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**Electronically Filed
by Superior Court of CA,
County of Santa Clara,
on 5/28/2019 1:34 PM
Reviewed By: L Del Mundo
Case #19CV348049
Envelope: 2936946**

6 Attorneys for Petitioner and Plaintiff
7 LABORERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL UNION 270

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF SANTA CLARA**

10
11 LABORERS INTERNATIONAL UNION OF
12 NORTH AMERICA, LOCAL UNION 270; an
13 organized labor union,

14 Petitioner and Plaintiff,

15 v.

16 CITY OF SUNNYVALE, a municipality; and
17 CITY COUNCIL OF THE CITY OF
18 SUNNYVALE, a municipal governing body,

19 Respondents and Defendants,

20

21 IRVINE MANAGEMENT COMPANY dba
22 IRVINE COMPANY, a Delaware corporation;
23 1090 EAST DUANE AVENUE LLC, a
24 Delaware limited liability corporation,

25 Real Parties in Interest.

Case No.: 19CV348049

Filed Under the California Environmental Quality
Act (“CEQA”)

VERIFIED PETITION FOR WRIT OF
MANDATE AND COMPLAINT FOR
DECLARATORY AND INJUNCTIVE RELIEF

(CEQA, Pub. Res. Code § 21000, et seq.; Code
of Civil Procedure §§ 1094.5, 1085)

1 **INTRODUCTION**

2 Petitioner and Plaintiff LABORERS INTERNATIONAL UNION OF NORTH AMERICA,
3 LOCAL UNION 270 (“Petitioner” or “Local 270”) petitions this court for a Writ of Mandate
4 (“Petition”), directed to Respondents and Defendants CITY OF SUNNYVALE and CITY COUNCIL
5 OF THE CITY OF SUNNYVALE (“Respondents” or the “City”) and Real Parties in Interest IRVINE
6 MANAGEMENT COMPANY dba IRVINE COMPANY and 1090 EAST DUANE AVENUE LLC
7 (“Real Parties” or “Applicant”), and by this verified petition and complaint, alleges as follows:

8 1. Petitioner brings this action to challenge the unlawful actions of Respondents in
9 approving the 1 Advanced Micro Devices Place Redevelopment Project (“Project”) because the Draft
10 Environmental Impact Report (“DEIR”) and Final Environmental Impact Report (“FEIR”) (collectively,
11 “EIR”) failed to satisfy the requirements of the California Environmental Quality Act (“CEQA”), Public
12 Resources Code (“PRC”) § 21000 *et seq.*, and the CEQA Guidelines, title 14, California Code of
13 Regulations, § 15000 *et seq.* The specific actions challenged are: (1) the City’s certification of the EIR
14 for the Project; (2) the City’s adoption of related findings, mitigation monitoring plan, and statement of
15 overriding considerations; and (3) the City’s approval of the Project including approving the rezoning of
16 the site from M-S/ITR/R-3/PD (Industrial and Service/Industrial-to-Residential/Medium Density
17 Residential/Planned Development) and MS/ITR/R-3/PD (Industrial and Service/Industrial-to-
18 Residential/High Density Residential/Planned Development) to R-3/PD (Medium Density
19 Residential/Planned Development) R-4/PD (High Density Residential Planned Development) and P-F
20 (Public Facilities), approving the Special Development Permit and Vesting Tentative Map, and Sense of
21 Place Fees, and approving the Park Agreement.

22 2. The Project includes the demolition of existing industrial/office buildings and
23 construction of 1,051 residential units, including 944 units in three to five-story apartment buildings and
24 107 units in three-story townhome style buildings. The unit count includes 45 apartment units for very
25 low-income households and 13 below market rate townhome units. Public improvements include the
26 dedication of a 6.5-acre public park, extension of Indian Wells Avenue to the east to connect with the
27 Duane Avenue/Stewart Drive intersection, and associated public improvements. Requested deviations
28 include reduced private useable open space and front setbacks on Indian Wells Avenue and Stewart

1 Drive.

2 3. Petitioner submitted evidence from experts explaining that the proposed Project may
3 have significant environmental effects on indoor air quality and birds and that the City’s EIR failed to
4 disclose, analyze, and mitigate these potentially significant effects.

5 4. Because the EIR violates several of CEQA’s requirements, the approvals that are reliant
6 upon it must be overturned. Therefore, Petitioner respectfully requests that the Court direct Respondents
7 to set aside the EIR certification and Project approvals.

8 **PARTIES**

9 5. Petitioner and Plaintiff LABORERS INTERNATIONAL UNION OF NORTH
10 AMERICA, LOCAL UNION 270 (“Local 270”) is a labor organization that has approximately 4,300
11 members residing in the County of Santa Clara. Local 270 has more than 100 members living in the City
12 of Sunnyvale. Local 270’s purposes include advocating on behalf of its members to ensure safe
13 workplace environments; working to protect recreational opportunities for its members to improve its
14 members’ quality of life when off the job; advocating to assure its members access to safe, healthful,
15 productive, and aesthetically and culturally pleasing surroundings on and off the job; promoting
16 environmentally sustainable businesses and development projects on behalf of its members, including
17 providing comments raising environmental concerns and benefits on proposed development projects;
18 advocating for changes to proposed development projects that will help to achieve a balance between
19 employment, the human population, and resource use to permit high standards of living and a wide
20 sharing of life’s amenities by its members as well as the general public; advocating for steps to preserve
21 important historic, cultural, and natural aspects of our national heritage, and maintain, wherever
22 possible, an environment that supports diversity and variety of individual choice; advocating on behalf
23 of its members for programs, policies, and development projects that promote not only good jobs but
24 also a healthy natural environment and working environment, including advocating for changes to
25 proposed projects and policies that, if adopted, would reduce air, soil, and water pollution, minimize
26 harm to wildlife, conserve wild places, reduce traffic congestion, reduce global warming impacts, and
27 assure compliance with applicable land use ordinances; and working to attain the widest range of
28 beneficial uses of the environment without degradation, risk to health or safety, or other undesirable or
unintended consequences.

1 6. Local 270 and its members have a direct and beneficial interest in Respondents’
2 compliance with laws bearing upon approval of the Project. These interests will be directly and
3 adversely affected by the Project, which violates the law as set forth in this Petition. The maintenance
4 and prosecution of this action will confer a substantial benefit on the public by protecting the public
5 from the environmental and other harms alleged below and others that may exist but are unknown due to
6 the lack of a full environmental analysis. Local 270 and its members submitted comments to the City’s
7 Planning Commission and the City Council objecting to and commenting on the Project and its
8 unsupported and inadequate environmental review pursuant to CEQA.

9 7. Respondent and Defendant CITY OF SUNNYVALE is a municipal corporation in whose
10 jurisdiction the Project will be located. Respondent CITY OF SUNNYVALE is the “lead agency” for
11 the Project for purposes of Public Resources Code § 21067, and has principal responsibility for
12 conducting environmental review for the Project and taking other actions necessary to comply with
13 CEQA.

14 8. Respondent and Defendant the CITY COUNCIL OF THE CITY OF SUNNYVALE
15 (“City Council”) serves as the elected governing body of the City of Sunnyvale. The City Council is
16 vested with all the powers of the City including reviewing and approving certain development plans and
17 complying with the requirements of state laws. Respondent CITY COUNCIL is ultimately responsible
18 for reviewing and approving or denying the Project. The CITY COUNCIL voted on April 23, 2019 to
19 approve the Project, including certification of the EIR.

20 9. Real Party in Interest IRVINE MANAGEMENT COMPANY dba IRVINE COMPANY,
21 is a Delaware corporation with a principal place of business at 550 Newport Center Drive, Newport
22 Beach, CA 92660. IRVINE COMPANY is listed on the Notice of Determination as the Project
23 applicant.

24 10. Real Party in Interest 1090 EAST DUANE AVENUE LLC is a Delaware Corporation
25 with a principal place of business at 550 Newport Center Drive, Newport Beach, CA 92660. 1090 EAST
26 DUANE AVENUE LLC is named as the developer of the Project in the Park Agreement between EAST
27 DUANE AVENUE LLC and the CITY OF SUNNYVALE. Petitioner is informed and believes, and
28 thereupon alleges, that 1090 EAST DUANE AVENUE LLC is a Project applicant or owner of the
Project site.

1 **JURISDICTION AND VENUE**

2 11. This Court has jurisdiction over the matters alleged in this Petition pursuant to Code of
3 Civil Procedure sections 1085 and 1094.5, and Public Resources Code sections 21167, 21168 and
4 21168.5.

5 12. Venue is proper in Santa Clara County Superior Court in accordance with Code of Civil
6 Procedure section 395 because the Project at issue is located in the County of Santa Clara.

7 13. Venue is proper in this Court under California Code of Civil Procedure §§394 (actions
8 against a city, county, or local agency) and 395 (actions generally) because Respondents include a city
9 in the County of Santa Clara and because the cause of action alleged in this Petition arose in the County
10 of Santa Clara and the Project will occur within the County of Santa Clara.

11 14. Petitioner will comply with the requirements of Public Resources Code section 21167.7
12 by sending a copy of this Petition and Complaint to the California Attorney General.

13 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

14 15. Petitioner has performed or will perform all conditions precedent to the filing of this
15 Petition. Petitioner has participated in the administrative and environmental review process prior to close
16 of the public hearings on the Project and before the issuance of the notice of determination. Petitioner
17 has fully exhausted administrative remedies to the extent required by law. (PRC, § 21177(a).)

18 16. Respondents have taken final agency actions certifying the EIR and adopting the
19 Approvals. Respondents had a mandatory duty to comply with all applicable laws, including, but not
20 limited to CEQA prior to undertaking the discretionary approvals at issue in this lawsuit. Petitioner
21 possesses no effective remedy to challenge the Approvals at issue in this action other than by means of
22 this lawsuit.

23 **STATUTE OF LIMITATIONS**

24 17. On April 23, 2019, the City Council approved the Project.

25 18. On April 26, 2019, Respondents posted a Notice of Determination (“NOD”) for the
26 approvals of the Project.

27 19. The statute of limitations for a CEQA challenge to Respondent’s decision to certify the
28 Project EIR expires 30 days from the filing and posting of the NOD. (Guidelines, §§ 15094, subd. (g),

1 15112, subd. (c)(1.) The 30th day after the April 26, 2019 NOD falls on Sunday, May 26, 2019. The
2 next weekday after Sunday May 26, 2019 is Monday May 27, 2019, which is a court holiday for
3 Memorial Day. Thus, the statute of limitations expires on Tuesday May 28, 2019.

4 20. Petitioner has filed this Petition prior to the expiration of any applicable statute of
5 limitations.

6 **NOTICE OF CEQA SUIT**

7 21. On May 6, 2019, Petitioner served a notice of their intent to file this lawsuit, in
8 accordance with Public Resources Code section 21167.5. (See Exhibit 1: Notice of Intent to File
9 Petition Pursuant to the California Environmental Quality Act.)

10 **PREPARATION OF ADMINISTRATIVE RECORD**

11 22. Pursuant to Public Resources Code, section 21167.6, subdivision (b)(2), Petitioner elects
12 to prepare the record of proceedings in this action. (See Exhibit 2: Petitioner's Notice of Intent to
13 Prepare Record.)

14 **PRIVATE ATTORNEY GENERAL DOCTRINE**

15 23. Petitioner brings this action as a private attorney general pursuant to Code of Civil
16 Procedure section 1021.5, and any other applicable legal theory, to enforce important rights affecting
17 the public interest.

18 24. Issuance of the relief requested in this Petition will confer a significant benefit on the
19 general public by requiring Respondents to carry out its duties under CEQA and other applicable laws
20 before approving the Project.

21 25. Issuance of the relief requested in this Petition will also result in the enforcement of
22 important rights affecting the public interest by compelling Respondents to engage in a legally adequate
23 analysis of the Project, and to ensure that the public has a meaningful opportunity to review and
24 comment on the impacts and mitigation measures for the Project.

25 26. The necessity and financial burden of enforcement make an award of attorneys' fees
26 appropriate in this case. Without this Petition, Respondents and Real Party will proceed with a plan and
27 development that will cause significant, unmitigated environmental impacts that might otherwise have
28 been reduced or avoided through legally adequate environmental review and the adoption of feasible

1 mitigation measures.

2 **IRREPARABLE HARM**

3 27. Petitioner and its members live and/or work near the Project site and in the County of
4 Santa Clara. They have been and will continue to be harmed by Respondents' failure to provide
5 environmental documents that accurately and fully inform interested persons of the Project's true
6 impacts, and mitigate those impacts. Such documents would lead to better environmental decision-
7 making regarding the Project, and would enable all residents, land owners, and business owners in the
8 affected region to better understand the true environmental impacts of the Project.

9 28. Petitioner has no plain, speedy, or adequate remedy in the course of ordinary law unless
10 this Court grants the requested writ of mandate to require Respondents to set aside their approval of the
11 Project. In the absence of such remedies, Respondents' decisions will remain in effect in violation of
12 State law and Petitioner will be irreparably harmed. No monetary damages or legal remedy could fully
13 and adequately compensate Petitioner for that harm.

14 **FACTUAL ALLEGATIONS**

15 29. On November 2, 2018 the City released a Draft EIR ("DEIR") for public review and
16 comment describing the Project including the demolition of three existing office buildings and the
17 construction and operation of a residential community. The new buildings would include four large
18 five-story apartment buildings including 887 apartment units. Each building would be designed to wrap
19 around an interior parking structure. The parking garages would contain about 1,650 parking spaces.
20 Overall, the Project will include almost 2,000 parking spaces and anticipates generating up to 6,670
21 daily trips as a result of new residents and guests accessing the Project. Four additional three-story
22 apartment buildings containing 57 units would be located on the southwest portion of the site. The
23 northern portion of the site would include 22 three-story buildings containing 130 townhouses. 6.5
24 acres of the site would be dedicated as a public park. The Project site will include extensive landscaped
25 areas. Of the 512 existing larger trees on the site, 202 will be protected in place and 49 will be
26 transplanted. Another approximately 572 replacement trees will be planted on site.

27 30. On December 19, 2018, Petitioner submitted a written comment to the City stating that
28 DEIR failed as an informational document and failed to incorporate all feasible mitigation measures.

1 31. In February 2019, the City released the Final EIR (“FEIR”) for the Project.

2 32. On March 24, 2019, Petitioner submitted written comments on the FEIR.

3 33. Petitioner submitted the expert comments of Francis Offermann, Certified Industrial
4 Hygienist and Professional Mechanical Engineer. Mr. Offermann explained that many composite wood
5 products typically used in home and apartment building construction contain formaldehyde-based glues
6 which off-gas formaldehyde—a known human carcinogen—over a very long time period. The EIR
7 contained no discussion of the Project’s emissions of formaldehyde to air and resulting health risks to
8 future residents and users of the Project. Mr. Offermann estimated that the future residents of the
9 Project would be exposed to a cancer risk from formaldehyde of approximately 125 per million. Mr.
10 Offermann’s cancer risk analysis assumed that all building materials used by the Project would be
11 compliant with the California Air Resources Board’s formaldehyde airborne toxics control measure.
12 Such a cancer risk is more than 12 times the Bay Area Air Quality Management District’s
13 (“BAAQMD”) CEQA significance threshold of 10 per million for airborne cancer risk. Mr. Offermann
14 described in length a methodology for estimating the Project’s formaldehyde emissions in order to for
15 the City to conduct an in-depth health risk assessment to disclose and evaluate the impact of
16 formaldehyde. Mr. Offermann suggested several feasible mitigation measures, such as requiring the use
17 of no-added-formaldehyde composite wood products, which are readily available, and requiring air
18 ventilation systems which would reduce formaldehyde levels. Since the EIR did not analyze this impact
19 of formaldehyde at all, the City did not consider any of Mr. Offermann’s suggested mitigation measures
20 or any other mitigation measures.

21 34. Petitioner also submitted the expert comments of wildlife biologist Dr. Shawn
22 Smallwood, Ph.D. Dr. Smallwood noted that the environmental setting and baseline relied upon in the
23 EIR for biological resources was inadequate because the EIR underestimated the number of special-
24 status species that may be impacted by the Project. Dr. Smallwood criticized the sole detection survey
25 performed for the EIR, which took place on a single day for an unreported period of time at an
26 unknown time of day. Dr. Smallwood noted that the Project’s consultants indicated that at least 3
27 special-status species of birds potentially occurred in the Project area, yet the EIR made no mention of
28 these species. Dr. Smallwood determined from observance records that 36 special-status species of

1 birds likely occurred within the area of the Project, yet the EIR only mentioned 4 of those species. Dr.
2 Smallwood also noted that the various pre-construction surveys required by the EIR were inadequate to
3 rectify the EIR's shortcomings in disclosing the proper environmental baseline and impacts on special-
4 status species.

5 35. Dr. Smallwood also noted that the EIR made passing references to the City's Bird Safe
6 Guidelines in the EIR's discussion of light and glare impacts, yet in the EIR's discussion of biological
7 resources there was no mention of the City's Bird Safe Guidelines or the Project's impact on birds due
8 to collisions with windows. As a result, the EIR's discussion of biological resources was insufficient to
9 describe the Project's impact on birds colliding with the Project's glass facades and other structures. Dr.
10 Smallwood stated that the EIR must disclose details of window placements, window extent, types of
11 glass, and anticipated interior and exterior landscaping and lighting in order to adequately disclose and
12 assess the Project's impacts on birds. Dr. Smallwood identified that 8 of the 36 species of birds likely to
13 occur at the Project site were prone to window collisions. Dr. Smallwood also noted that the Project
14 only met 1 of the 16 criteria laid out in the City's Bird Safe Guidelines and the EIR contained no
15 discussion of any of the criteria set out in those Guidelines. Dr. Smallwood estimated that the Project
16 would result in 509 bird deaths per year, an impact which was not discussed or analyzed in the EIR. To
17 minimize the Project's impacts on birds, Dr. Smallwood suggested several feasible mitigation measures
18 for the City to incorporate into the Project.

19 36. On March 25, 2019, the Planning Commission continued consideration of the Project to
20 April 8, 2019.

21 37. On April 8, 2019, the Planning Commission voted to recommend that the City Council
22 adopt a resolution to certify the EIR and to adopt the associated CEQA findings, the Statement of
23 Overriding Considerations, and the Mitigation Monitoring and Reporting Program.

24 38. On April 19, 2019, Petitioner submitted additional written comments to the City
25 Council, focusing on the City's failure to investigate the Project's impact on human health due to
26 formaldehyde emissions.

27 39. Petitioner again submitted the expert comments of Francis Offermann, Certified
28 Industrial Hygienist and Professional Mechanical Engineer, to reply to the response of the Project's

1 consultants, Ascent, to his comments of March 24, 2019.

2 40. Mr. Offermann responded to Ascent's claim that the primary study relied upon by Mr.
3 Offermann included only homes built in 2011 with Phase 1 CARB-compliant materials. However, Mr.
4 Offermann pointed out that the mean year of construction of the homes in the study was 2014 and, as a
5 result, most of the homes in the study were constructed with CARB-compliant Phase 2 materials. Mr.
6 Offermann noted that even if the homes in the study were constructed with only Phase 1 materials that
7 the study still supported a calculation that current Phase 2 compliant residences would create a health
8 risk for the most vulnerable residents of the Project of approximately 62.5 cancers per million – more
9 than 6 times the BAAQMD CEQA significance threshold for airborne cancer risk of 10 per million.

10 41. Mr. Offermann also rebutted Ascent's assertion that assuming a continuous 24-hour
11 exposure and 100 percent absorption by the respiratory system was unrealistic. Mr. Offermann
12 cited a key study which confirmed that many homeowners do not open their doors or windows for
13 ventilation due to concerns about security, noise, dust, and odors.

14 42. Petitioner noted that Ascent's assertion that Mr. Offermann resorted to speculation was
15 not supported by Mr. Offermann's expertise, detailed comments, and citations to relevant studies.
16 Petitioner reminded the City that it had an obligation to investigate impacts by requiring the applicant
17 to disclose information regarding the Project necessary to evaluate its impacts and that Mr. Offermann
18 had described in detail the methodology that the City could use to more precisely estimate the Project's
19 formaldehyde emissions. Petitioner concluded that Mr. Offermann's expert comments were substantial
20 evidence, based on the available data and without the benefit of the City investigating or gathering any
21 information on formaldehyde emissions from the Project, that the Project may have significant health
22 risks on future residents. Because the City did not address this impact in the EIR, the EIR was
23 insufficient and inadequate under CEQA.

24 43. On April 23, 2019, the City Council adopted a resolution to make the findings required
25 by CEQA, to certify the EIR, and to adopt a Statement of Overriding Considerations and Mitigation
26 Monitoring and Reporting Program.

27 44. On April 26, 2019, the City issued a Notice of Determination for the City Council's
28 April 23, 2019 actions regarding the Project.

MANDATORY REQUIREMENTS OF CEQA

1
2 45. CEQA prohibits local agencies from approving projects that may have adverse
3 environmental effects without first undergoing environmental review and avoiding or reducing the
4 significant environmental effects of those projects whenever feasible.

5 46. CEQA mandates that “the long-term protection of the environment . . . shall be the
6 guiding criterion in public decisions” throughout California. (PRC §21001(d).) CEQA requires
7 environmental factors to be considered at the “earliest stage . . . before [the project] gains irreversible
8 momentum,” *Bozung v. LAFCO* (1975) 13 Cal.3d 263, 284 n.28, “at a point in the planning process
9 where genuine flexibility remains.” (*Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296,
10 307 [internal quotation marks and citation omitted].) Moreover, “the ‘foremost principle’ in
11 interpreting CEQA is that the Legislature intended the act to be read so as to afford the fullest possible
12 protection to the environment within the reasonable scope of the statutory language.” (*Communities for*
13 *a Better Env’t v. Cal. Resources Agency* (2002) 103 Cal.App.4th 98, 109.)

14 47. CEQA has two primary purposes. First, CEQA is designed to inform decision makers
15 and the public about a project’s environmental effects. (14 CCR §15002(a)(1).) “The EIR process
16 protects not only the environment but also informed self-government.” (*Laurel Heights Improvement*
17 *Ass’n v. Regents of the University of California* (1988) 47 Cal.3d 376, 392 (*Laurel Heights*.)

18 48. Second, CEQA requires public agencies to identify ways to avoid or reduce
19 environmental damage and prevent such damage “by requiring changes in projects through the use of
20 alternatives or mitigation measures when the governmental agency finds the changes to be feasible.”
21 (14 CCR §15002(a)(2), (3).) Put another way, “agencies are required to give major consideration to
22 preventing environmental damage” and “should not approve a project as proposed if there are feasible
23 alternatives or mitigation measures available that would substantially lessen any significant effects that
24 the project would have on the environment.” (14 CCR §15021(a).)

25 49. CEQA generally requires that a lead agency prepare and certify an EIR for any project
26 that may have a significant effect on the environment to identify those effects, alternatives to the
27 project, and mitigation of the effects. (PRC §§21002.1(a), 21061, 21100(a).)

28 50. CEQA requires that an agency analyze the potential environmental effects of its

1 proposed actions in an EIR if “there is substantial evidence, in light of the whole record before the lead
2 agency, that the project may have a significant effect on the environment.” (PRC §21080(d).) An EIR
3 must analyze an impact if any substantial evidence in the record indicates that a project may have an
4 adverse environmental effect—even if contrary evidence exists. (14 CCR § 15064(f)(1); *No Oil, Inc. v.*
5 *City of Los Angeles* (1974) 13 Cal.3d 68, 85 (*No Oil*.)

6 51. An EIR must not only identify the environmental impacts of a project, but must also
7 provide “information about how adverse the adverse impact will be.” (*Santiago County Water Dist. v.*
8 *County of Orange* (1981) 118 Cal.App.3d 818, 831.)

9 52. Every CEQA document must start from a “baseline” assumption. The CEQA “baseline”
10 is the set of environmental conditions against which to compare a project’s anticipated impacts.
11 (*Communities for a Better Env't. v. So. Coast Air Quality Mgmt. Dist.* (2010) 48 Cal.4th 310, 321.) The
12 CEQA Guidelines instruct that an EIR “must include a description of the physical environmental
13 conditions in the vicinity of the project, as they exist at the time [environmental analysis] is
14 commenced, from both a local and regional perspective. This environmental setting will normally
15 constitute the baseline physical conditions by which a Lead Agency determines whether an impact is
16 significant.” (14 CCR § 15125(a).)

17 53. “[U]nder CEQA, the lead agency bears a burden to investigate potential environmental
18 impacts. ‘If the local agency has failed to study an area of possible environmental impact, a fair
19 argument may be based on the limited facts in the record. Deficiencies in the record may actually
20 enlarge the scope of fair argument by lending a logical plausibility to a wider range of inferences.’”
21 (*County Sanitation Dist. No. 2 v. County of Kern* (2005) 127 Cal.App.4th 1544, 1597 [quoting
22 *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 311].)

23 54. It is improper for an EIR to defer its analysis or the formulation of mitigation measures
24 until after certification of the EIR and approval of the project, and mitigation measures must be
25 enforceable and contain specific enforcement standards. (14 CCR § 15126.4.)

26 55. A lead agency cannot certify an EIR and approve a project with significant
27 environmental effects unless the agency makes a series of detailed findings. These include findings that
28 changes or alterations have been required that mitigate or avoid the project’s significant effects on the

1 environment, or that specific considerations render the mitigation measures or alternatives “infeasible”
2 but that the benefits of the project nonetheless outweigh the project’s significant environmental effects.
3 The lead agency’s findings must be supported by substantial evidence in the administrative record.
4 (PRC, § 21081; 14 CCR §§ 15091-15093.)

5 56. Noncompliance with the requirements outlined above constitutes a prejudicial abuse of
6 discretion under sections 21168 and 21168.5 of the Public Resources Code, regardless of whether a
7 different outcome would have resulted if the lead agency had complied with those requirements in the
8 first place. (PRC § 21005.) An abuse of discretion under CEQA may be shown either because an
9 agency failed to proceed in the manner required by law or reached factual conclusions unsupported by
10 substantial evidence. (*E.g.*, *Banning Ranch Conservancy v. City of Newport Beach* (2017) 2 Cal.5th
11 918, 935.) A procedural failure is reviewed de novo; in contrast, greater deference is accorded an
12 agency’s factual conclusions. (*Id.*) There is a prejudicial abuse of discretion “if the failure to include
13 relevant information precludes informed decisionmaking and informed public participation, thereby
14 thwarting the statutory goals of the EIR process.” (*Kings County Farm Bureau v. City of Hanford*
15 (1990) 221 Cal.App.3d 692, 712 [citing *Laurel Heights*, 47 Cal.3d at 403-05].)

16 57. While the courts review an EIR using an “abuse of discretion” standard, “the reviewing
17 court is not to ‘uncritically rely on every study or analysis presented by a project proponent in support
18 of its position. A ‘clearly inadequate or unsupported study is entitled to no judicial deference.’”
19 (*Berkeley Keep Jets Over the Bay Committee v. Bd. of Port Comrs.* (2001) 91 Cal.App.4th 1344, 1355
20 (*Berkeley Jets*) [quoting *Laurel Heights*, 47 Cal. 3d at 409 fn. 12].)

21 58. “When reviewing whether a discussion is sufficient to satisfy CEQA, a court must be
22 satisfied that the EIR . . . includes sufficient detail to enable those who did not participate in its
23 preparation to understand and to consider meaningfully the issues the proposed project raises . . .
24 .”(*Sierra Club v. Cty. of Fresno* (2018) 6 Cal.5th 502, 510 (2018) [citing *Laurel Heights*, 47 Cal.3d at
25 405].)

26 59. Another primary consideration of sufficiency is whether the EIR “makes a reasonable
27 effort to substantively connect a project’s air quality impacts to likely health consequences.” (*Sierra*
28 *Club*, 6 Cal.5th at 510.) “Whether or not the alleged inadequacy is the complete omission of a required

1 discussion or a patently inadequate one-paragraph discussion devoid of analysis, the reviewing court
2 must decide whether the EIR serves its purpose as an informational document.” (*Id.* at 516.) Although
3 an agency has discretion to decide the manner of discussing potentially significant effects in an EIR, “a
4 reviewing court must determine whether the discussion of a potentially significant effect is sufficient or
5 insufficient, i.e., whether the EIR comports with its intended function of including ‘detail sufficient to
6 enable those who did not participate in its preparation to understand and to consider meaningfully the
7 issues raised by the proposed project.’” (*Id.* at 516 [quoting *Bakersfield Citizens for Local Control v.*
8 *City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1197].) “A conclusory discussion of an
9 environmental impact that an EIR deems significant can be determined by a court to be inadequate as
10 an informational document without reference to substantial evidence.” (*Id.* at 514.)

11 60. A “fragmented presentation” of the discussion of environmental impacts in an EIR is
12 inadequate under CEQA. (*Banning Ranch Conservancy*, 2 Cal.5th at 941.) “Readers of an EIR should
13 not be required to ‘ferret out an unreferenced discussion in [related material]. . . . The data in an EIR
14 must not only be sufficient in quantity, it must be presented in a manner calculated to adequately
15 inform the public and decision makers, who may not be previously familiar with the details of the
16 project.’” (*Id.* [quoting *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova*
17 (2007) 40 Cal.4th 412, 442 (*Vineyard Area Citizens*)].) “[I]nformation ‘scattered here and there in EIR
18 appendices,’ or a report ‘buried in an appendix,’ is not a substitute for ‘a good faith reasoned analysis.’”
19 (*Vineyard Area Citizens*, 40 Cal.4th at 442 [quoting *California Oak Foundation v. City of Santa Clarita*
20 (2005) 133 Cal.App.4th 1219, 1239].)

21 **FIRST CAUSE OF ACTION**

22 **Violation of CEQA** 23 **(Public Resources Code, § 21000 et seq.)** 24 **(Code of Civil Procedure § 1085 or in the alternative §1094.5)**

25 61. Petitioners hereby reallege and incorporate by reference the preceding paragraphs, in
26 their entirety, as if fully set forth herein.

27 62. By relying on the EIR’s flawed analysis of the Project, and approving the Project and
28 certifying the EIR, Respondents prejudicially abused their discretion because their decision is not
supported by substantial evidence and because they failed to proceed in a manner required by law, as

1 follows:

2 A. **Indoor Air Quality.** The EIR fails to disclose, evaluate, and mitigate substantial
3 adverse impacts from the Project’s emissions of formaldehyde to indoor air and the resulting human
4 health impacts, and its conclusions are not supported by substantial evidence, as follows:

5 i. The EIR did not evaluate, analyze, or mitigate the significant impacts of
6 the Project’s emissions of formaldehyde to indoor air.

7 ii. Expert evidence demonstrates that the Project may have significant indoor
8 air quality impacts from its emission of formaldehyde to indoor air. Expert evidence calculates that the
9 resulting health risks to future residents will exceed the cancer risk thresholds established by the Bay
10 Area Air Quality Management District.

11 iii. The EIR failed to make a reasonable effort to substantively connect the
12 Project’s pollution emissions to indoor air to likely health consequences.

13 iv. Respondents abused their discretion and failed to proceed in a manner
14 required by law by failing to disclose the Project’s impacts on indoor air quality and by failing to
15 propose feasible mitigation measures and alternatives to reduce those impacts. To the extent the EIR
16 contains mitigation measures, development of specific mitigation measures to address the Project’s
17 emission of formaldehyde to indoor air is impermissibly deferred.

18 B. **Biological Resources.** The EIR fails to adequately disclose, evaluate, and
19 mitigate the Project’s substantial adverse impact with respect to biological resources. The EIR concludes
20 that the Project’s impacts on biological resources are less than significant, but the conclusions are not
21 supported by substantial evidence, as follows:

22 i. The EIR fails to establish an accurate environmental setting and baseline
23 for sensitive biological resources.

24 ii. The EIR did not disclose or evaluate the Project’s impact on biological
25 resources due to avian collisions with the Project’s structures.

26 iii. Respondents abused their discretion and failed to proceed in a manner
27 required by law by failing to disclose the Project’s impacts on biological resources and by failing to
28 propose feasible mitigation measures and alternatives to reduce those impacts. To the extent the EIR

1 contains mitigation measures, development of specific mitigation measures to address the Project's
2 impacts to birds is impermissibly deferred.

3 C. **Findings.** As a result of the inadequacies in the environmental analysis identified
4 above, the findings adopted by Respondent are not supported by substantial evidence as required by
5 CEQA as follows:

6 i. Respondents adopted a finding that the Project's exposure of sensitive
7 receptors to Toxic Air Contaminants would be less than significant even though the EIR did not
8 evaluate, analyze, or mitigate the significant impacts of the Project's emissions of formaldehyde to
9 indoor air.

10 ii. Respondents adopted a finding that the Project's impact on birds would be
11 less than significant with mitigation even though the EIR failed to establish an accurate environmental
12 setting and baseline for sensitive biological resources and did not disclose or evaluate the Project's
13 impact on biological resources due to avian collisions with the Project's structures.

14 63. As a result of the foregoing defects, Respondents prejudicially abused their discretion by
15 approving the Project in a manner that does not comply with the requirements of CEQA and Petitioner is
16 entitled to issuance of a writ of mandate setting aside all approvals that were issued in reliance on the
17 certified EIR.

18 **PRAYER FOR RELIEF**

19 WHEREFORE, Petitioner respectfully requests the following relief and entry of judgment as
20 follows:


21 1. For a peremptory writ of mandate directing Respondents to set aside the approval of the
22 Project, including but not limited to the ordinance rezoning the Project site, the resolution certifying the
23 EIR, and the special development permit and vesting tentative map issued for the Project unless and
24 until Respondents have prepared, circulated, and considered a legally adequate EIR prior to any
25 subsequent approval action;

26 2. For a peremptory writ of mandate directing Respondents and Real Parties in Interest to
27 suspend all activity in furtherance of the Project unless and until Respondents take all necessary steps
28 to bring their actions into compliance with CEQA;

- 1 3. For a preliminary and permanent injunction staying the effect of Respondents' approval
2 of the Project;
- 3 4. For a declaratory judgment declaring Respondents' approval of the Project to be null and
4 void and contrary to law;
- 5 5. For an award of costs of suit;
- 6 6. For an award of attorneys' fees pursuant to Code of Civil Procedure §1021.5 and any
7 other applicable provisions of law; and
- 8 7. For such other and further relief as the Court deems just and proper.
- 9

10 Dated: May 24, 2019

LOZEAU DRURY LLP

11
12
13 By: 
14 Michael Lozeau
15 Brian B. Flynn
16 Attorneys for Petitioner and Plaintiff
17 LABORERS INTERNATIONAL UNION OF
18 NORTH AMERICA, LOCAL UNION 270
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VERIFICATION

I, Brian B. Flynn, am an attorney for Petitioner and Plaintiff in this action. I am verifying this Petition pursuant to California Code of Civil Procedure section 446. Petitioner and Plaintiff is absent from the County of Alameda, in which I have my office. I have read the foregoing petition and complaint. I am informed and believe that the matters in it are true and on that ground allege that the matters stated in the complaint are true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: May 24, 2019



Brian B. Flynn
Attorney for Petitioner and Plaintiff

EXHIBIT 1

**Notice of Intent to File Petition Pursuant to the
California Environmental Quality Act and Proof of Service**



T 510.836.4200
F 510.836.4205

1939 Harrison Street, Ste. 150
Oakland, CA 94612

www.lozeaudrury.com
michael@lozeaudrury.com

May 6, 2019

Sunnyvale City Council
c/o Mayor Larry Klein
Sunnyvale City Hall
456 West Olive Avenue
Sunnyvale, CA 94086
kleincouncil@sunnyvale.ca.gov

Gerri Caruso, Principal Planner
Margaret Netto
City of Sunnyvale
Department of Community Development
Planning Division
456 West Olive Avenue, Sunnyvale, CA
94088-3707
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David Carnahan, City Clerk
City of Sunnyvale
City Clerk's Office
603 All America Way
Sunnyvale, CA 94086-3707
cityclerk@sunnyvale.ca.gov

U.S. Mail and E-mail

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550 Newport Center Drive
Newport Beach, CA 92660

Jennifer L. Hernandez
Holland & Knight
50 California Street
Suite 2800
San Francisco, CA 94111
Jennifer.Hernandez@hkclaw.com

**Re: Notice of Intent to File Suit Under the California Environmental Quality Act
Regarding 1 AMD Place Redevelopment Project (Sunnyvale Planning Project No.
2016-8035; SCH No. 2017082043**

Dear Mayor Klein, Messrs. Carnahan and Nagel, and Mses. Caruso, Netto, Matchniff and Hernandez:

I am writing on behalf of Laborers International Union of North America, Local Union 270 ("LIUNA") ("Petitioners") regarding the City's approval of the 1 AMD Place Redevelopment Project ("Project") and accompanying environmental impact report ("EIR").

Notice of Intent to File CEQA Suit re:
1 AMD Place Redevelopment Project
May 6, 2019
Page 2 of 3

Please take notice, pursuant to Public Resources Code (“PRC”) §21167.5, that LIUNA intends to file a Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief (“Petition”), under the provisions of the California Environmental Quality Act (“CEQA”), PRC §21000 *et seq.*, against Respondents and Defendants City of Sunnyvale and City Council of the City of Sunnyvale (“Respondents”) in the Superior Court for the County of Santa Clara, challenging the April 23, 2019 decision of Respondent City Council of the City of Sunnyvale to approve the Project and the accompanying certification of the EIR.

The Petition being filed will request that the Court grant the following relief:

1. Issue a peremptory writ of mandate directing Respondents to set aside the approval of the Project, including but not limited to the ordinance rezoning the Project site, the resolution certifying the EIR, and the special development permit and vesting tentative map issued for the Project unless and until Respondents have prepared, circulated, and considered a legally adequate EIR prior to any subsequent approval action;
2. Issue a peremptory writ of mandate directing Respondents and Real Party in Interest to suspend all activity in furtherance of the Project unless and until Respondents take all necessary steps to bring their actions into compliance with CEQA;
3. Issue a preliminary and permanent injunction staying the effect of Respondents’ approval of the Project;
4. Issue a declaratory judgment declaring Respondents’ approval of the Project to be null and void and contrary to law;
5. Award costs of suit;
6. Award attorneys’ fees pursuant to Code of Civil Procedure §1021.5 and any other applicable provisions of law; and
7. Grant such other and further relief as the Court deems just and proper.

Sincerely,



Michael R. Lozeau
Lozeau | Drury LLP

PROOF OF SERVICE

I, Toyer Grear, declare as follows:

I am a resident of the State of California, and employed in Oakland, California. I am over the age of 18 years and am not a party to the above-entitled action. My business address is 1939 Harrison Street, Suite 150, Oakland, CA 94612. On May 6, 2019, I served a copy of the following documents:

• **NOTICE OF INTENT TO FILE CEQA SUIT**

- By emailing the document(s) listed above to the email addresses set forth below.
- By placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Oakland, California addressed as set forth below.

Sunnyvale City Council
c/o Mayor Larry Klein
Sunnyvale City Hall
456 West Olive Avenue
Sunnyvale, CA 94086
kleincouncil@sunnyvale.ca.gov

Gerri Caruso, Principal Planner
Margaret Netto
City of Sunnyvale
Department of Community Development
Planning Division
456 West Olive Avenue, Sunnyvale, CA
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David Carnahan, City Clerk
City of Sunnyvale
City Clerk's Office
603 All America Way
Sunnyvale, CA 94086-3707
cityclerk@sunnyvale.ca.gov


John A. Nagel, City Attorney
Office of the City Attorney
456 West Olive Avenue
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cityatty@sunnyvale.ca.gov

Carlene Matchniff, Government Relations
Irvine Company
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Santa Clara, CA 95054

1090 East Duane Avenue LLC
550 Newport Center Drive
Newport Beach, CA 92660

Jennifer L. Hernandez
Holland & Knight
50 California Street
Suite 2800
San Francisco, CA 94111
Jennifer.Hernandez@hklaw.com

I declare under penalty of perjury (under the laws of the State of California) that the foregoing is true and correct, and that this declaration was executed May 6, 2019 at Oakland, California.



Toyer Grear

EXHIBIT 2

Petitioner's Notice of Intent to Prepare Administrative Record

1 MICHAEL LOZEAU (SBN 142893)
2 BRIAN B. FLYNN (SBN 314005)
3 LOZEAU | DRURY LLP
4 1939 Harrison Street, Suite 150
5 Oakland, CA 94612
6 Telephone: (510) 836-4200
7 E-mail: michael@lozeaudrury.com
8 brian@lozeaudrury.com

9 Attorneys for Petitioner and Plaintiff
10 LABORERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL UNION 270

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF SANTA CLARA**

13 LABORERS INTERNATIONAL UNION OF
14 NORTH AMERICA, LOCAL UNION 270; an
15 organized labor union,

16 Petitioner and Plaintiff,

17 v.

18 CITY OF SUNNYVALE, a municipality; and
19 CITY COUNCIL OF THE CITY OF
20 SUNNYVALE, a municipal governing body,

21 Respondents and Defendants,

22 IRVINE MANAGEMENT COMPANY dba
23 IRVINE COMPANY, a Delaware corporation;
24 1090 EAST DUANE AVENUE LLC, a
25 Delaware limited liability corporation,

26 Real Parties in Interest.

CASE NO.:

**PETITIONER'S NOTICE OF INTENT TO
PREPARE ADMINISTRATIVE RECORD**

**(Code Civ. Proc., §§ 1085, 1094.5;
Pub. Resources Code, §§ 21000 et seq. (CEQA))**

27 Pursuant to Public Resources Code § 21167.6(b)(2), Petitioner LABORERS
28 INTERNATIONAL UNION OF NORTH AMERICA, LOCAL UNION 270 ("Petitioner") hereby
notifies all parties that Petitioner elects to prepare the administrative record relating to the above-
captioned action challenging the April 23, 2019 decision of Respondent City Council of the City of
Sunnyvale to approve the residential development project known as the 1 Advanced Micro Devices
Place Redevelopment Project ("Project"), including certification of the EIR. Respondents and Real
Parties in Interest are directed not to prepare the administrative record for this action and not to expend
any resources to prepare the administrative record.

1 Dated: May 24, 2019

LOZEAU DRURY LLP

2
3
4 By: 

5 Michael Lozeau
6 Brian B. Flynn
7 Attorneys for Petitioner
8 LABORERS INTERNATIONAL UNION OF
9 NORTH AMERICA, LOCAL UNION 270
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