



# SCS Dublin

Final EIR | October 2022







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Final EIR | October 2022

State Clearinghouse No. 2022040022

**Kimley»Horn**

Expect More. Experience Better.



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# 1 Introduction

Upon completion of the SCS Dublin Draft Environmental Impact Report (Draft EIR), the City of Dublin filed a Notice of Completion (NOC) with the State Office of Planning and Research to begin the 45-day public review period from July 22, 2022, to September 6, 2022 (Public Resources Code, Section 21161). Concurrent with the NOC, the Draft EIR was distributed to responsible and trustee agencies, other affected agencies, surrounding cities, and interested parties, as well as all parties requesting a copy of the Draft EIR in accordance with Public Resources Code 21092(b)(3). During the public review period, the Draft EIR, including the technical appendices, was available for review on the City's Development Activity webpage under the SCS Dublin project: <https://dublin-development.icitywork.com/>.

This SCS Dublin Final Environmental Impact Report (Final EIR) has been prepared in accordance with the California Environmental Quality Act (CEQA) and state and local CEQA Guidelines and represents the independent judgment of the City, as CEQA lead agency. The Draft EIR, technical appendices, and other written documentation prepared during the EIR process, as those documents may be modified by the City Council at the time of certification, together with comments and associated responses, and changes and clarifications to the Draft EIR will constitute the Final EIR, as defined in the CEQA Guidelines Section 15132, and the City of Dublin CEQA Guidelines and Procedures.

## 1.1 Document Organization and Framework

This FEIR is organized as follows: **Section 1** provides a brief introduction to this report. **Section 2** provides a list of agencies and interested persons commenting on the Draft EIR. This section also contains individual comments followed thereafter by responses. To facilitate review of the responses, an index number (e.g., 1-1, 1-2, 2-1) has been assigned to each comment and to its corresponding responses. **Section 3** contains changes and clarifications to the Draft EIR as a result of the comments by agencies and interested persons as well as staff-initiated changes.

City staff has reviewed the comment letters, draft responses and information generated in the course of preparing the responses and determined that none of this material constitutes significant new information that requires a recirculation period for further public comment under CEQA Guideline Section 15088.5. None of this new material indicates that the project will result in a significant new environmental impact not previously disclosed in the Draft EIR. Additionally, none of this material indicates that there would be a substantial increase in the severity of a previously identified environmental impact that will not be mitigated, or that there would be any of the other circumstances requiring recirculation as described in Section 15088.5.

## 1.2 CEQA Requirements Regarding Comments and Responses

CEQA Guidelines Section 15204(a) outlines parameters for submitting comments and reminds persons and public agencies that the focus of review and comment of Draft EIRs should be, "on

the sufficiency of the document in identifying and analyzing possible impacts on the environment and ways in which significant effects of the project might be avoided or mitigated. Comments are most helpful when they suggest additional specific alternatives or mitigation measures that would provide better ways to avoid or mitigate the significant environmental effects. At the same time, reviewers should be aware that the adequacy of an EIR is determined in terms of what is reasonably feasible, in light of factors such as the magnitude of the project at issue, the severity of its likely environmental impacts, and geographic scope of the project. CEQA does not require a lead agency to conduct every test or perform all research, study, and experimentation recommended or demanded by commenters. When responding to comments, lead agencies need only respond to significant environmental issues and do not need to provide all information requested by reviewers, as long as a good faith effort at full disclosure is made in the EIR.”

## 2 Response to Comments on the Draft EIR

### 2.1 Agency, Organization, and Individual Comments on the Draft EIR

This section includes all written comments received on the Draft EIR and the City's responses to each comment. Comment letters and specific comments are given letters and numbers for reference purposes.

The following is a list of agencies and persons that submitted comments on the Draft EIR during the public review period:

**Table 2-1: List of Written Comments Received on the Draft EIR**

Comment Letter No.	Commenting Agency / Individual	Date
<i>Agencies</i>		
1	California Department of Transportation, District 4	September 6, 2022
2	San Francisco Bay Regional Water Quality Control Board	August 30, 2022
3	Alameda County Transportation Commission <sup>1</sup>	September 7, 2022
4	Dublin San Ramon Services District	August 26, 2022
5	Dublin Unified School District	September 1, 2022
6	Zone 7 Water Agency	September 2, 2022
<i>Individuals</i>		
7	Jeanine Gillengerten	September 6, 2022
8	Tom Evans	September 1, 2022

Notes:

(1) This letter was received after the deadline but was still included with a written response.

## California Department of Transportation

DISTRICT 4  
OFFICE OF REGIONAL AND COMMUNITY PLANNING  
P.O. BOX 23660, MS-10D | OAKLAND, CA 94623-0660  
[www.dot.ca.gov](http://www.dot.ca.gov)



### Comment Letter # 1

September 06, 2022

SCH #: 2022040022  
GTS #: 04-ALA-2022-00670  
GTS ID: 26040  
Co/Rt/Pm: ALA/580/17.855

Amy Million, Principal Planner  
City of Dublin  
100 Civic Plaza  
Dublin, CA 94568

### Re: SCS Dublin – Draft Environmental Impact report (DEIR)

Dear Amy Million:

Thank you for including the California Department of Transportation (Caltrans) in the environmental review process for the SCS Dublin project. We are committed to ensuring that impacts to the State's multimodal transportation system and to our natural environment are identified and mitigated to support a safe, sustainable, integrated and efficient transportation system. The following comments are based on our review of the July 2022 DEIR.

#### Project Understanding

The proposed mixed-use project consists of up to 265,000 square feet of commercial uses and 650 residential units. This 76.2-acre project site is located directly adjacent to the I-580/Tassajara Rd interchange.

#### Transportation Safety Analysis

Per the Interim Local Development Intergovernmental Review (LDR) Safety Review Practitioners Guidance ([link](#)), Caltrans has analyzed the existing data to conduct a safety review for this project area. The Lead Agency and/or applicant may use this information to identify and recommend appropriate safety mitigation measures for potential project-related impact in vehicular, pedestrian and bicycle use. Please see detailed information in the attached report.

Please provide the Transportation Impact Analysis for Caltrans to review when available.

1-1

### **Lead Agency**

Caltrans recognizes that the project applicant would contribute its pro-rata share of the planned improvements to the I-580 interchange pedestrian and bicycle improvements through the City of Dublin's Traffic Impact Fee or by other means. Caltrans looks forward to working with the applicant and lead agency on such improvements.

1-2

As the Lead Agency, the City of Dublin is responsible for all project mitigation, including any needed improvements to the State Transportation Network (STN). The project's fair share contribution, financing, scheduling, implementation responsibilities and lead agency monitoring should be fully discussed for all proposed mitigation measures.

### **Construction-Related Impacts**

Project work that requires movement of oversized or excessive load vehicles on State roadways requires a transportation permit that is issued by Caltrans. To apply, visit: <https://dot.ca.gov/programs/traffic-operations/transportation-permits>.

1-3

Prior to construction, coordination may be required with Caltrans to develop a Transportation Management Plan (TMP) to reduce construction traffic impacts to the STN.

### **Equitable Access**

If any Caltrans facilities are impacted by the project, those facilities must meet American Disabilities Act (ADA) Standards after project completion. As well, the project must maintain bicycle and pedestrian access during construction. These access considerations support Caltrans' equity mission to provide a safe, sustainable, and equitable transportation network for all users.

1-4

### **Encroachment Permit**

Please be advised that any permanent work or temporary traffic control that encroaches onto Caltrans' Right-of-Way (ROW) requires a Caltrans-issued encroachment permit. As part of the encroachment permit submittal process, you may be asked by the Office of Encroachment Permits to submit a completed encroachment permit application package, digital set of plans clearly delineating Caltrans' ROW, digital copy of signed, dated and stamped (include stamp expiration date) traffic control plans, this comment letter, your response to the comment letter, and where applicable, the following items: new or amended Maintenance Agreement (MA), approved Design Standard Decision Document (DSDD), approved encroachment exception request, and/or airspace lease agreement. Your application package may be emailed to [D4Permits@dot.ca.gov](mailto:D4Permits@dot.ca.gov).

1-5

Please note that Caltrans is in the process of implementing an online, automated, and milestone-based Caltrans Encroachment Permit System (CEPS) to replace the current permit application submittal process with a fully electronic system, including online payments. The new system is expected to be available during 2022. To obtain information about the most current encroachment permit process and to download the permit application, please visit <https://dot.ca.gov/programs/traffic-operations/ep/applications>.

1-5

Thank you again for including Caltrans in the environmental review process. Should you have any questions regarding this letter, or for future notifications and requests for review of new projects, please email [LDR-D4@dot.ca.gov](mailto:LDR-D4@dot.ca.gov).

Sincerely,

A handwritten signature in black ink that reads "Mark Leong". The signature is fluid and cursive, with a long horizontal stroke extending from the end of the name.

MARK LEONG  
District Branch Chief  
Local Development Review

c: State Clearinghouse

**Location:** The approximate 76.2-acre project site is in the city of Dublin, Alameda County, north of Interstate 580 and between Tassajara Road and Brannigan Street, extending just north of Gleason Drive. The project site is located on the Livermore, California, United States Geological Survey 7.5-minute topographic quadrangle map Township 2S, Range 1E, and Section 33 (northern portion) and Township 3S, Range 1E, and Section 4 (southern portion).

**Traffic Accident Surveillance and Analysis System (TASAS)  
Collision Data Form**

The contents of these reports shall be considered confidential and may be privileged pursuant to 23 U.S.C. Section 409 and are for the sole use of the intended recipient(s). Any unauthorized review, use, disclosure, or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message. Do not print, copy or forward.

The Table B report identified in Table 1 below was generated on 08/15/2022, and it depicts collision rates per million vehicle miles for the most recent 36-month period from 1/1/2019 to 12/31/2021 from Caltrans' Traffic Accident Surveillance and Analysis System (TASAS).

**Table 1  
TASAS Table B Collision Rates (1/1/2019 – 12/31/2021)**

Location	Number of Collision				Actual Rates (per million vehicle miles)			Average Rates (per million vehicle miles)		
	Total	Fatal	Injury	PDO	Fatal Collision	Fatal + Inj Collision	Total [1]	Fatal Collision	Fatal + Inj Collision	Total [1]
EB On Fr NB Tassajara PM 17.738	2	0	0	2	0.0	0.00	0.24	0.004	0.23	0.70
WB Off to Tassajara Rd PM 17.756	7	0	3	4	0.0	0.26	0.60	0.003	0.38	1.04
EB On Fr SB Tassajara PM 17.940	0	0	0	0	0.0	0.00	0.00	0.002	0.23	0.77
WB On Fr NB Tassajara Rd PM 17.944	2	0	1	1	0.0	0.13	0.25	0.002	0.23	0.77
WB On Fr SB Tassajara Rd PM 18.070	2	0	0	2	0.0	0.00	0.20	0.004	0.23	0.70
EB Off to Tassajara Rd PM 18.130	8	0	2	6	0.0	0.20	0.79	0.003	0.38	1.04

[1] All reported collisions, including Property Damage Only (PDO) collisions

Table 1 summarizes and compares the actual collision rates to the average rates for similar facilities throughout the State. The Total Collision Rates include all reported collisions: Fatal, Injury, and Property Damage Only.

Detailed analysis per the TASAS Selective Accident Retrieval (TSAR) generated on August 15, 2022, shows that the primary collision factors in the segment per Table 1 were:

**EB On Fr NB Tassajara Road (PM 17.738)**

- 1 Speeding (50%)
- 1 Other Violations (50%)

The types of collision included:

- 1 Rear End (50%)
- 1 Sideswipe (50%)

**WB Off Fr to Tassajara Road (PM 17.756)**

- 3 Speeding (42.9%)
- 2 Improper Turn (28.6%)
- 1 Other Violations (14.3%)
- 1 Influence of Alcohol (14.3%)

The types of collision included:

- 1 Broadside (14.3%)
- 2 Rear End (28.6%)
- 1 Sideswipe (14.3%)
- 3 Hit Object (42.9%)

**EB On Fr SB Tassajara Road (PM 17.940)**

Analysis of the TASAS Table B and TSAR record shows zero collision during the latest available three years

**WB On Fr NB Tassajara Road (PM 17.944)**

- 1 Speeding (50%)
- 1 Unknown (50%)

The types of collision included:

- 2 Rear End (100%)

**WB On Fr SB Tassajara Road (PM 18.070)**

- 1 Speeding (50%)
- 1 Improper Turn (50%)

The types of collision included:

- 1 Rear End (50%)
- 1 Hit Object (50%)

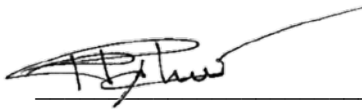
## EB Off to Tassajara Road (PM 18.130)

- 5 Speeding (62.5%)
- 1 Improper Turn (11.1%)
- 1 Other Violations (11.1%)
- 1 Influence of Alcohol (11.1%)

The types of collision included:

- 1 Broadside (12.5%)
- 5 Rear End (62.5%)
- 2 Hit Object (25.0%)

Prepared By:



Ronnie Pacheco

8/16/22

Date

Approved for Release

VIET NGUYEN

Viet Nguyen  
Sr. Transportation Engineer  
Traffic Safety Investigation

08/16/22

Date

**Response to Comment Letter #1: California Department of Transportation, District 4****Response to Comment 1-1: Transportation - Transportation Safety Analysis**

Data from the safety review for the project area conducted by Caltrans was reviewed as part of this Final EIR. The data provides useful reference information regarding collision rates and factors associated with such collisions. The Draft EIR addressed issues associated safety and the potential for increased hazards due to roadway design, and emergency access. Implementation of **Mitigation Measure TRANS 3-1: Pedestrian & Bicycle Safety Improvements** will increase pedestrian and bicycle safety and reduce vehicle conflicts at the mid-block crossings along Central Parkway and Finnian Way between Tassajara Road and Brannigan Street, as well as along Dublin Boulevard.

The request for the project Transportation Impact Analysis is acknowledged and the report will be provided to Caltrans.

**Response to Comment 1-2: Transportation - Transportation Impact Fees**

The project will comply with all applicable legal requirements for the issuance of any transportation permit from Caltrans.

**Response to Comment 1-3: Transportation - Construction Related Impacts**

See **Response to Comment 1-2**.

**Response to Comment 1-4: Transportation - Equitable Access**

The project will comply with all applicable legal requirements of Americans with Disabilities Act (ADA) standards and pedestrian and cyclist access standards regarding Caltrans facilities.

**Response to Comment 1-5: Transportation - Encroachment Permit**

The project will comply with all applicable legal requirements for the issuance of any encroachment permit from Caltrans.

## San Francisco Bay Regional Water Quality Control Board

August 30, 2022

*Sent via electronic mail: No hardcopy to follow*

City of Dublin, Community Development Department  
ATTN: Amy Million, Principal Planner (amy.million@dublin.ca.gov)  
100 Civic Plaza  
Dublin, CA 94568

**Subject:** San Francisco Bay Regional Water Quality Control Board Comments on the Draft Environmental Impact Report for the SCS Dublin Development Project, City of Dublin, Alameda County, California  
SCH No. 2022040022

Dear Ms. Million:

San Francisco Bay Regional Water Quality Control Board (Water Board) staff appreciates the opportunity to review the *Draft Environmental Impact Report for the SCS Dublin Development Project* (DEIR). The DEIR evaluates the potential environmental impacts associated with implementing the At Dublin Development Project (Project). The 76.2-acre Project site is generally bound by Tassajara Road, Interstate 580, Brannigan Street and Gleason Drive. The project site is located in the Eastern Dublin Specific Plan (EDSP) area and has Planned Development Zoning adopted with the EDSP. The Project site is surrounded by commercial uses to the west, southwest and southeast, a public park to the northwest, and residential uses to the north, northwest and east. The Project applicant (SCS Development Company) is proposing to amend the General Plan and Eastern Dublin Specific Plan to accommodate a mixed-use development that would allow up to 454,500 square feet of commercial uses and up to 680 residential units. The Project is a revision of the previously proposed At Dublin Project. A DEIR for the At Dublin Project was prepared and circulated for public review in 2018.

### Summary

As is discussed below, the DEIR does not provide an adequate discussion of potential mitigation measures for Project impacts to wetlands. The DEIR also requires additional detail with respect to hydromodification management associated with the Project's new impervious surfaces in portions of the Project that will drain to the water quality/detention basin that was constructed as part of the Dublin Ranch Drainage Master Plan Improvements. Also, the proposed fill of 0.66 acres of seasonal wetlands is a relatively large impact to waters of the State for a single project, and the Project

JIM McGRATH, CHAIR | EILEEN WHITE, EXECUTIVE OFFICER

applicant should not assume that the Water Board will issue a permit for the fill of all of the wetlands present at the Project site.

**Comment 1. The DEIR does not describe concrete mitigation measures for the fill of wetlands at the Project site or provide sufficient detail on measures to mitigate the Project's impacts on Hydromodification.**

The current Project is a revision of the previously proposed At Dublin Project. On July 25, 2018, Water Board staff provided comments on the DEIR for At Dublin (See Attachment). In that comment letter, we noted deficiencies in the discussion of mitigation for the Project's proposed impacts to wetlands and deficiencies in the discussion of measures to be implemented to mitigate hydromodification impacts associated with the Project's new impervious surfaces. In the four years since the circulation of the Draft EIR for the At Dublin Project, these deficiencies have not been addressed. Please review the comments in the attached July 25, 2018, comment letter and provide full responses to them prior to adopting a Final EIR for the SCS Dublin Project.

2-1

**Comment 2. The Project applicant should not assume that the Water Board will approve the fill of all 0.66 acres of wetlands at the Project site.**

The Project site contains 0.66 acres of seasonal wetlands and proposes to fill all of these wetlands. This is a large amount of fill for a single project.

When the Water Board receives an application for certification and/or WDRs, staff reviews the project to verify that the project proponent has taken all feasible measures to avoid impacts to waters of the State (these impacts usually consist of the placement of fill in waters of the State). Where impacts to waters of the State cannot be avoided, projects are required to minimize impacts to waters of the State to the maximum extent practicable (i.e., the footprint of the project in waters of the state is reduced as much as possible). Compensatory mitigation is then required for those impacts to waters of the state that cannot be avoided or minimized. Avoidance and minimization of impacts is a prerequisite to developing an acceptable project and identifying appropriate compensatory mitigation for an approved project's impacts. Avoidance and minimization cannot be used as compensatory mitigation. After avoidance and minimization of direct impacts to waters of the State have been maximized for the proposed project, the necessary type and quantity of compensatory mitigation for the remaining impacts to waters of the State are assessed on a case-by-case basis.

2-2

Under both the Clean Water Act and the *San Francisco Bay Basin Water Quality Control Plan* (Basin Plan), projects are required to avoid impacts to waters of the U.S. and waters of the State, in conformance with U.S. Environmental Protection Agency's CWA 404(b)(1) Guidelines (Guidelines). The Guidelines provide guidance in evaluating the circumstances under which the fill of jurisdictional waters may be permitted. Projects must first exhaust all opportunities, to the maximum extent practicable, to avoid, and then to minimize impacts to jurisdictional waters. Only after all options for avoidance and minimization of impacts have been exhausted, is it appropriate to develop mitigation for adverse impacts to waters of State. Since mixed use

development is not a water dependent project, it is assumed that impacts to waters of the State can be avoided.

The Water Boards only allow compensatory mitigation to be implemented for those impacts to waters of the State that cannot be avoided and/or minimized; “avoidance and minimization” in the context of reviewing applications for WDRs refers to minimizing the proposed project’s footprint in waters of the State. The current Project proposes to fill all waters of the State that are present at the Project site. It is unusual for the Water Board to issue permits for projects that include no avoidance or minimization of impacts to waters of the State. The Project applicant is encouraged to revise the DEIR to explore an alternative that avoids complete fill of waters of the State incorporates some preserved wetlands into the Project’s landscaping and open space.

2-2

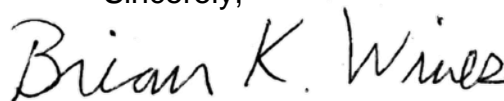
### Conclusion

The DEIR does not provide sufficient detail with respect to mitigation for Project impacts to wetlands. The DEIR should be revised to provide specific mitigation measures for all impacts to waters of the State. These mitigation measures should be in-kind and on-site mitigation measures to the maximum extent possible. The amount of proposed mitigation should include mitigation for temporal losses of any impacted waters of the State. If mitigation is out-of-kind and/or off-site, then the amount of the proposed mitigation should be increased. Proposed mitigation measures should include designs with sufficient detail to show that any created wetlands will have sufficient hydrology to sustain wetland hydrology and vegetation without human intervention. A proposed program for monitoring the success of the mitigation features should also be included with the mitigation proposal(s). In addition, before the Water Board issues a permit that authorizes the fill of all 0.66 acres of wetlands, we must be provided with an alternatives analysis that demonstrates that avoidance of some or all of the wetlands at the Project site is infeasible. Finally, the DEIR should include a discussion of compliance with HM requirements in Parcels PA-2 and PA-3.

If the DEIR is adopted without providing concrete mitigation proposals for impacts to wetlands, it is likely that the DEIR will not be adequate to support the issuance of Waste Discharge Requirements for the Project.

If you have any questions, please contact me at (510) 622-5680, or via e-mail at [brian.wines@waterboards.ca.gov](mailto:brian.wines@waterboards.ca.gov).

Sincerely,



Brian Wines  
Water Resources Control Engineer  
South and East Bay Watershed Section

Attachment: July 25, 2018, Comment Letter on the DEIR for the At Dublin Project

cc: State Clearinghouse (state.clearinghouse@opr.ca.gov)  
CDFW, Attn: Marcia Grefsrud ([marcia.grefsrud@wildlife.ca.gov](mailto:marcia.grefsrud@wildlife.ca.gov))

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**San Francisco Bay Regional Water Quality Control Board**

July 25, 2018

*Sent via electronic mail: No hardcopy to follow*

City of Dublin, Community Development Department  
ATTN: Amy Million, Principal Planner (amy.million@dublin.ca.gov)  
100 Civic Plaza  
Dublin, CA 94568

**Subject:** San Francisco Bay Regional Water Quality Control Board Comments on the Draft Environmental Impact Report for the At Dublin Development Project, City of Dublin, Alameda County, California  
**SCH No. 2018012027**

Dear Ms. Million:

San Francisco Bay Regional Water Quality Control Board (Water Board) staff appreciates the opportunity to review the *Draft Environmental Impact Report for the At Dublin Development Project* (DEIR). The DEIR evaluates the potential environmental impacts associated with implementing the At Dublin Development Project (Project). The 76.2-acre Project site is generally bound by Tassajara Road, Interstate 580, Brannigan Street and Gleason Drive. The project site is located in the Eastern Dublin Specific Plan (EDSP) area and has Planned Development Zoning adopted with the EDSP. The Project site is surrounded by commercial uses to the west, southwest and southeast, a public park to the northwest, and residential uses to the north, northwest and east. The Project applicant (Shea Properties, in partnership with SCS Development Company) is proposing to amend the General Plan and Eastern Dublin Specific Plan to accommodate a mixed-use development that would allow up to 454,500 square feet of commercial uses and up to 680 residential units.

**Summary**

As is discussed below, the DEIR does not provide an adequate discussion of potential mitigation measures for Project impacts to wetlands. The DEIR also requires additional detail with respect to hydromodification management associated with the Project's new impervious surfaces in portions of the Project that will drain to the water quality/detention basin that was constructed as part of the Dublin Ranch Drainage Master Plan Improvements.

**Comment 1. The DEIR does not describe concrete mitigation measures for the fill of wetlands at the Project site.**

The discussion of biological communities in Section 7.3.3 of the DEIR notes that 0.66 acres of seasonal wetlands occur as five separate topographic depressions and one flat-to-sloping area

where seasonal inundation and/or saturation occurs during the rainy season. The proposed mitigation for impacts to those wetlands is presented in MM BIO-3.1 Wetland Mitigation Plan.

Prior to obtaining the first site grading, building or other permit for development activities involving ground disturbance, the project applicant shall prepare the documentation acceptable to the Community Development Department that demonstrates compliance with the following: The project applicant shall acquire the appropriate applicable permit(s) (e.g. Section 404, Section 401, Porter-Cologne) from the respective regulating agency(s) (i.e. USACE and/or RWQCB). A wetland mitigation plan shall be prepared that will establish suitable compensatory mitigation based on the concept of no net loss of wetland habitat values or acreages, to the satisfaction of the regulatory agencies. This may include the creation, restoration, and/or enhancement of off-site wetlands prior to project ground disturbance. Mitigation areas shall be established in perpetuity through dedication of a conservation easement (or similar mechanism) to an approved environmental organization and payment of an endowment for the long-term management of the site. The wetland mitigation plan shall be subject to the approval of the applicable regulatory agency (USACE and/or RWQCB) and the City.

Mitigation Measure MM BIO-3.1, Wetland Mitigation Plan, does not actually include a wetland mitigation plan; it only requires the future development of a wetland mitigation plan. Developing a wetland mitigation plan for impacts to 0.66 acres of wetlands is not a simple process. It is necessary to find sufficient land with the proper hydrology to sustain a minimum of 0.66 acres of mitigation wetlands. Another project in the Dublin area, with a similar quantity of wetland impacts, has been working for about two years to develop an acceptable wetland mitigation plan, and is still several months away from securing all necessary approvals for the mitigation site.

Please note that the required amount of wetland mitigation will depend on the similarity of the impacted wetlands to the mitigation proposal, the uncertainty associated with successful implementation of the mitigation project, and the distance between the site of the impact and the site of the mitigation wetland. In-kind mitigation for the fill of wetlands consists of the creation of new wetlands. If the mitigation consists of restoration or enhancement of wetlands, the amount of mitigation will be greater than if the mitigation consists of wetland creation. If there are uncertainties with respect to the availability of sufficient water to support seasonal wetlands or sufficiently impermeable soils to sustain saturation, then the amount of mitigation would also have to be greater. Finally, the amount of required mitigation increases as the distance between the impact site and the mitigation site increases.

In a CEQA document, a project's potential impacts and proposed mitigation measures should be presented in sufficient detail for readers of the CEQA document to evaluate the likelihood that the proposed remedy will actually reduce impacts to a less than significant level. CEQA requires that mitigation measures for each significant environmental effect be adequate, timely, and resolved by the lead agency. In an adequate CEQA document, mitigation measures must be feasible and fully enforceable through permit conditions, agreements, or other legally binding instruments (CEQA Guidelines Section 15126.4). Mitigation measures to be identified at some future time are not acceptable. It has been determined by court ruling that such mitigation measures would be improperly exempted from the process of public and governmental scrutiny which is required under the California Environmental Quality Act. The current text of the DEIR does not demonstrate that it is feasible to mitigate all potentially significant impacts to wetlands

that may result from project implementation to a less than significant level. Impacts to the jurisdictional waters at the project site, as well as proposed mitigation measures or such impacts, will require review under CEQA before the Water Board can issue permits for those proposed impacts.

**Comment 2. The Project applicant is encouraged to make use of the Eastern Alameda Conservation Strategy in developing avoidance and minimization measures for potential impacts to special status plants and animals, and in developing mitigation for unavoidable impacts to special status species at the Project site.**

The discussion of Impact BIO-5 in Section 7.5.3 of the DEIR notes that the Eastern Alameda County Conservation Strategy (EACCS) is a guidance document that is used by the City for public projects, but compliance is not mandated for private development. The EACCS was developed by representatives of the cities in eastern Alameda County, Alameda County, Zone 7 Water Agency, the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service (USFWS), the California Department of Fish and Wildlife (CDFW), and the Water Board. While the EACCS is not an adopted Habitat Conservation Plan, following the mitigation guidance in EACCS for impacts to special status species has streamlined the permitting of impacts to special status species by USFWS and CDFW. The Project applicant is encouraged to make use of EACCS in developing mitigation for unavoidable impacts to special status plant and animal species.

**Comment 3. The discussion of post-construction stormwater management in the discussion of Hydrology and Water Quality does not address the need to mitigate for hydrograph modification resulting from new or replaced impervious surfaces that drain to the Dublin Ranch Drainage Master Plan water quality/detention basin.**

The discussion of potential Project impacts in Section 12.5.3 includes Impact HYD-2: Increase stormwater runoff due to an increase in impervious surfaces. This discussion notes that:

As a part of the Dublin Ranch Drainage Master Plan improvements, a water quality/detention basin was constructed at the downstream end of the Dublin Ranch Development Watershed adjacent to Interstate 580. This water quality/detention basin treats stormwater runoff for the properties that were included in the Dublin Ranch Development Watershed, including parcels PA-2 and PA-3. The stormwater quality/detention pond was constructed to meet the mandates in California Regional Water Quality Control Board San Francisco Bay Region Order No. R2-2003-0031, Waste Discharge Requirements and Water Quality Certification for Dublin Ranch Project, Dublin and Livermore, Alameda County.

Subsequent to the adoption of Order No. R2-2003-0031 in 2003, the Water Board developed the Municipal Regional Stormwater NPDES Permit (MRP). The most recent version of the MRP (Order No. R2-2015-0049) was adopted by the Water Board in November of 2015. As is noted in Section 12.4.1 of the DEIR, Provision C.3.g of the MRP requires that projects that create or recreate an acre or more of impervious surfaces are required to provide mitigation for hydromodification (HM) associated with impervious surfaces. In Alameda County, HM controls shall be designed such that post-project stormwater discharge rates and durations match pre-

project discharge rates and durations from 10 percent of the pre-project 2-year peak flow up to the pre-project 10-year peak flow. Please review HM that would be associated with development in parcels PA-2 and PA-3 to determine whether or not HM mitigation measures will be necessary for runoff from parcels PA-2 and PA-3 to comply with Provision C.3.g of the MRP.

## **Conclusion**

The DEIR does not provide sufficient detail with respect to mitigation for Project impacts to wetlands. The DEIR should be revised to provide specific mitigation measures for all impacts to waters of the State. These mitigation measures should be in-kind and on-site mitigation measures to the maximum extent possible. The amount of proposed mitigation should include mitigation for temporal losses of any impacted waters of the State. If mitigation is out-of-kind and/or off-site, then the amount of the proposed mitigation should be increased. Proposed mitigation measures should include designs with sufficient detail to show that any created wetlands will have sufficient hydrology to sustain wetland hydrology and vegetation without human intervention. A proposed program for monitoring the success of the mitigation features should also be included with the mitigation proposal(s). In addition, the DEIR should include a discussion of compliance with HM requirements in Parcels PA-2 and PA-3.

If the DEIR is adopted without providing concrete mitigation proposals for impacts to wetlands, it is likely that the DEIR will not be adequate to support the issuance of CWA Section 401 certification for the Project.

If you have any questions, please contact me at (510) 622-5680, or via e-mail at [brian.wines@waterboards.ca.gov](mailto:brian.wines@waterboards.ca.gov).

Sincerely,

Brian Wines  
Water Resources Control Engineer  
South and East Bay Watershed Section

cc: State Clearinghouse ([state.clearinghouse@opr.ca.gov](mailto:state.clearinghouse@opr.ca.gov))  
CDFW, Attn: Marcia Grefsrud ([marcia.grefsrud@wildlife.ca.gov](mailto:marcia.grefsrud@wildlife.ca.gov))

## Response to Comment Letter #2: San Francisco Bay Regional Water Quality Control Board

### Response to Comment 2-1: Biological Resources - Responses to 2018 At Dublin Project Comments

The comment requests a response to the comment letter sent in July 2018 (attached to the current comment letter for reference) regarding the At Dublin project. Responses to the July 2018 letter were included in the Final EIR for the At Dublin project dated October 2018. It should be noted that the At Dublin Final EIR was never certified as the project was denied. The responses below are based on the responses provided in the Final EIR and modified within the context with the SCS Dublin project. The SCS Dublin project is different from the At Dublin project analyzed in 2018 EIR and the City is not required to respond to the 2018 comment letter as part of this EIR.

#### Wetland Mitigation Plan

CEQA requires that a project's potential impacts and proposed mitigation measures should be presented in sufficient detail for readers of the CEQA document to evaluate the likelihood that the proposed mitigation will actually reduce impacts to a less than significant level. Mitigation measures must be feasible and fully enforceable through permit conditions, agreements, or other legally binding instruments (CEQA Guidelines Section 15126.4).

**Mitigation Measure BIO-3.1: Wetland Mitigation Plan** requires that prior to obtaining the first site grading, building or other permit for development activities involving ground disturbance, the project applicant shall prepare the documentation acceptable to the Community Development Department that demonstrates compliance with the following: The project applicant shall acquire the appropriate applicable permit(s) (e.g., Section 404, Section 401, Porter-Cologne) from the respective regulating agency(s) (i.e., USACE and/or RWQCB).

Furthermore, the mitigation identifies specific performance criteria that the project applicant will need to adhere to when preparing the wetland mitigation plan. This includes establishing suitable compensatory mitigation based on the concept of no net loss of wetland habitat values or acreages, to the satisfaction of the regulatory agencies. The mitigation also has specific requirements for monitoring, implementation and legal protection of preserved wetlands to ensure the mitigation plan meets requirements.

Since the mitigation measure sets forth all the standards the wetlands mitigation plan must meet, the preparation of a detailed wetland mitigation plan for analysis in the EIR is not required under CEQA.

#### Use of the Eastern Alameda County Conservation Strategy

The East Alameda County Conservation Strategy (EACCS) is a guidance document intended to provide a framework to protect, enhance, and restore natural resources in eastern Alameda County, while improving and streamlining the environmental permitting process for impacts resulting from infrastructure and development studies. The City of Dublin adopted the EACCS

as its guidance document for public projects and uses the document to provide input for managing biological resources and conservation priorities during project-level planning and environmental planning. For privately sponsored development projects such as this project, proponents are encouraged to consult the EACCS for guidance, but compliance with the document is not mandatory.

#### Post-construction Stormwater Management

The Revised Stormwater Management Plan for Dublin Ranch, City of Dublin, CA prepared by Balance Hydrologics, Inc. in collaboration with MacKay & Soms, dated March 2003, included disconnected roof downspouts as a specific site design feature that can reduce the impacts of impervious surfaces on peak flows. As part of subsequent Site Development Review Permit processes, the project will be required to include disconnected roof downspouts as well as incorporate additional site design measures such as creating self-retaining areas in larger landscape spaces, using landscape as a drainage feature, and planting interceptor trees to slow and disperse stormwater flow prior to entering the City's storm drain system. On-site treatment will include bioretention areas with raised subdrains allowing for infiltration into the subsoil. These low impact development practices will help mitigate peak flows that contribute to creek hydromodification, prior to discharging flows into the Dublin Ranch Regional Stormwater Pond.

#### **Response to Comment 2-2: Biological Resources - Regional Water Quality Control Board Approval**

The commenter states that the project applicant should not assume that the Water Board will approve the fill of all 0.66 acres of wetlands on the project site and recommends exploring an alternative that avoids complete fill of the wetlands. The comment further describes the process and standards for the regulatory agency permitting process. The mitigation requires the applicant to obtain the applicable permit from the respective regulatory agency(s). Comment is noted and the project applicant has been informed of the recommendation.



September 6, 2022

Amy Million, Principal Planner  
City of Dublin, Community Development Department  
100 Civic Plaza  
Dublin, CA, 94568

SUBJECT: Response to the Draft Environmental Impact Report (DEIR) for the SCS Dublin Project

Dear Amy,

Thank you for the opportunity to comment on the Draft Environmental Impact Report (DEIR) for the SCS Dublin Project. The 76.2-acre project site is located within the City of Dublin, and extends north from I-580 to Gleason Drive between Tassajara Road and Brannigan Street. The parcel is currently vacant and primarily zoned for a mix of commercial and medium density residential use. The proposed project would amend the City of Dublin's General Plan and Eastern Dublin Specific Plan to accommodate a mixed-use development that would include a pedestrian-focused commercial district and town square, open green space, and housing of various types and densities. These zoning changes would allow a maximum of 650 residential units, 265,000 square feet of commercial space and 108,900 square feet of park space.

Since the proposed project would appear to generate at least 100 pm-peak trips and is therefore subject to review under the Land Use Analysis Program (LUAP) of the Congestion Management Program (CMP), the Alameda County Transportation Commission (Alameda CTC) respectfully submits the following comments:

Congestion Management Program (CMP) Review

- On page 17-2, the DEIR references a separate transportation impact analysis document that will evaluate project impacts on traffic and LOS, including on regionally significant roadways. This analysis is required by the 2022 CMP to satisfy a state legislative requirement. The document is not directly linked in the DEIR, included within the Appendices, or shown on the project website. The 2022 CMP does not require this analysis to be published as part of the CEQA process, and instead allows for it to be sent directly to Alameda CTC. Please make this document available to Alameda CTC as soon as possible.

3-1

Use of Countywide Travel Demand Model

- Alameda CTC appreciates the use of the City of Dublin area-specific version of the Alameda CTC Travel Demand Model to determine project's residential VMT impacts. If applicable, please disclose any modifications made to the model's underlying data and standard assumptions.

3-2

Transportation Impacts & Mitigation Measures

- On page 17-17, the DEIR discusses potential coordination with the Livermore-Amador Valley Transit Authority (LAVTA) on future bus stop expansions to serve the project frontage area, which could encourage mode shift as well as offer first-mile last-mile connections to BART.
- Alameda CTC appreciates the proposed bike infrastructure improvements intended to mitigate the impact of an additional 2,160 daily trips in the study area, as well as the planned study of bicycle and pedestrian improvements discussed on page 17-26, which is expected to include, but not be limited to, the development of cross-sections of Class I or Class IV lanes on Tassajara

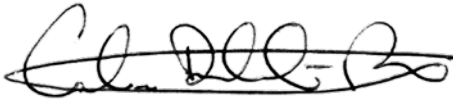
3-3

between Gleason Drive and I-580. Given the speed and volume of traffic on Gleason Drive, Alameda CTC encourages the consideration of Class I or Class IV facilities over the proposed Class II lanes between Tassajara Road and Brannigan Street, as discussed on page 17-18. Additionally, the DEIR does not include any potential facilities on Dublin Boulevard. Both Tassajara and Dublin Boulevard are on the Countywide Bikeways Network and represent corridors of countywide significance.

3-3

Thank you for the opportunity to comment on this DEIR. Please contact me at (510) 208-7400 or Shannon McCarthy at (510) 208-7489 if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Colin Dentel-Post', with a stylized flourish at the end.

Colin Dentel-Post  
Principal Planner

cc: Shannon McCarthy, Associate Transportation Planner  
Chris G. Marks, Senior Transportation Planner

**Response to Comment Letter #3: Alameda County Transportation Commission****Response to Comment 3-1: Transportation – Availability of Transportation Impact Analysis**

The request for the project Transportation Impact Analysis is acknowledged and the report will be provided to the Alameda County Transportation Commission.

**Response to Comment 3-2: Transportation - Use of Countywide Travel Demand Model**

Details of project's use of the City of Dublin area-specific version of the Alameda CTC Travel Demand Model are provided in the discussion of impact **TRANS-2** in the Draft EIR. No modifications were made to the model's underlying data and standard assumptions.

**Response to Comment 3-3: Transportation - Impacts and Mitigation Measures**

Comment noted that the discussed bus stops along the project frontage could encourage mode shift and offer last mile-connections to the Bay Area Rapid Transit (BART) station(s). Mode shift and last-mile connections offered by the project would contribute to a positive project impact through reduced demand for single occupancy vehicle trips.

Comment noted regarding a preference for Class I or Class IV bike facilities on Gleason Drive between Tassajara Road and Brannigan Street, as well as the inclusion of such facilities on Dublin Boulevard (which currently has or are planned for Class II bike facilities). As part of future Site Development Review Permits, the project will be required to be consistent with the City of Dublin Bicycle and Pedestrian Plan and construct the planned facilities.

**Comment Letter # 4**

8/26/2022

Amy Million, Principal Planner  
City of Dublin  
100 Civic Plaza  
Dublin, CA 94568

**SUBJECT: Comments on Draft Environmental Impact Report  
SCS Dublin, PLPA-2022-00005**

Dear Ms. Million:

Thank you for providing Dublin San Ramon Services District (DSRSD) the opportunity to review and comment on the Draft Environmental Impact Report for the SCS Dublin.

Appendix G of this report contains the Draft Report of the SCS Dublin Development Project Water Supply Assessment and Water Supply Verification. This draft document should be replaced with the finalized version of the aforementioned report, which was approved by DSRSD's Board of Directors on August 16, 2022, when preparing the Final Environmental Impact Report. DSRSD is available to coordinate with the City and/or Kimley Horn to ensure that the document is accurately shown in the finalized Environmental Impact Report.

4-1

Section 16.3.2 Utilities and Service Systems (pages 16-6 to 16-9), pertaining specifically to potable water, recycled water, and sanitary sewer collection system and treatment facility, accurately reflects the current status of those respective services, and DSRSD concurs with the statements made within that section, aside from one statement on page 16-9. The document states that connection on Brannigan Street will be to a 10-inch diameter sanitary sewer main. DSRSD's record drawings indicate that pipe is actually an 8-inch diameter pipe.

4-2

Questions regarding these comments should be directed to me at (925) 875-2242 or [pendergraft@dsrds.com](mailto:pendergraft@dsrds.com).

Sincerely,



Ryan Pendergraft  
Assistant Engineer

RP/ST

cc: Jackie Yee, Senior Engineer  
Irene Suroso, Senior Engineer  
Robert Thompson, Engineering Tech/GIS Spec I

**Response to Comment Letter #4: Dublin San Ramon Services District****Response to Comment 4-1: Provide Final SCS Dublin Development Project Water Supply Assessment and Water Supply Verification**

The Final SCS Dublin Development Project Water Supply Assessment has been included as part of this Final EIR as shown in **Chapter 3: Changes and Clarifications to the Draft EIR**. It is also available on the City's Development Activity webpage under the SCS Dublin project: <https://dublin-development.icitywork.com/>.

**Response to Comment 4-2: Utilities & Service Systems - Brannigan Street Sewer Main**

Comment noted and revisions to the Draft EIR have been made as recommended and are shown in **Chapter 3: Changes and Clarifications to the Draft EIR**.

Given the minor technical corrections, no new or significant impacts would result from this revision.



# DUBLIN SCHOOLS

## DUBLIN UNIFIED SCHOOL DISTRICT

7471 Larkdale Avenue, Dublin, CA 94568-1599 • 925-828-2551 • FAX 925-829-6532

September 1, 2022

*Education That Inspires  
Lifelong Learning*

### SUPERINTENDENT

*Chris D. Funk  
(925) 828-2551*

### BOARD OF TRUSTEES

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Student Board Member*

**By U.S Mail & E-Mail: amy.million@dublin.ca.gov**

Amy Million, Principal Planner  
City of Dublin, Community Development Department  
100 Civic Plaza  
Dublin, CA 94568

Re: Draft Environmental Impact Report for SCS Dublin Project

Dear Ms. Million:

Dublin Unified School District ("District") hereby submits comments regarding the Draft Environmental Impact Report ("Draft EIR") prepared by the City of Dublin ("City") for the SCS Dublin project. According to the Draft EIR, the proposed project, sponsored by the SCS Development Company ("Developer"), proposes to develop 76.2 acres with a combination of commercial/retail residential uses, including two types of retail experiences ("the Project").

The District is always mindful of new development, especially large scale development and its potential impacts on the District's facilities and educational services. In the process of the Developer's planning this Project, the Developer and District participated in a meaningful dialogue about solutions to potential impacts on the District. That dialogue resulted in a December 17, 2019, agreement between the District and the Developer, under which the Developer will provide funding to the District as another method of financing a portion of the cost of school facilities that would serve the Project ("Agreement"). The Agreement is attached to this letter.

In relation to prior development projects in the City, the District has expressed concerns about impacts on the District related to students generated by new development, the adequacy of school facilities for students generated by the development, the impacts of development on air quality, traffic, and noise in the vicinity of District schools, safety issues, and more. In approving the Agreement, the District's Board of Trustees found that the Developer adequately addressed all of the District's concerns related to the Project's impacts on District schools. A letter addressing the ongoing effectiveness of the Agreement is also attached to this letter.

5-1

The District is grateful for the Developer's support and its commitment through the Agreement to ensuring adequate facilities for the students who will live in the development. Without the Agreement in place, the District would again have been forced to expend resources on extensive comments regarding impacts on the District.

It is the District's position that the Agreement adequately and completely addresses the District's concerns related to the Project's potential impacts related to schools. As such, the District offers no further comment on the Draft EIR or the Project at this time.

Sincerely,



Chris D. Funk  
Superintendent

Encls: Agreement Between Dublin Unified School District and SCS Development Company, Inc.  
1/25/2022 Letter from H. Freiman to S. Schott

cc: DUSD Board of Trustees  
Stephen E. Schott, Vice President  
SCS Development Company, Inc.

**AGREEMENT BETWEEN DUBLIN UNIFIED SCHOOL DISTRICT  
AND SCS DEVELOPMENT COMPANY, INC.**

This Agreement (“Agreement”), dated for reference purposes as of December 17, 2019, is entered into by and between Dublin Unified School District, a California school district located in the County of Alameda (“District”), and SCS Development Company, Inc., a California corporation (“Developer”). District and Developer may hereafter be referred to individually as “Party” or collectively as “Parties.”

**RECITALS**

A. Developer is the owner of a 76.1-acre site generally bound by Tassajara Road, Interstate 580, Brannigan Street and Gleason Drive (“Property”), which is more particularly described and depicted on Exhibit “A” attached hereto and incorporated by this reference.

B. Developer is seeking entitlement from the City of Dublin (“City”) for the development of a mixed-use project referred to as “At Dublin” (“Project”). The Project is proposed with the Planned Development and Site Development (“PD/SDR”) to include multiple uses, including but not limited to single family detached residential, multifamily apartments (collectively the “Residential Project”) and hotel and commercial (collectively the “Commercial Project”).

C. The Project is further proposed to include senior citizen housing (“Senior Citizen Housing Project”). The Senior Citizen Housing Project shall consist only of those residential housing units complying with California Civil Code Section 51.3, and “housing for older persons,” as described in the federal Fair Housing Amendments Act of 1988 (Title 42 U.S.C. Section 3601, *et seq.*), the exemptions under Title 42 U.S.C. Section 3607(b)(2) and Title 24 C.F.R. Sections 100.300 through 100.307, and the Fair Employment and Housing Act (California Government Code Section 12900, *et seq.*) all as amended, and will otherwise comply with Civil Code section 51.3, subdivision (b)(4). Developer further represents that, at the time and in the manner specified in Section 3.2 below and provided that Approval of the Project has occurred (as defined in Section 3.1(a) below), Developer will record a declaration of restrictions against the Property in a form substantially similar to the form attached hereto as Exhibit “D” (the “Restriction”). For purposes of this Agreement, “School-Age Children” is defined as persons who are eligible for enrollment in the District’s grade K-12 educational programs.

D. For purposes of this Agreement, “Project,” “Commercial Project,” “Residential Project” and “Senior Citizen Housing Project” shall include any development Approved (as defined in Section 3.1) on the Property.

E. For the purposes of this Agreement, Developer and the District agree to apply the following projected Student Generation Rates (“Residential SGR”) to the Residential Project:

Housing Type	Residential SGR
Single Family Detached	0.724 School-Age Children per unit
Condos/Townhomes	0.525 School-Age Children per unit
Multifamily Apartments	0.344 School-Age Children per unit

F. As of the Effective Date of the Agreement (as defined in Section 2.1), the District is authorized to impose school impact fees pursuant to Education Code sections 17620, *et seq.*, and Government Code sections 65995, *et seq.*, at a rate of Eight Dollars and Fifty-Five Cents (\$8.55) per square foot of residential development (“Level II Fees”) and Sixty One Cents (\$0.61) per square foot of commercial/industrial development (“Commercial Fee”). School impact fees for qualified senior citizen housing are imposed at the Commercial Fee rate, per Education Code section 65995.1.

G. Developer supports District’s ongoing efforts to provide adequate school facilities for students generated by new development in the District. Developer desires voluntarily to establish terms for the timely provision of financing to provide school facilities to serve new development, including the Project. Developer is committed to funding such facilities under the terms and conditions set forth in this Agreement.

NOW THEREFORE, in consideration of the promises, covenants and provisions set forth herein, the receipt and adequacy of which the Parties hereby acknowledge, the District and Developer agree as follows:

## **TERMS AND CONDITIONS**

### **1. RECITALS AND EXHIBITS INCORPORATED**

1.1. Incorporation of Recitals. The foregoing recitals are true and correct and incorporated into the “Terms and Conditions” of this Agreement as though set forth fully herein.

1.2. Incorporation of Exhibits. Exhibits “A,” “B,” “C” and “D” attached to this Agreement are hereby incorporated in this Agreement by reference.

### **2. EFFECTIVE DATE AND TERMINATION**

2.1. Effective Date. This “Effective Date” of this Agreement shall be upon the later of the following dates: (i) the date upon which the governing board of the District approves this Agreement, or (ii) the date upon which this Agreement is executed by Developer.

#### **2.2. Termination and Tolling.**

- a. Termination Upon Payment. This Agreement shall terminate (i) with respect to the Senior Citizen Housing Project, upon payment of the Senior Housing

Citizen Housing Fee (as defined in Section 3.1(a)(ii) below); (ii) with respect to the Commercial Project, upon payment of the Commercial Project Fee (as defined in Section 3.1(a)(iii) below); and (iii) with respect to the Residential Project, upon the date when certificates of occupancy have been issued for all of the dwellings constructed upon the Property in connection with the Residential Project and all Parties' obligations under this Agreement have been fully performed. The District's obligations pursuant to Section 3.4 shall survive until termination of the Agreement for all purposes.

- b. Tolling. In the event that Developer, in its sole and absolute discretion, decides not to proceed with the construction of the Residential Project, Developer shall have the right to toll this Agreement upon written notice to the District no later than sixty (60) days prior to the date that the Contribution (as defined in Section 3.1 below) is due (the "Tolling Date"). In the event that, after the Tolling Date, Developer or its successors-in-interest subsequently (i) provides written notice to the District of the intent to resume the Residential Project, or (ii) obtains building permits for any part of the Residential Project from City (collectively, "Project Resumption"), then the tolling shall terminate and the Contribution shall be increased by the greater of (A) a three percent (3%) interest increase per annum or (B) the then-current State Allocation Board's approved construction cost index increase annualized ("Interest Rate") calculated from the Tolling Date to the date of Project Resumption. Notwithstanding the foregoing, if the Project Resumption has not occurred by the later of the date of expiration of the development agreement between the City and Developer regarding the Project (the "Development Agreement") or the date of expiration of any amendment to the Development Agreement, then this Agreement shall terminate upon notice by Developer to District of said expiration. If, however, Approval remains in place for the Residential Project such that its development can proceed without a development agreement, termination shall not be allowed under this Section 2.2(b).
- c. Notice of Termination. (i) Upon termination pursuant to this Section 2.2 with respect to the Senior Citizen Housing Project, and upon Developer's request, the District agrees to deliver to Developer a written notice of such termination and the Developer's obligations in relation thereto in a recordable form (including a quitclaim deed as to the Senior Citizen Housing Project) reasonably acceptable to Developer; (ii) upon termination pursuant to this Section 2.2 with respect to the Commercial Project, and upon Developer's request, the District agrees to deliver to Developer a written notice of such termination and the Developer's obligations in relation thereto in a recordable form (including a quitclaim deed as to the Commercial Project) reasonably acceptable to Developer; and (iii) upon termination pursuant to this Section 2.2 with respect to the Residential Project, District agrees to deliver to Developer a written notice of such termination and the Developer's

obligations in relation thereto in a recordable form (including a quitclaim deed as to the Residential Project) reasonably acceptable to Developer.

### 3. DEVELOPER CONTRIBUTION

The purpose of this Agreement is to set forth Developer's obligation both to pay school impact fees statutorily required under Education Code sections 17620, *et seq.*, and Government Code sections 65995, *et seq.*, and to provide additional voluntary funding to District as another method of financing a portion of the cost of school facilities within the District that will serve students from the Project and elsewhere in the District. Developer acknowledges that this Agreement, and each of its terms and conditions hereunder, are fully enforceable as a binding contract on Developer and its successors-in-interest or assignees and Developer will not assert in any manner that District is acting in excess of its powers in entering into this Agreement.

#### 3.1 Applicable Fees.

- a. Provided that the Project is Approved and there is no uncured District Event of Default (as defined in Section 5.1 below), Developer agrees to pay to District the sum total of each of the following:

- i. **Residential Fee:** Eighty Thousand Dollars (\$80,000) per student projected to be generated by the entire Residential Project, according to the SGR set forth in Recital E above. By way of illustration, if a single family detached residence is constructed as a part of the Residential Project, the Developer's contribution to the District for that unit will be calculated by multiplying the applicable SGR of .724 by Eighty Thousand Dollars (\$80,000), for a total of Fifty-Seven Thousand Nine Hundred and Twenty dollars (\$57,920). The total Residential Fee as applied to all residences included in the Residential Project shall constitute the "Contribution".

- ii. **Senior Citizen Housing Fee:** The greater of (a) the statutory school impact fee applicable to Senior Citizen Housing in the amount in effect when building permits are issued for such housing or (b) the applicable Commercial Fee in the amount in effect when building permits are issued for such housing, per square foot of the Senior Citizen Housing Project; plus

- iii. **Commercial Project Fee:** The applicable Commercial Fee amount in effect when building permits are issued for such development per square foot of the Commercial Project.

- b. Payment of the Contribution related to the entirety of the Residential Project shall be made no later than the earlier of: (a) (18) eighteen months after Approval of the Project, or (b) issuance by the City of the first residential building permit (excluding permits solely for grading or site improvements) for development of the Project on the Property. For purposes of this Agreement, "Approval" shall be defined to mean that all necessary

entitlements, permits, certifications, and approvals from the City and any other governmental or quasi-governmental agency with jurisdiction over the Project required for Developer's intended development of the Project have been obtained, and (i) all applicable administrative and judicial appeal, rehearing, and challenge periods and all referendum periods for such approvals, including without limitation, challenges under the California Environmental Quality Act (Pub. Res. Code §§ 21000, *et seq.*) ("CEQA"), shall have expired without such an appeal, request for rehearing, challenge, or referendum having been filed, or (ii) in the event of a timely filing of such an appeal, request for rehearing, challenge, or referendum, such matters shall have been fully and finally resolved in a manner that allows the Project to proceed. If Approval has occurred, the Project thus approved shall be referred to for purposes of this Agreement as an "Approved" Project. Developer shall provide the District with immediate written notice upon occurrence of the Approval of the Project. Promptly upon Developer's payment of the Contribution, District shall certify such payment in writing to the City.

- c. Payment of the statutory fee amount for the Commercial Project and the Senior Citizen Housing Project shall be made no later than the date on which such fees are statutorily due to the District.
- d. Developer's commitment to pay the Contribution shall be in lieu of any and all other fees, assessments, taxes, charges, impositions, dedications, exactions, liens, or payment, of any type, amount, or value whatsoever, established, levied, or imposed at any time by District on Developer in relation to the Residential Project.
- e. District and Developer acknowledge and agree that (i) the Commercial Project shall have no obligations under this Agreement other than payment of the statutory fee amount applicable to the Commercial Project; and (ii) Developer's payment of the Contribution shall satisfy in full the Developer's obligations for the Commercial Project.
- f. District and Developer acknowledge and agree that (i) the Senior Citizen Housing Project shall have no obligations under this Agreement other than the greater of payment of the statutory fee amount applicable to the Senior Citizen Housing Project or the then-applicable commercial fee amount; and (ii) Developer's payment of the applicable amount shall satisfy in full the Developer's obligations for the Senior Citizen Housing Project.
- g. District and developer further acknowledge and agree that:
  - i. This Agreement shall not prevent the levy and collection of property taxes applicable to the Property, for any reason, including the levy of taxes in connection with the District's existing or future bonded indebtedness. This Agreement shall further not prevent the District from seeking to gain

and/or actually receiving voter approval of any District-wide general obligation bonds, or any other voter approved State authorized financing programs, including but not limited to, parcel taxes, School Facilities Improvement District bonds, applicable property taxes, and any other State authorized financing programs that may then be in effect (collectively the “Financing Measures”). Notwithstanding the foregoing, District shall not seek to gain and/or actually gain voter approval for any Financing Measure that is applicable solely to the Property or to the Property and less than the entirety of the District until and unless such approval is received from the future occupants of the Project, and District shall not seek any such Financing Measure applicable solely to the Property or to the Property and less than the entirety of the District from Developer or the current or future owner(s) of the Property prior to occupancy of the Project.

- ii. This Agreement shall not prevent the District from charging future property owners within the Project for expansion or replacement of then-existing square footage pursuant to then-applicable law.
- iii. Nothing herein shall be construed so as to limit Developer from exercising whatever rights it may otherwise have in connection with protesting or otherwise objecting to the imposition of taxes, bonds, or assessments on the Property.

### 3.2 Restrictive Covenant.

- a. Developer represents and covenants that Developer shall not obtain any building permits for development of the Residential Project on the Property or commence construction of the Residential Project on the Property, other than permits and construction work related to grading and site improvements for the Residential Project, until the Contribution has been made.
- b. Restrictive Residency Covenant – Senior Citizen Housing Project Developer represents and covenants that Developer shall not alter the Senior Citizen Housing residency requirements on the Property as provided in the Restriction so as to allow for the residency of School-Age Children (except as provided in the Restriction). In accordance with this Section 3.2(b), Developer shall cause the Restriction to be recorded prior to the issuance of any building permits for the Project, and Developer shall not apply for any such building permits absent the recording of said Restriction. If the Restriction is not in the form attached to this Agreement (other than insertion of dates and completion of other similar blanks), then prior to recording the Restriction, Developer shall present the Restriction to the District for the District’s review and approval, which approval shall not be unreasonably withheld. If, upon review of the Restriction, the District reasonably determines that the Restriction to be recorded does not substantially conform to the Restriction presented as

Exhibit D hereto, then Developer may not record the Restriction; provided, however, that the District shall be deemed to have approved the Restriction if the District does not deliver written notice to Developer reasonably disapproving the Restriction within fifteen (15) days after District's receipt of the Restriction. Developer shall not record any Restriction that has not been approved (or deemed approved) by the District.

- i. If Developer or any subsequent owner of the Property (in each case, the "then-current owner of the Project") enacts, alters, or eliminates the Senior Citizen Housing residency requirements within any portion of the Property to allow for residency of School-Age Children in any unit or units in the Project other than as permitted in the Restriction (each such unit is a "School-Age Residential Unit"), the then-current owner of the Project (or, in the case of a homeowner vote to revise the Restriction or the CC&R's, the homeowners' association) shall be obligated to: (a) notify the District in writing of such fact, and (b) within 60 days of the applicable enactment or change of residency requirements, pay the then-applicable school facility impact mitigation fees that the District is permitted to impose on residential construction within the Project for the number of residential units then allowed to house School-Age Children pursuant to Education Code section 17620, *et seq.*, and Government Code section 65995, *et seq.* In such event, no credit shall be given to the owner of the unit or units in question for the Contribution already paid.

3.3 Certificate of Compliance/Deferral of Payment of Fees. Except as otherwise stated below, prior to the City's issuance of a building permit (excluding permits for grading or site improvements) for any residential or commercial structure to be constructed in the Project, Developer shall first obtain from the District a Certificate of Compliance evidencing that the Developer has complied with the provisions of this Agreement. District shall not be obligated to provide a Certificate of Compliance in the event that there is an uncured Developer Event of Default (as defined in Section 5.1 below), and such Certificate of Compliance shall not be issued until such Event of Default has been cured in accordance with Section 5.1 below.

3.4. Joint Statement; Non-Opposition. In acknowledgment of Developer's contributions as set forth in this Agreement, and the effect of those contributions in financing school facilities to serve the Project, District: (a) shall, with Developer, issue the Joint Statement attached hereto as Exhibit C no later than five (5) days after Developer's request; (b) shall, within five (5) days after any Developer request, transmit correspondence substantially conforming to Exhibit C to the City; (c) shall not retract the Joint Statement or issue communications disclaiming or conflicting with the Joint Statement; and (d) shall not oppose Developer's efforts to obtain Approval of the Project. District's obligations under this Section 3.4 shall be conditioned on there then being no uncured Developer Event of Default (as defined in Section 5.1 below). District's obligations under this Section 3.4 shall further be conditional upon this Agreement becoming effective, and may cease upon termination of this Agreement. District hereby covenants that, except as authorized by this Agreement, it will not under any

circumstances or at any time assert or take any of the actions described below against Developer, or any successor-in-interest or assignee:

- a. Oppose, object, or otherwise impede the processing of applications for any Approvals with respect to the Project, including without limitation site plan amendments, general plan amendments, zoning or rezoning, conditional use permit applications, environmental evaluations, tentative tract map applications, final map processing and approvals, building permits, certificates of occupancy or utility releases for completed structures, annexations, or other local government processing related to the Property.
- b. Oppose the Project on the basis of compliance with CEQA or any regulations implemented with respect thereto on the basis of inadequate school facilities to serve the Project or otherwise.
- c. Advise or request any other public or private entity to advise anyone that school facilities are inadequate to serve the students generated by the Project.
- d. Refuse to issue a Certificate of Compliance when requested by Developer, or other builder or contractor constructing the Project.
- e. Except as expressly provided in this Agreement, pursue additional funding for school facilities from Developer, including without limitation any fees, assessments, taxes, charges, impositions, dedications, exactions, liens, or payment, of any type, amount, or value whatsoever, and notwithstanding any subsequent change in applicable law to the extent such change may authorize the District to do so.

Nothing herein shall prohibit or limit the District from opposing or commenting on project applications for developments other than the Project as described herein. Notwithstanding the foregoing, the requirement of this Section 3.4 shall not apply in the event of an uncured Developer Event of Default (as defined in Section 5.1 below).

#### 4. JOINT USE GYMNASIUM

The Parties acknowledge that effective May 1, 2018, District and City entered into an Agreement for Ground Lease and Property Option – Dublin Crossing, whereby City has committed to lease twelve (12) acres of land to District, with an option for the District to purchase, for a future school site commonly referred to as the “Dublin Crossing” school site, subject to the conditions set forth in that agreement. That agreement also commits the District to include in its future plans for the Dublin Crossing school site the design for a joint use gymnasium, with the funding for such gymnasium subject to negotiations between the City and District. Developer agrees to make commercially reasonable, good faith efforts to request that the City direct at least Five Million Dollars (\$5,000,000) of public facility or community benefit fees generated by the Project toward the construction of a joint use gymnasium to be constructed on the future Dublin Crossing school site, or such other site that is mutually agreed to by District and City. Developer

shall make commercially reasonable, good faith efforts to include this obligation in a legally binding development agreement with the City related to the Project so as to bind the City to such a direction of funds. If, despite Developer's commercially reasonable, good faith efforts, this obligation is not secured in a legally binding development agreement, Developer shall promptly so notify District and shall provide reasonable evidence of Developer's commercially reasonable, good faith efforts made to secure such an obligation.

## 5. DEFAULT, REMEDIES, AND TERMINATION

5.1. Events of Default. Subject to any extensions of time by mutual consent of the Parties in writing, any failure by either Party to perform any material term or provision of this Agreement shall constitute an "Event of Default" upon occurrence of the circumstances set forth in subsections 5.1(a) and 5.1(b) below.

- a. Developer Event of Default. A Developer Event of Default shall occur if Developer does not cure such failure to perform as follows: (i) in the event of Developer's failure to pay the Contribution as defined above in Section 3.1(a)(i) above or any portion thereof ("Residential Contribution Default"), within thirty (30) days following written notice of default from District; and (ii) in the event of any other default related to the Residential Project ("Other Residential Default"), or related to the Senior Citizen Housing Project ("Senior Citizen Housing Default"), or related to the Commercial Project ("Commercial Default"), (A) within sixty (60) days following written notice of default from the District, where such failure is of a nature that can be cured within such sixty (60) day period, or (B) if such failure is not of a nature which can be cured within such sixty (60) day period, Developer does not commence substantial efforts to cure such failure within sixty (60) days, or thereafter does not within a reasonable time prosecute to completion with diligence and continually the curing of such failure. Late payments of the Contribution, the Senior Citizen Housing Fee, or the Commercial Fee, or any portion thereof, beyond such thirty (30) day cure period shall bear a late payment penalty at the Interest Rate, calculated on a monthly basis.
- b. District Event of Default. A District Event of Default shall occur if District does not cure such failure to perform (i) in the event of a default in District's obligations pursuant to Section 3.4 herein, within five (5) business days following written notice of default from Developer; and (ii) in the event of any other default, (A) within sixty (60) days following written notice of default from the Developer, where such failure is of a nature that can be cured within such sixty (60) day period, or (B) if such failure is not of a nature which can be cured within such sixty (60) day period, District does not commence substantial efforts to cure such failure within sixty (60) days, or thereafter does not within a reasonable time prosecute to completion with diligence and continually the curing of such failure.

- c. Notice of Default. Any notice of default given hereunder by either Party shall specify in detail the nature of the failures in performance that the noticing Party claims constitutes the Event of Default, sufficient facts constituting substantial evidence of such failure, which type of default has occurred as set forth in Section 5.1(a) above, and the manner in which such failure may be satisfactorily cured in accordance with the terms and conditions of this Agreement (“Notice of Default”). During the time periods herein specified for cure of a failure of performance, the Party charged therewith shall not be considered to be in default for purposes of (i) termination of this Agreement, (ii) institution of legal proceedings with respect thereto, or (iii) issuance of any approval with respect to the Project. The waiver by either Party of any default under this Agreement shall not operate as a waiver of any subsequent breach of the same or any other provision of this Agreement.

5.2. Meet and Confer. During the time periods specified in Section 5.1 for cure of an alleged Event of Default, the Parties shall meet and confer in a timely and responsive manner, to attempt to resolve any matters prior to litigation or other action being taken, including without limitation any action in law or equity; provided, however, that nothing herein shall be construed to extend the time period for this meet and confer obligation beyond the applicable cure period referred to in Section 5.1 (even if the applicable cure period itself is extended pursuant to Section 5.1.a(ii)(B) or 5.1.b(ii)(B)) unless the Parties agree otherwise in writing. The Parties may agree in writing to toll any applicable statutes of limitation for such period as may reasonably be necessary to complete the meet and confer process outlined in this section.

5.3. Remedies and Termination.

- a. Residential Contribution Default or Other Residential Default. If, after notice and expiration of the cure periods and procedures set forth in Sections 5.1 and 5.2, as applicable, the alleged Event of Default related to a Residential Contribution Default or Other Residential Default is not cured, the non-defaulting Party, at its option, may institute legal proceedings pursuant to Section 5.4 of this Agreement and/or terminate this Agreement. In the event that this Agreement is terminated and litigation is instituted that results in a final decision that such termination was improper, then this Agreement shall immediately be reinstated as though it had never been terminated. Notwithstanding the foregoing, termination for an uncured Residential Contribution Default or Other Residential Default shall apply only as to the Parties’ obligations under this Agreement in relation to the Residential Project, and shall not apply to the Senior Citizen Housing Project or the Commercial Project, and the Agreement’s terms shall continue to apply as to the Senior Citizen Housing Project and the Commercial Project.
- b. Senior Citizen Housing Default. If, after notice and expiration of the cure periods and procedures set forth in Sections 5.1 and 5.2, as applicable, the alleged Event of Default related to a Senior Citizen Housing Default is not cured, the non-defaulting Party, at its option, may institute legal proceedings

pursuant to Section 5.4 of this Agreement and/or terminate this Agreement. In the event that this Agreement is terminated and litigation is instituted that results in a final decision that such termination was improper, then this Agreement shall immediately be reinstated as though it had never been terminated. Notwithstanding the foregoing, termination for an uncured Senior Citizen Housing Default shall apply only as to the Parties' obligations under this Agreement in relation to the Senior Citizen Housing Project, and shall not apply to the Residential Project or the Commercial Project, and the Agreement's terms shall continue to apply as to the Residential Project and the Commercial Project.

- c. Commercial Default. If, after notice and expiration of the cure periods and procedures set forth in Sections 5.1 and 5.2, as applicable, the alleged Event of Default related to a Commercial Default is not cured, the non-defaulting Party, at its option, may institute legal proceedings pursuant to Section 5.4 of this Agreement and/or terminate this Agreement. In the event that this Agreement is terminated and litigation is instituted that results in a final decision that such termination was improper, then this Agreement shall immediately be reinstated as though it had never been terminated. Notwithstanding the foregoing, termination for an uncured Commercial Default shall apply only as to the Parties' obligations under this Agreement in relation to the Commercial Project, and shall not apply to the Residential Project or the Senior Citizen Housing Project, and the Agreement's terms shall continue to apply as to the Residential Project and the Senior Citizen Housing Project.

5.4. Remedies. Either Party may, in addition to any other rights or remedies, institute legal action to cure, correct or remedy any default, enforce any covenant or agreement herein, enjoin any threatened or attempted violation thereof, enforce by specific performance the obligations and rights of the Parties hereto or to obtain any remedies consistent with the purpose of this Agreement, subject to compliance with Sections 5.1 and 5.2. All remedies shall be cumulative and not exclusive of one another, and the exercise of any one or more of these remedies shall not constitute a waiver or election with respect to any other available remedy. Notwithstanding the foregoing, any remedy sought shall apply solely to the specific type of default identified in the Notice of Default. By way of illustration, if a Notice of Default sent by the District to Developer relates solely to a Residential Contribution Default, District may seek to enforce its rights under this Agreement only in relation to the Residential Project, and not in relation the Senior Citizen Housing Project or the Commercial Project.

## 6. MISCELLANEOUS

6.1. Agreement Runs With Land. This Agreement is created for the benefit of District, Developer and the Property. Subject to the limitations set forth herein, the covenants of this Agreement shall run with the land constituting the Property. Developer agrees for the benefit of District that the Property, as described in Exhibit "A" hereto, shall be held, transferred,

and encumbered subject to the provisions of this Agreement which are for the use and benefit of the District, the Developer, the Property, and of each and every person who now or in the future owns any portion or portions of the Property. Within thirty (30) days following execution of this Agreement, the Parties shall execute a Memorandum of Agreement in a form substantially conforming to Exhibit "B" hereto. Following notice of Approval as set forth in Section 3.1 hereof, either Party to this Agreement may cause the applicable Memorandum of Agreement to be recorded with the Recorder's Office of Alameda County. Both Parties shall reasonably cooperate to prepare or provide any further documents and signatures necessary for the recording of the terms of this Agreement.

6.2. Successors and Assignees. All terms and conditions of this Agreement shall be binding upon all successors-in-interest, including without limitation purchasers of all or any part of the Property. Developer shall have the right to assign in whole or in part its rights, duties and obligations under this Agreement in connection with a transfer of all or any portion of the Property without the consent of the District. In the event that Developer transfers title to all or a portion of the Property, then such successor or assign shall be required to fulfill Developer's obligations under this Agreement for that certain portion of the transferred Property. Developer shall be released from the obligations under this Agreement which apply to the transferred portion of the Property. For that portion of the Property that is not transferred, Developer's obligations under this Agreement shall remain in full force and effect. Prior to any such transfer or assignment, Developer shall also notify the District in writing of the name of the successor or assign and all appropriate contact information for the District's records. In the event of transfer of any portion of the Property, (a) any Event of Default by any assignee with respect to the transferred Property shall not be considered an Event of Default by Developer or any other assignee with respect to the portion of the Property retained by Developer or such other assignee, and (b) any Event of Default by Developer with respect to the Property retained by Developer shall not be considered an Event of Default by any assignee with respect to the portion of the Property transferred to such assignee.

6.3. Headings. The headings of this Agreement are for convenience purposes only and shall not limit or define the meaning of the provisions of this Agreement.

6.4. Governing Law and Venue. This Agreement shall be construed in accordance with, and governed by, the laws of the State of California applicable to contracts to be performed wholly within this State. Any dispute arising from the terms and conditions of this Agreement shall be heard by a court of competent jurisdiction located within Alameda County.

6.5. Attorneys' Fees and Costs. In the event of any legal proceeding, including any lawsuit, action, or proceeding in law or equity, arising out of or relating to this Agreement, the prevailing Party shall be entitled to recover its reasonable attorneys' fees and costs arising from the proceeding, including expert witness fees. The prevailing Party on any appeal shall also be entitled to recover its reasonable attorneys' fees and costs arising out of any such appeal. In addition to the foregoing attorneys' fees and costs, the prevailing Party shall be entitled to its attorneys' fees and costs incurred in any post-judgment proceedings to collect or enforce the judgment. This provision is separate and several and shall survive the merger of this Agreement into any judgment on this Agreement.

6.6. Construction. The singular includes the plural, “shall” is mandatory, and “may” is permissive. The Parties acknowledge and agree that each of the Parties and each of the Parties’ attorneys have participated fully in the negotiation and drafting of this Agreement. In cases of uncertainty as to the meaning, intent or interpretation of any provision of this Agreement, the Agreement shall be construed without regard to which of the Parties caused, or may have caused, the uncertainty to exist. No presumption shall arise from the fact that particular provisions were or may have been drafted by a specific Party, and prior versions or drafts of this Agreement may be used to interpret the meaning or intent of this Agreement or any provision thereof.

6.7. Notices. Any notice to be given hereunder to either Party shall be in writing and shall be given either by personal delivery (including express or courier service), by receipt-confirmed facsimile, or by registered or certified mail, with return receipt requested and postage prepaid (excluding electronic messaging) and addressed as follows:

6.7.1. To District:

Dublin Unified School District  
ATTN: SUPERINTENDENT  
7471 Larkdale Avenue  
Dublin, CA 94568  
Facsimile: 925-829-6532

With a copy to Legal Counsel: LOZANO SMITH

ATTN: Harold M. Freiman, Esq.  
2001 North Main Street, Suite 500  
Walnut Creek, CA 94596  
Facsimile: 925-953-1625

6.7.2. To Developer:

SCS Development Company, Inc.  
ATTN: Stephen E. Schott  
404 Saratoga Avenue, Suite 100  
Santa Clara, CA 95050  
Facsimile: 408-985-6057

6.8. No Joint Venture. The relationship of the Parties to this Agreement is determined solely by the provisions of this Agreement. This Agreement does not create and shall not be construed to create any agency, partnership, joint venture, trust or other relationship with duties or incidents different from those of parties to an arm’s-length contract.

6.9. No Further Assurances. Nothing in this Agreement, whether express or implied, is intended to or shall do any of the following: (a) confer any benefits, rights or remedies under or by reason of this Agreement on any persons or entities other than the express Parties to this

Agreement; (b) relieve or discharge the obligation or liability of any person not an express party to this Agreement; or (c) give any person not an express party to this Agreement any right of subrogation or action against any Party to this Agreement.

6.10. Time is of the Essence. Time is of the essence in the performance of each Party's respective obligations under this Agreement.

6.11. Amendments and Waivers. No amendment of, supplement to, or waiver of any obligations under this Agreement shall be enforceable or admissible unless set forth in writing signed by the Party against which enforcement or admission is sought. No delay or failure to require performance of any provision of this Agreement shall constitute a waiver of that provision as to that or any other instance. Any waiver granted shall apply solely to the specific instance expressly stated in a writing signed by the Parties.

6.12. Entire Agreement. This Agreement sets forth the entire understanding of the Parties relating to the transactions it contemplates, and supersedes all prior understandings relating to them, whether written or oral. There are no obligations, commitments, representations, or warranties relating to them except those expressly set forth in this Agreement.

6.13. Severability. If any provision of this Agreement is held invalid, void or unenforceable by a court of competent jurisdiction, but the remainder of the Agreement can be enforced without failure of material consideration to any Party, then this Agreement shall not be affected and it shall remain in full force and effect, unless amended or modified by mutual consent of the Parties; provided, however, that if the invalidity or unenforceability of any provision of this Agreement results in a material failure of consideration, then the Party adversely affected thereby shall have the right in its sole discretion to terminate this Agreement upon providing written notice of such termination to the other Party.

6.14. Execution in Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and counterpart signature pages may be assembled to form a single document which shall be deemed an original document. Consolidated signature pages shall be compiled by District and forwarded to Developer to constitute the Developer's executed copy of the Agreement.

6.15. Signatures. By signing below, each of the signatories represents and warrants that he or she has been duly authorized to execute this Agreement on behalf of the Party on whose behalf he or she is signing. The Superintendent for the District further represents and warrants, by his/her signature, that this Agreement has been duly ratified and approved by the Board of Trustees of the District.

**[Continued on next page]**

6.16. Represented by Counsel. Each Party hereto acknowledges that it has been represented by legal counsel, or had the opportunity to obtain legal counsel and consciously chose not to obtain it, in the negotiation, drafting, and execution of this Agreement.

**IN WITNESS WHEREOF**, this Agreement has been entered into by and between the District and Developer as of the last date set forth below.

**DUBLIN UNIFIED SCHOOL DISTRICT**

By: Amy Miller

Name: Amy Miller

Its: Board President

Date: Jan 18, 2012020

By: Dave Marken

Name: Dave Marken

Its: Superintendent

Date: Jan 18, 2012020

**SCS DEVELOPMENT COMPANY, INC.**  
**a California corporation**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_, 201\_\_


6.16. Represented by Counsel. Each Party hereto acknowledges that it has been represented by legal counsel, or had the opportunity to obtain legal counsel and consciously chose not to obtain it, in the negotiation, drafting, and execution of this Agreement.

**IN WITNESS WHEREOF**, this Agreement has been entered into by and between the District and Developer as of the last date set forth below.

**DUBLIN UNIFIED SCHOOL DISTRICT**

**SCS DEVELOPMENT COMPANY, INC.**  
**a California corporation**

By: \_\_\_\_\_

By: 

Name: \_\_\_\_\_

Name: Stephen E. Schott

Its: Board President

Its: Vice President

Date: \_\_\_\_\_, 201\_\_

Date: January 9, 2020

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: Superintendent

Date: \_\_\_\_\_, 201\_\_

**EXHIBIT A**  
**LEGAL DESCRIPTION AND DEPICTION OF THE PROPERTY**



Shea Properties

0 60 120 240 360 FEET  
**STAGE 1: LANDSCAPE MASTER PLAN**

0.4  
SHEET  
AUGUST 7, 2018  
**AT DUBLIN**

EXHIBIT A  
LEGAL DESCRIPTION AND DEPICTION OF THE PROPERTY

**Legal Description**

Real property in the City of Dublin , County of Alameda, State of California, described as follows:

PARCEL ONE:

PARCEL A OF PARCEL MAP 9512, FILED JUNE 23, 2008 IN [BOOK 308, PAGES 13 THROUGH 18](#), INCLUSIVE OF PARCEL MAPS, ALAMEDA COUNTY RECORDS.

ALSO EXCEPTING THEREFROM, ALL THOSE CERTAIN PIECES OR PARCELS OF LAND DESCRIBED UNDER EXHIBIT "C" OF THE AMENDED FINAL ORDER OF CONDEMNATION, BEING DUBLIN BOULEVARD, CENTRAL PARKWAY, GLEASON DRIVE AND WIDENING OF TASSAJARA ROAD. SAID ORDER RECORDED FEBRUARY 04, 2004, SERIES NO. [2004050348](#), ALAMEDA COUNTY RECORDS.

PARCEL TWO:

PARCEL 3 OF PARCEL MAP 9512, FILED JUNE 23, 2008 IN [BOOK 308, PAGES 13 THROUGH 18](#), INCLUSIVE OF PARCEL MAPS, ALAMEDA COUNTY RECORDS.

PARCEL THREE:

PARCEL 4 OF PARCEL MAP 9512, FILED JUNE 23, 2008 IN [BOOK 308, PAGES 13 THROUGH 18](#), INCLUSIVE OF PARCEL MAPS, ALAMEDA COUNTY RECORDS.

PARCEL FOUR:

PARCEL 1 OF PARCEL MAP 9512, FILED JUNE 23, 2008 IN [BOOK 308, PAGES 13 THROUGH 18](#), INCLUSIVE OF PARCEL MAPS, ALAMEDA COUNTY RECORDS.

PARCEL FIVE:

PARCEL 2 OF PARCEL MAP 9512, FILED JUNE 23, 2008 IN [BOOK 308, PAGES 13 THROUGH 18](#), INCLUSIVE OF PARCEL MAPS, ALAMEDA COUNTY RECORDS.

APN: 985-0051-004 (Affects Parcel One), 985-0052-024 (Affects Parcel Two), 985-0052-025 (Affects Parcel Three), 985-0051-005 (Affects Parcel Four) and 985-0051-006 (Affects Parcel Five)

## EXHIBIT B

### MEMORANDUM OF AGREEMENT

#### RECORDING REQUESTED BY AND WHEN RECORDED MAIL TO:

Dublin Unified School District  
7471 Larkdale Avenue  
Dublin, California 94568  
Attn: Superintendent

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*(Space Above for Recorder's Use)*

#### MEMORANDUM OF AGREEMENT BETWEEN DUBLIN UNIFIED SCHOOL DISTRICT AND SCS DEVELOPMENT COMPANY, INC.

This Memorandum is entered into as of \_\_\_\_\_, 20\_\_\_\_, by and between DUBLIN UNIFIED SCHOOL DISTRICT, a California public school district (“**DISTRICT**”), and SCS DEVELOPMENT COMPANY, INC. (“**DEVELOPER**”). The DISTRICT and DEVELOPER are sometimes referred to herein collectively as the “**Parties**,” or each individually as a “**Party**.”

WHEREAS, Developer is the owner/developer of certain real property located within the District’s boundaries, consisting of a 76.1 acre site generally bound by Tassajara Road, Interstate 580, Brannigan Street and Gleason Drive, in the City of Dublin, County of Alameda, State of California, as more particularly described in Exhibit 1, attached hereto (hereinafter “**Property**”) on which Developer is seeking or has received entitlements to construct residential units, commercial space, and other public improvements (“**Project**”).

WHEREAS, DISTRICT and DEVELOPER are Parties to that certain Agreement Between Dublin Unified School District dated \_\_\_\_\_, 2019 (“**Agreement**”), by which DEVELOPER has agreed to provide various benefits to DISTRICT to satisfy DEVELOPER’s statutory obligations to pay State mandated fees to DISTRICT as required by Government Code sections 65995, *et seq.*, and Education Code section 17620, *et seq.*, and to provide additional contributions to the DISTRICT.

WHEREAS, the Parties intend to bind the successors in interest in the Property, as that Property is more particularly described in Exhibit 1 hereto, to the obligations of DEVELOPER as set forth in the Agreement, and subject to the exceptions therein, until such obligations to DISTRICT are fully satisfied; and

WHEREAS, the purpose of this Memorandum is to give notice of the existence of the Agreement, together with this Memorandum, which constitute the agreement between the DISTRICT and DEVELOPER, to each successor in interest to any portion of the Property.

NOW, THEREFORE, DISTRICT and DEVELOPER hereby agree that the Agreement creates a covenant running with the land and that either Party may record this Memorandum following notice of Approval (as defined in the Agreement) of the Project. Any interested person may obtain a copy of the Agreement at the Dublin Unified School District office located at 7471 Larkdale Avenue, Dublin, California 94568. The terms and conditions of the Agreement are hereby incorporated by reference with the same force and effect as though set forth herein.

In the event of any conflict between the terms of the Agreement and the terms of this Memorandum, the terms of the Agreement shall control.

This Memorandum may be executed in counterparts, each of which shall be deemed an original for all purposes and which together shall be considered one document.

IN WITNESS WHEREOF, this Memorandum has been executed by the Parties on the date and year first written above.

DISTRICT:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_  
Dated: \_\_\_\_\_

DEVELOPER:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_  
Dated: \_\_\_\_\_

Exhibit “1” to Memorandum

Property Description/Map



Shea Properties

0 60 120 240 360 FEET  
STAGE 1: LANDSCAPE MASTER PLAN  
N SHEET 0.4  
AUGUST 7, 2018  
AT DUBLIN

## **Exhibit “1” to Memorandum**

### **Property Description/Map**

#### **Legal Description**

Real property in the City of Dublin, County of Alameda, State of California, described as follows:

##### **PARCEL ONE:**

PARCEL A OF PARCEL MAP 9512, FILED JUNE 23, 2008 IN BOOK 308, PAGES 13 THROUGH 18, INCLUSIVE OF PARCEL MAPS, ALAMEDA COUNTY RECORDS.

ALSO EXCEPTING THEREFROM, ALL THOSE CERTAIN PIECES OR PARCELS OF LAND DESCRIBED UNDER EXHIBIT "C" OF THE AMENDED FINAL ORDER OF CONDEMNATION, BEING DUBLIN BOULEVARD, CENTRAL PARKWAY, GLEASON DRIVE AND WIDENING OF TASSAJARA ROAD. SAID ORDER RECORDED FEBRUARY 04, 2004, SERIES NO. 2004050348, ALAMEDA COUNTY RECORDS.

##### **PARCEL TWO:**

PARCEL 3 OF PARCEL MAP 9512, FILED JUNE 23, 2008 IN BOOK 308, PAGES 13 THROUGH 18, INCLUSIVE OF PARCEL MAPS, ALAMEDA COUNTY RECORDS.

##### **PARCEL THREE:**

PARCEL 4 OF PARCEL MAP 9512, FILED JUNE 23, 2008 IN BOOK 308, PAGES 13 THROUGH 18, INCLUSIVE OF PARCEL MAPS, ALAMEDA COUNTY RECORDS.

##### **PARCEL FOUR:**

PARCEL 1 OF PARCEL MAP 9512, FILED JUNE 23, 2008 IN BOOK 308, PAGES 13 THROUGH 18, INCLUSIVE OF PARCEL MAPS, ALAMEDA COUNTY RECORDS.

##### **PARCEL FIVE:**

PARCEL 2 OF PARCEL MAP 9512, FILED JUNE 23, 2008 IN BOOK 308, PAGES 13 THROUGH 18, INCLUSIVE OF PARCEL MAPS, ALAMEDA COUNTY RECORDS.

A.P.N.: 985-0051-004 and 985-0051-005 and 985-0051-006 and 985-0051-024 and 985-0051-025

## **NOTARY ACKNOWLEDGEMENT**

<p>A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.</p>
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STATE OF CALIFORNIA

COUNTY OF ALAMEDA

On \_\_\_\_\_, 2019, before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity, and that by his/her/their signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: \_\_\_\_\_ (Seal)

**EXHIBIT C**  
**JOINT USE STATEMENT**

**DUBLIN UNIFIED SCHOOL DISTRICT REACHES AGREEMENT  
WITH DEVELOPER OF ATDUBLIN FOR SCHOOL FEES**

The Dublin Unified School District (DUSD) has reached an agreement with SCS Development—the owner of the AT Dublin project—for the accelerated payment of development fees plus an additional contribution. SCS will pay \$80,000 per student projected to be generated by the Project, in addition to statutory fees for senior housing and commercial development. This will be by far the highest contribution paid to DUSD by a developer. This agreement is conditional on the City of Dublin’s exercise of its discretion whether to approve the development.

The District takes no position as to whether the development should or should not be approved, as that is a matter entirely within the City’s sole jurisdiction. However, the District must take all steps necessary to ensure the availability of adequate school facilities in the event that the City does approve development. The agreement reached with AT Dublin gives assurance that adequate school facilities will be available for students who would reside in the project if approved. The agreement does so by providing for funding equal to the *full* mitigation of the school facilities impact of the project, at a level previously unprecedented in the District. The effect on the District is therefore neutral with or without project approval.

The up-front mitigation payment provided for by the agreement is more than twice the statutory amount SCS is legally required to pay. The payment is being offered by SCS to help DUSD with its facilities needs, including the purchase of land and development of a new high school. The District has selected and is moving forward with the Promenade site as the best

option for the location of a Dublin high school. The high school will be designed for an ultimate capacity for 2,500 students, with the first phase to be built including capacity for 1,300 students.

AT Dublin is a 76-acre, mixed-use, infill project planned on Tassajara Road between Gleason and I-580. It is located near the Promenade site—a centrally located property that is situated in a high-density, residential and commercial neighborhood. If approved by the City, the AT Dublin development and the new high school would complete a significant portion of the remaining undeveloped lands of the Eastern Dublin Specific Plan, and together would encourage increased pedestrian walking and biking as originally envisioned. The new East Dublin school site provides the opportunity to integrate a high quality, state of the art, high school into a walkable master plan community.

The AT Dublin project as now proposed will include a significant portion of restricted senior citizen housing. Inclusion of senior citizen housing substantially reduces the impacts of the project on DUSD. To help ensure that there are no impacts on schools from those senior citizen homes, SCS has agreed to record a declaration of restrictions imposing limits on the ability to have students residing in those homes. SCS has further agreed to an additional restriction whereby if these homes are ever converted from senior housing in the future, any residential fee that is justified at that time will be paid to DUSD for the homes.

SCS Development understands the importance of building a new high school for the community and has been working with DUSD to help make this a reality. Enrollment at Dublin High is over 3,000 students, and is estimated to grow by almost 1,000 students within the next five years. The developer's contribution to the District would be paid on a schedule that will bring in the funds well in advance of when statutory fees would have been due. This will give

the District greater funding choices as it moves forward with its school planning and construction, particularly for the needed new high school.

“We appreciate the initiative of SCS to sit down with the District early on and work with us in reaching this agreement,” says Amy Miller, Board President of DUSD. “Clearly, SCS understands the needs of our District, particularly our limited ability to access new funding sources, especially at the state level. This level of mitigation from SCS, unprecedented in our District, provides critical additional funds which will be instrumental to our facilities program, including our new high school should the AT Dublin project be approved. The agreement is critical to achieve the District’s goal that the impact of development will be at least neutral on the District, with the developer fully funding the cost for any new facilities needed to house students from that development. This development will not directly impact the school district in any way as a result of this agreement”

“One of the District’s priorities is to continue with our acquisition of the Promenade site and the planning and contribution of a new high school,” says Dr. Dave Marken, Superintendent. “SCS’s contribution to DUSD would help the District towards completion of this vital project.” Students who would live in the AT Dublin community are not expected to begin enrolling in Dublin schools until at least 2022. AT Dublin is planned to be fully built-out by 2025 and is projected to contribute a total of 177 students, at all grade levels, 44 of whom would be expected at the high school grade levels.

# # #

**EXHIBIT D**  
**DECLARATION OF RESTRICTIONS**

**RECORDING REQUESTED BY:**

**WHEN RECORDED, MAIL TO:**

Dublin Unified School District  
ATTN: SUPERINTENDENT  
7471 Larkdale Avenue  
Dublin, California 94568

---

*(Space Above for Recorder's Use)*

**DECLARATION OF RESTRICTIONS**  
**\*\*[INSERT PROPERTY IDENTIFIER]\*\***

**DECLARATION OF RESTRICTIONS**  
**\*\*[INSERT PROPERTY IDENTIFIER]\*\***

THIS DECLARATION OF RESTRICTIONS (“**Declaration**”) is made by SCS DEVELOPMENT COMPANY, INC., a California corporation (“**Declarant**”).

**PREAMBLE:**

A. Declarant is the owner of certain real property (the “**Property**”) in the City of Dublin, County of Alameda, State of California, described as follows:

**\*\*[INSERT LEGAL DESCRIPTION]\*\***

B. Declarant has received all necessary approvals and entitlements from the City of Dublin to construct an age-restricted senior housing development project (the “**Project**”) on the Property in accordance with the Age and Occupancy Restriction Laws, as defined below.

C. The Declarant and the Dublin Unified School District (the “**District**”) have entered into an Agreement (the “**Agreement**”), binding on Declarant and Declarant’s assignees and successors-in-interest, whereby Declarant and the District have agreed that Declarant will provide the District with funding in excess of that otherwise required by Education Code sections 17620, *et seq.*, and Government Code sections 65995, *et seq.*

D. The Agreement further requires that Declarant impose restrictions on occupancy as well as reporting requirements.

THEREFORE, DECLARANT HEREBY DECLARES AS FOLLOWS:

1. **Definitions.**

(a) “Age Restrictions” means, collectively, the provisions of this Section 1 and Section 2 below.

(b) “Age and Occupancy Restrictions and Laws” means, collectively, California Civil Code Sections 51.2 to 51.4; the federal Fair Housing Amendments Act of 1988 (Title 42 U.S.C. Section 3601, *et seq.*); Title 42 U.S.C. Section 3607(b)(2) and Title 24 C.F.R. Sections 100.300 through 100.307; the Fair Employment and Housing Act (California Government Code Section 12900, *et seq.*); the Planning and Zoning Law at Section 65008(a)(1)(B) of the California Government Code; and all other applicable state and federal regulations governing age-restricted senior housing, all as amended from time to time.

(c) “Association” means an “association” as defined in California Civil Code Section 4080 that is established by Declarant for the purpose of managing the Property and enforcing the Age Restrictions. Until the establishment of the Association, the Declarant shall be responsible for enforcing the Age Restrictions.

(d) “Permitted Health Care Resident” means either a natural person hired to provide live-in, long-term or terminal or hospice care to a Qualifying Resident for compensation, or a family member of the Qualifying Resident providing that care. The care provided must be substantial in nature and must provide either assistance with necessary daily activities or medical treatment, or both. The provision of lodging and food in exchange for providing such services shall be deemed to be receiving compensation for purposes of compliance with California Civil Code Section 51.3(i).

(e) “Qualified Permanent Resident” means a natural person who was residing with the Qualifying Resident prior to the death, hospitalization, or other prolonged absence of, or the dissolution of marriage with, the Qualifying Resident, and meets at least one of the following:

(i) was forty-five (45) years of age or older; or

(ii) was a spouse or cohabitant of the Qualifying Resident; or

(iii) was a person providing primary physical or economic support to the Qualifying Resident; or

(iv) a disabled person or person with a disabling illness or injury who is a child or grandchild of the Qualifying Resident or a Qualified Permanent Resident, who needs to live with the Qualifying Resident or Qualified Permanent Resident because of the disabling condition, illness or injury.

For purposes of this Section 1(d), “primary physical support” means support services which are substantial in nature (including without limitation daily chores, assistance with hygiene, errands and other tasks which the Qualifying Resident cannot perform on their own). “Primary economic support” is financial support that exceeds the income and other financial support received by the Qualifying Resident. “Cohabitant” means persons who live together as husband and wife, or persons who are domestic partners within the meaning of California Family Code Section 297. “Disabled” means a person who has a disability as defined in California Civil Code Section 54(b), and “disabling injury or illness” means an illness or injury which results in a condition meeting the definition of disability set forth in California Civil Code Section 54(b).

(f) “Qualifying Resident” means a natural person who is fifty-five (55) years of age or older.

2. **Restrictions.** Each occupied residence in the Property shall be occupied subject to the following restrictions, which shall be interpreted in accordance with the Age and Occupancy Restrictions and Laws then in effect:

(a) Permitted Residents. Subject to the limited exceptions described in this Section 2 and the Age and Occupancy Restrictions and Laws, each of the occupied residences in the Property shall be permanently occupied by one or more Qualifying Residents. Each other permanent resident in the same residence must be a Qualifying Resident, a Qualified Permanent Resident or a Permitted Healthcare Resident. For purposes of remaining in compliance with state and federal law permitting age-restricted senior housing, “permanent occupancy” shall mean that the Qualifying Resident considers the residence to be his or her primary legal residence and the

Qualifying Resident either resides in it continuously or returns to occupy the residence during every calendar year. Furthermore, except as allowed under Section 2(b) below, a Permitted Health Care Resident may occupy a residence only while actually providing live-in, long-term or terminal or hospice care to a Qualifying Resident for compensation. In accordance with Civil Code Section 51.3(i), the phrase “for compensation” shall include provisions of lodging and food in exchange for such care.

(b) Death or Prolonged Absence of Qualifying Resident.

(i) *Continued Occupancy by Qualified Permanent Residents.* Notwithstanding Section 2(a) above, upon the death, dissolution of marriage, or upon hospitalization or other prolonged absence of the Qualifying Resident, any Qualified Permanent Resident who is not yet fifty-five (55) years of age, but who was residing with such Qualifying Resident at the time of the death or dissolution, or on the date of commencement of hospitalization or prolonged absence of the Qualifying Resident, shall be entitled to continue to occupy the residence. However, in no event may such Qualified Permanent Resident continue to occupy a residence in the absence of a Qualifying Resident if such occupancy would cause the total number of residences occupied solely by persons under fifty-five (55) years of age to exceed twenty percent (20%) of the total number of occupied residences in the Property, as determined by the board of directors of the Association in accordance with the Age and Occupancy Restrictions and Laws.

(ii) *Continued Occupancy by Permitted Healthcare Residents.* A Permitted Healthcare Resident shall be entitled to continue his or her occupancy as a permitted resident in the absence of the Qualifying Resident only if both of the following are applicable:

(1) The Qualifying Resident became absent from the Community due to hospitalization or other necessary medical treatment and expects to return to his or her residence within ninety (90) days from the date the absence began; and

(2) The absent Qualifying Resident or an authorized person acting for the Qualifying Resident submits a written request to the board of directors of the Association stating that the Qualifying Resident desires that the Permitted Healthcare Resident be allowed to remain in order to be present when the Qualifying Resident returns to reside in the Property.

Upon written request by the Qualifying Resident or an authorized person acting for the Qualifying Resident, the board of directors of the Association shall have the discretion to allow a Permitted Healthcare Resident to remain for a time period longer than ninety (90) days from the date that the Qualifying Resident's absence began, if it appears that the Qualifying

Resident will return within a period of time not to exceed an additional ninety (90) days.

(c) Occupancy by Certain Disabled Persons. A person who does not otherwise qualify for permanent residence under this Section 2 may nevertheless permanently occupy the residence if they have a disability that meets the criteria for occupancy as a Qualified Permanent Resident. Such person may remain in the residence unless or until the board of directors of the Association determines that there are special circumstances to disallow such person as a Qualified Permanent Resident. Special circumstances means a condition where such person is or may be harmful to himself or herself or others as determined in Section 2(c)(ii) below.

(i) For any disabled person residing as a Qualified Permanent Resident under this Section 2(c) whose disabling condition ends, the board of directors of the Association may require the formerly disabled resident to cease residing in the Property within six months of receipt of written notice from the board of directors of the Association; provided, however, that notwithstanding Section 2(a) above, the board of directors of the Association may allow the person to remain a resident for up to one year after the disabling condition ends.

(ii) The board of directors of the Association may take action to prohibit or terminate occupancy by a person who is a Qualified Permanent Resident by virtue of a disability if the board of directors of the Association finds, based on credible and objective evidence, that the person is likely to pose a significant threat to the health or safety of others that cannot be ameliorated by means of a reasonable accommodation; provided, however, that action to prohibit or terminate the occupancy may be taken only after doing both of the following:

(1) Providing reasonable notice to and an opportunity to be heard for the disabled person whose occupancy is being challenged, and reasonable notice to the co-resident parent or grandparent of that person.

(2) Giving due consideration to the relevant, credible, and objective information provided in hearing. The evidence shall be taken and held in a confidential manner, pursuant to a closed session, by the Board of Directors in order to preserve the privacy of the affected persons. The affected persons shall be entitled to have present at the hearing an attorney or any other person authorized by them to speak on their behalf or to assist them in the matter.

(d) Resale or Lease. Each resale or lease of a residence in the Property is subject to the requirement that such residence be occupied after resale or during the term of the lease in accordance with this Section 2. Each lease or rental agreement and each purchase agreement for resale of a residence in the Property shall contain a statement above the signature line for lessee or purchaser (as applicable) asserting that at least one (1) permanent occupant of the residence shall be fifty-five (55) years of age or older and each other permanent occupant shall

meet the age and occupancy qualifications of this Declaration and the Age and Occupancy Restrictions and Laws.

(e) Permanent Occupancy Definition for Qualified Permanent Residents and Permitted Health Care Residents. Persons less than fifty-five (55) years of age who do not qualify as Qualified Permanent Residents or Permitted Health Care Residents shall not be entitled to occupy, visit or reside in any residence for more than sixty (60) calendar days (whether consecutive or non-consecutive) in any calendar year, pursuant to California Civil Code Section 51.3(d).

(f) Compliance with Reporting Requirements.

(i) *Obligations of Owners.* By accepting and recording a deed to a residence in the Property, each owner of such residence covenants and agrees as follows:

(1) To fully and truthfully respond to all requests by the Association for age and occupancy information concerning each occupant of the owner's residence, and to cause all occupants of the owner's residence to cooperate by providing such information. Owners understand and acknowledge that age and occupancy information shall be requested by the Association as part of its obligation to conduct regular age and occupancy surveys of the Property and that such surveys are required to maintain the Property's eligibility to continue operating as an age- and occupancy-restricted project under senior housing exemptions available under state and federal law;

(2) In the event of the change of occupancy of any residence in the Property by one or more permanent residents, the owner of the residence shall immediately inform the board of directors of the Association in writing and shall provide to the board of directors of the Association the names and ages of all current occupants of the residence, and such other information as the board of directors of the Association reasonably requests to verify the ages and qualifications of all persons occupying the residence as Qualified Permanent Residents or Permitted Health Care Residents;

(3) To ensure that all occupants of the owner's residence comply at all times with all provisions of this Declaration and any rules and regulations of the Association, including restrictions on age and other qualifications of permanent occupants and limiting the duration of visits by temporary occupants or those who do not meet the age and occupancy restrictions of this Declaration or the Age and Occupancy Restrictions and Laws; and

(4) To indemnify, defend and hold harmless the Association and Declarant from any and all claims, losses, damages and causes of action which may arise from such owner's failure to so comply. This obligation

also creates in each owner the responsibility to monitor and enforce the actions of their tenants or lessees.

(g) Association Monitoring and Enforcement of Compliance with Age and Occupancy Restrictions and Applicable State and Federal Laws and Regulations. The Association has the power and the duty to ensure that the Property complies with the age and occupancy restrictions in this Declaration and the Age and Occupancy Restrictions and Laws. The Association, acting through its board or directors, shall monitor and enforce Property compliance with the age and occupancy restrictions set forth in this Declaration and the Age and Occupancy Restrictions and Laws. The Association shall have at its disposal all legal and equitable enforcement remedies available, including the imposition of penalties for ongoing violations, and the right, following notice and hearing and all procedures required under state law, to cause the removal of residents whose presence causes the Property to fall out of compliance with the Age and Occupancy Restrictions and Laws. The board of directors of the Association shall regularly evaluate the results of its age and occupancy surveys and other compliance monitoring efforts and commence enforcement actions as it deems necessary to ensure ongoing compliance with the age and occupancy restrictions in this Declaration and the Age and Occupancy Restrictions and Laws.

(i) *Association Obligation to Conduct Age and Occupancy Surveys.* In discharging its obligation to monitor and enforce the age and occupancy restrictions set forth in this Declaration and the Age and Occupancy Restrictions and Laws, the board of directors of the Association shall conduct regular, confidential age and occupancy surveys of the occupied residences in the Property in order to determine the numbers and ages of all persons who are then permanently occupying residences in the Property.

(ii) *Information to be Gathered.* The Association's survey shall be designed with due regard for individual privacy while permitting the Association to make a reasonable determination that all persons permanently occupying residences in the Property comply with the age and occupancy restrictions set forth in this Declaration and the Age and Occupancy Restrictions and Laws. Ages of residents shall be determined to the extent possible from objective documentary sources, such as birth certificates, driver's licenses, government identification cards, passports, baptismal records, immigration papers, affidavits, prior surveys or other documentary proof of age deemed reliable by the board of directors of the Association, and which in the judgment of the board of directors of the Association, is reasonably necessary to establish a record that the Property complies with Age and Occupancy Restrictions and Laws. If a resident is unable or unwilling to provide such documentary proof of age, then the Association may in its discretion rely on an affidavit from another resident or a family member of the resident.

(iii) *Frequency of Survey.* The Association shall collect age and occupancy information on a particular residence at the time of its initial sale by Declarant and at the time of its re-sale, lease or re-lease by any owner.

In addition, the Association shall update all occupancy survey information no less frequently than once every two (2) years; provided that the board of directors of the Association shall have the power and duty to supplement the occupancy survey information in its records to reflect re-sales and changes in tenancy under leases or rental agreements, and it shall update its records on a particular residence any time it reasonably appears to the board of directors of the Association that there has been a change in the number or identity of permanent occupants in the residence. The Association shall have the power to carry out its duties under this Section by any legal means available, as the board of directors of the Association deems appropriate.

(iv) *Summary of Survey.* The Association shall keep in its records a written summary of the latest occupancy survey (stating at least the number of occupied residences and the percentage of occupied residences then in compliance with the age and occupancy restrictions set forth in this Declaration and the Age and Occupancy Restrictions and Laws, but not including any personal information about any resident). The summary shall be made available for inspection upon reasonable notice and request by any person, including members of the public. Individual surveys, supporting documentation, and affidavits shall be kept in a separate file with limited access, and such file is to be created and maintained for the purposes of evidencing compliance with the age and occupancy restrictions set forth in this Declaration and the Age and Occupancy Restrictions and Laws and for use in enforcement proceedings. Such information shall be kept securely segregated from the Association's general operating records and files whether in physical or electronic format. The segregated documents and electronic files shall be considered confidential but shall be made available for review at the request of governmental agencies, including but not limited to the District, investigating compliance with the Age and Occupancy Restrictions and Laws or by court order. Confidential information gathered in a particular survey or update shall be retained by the Association until the board of directors of the Association is advised by the Association's independent legal counsel that all applicable statutes of limitation or repose for the filing of a complaint or suit or other legal remedies against the Association under the Age and Occupancy Restrictions and Laws (including tolling periods) with respect to such information have expired. The retained documents and electronic files shall be destroyed in a manner appropriate to preserve their confidentiality.

(v) *Additional Policies.* The Association may develop additional policies and procedures to supplement its regular surveys as reasonably necessary to ensure that its records remain current and ensure compliance with the age and occupancy restrictions in this Declaration and the Age and Occupancy Restrictions and Laws.

(vi) *Posted Notice of Intent to Operate Age- and Occupancy-Restricted Community.* The Association shall maintain in the Property permanent signage with written statements of its age and occupancy policies, including a description of the Property as a residential development for occupancy by persons fifty-five (55) years of age or older and other residents who qualify for permanent occupancy under another occupancy category. The Association shall periodically distribute a written copy of its age and occupancy policies to the owners of residences in the Property and shall make additional copies available to owners and tenants on reasonable request.

3. **Restatement of Applicable Law.** Section 2 above is intended to be a restatement of the authority that may be granted to the Association under the Age and Occupancy Restrictions and Laws. All amendments, restatements and interpretations of the Age and Occupancy Restrictions and Laws, and any other applicable law or regulation governing “senior citizen housing developments,” and “housing for older persons,” as these terms are defined under state and federal law, are deemed to amend, restate and interpret Section 2.

4. **Severability.** If any clause, sentence or other portion of this Declaration shall become illegal, null or void for any reason, or shall be held by any court of competent jurisdiction to be so, the remaining portion shall remain full force and effect.

5. **Nature and Purpose of Covenants.** The covenants and restrictions set forth in this Declaration constitute a general scheme for the development, protection and maintenance of the Property for the benefit of all owners. Said covenants and restrictions are for the benefit of the Property and shall bind all owners thereof. Such covenants and restrictions shall be a burden upon, and a benefit to, not only the Declarant but also its successors and assigns, including the Association. All of such covenants and restrictions are intended to be and are hereby declared to be covenants running with the land or equitable servitudes upon the land, as the case may be.

6. **Covenants Running With the Land.** Each covenant contained in this Declaration is a covenant running with the land, binding upon and inuring to the benefit of each heir, assignee and successor-in-interest of Declarant as the owner of all or any portion of the Property, and the term “Declarant,” as used herein, shall be deemed to include such heirs, assigns and successors-in-interest. Each deed, lease or conveyance of all or any portion of the Property, or any interest therein, shall expressly reference and be subject to all the provisions of this Declaration.

7. **Duration.** Termination of this Declaration or amendment of any provision herein shall require the express approval of the District; provided, however, that this Declaration, including each covenant, condition and restriction contained herein, shall automatically terminate with respect to a portion of the Property upon recordation of a separate declaration of covenants, conditions, restrictions and reservation of easements meeting the definition of “declaration” in California Civil Code Sections 4135 and 4250 (“CC&Rs”) against such portion of the Property which incorporates the Age Restrictions set forth herein (in substantially similar form and in accordance with then applicable Age and Occupancy Restrictions and Laws) and provides for the establishment of an Association which assumes responsibility for the Age Restrictions. The CC&Rs shall be reviewed and approved by the District prior to execution and recordation in the

official records of the County Recorder of the County of Alameda. As an additional condition for termination of this Declaration with respect to all or any portion of the Property, the CC&Rs shall provide (a) for the District's right to enforce the Age Restrictions, in substantially similar form as Section 9 below; and (b) provide that termination of the CC&Rs or amendment of any provision which may negate or materially and adversely affect or impact performance of the Age Restrictions shall require the prior written approval of the District as follows: "No later than the date that is sixty (60) calendar days after its receipt of a proposed amendment, the District shall deliver written notice of its approval or disapproval of the proposed amendment to the party who delivered the proposed amendment to the District. If the District fails to deliver such written notice within such 60-calendar day period, the District shall be deemed to have approved the proposed amendment. If the District delivers written notice of disapproval of the proposed amendment within such 60-calendar day period, the proposed amendment shall be deemed null and void and shall have no legal effect on the Property or any residence therein."

8. **Construction.** This Declaration shall be construed in accordance with the laws of the State of California. The headings used in this Declaration are for convenience only and are not to be used to interpret the meaning of any of the provisions of this Declaration. If any term, provision or condition contained in this Declaration (or the application of any such term, provision or condition) shall to any extent be invalid or unenforceable, the remainder of this Declaration shall be valid and enforceable to the fullest extent permitted by law. In this Declaration, whenever the context requires, the singular number includes the plural and vice versa, and the masculine and neuter gender shall be mutually inclusive.

9. **District's Enforcement Rights.** The District is deemed to be an intended beneficiary of this Declaration, and has the right, but not the obligation, to enforce the provisions of this Declaration by any legal or equitable means (including injunctive relief) against such person or persons in actual possession of the Property or any who directly or through any agent violate(s) the terms hereof. In the event any legal action is instituted by the District in connection with this Declaration, the District shall be entitled to reasonable attorneys' fees and all fees, costs, and expenses incurred on any appeal or in collection or enforcement of any judgment.

*[Signature on following page]*

*[Signature Page to Declaration of Restrictions]*

Declarant has executed this Declaration of Restrictions as of \_\_\_\_\_  
\_\_\_\_\_, 201\_\_.

SCS DEVELOPMENT COMPANY, INC.,  
a California corporation,

By: \_\_\_\_\_

Its: \_\_\_\_\_

Name: \_\_\_\_\_

***“Declarant”***

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF \_\_\_\_\_

On \_\_\_\_\_, \_\_\_\_\_, before me, \_\_\_\_\_

(here insert name and title of the officer)

personally appeared

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

(Seal)

\_\_\_\_\_  
Signature



# Lozano Smith

ATTORNEYS AT LAW

Harold M. Freiman

E-mail: hfreiman@lozanosmith.com

January 25, 2022

**By U.S. Mail & Facsimile to: 408-985-6057**

Stephen E. Schott  
Vice President  
SCS Development Company, Inc.  
404 Saratoga Avenue, Suite 100  
Santa Clara, CA 95050

Re: Agreement Between Dublin Unified School District and SCS Development Company

Dear Mr. Schott:

I am writing to you on behalf of Dublin Unified School District ("District") regarding the Agreement Between Dublin Unified School District and SCS Development Company, Inc. ("SCS"), with a reference date of December 17, 2019, and an effective date of January 18, 2020 ("Agreement"). The District appreciated the collaborative process with SCS and its representatives that led to the Agreement. As expressed in that Agreement, SCS committed to payments to the District that equated to what was then the full cost of providing school facilities for the students expected to be generated by the development that is governed by the Agreement. That development is commonly referred to as the "At Dublin" project (the "Project"). The District has relied on the Agreement as it plans the facilities needed to house the students that the Project will generate.

We understand that SCS continues to move forward with development plans for the Project on the 76.1-acre site generally bound by Tassajara Road, Interstate 580, Brannigan Street and Gleason Drive ("Property"). That Property is the subject of the Agreement. While we understand that the Dublin City Council denied the Project on August 18, 2020, it did so "without prejudice," directing staff to leave the General Plan Amendment study open and continue to work with SCS in relation to the Project. We understand that SCS and the City have since been seeking community input on the planned development of the Property.

During this further community input process, the District has honored section 3.4 of the Agreement, and has avoided taking any actions or speaking at community meetings in any way

*Limited Liability Partnership*

2001 North Main Street, Suite 500 Walnut Creek, California 94596 Tel 925-953-1620 Fax 925-953-1625

that could be viewed as in opposition to the Project. However, this limits the District from speaking freely about the Project, at the community meetings and to the City. The District therefore wishes to take this opportunity to ensure that the City and SCS are aware of the Agreement and are taking the Agreement into account in relation to their plans for the Project. We therefore write to remind SCS of some of the key terms of the Agreement, which include:

- For residential development, payment by SCS of \$80,000 per student projected to be generated by the Project, based on agreed upon student generation rates. (Agreement Section 3.1(a)(i) & Recital E.) Such payment is to be made the earlier of 18 months after the Project is approved, as defined in the Agreement, or issuance by the City of the first residential building permit for development of the Project (excluding permits solely for grading or site improvements). (Section 3.1(b).)
- For senior citizen housing, if any, payment by SCS of the greater of the statutory school impact fee applicable to such housing at the time that the building permits are issued or the applicable commercial school impact fee in place when the permits are issued. (Section 3.1(a)(ii).)
- For commercial development, if any, payment by SCS of the commercial school impact fee in place when building permits are issued. (Section 3.1(a)(iii).)
- SCS may not obtain building permits on the Property or commence construction of residential units on the Property, other than permits and construction for grading and site improvements, until the residential payment as described above is made to the District. (Section 3.2(a).)
- Upon SCS's payment of the residential payment described above, the District must provide written certification to the City of such payment. (Section 3.1(b).)
- SCS will make commercially reasonable efforts to request that the City direct at least \$5 million of public facility/community benefit fees generated by the Project toward the construction of a joint use gym at a District school site. (Section 4.)

While we understand that the plans for the Project may still be evolving, the Agreement provided for flexibility, regardless of the ultimate size and nature of the Project. The Agreement defines the "Project" as "development of a mixed use project referred to as 'At Dublin'." We note that this was in contrast to an earlier 2018 agreement between the District and SCS in relation to the Property that was replaced by the current Agreement; that 2018 agreement was tied to very specific descriptions and types of development and square footage ranges. The current Agreement is not similarly tethered to a specific or static definition of the Project.

We also note that the Agreement provided in various ways that it would remain in effect and binding on the Property regardless of changed circumstances, even including the possibility of an ownership change. (See Sections 3 ("Developer acknowledges that this Agreement, and each of its terms and conditions hereunder, are fully enforceable as a binding contract on Developer and its successors-in-interest or assignees") & 6.1 ("the covenants of this Agreement shall run with

Stephen E. Schott

January 25, 2022

Page 3

the land constituting the Property” and “shall be held, transferred, and encumbered subject to the provisions of this Agreement which are for the use and benefit of the District, the Developer, the Property, and each and every person who now or in the future owns any portion or portions of the Property”).

The Agreement would terminate upon the following events: (1) for senior housing units, upon payment of the fee applicable to such units; (2) for commercial square footage, upon payment of the fee applicable to commercial projects; and (3) for residential units, the date when the certificates of occupancy have been issued for all of the units and all of the Parties’ obligations under the Agreement have been fully performed. (Section 2.2(a).) The Agreement also addressed the possibility that SCS might decide “not to proceed with the construction of the Residential Project,” in which case SCS would have the right to toll the Agreement until the SCS or its successor(s) chose to resume the residential portion of the project, at which point the amounts owing to the District would be increased. (Section 2.2(b).) If the residential project had not resumed by the expiration of the separate development agreement between the City and SCS regarding the Project, then the Agreement with the District would terminate, subject to limitations set forth in the Agreement. (Id.) Termination of the Agreement could also occur as a remedy in the event of a Party’s default under the Agreement. (Section 5.3.)

At this time, none of the occurrences allowing for termination per the provisions described above, nor any other provision for termination of the Agreement, have occurred. The Agreement therefore remains in effect.

Thank you for this opportunity to revisit the terms of the Agreement. We would be happy to coordinate with you further regarding the implementation of the Agreement as your Project moves forward through the City approval process.

Sincerely,

LOZANO SMITH



Harold M. Freiman

HMF/sws

cc: Kevin Fryer (by email)  
Chris Funk, Superintendent, Dublin Unified School District

**Response to Comment Letter #5: Dublin Unified School District****Response to Comment 5-1: Public Services - Acknowledgement of Agreement**

Comment noted. As the Draft EIR found that the project would result in a less than significant impact to schools with payment of school impact fees, additional discussion of the 2019 agreement would not change the significance of school impacts. Dublin Unified School District's comments on the Agreement with Developer are noted.

September 2, 2022

City of Dublin, Community Development Department  
100 Civic Plaza  
Dublin, CA 94568  
Attn.: Amy Million, Principal Planner

Sent by e-mail to: [amy.million@dublin.ca.gov](mailto:amy.million@dublin.ca.gov)

**Re: Draft EIR for the SCS Dublin Project**

Zone 7 Water Agency (Zone 7, or Zone 7 of the Alameda County Flood Control and Water Conservation District) has reviewed the referenced document in the context of Zone 7's mission to "Deliver safe, reliable, efficient, and sustainable water and flood protection services" within the Livermore-Amador Valley. Below are our comments for your consideration.

**Groundwater**

1. **Wells** - Our records indicate that there is one destroyed well in the project area (Figure 1). Please immediately notify Zone 7 if any other wells exist in the project area. All well locations should be field verified and noted on the plans. Also, please be advised that a Zone 7 drilling permit is needed for any water well or soil boring work that may be planned for this project. The drilling permit application and permit fee schedule can be downloaded from our website: <https://www.zone7water.com/post/well-drilling-and-soil-boring-permits>. For additional information please email [wellpermits@zone7water.com](mailto:wellpermits@zone7water.com).
2. **Livermore Valley Groundwater Basin** - The project area lies over the Fringe of the Livermore Valley Groundwater Basin; as such, the underlying groundwater is subject to the management provisions of the basin's Alternative Groundwater Sustainability Plan (GSP), which was prepared by Zone 7 Water Agency and approved by the State Department of Water Resources. As the designated Groundwater Sustainability Agency (GSA), Zone 7 Water Agency strives to maintain sufficient groundwater supplies and good groundwater quality within the groundwater basin. To support these goals, the project should be consistent with the GSP and Zone 7's Sustainable Groundwater Management Ordinance, as well as the State's Water Recycling Policy (and associated orders), the State's storm water protection measures, and the County's Water Wells

6-1

6-2

Ordinance. Many of these documents can be found on Zone 7's website;  
<https://www.zone7water.com>.

6-2

### **Hydrology Section Updates**

3. The hydrology section of the DEIR contains some outdated data and/or data from unknown sources; ideally these should be updated, in particular with information available in our 2021 Alternative Groundwater Sustainability Plan (<https://www.zone7water.com/alternative-groundwater-sustainability-plan-and-updates>) or with information from staff. Examples:
  - DEIR states that the total storage capacity of the basin is estimated at about 500,000 acre-feet (af) (Page 12-2). The source and accuracy of this data is unclear. We recommend the following replacement language focusing on the Main Basin: Zone 7 operates the Main Basin such that groundwater storage remains between 254 thousand acre-feet (TAF; full Basin volume) and 128 TAF (historic low volume) – that range is considered the Operational Storage. The 2021 Alternative GSP noted above contains the most current information.
  - DEIR states that under average hydrologic conditions, the groundwater budget is essentially in balance, and follows with some specific values (Pages 12-2 and -3). Source and accuracy of this data is unclear. The 2021 Alternative GSP noted above contains the most current information.

6-3

### **Water Supply**

4. As stated in the SCS Dublin Development Project Water Supply Assessment (WSA) and Water Supply Verification, the projected potable water demand for the project has been reflected in DSRSD's 2020 Urban Water Management Plan and associated demand forecast. Zone 7's 2020 UWMP similarly reflects the demand associated with this project, and Zone 7 has plans in place to acquire the water supplies required to serve this project.
5. Note that the WSA's Table 7-1 is mistakenly using the total supply and demand instead of the potable supply and demand to be served by Zone 7.

6-4

6-5

### **Flood Protection**

6. Developments creating new impervious areas within the Livermore-Amador Valley are subject to the assessment of the Development Impact Fee for Flood Protection and Storm Water Drainage. These fees are collected for Zone 7 by the local governing agency: 1) upon approval of final map for public improvements creating new impervious areas; and/or 2) upon issuance of a building or use permit required for site improvements creating new impervious areas. Fees are dependent on whether post-project impervious area conditions are greater than pre-project conditions.

6-6

We appreciate the opportunity to comment on this project. If you have any questions on this letter, please feel free to contact me at (925) 454-5005 or via email at [erank@zone7water.com](mailto:erank@zone7water.com).

Sincerely,



Elke Rank

cc: Carol Mahoney, Amparo Flores, Ken Minn, file

Attachments

**Response to Comment Letter #6: Zone 7 Water Agency****Response to Comment 6-1: Hydrology and Water Quality - Wells**

The project will comply with all applicable legal requirements for the issuance of any drilling permit from the Zone 7 Water Agency.

**Response to Comment 6-2: Hydrology and Water Quality - Livermore Valley Groundwater Basin**

Comment noted. The project will be consistent with the Zone 7 Water Agency Groundwater Sustainability Plan (GSP) and Sustainable Groundwater Management Ordinance, as well as the State's Water Recycling Policy (and associated orders), the State's storm water protection measures, and the County's Water Wells Ordinance.

**Response to Comment 6-3: Hydrology and Water Quality - Data Updates**

Comment noted. Revisions to the Draft EIR have been made as recommended and are shown in **Chapter 3: Changes and Clarifications to the Draft EIR**.

Given the minor technical corrections, no new or significant impacts would result from this revision.

**Response to Comment 6-4: Hydrology and Water Quality - WSA Concurrence**

Comment noted that the Zone 7 Water Agency 2020 Urban Water Management Plan concurs with DSRSD's 2020 Urban Water Management Plan on the estimated demand for the project and that Zone 7 has plans to acquire water sufficient to support the project.

**Response to Comment 6-5: Hydrology and Water Quality - Potable Water Supply and Demand**

Comment noted regarding corrections to Table 7-1 of the SCS Dublin Water Supply Assessment and Water Supply Verification. Table 7-1 was changed to Table 7-2 in the corrected Water Supply Assessment approved by the DSRSD Board on September 20, 2022, as shown in **Section 3: Changes and Clarifications to the Draft EIR** and is available in electronic format and posted on the City of Dublin website at <https://dublin-development.icitywork.com/>. The Final WSA addresses clerical errors and does not change any of the impact conclusions in Draft EIR with regard to water supply or infrastructure.

**Response to Comment 6-6: Hydrology and Water Quality - Flood Protection**

Comment noted. The project applicant will be responsible for complying with the Development Impact Fee for Flood Protection and Storm Water Drainage per Zone 7 Water Agency requirements.

Amy Million

**From:** J Gillengerten [REDACTED]  
**Sent:** Tuesday, September 6, 2022 7:21 PM  
**To:** Amy Million  
**Cc:** tom Evans  
**Subject:** Public Comment on SCS draft EIR

September 6, 2022

Amy Million, Principal Planner  
City of Dublin, Community Development Department  
100 Civic Plaza  
Dublin, CA 94568

Re:  
Comments on SCS Draft EIR comments

Dear Ms. Million:

Thank you for this opportunity to review and comment on the Draft EIR for the SCS property. I have attached comment from Mr Tom Evans that concisely mirror my concerns. I would also like to state for the record that I attended the April Scoping meeting and it was presented to us as an overview of the SCOPE of the EIR, not as an opportunity to give comments on content of the report. It is inaccurate to present the lack of feedback of the participants as a lack of comments or concerns.

## 16 Public Services, Utilities & Service Systems

### Schools

Educating students requires more than just classrooms. A school needs to have physical components that allow students to also eat, play and gather together as a community. Schools require facilities that are geared toward all the requirements to serve the needs of the students - gyms, cafeterias, playing fields, administration and staff offices. It is NEVER in the best interest of children, especially K to 8, to just pack in more classrooms or drop in portables as a way to meet enrollment needs. The larger the student population, the less desirable the student outcomes.

According to Hanover Research's Impacts of School and Class Size on Student Outcomes report dated January 2015:

#### Major Findings from Literature Related to School-Size

##### Academic Achievement

Academic achievement in small schools is at least equal- and often superior- to that of large schools.

Student attendance is better in small schools than in large ones.

A smaller percentage of students drop out of small schools than large ones.

##### Student's Feelings, Attitudes, and Behavior

Student attitudes toward school in general and toward particular school subjects are more positive in small schools.

Student social behavior- as measured by truancy, discipline problems, violence, theft, substance abuse, and gang participation- is more positive in small schools.

Levels of extracurricular participation are much higher and more varied in small schools than in large ones, and students in small schools receive greater satisfaction their extracurricular participation.

Students have a greater sense of belonging in small schools than in large ones.

##### Equity

Poor students and those of racial and ethnic minorities are more adversely affected- academically, attitudinally, and behaviorally- by attending large schools than are other students.

##### Teacher Attitudes

Interpersonal relations between and among students, teachers, and administrators are more positive in small schools than in large ones.

Teacher attitudes toward their work and their administrators are more positive in small schools than in large ones.

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These effects are incremental and I realize that there are limited mitigation measures that can be imposed on the developer but the impacts must be faced and reported in the EIR.

During the April, 2022 meeting regarding the scope of this EIR, it was requested that the impact to schools be included in the report. The draft describes the status of schools in Dublin from several perspectives. The draft also describes legal statutes that limit the amount of mitigation that local government can impose on developers. Finally, on page 16-26 the draft declares that "The evaluation of school impacts is limited to those effects with the potential to result in the need for construction of new classrooms or placement of portable classrooms." Educating students requires more than just classrooms. A school It is not clear by this statement if the study restricted itself to only to the need for new classrooms, or if this draft feels that the only possible impact is on the need for new classrooms. In either case, the limited evaluation is insufficient. Although the need for new classrooms could be the most important, other possible considerations are:

The possibility of increased classroom size, which can affect the amount of attention given to individual students.

Further crowding on playgrounds, lunchrooms, etc. that have no ability to expand even if more portable classrooms are added.

Some existing students possibly getting moved to a further school location to make room for new students generated by the project.

The incremental increased aggravation in the traffic jams due to drop-off and pick-up of students.

The cost of new materials such as books, desks, lab equipment, etc

On page 16-29, the draft states that "...DUSD is experiencing school capacity constraints, to which the project would contribute." This statement is too general and insufficient. Overcrowded schools is one of the biggest controversies in Dublin. This one-liner doesn't do enough to describe the impact. The impacts need to be spelled out in this EIR so that the public can see what the impacts are. Mitigation is a separate matter.

7-1

On page 16-31, the draft makes an unsubstantiated claim that because school levied fees are considered by law to be full and complete mitigation that "Therefore, the demand on the DUSD as a result of the project is considered a less than significant impact (Class III) on school services, and no mitigation is required." This is a false statement for the following reasons:

Mitigation is required in the form of a fee per square foot of construction levied by the school district or by negotiation between DUSD and the applicant. Perhaps what the author of this draft meant to say is that there is no further mitigation that can legally be required other than the fee legally authorized and imposed on the developer.

Section 65995 of the Government Code does not describe the impact on schools. It only discusses the limits of mitigation. Specifically, the Section 65995 does not state the impacts are "less than significant" as the draft EIR does. The draft EIR offers a conclusion that is baseless.

This statement makes the argument that because mitigation has been artificially limited by law that the impact must be low. In other words, the claim is: if mitigation is limited, then the impact must also be limited. There is no such logical connection between the reduced legal limit to mitigation and the impact caused by the project. Specifically, impact is not dependent on mitigation.

Please remove this statement from the report. Please add the other impacts that can occur from more housing units. With those in place, it would make sense then to describe the limits on mitigation.

Table 16-7 shows the DUSD's projection for student generation due to this project is 494. This number is not a good representation of DUSD's projection. It is based on study areas that contain more acreage than SCS has so it is not accurate and DUSD has not made that specific claim. A better reference to DUSD's projection would be to use their student generation rates just like Kimley Horn did for their estimate of 353 students. The rates are available on the DUSD website. I recommend using these rates to describe DUSD's projection, and updating the reference documents to include this more recent demographic report.

## 1 Executive Summary

### Section 1.3 Project Objectives

Item 1 – The EIR doesn't provide a measure for "balanced" when it comes to a mix of residential and commercial uses. Recommend striking the word "balanced."

Item 7 – "Provide a project that balances housing with job-creating uses." A good ratio of jobs to houses would be around 1.5. Therefore 650 housing units would be balanced if about 975 jobs were created. Just by observation it looks like Topgolf may take up about a third of the 265,000 square feet. Maybe they'll hire 40 employees. The remaining 180,000 square feet should therefore provide about 935 jobs. That's about 190 square feet per employee. Office spaces generally have 150-300 sq ft per employee while retail generally has 300-700 sq ft per employee. Even more space per employee is required for hotels.

7-2

Since the discussions for the commercial area have been mostly about retail and entertainment, then this area would at best accommodate (based on 250-600 sq ft per employee) about 350 to 750 jobs (instead of 975 jobs), making this project less-than-ideal. This project puts Dublin further from it's goal of 1.5 jobs:housing ratio instead of closer. Therefore, I recommend striking this statement. In addition, this project would likely provide mostly retail jobs which pay substantially less than the average income of people that live in Dublin.

### Section 1.6 Areas of Controversy

Amongst the most controversial topics for this project are a) school overcrowding, b) too much housing development, c) affordable housing, and d) traffic.

## Schools

Please see previous comments regarding 16 Public Services, Utilities & Service Systems

## Too Much Housing Development

The current planned development on record for this property is for 261 housing units and 900,000 square feet of commercial space. The City hired a number of consultants to figure out what the residents wanted for this property. The first survey that was conducted showed the following respondents choices:

30% wanted no housing

31% wanted low density housing

26% wanted medium density housing

13% wanted high density housing

Even though “no housing” was not a practical option, it showed that 62% of the residents wanted low density housing or no housing at all. 39% wanted medium density or higher. After seeing the results, the consultant and developer sweetened the pot by promising some public benefit. (e.g. the vista looking toward Mt. Diablo and more retail located near Finnegan) A second survey was conducted. Roughly the same number of people. This time, the promised public benefits were enough so that more people were okay with medium density:

30% wanted current zoning (low housing count-261 housing units)

20% wanted low housing count (350 units)

36% wanted medium density housing (650 units + public benefit)

14% wanted high density housing (850 units + public benefit)

That was more of a 50-50 split for low density vs. higher density housing. Still controversial, but the project is moving ahead with the higher density (650 residential units) with the encouragement of the City Council.

7-3

## Affordable Housing

I believe that there should be a recognition of the need to build housing that the employees of the planned commercial component of this development can afford. Housing, traffic, air quality are all impacted because the people who will work in the commercial component of this project will not be able to live locally.

7-4

No exact numbers have been announced for affordable housing. However, the developer appears to have agreed to the 12.5% inclusionary housing requirement, likely doing a buyout for 40% of that. The expectation is that there will be  $(550 \text{ units})(12.5\%)(60\%) = 41$  affordable for-sale units dispersed throughout the development. In addition, a parcel may be dedicated for affordable rental housing which could bring the total units of affordable housing to 100 units. The inclusion of these affordable units should make this project less controversial in this subject area.

## Increase Traffic

See Draft EIR

### Section 1.9 Impact of the Project

CEQA Guidelines section 15126.2(c) requires the reporting of Significant Environmental Effects Which Cannot be Avoided if the Proposed Project is Implemented. This section needs to be included in this EIR to reflect the impact on schools in Dublin. It may be true that limited mitigation can be found in the form of Level 2 fees levied by the school district, but those recovered fees are only a small portion of the cost to DUSD for housing students. This should be part of the discussion in this new section. This section needs to be added to report the impact on schools.

### Table 1-2: Summary of Significant Impacts of the Proposed Project

Table 1-2: Land Use & Planning. The table shows “No significant impacts identified.” This is a ridiculous notion. The number of houses has more than doubled the initial plan. This land used requires a change in zoning which is absolutely significant.

7-5

Table 1-2: Population & Housing. The table shows “No significant impacts identified.” The number of housing units and population will more than double the initial plan. The population of Dublin will increase by 2.5% from this project alone. Please correct this section.

### 1.9.2 Growth-Inducing Effects

In the Draft, the last sentence in this section states that “the project site... has been planned for development as anticipated in the City’s General Plan. This statement is false. “The project” described in this Draft EIR is not as anticipated in the current General Plan. It requires a zoning change and increases the anticipated housing count by 149%. It would be better to state that the property has been planned for development, and leave it at that.

## 3 Project Description

### Section 3.3 Project Objectives

See previous comments about Section 1.3. Since most of the proposed commercial use will be retail and entertainment, the employment opportunities will be mostly for minimum-wage jobs. None of these minimum-wage workers will be able to afford a house in this new project.

7-6

## 5 Aesthetics

### Section 5.2 Scoping Issues Addressed.

The Draft states that “During the public comment scoping period for the project, no comments regarding aesthetics were raised.” This statement needs to be stricken. Reason: the current statement makes it sound like no one in attendance at the meeting had an opinion about aesthetics. However, the meeting was specifically about scope, not content. While the statement is true, it is misleading. It is also true that there were no comments on volcanos, NASCAR, or cake recipes because those items are not about the scope of the EIR.

7-7

A more appropriate and accurate statement could be something like, “During the public scoping meeting, no comments about the scope of the aesthetics report were raised.”

## 6 Air Quality

### Section 6.2 Scoping Issues Addressed.

The Draft states that “During the public comment scoping period for the project, no comments regarding air quality were raised.” This statement needs to be stricken. Reason: the current statement makes it sound like no in attendance at the meeting had an opinion about air quality. However, the meeting was specifically about scope, not content. While the statement is true, it is misleading.

A more appropriate and accurate statement could be something like, “During the public scoping meeting, no comments about the scope of the air quality report were raised.”

### Table 6-7: Project Consistency with Applicable Clean Air Plan Control Measures

Items TR2 and TR8 claim to be consistent with applicable clean air plan control measures using “smart growth” without defining what smart growth means. Needs to reference where it is defined or define it. If the discussion afterward is the definition, then the draft should state so. The consistency discusses busses and bicycles – nothing about ridesharing, nothing about trip reductions.

Item TR10: Land Use Strategies. The draft states that it’s within 1.5 miles of a BART station. That must mean that the strategy for Dublin residents living close to BART is to leave town on BART to their jobs instead of work in Dublin (because there are not enough good paying jobs in Dublin). Shorter commutes for work (i.e. good jobs in Dublin) would be a better strategy for air quality.

Item TR13: Parking Policies. Just because the project would meet Dublin’s substandard parking requirements (less parking than neighbor cities), that does nothing for air quality. In fact, the less parking that is available the more fuel is burned looking for parking. The description of parking has no bearing on air quality and should be stricken.

## 10 Greenhouse Gas Emissions

Table 10-2: Dublin Community-wide 2015 GHG Emissions and Adjusted Forecast by Sector (MTCO<sub>2</sub>e) Population assumptions are wrong in this table. Populations need to be updated/increased and the emission forecasts revised accordingly. All statements and statistics which use these values as a basis need to be re-evaluated.

## 14 Noise & Vibration

“The City of Dublin promotes and supports a **high quality of life**, ensures a safe and secure environment, fosters new opportunities, provides equity across all programs, and champions a culture of diversity and inclusion.” This mission statement depicts a quality of life that is better than average, life experiences that are better than minimum standards. Noise is a quality of life issue that should be taken seriously and not be judged as acceptable if it meets the bare minimum standards.

### Section 14.5.4 Operations

#### MM N-1.2 Noise Attenuation

This section discusses noise control at residential locations. Interior noise levels should be required to be no more than 45 dBA. This can partially be done by an acoustical study. However, these are not without flaws. Blocking noise in a structure is accomplished by a combination of mass, damping materials, and blocking air leaks. In particular, an acoustical study may reference an STC of 45 for an exterior wall, but that does not consider any air leaks or flanking which allow sound to permeate. In other words, the construction details, especially at joints, make a large difference as to how much noise enters the interior of a building. I recommend the following recommendations to this mitigation:

For all residences with an exterior noise level above 60 dBA, have an acoustical study done and follow recommendations to mitigate noise

For all residences with an exterior noise level above 63 dBA, include the following construction features:

Noise abating windows and sliding glass doors, following manufacturers recommendations

Acoustical caulking in all drywall joints

Use of drywall isolation clips on exterior walls only

Solid core front doors with acoustical stripping and an STC rating of at least 63.

Air ducts that have acoustic lining to absorb noise in order to keep outside noise from travelling along the duct and to reduce overall interior noise

## 15 Population & Housing

### Section 15.3 Environmental Setting

The Draft refers to the population of Dublin as of January 1, 2021. It states that population as being 64,000 while the table below it shows the population in the year before of 72,000. Make no sense. They should be using the current population which is over 73,000. The year 2022 should be added to Table 15-1.

### Section 15.4 Applicable Regulations, Plans, and Standards

The Draft states the buildout plan of the Eastern Dublin Specific Plan to include 29,424 jobs in a 20-to-30-year period. Well, it has been almost 30 years and the number of jobs in 2020 in Dublin was about 22,400 falling significantly short of the plan. This falls short of the City's goal of jobs:housing ratio of 1.5. If the City wishes to keep this section then, this latest 2020 statistic of jobs should be included as a point of reference.

7-11

## 18 Energy Conservation

### Section 18.2 Scoping Issues Addressed.

The Draft states that "During the public comment scoping period for the project, no comments regarding aesthetics were raised." This statement needs to be stricken. Reason: the current statement makes it sound like no in attendance at the meeting had an opinion about aesthetics. However, the meeting was specifically about scope, not content.

7-12

A more appropriate and accurate statement could be something like, "During the public scoping meeting, no comments about the scope of the Energy Conservation report were raised."

Please make these comments part of the public comments for this project.  
Thank you,

Jeanine Gillengerten  
Dublin

**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

**Response to Comment Letter #7: Jeanine Gillengerten****Response to Comment 7-1: Public Services - Schools**

CEQA requires analysis of project impacts related to, “substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times, or other performance objectives.” Discussion of impact PSU-2 in the Draft EIR details the current and projected capacity for each school that would serve the project and finds that the project would contribute to the school capacity constraints that the Dublin Unified School District (DUSD) is experiencing. However, as stated in the Draft EIR, this impact would be mitigated by the payment of development fees per Section 65995(h) of the California legal code, which reads:

The payment or satisfaction of a fee, charge, or other requirement levied or imposed pursuant to Section 17620 of the Education Code in the amount specified in Section 65995 and, if applicable, any amounts specified in Section 65995.5 or 65995.7 are hereby deemed to be full and complete mitigation of the impacts of any legislative or adjudicative act, or both, involving, but not limited to, the planning, use, or development of real property, or any change in governmental organization or reorganization as defined in Section 56021 or 56073, on the provision of adequate school facilities.

Thus, with the payment of development fees, the project impact would be less than significant.

Furthermore, DUSD submitted a comment letter on the Draft EIR indicating their position that the December 17, 2019 agreement between the project developer and the District adequately and completely addresses the District’s concerns related to the project’s potential impacts related to schools. See [Response to Comment 5](#) and the attached copy of the agreement for more information.

Regarding the comment about the DUSD’s generation projection of 494 students in [Table 16-7](#) of the Draft EIR, these projections are based on DUSD’s 7-Year Student Population Projections (DUSD, 2019) projected future student population by Study Area based on future anticipated residential development between 2019 and 2025. As noted in the Draft EIR, the project site comprises all of Study Areas 120A and 106 and part of Study Areas 102 and 127.

**Response to Comment 7-2: Project Objectives**

Comment noted regarding removing the word “balanced” in reference to the mix of residential and commercial uses. The word is used in general context and is considered appropriate and consistent with the City’s General Plan and general market conditions in the City.

As described in Section 15124 of the CEQA Guidelines, the project objectives are used to help the lead agency develop a reasonable range of alternatives to evaluate in the EIR and aid the

decision makers in preparing findings or a statement of overriding considerations, if necessary. The statement of objectives may include the underlying purpose of the project and may discuss the project benefits.

#### **Response to Comment 7-3: Population and Housing - Housing**

Comment noted regarding prior surveys of City residents regarding their preference for development of the project site.

The proposed project is based on the Preferred Plan approved by City Council on February 15, 2022, which was preceded by an extensive community outreach process. More information can be found here: <https://www.dublin.ca.gov/2297/SCS-Property-Community-Outreach>

#### **Response to Comment 7-4: Population and Housing - Affordable Housing**

Comment noted regarding the inclusion of affordable housing in the project.

#### **Response to Comment 7-5: Impact of the Project**

Section 20.3, Significant and Unavoidable Impacts of the Draft EIR, discloses the significant and unavoidable impacts of the project. Regarding schools, see [Response to Comment 7-1](#), above.

As shown in [Figure 3-5: Proposed General Plan Land Use Designations](#) of the Draft EIR, the project includes a General Plan/Specific Plan Amendment that would re-designate the project site from six to five land use designations. With City Council approval of the project and certification of the EIR, the project would be consistent with applicable land use plans, policies, and regulations, and environmental impacts would be less than significant and no mitigation is required.

While the project would increase the population projections for the City, by increasing the number of units allowed from 261 to 650, the project still represents a small fraction of the planned buildout for the Eastern Dublin Specific Plan area. Furthermore, the project would be consistent with the density of surrounding development and would be within the population growth estimated by the City's General Plan Housing Element. For these reasons, impacts associated with increased population growth and growth-inducing effects would be less than significant and no mitigation measures are required.

The sentence, "*However, the project site is located within the City of Dublin and has been planned for development as anticipated in the City's General Plan*", is referring to the project site itself (i.e., the 76.2-acre parcel), which has existing land use designations and, therefore, has been planned for development.

#### **Response to Comment 7-6: Project Objectives**

Comment noted regarding housing affordability. See also [Response to Comment 7-2](#).

**Response to Comment 7-7: Aesthetics – Scoping Issues Addressed**

Comment noted. The scoping period referenced is in regard to the entire 30-day period from April 1, 2022, to May 2, 2022, which included the scoping meeting on April 13, 2022.

**Response to Comment 7-8: Air Quality – Scoping Issues Addressed**

Comment noted. See [Response to Comment 7-7](#).

Comments regarding project consistency with applicable clean air plan control measures are noted as well. The Bay Area 2017 Clean Air Plan updates the Bay Area 2010 Clean Air Plan in accordance with the requirements of the California Clean Air Act to implement “all feasible measures” to reduce ozone; provides a control strategy to reduce ozone, PM, TACs, and greenhouse gases in a single, integrated plan; reviews progress in improving air quality in recent years; and establishes emission control measures to be adopted or implemented in both the short term and through 2050.

As discussed in [Table 6-7: Project Consistency with Applicable Clean Air Plan Control Measures](#), the project would comply with city, state, and regional requirements. However, as discussed in [Impacts AQ-2](#) and [AQ-5](#), the project would exceed air quality thresholds even with [MM AQ-2.1](#) through [AQ-2.5](#), and impacts would be significant and unavoidable.

The comment regarding where Dublin residents work and how they commute to work (by BART or otherwise) is noted.

The comment regarding Dublin’s “substandard” parking requirements and its effect on air quality is noted. The Bay Area Air Quality Management District (BAAQMD) 2017 Clean Air Plan TR13 encourages parking policies and programs in local plans that reduce minimum parking requirements; limit the supply of off-street parking in transit-oriented areas; unbundle the price of parking spaces; and support implementation of demand-based pricing (such as “SF Park”) in high-traffic areas.

**Response to Comment 7-9: Greenhouse Gas Emissions – Population**

The data summarized in this table are from the City of Dublin Climate Action Plan adopted in September of 2020. The data are the latest available at the time of the Notice of Preparation, which establishes the baseline for which the analysis is completed. The Draft EIR is not required to be continuously updated with more current data after the Notice of Preparation.

**Response to Comment 7-10: Noise and Vibration – Noise Attenuation**

[Mitigation Measure N-1.2](#) from the Draft EIR requires compliance with City noise requirements. With implementation of [MM N-1.2: Noise Attenuation \(which requires interior noise levels at all residential units at the project site meet the City’s 45 dBA threshold\)](#) and adherence to Dublin Municipal Code requirements, the Draft EIR determined that noise impacts associated with traffic, mechanical equipment, deliveries, loading/unloading activities, and parking lot noise would be reduced to a less than significant level.

**Response to Comment 7-11: Population and Housing – Population**

Comment noted regarding the estimated 2020 population for the City of Dublin. Revisions to the Draft EIR have been made as recommended and are shown in **Chapter 3: Changes and Clarifications to the Draft EIR**. See also **Response to Comment 7-5**.

Given the minor technical corrections, no new or significant impacts would result from this revision.

**Response to Comment 7-12: Energy Conservation – Scoping Issues Addressed**

See the **Response to Comment 7-7**.

September 1, 2022

Amy Million, Principal Planner  
City of Dublin, Community Development Department  
100 Civic Plaza  
Dublin, CA 94568

Re: SCS Draft EIR comments

Dear Ms. Million:

Thank you for opportunity to review and comment on the Draft EIR for the SCS property. My comments are as follows:

## 16 Public Services, Utilities & Service Systems

### Schools

During the April, 2022 meeting regarding the scope of this EIR, it was requested that the impact to schools be included in the report. The draft describes the status of schools in Dublin from several perspectives. The draft also describes legal statutes that limit the amount of mitigation that local government can impose on developers. Finally, on page 16-26 the draft declares that "The evaluation of school impacts is limited to those effects with the potential to result in the need for construction of new classrooms or placement of portable classrooms." It is not clear by this statement if the study restricted itself to only to the need for new classrooms, or if this draft feels that the only possible impact is on the need for new classrooms. In either case, the limited evaluation is insufficient. Although the need for new classrooms could be the most important, other possible considerations are:

- The possibility of increased classroom size, which can affect the amount of attention given to individual students.
- Further crowding on playgrounds, lunchrooms, etc. that have no ability to expand even if more portable classrooms are added.
- Some existing students possibly getting moved to a further school location to make room for new students generated by the project.
- The incremental increased aggravation in the traffic jams due to drop-off and pick-up of students.
- The cost of new materials such as books, desks, lab equipment, etc

On page 16-29, the draft states that "...DUSD is experiencing school capacity constraints, to which the project would contribute." **This statement is too general and insufficient.** Overcrowded schools is one of the biggest controversies in Dublin. This one-liner doesn't do enough to describe the impact. The impacts need to be spelled out in this EIR so that the public can see what the impacts are. Mitigation is a separate matter.

On page 16-31, the draft makes an unsubstantiated claim that because school levied fees are considered by law to be full and complete mitigation that “Therefore, the demand on the DUSD as a result of the project is considered a less than significant impact (Class III) on school services, and no mitigation is required.” **This is a false statement for the following reasons:**

- Mitigation is required in the form of a fee per square foot of construction levied by the school district or by negotiation between DUSD and the applicant. Perhaps what the author of this draft meant to say is that there is no further mitigation that can legally be required other than the fee legally authorized and imposed on the developer.
- Section 65995 of the Government Code does not describe the impact on schools. It only discusses the limits of mitigation. Specifically, the Section 65995 does not state the impacts are “less than significant” as the draft EIR does. The draft EIR offers a conclusion that is baseless.
- This statement makes the argument that because mitigation has been artificially limited by law that the impact must be low. In other words, the claim is: if mitigation is limited, then the impact must also be limited. There is no such logical connection between the reduced legal limit to mitigation and the impact caused by the project. Specifically, impact is not dependent on mitigation.

Please remove this statement from the report. Please add the other impacts that can occur from more housing units. With those in place, it would make sense then to describe the limits on mitigation.

Table 16-7 shows the DUSD’s projection for student generation due to this project is 494. This number is not a good representation of DUSD’s projection. It is based on study areas that contain more acreage than SCS has so it is not accurate and DUSD has not made that specific claim. A better reference to DUSD’s projection would be to use their student generation rates just like Kimley Horn did for their estimate of 353 students. The rates are available on the DUSD website. For example, here is one set of ratios that is fairly recent from the DUSD demographics study dated January 2022:

School Level	Housing Type		
	Single Family	Multi-Family	High Density
Elementary School (TK-5)	0.388	0.365	0.133
Middle School (6-8)	0.168	0.087	0.036
High School (9-12)	0.118	0.017	0.056

I recommend using these rates to describe DUSD’s projection, and updating the reference documents to include this more recent demographic report.

## 1 Executive Summary

### Section 1.3 Project Objectives

Item 1 – The EIR doesn't provide a measure for "balanced" when it comes to a mix of residential and commercial uses. Recommend striking the word "balanced."

Item 7 – "Provide a project that balances housing with job-creating uses." A good ratio of jobs to houses would be around 1.5. Therefore 650 housing units would be balanced if about 975 jobs were created. Just by observation it looks like Topgolf may take up about a third of the 265,000 square feet. Maybe they'll hire 40 employees. The remaining 180,000 square feet should therefore provide about 935 jobs. That's about 190 square feet per employee. Office spaces generally have 150-300 sq ft per employee while retail generally has 300-700 sq ft per employee. Even more space per employee is required for hotels.

Since the discussions for the commercial area have been mostly about retail and entertainment, then this area would at best accommodate (based on 250-600 sq ft per employee) about 350 to 750 jobs (instead of 975 jobs), making this project less-than-ideal. **This project puts Dublin further from it's goal of 1.5 jobs:housing ratio instead of closer.** Therefore, I recommend striking this statement. In addition, this project would likely provide mostly retail jobs which pay substantially less than the average income of people that live in Dublin.

### Section 1.6 Areas of Controversy

Amongst the most controversial topics for this project are a) school overcrowding, b) too much housing development, c) affordable housing, and d) traffic.

#### Schools

Please see previous comments regarding 16 Public Services, Utilities & Service Systems

#### Too Much Housing Development

The current planned development on record for this property is for 261 housing units and 900,000 square feet of commercial space. The City hired a number of consultants to figure out what the residents wanted for this property. The **first survey** that was conducted showed the following respondents choices:

- 30% wanted no housing
- 31% wanted low density housing
- 26% wanted medium density housing
- 13% wanted high density housing

Even though "no housing" was not a practical option, it showed that 62% of the residents wanted low density housing or no housing at all. 39% wanted medium density or higher. After seeing the results, the consultant and developer sweetened the pot by promising some public benefit. (e.g. the vista looking toward Mt. Diablo and more retail located near Finnegan) A **second survey** was conducted. Roughly the same number of people. This time, the promised public benefits were enough so that more people were okay with medium density:

- 30% wanted current zoning (low housing count-261 housing units)
- 20% wanted low housing count (350 units)
- 36% wanted medium density housing (650 units + public benefit)
- 14% wanted high density housing (850 units + public benefit)

8-2

8-3

That was more of a 50-50 split for low density vs. higher density housing. Still controversial, but the project is moving ahead with the higher density (650 residential units) with the encouragement of the City Council.

8-3

**Affordable Housing**

No exact numbers have been announced for affordable housing. However, the developer appears to have agreed to the 12.5% inclusionary housing requirement, likely doing a buyout for 40% of that. The expectation is that there will be  $(550 \text{ units})(12.5\%)(60\%) = 41$  affordable for-sale units dispersed throughout the development. In addition, a parcel may be dedicated for affordable rental housing which could bring the total units of affordable housing to 100 units. The inclusion of these affordable units should make this project less controversial in this subject area.

8-4

**Increase Traffic**

See Draft EIR

**Section 1.9 Impact of the Project**

CEQA Guidelines section 15126.2(c) requires the reporting of Significant Environmental Effects Which Cannot be Avoided if the Proposed Project is Implemented. This section needs to be included in this EIR to reflect the impact on schools in Dublin. It may be true that limited mitigation can be found in the form of Level 2 fees levied by the school district, but those recovered fees are only a small portion of the cost to DUSD for housing students. This should be part of the discussion in this new section. This section needs to be added to report the impact on schools.

**Table 1-2: Summary of Significant Impacts of the Proposed Project**

**Table 1-2: Land Use & Planning.** The table shows “No significant impacts identified.” This is a ridiculous notion. The number of houses has more than doubled the initial plan. This land used requires a change in zoning which is absolutely significant.

8-5

**Table 1-2: Population & Housing.** The table shows “No significant impacts identified.” The number of housing units and population will more than double the initial plan. The population of Dublin will increase by 2.5% from this project alone. Please correct this section.

**1.9.2 Growth-Inducing Effects**

In the Draft, the last sentence in this section states that “the project site... has been planned for development as anticipated in the City’s General Plan. **This statement is false.** “The project” described in this Draft EIR is not as anticipated in the current General Plan. It requires a zoning change and increases the anticipated housing count by 149%. It would be better to state that the property has been planned for development, and leave it at that.

**3 Project Description**

**Section 3.3 Project Objectives**

See previous comments about Section 1.3. Since most of the proposed commercial use will be retail and entertainment, the employment opportunities will be mostly for minimum-wage jobs. None of these minimum-wage workers will be able to afford a house in this new project.

8-6

## 5 Aesthetics

### Section 5.2 Scoping Issues Addressed.

The Draft states that “During the public comment scoping period for the project, no comments regarding aesthetics were raised.” This statement needs to be stricken. Reason: the current statement makes it sound like no one in attendance at the meeting had an opinion about aesthetics. However, the meeting was specifically about scope, not content. While the statement is true, it is misleading. It is also true that there were no comments on volcanos, NASCAR, or cake recipes because those items are not about the scope of the EIR.

A more appropriate and accurate statement could be something like, “During the public scoping meeting, no comments about the scope of the aesthetics report were raised.”

8-7

## 6 Air Quality

### Section 6.2 Scoping Issues Addressed.

The Draft states that “During the public comment scoping period for the project, no comments regarding air quality were raised.” This statement needs to be stricken. Reason: the current statement makes it sound like no in attendance at the meeting had an opinion about air quality. However, the meeting was specifically about scope, not content. While the statement is true, it is misleading.

A more appropriate and accurate statement could be something like, “During the public scoping meeting, no comments about the scope of the air quality report were raised.”

### Table 6-7: Project Consistency with Applicable Clean Air Plan Control Measures

Items **TR2** and **TR8** claim to be consistent with applicable clean air plan control measures using “smart growth” without defining what smart growth means. Needs to reference where it is defined or define it. If the discussion afterward is the definition, then the draft should state so. The consistency discusses busses and bicycles – nothing about ridesharing, nothing about trip reductions.

**Item TR10: Land Use Strategies.** The draft states that it’s within 1.5 miles of a BART station. That must mean that the strategy for Dublin residents living close to BART is to leave town on BART to their jobs instead of work in Dublin (because there are not enough good paying jobs in Dublin). Shorter commutes for work (i.e. good jobs in Dublin) would be a better strategy for air quality.

**Item TR13: Parking Policies.** Just because the project would meet Dublin’s substandard parking requirements (less parking than neighbor cities), that does nothing for air quality. In fact, the less parking that is available the more fuel is burned looking for parking. The description of parking has no bearing on air quality and should be stricken.

8-8

## 10 Greenhouse Gas Emissions

### Table 10-2: Dublin Community-wide 2015 GHG Emissions and Adjusted Forecast by Sector (MTCO<sub>2e</sub>)

Population assumptions are wrong in this table. Populations need to be updated/increased and the emission forecasts revised accordingly. All statements and statistics which use these values as a basis need to be re-evaluated.

8-9

## 14 Noise & Vibration

*“The City of Dublin promotes and supports a **high quality of life**, ensures a safe and secure environment, fosters new opportunities, provides equity across all programs, and champions a culture of diversity and inclusion.”* This mission statement depicts a quality of life that is better than average, life experiences that are better than minimum standards. Noise is a quality of life issue that should be taken seriously and not be judged as acceptable if it meets the bare minimum standards.

### Section 14.5.4 Operations

#### MM N-1.2 Noise Attenuation

This section discusses noise control at residential locations. Interior noise levels should be required to be no more than 45 dBA. This can partially be done by an acoustical study. However, these are not without flaws. Blocking noise in a structure is accomplished by a combination of mass, damping materials, and blocking air leaks. In particular, an acoustical study may reference an STC of 45 for an exterior wall, but that does not consider any air leaks or flanking which allow sound to permeate. In other words, the construction details, especially at joints, make a large difference as to how much noise enters the interior of a building. I recommend the following recommendations to this mitigation:

- For all residences with an exterior noise level above 60 dBA, have an acoustical study done and follow recommendations to mitigate noise
- For all residences with an exterior noise level above 63 dBA, include the following construction features:
  - Noise abating windows and sliding glass doors, following manufacturers recommendations
  - Acoustical caulking in all drywall joints
  - Use of drywall isolation clips on exterior walls only
  - Solid core front doors with acoustical stripping and an STC rating of at least 63.
  - Air ducts that have acoustic lining to absorb noise in order to keep outside noise from travelling along the duct and to reduce overall interior noise

8-10

## 15 Population & Housing

### Section 15.3 Environmental Setting

The Draft refers to the population of Dublin as of January 1, 2021. It states that population as being 64,000 while the table below it shows the population in the year before of 72,000. Make no sense. They should be using the current population which is over 73,000. The year 2022 should be added to Table 15-1.

### Section 15.4 Applicable Regulations, Plans, and Standards

The Draft states the buildout plan of the Eastern Dublin Specific Plan to include 29,424 jobs in a 20-to-30-year period. Well, it has been almost 30 years and the number of jobs in 2020 in Dublin was about 22,400 falling significantly short of the plan. This falls short of the City's goal of jobs:housing ratio of 1.5. If the City wishes to keep this section then, this latest 2020 statistic of jobs should be included as a point of reference.

8-11

## 18 Energy Conservation

Section 18.2 Scoping Issues Addressed.

The Draft states that “During the public comment scoping period for the project, no comments regarding aesthetics were raised.” This statement needs to be stricken. Reason: the current statement makes it sound like no in attendance at the meeting had an opinion about aesthetics. However, the meeting was specifically about scope, not content.

8-12

A more appropriate and accurate statement could be something like, “During the public scoping meeting, no comments about the scope of the Energy Conservation report were raised.”

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Please make these comments part of the public comments for this project. I am happy to discuss any of these items.

Regards,



Tom Evans  
Dublin, CA



## **Response to Comment Letter #8: Tom Evans**

### **Response to Comment 8-1: Public Services – Schools**

See [Response to Comment 7-1](#).

### **Response to Comment 8-2: Project Objectives**

See [Response to Comment 7-2](#).

### **Response to Comment 8-3: Population and Housing – Housing**

See [Response to Comment 7-3](#).

### **Response to Comment 8-4: Population and Housing – Affordable Housing**

See [Response to Comment 7-4](#).

### **Response to Comment 8-5: Impact of the Project**

See [Response to Comment 7-5](#).

### **Response to Comment 8-6: Project Objectives**

See [Response to Comment 7-6](#).

### **Response to Comment 8-7: Aesthetics – Scoping Issues Addressed**

See [Response to Comment 7-7](#).

### **Response to Comment 8-8: Air Quality – Scoping Issues Addressed**

See [Response to Comment 7-7](#).

### **Response to Comment 8-9: Greenhouse Gas Emissions - Population**

See [Response to Comment 7-9](#).

### **Response to Comment 8-10: Noise and Vibration – Noise Attenuation**

See [Response to Comment 7-10](#).

### **Response to Comment 8-11: Population and Housing – Population and Jobs**

See [Response to Comment 7-11](#).

### **Response to Comment 8-12: Energy Conservation – Scoping Issues Addressed**

See [Response to Comment 7-7](#).

### 3 Changes and Clarifications to the Draft EIR

Subsequent to the public release of the Draft EIR, revisions have been made as a result of public comments received and/or staff-initiated changes. Those pages with revisions are identified below and follow this list of pages. Changes to the Draft EIR are shown with new text in underline, and removed text in ~~striketrough~~. These text changes do not constitute substantial new information and do not result in significant new impacts or the increase in severity of impacts already disclosed.

#### 3.1 List of Errata Pages

Page 12-1, 12-2,12-3 and 12-16      Text revised to add reference to Zone 7 Water Agency, *Alternative Groundwater Sustainability Plan for the Livermore Valley Groundwater Basin* and incorporate recommended language on the Main Basin.

Page 15-1      Text revised to update population numbers.

Page 16-9      Text revised to correct sewer line size in Brannigan Street.

Appendix F      **Noise Analysis Technical Data**  
Revisions to *FHWA Highway Noise Prediction Model (FHWA-RD-77-108) with California Vehicle Noise (CALVENO) Emission Levels* tables page 3 (Opening Year) and page 4 (Opening Year Plus Project) to correct assumption regarding the timing of construction of the Dublin Boulevard Extension Project, as described below.

Appendix G      **Final Water Supply Assessment and Water Supply Verification**  
The Draft EIR included the Draft Water Supply Assessment dated July 2022 as **Appendix G**. On August 16, 2022, the DSRSD Board of Directors approved, by Resolution No. 48-22, the Water Supply Assessment and Water Supply Verification for the project. Following the adoption, DSRSD staff noted two clerical errors and on September 20, 2022, the DSRSD Board of Directors approved the corrected Water Supply Assessment and Water Supply Verification for the project. **Appendix G** has been updated with the corrected Water Supply Assessment and Water Supply Verification approved on September 20, 2022.

### 3.2 Clarification to Traffic and Noise Assumptions

In the Draft EIR, the noise assessment was based on traffic volumes for Existing, Near-Term, and Cumulative conditions. In the Near-Term condition, it was initially assumed that the Dublin Boulevard Extension Project would be completed by the opening year for the project (2025) when in fact it is not anticipated to be completed until the Winter of 2027. This change in assumptions has potential implications on the noise analysis which relies on average daily traffic volumes for roadway segments, as presented in [Appendix F](#). The following describes the implications of this change in assumptions and potential effects on the Noise analysis as presented in the Draft EIR.

As shown in the graphic below, the Dublin Boulevard Extension Project is planned for the 1.5-mile extension of Dublin Boulevard from Fallon Road to North Canyons Parkway in Livermore. The Final Design phase began in May 2021 and is anticipated to be complete in approximately 24 months (May 2023). Construction of the Dublin Boulevard Extension Project is anticipated to be completed by Winter 2027.

Dublin Boulevard – North Canyons Parkway Extension Project



To correct this assumption, the average daily traffic volumes for the Near-Term condition were revised to remove the Extension Project. For the noise analysis, Kimley-Horn reviewed these revised traffic volumes for the Existing, Near-Term, and Cumulative conditions and determined that, consistent with Draft EIR, the “Near Term With Project” traffic noise levels would not exceed the 3.0 dBA increase significance threshold along any of the surrounding roadways. This assessment is based on the professional judgement that traffic volumes on a particular roadway segment would need to approximately double to cause a significant impact.

As a result, the project would not result in a perceptible increase in traffic noise levels and impacts would be less than significant. Additionally, because the revision only relates to the timing of completion of the Dublin Boulevard Extension Project there would be no change in vehicle miles traveled (VMT). Because there would be no new or substantial increase in the severity of noise or transportation impacts, recirculation of the Draft EIR is not required, consistent with Section 15088.5 (b) of the CEQA Guidelines.<sup>1</sup>

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<sup>1</sup> Section 15088.5 (b) of the CEQA Guidelines states: "Recirculation is not required where new information added to the EIR merely clarifies or amplifies or makes insignificant modifications in an adequate EIR."

## 12 Hydrology & Water Quality

### 12.1 Introduction

This chapter describes effects on water resources (hydrology and water quality) that would be caused by implementation of the project. Information used to prepare this chapter came from the following resources:

- Aerial/satellite photography
- Project application and related materials
- Dublin-San Ramon Services District, 2020 Urban Water Management Plan, 2021
- Zone 7 Water Agency, Alternative Groundwater Sustainability Plan for the Livermore Valley Groundwater Basin, 2021

### 12.2 Scoping Issues Addressed

During the public comment scoping period for the project, one comment letter was received requesting analysis of planned potable water supply, wastewater connection, irrigation water supply, and hydrology and water quality in general.

### 12.3 Environmental Setting

This section presents information on the existing conditions of the project site and vicinity for hydrology and water quality.

#### 12.3.1 Surface Water

##### Watershed

The project site is located within the Livermore Drainage Unit which is one of two major drainage basins in the Alameda Creek Watershed, and east of Tassajara Creek, which runs in a north-south direction. Tassajara Creek is a natural watercourse north of Interstate 580; but is channelized south of Interstate 580, prior to its convergence with Arroyo Mocho. Arroyo Mocho flows south to Arroyo De La Laguna, which empties into the San Francisco Bay.

The project site is located in the service area of the Dublin-San Ramon Services District (DSRSD), which serves the City of Dublin with potable water and non-potable recycled water. Alameda County Flood Control and Water Conservation District, known as Zone 7, supplies wholesale water to DSRSD.

##### Flooding

Flood Insurance Rate maps partition flood areas into three zones: Zone A for areas of 100-year flood; Zone B for areas of 500-year flood; and Zone C for areas of minimal flooding. The National Flood Insurance Program 100-year floodplain is considered the base flood condition.

This is defined as a flood event of a magnitude that would be equaled or exceeded an average of once during a 100-year period. Floodways are defined as stream channels plus adjacent floodplains that must be kept free of encroachment as much as possible so that the 100-year floods can be carried without substantial increases (no more than one foot) in flood elevations.

According to the Federal Emergency Management Agency (FEMA) mapped Flood Insurance Rate Map (FIRM), the majority of the project site is within Zone X (areas of the 0.2% annual chance flood; areas of one percent annual chance flood with average depth of less than one foot or with drainage areas less than one square mile; and areas protected by levees from 1% annual chance flood), except the southerly portion of PA-1, which lies within zone AH (flood depth of one to three feet) with a base flood elevation of 349.0. (FEMA, 2009). As shown in **Figure 12-1: Flood Hazard Areas**, the southerly portion of the project site is located within the 100-year floodplain.

### 12.3.2 Groundwater

The project is within the Livermore Valley Groundwater Basin which extends about 14 miles from the Pleasanton Ridge east to the Altamont Hills and about three miles from the Livermore Upland north to the Orinda Upland. Principal streams providing surface drainage include Arroyo Valle, Arroyo Mocho, and Arroyo Las Positas, with Alamo Creek, South San Ramon Creek, and Tassajara Creek as minor streams. All streams converge on the west side of the basin to form Arroyo de la Laguna, which flows south and joins Alameda Creek in Sunol Valley.

Some geologic structures restrict the lateral movement of groundwater, but the general groundwater gradient is to the west, then south towards Arroyo de la Laguna. Elevations within the basin range from about 600 feet in the east, near the Altamont Hills, to about 280 feet in the southwest, where Arroyo de la Laguna flows into Sunol Groundwater Basin. Average annual precipitation ranges from 16 inches on the valley floor to more than 20 inches along the southeast and northwest basin margins.

The floor of the Livermore Valley and portions of the upland areas on all sides of the valley overlie groundwater-bearing materials. The materials are continental deposits from alluvial fans, outwash plains, and lakes. They include valley-fill materials, the Livermore Formation, and the Tassajara Formation. Under most conditions, the valley-fill and Livermore sediments yield adequate to large quantities of groundwater to all types of wells. The quality of water produced from these rocks ranges from poor to excellent, with most waters in the good to excellent range.

Zone 7 operates the Main Basin such that groundwater storage remains between 254 thousand acre-feet (TAF; full Basin volume) and 128 TAF (historic low volume) – that range is considered the Operational Storage. Groundwater below this minimum threshold is regarded as Reserve Storage that intended for use only during emergency conditions. Total storage capacity of the basin is estimated at about 500,000 acre feet (af). Groundwater storage was estimated at 219,000 af in 1999.

Zone 7 has maintained an annual hydrologic inventory of supply and demand since 1974. ~~The inventory describes the balance between groundwater supply and demand. Under average hydrologic conditions, the groundwater budget is essentially in balance. Groundwater budget inflow components include natural recharge of 10,000 acre-feet, artificial recharge of 10,900 af, applied water recharge of 1,740 acre-feet, and subsurface inflow of 1,000 af. Groundwater budget outflow components include urban extraction of 10,290 af, agricultural extraction of 190 af, other extraction and evaporation associated with gravel mining operations of 12,620 af, and subsurface outflow of 540 af.~~ As described in the *Alternative Groundwater Sustainability Plan* (2021), Zone 7 has continued to sustainably manage groundwater storage in the Basin to avoid “undesirable results” for decades, including over three major droughts. As of the end of the 2020 water year, the total groundwater storage was estimated to be 239.5 thousand acre-feet.

Zone 7 extracts groundwater from the Livermore Valley Main Groundwater Basin (Main Basin) which contains high-yielding aquifers and good quality groundwater. The Main Basin has an estimated storage capacity of approximately 254,000 af. California Department of Water Resources (DWR) has not identified the Main Basin as a basin in overdraft or a basin expected to be in overdraft. The Main Basin is considered a storage facility and not a long-term source of water supply because Zone 7 only pumps groundwater it has artificially recharged using its surface water supplies.

DSRSD, the City of Pleasanton, the City of Livermore, and California Water Service Company have agreements with Zone 7 limiting their extraction of the long-term sustainable yield of the Main Basin. This agreement, along with Zone 7's other groundwater management activities, keeps the groundwater budget in balance under average hydraulic conditions. Each of these entities, known as retailers, has a groundwater pumping quota (GPQ) and are responsible for a fee if they pump in excess of their GPQ.

DSRSD groundwater supply is pumped by Zone 7 from Mocho well No. 4, a Zone 7 installed well located in the Mocho well field. Groundwater from Mocho No.4 is blended with water from other Zone 7 water supplies and is delivered to DSRSD to meet its total water demand. Zone 7 conducts a program of groundwater replenishment by recharging imported surface water via its streams ("in-stream recharge") for storage in the Main Basin. Zone 7's operational policy is to maintain the balance between the combination of natural and artificial recharge and withdrawal, ensuring that groundwater levels do not drop below the historic low level of 128,000 af. Zone 7 plans to recharge 9,200 afy on average, which means that Zone 7 can pump an equivalent 9,200 afy on average from the Main Basin.

DWR (California Department of Water Resources). 2021. California's Groundwater Update 2020 (Bulletin 118). Available at [https://data.cnra.ca.gov/dataset/calgw\\_update2020](https://data.cnra.ca.gov/dataset/calgw_update2020). Accessed April 4, 2022.

*EKI, Zone 7 Water Agency, Alternative Groundwater Sustainability Plan for the Livermore Valley Groundwater Basin, 2021*

Federal Emergency Management Agency. 2009. Flood Insurance Rate Map Number 06001C0328G. Available at <https://msc.fema.gov/portal/home>. Accessed April 4, 2022.

Mackay & Somps. 2006. Dublin Ranch Drainage Master Plan.

USACE (U.S. Army Corps of Engineers). 2008. A Field Guide to the Identification of the Ordinary High Water Mark (OHWM) in the Arid West Region of the Western United States: A Delineation Manual. Available at: [https://www.spk.usace.army.mil/Portals/12/documents/regulatory/pdf/Ordinary\\_High\\_Watermark\\_Manual\\_Aug\\_2008.pdf](https://www.spk.usace.army.mil/Portals/12/documents/regulatory/pdf/Ordinary_High_Watermark_Manual_Aug_2008.pdf). Accessed April 4, 2022.

## 15 Population & Housing

### 15.1 Introduction

This section describes effects on population and housing that would be caused by implementation of the project. Information used to prepare this section came from the following resources:

- City of Dublin, *General Plan*, 1985 amended 2022
- City of Dublin, *Eastern Dublin Specific Plan*, 1994, updated 2022
- City of Dublin, *6<sup>th</sup> Cycle Public Review Draft Housing Element*, 2022
- Association of Bay Area Governments (ABAG) and Metropolitan Transportation Commission (MTC), *Plan Bay Area 2050*, 2021

### 15.2 Scoping Issues Addressed

During the public comment scoping period for the project, comments requesting analysis of the number of school children generated were received.

### 15.3 Environmental Setting

This section presents information on population and housing conditions in the project area.

#### 15.3.1 Population Characteristics

##### Alameda County

Alameda County has a current population of approximately 1,656,591 persons (DOF, 2021a). The 6<sup>th</sup> Cycle Public Review Draft Housing Element estimates that the population of Alameda County will increase to 2,092,370 (an increase of 42 percent compared to population in 2010) by 2040 (City of Dublin, 2022a). **Table 15-1: City of Dublin and Alameda County Existing and Forecasted Population** shows population numbers for the County as determined by the City as determined by the City General Plan Housing Element.

##### City of Dublin

As of ~~January 1, 2021~~, the City of Dublin has a population of ~~64,695~~ **72,589** persons representing approximately four percent of Alameda County's population (~~DOF, 2021a~~). As shown in **Table 15-1: City of Dublin and Alameda County Existing and Forecasted Population**, the population in Dublin is expected to increase to 83,595 by 2040 (a 82 percent increase compared to population in 2010).

gravity to the WWTP. Generally, wastewater flows by gravity from the northwest to the south and from the east to the west and then to the south within the wastewater collection service area. The collection system consists of approximately 207 miles of gravity mains, 26 feet of force main, one permanent lift station, and one temporary lift station (DSRSD, 2017).

The project would connect to existing underground DSRSD sewer lines located within the right-of-way of the adjacent roadways. Major sanitary sewer facilities include a 30-inch pipe on Dublin Boulevard, a 15-inch pipe on Tassajara Road, ~~and a 10-inch pipe on both Brannigan Street and Gleason Drive~~, and an 8-inch pipe on Brannigan Street.

### Treatment Facility

DSRSD owns and operates the Regional Wastewater Treatment Plant in the City of Pleasanton, which treats wastewater from the cities of Dublin, South San Ramon, and Pleasanton. The WWTP includes conventional secondary treatment facilities, as well as tertiary and advanced recycled water treatment facilities.

The WWTP includes conventional secondary treatment facilities, as well as tertiary and advanced recycled water treatment facilities. The conventional secondary wastewater treatment facilities include primary sedimentation, activated sludge secondary treatment, secondary sedimentation, chlorine disinfection, and effluent pumping. The secondary treatment facilities currently have an average dry weather flow (ADWF) capacity of 17.0 MGD.

A portion of the secondary effluent from the WWTP is treated further to produce Title 22 disinfected tertiary recycled water ("recycled water"). Recycled water is produced using sand filtration and ultraviolet disinfection facilities (SFUV) during the dry season when demands are high. The sand filtration tertiary treatment facility capacity is approved by RWQCB for 16.2 MGD, and the ultraviolet disinfection system has been approved to be operated at up to 17.6 MGD. The WWTP also includes microfiltration and ultraviolet disinfection facilities (MFUV) with a treatment capacity of 3.0 MGD. These facilities currently act as backup facilities for the SFUV facilities and are used during times of low and high demand.

Wastewater that is not recycled is discharged into the San Francisco Bay through a pipeline owned by the Livermore Amador Valley Water Management Agency (LAVWMA), a joint powers agency created in 1974 by DSRSD, Livermore, and Pleasanton. Operations began in September 1979, with an expansion in 2005, for a current design capacity of 41.2 MGD. The wastewater effluent from the Livermore and DSRSD wastewater treatment facilities are conveyed to the LAVWMA pump station in Pleasanton. The wastewater effluent is then pumped out of the Livermore-Amador Valley via a 16-mile pipeline from Pleasanton to San Leandro and enters the East Bay Regional Discharge Authority system for de-chlorination and discharge through a deep-water outfall to the San Francisco Bay (DSRSD, 2021).

### **Storm Drainage**

The City of Dublin maintains storm drain pipes and inlets that are on public streets or that carry water which originates on a public street. Drainage facilities that are located on private

**FHWA Highway Noise Prediction Model (FHWA-RD-77-108) with California Vehicle Noise (CALVENO) Emission Levels**

**Project Name:** SCS Dublin  
**Project Number:** 097059316  
**Scenario:** Opening Year  
**Ldn/CNEL:** CNEL

Assumed 24-Hour Traffic Distribution:

	Day	Evening	Night
Total ADT Volumes	77.70%	12.70%	9.60%
Medium-Duty Trucks	87.43%	5.05%	7.52%
Heavy-Duty Trucks	89.10%	2.84%	8.06%

#	Roadway	Segment	Lanes	Median Width	ADT Volume	Speed (mph)	Alpha Factor	Vehicle Mix		Distance from Centerline of Roadway Distance to Contour					Calc Dist	Day	Eve	Night
								Medium Trucks	Heavy Trucks	CNEL at 100 Feet	70 CNEL	65 CNEL	60 CNEL	55 CNEL				
1	Hacienda Drive	Central Parkway to Dublin Boulevard	5	25	14,200	35	0	2.0%	1.0%	62.5	-	-	177	559	100	11,033	1,803	1,363
2	Hacienda Drive	Dublin Boulevard to I-580 WB Off Ramp	7	25	38,760	35	0	2.0%	1.0%	67.1	-	163	514	1,625	100	30,117	4,923	3,721
3	Hacienda Drive	I-580 WB Off Ramp to I-580 EB Off Ramp	6	0	42,020	35	0	2.0%	1.0%	67.1	-	162	511	1,615	100	32,650	5,337	4,034
4	Hacienda Drive	I-580 EB Off Ramp to Owens Drive	6	20	47,040	40	0	2.0%	1.0%	69.0	80	253	799	2,526	100	36,550	5,974	4,516
5	Tassajara Road	Fallon Road to Gleason Drive	4	20	29,390	45	0	2.0%	1.0%	68.0	62	197	624	1,975	100	22,836	3,733	2,821
6	Tassajara Road	Gleason Drive to Aviano Way	4	25	27,120	45	0	2.0%	1.0%	67.6	58	184	581	1,837	100	21,072	3,444	2,604
7	Tassajara Road	Aviano Way to Project Driveway	4	25	27,120	45	0	2.0%	1.0%	67.6	58	184	581	1,837	100	21,072	3,444	2,604
8	Tassajara Road	Project Driveway to Central Parkway	4	25	27,120	45	0	2.0%	1.0%	67.6	58	184	581	1,837	100	21,072	3,444	2,604
9	Tassajara Road	Central Parkway to Project Driveway (South Entry Level Townhomes)	5	25	29,390	45	0	2.0%	1.0%	68.1	64	204	644	2,036	100	22,836	3,733	2,821
10	Tassajara Road	Project Driveway (South Entry Level Townhomes) to Finnian Way	5	25	29,960	45	0	2.0%	1.0%	68.2	66	208	656	2,076	100	23,279	3,805	2,876
11	Tassajara Road	Finnian Way to Project Driveway (Affordable Housing)	6	25	29,290	45	0	2.0%	1.0%	68.2	-	209	660	2,087	100	22,758	3,720	2,812
12	Tassajara Road	Project Driveway (Affordable Housing) to Dublin Boulevard	6	25	29,290	45	0	2.0%	1.0%	68.2	-	209	660	2,087	100	22,758	3,720	2,812
13	Tassajara Road	Dublin Boulevard to Northside Drive	6	5	45,660	45	0	2.0%	1.0%	69.9	98	311	985	3,114	100	35,478	5,799	4,383
14	Tassajara Road	Northside Drive to I-580 WB Off-Ramp	5	5	46,600	45	0	2.0%	1.0%	69.9	99	312	986	3,117	100	36,208	5,918	4,474
15	Tassajara Road	I-580 WB Off-Ramp to Pimlico Drive	4	8	53,860	45	0	2.0%	1.0%	70.5	113	356	1,126	3,561	100	41,849	6,840	5,171
16	Santa Rita Road	I-580 WB Off-Ramp to Pimlico Drive	4	8	39,910	45	0	2.0%	1.0%	69.2	83	264	834	2,639	100	31,010	5,069	3,831
17	Brannigan Street	Gleason Drive to Aviano Way	2	0	4,040	25	0	2.0%	1.0%	54.4	-	-	-	87	100	3,139	513	388
18	Brannigan Street	Aviano Way to Central Parkway	2	0	4,510	25	0	2.0%	1.0%	54.9	-	-	-	97	100	3,504	573	433
19	Brannigan Street	Central Parkway to Finnian Way	2	0	2,740	25	0	2.0%	1.0%	52.7	-	-	-	59	100	2,129	348	263
20	Brannigan Street	Finnian Way to Project Driveway (South Family Homes)	2	0	3,720	25	0	2.0%	1.0%	54.0	-	-	-	80	100	2,890	472	357
21	Brannigan Street	Project Driveway (South Family Homes) to Dublin Boulevard	2	0	3,720	25	0	2.0%	1.0%	54.0	-	-	-	80	100	2,890	472	357
22	Brannigan Street	Dublin Boulevard to Project Driveway (Commercial)	2	0	2,100	25	0	2.0%	1.0%	51.6	-	-	-	45	100	1,632	267	202
23	Fallon Road	Tassajara Road to Gleason Drive	4	25	16,010	40	0	2.0%	1.0%	64.2	-	83	262	827	100	12,440	2,033	1,537
24	Fallon Road	Gleason Drive to Central Parkway	4	25	27,160	40	0	2.0%	1.0%	66.5	-	140	444	1,404	100	21,103	3,449	2,607
25	Fallon Road	Central Parkway to Dublin Boulevard	5	25	29,280	45	0	2.0%	1.0%	68.1	64	203	641	2,029	100	22,751	3,719	2,811
26	Fallon Road	Dublin Boulevard to I-580 WB Off Ramp	4	25	33,760	45	0	2.0%	1.0%	68.6	72	229	723	2,286	100	26,232	4,288	3,241
27	Fallon Road	I-580 WB Off Ramp to I-580 EB Off Ramp	4	0	27,800	45	0	2.0%	1.0%	67.6	58	182	576	1,823	100	21,601	3,531	2,669
28	Fallon Road	I-580 EB Off Ramp to W Jack London Boulevard	4	25	27,410	40	0	2.0%	1.0%	66.5	-	142	448	1,417	100	21,298	3,481	2,631
29	Gleason Drive	Tassajara Road to Project Driveway	2	25	10,120	40	0	2.0%	1.0%	62.0	-	51	160	507	100	7,863	1,285	972
30	Gleason Drive	Project Driveway to Brannigan Street	2	25	10,120	40	0	2.0%	1.0%	62.0	-	51	160	507	100	7,863	1,285	972
31	Gleason Drive	Brannigan Street to Grafton Street	4	15	7,780	40	0	2.0%	1.0%	61.0	-	-	125	396	100	6,045	988	747
32	Gleason Drive	Grafton Street to Fallon Road	4	15	7,220	40	0	2.0%	1.0%	60.7	-	-	116	368	100	5,610	917	693
33	Central Parkway	Hacienda Drive to Tassajara Road	2	25	9,990	35	0	2.0%	1.0%	60.7	-	-	118	373	100	7,762	1,269	959
34	Central Parkway	Tassajara Road to Project Driveway (North Side)	2	25	12,900	35	0	2.0%	1.0%	61.8	-	48	152	481	100	10,023	1,638	1,238
35	Central Parkway	Project Driveway (North Side) to Brannigan Street	2	25	12,900	35	0	2.0%	1.0%	61.8	-	48	152	481	100	10,023	1,638	1,238
36	Central Parkway	Brannigan Street to Montalcino Street/Chancery Lane	2	25	12,240	35	0	2.0%	1.0%	61.6	-	46	144	457	100	9,510	1,554	1,175
37	Central Parkway	Montalcino Street/Chancery Lane to Grafton Street	2	15	13,480	35	0	2.0%	1.0%	62.0	-	50	158	499	100	10,474	1,712	1,294
38	Central Parkway	Grafton Street to Fallon Road	2	15	14,150	35	0	2.0%	1.0%	62.2	-	52	166	524	100	10,995	1,797	1,358
39	Dublin Boulevard	Hacienda Drive to Tassajara Road	6	25	51,040	45	0	2.0%	1.0%	70.6	115	364	1,150	3,637	100	39,658	6,482	4,900
40	Dublin Boulevard	Tassajara Road to Project Driveway (South Family Homes)	5	25	53,320	45	0	2.0%	1.0%	70.7	117	369	1,168	3,694	100	41,430	6,772	5,119
41	Dublin Boulevard	Project Driveway (South Family Homes) to Brannigan Street	5	25	53,320	45	0	2.0%	1.0%	70.7	117	369	1,168	3,694	100	41,430	6,772	5,119
42	Dublin Boulevard	Brannigan Street to Grafton Street	6	25	49,970	45	0	2.0%	1.0%	70.5	113	356	1,126	3,561	100	38,827	6,346	4,797
43	Dublin Boulevard	Grafton Street to Keegan Street	6	25	49,350	45	0	2.0%	1.0%	70.5	111	352	1,112	3,517	100	38,345	6,267	4,738
44	Dublin Boulevard	Keegan Street to Lockhart Street	6	25	43,120	45	0	2.0%	1.0%	69.9	97	307	972	3,073	100	33,504	5,476	4,140
45	Dublin Boulevard	Lockhart Street to Fallon Road	6	25	43,900	45	0	2.0%	1.0%	70.0	99	313	989	3,128	100	34,110	5,575	4,214
46	Dublin Boulevard	East of Fallon Road	6	25	29,730	45	0	2.0%	1.0%	68.3	-	212	670	2,110	100	23,190	3,776	2,864

<sup>1</sup> Distance is from the centerline of the roadway segment to the receptor location.

"-" = contour is located within the roadway right-of-way.

**FHWA Highway Noise Prediction Model (FHWA-RD-77-108) with California Vehicle Noise (CALVENO) Emission Levels**

**Project Name:** SCS Dublin  
**Project Number:** 097059316  
**Scenario:** Opening Year Plus Project  
**Ldn/CNEL:** CNEL

Assumed 24-Hour Traffic Distribution:

	Day	Evening	Night
Total ADT Volumes	77.70%	12.70%	9.60%
Medium-Duty Trucks	87.43%	5.05%	7.52%
Heavy-Duty Trucks	89.10%	2.84%	8.06%

#	Roadway	Segment	Lanes	Median Width	ADT Volume	Speed (mph)	Alpha Factor	Vehicle Mix		Distance from Centerline of Roadway Distance to Contour					Calc Dist	Day	Eve	Night
								Medium Trucks	Heavy Trucks	CNEL at 100 Feet	70 CNEL	65 CNEL	60 CNEL	55 CNEL				
1	Hacienda Drive	Central Parkway to Dublin Boulevard	5	25	14,350	35	0	2.0%	1.0%	62.5	-	-	179	565	100	11,150	1,822	1,378
2	Hacienda Drive	Dublin Boulevard to I-580 WB Off Ramp	7	25	39,560	35	0	2.0%	1.0%	67.2	-	166	525	1,659	100	30,738	5,024	3,798
3	Hacienda Drive	I-580 WB Off Ramp to I-580 EB Off Ramp	6	0	42,700	35	0	2.0%	1.0%	67.2	-	164	519	1,641	100	33,178	5,423	4,099
4	Hacienda Drive	I-580 EB Off Ramp to Owens Drive	6	20	47,500	40	0	2.0%	1.0%	69.1	81	255	807	2,551	100	36,908	6,033	4,560
5	Tassajara Road	Fallon Road to Gleason Drive	4	20	29,650	45	0	2.0%	1.0%	68.0	63	199	630	1,992	100	23,038	3,766	2,846
6	Tassajara Road	Gleason Drive to Aviano Way	4	25	27,540	45	0	2.0%	1.0%	67.7	59	187	590	1,865	100	21,399	3,498	2,644
7	Tassajara Road	Aviano Way to Project Driveway	4	25	27,690	45	0	2.0%	1.0%	67.7	59	188	593	1,875	100	21,515	3,517	2,658
8	Tassajara Road	Project Driveway to Central Parkway	4	25	27,800	45	0	2.0%	1.0%	67.7	60	188	595	1,883	100	21,601	3,531	2,669
9	Tassajara Road	Central Parkway to Project Driveway (South Entry Level Townhomes)	5	25	30,540	45	0	2.0%	1.0%	68.3	67	212	669	2,116	100	23,730	3,879	2,932
10	Tassajara Road	Project Driveway (South Entry Level Townhomes) to Finnian Way	5	25	31,170	45	0	2.0%	1.0%	68.3	68	216	683	2,160	100	24,219	3,959	2,992
11	Tassajara Road	Finnian Way to Project Driveway (Affordable Housing)	6	25	32,150	45	0	2.0%	1.0%	68.6	72	229	724	2,291	100	24,981	4,083	3,086
12	Tassajara Road	Project Driveway (Affordable Housing) to Dublin Boulevard	6	25	32,170	45	0	2.0%	1.0%	68.6	72	229	725	2,292	100	24,996	4,086	3,088
13	Tassajara Road	Dublin Boulevard to Northside Drive	6	5	48,290	45	0	2.0%	1.0%	70.2	104	329	1,042	3,294	100	37,521	6,133	4,636
14	Tassajara Road	Northside Drive to I-580 WB Off-Ramp	5	5	49,850	45	0	2.0%	1.0%	70.2	105	333	1,054	3,335	100	38,733	6,331	4,786
15	Tassajara Road	I-580 WB Off-Ramp to Pimlico Drive	4	8	56,010	45	0	2.0%	1.0%	70.7	117	370	1,171	3,703	100	43,520	7,113	5,377
16	Santa Rita Road	I-580 WB Off-Ramp to Pimlico Drive	4	8	41,200	45	0	2.0%	1.0%	69.4	86	272	861	2,724	100	32,012	5,232	3,955
17	Brannigan Street	Gleason Drive to Aviano Way	2	0	4,280	25	0	2.0%	1.0%	54.6	-	-	-	92	100	3,326	544	411
18	Brannigan Street	Aviano Way to Central Parkway	2	0	5,040	25	0	2.0%	1.0%	55.4	-	-	34	109	100	3,916	640	484
19	Brannigan Street	Central Parkway to Finnian Way	2	0	3,460	25	0	2.0%	1.0%	53.7	-	-	-	74	100	2,688	439	332
20	Brannigan Street	Finnian Way to Project Driveway (South Family Homes)	2	0	4,860	25	0	2.0%	1.0%	55.2	-	-	33	105	100	3,776	617	467
21	Brannigan Street	Project Driveway (South Family Homes) to Dublin Boulevard	2	0	5,290	25	0	2.0%	1.0%	55.6	-	-	36	114	100	4,110	672	508
22	Brannigan Street	Dublin Boulevard to Project Driveway (Commercial)	2	0	4,040	25	0	2.0%	1.0%	54.4	-	-	-	87	100	3,139	513	388
23	Fallon Road	Tassajara Road to Gleason Drive	4	25	16,060	40	0	2.0%	1.0%	64.2	-	83	262	830	100	12,479	2,040	1,542
24	Fallon Road	Gleason Drive to Central Parkway	4	25	27,250	40	0	2.0%	1.0%	66.5	-	141	445	1,408	100	21,173	3,461	2,616
25	Fallon Road	Central Parkway to Dublin Boulevard	5	25	29,520	45	0	2.0%	1.0%	68.1	65	205	647	2,045	100	22,937	3,749	2,834
26	Fallon Road	Dublin Boulevard to I-580 WB Off Ramp	4	25	34,240	45	0	2.0%	1.0%	68.7	73	232	733	2,319	100	26,604	4,348	3,287
27	Fallon Road	I-580 WB Off Ramp to I-580 EB Off Ramp	4	0	28,170	45	0	2.0%	1.0%	67.7	58	185	584	1,847	100	21,888	3,578	2,704
28	Fallon Road	I-580 EB Off Ramp to W Jack London Boulevard	4	25	27,720	40	0	2.0%	1.0%	66.6	-	143	453	1,433	100	21,538	3,520	2,661
29	Gleason Drive	Tassajara Road to Project Driveway	2	25	10,240	40	0	2.0%	1.0%	62.1	-	51	162	513	100	7,956	1,300	983
30	Gleason Drive	Project Driveway to Brannigan Street	2	25	10,200	40	0	2.0%	1.0%	62.1	-	51	162	511	100	7,925	1,295	979
31	Gleason Drive	Brannigan Street to Grafton Street	4	15	7,940	40	0	2.0%	1.0%	61.1	-	-	128	404	100	6,169	1,008	762
32	Gleason Drive	Grafton Street to Fallon Road	4	15	7,260	40	0	2.0%	1.0%	60.7	-	-	117	370	100	5,641	922	697
33	Central Parkway	Hacienda Drive to Tassajara Road	2	25	10,370	35	0	2.0%	1.0%	60.9	-	-	122	387	100	8,057	1,317	996
34	Central Parkway	Tassajara Road to Project Driveway (North Side)	2	25	13,360	35	0	2.0%	1.0%	62.0	-	50	158	498	100	10,381	1,697	1,283
35	Central Parkway	Project Driveway (North Side) to Brannigan Street	2	25	13,130	35	0	2.0%	1.0%	61.9	-	49	155	490	100	10,202	1,668	1,260
36	Central Parkway	Brannigan Street to Montalcino Street/Chancery Lane	2	25	12,680	35	0	2.0%	1.0%	61.7	-	47	150	473	100	9,852	1,610	1,217
37	Central Parkway	Montalcino Street/Chancery Lane to Grafton Street	2	15	13,920	35	0	2.0%	1.0%	62.1	-	52	163	515	100	10,816	1,768	1,336
38	Central Parkway	Grafton Street to Fallon Road	2	15	14,580	35	0	2.0%	1.0%	62.3	-	54	171	540	100	11,329	1,852	1,400
39	Dublin Boulevard	Hacienda Drive to Tassajara Road	6	25	52,350	45	0	2.0%	1.0%	70.7	118	373	1,180	3,730	100	40,676	6,648	5,026
40	Dublin Boulevard	Tassajara Road to Project Driveway (South Family Homes)	5	25	55,050	45	0	2.0%	1.0%	70.8	121	381	1,206	3,814	100	42,774	6,991	5,285
41	Dublin Boulevard	Project Driveway (South Family Homes) to Brannigan Street	5	25	54,780	45	0	2.0%	1.0%	70.8	120	380	1,200	3,795	100	42,564	6,957	5,259
42	Dublin Boulevard	Brannigan Street to Grafton Street	6	25	50,810	45	0	2.0%	1.0%	70.6	114	362	1,145	3,621	100	39,479	6,453	4,878
43	Dublin Boulevard	Grafton Street to Keegan Street	6	25	50,150	45	0	2.0%	1.0%	70.5	113	357	1,130	3,574	100	38,967	6,369	4,814
44	Dublin Boulevard	Keegan Street to Lockhart Street	6	25	43,730	45	0	2.0%	1.0%	69.9	99	312	985	3,116	100	33,978	5,554	4,198
45	Dublin Boulevard	Lockhart Street to Fallon Road	6	25	44,490	45	0	2.0%	1.0%	70.0	100	317	1,003	3,170	100	34,569	5,650	4,271
46	Dublin Boulevard	East of Fallon Road	6	25	29,930	45	0	2.0%	1.0%	68.3	-	213	674	2,133	100	23,256	3,801	2,873

<sup>1</sup> Distance is from the centerline of the roadway segment to the receptor location.

"-" = contour is located within the roadway right-of-way.