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October 30, 2018

Via E-mail

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Re: AC by Marriott - West San Jose Project
(October 31, 2018 Director's Hearing, Agenda Item 4.a; Project File No. HI7-023)

Dear Director Hughey, Deputy Director Do, Mr. Rivera, and Ms. Mathur:

Please accept the following supplemental comments submitted on behalf of Laborers International Union of North America, Local Union 270 and its members ("LIUNA") regarding the Initial Study and Mitigated Negative Declaration ("IS/MND") prepared for the AC by Marriott - West San Jose Project ("Project") (Project File No. HI7-023). Certified Industrial Hygienist, Francis "Bud" Offermann, PE, CIH, has conducted a review of the Project, the IS/MND and relevant appendices regarding the Project's indoor air emissions. Indoor Environmental Engineering Comments (Oct. 29, 2018) (attached). Mr. Offerman concludes that it is likely that the Project will expose future workers employed at the hotel to significant impacts related to indoor air quality, and in particular, emissions of the cancer-causing chemical formaldehyde. Mr. Offermann is one of the world's leading experts on indoor air quality and has published extensively on the topic.

Mr. Offermann explains that many composite wood products typically used in hotel construction contain formaldehyde-based glues which off-gas formaldehyde over a very long time period. He states, "The primary source of formaldehyde indoors is composite wood products manufactured with urea-formaldehyde resins, such as plywood, medium density fiberboard, and particle board. These materials are

commonly used in residential and hotel building construction for flooring, cabinetry, baseboards, window shades, interior doors, and window and door trims.”

Formaldehyde is a known human carcinogen. Mr. Offermann states that there is a fair argument that full-time workers at the AC by Marriott project will be exposed to a cancer risk from formaldehyde of approximately 18.4 per million. This is almost double the Bay Area Air Quality Management District (BAAQMD) CEQA significance threshold for airborne cancer risk of 10 per million. Mr. Offermann states:

With respect to this project, AC by Marriott - West San Jose, since this is a hotel, guests are expected to have short term exposures (e.g. less than a week), but employees are expected to experience longer term exposures (e.g. 40 hours per week, 50 weeks per year). The longer term exposures for employees is anticipated to result in significant cancer risks resulting from exposures to formaldehyde released by the building materials and furnishing commonly found in residences and hotels.

Offermann Comments, p. 4. Mr. Offermann concludes that this significant environmental impact should be analyzed in an EIR and mitigation measures should be imposed to reduce the risk of formaldehyde exposure. *Id.*, pp. 6-7. Mr. Offermann suggests several feasible mitigation measures, such as requiring the use of no-added-formaldehyde composite wood products, which are readily available. Offermann Comments, pp. 6-7. Mr. Offermann also suggests requiring air ventilation systems which would reduce formaldehyde levels. *Id.* Since the MND does not analyze this impact at all, none of these or other mitigation measures are considered.

When a Project exceeds a duly adopted CEQA significance threshold, as here, this alone establishes a fair argument that the project will have a significant adverse environmental impact and an EIR is required. Indeed, in many instances, such air quality thresholds are the only criteria reviewed and treated as dispositive in evaluating the significance of a project's air quality impacts. See, e.g. *Schenck v. County of Sonoma* (2011) 198 Cal.App.4th 949, 960 (County applies BAAQMD's "published CEQA quantitative criteria" and "threshold level of cumulative significance"). See also *Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98, 110-111 ("A 'threshold of significance' for a given environmental effect is simply that level at which the lead agency finds the effects of the project to be significant"). The California Supreme Court made clear the substantial importance that an air district significance threshold plays in providing substantial evidence of a significant adverse impact. *Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310, 327 ("As the [South Coast Air Quality Management] District's established significance threshold for NOx is 55 pounds per day, these estimates [of NOx emissions of 201 to 456 pounds per day] constitute substantial evidence supporting a fair argument for a significant adverse impact"). Since expert evidence demonstrates that the Project will exceed the BAAQMD's CEQA significance

threshold, there is a fair argument that the Project will have significant adverse impacts and an EIR is required.

Mr. Offermann also notes that the high cancer risk that may be posed by the Project's indoor air emissions likely will be exacerbated by the additional cancer risk that exists from vehicle emissions from the adjacent Stevens Creek Boulevard and other nearby roadways. As the previous comments submitted by SWAPE point out, however, the applicant and City have not estimated the cumulative health risk impacts of the Project either on nearby sensitive receptors or future workers at the Project. See SWAPE Comment (Oct. 24, 2018). Consistent with SWAPE's observations, Mr. Offermann notes:

The [IS/MND] does not assess the impact of existing or future traffic related emissions of PM_{2.5} upon the outdoor or indoor air concentrations. The air quality analyses in this MND focuses only on the emissions (pounds/day) of air contaminants from construction and operation and compares these emissions to the requirements established by the Bay Area Air Quality Management District (BAAQMD). The MND contains no air dispersion calculations of the cumulative impact these project related emissions and existing emissions have upon the concentrations of air contaminants in the outdoor and indoor air that people inhale each day.

Offermann Comments, p. 6. Mr. Offermann identifies a rule adopted in San Francisco that identifies a level of PM_{2.5} that triggers the installation of air filter systems in new development. "The San Francisco Department of Public Health, 2014. Article 38, Enhanced Ventilation Required for Urban Infill Sensitive Use Developments, requires that air filtration, with a minimum efficiency of MERV 13 be installed to remove PM_{2.5} from mechanically supplied outdoor air in all PM_{2.5} impacted areas." Offermann Comments, p. 6. A PM_{2.5} impacted area includes "[a]ll areas within 500 feet of any freeway or high-traffic road way (defined as urban roads with 100,000 vehicles/day or rural roads with 50,000 vehicles/day), unless air dispersion modeling shows total (traffic and ambient) outdoor concentrations of less than an annual average of 10 µg/m³ PM_{2.5}, are defined as PM_{2.5} impacted areas." *Id.* Mr. Offermann concludes that:

It is my experience that based on the high future traffic noise level of 79 dBA L_{dn}. (City of San Jose, 2018, Revised Public Review Draft Initial Study – Mitigative Negative Declaration, Table 14 - Predicted Future Traffic Noise Exposure) that the annual average concentration of PM_{2.5} will be substantially higher than 10 µg/m³, and warrant installation of MERV 13 air filters in all mechanically supplied outdoor air ventilation systems.

Id.

LIUNA has previously brought Mr. Offermann's indoor air pollution concerns to the attention of the City. During a Planning Commission hearing held on September 26,

2018 regarding a project proposed at 715 West Julian Street, Planning Department staff responded to the indoor air pollution concerns raised by LIUNA. During that hearing, staff claimed that a California Supreme Court decision – *California Building Industry Ass’n v. Bay Area Air Quality Mgmt. Dist.* (2015) 62 Cal.4th 369, 386 (“*CBIA*”) – ruled that this type of air quality impact need not be addressed under CEQA because future residents of a mixed use project are part of the project and CEQA does not require evaluation of health or other impacts of a project on itself. To the extent staff again takes the position that future workers are not worthy of considering health protections under CEQA because they are part of the AC by Marriott project, staff’s responses would be incorrect as a matter of law. Indeed, rather than support staff’s response, the California Supreme Court in *CBIA* expressly holds that potential adverse impacts to future users and residents from pollution generated by a proposed project **must be addressed** under CEQA.

At issue in *CBIA* was whether the Air District could enact CEQA guidelines that advised lead agencies that they must analyze the impacts of adjacent environmental conditions on a project. The Supreme Court held that CEQA does not generally require lead agencies to consider the environment’s effects on a project. (*CBIA*, 62 Cal.4th at 800-801.) However, to the extent a project may exacerbate existing adverse environmental conditions at or near a project site, those would still have to be considered pursuant to CEQA. (*Id.* at 801) (“CEQA calls upon an agency to evaluate existing conditions in order to assess whether a project could exacerbate hazards that are already present”). In so holding, the Court expressly held that CEQA’s statutory language required lead agencies to disclose and analyze “impacts on **a project’s users or residents** that arise **from the project’s effects** on the environment.” (*Id.* at 800 (emphasis added).)

The carcinogenic formaldehyde emissions identified by Mr. Offermann are not an existing environmental condition. Those emissions to the air will be from the Project. Employees will be users of the hotel. Currently, there is presumably little if any formaldehyde emissions at the site. Once the Project, emissions will begin at levels that pose significant health risks. Rather than excusing the City from addressing the impacts of carcinogens emitted into the indoor air from the Project, the Supreme Court in *CBIA* expressly finds that this type of effect by the project on the environment and a “project’s users and residents” must be addressed in the CEQA process.

The Supreme Court’s reasoning is well-grounded in CEQA’s statutory language. CEQA expressly includes a project’s effects on human beings as an effect on the environment that must be addressed in an environmental review. “Section 21083(b)(3)’s express language, for example, requires a finding of a ‘significant effect on the environment’ (§ 21083(b)) whenever the ‘environmental effects of a project will cause substantial adverse effects *on human beings*, either directly or indirectly.” (*CBIA*, 62 Cal.4th at 800 (emphasis in original.)) Likewise, “the Legislature has made clear—in declarations accompanying CEQA’s enactment—that public health and safety are of great importance in the statutory scheme.” (*Id.*, citing e.g., §§ 21000, subs. (b), (c), (d),

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(g), 21001, subds. (b), (d).) It goes without saying that the hundreds of future employees at the Project are human beings and the health and safety of those workers is as important to CEQA's safeguards as nearby residents currently living adjacent to the Project site.

For the above additional reasons, the IS/MND for the Project should be withdrawn, an EIR should be prepared, and the draft EIR should be circulated for public review and comment in accordance with CEQA. Thank you for considering these comments.

Sincerely,



Michael R. Lozeau
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