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August 17, 2021

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Re: Comment on the Initial Study/Mitigated Negative Declaration for the Chestnut & Tenth Street Commercial Project – August 19, 2021 Planning Commission Meeting, Agenda Item No. V.B

Dear Chair Fischer, Honorable Members of the Planning Commission, and Mr. Tamborini:

I am writing on behalf of the Laborers International Union of North America, Local Union 270 and its members living in and around the City of Gilroy (“LIUNA”) regarding the Initial Study and Mitigated Negative Declaration (“IS/MND”) prepared for the Chestnut & Tenth Street Commercial Project located on two parcels at 401 and 405 East Tenth Street in Gilroy (the “Project”). After reviewing the IS/MND, we conclude that it fails to analyze all environmental impacts and implement all necessary mitigation measures. LIUNA respectfully requests that the City Planning Division prepare an environmental impact report (“EIR”) for the Project pursuant to the California Environmental Quality Act (“CEQA”), Public Resources Code section 21000, *et seq.*

These comments have been prepared with the assistance of Certified Industrial Hygienist

Francis Offermann, PE, CIH and wildlife biologist Shawn Smallwood, Ph.D. Mr. Offermann'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 hereto and are incorporated herein by reference and entirety.

I. PROJECT DESCRIPTION

The Project proposes to demolish and remove on-site improvements, construct and operate a 66-foot tall, five-story, 120-room hotel, as well as a car wash and four commercial buildings. Three of the commercial structures would have drive-through service and the fourth would include a gasoline service station and a convenience store. The Project will generate 5,425 vehicle trips per day with a net increase over existing trips of 4,686 vehicle trips per day. An average of 119 employees are expected to work at the Project site, with most of those employed in the proposed hotel.

II. LEGAL STANDARD

As the California Supreme Court has held, “[i]f no EIR has been prepared for a nonexempt project, but substantial evidence in the record supports a fair argument that the project may result in significant adverse impacts, the proper remedy is to order preparation of an EIR.” *Communities for a Better Env’t v. South Coast Air Quality Mgmt. Dist.* (2010) 48 Cal.4th 310, 319-320 (*CBE v. SCAQMD*) (citing *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75, 88; *Brentwood Assn. for No Drilling, Inc. v. City of Los Angeles* (1982) 134 Cal.App.3d 491, 504–505). “Significant environmental effect” is defined very broadly as “a substantial or potentially substantial adverse change in the environment.” Pub. Res. Code (“PRC”) § 21068; see also 14 CCR § 15382. An effect on the environment need not be “momentous” to meet the CEQA test for significance; it is enough that the impacts are “not trivial.” *No Oil, Inc.*, 13 Cal.3d at 83. “The ‘foremost principle’ in interpreting CEQA is that the Legislature intended the act to be read so as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.” *Communities for a Better Env’t v. Cal. Res. Agency* (2002) 103 Cal.App.4th 98, 109 (*CBE v. CRA*).

The EIR is the very heart of CEQA. *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1214 (*Bakersfield Citizens*); *Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 927. The EIR is an “environmental ‘alarm bell’ whose purpose is to alert the public and its responsible officials to environmental changes before they have reached the ecological points of no return.” *Bakersfield Citizens*, 124 Cal.App.4th at 1220. The EIR also functions as a “document of accountability,” intended to “demonstrate to an apprehensive citizenry that the agency has, in fact, analyzed and considered the ecological implications of its action.” *Laurel Heights Improvements Assn. v. Regents of Univ. of Cal.* (1988) 47 Cal.3d 376, 392. The EIR process “protects not only the environment but also informed self-government.” *Pocket Protectors*, 124 Cal.App.4th at 927.

An EIR is required if “there is substantial evidence, in light of the whole record before

the lead agency, that the project may have a significant effect on the environment.” PRC § 21080(d); see also *Pocket Protectors*, 124 Cal.App.4th at 927. In very limited circumstances, an agency may avoid preparing an EIR by issuing a negative declaration, a written statement briefly indicating that a project will have no significant impact thus requiring no EIR (14 CCR § 15371), only if there is not even a “fair argument” that the project will have a significant environmental effect. PRC, §§ 21100, 21064. Since “[t]he adoption of a negative declaration . . . has a terminal effect on the environmental review process,” by allowing the agency “to dispense with the duty [to prepare an EIR],” negative declarations are allowed only in cases where “the proposed project will not affect the environment at all.” *Citizens of Lake Murray v. San Diego* (1989) 129 Cal.App.3d 436, 440.

Where an initial study shows that the project may have a significant effect on the environment, a mitigated negative declaration may be appropriate. However, a mitigated negative declaration is proper *only* if the project revisions would avoid or mitigate the potentially significant effects identified in the initial study “to a point where clearly no significant effect on the environment would occur, and . . . there is no substantial evidence in light of the whole record before the public agency that the project, as revised, may have a significant effect on the environment.” PRC §§ 21064.5 and 21080(c)(2); *Mejia v. City of Los Angeles* (2005) 130 Cal.App.4th 322, 331. In that context, “may” means a reasonable possibility of a significant effect on the environment. PRC §§ 21082.2(a), 21100, 21151(a); *Pocket Protectors*, 124 Cal.App.4th at 927; *League for Protection of Oakland's etc. Historic Res. v. City of Oakland* (1997) 52 Cal.App.4th 896, 904–05.

Under the “fair argument” standard, an EIR is required if any substantial evidence in the record indicates that a project may have an adverse environmental effect—even if contrary evidence exists to support the agency’s decision. 14 CCR § 15064(f)(1); *Pocket Protectors*, 124 Cal.App.4th at 931; *Stanislaus Audubon Society v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 150-51; *Quail Botanical Gardens Found., Inc. v. City of Encinitas* (1994) 29 Cal.App.4th 1597, 1602. The “fair argument” standard creates a “low threshold” favoring environmental review through an EIR rather than through issuance of negative declarations or notices of exemption from CEQA. *Pocket Protectors*, 124 Cal.App.4th at 928.

The “fair argument” standard is virtually the opposite of the typical deferential standard accorded to agencies. As a leading CEQA treatise explains:

This ‘fair argument’ standard is very different from the standard normally followed by public agencies in making administrative determinations. Ordinarily, public agencies weigh the evidence in the record before them and reach a decision based on a preponderance of the evidence. [Citations]. The fair argument standard, by contrast, prevents the lead agency from weighing competing evidence to determine who has a better argument concerning the likelihood or extent of a potential environmental impact. The lead agency’s decision is thus largely legal rather than factual; it does not resolve conflicts in the evidence but determines only whether substantial evidence exists in the record to support the

prescribed fair argument.

Kostka & Zisheke, *Practice Under CEQA*, §6.29, pp. 273-274. The Courts have explained that “it is a question of law, not fact, whether a fair argument exists, and the courts owe no deference to the lead agency’s determination. Review is de novo, with a preference for resolving doubts in favor of environmental review.” *Pocket Protectors*, 124 Cal.App.4th at 928 (emphasis in original).

CEQA requires that an environmental document include a description of the project’s environmental setting or “baseline.” CEQA Guidelines § 15063(d)(2). The CEQA “baseline” is the set of environmental conditions against which to compare a project’s anticipated impacts. *CBE v. SCAQMD*, 48 Cal.4th at 321. CEQA Guidelines section 15125(a) states, in pertinent part, that a lead agency’s environmental review under CEQA:

...must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time [environmental analysis] is commenced, from both a local and regional perspective. This environmental setting will normally constitute the baseline physical conditions by which a Lead Agency determines whether an impact is significant.

See Save Our Peninsula Committee v. County of Monterey (2001) 87 Cal.App.4th 99, 124–25 (“*Save Our Peninsula*”).) As the court of appeal has explained, “the impacts of the project must be measured against the ‘real conditions on the ground,’” and not against hypothetical permitted levels. *Id.* at 121–23.

III. DISCUSSION

A. **There is Substantial Evidence of a Fair Argument that the Project’s Indoor Air Quality Impacts Will Have a Significant Health Risk Impact.**

Certified Industrial Hygienist, Francis “Bud” Offermann, PE, CIH has conducted a review of the Project and the documents provided to the Planning Commission and prepared expert comments on the Project’s indoor air emissions and associated health risks. Mr. Offermann concludes it is likely that the Project will expose future employees of the Project to significant impacts related to indoor air quality, and in particular, emissions of the cancer-causing chemical formaldehyde. Mr. Offermann is one of the world’s leading experts on indoor air quality and has published extensively on the topic. Mr. Offermann’s expert comments and curriculum vitae are attached as Exhibit A.

Formaldehyde is a known human carcinogen and listed by the State of California as a Toxic Air Contaminant (“TAC”). MND, p. 33. The Bay Area Air Quality Management District (“BAAQMD”) has established a significance threshold of health risks for carcinogenic TACs of 10 per million. *Id.*, p. 37 (Table 4.3-2). While the City acknowledges formaldehyde as a TAC, it discusses it only in the abstract and in the context of diesel exhaust, thus failing to acknowledge

the significant indoor air emissions that will result from the Project. Specifically, there is no discussion of impacts or health risks, no analysis, and no identification of mitigations for significant emissions of formaldehyde to indoor air from the Project.

Mr. Offermann explains that many composite wood products typically used indoors contain formaldehyde-based glues which off-gas formaldehyde over a very long time period. He explains, “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.” Offermann Comments, pp. 2-3.

Mr. Offermann calculates that future employees of the Project will be exposed to a cancer risk from formaldehyde of 17.7 per million, even assuming all materials are compliant with the California Air Resources Board’s formaldehyde airborne toxics control measure. Offermann Comments, p. 4. This exceeds BAAQMD’s CEQA significance thresholds for airborne cancer risk of 10 per million. *Id.* Mr. Offermann stresses that his calculations account for the fact that wood products for the project would be compliant with the most recent CARB standards. *Id.*, pp. 4-5.

Based on his review of the Project, Mr. Offermann concludes that the potential for significant formaldehyde exposure requires further assessment prior to approval of the Project, and he proposes mitigation measures that will help achieve acceptable indoor concentrations. Offermann Comments, p. 5. Mr. Offermann prescribes several steps for the project proponent to take to assess the formaldehyde emissions in building materials and furnishings, such as defining indoor air quality zones and calculating formaldehyde emissions rates and risks using standard industry methods. *Id.*, pp. 5-7. As for mitigation, Mr. Offermann recommends both source mitigation (the preferred method due to its lower initial and operating costs) and ventilation mitigation. *Id.*, pp. 8-13. Source mitigation requires builders to select materials that are made with CARB approved no-added formaldehyde (“NAF”) resins or ultra-low emitting formaldehyde (“ULEF”) resins to ensure that the BAAQMD cancer risk standards are met. *Id.*, p. 11.

When a Project exceeds a duly adopted CEQA significance threshold, as here, this alone establishes substantial evidence that the project will have a significant adverse environmental impact. Indeed, in many instances, such air quality thresholds are the only criteria reviewed and 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 Air District’s “published CEQA quantitative criteria” and “threshold level of cumulative significance”); see also *Communities for a Better Env’t. v. California Res. Agency* (2002) 103 Cal.App.4th 98, 110-11 (“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”).

The California Supreme Court made clear the importance that an air district significance

threshold plays in providing substantial evidence of a significant adverse impact. *Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310, 327 (“As the [South Coast Air Quality Management] District’s established significance threshold for NOx is 55 pounds per day, these estimates [of NOx emissions of 201 to 456 pounds per day] constitute substantial evidence supporting a fair argument for a significant adverse impact.”). Since expert evidence demonstrates that the Project will exceed the BAAQMD’s CEQA significance threshold, there is substantial evidence that an “unstudied, potentially significant environmental effect[.]” exists. See *Friends of Coll. of San Mateo Gardens v. San Mateo Cty. Cmty. Coll. Dist.* (2016) 1 Cal.5th 937, 958.

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”). In that case, the Supreme Court expressly held that potential adverse impacts to future users and residents from pollution generated by a proposed project must be addressed under CEQA. 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 800-01. However, to the extent a project may exacerbate existing environmental conditions at or near a project site, those would still have to be considered pursuant to CEQA. *Id.* at 801. 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.

The carcinogenic formaldehyde emissions identified by Mr. Offermann are not an existing environmental condition. The emissions will be a direct result of the construction of the Project using CARB Phase 2 Formaldehyde ATCM materials, which do not adequately mitigate cancer risks from formaldehyde emissions. Once built, the Project will emit formaldehyde at levels that pose significant direct and cumulative health risks. The Supreme Court in *CBIA* expressly found that if a project has this type of air emissions and health impacts on both the environment and users and residents, its proponent must address those impacts in the CEQA process. The existing TAC sources near the Project site would have to be considered in evaluating the cumulative effect on future residents of both the Project’s TAC emissions as well as those existing off-site emissions.

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. 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 future employees of the Project are human beings

and the health and safety of those employees must be subjected to CEQA's safeguards.

The City has a duty to investigate issues relating to a project's potential environmental impacts. See *County Sanitation Dist. No. 2 v. County of Kern* (2005) 127 Cal.App.4th 1544, 1597-98 ("[U]nder CEQA, the lead agency bears a burden to investigate potential environmental impacts."). The proposed Project will have significant impacts on air quality and health risks by emitting cancer-causing levels of formaldehyde into the air that will expose future employees to cancer risks potentially in excess of BAAQMD's threshold of significance for cancer health risks of 10 per million.

The City fails to address or mitigate the significant impact of the Project's formaldehyde emissions. Mr. Offermann's comments constitute substantial evidence of a fair argument that the Project may have a significant impact on indoor air quality from formaldehyde emissions. An EIR must be prepared for the Project prior to approval to address this impact.

B. The Project Will Have Significant Impacts on Biological Resources That the IS/MND Fails to Adequately Analyze and Mitigate.

1. The wildlife baseline relied upon by the IS/MND is inadequate because it is based on flawed premises regarding the occurrence of special-status species and therefore underestimated these species.

The evening of August 14, 2021, Dr. Smallwood visited the project site and its vicinity and performed a reconnaissance level survey of wildlife utilizing the area of the Project. Smallwood Comments, p. 1. Dr. Smallwood reconnoitered the area for 120 minutes. *Id.* During that brief visit, he observed the presence of 17 species of vertebrate wildlife at the Project site. *Id.*, p. 2. Most of the species he observed relevant to the Project's impacts were bird species. *Id.*, p. 4. Had he spent more time at the site, Dr. Smallwood explains he would have detected even more species. *Id.*, pp. 4-6.

Every CEQA document must start from a "baseline" assumption. The CEQA "baseline" is the set of environmental conditions against which to compare a project's anticipated impacts. *Communities for a Better Env't. v. So. Coast Air Qual. Mgmt. Dist.* (2010) 48 Cal. 4th 310, 321. Unfortunately, the IS/MND's reliance on false premises to reach conclusions about the Project site resulted in a skewed baseline. Specifically, Dr. Smallwood points out that the City incorrectly determined that "(1) disturbance precludes the occurrence of special-status species, and (2) all special-status species depend solely on natural communities." Smallwood Comments, p. 6. Contrary to these incorrect assumptions, Dr. Smallwood explains that "many assignments of special status have been to species that occur only in California or whose geographic ranges are small or diminishing," and "many special-status species occur in anthropogenic environments." *Id.* A skewed baseline such as the one used by the City here ultimately "mislead(s) the public" by engendering inaccurate analyses of environmental impacts, mitigation measures and cumulative impacts for biological resources. See *San Joaquin Raptor Rescue Center*, 149 Cal.App.4th 645, 656; *Woodward Park Homeowners*, 150 Cal.App.4th 683, 708-711.

Dr. Smallwood points out that the IS/MND did not rely on either a survey for wildlife on site nor a review of species-occurrence databases or expert knowledge. Smallwood Comments, p. 7. He notes that there are multiple databases that would have been useful to determine presence and likelihood of presence, such as eBird and iNaturalist. *Id.* Dr. Smallwood reviewed these databases and found that the Project site “either occurs within the geographic ranges or [] occurs near where others have reported sightings of at least 49 special-status species of wildlife.” *Id.*, pp. 7-8 (Table 2). One such species is the monarch butterfly, which Dr. Smallwood said requires a special survey effort due to the species’ rapid decline in California and the existence on the Project site of eucalyptus trees, a suitable habitat for the butterflies. *Id.*, p. 7. The occurrence of special-status species at or near the Project site warrants discussion and analysis in an EIR to ensure that any impacts are mitigated to a less than significant level.

In addition to this failure to fully assess species occurrences, Dr. Smallwood found that the IS/MND also relied on the erroneous presumption that impacts to biological resources occurred only to terrestrial habitats, thus overlooking an entire category of species that rely primarily on the aerosphere. Smallwood Comments, p. 7. The IS/MND neglected to consider this portion of habitat, and as a result, no attention was paid to the impacts the Project will have on avian species from collisions with the building’s windows and other structures. An EIR is necessary to consider the species present in the aerosphere at the Project site.

2. The IS/MND failed to address the potential adverse impact on bird species from window collisions.

According to Dr. Smallwood, the Project will most likely have a significant impact on birds as a result of window collisions. The City has not analyzed or mitigated these potential impacts to special-species birds.

Dr. Smallwood identifies the now widely-recognized impact of bird collisions with windows and other building structures:

Window collisions are often characterized as either the second or third largest source or human-caused bird mortality. The numbers behind these characterizations are often attributed to Klem’s (1990) and Dunn’s (1993) estimates of about 100 million to 1 billion bird fatalities in the USA, or more recently Loss et al.’s (2014) estimate of 365-988 million bird fatalities in the USA or Calvert et al.’s (2013) and Machtans et al.’s (2013) estimates of 22.4 million and 25 million bird fatalities in Canada, respectively. However, these estimates were likely biased too low, because they were based on opportunistic sampling, volunteer study participation, fatality monitoring by more inexperienced than experienced searchers, and usually no adjustments made for scavenger removals of carcasses before searchers could detect them (Bracey et al. 2016).

Smallwood Comments, p. 11. Dr. Smallwood’s site visit confirmed the presence of many bird

species that would travel through the Project site's air space. *Id.* He also notes that "most of the special-status species in Table 2 [of his comment] have been documented as window collision fatalities and are therefore susceptible to new structural glass installations." *Id.*

In an effort to assess the scope of the Project's impacts on bird species using the area, Dr. Smallwood has calculated an estimate of the number of bird fatalities that would result from collisions with the Project. Smallwood Comments, p. 12. The IS/MND did not include any figures on how much glass would be used on the Project's hotel facades, which is important in analyzing impacts to wildlife from window collisions. Based on an average rate of facades as a function of square footage of 13 recent office buildings and hotels in California, Dr. Smallwood estimates that the building will include about 2,673 m² of glass on its facades. *Id.* Based on Dr. Smallwood's own data and review of a number of scientific studies, the mean fatality rate of bird deaths per m² of glass per year is 0.073. *Id.* He therefore estimates that the project could result in 194 bird deaths per year, a number which could be up to 3 times higher when accounting for fatalities removed by scavengers or missed by fatality searchers. *Id.* This death rate would continue every year until the structure were either renovated to reduce bird collisions, or was removed. *Id.*

Dr. Smallwood provides detailed information about the types of factors that would contribute to a Project's bird collision risks and available mitigation measures. Smallwood Comments, pp. 12-16. As it stands, however, "the proposed project's design remains insufficiently described to determine the degree to which the project would contribute to relative collision risk." *Id.*, p. 16. Dr. Smallwood concludes that key additional information for impacts assessment and mitigation include "intensity and timing of bird traffic, heights above ground, travel trajectories, and specific behaviors of birds in flight." *Id.*

Because this impact was not addressed in the IS/MND and Dr. Smallwood has presented substantial evidence of a fair argument that the Project's windows will impact birds, the City must prepare an EIR to analyze the impact of window collision on bird species.

3. The Project will have a significant impact on wildlife from vehicle collisions because of increased traffic generated by the Project.

The IS/MND does not address the impacts the Project's vehicle trips will have on wildlife. The Project will generate 5,425 vehicle trips per day with a net increase over existing trips of 4,686 vehicle trips per day. According to the IS/MND, the project will generate about 2,194 vehicle trips per job. MND, Appendix A. This translates into more than 800,000 vehicle trips per year among employees, not including the predicted VMT for hotel guests, which do not appear to have been predicted in the IS/MND. Yet the IS/MND does not analyze the impacts on wildlife that will be caused by this increase in traffic on roadways servicing the Project. Vehicle collisions have the potential to impact dozens of special-status species.

Vehicle collisions with wildlife is not a minor issue, but rather results in the death of millions of species each year. Dr. Smallwood explains:

For wildlife vulnerable to front-end collisions and crushing under tires, road mortality can be predicted from the study of Mendelsohn et al. (2009) as a basis, although it would be helpful to have the availability of more studies like that of Mendelsohn et al. (2009) at additional locations. . . .

During the Mendelsohn et al. (2009) study, 19,500 cars traveled Vasco Road daily, so the vehicle miles that contributed to my estimate of non-volant fatalities was 19,500 cars and trucks \times 2.5 miles studied \times 365 days/year \times 1.25 years = 22,242,187.5 vehicle miles per 12,187 wildlife fatalities, or 1,825 vehicle miles per fatality. Applying these 1,825 miles per fatality to my prediction of the project's 800,810 annual VMT, I predict 439 wildlife fatalities per year. **Operations over 50 years would accumulate 21,950 wildlife fatalities.** It remains unknown whether and to what degree vehicle tires contribute to carcass removals from the roadway, thereby contributing a negative bias to the fatality estimates I made from the Mendelsohn et al. (2009) fatality counts.

Smallwood Comments, p. 19 (emphasis in original).

Based on Dr. Smallwood's calculations, he concluded that "the project-generated traffic would cause substantial, significant impacts to wildlife." *Id.* Because Dr. Smallwood has provided substantial evidence of a fair argument that this impact from the Project's traffic may be significant, the City must analyze such impacts in an EIR.

4. The IS/MND failed to address the cumulative impacts of past, ongoing, and future projects on wildlife.

The IS/MND uses the incorrect standard for assessing cumulative impacts. Smallwood Comments, p. 19. As Dr. Smallwood notes, "the IS/MND implies that cumulative impacts are really just residual impacts of incomplete mitigation of project-level impacts. If that was CEQA's standard, then cumulative effects analysis would be merely an analysis of mitigation efficacy. . . . the IS/MND's implied standard is not the standard of analysis of cumulative effects." *Id.*, p. 20. Instead, Dr. Smallwood explains that "CEQA defines cumulative impacts, and it outlines two general approaches for performing the analysis. . . . An EIR is needed to address cumulative impacts from loss of both terrestrial and aerial habitat, from bird-window collision mortality and from road mortality." *Id.*

Kraig Tamborini, Senior Planner
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IV. CONCLUSION

In light of the above comments, the City must prepare an EIR for the Project and the draft EIR should be circulated for public review and comment in accordance with CEQA. Thank you for considering these comments.

Sincerely,



Michael R. Lozeau