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Via Email

March 8, 2019

Steven Turner, Planning Manager
1017 Middlefield Road
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Re: Comment on the Draft Environmental Impact Report for the Harbor View Project
(SCH No. 2018012016)

Dear Mr. Turner:

I am writing on behalf of the Laborers International Union of North America, Local Union 261 and its members living in San Mateo County and the City of Redwood City (collectively "LIUNA") regarding the Draft Environmental Impact Report ("DEIR") prepared for the Harbor View Project, State Clearinghouse No. 2017082023 ("Project").

We have reviewed the DEIR with the assistance of expert biologist Shawn Smallwood, Ph.D., who has reviewed and prepared comments on the DEIR's discussion of impacts to biological resources. In addition to concerns about the Project's impacts on biological resources, our review also has identified serious shortcomings in the DEIR's analysis of the Project's human health impacts. The DEIR omits any discussion of indoor air emissions of formaldehyde and the cancer risks posed to workers at the new office building. The DEIR also fails to substantiate its conclusion that the Project's operation, including at least 8,090 vehicle trips per day will not have significant health risks on the adjacent inmates incarcerated at the Maple Street Correctional Center, especially the cumulative impacts when the Project's emissions are combined with the health risks posed by the adjacent Highway 101, the correctional center's and police station's on-site generators, and particulates emissions associated with the Union Pacific railroad tracks immediately to the west and east of the site operation and the Graniterock facility.

LIUNA urges the City to revise the DEIR to adequately describe, analyze, and mitigate the Project and its impacts. The revised DEIR should be recirculated to allow public review and comment. LIUNA further reserves its right to submit additional comments and evidence up until the date of the City Council's final decision on the Project. (*See Galante Vineyards v. Monterey Water Dist.* (1997) 60 Cal.App.4th 1109.)

I. PROJECT DESCRIPTION

The Project includes the construction and operation of four office buildings, two parking structures, and an employee amenities building on a 27.08 acre site about a thousand feet from Steinberger Slough and Redwood Creek to the north and west and several hundred feet from existing salt ponds to the east. The four office buildings would extend to seven-stories in height with a total floor space area of 1,144,748 square feet. The office buildings would be 100 feet tall to rooftop and 123 feet to the top of each rooftop's trellis/tower. 3,855 parking spaces are proposed for the Project. The two proposed garages would be three and five stories high, respectively, with 3,099 total parking spaces. An additional 756 surface parking spaces also are proposed. The 35,000 square foot amenities building would be two stories in height. The buildings are proposed to be set within a campus including 4 acres of green space and landscaping on about 36 percent of the site with landscaped promenades between the buildings. The Project includes the demolition of the existing 67,000 square-foot vacant construction office building on the site, remediation of existing on-site contamination, the removal of about 106,000 tons of soil and the importation of 56,000 cubic yards of soil to add to existing fill materials to elevate the buildings above the existing flood plain and anticipated sea-level rise. It is anticipated that construction of the Project will take about two years to complete. The site currently is zoned Industrial and will required an amendment to both the General Plan and the Zoning Map to reflect commercial office uses.

III. LEGAL STANDARDS

A. EIR

CEQA requires that an agency analyze the potential environmental impacts of its proposed actions in an environmental impact report ("EIR") (except in certain limited circumstances). (See, e.g., Pub. Resources Code, § 21100.) The EIR is the very heart of CEQA. (*Dunn-Edwards v. BAAQMD* (1992) 9 Cal.App.4th 644, 652.) "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 Environment v. Cal. Resources Agency* (2002) 103 Cal.App.4th 98, 109 ("CBE v. CRA").)

CEQA has two primary purposes. First, CEQA is designed to inform decision makers and the public about the potential, significant environmental effects of a project. (14 Cal. Code Regs. ("CEQA Guidelines") § 15002(a)(1).) "Its purpose is to inform the public and its responsible officials of the environmental consequences of their decisions before they are made. Thus, the EIR 'protects not only the environment but also informed self-government.'" (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal. 3d 553, 564.) The EIR has been described as "an environmental 'alarm bell' whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return." (*Berkeley Keep Jets Over the Bay v. Bd. of Port Comm'rs.* (2001) 91 Cal.App.4th 1344, 1354 ("Berkeley Jets"); *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810.)

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Second, CEQA requires public agencies to avoid or reduce environmental damage when “feasible” by requiring “environmentally superior” alternatives and all feasible mitigation measures. (CEQA Guidelines, § 15002(a)(2) and (3); *See also Berkeley Jets*, 91 Cal.App.4th at 1354; *Citizens of Goleta Valley*, 52 Cal.3d at 564.) The EIR serves to provide agencies and the public with information about the environmental impacts of a proposed project and to “identify ways that environmental damage can be avoided or significantly reduced.” (CEQA Guidelines, §15002(a)(2).) If the project will have a significant effect on the environment, the agency may approve the project only if it finds that it has “eliminated or substantially lessened all significant effects on the environment where feasible” and that any unavoidable significant effects on the environment are “acceptable due to overriding concerns.” (Pub. Resources Code, § 21081; CEQA Guidelines, § 15092(b)(2)(A) & (B).)

While the courts review an EIR using an “abuse of discretion” standard, “the reviewing court is not to ‘uncritically rely on every study or analysis presented by a project proponent in support of its position. A ‘clearly inadequate or unsupported study is entitled to no judicial deference.’” (*Berkeley Jets*, 91 Cal.App.4th at p. 1355 (emphasis added), quoting, *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal. 3d 376, 391 409, n. 12.) As the court stated in *Berkeley Jets*, 91 Cal.App.4th at 1355:

A prejudicial abuse of discretion occurs “if the failure to include relevant information precludes informed decisionmaking and informed public participation, thereby thwarting the statutory goals of the EIR process.” (*San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 722; *Galante Vineyards v. Monterey Peninsula Water Management Dist.* (1997) 60 Cal. App. 4th 1109, 1117; *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal. App. 4th 931, 946.)

More recently, the California Supreme Court has emphasized that:

When reviewing whether a discussion is sufficient to satisfy CEQA, a court must be satisfied that the EIR (1) includes sufficient detail to enable those who did not participate in its preparation to understand and to consider meaningfully the issues the proposed project raises [citation omitted], and (2) makes a reasonable effort to substantively connect a project's air quality impacts to likely health consequences.

(*Sierra Club v. Cty. of Fresno* (2018) 6 Cal.5th 502, 510 (2018), citing *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 405.) “Whether or not the alleged inadequacy is the complete omission of a required discussion or a patently inadequate one-paragraph discussion devoid of analysis, the reviewing court must decide whether the EIR serves its purpose as an informational document.” (*Sierra Club v. Cty. of Fresno*, 6 Cal.5th at 516.) Although an agency has discretion to decide the manner of discussing potentially significant effects in an EIR, “a reviewing court must determine whether the discussion of a potentially significant effect is sufficient or insufficient, i.e., whether the EIR comports with its intended function of including ‘detail sufficient to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the

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proposed project.” (6 Cal.5th at 516, citing *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1197, 22 Cal.Rptr.3d 203 (*Bakersfield*)). “The determination whether a discussion is sufficient is not solely a matter of discerning whether there is substantial evidence to support the agency’s factual conclusions.” (6 Cal.5th at 516.) Whether a discussion of a potential impact is sufficient “presents a mixed question of law and fact. As such, it is generally subject to independent review. However, underlying factual determinations—including, for example, an agency’s decision as to which methodologies to employ for analyzing an environmental effect—may warrant deference.” (*Sierra Club v. Cty. of Fresno*, 6 Cal.5th at 516.) As the Court emphasized:

[W]hether a description of an environmental impact is insufficient because it lacks analysis or omits the magnitude of the impact is not a substantial evidence question. A conclusory discussion of an environmental impact that an EIR deems significant can be determined by a court to be inadequate as an informational document without reference to substantial evidence.

(*Sierra Club v. Cty. of Fresno*, 6 Cal.5th at 514.)

In general, mitigation measures must be designed to minimize, reduce or avoid an identified environmental impact or to rectify or compensate for that impact. (CEQA Guidelines § 15370.) Where several mitigation measures are available to mitigate an impact, each should be discussed and the basis for selecting a particular measure should be identified. (*Id.* at § 15126.4(a)(1)(B).) A lead agency may not make the required CEQA findings unless the administrative record clearly shows that all uncertainties regarding the mitigation of significant environmental impacts have been resolved.

IV. THE DEIR IS INCONSISTENT WITH CEQA’S REQUIREMENTS.

A. THE DEIR’S ASSERTION THAT NO HEALTH RISKS WILL RESULT FROM THE PROJECT’S EXTENSIVE DEMOLITION, GRADING AND CONSTRUCTION IS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE.

Although the DEIR includes a discussion of health risks posed by the Project’s two-year construction period based on a quantified health risk assessment, it fails to sufficiently address health risks from the Project’s long-term operations. Looking at emissions for the construction period alone, the DEIR states that the resulting cancer risk to inmates at the adjacent correctional center would be less than 1 in a million, which is below the BAAQMD’s significance threshold of 10 in a million. (DEIR, 4.2-22.) Unlike the analysis and discussion provided for the Project’s construction, the EIR fails to provide any sufficient analysis or discussion of the Project’s direct and cumulative health impacts resulting from its operation.

The DEIR only touches on operational health risks, stating that:

“The Project would result in vehicle trip generation that would primarily be gasoline powered and would not be a significant source of TACs. Impacts from Project operation

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are expected to be minimal due to the use of natural gas (not diesel) fired generators, which emit only negligible levels of TACs.”

The Project’s 8,090 daily vehicle trips would be distributed over the surrounding roadway network and would not add to any one roadway segment. Given the absence of sensitive receptors in the area, the increase in traffic due to the Project would not result in significant exposure of receptors to substantial pollutant concentrations of TACs.”

(DEIR, p. 4.2-28.) As for cumulative health risks, the DEIR’s entire discussion states:

The Project’s incremental increase in localized TAC emissions resulting from new vehicle trips would be minor (Impact AIR-6). The Project would not contribute substantially to cumulative TAC emissions that could affect nearby existing and nearby proposed sensitive land uses. Therefore, the Project’s contribution to any cumulative air quality impacts related to exposure to TACs would be less than significant.

(DEIR, p. 4.2-30.)

The EIR’s cursory discussion of the Project’s direct and cumulative operational health impacts is insufficient and fails to “enable those who did not participate in its preparation to understand and to consider meaningfully the issues the proposed project raises[.]” (*Sierra Club v. Cty. of Fresno*, 6 Cal.5th 502, 510.) Alternatively, by failing to provide any analytical basis for the conclusion that 8,090 vehicles per day, never mind delivery trucks, would not have significant health impacts on inmates about one hundred feet away is not supported by substantial evidence.

OEHHA recommends a health risk assessment of a project’s operational emissions for projects that will be in place for more than 6 months. (OEHHA, February 2015, pp. 8-6, 8-15.) Projects lasting more than 6 months should be evaluated for the duration of the project, and an exposure duration of 30 years be used to estimate individual cancer risk for the maximally exposed individual resident (MEIR). (*Id.*) The Project would last at least 30 years and certainly much longer than six months. The DEIR does not provide a sufficient explanation for the conclusion that well over 8,000 vehicles and trucks driving on a daily basis near locked-up inmates would not result in emissions with health risks to those inmates greater than 10 in a million.

Likewise, the DEIR fails to provide a sufficient discussion of the Project’s cumulative health risks during its operation. The correction center is virtually surrounded by toxic air contaminant sources. Route 101 is about 200 feet from the most sensitive receptor. Various generators are located nearby, including one operated by the correction center and another by the City. Railroad tracks run between the Project and the correction center as well as on the east side of the Project. Adding in the incremental cancer risk that likely exists for the over 8,000 vehicles that will be driving through the Project site every day would very likely contribute to the

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cumulative health risk to the inmates, i.e. a cancer risk exceeding 100 in a million. None of this is seriously considered in the DEIR.

In order for the DEIR to be sufficient under CEQA, the cavalier assertions regarding the Project's health impacts on the adjacent inmates must be substantiated with a thorough health risk assessment and discussion in the DEIR. The City and DEIR's conclusory assertions fail as a matter of law.

B. THE DEIR FAILS TO ESTABLISH AN ACCURATE BASELINE FOR SENSITIVE BIOLOGICAL RESOURCES AND FAILS TO DISCLOSE AND MITIGATE IMPACTS OF THE PROJECT ON NUMEROUS SENSITIVE SPECIES.

Expert biologist Shawn Smallwood, Ph.D., has reviewed the DEIR's discussion of biological resources. Drawing on his familiarity with the project area and decades of studying and surveying many of the species encountered at the site, Dr. Smallwood has prepared a critique of the DEIR, pointing out numerous shortcomings in the baseline assessment of the presence of species at the site, failures to evaluate impacts that will result from the Project, and numerous instances where the DEIR's assertions are insufficient or not supported by substantial evidence.

1. The DEIR Fails To Adequately Address The Project's Impacts On Wildlife Resulting from Bird Strikes.

The DEIR mentions the likely impacts to birds caused from collisions with the Project's buildings. As the DEIR notes:

Development of the Project may increase the risk of bird collisions over that posed by existing structures. For new buildings, reflective building façades that are generally located in a clear flight path from water features can create hazards for birds. Other potential feature-related hazards new development can pose to birds include glass courtyards, transparent building corners, or clear glass walls on rooftops or balconies. When considering the Project site location along a known migratory route, proximity to the bay, the large area of exterior glass surfaces, and the presence of frequent shoreline fog which can adversely affect avian navigational awareness, the Harbor View Project development could increase the risk of avian collisions. If the buildings' exterior surfaces were to be reflective and not incorporate elements to avoid or minimize avian collisions, it is foreseeable that an unknown number of songbirds or waterbirds could collide with new structures and could result in injury or fatality.

(DEIR, p. 4.3-33.) This discussion of the Project is not sufficient to describe the Project's impacts on birds colliding with the building's largely glass facades. By framing this impact as a mere possibility, the DEIR misrepresents the Project's potential impacts and fails to give any sense of the magnitude of this potential impact.

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Full disclosure of the potential impact on wildlife of window collisions is especially important because “[w]indow collisions are often characterized as either the second or third largest source of human-caused bird mortality.” (Dr. Smallwood Comments, p. 9.) As a preliminary matter, a proper DEIR for the Project should include “specific details of window placements, window extent, types of glass, and anticipated interior and exterior landscaping and lighting.” (*Id.* at p. 7.) The DEIR then should discuss the likely magnitude of bird collisions with the Project as well as the particular species that would be most likely to collide with the Project and evaluate the direct and cumulative impacts of those bird fatalities.

Dr. Smallwood reviewed a number of studies in order to calculate the number of bird collisions per m² of glass windows and window curtain walls per year. (*Id.*, p. 7.) According to his calculations, the Project’s estimated 28,550 m² of glass windows and window curtain walls, would result in an estimated 2,170 bird deaths per year. (*Id.* at p. 12.) As Dr. Smallwood also points out, the species present in that area which are prone to collisions with buildings would include a number of species listed as Bird Species of Conservation Concern, California Species of Special Concern, Taxa to Watch List or by Section 3503.5. These would include, for example, Alameda song sparrow, Allen’s hummingbird, Yellow warbler, San Francisco common yellowthroat, Cooper’s hawk, and Red-tailed hawk. (*Id.*, p. 4; *Id.*, p. 7 (“Seven special-status species known to occur in the immediate project area (Table 1) are known to collide with windows in the area (Kahle et al. 2016), and several others have been documented as collision victims elsewhere.”). Aspects of the Project’s design will actually exacerbate the number of birds that will be killed by collisions with the Project’s structures. In addition to the approximately 28,550 m² of windows and window curtain walls, the Project is “made even more dangerous to birds by canopies, sunshades, alcoves, angles, and transparent building corners.” (*Id.*, p. 7.) “Some of the windows would reflect outdoor landscaping including trees and shrubs, which could lure birds toward false cover.” (*Id.*) The project’s proximity to San Francisco Bay, the extent of collision surface proposed, the exacerbating features identified by Dr. Smallwood, and the estimated number of bird deaths calculated by Dr. Smallwood each underscore the DEIR’s cursory discussion and lack of “sufficient detail to enable those who did not participate in its preparation to understand and to consider meaningfully the issues the proposed project raises[.]” (*Sierra Club v. Cty. of Fresno*, 6 Cal.5th 502, 510.)

To make matters worse, despite acknowledging the likely impact of bird collisions with the Project, the DEIR merely references the federal Migratory Bird Treaty Act as magically addressing those potential impacts. As the DEIR states:

Due to recent changes to the federal MBTA, the incidental “take” of migratory bird species is not prohibited by the MBTA or Fish and Game Code (USDOI, 2017; USFWS, 2018). Because the take of migratory birds is not prohibited by CDFW or by the MBTA based on federal guidance, potential impacts to avian species from collision with new buildings would be less than significant with no mitigation required.

(DEIR, p. 4.3-33.) The DEIR then concludes that no mitigation to address bird collisions is required by the Project. (*Id.*) It does offer up a consolation suggestion, stating vaguely that:

Nonetheless, it is recommended that the Project applicant incorporate bird safe measures into the building design that would reduce the potential for avian collisions. These include, but not limited to, the use of exterior glass treatments (use of non-reflective glass through tinting, glazing and/or fritting that reduces transmission of light out of the building), as well as exterior façade and lighting treatments.

(*Id. see also id.*, p. 3-13 (“Aspects of the proposed building design are consistent with bird safe design guidelines. These included glazing options, building and fenestration strategies, as well as lighting strategies”).

Merely stating a project will comply with another agency’s regulations is not sufficient to satisfy CEQA’s disclosure and analysis requirements. *See Kings Co v. Hanford* (1990)221 CA3d 692, 712-718 (agency erred by “wrongly assuming that, simply because the smokestack emissions would comply with applicable regulations from other agencies regulating air quality, the overall project would not cause significant effects to air quality.”); *Citizens for Non-Toxic Pest Control v. Dept. Food & Agr.* (1986) 187 CA3d 1575, 1587-88 (state agency may not rely on registration status of pesticide to avoid CEQA review); *Sundstrom v. Cty. of Mendocino* (1988) 202 Cal.App.3d 296, 309 (“Having no ‘relevant data’ pointing to a solution of the sludge disposal problem, the County evaded its duty to engage in a comprehensive environmental review by approving the use permit subject to a condition requiring future regulatory compliance”); *See Citizens for Quality Growth v. City of Mount Shasta* (1988) 198 Cal.App.3d 433, 442 n. 8 (lead agency cannot refrain from considering means of exercising its own regulatory power simply because another agency has general authority over the impacted natural resource). Especially where, as here, an expert comment indicates that significant impacts will result despite the presence of the Migratory Bird Treaty Act, the City is obligated to address these potential impacts in an EIR, not by mere reference to a federal law that does not appear to even apply to the issue.

The DEIR’s failure to sufficiently disclose and address this impact, coupled with its complete failure to identify and require implementation of mitigation measures, is insufficient under CEQA. Moreover, substantial evidence provided by Dr. Smallwood demonstrates that the Project will have significant impacts for which mitigation measures must be formulated and, if not able to be mitigated, subjected to a statement of overriding considerations.

Relatedly, the DEIR relies on the deficient bird collision discussion and its non-existent mitigation to address the impacts of glare and lighting on birds as well. The DEIR states “[t]his EIR conducts a thorough analysis of the potential effects of nighttime lighting or use of certain building materials that can cause glare on birds in Section 4.3, *Biological Resources*. Mitigation measures are identified, the implementation of which will ensure the potential effect is less than significant.” (DEIR, p. 4.1-18.) Because in fact there are no mitigations identified and no analysis of lighting and glare on birds, this impact also is not sufficiently addressed or mitigated by the DEIR. The Project’s lighting impacts also extend to other wildlife:

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Artificial lighting causes a variety of substantial impacts on a variety of wildlife species (Rich and Longcore 2006). At the site of the proposed project I am particularly concerned about the project's lighting impacts on wildlife residing in Bay waters, including harbor seals, California brown pelicans, double-crested cormorants, and other species. I am also concerned about the project's lighting impacts on salt marsh harvest mouse in nearby pickleweed stands. Added lighting could cause displacement or altered activity patterns of at least some species.

(Smallwood Comments, p. 18.)

In order to mitigate the impact of the window collisions on bird species, Dr. Smallwood has suggested several possible mitigation measures. Dr. Smallwood suggests: (1) marking the windows (e.g. decals, film, fritted glass); (2) managing outdoor landscape to reduce reflection of vegetation; (3) managing indoor landscape; and (4) managing nocturnal lighting. (Ex. A, p. 14.) For mitigation measures involving the siting and design of the Project, Dr. Smallwood suggests: (1) deciding on the location of structures; (2) deciding on the façade and orientation of structures; (3) selecting types and sizes of windows; (4) minimizing transparency through two parallel façades; (5) minimizing views of interior plants; and (6) landscaping so as to increase distance between windows and vegetation. (*Id.*) Dr. Smallwood also suggests that the City also look to the guidelines developed by the American Bird Conservancy and the City of San Francisco to minimize injuries and fatalities to bird species. (*Id.* at p. 15.)

Even with Dr. Smallwood's proposed mitigations, however, it is not likely that the Project can fully mitigate this potentially significant impact. Only a robust discussion in a draft EIR subjected to public review and comment would indicate the extent of the impact and the necessary mitigation measures and fully disclose unmitigated impacts the Project may cause.

2. The EIR fails to identify the likely presence of sensitive and other wildlife species at the Project site.

Dr. Smallwood points out the absence of any detection level surveys that would provide actual evidence of the presence or absence of species at the Project site. Based on his expert opinion and his observations at the Project site, there has been no effort to detect whether or not numerous sensitive species are in harm's way from the Project. Dr. Smallwood identifies 56 vertebrate species of wildlife likely to be adversely affected by the project, while the DEIR only acknowledges 18 of those species. (Smallwood Comments, p. 2)

Establishing an accurate baseline is the sine qua non to adequately analyzing and mitigating the significant environmental impacts of the Project. (*See* CEQA Guidelines, § 15125(a); *Save Our Peninsula*, 87 Cal.App.4th at 121-123.) Unfortunately, the DEIR's failure to investigate and identify the occurrences of sensitive biological resources at the Project site results in a skewed baseline. Such a skewed baseline ultimately "mislead(s) the public" by engendering inaccurate analyses of environmental impacts, mitigation measures and cumulative

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impacts for biological resources. (See *San Joaquin Raptor Rescue Center*, 149 Cal.App.4th at 656; *Woodward Park Homeowners*, 150 Cal.App.4th at 708-711.)

The various preconstruction surveys called for in the DEIR do nothing to rectify the DEIR's numerous shortcomings in disclosing impacts. Nor would those surveys to be conducted just prior to construction stand-in as a proper baseline from which to disclose and evaluate impacts. (See Smallwood Comment, p. 20.)

By failing to conduct any surveys and disregarding the absence of key species from the project site, ignoring numerous other species likely to be present, the DEIR fails to establish and otherwise skews the entire biological resources baseline for the Project. This entire section should be redone, starting with properly timed, truly focused, detection surveys of the entire site and the presence of birds and other wildlife.

3. The DEIR fails to address the Project's impacts on wildlife movement.

The DEIR's cursory discussion of potential impacts to wildlife movement is insufficient. As Dr. Smallwood explains:

City of Redwood City (2019:4.3-32) committed a mere two sentences to potential project impacts on wildlife movement in the region. According to the City, the project site is located within a sensitive natural area, and therefore the project has low potential to adversely affect wildlife corridors or nursery sites. This conclusion does not follow logically from the premise; the conclusion makes no sense.

The project site is located at the interface of developed land and Bay waters and marsh. Birds fly along this interface for migration, dispersal, home range patrol and daily foraging. City of Redwood City (2019:4.3-320) acknowledges this, "...birds typically follow coastlines, rivers, and mountain ranges in their migratory passages from wintering to breeding grounds and back again." Erecting multiple buildings on this coastline would pose a barrier to bird movement. It would also cast artificial light into potential nursery areas, thereby degrading them.

(Smallwood Comments, pp. 18-19.) Dr. Smallwood continues:

A site such as the proposed project site is critically important for wildlife movement because it borders urban sprawl, forcing more volant wildlife to use the site as stop-over and staging habitat during migration, dispersal, and home range patrol (Warnock 2010, Taylor et al. 2011, Runge et al. 2014). The project would cut wildlife off from stop-over and staging habitat, and would therefore interfere with wildlife movement in the region.

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(*Id.*, p. 19.) The DEIR’s non-substantive discussion of this potential impact identified by Dr. Smallwood is inconsistent with CEQA as a matter of law.

4. The DEIR fails to discuss the Project’s likely impacts to wildlife from increased traffic.

Dr. Smallwood describes the significant role increased traffic plays in wildlife mortality. (Smallwood Comments, pp. 6-7.) Despite this scientific evidence of wildlife impacts from traffic, no attempt is made by the DEIR to identify or evaluate this impact from the project’s increased traffic. As Dr. Smallwood points out:

According to City of Redwood City (2019), the project would generate 8,090 net new average daily automobile trips. These trips would extend the project’s impacts on wildlife well beyond the project footprint, because cars crush and kill wildlife attempting to cross California’s roadways (Shilling et al. 2017). Vehicle collisions have accounted for the deaths of many thousands of reptile, amphibian, mammal, bird, and arthropod fauna, and the impacts have often been found to be significant at the population level (Forman et al. 2003). Increased use of existing roads will increase wildlife fatalities (see Figure 7 in Kobylarz 2001). Members of some special-status species that are likely absent from the project site would be killed by traffic generated by the project, including Federally Threatened California red-legged frog (*Rana draytonii*) and California Species of Concern American badger (*Taxidea taxus*). Nothing about these likely impacts is addressed in City of Redwood City (2019).

(Smallwood Comments, p. 6.) As a result, the DEIR is deficient as a matter of law.

5. No meaningful discussion of the Project’s cumulative effects on wildlife is included in the DEIR.

Recognizing that several projects may together have a considerable impact, CEQA requires an agency to consider the “cumulative impacts” of a project along with other projects in the area. (§ 21083(b); CEQA Guidelines §15355(b).) If a project may have cumulative impacts, the agency must prepare an EIR, since “a project may have a significant effect on the environment if “[t]he possible effects of a project are individually limited but cumulatively considerable.” (CBE, 103 Cal.App.4th at 98, 114; *Kings County Farm Bur.*, 221 Cal.App.3d at 721.) It is vital that an agency assess “the environmental damage [that] often occurs incrementally from a variety of small sources . . .” (*Bakersfield Citizens For Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1214 (“*Bakersfield Citizens*”))

Rather than assess the cumulative wildlife impacts of the Project, the DEIR states that cumulative impacts are addressed by assuming that “[c]umulative developments, particularly those in proximity to water and natural resources, have been or will be adequately assessed for their potential to result in significant environmental effects and would be required to implement adopted mitigation measures to reduce such impacts.” (DEIR, p. 4.3-35.) As Dr. Smallwood

points out, “[t]his argument implies that cumulative effects are really just residual, unmitigated impacts. If this implication was correct, then CEQA would not have included a requirement for cumulative effects analysis because mitigation for project-specific impacts would always negate cumulative effects. The EIR needs to be revised so that it includes an adequate cumulative effects analysis.” (Smallwood Comment, p. 19.). Likewise, the DEIR once again incorrectly attempts to rely on existing regulations as a proxy for analyzing and mitigating the Project’s cumulative impacts. (DEIR, p. 4.3-36 (“Further, environmentally protective laws and regulations have been applied with increasing rigor since the early 1970s and include the CESA, FESA, and the CWA, as described earlier in this section.”) As discussed above, the City cannot comply with CEQA merely by assuming compliance with existing regulations or laws. (*See supra*, p. 8.)

As a result, the DEIR’s discussion of cumulative wildlife impacts is entirely deficient.

C. THE DEIR FAILS TO ADDRESS THE POTENTIAL ADVERSE IMPACTS OF THE PROJECT ON INDOOR AIR QUALITY.

The DEIR entirely omits any consideration of the Project’s emissions of indoor air pollutants and the resulting health impact to workers employed in the office buildings. Formaldehyde is a known human carcinogen. Many composite wood products typically used in office building construction contain formaldehyde-based glues which off-gas formaldehyde over a very long time period. Likewise, it is eminently foreseeable that furnishings to be used within these buildings will be made of similar off-gassing materials. The primary source of formaldehyde indoors is composite wood products manufactured with urea-formaldehyde resins, such as plywood, medium density fiberboard, and particle board. These materials are commonly used in residential and office building construction for flooring, cabinetry, baseboards, window shades, interior doors, and window and door trims. Given the prominence of materials with formaldehyde-based resins that will be used in constructing the Project and in furnishing the buildings, there is a significant likelihood that the Project’s emissions of formaldehyde to air will result in very significant cancer risks to future workers in the buildings. Even if the materials used within the buildings comply with the Airborne Toxic Control Measures (ATCM) of the California Air Resources Board (CARB), significant emissions of formaldehyde may still occur.

The proposed office buildings will have significant impacts on air quality and health risks by emitting cancer-causing levels of formaldehyde into the air that will expose workers to cancer risks potentially in excess of BAAQMD’s threshold of significance for cancer health risks of 10 in a million. Likewise, when combined with the risks posed by the nearby highway, railroad tracks, the Graniterock manufacturing plant, and other sources, the health risks inside the project may exceed BAAQMD’s cumulative health risk threshold of 100 cancers in a million. Currently, the City does not have any idea what risks will be posed by formaldehyde emissions from the Project or the residences.

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

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environmental impacts.”].) “If the local agency has failed to study an area of possible environmental impact, a fair argument may be based on the limited facts in the record. Deficiencies in the record may actually enlarge the scope of fair argument by lending a logical plausibility to a wider range of inferences.” (*Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 311.) Given the lack of analysis conducted by the City on the health risks posed by emissions of formaldehyde from the Project, such emissions from the Project may pose significant health risks. As a result, the City must include an analysis and discussion in the DEIR which discloses and analyzes the health risks that the Project’s formaldehyde emissions may have on future workers and identifies appropriate mitigation measures. Until that occurs, the DEIR is insufficient in disclosing this important impact.

V. CONCLUSION

For the foregoing reasons, LIUNA and its members urge the City to prepare and recirculate a revised DEIR addressing the above shortcomings. 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,



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