project's GHG emissions at a project-level.

In order to determine the Project's GHG emissions, SWAPE ran a GHG analysis using CalEEMod with Project-specific information as disclosed in the Project's documents. SWAPE determined that the Project's emissions include approximately 380 MT CO₂e/year of total construction emissions and approximately 1,570 MT CO₂e/year of annual operational emissions. Ex. C, p. 13. Since BAAQMD adopted GHG thresholds, SWAPE compared the Project's emissions to BAAQMD's bright-line threshold of 1,100 MT CO₂e/year, concluding that the Project's emissions exceed the significance threshold. *Id.*

Annual Greenhouse Gas Emissions	
Project Phase	Proposed Project (MT CO₂e/year)
Construction (amortized over 30 years)	12.65
Area	0.0079
Energy	579.46
Mobile	941.52
Waste	37.99
Water	10.7
Total	1,582.33
Threshold	1,100
<i>Exceed?</i>	<i>Yes</i>

Since the Project's GHG emissions exceed the BAAQMD's 1,100 MT CO₂e/year significance threshold, a service population analysis is warranted. *Id.* SWAPE divided the Project's GHG emissions by the service population value of 199 people to find that the Project would emit approximately 7.95 MT CO₂e/SP/year, which exceeds the BAAQMD's efficiency

target goal of 2.6 MT CO₂e/SP/year. *Id.*, pp. 13–14.

SWAPE Greenhouse Gas Emissions	
Project Phase	Proposed Project (MT CO₂e/year)
Annual Emissions	1,582.33
Service Population	199
Service Population Efficiency	7.95
Threshold	2.6
<i>Exceed?</i>	<i>Yes</i>

SWAPE’s GHG analyses provide substantial evidence of a significant impact not discussed in the previous DDSP EIR because SWAPE’s analyses are new information, which were not known and could not have been known at the time the DDSP EIR was certified because the BAAQMD CEQA significance thresholds had not yet been adopted and the DDSP EIR required project-level analysis of GHG emissions. The City can therefore not rely on CEQA Guidelines section 15182 to exempt the Project from a project-level EIR.

G. There are Substantial Changed Circumstances Requiring Major Revisions to the DDSP EIR Due to a Substantial Increase in the Severity of Previously Identified Transportation and Circulation Significant Effects.

Under CEQA Guidelines section 15162(a)(2), if there is substantial evidence of substantial changes to the circumstances under which the Project is undertaken which will require major revisions to the DDSP EIR due to a substantial increase in the severity of previously identified significant effects, then a subsequent EIR should be prepared. The DDSP EIR found that in the Near-Term, the Base FAR Project and Maximum FAR Project results in significant and unavoidable impacts, and in the Cumulative scenario, the Maximum FAR Project results in significant and unavoidable impacts. *See* DDSP EIR, pp. 3-172–3-175.

Traffic engineer Dan Smith conducted a review of the proposed Project and relevant documents regarding the Project’s impacts on traffic and circulation. Dan Smith Comments (March 24, 2020) (Exhibit D). Mr. Smith concludes that the traffic and circulation circumstances in the DDSP area have significantly changed since the DDSP EIR’s 2010 analysis of these impacts, and there has been a substantial increase in the severity of the DDSP EIR’s previously identified significant impacts on traffic and circulation. The City may therefore not rely on CEQA Guidelines section 15182 to exempt the Project from environmental review.

As Mr. Smith notes, the DDSP EIR Traffic and Circulation analysis relied on an existing traffic data base going back to 2008 and its impact and mitigation findings were based on forecasts of Near Term traffic to 2015 and Cumulative traffic to year 2035. Ex. D, p. 2. The 2015 analysis is based on existing traffic counts, estimated traffic from a limited set of entitled

projects, six within the Project area itself, four elsewhere in Dublin and three others in nearby areas of Pleasanton and San Ramon, the Project itself, and an estimate of regional traffic growth through the Project study area to 2015. *Id.* The 2025 analysis is estimated from Project generated traffic and general plan based modeled traffic estimates for the area. *Id.*

Mr. Smith states that the problem with the DDSP EIR analyses is:

many additional major projects have been approved in Dublin alone since 2010, many of them not on the entitled projects list in the [DDSP EIR] and many of them requiring General Plan Amendments, so not reflected in either the 2015 or 2035 analyses. In fact there have been a total of 12 development projects requiring General Plan Amendments approved in Dublin between 2010 and 2018.

Id.

To show just how much these additional projects have changed the traffic and circulation in the DDSP area, Mr. Smith lists out these major additional projects and the increase in daily trips they add to the DDSP area that were not considered in the DDSP EIR Traffic and Circulation analysis. *See Ex. B, pp. 2–4.* The major projects identified in Mr. Smith's analysis, together with numerous small projects not mentioned in his analysis, were clearly not considered or not fully considered in the DDSP EIR traffic analysis. Therefore, there is substantial evidence of substantial changed circumstances due to a substantial increase in the severity of previously identified significant effects that preclude the City's reliance on the DDSP and exemption from further CEQA review under Guidelines sections 15182 and 15162.

H. There are Mitigation Measures That are Considerably Different From Those Analyzed in the DDSP EIR that Would Substantially Reduce Significant Effects on the Environment, but the City declines to Adopt the Mitigation Measures.

If there is new information of substantial importance, which was not known and could not have been known when the DDSP EIR was certified as complete, including mitigation measures which are considerably different from those analyzed in the DDSP EIR that would substantially reduce significant effects on the environment, but the City declines to adopt them, then a subsequent EIR may be required. *See CEQA Guidelines § 15162(a)(3).* The DDSP EIR did not analyze the impacts on biological resources or indoor air quality, yet as Mr. Offermann and Dr. Smallwood concluded, the Project will have significant impacts on indoor air quality and biological resources. The DDSP EIR also concluded that the air quality and GHG emission impacts would be less than significant, yet SWAPE concluded that the Project will have significant air quality and GHG impacts. Along with these experts' conclusions, they provided feasible mitigation measures that the City could implement to substantially reduce the significant impacts they identified. However, since the City relies on CEQA Guidelines section 15182 to exempt the Project from further environmental review, the City is declining to adopt any mitigation measures for the Project's impacts outside of the ones identified in the DDSP EIR.

Mr. Offermann's comment includes a list of mitigation measures the City could feasibly implement to substantially reduce the Project's significant indoor air quality impacts. Ex. A, pp. 11–12. The effectiveness of these mitigation measures were not fully understood until after the certification of the DDSP EIR, so it is new information of substantial importance, which was not known and could not have been known when the DDSP EIR was certified as complete.

Dr. Smallwood's comment also includes a list of mitigation measures the City could feasibly implement to substantially reduce the Project's significant impacts on biological resources. Ex. B, pp. 13–16. Most of the mitigation measures suggested by Dr. Smallwood were not identified until after the DDSP EIR was certified, such as the American Bird Conservancy Guidelines in 2015, and the City of San Francisco building design guidelines in 2011. *See id.*, p. 16. These mitigation measures are therefore new information of substantial importance, which were not known and could not have been known when the DDSP EIR was certified as complete.

SWAPE's comment also includes a list of mitigation measures the City could feasibly implement to substantially reduce the Project's significant construction and operational emissions. *See Ex. C*, pp. 14–21. Many of these mitigation measures were not identified until after the DDSP EIR was certified, including the Northeast Diesel Collaborative's Best Practices for Clean Diesel Construction in 2012. *See id.*, p. 15. These mitigation measures are therefore new information of substantial importance, which were not known and could not have been known when the DDSP EIR was certified as complete.

The feasible mitigation measures Mr. Offermann, Dr. Smallwood, and environmental consulting firm SWAPE recommended to substantially reduce the significant impacts each expert also identified that the Project will have is new information of substantial importance that was not known and could not have been known with the exercise of reasonable diligence when the DDSP EIR was certified, and are considerably different from those analyzed in the DDSP EIR because no mitigation measures were analyzed for these categories of environmental effects. The City therefore cannot rely on CEQA Guidelines section 15182 to exempt the Project from project-level environmental review.

IV. CONCLUSION

The City has not met the criterion under CEQA Guidelines section 15182 and therefore cannot use section 15182 to relieve the City from conducting project-level CEQA review for the Project. Thank you for your attention to these comments. Please include this letter and all attachments hereto in the record of proceedings for this project.

Sincerely,



Paige Fennie

Lozeau | Drury LLP