



STATE OF CALIFORNIA

Gavin Newsom, Governor

NATIVE AMERICAN HERITAGE COMMISSION

RECEIVED
APR 25 2022
CITY OF DUBLIN
BUILDING & SAFETY DIVISION

April 14, 2022

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

Re: 2022040022, SCS Dublin Project, Alameda County

Dear Ms. Million:

The Native American Heritage Commission (NAHC) has received the Notice of Preparation (NOP), Draft Environmental Impact Report (DEIR) or Early Consultation for the project referenced above. The California Environmental Quality Act (CEQA) (Pub. Resources Code §21000 et seq.), specifically Public Resources Code §21084.1, states that a project that may cause a substantial adverse change in the significance of a historical resource, is a project that may have a significant effect on the environment. (Pub. Resources Code § 21084.1; Cal. Code Regs., tit.14, §15064.5 (b) (CEQA Guidelines §15064.5 (b)). If there is substantial evidence, in light of the whole record before a lead agency, that a project may have a significant effect on the environment, an Environmental Impact Report (EIR) shall be prepared. (Pub. Resources Code §21080 (d); Cal. Code Regs., tit. 14, § 5064 subd.(a)(1) (CEQA Guidelines §15064 (a)(1)). In order to determine whether a project will cause a substantial adverse change in the significance of a historical resource, a lead agency will need to determine whether there are historical resources within the area of potential effect (APE).

CEQA was amended significantly in 2014. Assembly Bill 52 (Gatto, Chapter 532, Statutes of 2014) (AB 52) amended CEQA to create a separate category of cultural resources, "tribal cultural resources" (Pub. Resources Code §21074) and provides that a project with an effect that may cause a substantial adverse change in the significance of a tribal cultural resource is a project that may have a significant effect on the environment. (Pub. Resources Code §21084.2). Public agencies shall, when feasible, avoid damaging effects to any tribal cultural resource. (Pub. Resources Code §21084.3 (a)). **AB 52 applies to any project for which a notice of preparation, a notice of negative declaration, or a mitigated negative declaration is filed on or after July 1, 2015.** If your project involves the adoption of or amendment to a general plan or a specific plan, or the designation or proposed designation of open space, on or after March 1, 2005, it may also be subject to Senate Bill 18 (Burton, Chapter 905, Statutes of 2004) (SB 18). **Both SB 18 and AB 52 have tribal consultation requirements.** If your project is also subject to the federal National Environmental Policy Act (42 U.S.C. § 4321 et seq.) (NEPA), the tribal consultation requirements of Section 106 of the National Historic Preservation Act of 1966 (154 U.S.C. 300101, 36 C.F.R. §800 et seq.) may also apply.

The NAHC recommends consultation with California Native American tribes that are traditionally and culturally affiliated with the geographic area of your proposed project as early as possible in order to avoid inadvertent discoveries of Native American human remains and best protect tribal cultural resources. Below is a brief summary of portions of AB 52 and SB 18 as well as the NAHC's recommendations for conducting cultural resources assessments.

Consult your legal counsel about compliance with AB 52 and SB 18 as well as compliance with any other applicable laws.

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AB 52 has added to CEQA the additional requirements listed below, along with many other requirements:

1. Fourteen Day Period to Provide Notice of Completion of an Application/Decision to Undertake a Project: Within fourteen (14) days of determining that an application for a project is complete or of a decision by a public agency to undertake a project, a lead agency shall provide formal notification to a designated contact of, or tribal representative of, traditionally and culturally affiliated California Native American tribes that have requested notice, to be accomplished by at least one written notice that includes:
 - a. A brief description of the project.
 - b. The lead agency contact information.
 - c. Notification that the California Native American tribe has 30 days to request consultation. (Pub. Resources Code §21080.3.1 (d)).
 - d. A "California Native American tribe" is defined as a Native American tribe located in California that is on the contact list maintained by the NAHC for the purposes of Chapter 905 of Statutes of 2004 (SB 18). (Pub. Resources Code §21073).
2. Begin Consultation Within 30 Days of Receiving a Tribe's Request for Consultation and Before Releasing a Negative Declaration, Mitigated Negative Declaration, or Environmental Impact Report: A lead agency shall begin the consultation process within 30 days of receiving a request for consultation from a California Native American tribe that is traditionally and culturally affiliated with the geographic area of the proposed project. (Pub. Resources Code §21080.3.1, subds. (d) and (e)) and prior to the release of a negative declaration, mitigated negative declaration or Environmental Impact Report. (Pub. Resources Code §21080.3.1 (b)).
 - a. For purposes of AB 52, "consultation shall have the same meaning as provided in Gov. Code §65352.4 (SB 18). (Pub. Resources Code §21080.3.1 (b)).
3. Mandatory Topics of Consultation If Requested by a Tribe: The following topics of consultation, if a tribe requests to discuss them, are mandatory topics of consultation:
 - a. Alternatives to the project.
 - b. Recommended mitigation measures.
 - c. Significant effects. (Pub. Resources Code §21080.3.2 (a)).
4. Discretionary Topics of Consultation: The following topics are discretionary topics of consultation:
 - a. Type of environmental review necessary.
 - b. Significance of the tribal cultural resources.
 - c. Significance of the project's impacts on tribal cultural resources.
 - d. If necessary, project alternatives or appropriate measures for preservation or mitigation that the tribe may recommend to the lead agency. (Pub. Resources Code §21080.3.2 (a)).
5. Confidentiality of Information Submitted by a Tribe During the Environmental Review Process: With some exceptions, any information, including but not limited to, the location, description, and use of tribal cultural resources submitted by a California Native American tribe during the environmental review process shall not be included in the environmental document or otherwise disclosed by the lead agency or any other public agency to the public, consistent with Government Code §6254 (r) and §6254.10. Any information submitted by a California Native American tribe during the consultation or environmental review process shall be published in a confidential appendix to the environmental document unless the tribe that provided the information consents, in writing, to the disclosure of some or all of the information to the public. (Pub. Resources Code §21082.3 (c)(1)).
6. Discussion of Impacts to Tribal Cultural Resources in the Environmental Document: If a project may have a significant impact on a tribal cultural resource, the lead agency's environmental document shall discuss both of the following:
 - a. Whether the proposed project has a significant impact on an identified tribal cultural resource.
 - b. Whether feasible alternatives or mitigation measures, including those measures that may be agreed to pursuant to Public Resources Code §21082.3, subdivision (a), avoid or substantially lessen the impact on the identified tribal cultural resource. (Pub. Resources Code §21082.3 (b)).

7. Conclusion of Consultation: Consultation with a tribe shall be considered concluded when either of the following occurs:

- a. The parties agree to measures to mitigate or avoid a significant effect, if a significant effect exists, on a tribal cultural resource; or
- b. A party, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached. (Pub. Resources Code §21080.3.2 (b)).

8. Recommending Mitigation Measures Agreed Upon in Consultation in the Environmental Document: Any mitigation measures agreed upon in the consultation conducted pursuant to Public Resources Code §21080.3.2 shall be recommended for inclusion in the environmental document and in an adopted mitigation monitoring and reporting program, if determined to avoid or lessen the impact pursuant to Public Resources Code §21082.3, subdivision (b), paragraph 2, and shall be fully enforceable. (Pub. Resources Code §21082.3 (a)).

9. Required Consideration of Feasible Mitigation: If mitigation measures recommended by the staff of the lead agency as a result of the consultation process are not included in the environmental document or if there are no agreed upon mitigation measures at the conclusion of consultation, or if consultation does not occur, and if substantial evidence demonstrates that a project will cause a significant effect to a tribal cultural resource, the lead agency shall consider feasible mitigation pursuant to Public Resources Code §21084.3 (b). (Pub. Resources Code §21082.3 (e)).

10. Examples of Mitigation Measures That, If Feasible, May Be Considered to Avoid or Minimize Significant Adverse Impacts to Tribal Cultural Resources:

- a. Avoidance and preservation of the resources in place, including, but not limited to:
 - i. Planning and construction to avoid the resources and protect the cultural and natural context.
 - ii. Planning greenspace, parks, or other open space, to incorporate the resources with culturally appropriate protection and management criteria.
- b. Treating the resource with culturally appropriate dignity, taking into account the tribal cultural values and meaning of the resource, including, but not limited to, the following:
 - i. Protecting the cultural character and integrity of the resource.
 - ii. Protecting the traditional use of the resource.
 - iii. Protecting the confidentiality of the resource.
- c. Permanent conservation easements or other interests in real property, with culturally appropriate management criteria for the purposes of preserving or utilizing the resources or places.
- d. Protecting the resource. (Pub. Resource Code §21084.3 (b)).
- e. Please note that a federally recognized California Native American tribe or a non-federally recognized California Native American tribe that is on the contact list maintained by the NAHC to protect a California prehistoric, archaeological, cultural, spiritual, or ceremonial place may acquire and hold conservation easements if the conservation easement is voluntarily conveyed. (Civ. Code §815.3 (c)).
- f. Please note that it is the policy of the state that Native American remains and associated grave artifacts shall be repatriated. (Pub. Resources Code §5097.991).

11. Prerequisites for Certifying an Environmental Impact Report or Adopting a Mitigated Negative Declaration or Negative Declaration with a Significant Impact on an Identified Tribal Cultural Resource: An Environmental Impact Report may not be certified, nor may a mitigated negative declaration or a negative declaration be adopted unless one of the following occurs:

- a. The consultation process between the tribes and the lead agency has occurred as provided in Public Resources Code §21080.3.1 and §21080.3.2 and concluded pursuant to Public Resources Code §21080.3.2.
- b. The tribe that requested consultation failed to provide comments to the lead agency or otherwise failed to engage in the consultation process.
- c. The lead agency provided notice of the project to the tribe in compliance with Public Resources Code §21080.3.1 (d) and the tribe failed to request consultation within 30 days. (Pub. Resources Code §21082.3 (d)).

The NAHC's PowerPoint presentation titled, "Tribal Consultation Under AB 52: Requirements and Best Practices" may be found online at: http://nahc.ca.gov/wp-content/uploads/2015/10/AB52TribalConsultation_CalEPAPDF.pdf

SB 18

SB 18 applies to local governments and requires local governments to contact, provide notice to, refer plans to, and consult with tribes prior to the adoption or amendment of a general plan or a specific plan, or the designation of open space. (Gov. Code §65352.3). Local governments should consult the Governor's Office of Planning and Research's "Tribal Consultation Guidelines," which can be found online at: https://www.opr.ca.gov/docs/09_14_05_Updated_Guidelines_922.pdf.

Some of SB 18's provisions include:

1. **Tribal Consultation:** If a local government considers a proposal to adopt or amend a general plan or a specific plan, or to designate open space it is required to contact the appropriate tribes identified by the NAHC by requesting a "Tribal Consultation List." If a tribe, once contacted, requests consultation the local government must consult with the tribe on the plan proposal. **A tribe has 90 days from the date of receipt of notification to request consultation unless a shorter timeframe has been agreed to by the tribe.** (Gov. Code §65352.3 (a)(2)).
2. **No Statutory Time Limit on SB 18 Tribal Consultation.** There is no statutory time limit on SB 18 tribal consultation.
3. **Confidentiality:** Consistent with the guidelines developed and adopted by the Office of Planning and Research pursuant to Gov. Code §65040.2, the city or county shall protect the confidentiality of the information concerning the specific identity, location, character, and use of places, features and objects described in Public Resources Code §5097.9 and §5097.993 that are within the city's or county's jurisdiction. (Gov. Code §65352.3 (b)).
4. **Conclusion of SB 18 Tribal Consultation:** Consultation should be concluded at the point in which:
 - a. The parties to the consultation come to a mutual agreement concerning the appropriate measures for preservation or mitigation; or
 - b. Either the local government or the tribe, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached concerning the appropriate measures of preservation or mitigation. (Tribal Consultation Guidelines, Governor's Office of Planning and Research (2005) at p. 18).

Agencies should be aware that neither AB 52 nor SB 18 precludes agencies from initiating tribal consultation with tribes that are traditionally and culturally affiliated with their jurisdictions before the timeframes provided in AB 52 and SB 18. For that reason, we urge you to continue to request Native American Tribal Contact Lists and "Sacred Lands File" searches from the NAHC. The request forms can be found online at: <http://nahc.ca.gov/resources/forms/>.

NAHC Recommendations for Cultural Resources Assessments

To adequately assess the existence and significance of tribal cultural resources and plan for avoidance, preservation in place, or barring both, mitigation of project-related impacts to tribal cultural resources, the NAHC recommends the following actions:

1. Contact the appropriate regional California Historical Research Information System (CHRIS) Center (http://ohp.parks.ca.gov/?page_id=1068) for an archaeological records search. The records search will determine:
 - a. If part or all of the APE has been previously surveyed for cultural resources.
 - b. If any known cultural resources have already been recorded on or adjacent to the APE.
 - c. If the probability is low, moderate, or high that cultural resources are located in the APE.
 - d. If a survey is required to determine whether previously unrecorded cultural resources are present.
2. If an archaeological inventory survey is required, the final stage is the preparation of a professional report detailing the findings and recommendations of the records search and field survey.
 - a. The final report containing site forms, site significance, and mitigation measures should be submitted immediately to the planning department. All information regarding site locations, Native American human remains, and associated funerary objects should be in a separate confidential addendum and not be made available for public disclosure.
 - b. The final written report should be submitted within 3 months after work has been completed to the appropriate regional CHRIS center.

3. Contact the NAHC for:
 - a. A Sacred Lands File search. Remember that tribes do not always record their sacred sites in the Sacred Lands File, nor are they required to do so. A Sacred Lands File search is not a substitute for consultation with tribes that are traditionally and culturally affiliated with the geographic area of the project's APE.
 - b. A Native American Tribal Consultation List of appropriate tribes for consultation concerning the project site and to assist in planning for avoidance, preservation in place, or, failing both, mitigation measures.
4. Remember that the lack of surface evidence of archaeological resources (including tribal cultural resources) does not preclude their subsurface existence.
 - a. Lead agencies should include in their mitigation and monitoring reporting program plan provisions for the identification and evaluation of inadvertently discovered archaeological resources per Cal. Code Regs., tit. 14, § 15064.5(f) (CEQA Guidelines § 15064.5(f)). In areas of identified archaeological sensitivity, a certified archaeologist and a culturally affiliated Native American with knowledge of cultural resources should monitor all ground-disturbing activities.
 - b. Lead agencies should include in their mitigation and monitoring reporting program plans provisions for the disposition of recovered cultural items that are not burial associated in consultation with culturally affiliated Native Americans.
 - c. Lead agencies should include in their mitigation and monitoring reporting program plans provisions for the treatment and disposition of inadvertently discovered Native American human remains. Health and Safety Code § 7050.5, Public Resources Code § 5097.98, and Cal. Code Regs., tit. 14, § 15064.5, subdivisions (d) and (e) (CEQA Guidelines § 15064.5, subds. (d) and (e)) address the processes to be followed in the event of an inadvertent discovery of any Native American human remains and associated grave goods in a location other than a dedicated cemetery.

If you have any questions or need additional information, please contact me at my email address:

Cody.Campagne@nahc.ca.gov.

Sincerely,

Cody Campagne

Cody Campagne
Cultural Resources Analyst

cc: State Clearinghouse

California Department of Transportation

DISTRICT 4
OFFICE OF TRANSIT AND COMMUNITY PLANNING
P.O. BOX 23660, MS-10D | OAKLAND, CA 94623-0660
www.dot.ca.gov



April 29, 2022

SCH #: 202204022
GTS #: 04-ALA-2022-00648
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 – Notice of Preparation (NOP) of a Draft EIR (DEIR)

Dear Amy Million:

Thank you for including the California Department of Transportation (Caltrans) in the environmental review process for this 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 April 2022 NOP.

Project Understanding

The proposed project would construct a mixed-use development including a pedestrian focused commercial/entertainment district, central town square, visible and functional grand paseo/green space and a diversity of housing types and densities, including a dedicated affordable housing site. This project site is located directly adjacent to the I-580 off-ramp at Tassajara Rd.

Travel Demand Analysis

With the enactment of Senate Bill (SB) 743, Caltrans is focused on maximizing efficient development patterns, innovative travel demand reduction strategies, and multimodal improvements. For more information on how Caltrans assesses Transportation Impact Studies, please review Caltrans' Transportation Impact Study Guide ([link](#)).

If the project meets the screening criteria established in the City's adopted Vehicle Miles Traveled (VMT) policy to be presumed to have a less-than-significant VMT impact and exempt from detailed VMT analysis, please provide justification to support the

exempt status in alignment with the City's VMT policy. Projects that do not meet the screening criteria should include a detailed VMT analysis in the DEIR, which should include the following:

- VMT analysis pursuant to the City's guidelines. Projects that result in automobile VMT per capita above the threshold of significance for existing (i.e. baseline) city-wide or regional values for similar land use types may indicate a significant impact. If necessary, mitigation for increasing VMT should be identified. Mitigation should support the use of transit and active transportation modes. Potential mitigation measures that include the requirements of other agencies such as Caltrans are fully enforceable through permit conditions, agreements, or other legally-binding instruments under the control of the City.
- A schematic illustration of walking, biking and auto conditions at the project site and study area roadways. Potential traffic safety issues to the State Transportation Network (STN) may be assessed by Caltrans via the Interim Safety Guidance.
- The project's primary and secondary effects on pedestrians, bicycles, travelers with disabilities and transit performance should be evaluated, including countermeasures and trade-offs resulting from mitigating VMT increases. Access to pedestrians, bicycle, and transit facilities must be maintained.

Multimodal Safety

This project may potentially increase conflicts between bicyclists/pedestrians and vehicles at the Tassajara Rd/Santa Rita/I-580 interchange area. Consider providing or upgrading bike/pedestrian facilities across the interchange to enhance bike and pedestrian safety. Note that the Caltrans District 4 Bike Plan proposes a Class II buffered bike lane project on Tassajara Rd across the I-580 interchange (Project Ala-580-X10). Please consider this as a potential improvement to meet the needs of additional anticipated bicyclists generated by the project.

Hydrology

Please ensure that any increase in stormwater runoff to State drainage systems or State facilities be treated, contained on the project site, and metered to preconstruction levels. Floodplain impacts, if any, should be documented and mitigated and a floodplain analysis report should be provided. Please explain any additional flooding impacts, if any, on the existing adjacent properties.

If the project involves drainage work, please provide a drainage report, detailing assumptions and calculations used in the design of the drainage systems. The report should include pre- and post-project flows to the existing drainage system. Also, include drainage details and profiles for connections to the existing inlet and system.

Cultural Resources

Archaeological identification efforts including a recent records search at the Northwest Information Center, pedestrian survey, and Native American outreach under CEQA Assembly Bill (AB) 52 is recommended to identify any previously unknown cultural and/or tribal resources prior to construction.

Construction-Related Impacts

Potential impacts to the State Right-of-Way (ROW) from project-related temporary access points should be analyzed. Mitigation for significant impacts due to construction and noise should be identified. 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>.

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

Lead Agency

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

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.

Encroachment Permit

Please be advised that any permanent work or temporary traffic control that encroaches onto Caltrans' 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.

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>.

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.

Sincerely,

A handwritten signature in black ink that reads "Mark Leong". The signature is fluid and cursive, with the first name "Mark" and last name "Leong" clearly distinguishable.

MARK LEONG
District Branch Chief
Local Development Review

c: State Clearinghouse



Jared Blumenfeld
Secretary for
Environmental Protection



Department of Toxic Substances Control

Meredith Williams, Ph.D.
Director
8800 Cal Center Drive
Sacramento, California 95826-3200



Gavin Newsom
Governor

SENT VIA ELECTRONIC MAIL

May 2, 2022

Ms. Amy Million
Principal Planner
City of Dublin, Community Development Department
100 Civic Plaza
Dublin, CA 94568
Amy.Million@dublin.ca.gov

NOTICE OF PREPARATION OF A DRAFT ENVIRONMENTAL IMPACT REPORT FOR
THE SCS DUBLIN – DATED MARCH 2022 (STATE CLEARINGHOUSE NUMBER:
2022040022)

Dear Ms. Million:

The Department of Toxic Substances Control (DTSC) received a Notice of Preparation of a Draft Environmental Impact Report (NOP of DEIR) for the SCS Dublin (Project). The Lead Agency is receiving this notice from DTSC because the Project includes one or more of the following: groundbreaking activities, work in close proximity to a roadway, work in close proximity to mining or suspected mining or former mining activities, presence of site buildings that may require demolition or modifications, importation of backfill soil, and/or work on or in close proximity to an agricultural or former agricultural site.

DTSC recommends that the following issues be evaluated in the Hazards and Hazardous Materials section of the DEIR:

1. The DEIR should acknowledge the potential for historic or future activities on or near the project site to result in the release of hazardous wastes/substances on the project site. In instances in which releases have occurred or may occur, further studies should be carried out to delineate the nature and extent of the contamination, and the potential threat to public health and/or the environment should be evaluated. The DEIR should also identify the mechanism(s) to initiate

any required investigation and/or remediation and the government agency who will be responsible for providing appropriate regulatory oversight.

2. Refiners in the United States started adding lead compounds to gasoline in the 1920s in order to boost octane levels and improve engine performance. This practice did not officially end until 1992 when lead was banned as a fuel additive in California. Tailpipe emissions from automobiles using leaded gasoline contained lead and resulted in aerially deposited lead (ADL) being deposited in and along roadways throughout the state. ADL-contaminated soils still exist along roadsides and medians and can also be found underneath some existing road surfaces due to past construction activities. Due to the potential for ADL-contaminated soil DTSC, recommends collecting soil samples for lead analysis prior to performing any intrusive activities for the project described in the DEIR.
3. If any sites within the project area or sites located within the vicinity of the project have been used or are suspected of having been used for mining activities, proper investigation for mine waste should be discussed in the DEIR. DTSC recommends that any project sites with current and/or former mining operations onsite or in the project site area should be evaluated for mine waste according to DTSC's 1998 [Abandoned Mine Land Mines Preliminary Assessment Handbook](#).
4. If buildings or other structures are to be demolished on any project sites included in the proposed project, surveys should be conducted for the presence of lead-based paints or products, mercury, asbestos containing materials, and polychlorinated biphenyl caulk. Removal, demolition and disposal of any of the above-mentioned chemicals should be conducted in compliance with California environmental regulations and policies. In addition, sampling near current and/or former buildings should be conducted in accordance with DTSC's 2006 [Interim Guidance Evaluation of School Sites with Potential Contamination from Lead Based Paint, Termiticides, and Electrical Transformers](#).
5. If any projects initiated as part of the proposed project require the importation of soil to backfill any excavated areas, proper sampling should be conducted to ensure that the imported soil is free of contamination. DTSC recommends the imported materials be characterized according to [DTSC's 2001 Information Advisory Clean Imported Fill Material](#).
6. If any sites included as part of the proposed project have been used for agricultural, weed abatement or related activities, proper investigation for organochlorinated pesticides should be discussed in the DEIR. DTSC recommends the current and former agricultural lands be evaluated in

accordance with DTSC's 2008 [Interim Guidance for Sampling Agricultural Properties \(Third Revision\)](#).

DTSC appreciates the opportunity to comment on the DEIR. Should you need any assistance with an environmental investigation, please visit DTSC's [Site Mitigation and Restoration Program](#) page to apply for lead agency oversight. Additional information regarding voluntary agreements with DTSC can be found at [DTSC's Brownfield website](#).

If you have any questions, please contact me at (916) 255-3582 or via email at Brian.McAloon@dtsc.ca.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read 'B. McAloon', with a stylized, cursive script.

Brian McAloon
Project Manager
Site Evaluation and Remediation Unit
Site Mitigation and Restoration Program
Department of Toxic Substances Control

cc: (via email)

Governor's Office of Planning and Research
State Clearinghouse
State.Clearinghouse@opr.ca.gov

Mr. Dave Kereazis
Office of Planning & Environmental Analysis
Department of Toxic Substances Control
Dave.Kereazis@dtsc.ca.gov



Response to Request for Comments

TO: City of Dublin Planning Department
Attn.: Amy Million, Principal Planner
DATE: 4/22/2022

FROM: Dublin San Ramon Services District
Reviewed by: Ryan Pendergraft, Assistant Engineer

SUBJECT: **PLPA-2022-00005, SCS Dublin Notice of Preparation of Environmental Impact Report**

Thank you for the opportunity to comment on this Notice of Preparation. Dublin San Ramon Services District (DSRSD) would request that the scope of the Environmental Impact Report include details related to planned potable water supply, wastewater connection, and irrigation water supply. As part of these details, the previously completed Water Supply Assessment and Utility Analysis for this area are required to be updated to align with the current project details. DSRSD will work with the applicant and/or the City to ensure that this requirement is fulfilled.

Should you have any questions concerning the above, please contact Ryan Pendergraft at (925) 875-2242.



Via Email:

amy.million@dublin.ca.gov

April 22, 2022

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

RE: SCS Dublin (PLPA-2022-0005)

Dear Ms. Million:

Thank you for the notice that the City of Dublin would be lead agency in preparation of an EIR for the proposed SCS Dublin project. As described, the proposed development is a mixed-use development that would allow up to 265,000 square feet of commercial uses and up to 650 residential units.

Though a different project, it is in the same location and with similar land use components as the previously proposed At Dublin development. As such, the City's comments on the currently proposed SCS Dublin project are similar to those provided on the prior proposal. The City of Pleasanton ("City") is concerned about the impacts to both the regional and local traffic circulation system. The proposed project will generate a significant number of vehicle trips on major arterial streets and at the following intersections:

- I-580
- Hacienda Drive
- Santa Rita Road;
- Stoneridge Drive; and,
- El Charro Road.

These roadways have several intersections that currently operate at capacity in the AM and PM peak commute hours. The City is concerned that the proposed project will generate traffic that will lead to reduced level of service ("LOS") at the freeway interchanges and on local Pleasanton roadways. These increases will likely be centered around Hacienda Drive, Santa Rita Road, and El Charro Road and may deteriorate arterial operations and local access to levels below City standards. In addition to the deterioration in LOS, lengthy queues may result at the arterial intersections and freeway interchanges. Therefore, the City submits the following comments concerning the draft EIR:

1. The intersection of El Charro/Stoneridge/Jack London is listed as a City of Livermore intersection and to be evaluated on Livermore's LOS criteria. The intersection is actually in Pleasanton and shall adhere to Pleasanton LOS policies.

COMMUNITY DEVELOPMENT

www.cityofpleasantonca.gov

P. O. BOX 520 · 200 Old Bernal Avenue
Pleasanton, CA 94566-0802

Planning	Building & Safety	Code Enforcement	Permit Center	Traffic Engineering
(925) 931-5600	(925) 931-5300	(925) 931-5620	(925) 931-5630	(925) 931-5677
Fax: 931-5483	Fax: 931-5478	Fax: 931-5478	Fax: 931-5478	Fax: 931-5487

April 22, 2022

Staff notes, the City of Livermore has two business-park like developments in the pipeline that would have a combined square footage of approximately 1,277,000 square feet. The developments would use I-580 and the El Charro Road interchange. Staff would like to see the impacts be included in the analysis.

2. Several of the Pleasanton intersections were not assessed based on the City of Pleasanton's LOS D threshold. These intersections shall be analyzed based on LOS D and mitigations shall be provided if they do not meet that criteria. The "Gateway" condition identified in the City of Pleasanton General Plan only applies if the mitigation identified is unnecessary or inconsistent with maintaining visual character, landscaping, and pedestrian amenities.
3. Under cumulative plus project conditions, the General Plan trips were removed and the proposed project trips added (page 16-11). Based on the trip generation comparison shown on page 18-7, the proposed project would generate approximately 842 less trips than the General Plan in the PM peak hour. However, the analysis shows over 250 more trips being added to the Santa Rita/West Las Positas intersection in the PM peak hour (Figure 17-12c). Please explain/clarify the increase in trips with such a large reduction in trip generation between the General Plan and proposed project.
4. Regarding freeway ramps, at the locations where the project will cause the vehicles to exceed the metering ramp rates, the applicant shall work with Caltrans and the City of Pleasanton to reduce the delays and make improvements where needed to maintain sufficient queuing and intersection operations at the ramps and adjacent intersections.
5. Regarding bicycle and pedestrian improvements, there are several gaps that exist at/near the freeway overcrossings around the site. The applicant shall work with Dublin and Pleasanton to determine feasible improvements to provide an "all ages and abilities" network between the two cities.

Thank you for your consideration of our comments. The City looks forward to our continued cooperative and proactive effort in addressing impacts of the proposed project. If you have any questions, please contact Mike Tassano, Traffic Engineer, at (925) 931-5670.

Sincerely,



Ellen Clark, AICP

Community Development Director

Electronic cc: Mike Tassano, Traffic Engineer
Dan Sodergren, City Attorney
Brian Dolan, Interim City Manager

COMMUNITY DEVELOPMENT
www.cityofpleasantonca.gov

P. O. BOX 520 · 200 Old Bernal Avenue
Pleasanton, CA 94566-0802

Planning	Building & Safety	Code Enforcement	Permit Center	Traffic Engineering
(925) 931-5600	(925) 931-5300	(925) 931-5620	(925) 931-5630	(925) 931-5677
Fax: 931-5483	Fax: 931-5478	Fax: 931-5478	Fax: 931-5478	Fax: 931-5487



DUBLIN SCHOOLS

DUBLIN UNIFIED SCHOOL DISTRICT

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

April 29, 2022

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: Response of Dublin Unified School District to Notice of Preparation for SCS Dublin Project Description

Dear Ms. Million:

Dublin Unified School District ("District") appreciates the opportunity to provide input regarding the Notice of Preparation ("NOP") of an Environmental Impact Report ("EIR") for the SCS Dublin Project, formerly referred to as the "At-Dublin" project ("Project").

The District requests that the EIR address the Project's potential effects on public services, and specifically on schools. In relation to the City's analysis, we call to your attention the enclosed agreement between SCS Development Company, Inc., and the District, addressing development on the property in question.

We request that all notices and copies of documentation with regard to this Project be mailed both to the District directly, and also to our legal counsel's attention as follows:

Chris D. Funk, Superintendent
Dublin Unified School District
7471 Larkdale Ave.
Dublin, CA 94568

Harold M. Freiman, Esq.
Lozano Smith
2001 N. Main St., Suite 500
Walnut Creek, CA 94596

Please feel free to contact me directly if you would like to discuss any of the above. Thank you.

Sincerely,

Chris D. Funk
Superintendent

Enclosure

cc: Harold Freiman, Lozano Smith

**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, 2020

By: Dave Marken

Name: Dave Marken

Its: Superintendent

Date: Jan 18, 2020

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

STAGE 1: LANDSCAPE MASTER PLAN

0 60 120 240 360 FEET

N SHEET 0.4
AUGUST 7, 2018

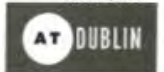


EXHIBIT A
LEGAL DESCRIPTION AND DEPICTION OF THE PROPERTY

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

(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>

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



May 2, 2022

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

SUBJECT: Response to the Notice of Preparation (NOP) of an Environmental Impact Report for the
SCS Dublin Project

Dear Amy,

Thank you for the opportunity to comment on the Notice of Preparation (NOP) of the Environmental Impact Report (EIR) for the SCS Dublin Project. The 73.8-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 existing parcel is vacant and primarily zoned for a mix of commercial and medium density residential use. The proposed project would implement the preferred plan for the SCS Property by amending the 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 accommodate a maximum of 650 residential units and 265,000 square feet of commercial space.

The Alameda County Transportation Commission (Alameda CTC) respectfully submits the following comments:

Basis for Congestion Management Program (CMP) Review

- It appears that the proposed project will generate at least 100 p.m. peak hour trips over existing conditions, and therefore the CMP Land Use Analysis Program requires the City to conduct a transportation impact analysis of the project. For information on the CMP, please visit: <https://www.alamedactc.org/planning/congestion-management-program/>.

Use of Countywide Travel Demand Model

- The Alameda Countywide Travel Demand Model should be used for CMP Land Use Analysis purposes. The CMP requires local jurisdictions to conduct travel model runs themselves or through a consultant. The City of Dublin and the Alameda CTC signed a Countywide Model Agreement on July 17, 2008. Before the model can be used for this project, a letter must be submitted to the Alameda CTC requesting use of the model and describing the project. A copy of a sample letter agreement is available upon request. The most current version of the Alameda CTC Countywide Travel Demand Model was updated in May 2019 to be consistent with the assumptions of Plan Bay Area 2040.

Impacts

- The EIR should address all potential impacts of the project on the Metropolitan Transportation System (MTS) roadway network.
 - MTS roadway facilities in the project area include:
 - I-580 in Dublin, Pleasanton, and Livermore
 - Tassajara Road in Dublin and Pleasanton
 - Dublin Boulevard in Dublin
 - For the purposes of CMP Land Use Analysis, the Highway Capacity Manual 2010 freeway and urban streets methodologies are the preferred methodologies to study vehicle delay impacts.
 - The Alameda CTC has *not* adopted any policy for determining a threshold of significance for Level of Service for the Land Use Analysis Program of the CMP.
- The EIR should address potential impacts of the project on Metropolitan Transportation System (MTS) transit operators.
 - MTS transit operators potentially affected by the project include: BART and LAVTA
 - Transit impacts for consideration include the effects of project vehicle traffic on mixed flow transit operations, transit capacity, transit access/egress, need for future transit service, and consistency with adopted plans.
- The EIR should address potential impacts of the project to people biking and walking in and near the project area, especially nearby roads included in the Countywide High-injury Network and major barriers identified in the Countywide Active Transportation Plan.
 - Impacts to consider on conditions for cyclists include effects of vehicle traffic on cyclist safety and performance, site development and roadway improvements, and consistency with adopted plans.

Mitigation Measures

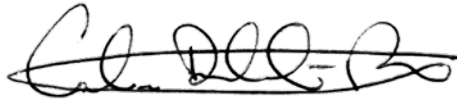
- Alameda CTC's policy regarding mitigation measures is that to be considered adequate they must:
 - Adequately sustain CMP roadway and transit service standards;
 - Be fully funded; and
 - Be consistent with project funding priorities established in the Capital Improvement Program of the CMP, the Countywide Transportation Plan (CTP), and the Regional Transportation Plan (RTP) or the Federal Transportation Improvement Program, if the agency relies on state or federal funds programmed by Alameda CTC.
- The EIR should discuss the adequacy of proposed mitigation measures according to the criteria above. In particular, the EIR should detail when proposed roadway or transit route improvements are expected to be completed, how they will be funded, and the effect on service standards if only the funded portions of these mitigation measures are built prior to Project completion. The EIR should also address the issue of transit funding as a mitigation measure in the context of the Alameda CTC mitigation measure criteria discussed above.
- Jurisdictions are encouraged to discuss multimodal tradeoffs associated with mitigation measures that involve changes in roadway geometry, intersection control, or other changes to the transportation network. This analysis should identify impacts to automobiles, transit, bicyclists, and

pedestrians. The HCM 2010 MMLOS methodology is encouraged as a tool to evaluate these tradeoffs, but project sponsors may use other methodologies as appropriate for particular contexts or types of mitigations.

- The EIR should consider the use of TDM measures, in conjunction with roadway and transit improvements, as a means of attaining acceptable levels of service. Whenever possible, mechanisms that encourage ridesharing, flextime, transit, bicycling, telecommuting and other means of reducing peak hour traffic trips should be considered.

Thank you for the opportunity to comment on this NOP. Please contact me at (510) 208 7400 or Chris G. Marks, Associate Transportation Planner at (510) 208-7453, 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: Chris G. Marks, Associate Transportation Planner
Shannon McCarthy, Associate Transportation Planner

Amy Million

From: Tom Evans <offrampmusic@LIVE.COM>
Sent: Thursday, April 28, 2022 4:25 PM
To: Amy Million
Subject: FW: comments on Preparation of EIR for SCS Dublin

Hi Amy –

I meant to include **Parking** in my list of areas to consider. It's hard to tell from the simplified plan view that I have access to, but it looks like the applicant may be developing the inner streets without street parking. I think this is a huge disservice to the owners and community. Where do visitors park? What if your elderly parents need help? Where does a repairman park his truck to fix your heater?

Sincerely,
Tom Evans

From: Tom Evans
Sent: Wednesday, April 27, 2022 10:02 AM
To: Amy Million <Amy.Million@dublin.ca.gov>
Subject: comments on Preparation of EIR for SCS Dublin

Hi Amy –

I am writing to reiterate my thoughts on the topics to be covered by the SCS properties EIR. This list as it was presented looks pretty good. I want to restate that I want the schools included in the study. Even though the laws don't allow their consideration for acceptance of applications, the information is still pertinent and laws sometimes change. I've bolded the items on the list below that I think are the most important and I've added in red a couple comments for clarification. The reason I think Geology & Soils is not that significant is because for structural building concerns it is already covered in the California Building Standards Code. Thanks again for inviting the public to comment on this aspect of development.

Included for Detailed EIR Analysis (Potentially Significant)

- Aesthetics
- Air Quality
- Biological Resources
- Cultural & Tribal Resources
- GHG Emissions
- Geology & Soils ← *could be moved to the excluded category*
- **Hazards & Hazardous Materials**
- **Hydrology & Water Quality (including water availability during the drought)**
- Land Use & Planning
- Noise & Vibration
- Population & Housing
- Public Services, Utilities, & Service Systems
- **Schools, student population, and school facilities**
- **Transportation (including traffic)**
- Energy Conservation

Excluded from Detailed EIR Analysis (Insignificant)

- Agricultural & Forestry Resources
- Mineral Resources

- Wildfire

Regards,
Tom Evans
925-997-9625

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