

June 2, 2020

SB 343

Senate Bill 343 mandates supplemental materials that have been received by the City Clerk's office that relate to an agenda item after the agenda packets have been distributed to the City Council be available to the public.

The attached documents were received in the City Clerk's office after distribution of the June 2, 2020, City Council meeting agenda packet.

Item 6.2

From: Meg Holtzapple <[REDACTED]>
Sent: Monday, June 1, 2020 9:35 AM
To: Amy Million <Amy.Million@dublin.ca.gov>
Subject: Fwd: City of Dublin is taking short cuts again!

Hi Amy,

Here we go again. I support the attached appeals and am in opposition to a 6 story hotel behind the old Hooters restaurant. Once again, the city is on the side of developers.

thanks,
Meghan

----- Forwarded message -----

From: <[REDACTED]>
Date: Fri, May 22, 2020 at 12:08 PM
Subject: City of Dublin is taking short cuts again!
To:

Hello concerned Dublin resident,

You are being contacted because you wrote to Amy Million, Dublin City Principle Planner, on your concern regarding the Cambria Hotel build project (and removal issue of the 9 redwood trees) approved by the City Planning Commission on April 28. Please read the attached op-ed regarding the two appeals submitted to the City challenging the approval of the Cambria Hotel build. The two appeals are on the agenda for the City Council meeting on June 2. I ask for your consideration to email/write again to Amy before June 2 in support the appeals at amy.million@dublin.ca.gov.

Thank you for your time and support. Stay well and safe.

Much appreciation,
Shirley Lewandowski
Concerned Dublin Resident

City of Dublin is taking short cuts again!

Once again the City of Dublin is approving a development project without requiring a project level review under the California Environmental Quality Act (CEQA). Two (2) appeals have been filed with the City of Dublin regarding the City Planning Commission's approval of the 6-story Cambria Hotel at San Ramon Road behind the old Hooters restaurant. The City claimed this project needed no CEQA review because it was consistent with the Downtown Dublin Specific Plan using its 2010 Environmental Impact Report (EIR). The two appeals are based on four (4) individual expert reports submitted to the City prior to the meeting providing substantial evidence that this project needed environmental review.

These four (4) reports were never addressed by the City Planning Staff or addressed after a speaker spoke about the reports during Public Comment at the City Planning Commission meeting on April 28. The project was approved.

This is an unfortunate and historically reoccurring problem where our City Management looks for loopholes to approve projects without conducting full environmental review. Dublin residents continually end up dealing and living with the negative repercussions from commercial and housing developments that clearly reflect a city growth that is unbalanced, not smart and not well thought out.

Is the City Management really looking out for the welfare of its residents; or the developers? Seems like mostly the developers. Is City Management living up to the City's Mission and Vision statements? Definitely not, given the continuing runaway urban sprawl appearance of our city and the traffic bottlenecks we have now.

How can we stop this ongoing dilemma? Elect candidates who really are transparent to the residents and don't accept campaign contributions from special interest groups and developers. We can't afford to just shrug our shoulders or give up when we see or know about something not in the interest of residents or our city. It is our city, so speak out through Public Comments during Planning Commission and City Council meetings, write letters and emails to elected officials and the news media, and speak up on social media. **Our founding fathers gave us a democracy. It's up to us to keep it by speaking out.**

If you agree, please let the elected officials of our city and city management know as they are paid by resident tax money. City website: www.dublin.ca.gov.

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Mayor and City Council
City of Dublin
100 Civic Plaza
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June 2, 20

Mayor and City Council
City of Dublin
100 Civic Plaza
Dublin, CA 94568

Re: Lack of Environmental Review for Approval of Cambria Hotel
Project

Dear Mayor Haubert and Council Members:

I am writing on behalf of my client, West Dublin Alliance, in support of its appeal of the Planning Commission's approval of the Cambria Hotel Project ("Project"). The City claims that, because it prepared and certified an Environmental Impact Report ("EIR") for the Dublin Downtown Specific Plan ("DDSP" or "Plan"), and this Project is consistent with the DDSP, no further analysis of this project is needed. The essence of the City's argument is that all of the potentially significant impacts that might arise from this Project either were or could have been addressed in the DDSP. For those that were addressed in the EIR, the analysis in the EIR, including any mitigation measures, is conclusively presumed adequate. For any impacts that were not addressed, the time to address those impacts has expired and the EIR's conclusion of no significant impact is also conclusively presumed adequate.

However, the DDSP EIR was a program EIR. While the Project is consistent with the DDSP, any project-specific impacts that could not have been foretold and addressed in the DDSP EIR, as well as any changed circumstances or new information indicating a new or significantly increased significant impact that could not have been addressed in that EIR, must be addressed through supplemental environmental review. (Public Resources Code § 21166; CEQA Guidelines § 15162; *Sierra Club v. County of San Diego* (2014) 231 Cal.App.4th 1152, 1164.)

Here, the issue of indoor air pollution due to a project undertaken under the DDSP was never raised in the EIR for that Plan. Indeed, it could not have been raised in that context as it depends on specifics of the particular building project being undertaken as part of the implementation of that Plan. Consequently, if substantial evidence supports a fair argument that the Project will have a significant impact due to indoor air pollution, an EIR must be prepared. (*Sierra Club, supra.*)

A letter submitted in conjunction with comments from an attorney representing the Laborers International Union of North American No. 304 explained in considerable detail why construction material that would be used in the Project's construction would release formaldehyde, a toxic and carcinogenic volatile chemical, into the atmosphere inside the hotel, causing a potentially significant adverse health impacts on the hotel's employees and guests. In rebuttal, City staff argues that the hotel's HVAC system and the fact that materials used for construction would be regulated under federal law will greatly reduce the concentration of formaldehyde in the hotel. Staff further argues that the "off-gassing" of formaldehyde will decrease over time, and thus any impacts would be only temporary and negligible. Staff concludes that those factors, taken in aggregate, fully mitigate any potential impact and no further study or mitigation is required. However, City staff is mistaken.

To begin with, the City presents no substantial evidence that a standard HVAC system, without any additional filtration or increased air turnover, will suffice to address the off-gassing of formaldehyde from building materials in this project. Further, while the building materials may be regulated under federal law, such regulation does not, in itself, guarantee the absence of significant impacts under the specific circumstances of this hotel Project. (See, *John R. Lawson Rock & Oil, Inc. v. State Air Resources Bd.* (2018) 20 Cal.App.5th 77, 110 [general evidence of regulation does not suffice to negate substantial evidence of a specific potentially significant impact].)

Of equal importance, while a lead agency has discretion to decide which evidence it will rely upon when that evidence is contained in an EIR, the standard is different when no EIR is prepared. Even if the substantial evidence before the lead agency supporting a fair argument of a significant impact is countered by evidence opposing that impact, if (as here) these are specific project-level impacts that were not addressed in the prior Program EIR, a supplemental EIR must be prepared. (*Sierra Club, supra.*)

As the letter from Mr. Offermann points out, the toxic effects from formaldehyde releases can be mitigated, but that requires study to determine exactly what will be needed for this specific Project. That is precisely the purpose of requiring a focused EIR, and that is what is needed here.

West Dublin Alliance therefore respectfully requests that its appeal be granted and the project application be remanded to the Planning Department with direction to prepare a focused EIR to address project-specific impacts.

Most sincerely,

Stuart M. Flashman
Attorney for West Dublin Alliance



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June 2, 2020

Via E-Mail

Mayor David Haubert
Vice Mayor Arun Goel
Councilmember Melissa Hernandez
Councilmember Jean Josey
Councilmember Shawn Kumagai
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Amy Million, Principal Planner
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Marsha Moore
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**Re: Comment on the Cambria Hotel Project
(PLPA-2019-00020, PLPA-2019-00044)**

Dear Mayor Haubert, Vice Mayor Goel, Honorable Members of the City Council, Ms. Moore, and Ms. Million:

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 City Council approve LIUNA's appeal and deny the Planning Commission's approval of the Site Development Review Permit and Minor Use Permit and direct staff to prepare a project-level EIR to analyze the significant environmental impacts of the Project and to propose all feasible mitigation measures and alternatives to reduce those impacts.

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

In the 2010 EIR, the City promised the community that it would revisit key environmental reviews for future individual projects before approving those projects. For example, the DDSP EIR specifically stated that future individual projects under the DDSP would be subject to new project-level emissions thresholds in the Bay Area Air Quality Management District ("BAAQMD") Draft CEQA Guidelines for construction emissions. However, the City failed to conduct a project-level emissions analysis for the Project and compare the Project's construction emissions to the BAAQMD significance thresholds, so expert consulting firm SWAPE did. *See* Air Quality Comment dated March 25, 2020 ("March 25 SWAPE Comment"). SWAPE found that the Project's construction-related VOC emissions exceed the BAAQMD significance threshold of 54 lbs/day, resulting in a significant impact. *Id.*, p. 5.

The DDSP EIR also stated that future projects within the DDSP area would be reviewed on a project-by-project basis for greenhouse gas ("GHG") emissions. However, the City failed to conduct a project-level GHG analysis for the Project, so again, SWAPE conducted an analysis of the Project's GHG emissions, concluding that the Project would emit 1,583 MT CO₂e/year, exceeding the BAAQMD's 1,100 MT CO₂e/year threshold. *Id.*, p. 13.

The DDSP EIR was prepared with the intent for the City to follow up on project-level environmental impacts such as construction emissions and GHG emissions. Here, the City has failed to do this or take into account SWAPE's expert analysis of these impacts. As a matter of fairness, the City should do the project-specific analyses it promised to the public in its 2010 EIR.

II. 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.

LIUNA previously submitted comments on the Project's potential significant health impacts on future employees from formaldehyde emissions that will be emitted by finishing materials used to construct interiors of the hotel as well as the reasonably foreseeable emissions of formaldehyde from furniture and other materials that will be used throughout the hotel. *See* Indoor Environmental Engineering Comment dated March 19, 2020 ("March 19 Offermann

Comment”).

LIUNA’s concerns regarding health risks posed by the Project’s formaldehyde emissions are based on the expert analysis and opinions of industrial hygienist and engineer Francis Offermann, PE CIH. Formaldehyde is a potent carcinogen and toxic air contaminant (“TAC”). Mr. Offermann’s comments identified a significant health risk posed by the Project’s emissions of formaldehyde from composite wood products typically used in hotel building construction containing formaldehyde-based glues which off-gas formaldehyde over a very long time period. The formaldehyde emissions are from composite wood products manufactured with urea-formaldehyde resins, such as plywood, medium density fiberboard, and particle board. These materials are commonly used for flooring, cabinetry, baseboards, window shades, interior doors, and window and door trims. *Id.*, p. 3. In his March 19 comments, Mr. Offermann concluded 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. *Id.*, p. 4. 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 BAAQMD CEQA significance threshold for airborne cancer risk of 10 per million. *Id.*

Despite the City’s duty to investigate issues relating to a project’s potential environmental impacts, the City has, thus far, attempted to deny Mr. Offermann’s expert analysis and his discussion of the 2019 Chan study and has still not considered with any informed expertise the likely impacts of indoor formaldehyde emissions posed by the Project to future employees. *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.”). Rather than objectively study this serious health threat, staff denies Mr. Offermann’s expert analysis and the 2019 Chan study without itself bringing any expertise to bear on the Project’s formaldehyde emissions. *See June 2, 2020 City Council Agenda Packet*, p. 307.

Instead of analyzing the Project’s formaldehyde emissions, the City concludes that since the Project is subject to the United States Environmental Protection Agency and other agency regulations, the impacts from the presence of formaldehyde would be less than significant. *Id.* However, this response ignores Mr. Offermann’s expert analysis and the 2019 Chan study. The 2019 Chan study analyzed the indoor concentrations of formaldehyde for homes built between 2011 and 2015, of which most of the homes in the study were constructed with materials that complied with the Airborne Toxic Control Measures (“ATCM”) of the California Air Resources Board (“CARB”) Phase 2 compliant materials. The 2019 Chan study showed that 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. Mr. Offermann relied 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 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. This new information, as elucidated by Mr. Offermann, shows that the Project will have a significant health risk impact from its indoor air emissions that was not discussed in the DDSP EIR. Therefore, the City must prepare a subsequent EIR for the Project.

III. 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.

LIUNA previously submitted comments on the Project's potential impacts on biological resources. *See* Biological Resources Comment dated March 24, 2020 ("March 24 Smallwood Comment"). Ecologist Shawn Smallwood, Ph.D., conducted a review of the proposed Project and relevant documents regarding the Project's impacts on biological resources, noting that the DDSP EIR explicitly did not analyze impacts to biological resources. 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.

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. March 24 Smallwood Comment, pp. 4, 5. Dr. Smallwood states that 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.

Additionally, Dr. Smallwood noted that within the last year, the scientific community has learned that human actions are cumulatively contributing to the rapid decline of birds across North America. Rosenburg 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. March 24, Smallwood Comment, p. 9. Specifically, Dr. Smallwood predicts "69 bird deaths per year" due to the Project. *Id.*

Despite the City's duty to investigate issues relating to a project's potential environmental impacts, the City has, thus far, attempted to deny Dr. Smallwood's expert analysis and refuses to consider with any informed expertise the Project's likely impacts of window collisions to the recently listed tri-colored blackbird or other birds. The City asserts that it is not required to analyze impacts on birds due to collisions with glass windows and these impacts are not new information without providing any information justifying these conclusions. *See* June 2, 2020 City Council Agenda Packet, p. 307. The City also states the Project's exterior façade incorporates aluminum panels with low reflectivity glass that would reduce the occurrence of bird strikes yet provides no evidence to support this assertion or guarantee that low reflectivity glass will ultimately be used on the Project. *Id.* The City should analyze this in a project-level CEQA review.

IV. 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.

LIUNA previously submitted comments on the substantial changed circumstances requiring major revisions to the DDSP EIR due to a substantial increase in the severity of the significant transportation and circulation effects identified in the DDSP EIR. *See* Transportation and Circulation Comment dated March 24, 2020 ("March 24 Smith Comment"). Traffic engineer Dan Smith reviewed the proposed Project and relevant documents regarding the Project's impacts on traffic and circulation, concluding that the traffic and circulation circumstances in the DDSP area have significantly changed and are substantially more severe since the DDSP EIR's 2010 analysis of these impacts. Mr. Smith concluded that the problem with the DDSP EIR's analysis is that additional major projects have been approved in Dublin alone since 2010, many of them not on the entitled projects listed in the DDSP EIR and many requiring General Plan Amendments. *Id.*, p. 2.

Despite the City's duty to investigate issues relating to a project's potential environmental impacts, the City has, thus far, attempted to deny Mr. Smith's expert analysis. The City claims a supplementary traffic analysis for the 2014 DDSP Amendment found no new or substantially more severe significant impacts would result from the 2014 DDSP amendment. *See* June 2, 2020 City Council Agenda Packet, p. 310. However, the City fails to make the 2014 traffic study available for analysis to interested parties or the City Council and at least two very large projects with traffic overlap in the DDSP area, the Kaiser Permanent Medical Complex approved in 2016 and the recently approved Pleasanton Costco, were not addressed in the DDSP EIR or 2014 Amendment. The DDSP EIR already identified significant traffic impacts, and the additional significant traffic impacts identified by Mr. Smith are substantial changed circumstances that require major revisions to the DDSP EIR.

IV. CONCLUSION

The City has not met the criterion under CEQA Guidelines section 15182 and therefore

Cambria Hotel Project

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cannot use section 15182 to relieve the City from conducting project-level CEQA review for the Project. LIUNA therefore respectfully requests the City Council to approve its appeal. 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,

A handwritten signature in blue ink, appearing to read "Paige Fennie".

Paige Fennie

Lozeau | Drury LLP