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Via E-mail

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Re: 2900 Harbor Bay Parkway - PLN18-0381, Harbor Bay Hospitality, LLC
(December 10, 2018 Planning Board Hearing, Agenda Item 7-B;
File # 2018-6059)

Dear Planning Board members and Messrs. Thomas and Dong:

I am writing on behalf of the **Laborers International Union of North America, Local Union 304** and its members living in and around the City of Alameda ("LIUNA") regarding the above-referenced hotel project proposed for the parcel located at 2900 Harbor Bay Parkway along the shore of San Francisco Bay in Alameda. The proposed project includes the construction and operation of a 63-foot tall, 5-story, 172-room hotel on the 5.5 acre parcel. Staff claims that the potential environmental effects of the Project already have been fully addressed by the City's Harbor Bay Isle Environmental Impact Report certified in April 1974 ("1974 EIR"). Fundamentally, the proposed hotel is an entirely different project than the overall development plan reviewed in the 1974 EIR. The 1974 EIR has no informational value to the proposed hotel and is irrelevant to analyzing its environmental impacts. In addition, as proposed, the project is inconsistent with the development plan addressed in the 1974 EIR which states unequivocally that "[b]uildings will not ... be closer than 100 feet from the shore." 1974 EIR, p. IV-232.

According to hotel design drawings, the front of the hotel facing the Bay will be significantly less than 100 feet from the Bay shore. See Project Plans, Sheet A8. Likewise, the 1974 EIR conceptually only mentions a total of 450,000 square feet of office space in the area zoned for business park. See 1974 EIR, p. IV-48. The square footage is at least at 1.2 million square feet and climbing, entirely inconsistent with the amount identified in in the 1974 EIR. Thus, not even tiering is allowed to review the hotel project as proposed. As a result, the hotel project must be reviewed as a separate project pursuant to the California Environmental Quality Act ("CEQA").

A number of highly qualified experts have reviewed the proposed hotel project and its environmental effects. Biologist Shawn Smallwood, Ph.D., traffic engineer Daniel Smith, Jr., P.E., and Certified Industrial Hygienist, Francis "Bud" Offermann, PE, CIH have identified a number of significant impacts from the proposed hotel including wildlife, traffic, and air quality impacts, as well as omissions and flaws in the documents relied upon by staff. These comments are attached as Exhibits A through C. In addition, BAAQMD screening levels indicate the project will have significant greenhouse gas ("GHG") emissions. Local residents have articulated the project's profound visual impacts a five-story hotel building will have on their views of the Bay and access to the shoreline. Because the hotel project has never been reviewed pursuant to CEQA, this substantial evidence of significant impacts requires the preparation of an EIR for the hotel project.

Even assuming the hotel was considered in the 1974 EIR, "[n]ew information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete..., shows ...[t]he project will have one or more significant effects not discussed in the previous EIR..." 14 Cal. Admin. Code § 15162(a)(3)(A). Likewise, the project has substantially changed from the Village I and zoning project addressed by the 1974 EIR and profound changes in the circumstances of the project have occurred requiring a comprehensive update of the 1974 EIR. 14 Cal. Admin. Code § 15162(a). Thus, whether the project is a new project distinct from the 1974 development plan or whether it was a considered part of that plan, the City must review with either a stand-alone or supplemental EIR the proposed hotel's impacts on the health of its workers from toxic air emissions of formaldehyde, on birds colliding into the building, on greenhouse gas emissions, on traffic and resulting air pollution emissions, and on people's views of and access to the adjacent San Francisco Bay.

Further, if the City insists on treating the project as being the same project as the 1974 development plan, the City must implement the mitigation measure set forth in the 1974 EIR and purportedly revised by the 1989 Addendum for Village V requiring that, "[i]n the event such technology becomes feasible, applicant should provide an electric car for each house sold in Village V as proposed in the HBI Master Plan for local Alameda trips, to mitigate air and noise impacts of traffic and reduce use of gasoline." 1989 Addendum, p. 4-23. See 1974 EIR, pp. I-12, I-20, p. IV-233 ("special electric cars which will be available to all residents"), p. I-21. There can be no serious argument at

this date that electric vehicles are not feasible. There is substantial evidence that the hotel project by itself will have and the Bay Farm development generally is having significant GHG impacts. Likewise, Harbor Bay is having traffic impacts to which the proposed hotel will contribute. The electric car mitigation measure must be honored to address the unavoidable traffic, air quality and GHG impacts from the Harbor Bay development, including the proposed hotel.

In contrast to this evidence of environmental impacts from the hotel project, the obvious omission of any evaluation of a hotel project in the 1974 EIR, and the awareness of new impacts of which the City and the public were not aware in 1974, staff suggests that “[p]ursuant to CEQA Guidelines Section 15162, there have been no significant changes in circumstances that require revisions to the previously certified Harbor Bay Isle Environmental Impact Report” and that “[t]he proposed project is not likely to cause substantial environmental damage or substantially and avoidably injure endangered, rare, or threatened fish or wildlife or their habitat.” Both of these assertions are incorrect and none of the reports prepared for the project address the significant impacts identified by Dr. Smallwood, Mr. Offermann and Mr. Smith. Nor do they give appropriate weight to the concerns expressed by many residents. As a result, an environmental impact report (“EIR”) is required to analyze the project’s impacts and to propose all feasible mitigation measures to reduce those impacts. We urge the Planning Board to decline to approve the project and the CEQA determination proposed by staff, and to instruct staff to prepare an EIR for the project prior to any project approvals. We reserve the right to supplement these comments during public hearings concerning the Project. *Galante Vineyards v. Monterey Peninsula Water Management Dist.*, 60 Cal. App. 4th 1109, 1121 (1997).

DISCUSSION

I. THE HOTEL PROJECT WAS NOT ADDRESSED IN THE 1974 EIR AND IS A SEPARATE PROJECT FROM THE PROJECT ADDRESSED IN THE 1974 EIR.

A specific development project is not the same as an area plan. The development plan reviewed by the 1974 EIR consisted of a general plan identifying zoning areas for the Harbor Bay development and a specific proposal to build out one of five residential villages envisioned by the development. See 1974 EIR, p. I-1 – I-2. The project description found at the beginning of the EIR does not even mention the office park. *Id.* Only at page I-5 does the EIR begin to describe generally the proposed zoning for the office park, which it does so only in the most general terms:

The 51 acres of land allocated for the administrative/professional office park complex will provide at least 450,000 square feet of net desirable office space. The intent is to provide professional service office space geared to convenient service to nearby residents.

1974 EIR, p. I-5. The only portion of the entire development that was presented in any detail was the first of five residential areas to be developed – Village 1. See *id.*, p. II-1. Any projects to be built within the area to be zoned commercial was only conceptual at the time of the 1974 EIR:

The plan submitted to the City of Alameda by HBI Associates is for 640 acres of the 908.7-acre site and provides for a residential community with associated commercial, educational, and recreational activities, including a 51-acre site intended by the developer for professional administrative office activities.

1974 EIR, p. II-4. A developer's mere intention at the time does not amount to a specific project proposal beyond the zoning change. The plan as of the 1974 EIR was simply to rezone the 51 acre area for commercial development. See *id.*, pp. II-7 – II-8; IV-2. No specific proposals were evaluated as part of the 1974 EIR. Just blank spaces on the map were proposed. *Id.* Indeed, the 1974 EIR expressly states that any projects within the business park area were conceptual and not yet proposed:

The 51 acres immediately northwest along the bay are proposed for development as an administrative-professional office park. It is presently zoned for residential use but the developer has requested a zoning change to C-M-PD. ***Plans for the development of this office park are not yet complete, but the concept is for structures of moderate density in a landscape setting.***

1974 EIR, p. II-19 (emphasis added). Likewise, in addressing the zoning change, the 1974 EIR could only surmise at the scope of office park development that might take place.

The project also proposes to place 51 acres in an administrative and professional office park. It is estimated that the site could accommodate roughly 567,000 square feet of building area, of which about 450,000 would be usable office space. The ***intention appears to be*** to provide office space for small businesses and for professionals, such as dentists, doctors, lawyers, and others who would derive their trade primarily from residents in the development and in nearby areas. Demand for other types of office uses is not apparent.

1974 EIR, p. IV-48 (emphasis added). Indeed, the 1974 EIR notes the lack of any office demand in the Bay Farm area at the time and uses that fact to downplay any potential impacts from the rezoning of the business park area from residential to commercial. *Id.* ("If the land were not marketable as the developer intends, there would not, however, be any substantial adverse or other impacts on adjacent land in the project or on Alameda"). Thus, it is evident from the 1974 EIR, that the project reviewed in that document was Village 1 plus the zoning changes for the remainder of the site. It did not

include any proposed office development, never mind any hotel projects on Bay Farm Island. Accordingly, staff cannot persist with the fiction that the potential environmental impacts of the proposed hotel already were addressed 44-years ago in the EIR prepared for Village 1 and zoning changes.

Because the original EIR did not evaluate any business park proposal but only, in part, the zoning change, the new proposed hotel is an entirely different project from that considered in the 1974 EIR. The proposed hotel is not a change to the 1974 EIR because neither the hotel specifically nor a business park as a whole was described in that 1974 EIR. Even if it were arguable that the hotel is changing any project described in the 1974 EIR, in order to be deemed the same project subject to CEQA's subsequent review provisions Pub. Res. Code 21166 and 14 Cal. Admin. Code § 15182, the prior EIR has to have some informational value. "If the original environmental document retains some informational value despite the proposed changes, then the agency proceeds to decide under CEQA's subsequent review provisions whether project changes will require major revisions to the original environmental document because of the involvement of new, previously unconsidered significant environmental effects." *Friends of Coll. of San Mateo Gardens v. San Mateo Cty. Cmty. Coll. Dist.* (2016) 1 Cal.5th 937, 952. It is clear from the above excerpts that the 1974 EIR, although pertinent to zoning the business park area as commercial, has no informational value or relevance to the currently proposed hotel or to the actual, physical business park that has been approved in piecemeal fashion over the years.

Although the proposed hotel is not the same project as was considered in the 1974 EIR, CEQA does provide for tiering the environmental review of a project from a prior EIR review to the extent some of the environmental impact analysis of the overarching plans would be applicable to considering impacts of this specific project. Thus, "[a]gencies are encouraged to tier the environmental analyses which they prepare for **separate** but related projects including general plans, zoning changes, and development projects." 14 Cal. Admin. Code § 15152(b). Just because tiering is appropriate does not mean that a specific development project is deemed to be the same project as the prior approved area plan or general plan:

Where an EIR has been prepared and certified for a program, plan, policy, or ordinance consistent with the requirements of this section, any lead agency for **a later project pursuant to or consistent with** the program, plan, policy, or ordinance should limit the EIR or negative declaration on the **later project** to effects which:

- (1) Were not examined as significant effects on the environment in the prior EIR; or
- (2) Are susceptible to substantial reduction or avoidance by the choice of specific revisions in the project, by the imposition of conditions, or other means.

14 Cal. Admin. Code § § 15152(d) (emphasis added). Thus, the tiering provision expressly treats a later site specific development project as a separate project from the planning level decisions.

Additionally, when the tiering requirements are being employed by a lead agency, the agency is expressly limited to preparing either an EIR or a negative declaration.

A later EIR shall be required when the initial study or other analysis finds that the later project may cause significant effects on the environment that were not adequately addressed in the prior EIR. A ***negative declaration shall be required*** when the provisions of Section 15070 are met.

14 Cal. Admin. Code § § 15152(f) (emphasis added). Although tiering does relieve the lead agency from having to revisit effects of the newer project that were in fact addressed in the prior program-level EIR, it does not eliminate site specific analyses or the need to prepare either an EIR or negative declaration subject to CEQA's public notice, review and hearing requirements. Moreover, by requiring at least a negative declaration when Section 15070's requirements are met, the tiering procedure expressly incorporates CEQA's fair argument standard. Section 15070 provides:

A public agency shall prepare or have prepared a proposed negative declaration or mitigated negative declaration for a project subject to CEQA when:

- (a) The initial study shows that there is no substantial evidence, in light of the whole record before the agency, that the project may have a significant effect on the environment, or
- (b) The initial study identifies potentially significant effects, but:
 - (1) Revisions in the project plans or proposals made by or agreed to by the applicant before a proposed mitigated negative declaration and initial study are released for public review would avoid the effects or mitigate the effects to a point where clearly no significant effects would occur, and
 - (2) There is no substantial evidence, in light of the whole record before the agency, that the project as revised may have a significant effect on the environment.

14 Cal. Admin. Code § 15070. There is no authority to use an addendum to another project's EIR in order to tier from that prior program EIR for a specific development project. Hence, the numerous addenda that have been prepared by the City to the 1974 EIR since that time have no bearing on the need for preparing an EIR for the proposed hotel. If, in the end, the City is not presented with substantial evidence of a fair argument that the Project may have a significant environmental effect, it must at least prepare a negative declaration.

Important to the proposed hotel project is the rule under CEQA that a project's environmental review cannot rely on tiering "when the later project is inconsistent with the program, plan, policy, or ordinance for which a prior EIR was prepared." Where a project is inconsistent with the project reviewed in the prior EIR it is outside the scope of the prior review. See *Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th 1307. See also Kostka & Zischke, Practice Under the California Environmental Quality Act, ¶ 10.7.

Thus, in regard to the hotel, even assuming it was a project reviewed by the 1974 EIR, it is inconsistent with at least two substantial components of the 1974 zoning project. First, the 1974 EIR discusses potential visual impacts of the zoning changes (though no particular building project). The EIR provides that:

One of the distinguishing characteristics of the site for the present residents of Bay Farm Island is the view of the bay and San Francisco beyond. At full project development that view will be diminished by the dwelling units to be built and the industrial park now planned. ***Buildings will not, however, be closer than 100 feet from the shore.***

IV-232 (emphasis added). Sheet A1 for the proposed hotel depicts the footprint of the hotel in relation to the Bay shore. The drawing depicts a "contour line at elevation 103" but does not define what this line is intended to depict. It would appear to be the mean high tide line which would reasonably identify the Bay shore consistent with the jurisdiction of the Bay Conservation and Development Commission ("BCDC"). The measurements on the plan indicate that the proposed building will be within 100 feet of the shore. As a result, the proposed building is inconsistent with a basic parameter set forth for the development plan considered by the 1974 EIR.

Likewise, the 1974 development plan estimated the amount of office space that would possibly be included in the 51-acre area proposed to be zoned as a commercial business park. Although only a concept at the time, the EIR "estimated that the site could accommodate roughly 567,000 square feet of building area, of which about 450,000 would be usable office space." 1974 EIR, p. IV-48. Only that concept was addressed, if at all, in the 1974 EIR. The amount of office space in the business park has now ballooned to an amount greatly in excess of the project discussed in the 1974 EIR. Even as of 19 years ago in the 1989 Addendum to the 1974 EIR, the City determined that as of December 1988, "[a]pproximately 1.2 million square feet of office and R&D space has been completed in the Business Park." April 1989 Addendum, p. 1-6. Hence, the addition of a 113,000 square feet hotel is well beyond the concept addressed in the 1974 EIR and is entirely inconsistent with the relatively modest office space contemplated at the time.

For these reasons, even tiering to the 1974 EIR is not appropriate for the proposed hotel project and it must be evaluated on its own as a separate project under CEQA.

II. AN EIR MUST BE PREPARED FOR THE PROPOSED HOTEL BECAUSE THERE IS SUBSTANTIAL EVIDENCE OF A FAIR ARGUMENT THAT THE PROJECT MAY HAVE ONE OR MORE SIGNIFICANT ENVIRONMENTAL IMPACTS.

As the California Supreme Court held, “[i]f no EIR has been prepared for a nonexempt project, but substantial evidence in the record supports a fair argument that the project may result in significant adverse impacts, the proper remedy is to order preparation of an EIR.” *Communities for a Better Env’t v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310, 319-320 [“CBE v. SCAQMD”], citing, *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75, 88; *Brentwood Assn. for No Drilling, Inc. v. City of Los Angeles* (1982) 134 Cal.App.3d 491, 504–505. “Significant environmental effect” is defined very broadly as “a substantial or potentially substantial adverse change in the environment.” Pub. Res. Code [“PRC”] § 21068; see also 14 CCR § 15382. An effect on the environment need not be “momentous” to meet the CEQA test for significance; it is enough that the impacts are “not trivial.” *No Oil, Inc., supra*, 13 Cal.3d at 83. “The ‘foremost principle’ in interpreting CEQA is that the Legislature intended the act to be read so as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.” *Communities for a Better Env’t v. Cal. Resources Agency* (2002) 103 Cal.App.4th 98, 109 [“CBE v. CRA”].

The EIR is the very heart of CEQA. *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1214; *Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 927. The EIR is an “environmental ‘alarm bell’ whose purpose is to alert the public and its responsible officials to environmental changes before they have reached the ecological points of no return.” *Bakersfield Citizens*, 124 Cal.App.4th at 1220. The EIR also functions as a “document of accountability,” intended to “demonstrate to an apprehensive citizenry that the agency has, in fact, analyzed and considered the ecological implications of its action.” *Laurel Heights Improvements Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 392. The EIR process “protects not only the environment but also informed self-government.” *Pocket Protectors*, 124 Cal.App.4th at 927.

An EIR is required if “there is substantial evidence, in light of the whole record before the lead agency, that the project may have a significant effect on the environment.” PRC § 21080(d); see also *Pocket Protectors*, 124 Cal.App.4th at 927. In very limited circumstances, an agency may avoid preparing an EIR by issuing a negative declaration, a written statement briefly indicating that a project will have no significant impact thus requiring no EIR (14 Cal. Code Regs. § 15371), only if there is not even a “fair argument” that the project will have a significant environmental effect. PRC, §§ 21100, 21064. Since “[t]he adoption of a negative declaration . . . has a terminal effect on the environmental review process,” by allowing the agency “to dispense with the duty [to prepare an EIR],” negative declarations are allowed only in cases where “the proposed project will not affect the environment at all.” *Citizens of*

Lake Murray v. San Diego (1989) 129 Cal.App.3d 436, 440. A mitigated negative declaration is proper only if the project revisions would avoid or mitigate the potentially significant effects identified in the initial study “to a point where clearly no significant effect on the environment would occur, and...there is no substantial evidence in light of the whole record before the public agency that the project, as revised, may have a significant effect on the environment.” PRC §§ 21064.5 and 21080(c)(2); *Mejia v. City of Los Angeles* (2005) 130 Cal.App.4th 322, 331. In that context, “may” means a reasonable possibility of a significant effect on the environment. PRC §§ 21082.2(a), 21100, 21151(a); *Pocket Protectors, supra*, 124 Cal.App.4th at 927; *League for Protection of Oakland's etc. Historic Resources v. City of Oakland* (1997) 52 Cal.App.4th 896, 904–905.

Under the “fair argument” standard, an EIR is required if any substantial evidence in the record indicates that a project may have an adverse environmental effect—even if contrary evidence exists to support the agency's decision. 14 CCR § 15064(f)(1); *Pocket Protectors*, 124 Cal.App.4th at 931; *Stanislaus Audubon Society v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 150-15; *Quail Botanical Gardens Found., Inc. v. City of Encinitas* (1994) 29 Cal.App.4th 1597, 1602. The “fair argument” standard creates a “low threshold” favoring environmental review through an EIR rather than through issuance of negative declarations or notices of exemption from CEQA. *Pocket Protectors*, 124 Cal.App.4th at 928. An effect on the environment need not be “momentous” to meet the CEQA test for significance; it is enough that the impacts are “not trivial.” *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 83.

The “fair argument” standard is virtually the opposite of the typical deferential standard accorded to agencies. As a leading CEQA treatise explains:

This ‘fair argument’ standard is very different from the standard normally followed by public agencies in making administrative determinations. Ordinarily, public agencies weigh the evidence in the record before them and reach a decision based on a preponderance of the evidence. [Citations]. The fair argument standard, by contrast, prevents the lead agency from weighing competing evidence to determine who has a better argument concerning the likelihood or extent of a potential environmental impact. The lead agency’s decision is thus largely legal rather than factual; it does not resolve conflicts in the evidence but determines only whether substantial evidence exists in the record to support the prescribed fair argument.

Kostka & Zishcke, *Practice Under CEQA*, §6.29, pp. 273-274. The Courts have explained that “it is a question of law, not fact, whether a fair argument exists, and the courts owe no deference to the lead agency's determination. Review is de novo, with a preference for resolving doubts in favor of environmental review.” *Pocket Protectors*, 124 Cal.App.4th at 928. As a matter of law, “substantial evidence includes . . . expert opinion.” Pub.Res.Code § 21080(e)(1); 14 Cal. Code Regs. § 15064(f)(5). CEQA Guidelines demand that where experts have presented conflicting evidence on the

extent of the environmental effects of a project, the agency must consider the environmental effects to be significant and prepare an EIR. 14 Cal. Code Regs. § 15064(f)(5); Pub. Res. Code § 21080(e)(1); *Pocket Protectors*, 124 Cal.App.4th at 935.

A. There Is Substantial Evidence of a Fair Argument That the Hotel Project's Emissions of Formaldehyde to the Air Will Have Significant Health Impacts on Future Employees.

Certified Industrial Hygienist, Francis "Bud" Offermann, PE, CIH, has conducted a review of the proposed hotel project and relevant documents regarding the Project's indoor air emissions. Indoor Environmental Engineering Comments (Oct. 29, 2018) (Exhibit A). 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. See attached CV.

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." Offermann Comment, p. 3.

Formaldehyde is a known human carcinogen. Mr. Offermann states that there is a fair argument that full-time workers at the hotel project will be exposed to a cancer risk from formaldehyde of approximately 18.4 cancers per million. Offermann Comment, p. 4. This is almost double the Bay Area Air Quality Management District ("BAAQMD") CEQA significance threshold for airborne cancer risk of 10 cancers per million. See Exhibit D. Mr. Offermann states:

With respect to this project, Marriott Residence Inn, located at 2900 Harbor Bay Parkway, Alameda, CA, 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, pp. 3-4. 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. 4. Mr. Offermann

identifies mitigation measures that are available to reduce these significant health risks, including the installation of air filters and a requirement that the applicant use only composite wood materials (e.g. hardwood plywood, medium density fiberboard, particleboard) for all interior finish systems that are made with CARB approved no-added formaldehyde (NAF) resins or ultra-low emitting formaldehyde (ULEF) resins in the buildings' interiors. Offermann Comments, pp. 11-12.

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.

The City has a duty to investigate issues relating to a project's potential environmental impacts, especially those issues raised by an expert's comments. See *Cty. Sanitation Dist. No. 2 v. Cty. of Kern*, (2005) 127 Cal.App.4th 1544, 1597-98 ("under CEQA, the lead agency bears a burden to investigate potential environmental impacts"). In addition to assessing the hotel project's potential health impacts to workers, Mr. Offermann identifies the investigatory path that the City should be following in developing an EIR to more precisely evaluate the hotels' future formaldehyde emissions and establishing mitigation measures that reduce the cancer risk below the BAAQMD level. Offermann Comments, pp. 5-9. Such an analysis would be similar in form to the air quality modeling and traffic modeling typically conducted as part of a CEQA review.

The failure to address the project's formaldehyde emissions is contrary to the California Supreme Court's decision in *California Building Industry Ass'n v. Bay Area Air Quality Mgmt. Dist.* (2015) 62 Cal.4th 369, 386 ("CBIA"). 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 hotel project. Employees will be users of the hotel. Currently, there is presumably little if any formaldehyde emissions at the site. Once the project is built, 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, subds. (b), (c), (d), (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.

Mr. Offermann also notes that the high cancer risk that may be posed by the hotel project's indoor air emissions likely will be exacerbated by the additional cancer risk that exists from the project's location near the Oakland Airport and Port of Oakland and the high levels of PM2.5 already present in the ambient air. Offermann Comments, pp. 10-11. No analysis has been conducted of the significant cumulative health impacts that will result to employees working at the proposed hotel.

Because Mr. Offermann's expert review is substantial evidence of a fair argument of a significant environmental impact to future users of the project, an EIR must be prepared to disclose and mitigate those impacts.

B. The Traffic Analysis Prepared for the Proposed Hotel Is Not Substantial Evidence of No Traffic Impacts Because It Leaves Out Key Intersections Most Likely to be Adversely Affected by the Project's Traffic.

Traffic Engineer Dan Smith has reviewed the Transportation Impact Analysis ("TIA") prepared by Abrams Associates dated November 14, 2018. Although Mr. Smith had no concerns with the analysis conducted for the intersections addressed in the report, he explains that the TIA does not fully resolve the hotel project's potential traffic impacts because it leaves out critical intersections that will be affected by traffic to and from the project. As Mr. Smith explains:

The problem is that the analysis only focuses on intersections within the Harbor Bay Island portion of Alameda close to the Project site. It fails to consider potential traffic impacts on the major gateway intersections to Harbor Bay Island where there is large concentration of traffic and where traffic impacts would be more consequential than at the intersections the TIA studied. Four of the five intersections studied involve intersections of key circulation roads with minor cross streets with only the cross streets controlled by stop signs. Among the gateway intersections that should have been studied are Otis with Fernstein, Doolittle with Island / Otis, Doolittle with Harbor Bay Parkway, Doolittle with Hegenberger, Doolittle with Airport Access Road, Airport Access Road with 98th Avenue and Airport Access Road with Hegenberger.

Smith Comments, p. 1 (Exhibit B). This substantial omission from the traffic analysis is substantial evidence of a fair argument that the hotel project may have significant individual and cumulative traffic impacts.

C. There Is Substantial Evidence of a Fair Argument That the Hotel Project Will Have a Significant Adverse Impact on Wildlife Resulting From Numerous Collisions of Birds, Including Sensitive Species, With the Building's Windows.

Despite the recent attention by the City and others of the massive environmental impact of bird collisions with building windows, no effort is made by staff to consider the impacts of the proposed hotel on birds despite the project's location on the edge of San Francisco Bay. Dr. Shawn Smallwood has reviewed this impact of the project as well as the report prepared regarding wildlife at the proposed site. Dr. Smallwood's evaluation provides substantial evidence that the project will have significant individual and cumulative adverse impacts on birds foraging and flying through the area. Dr. Smallwood's comments and CV are attached as Exhibit C.

During a three hour visit to the site on November 16, 2018, Dr. Smallwood identified 22 species of wildlife on and adjacent to the site. Dr. Smallwood was impressed with the amount of wildlife relying on this site:

An inescapable impression was the abundance of wildlife on site. High densities of mourning doves, house finches and killdeer crowded together on site. Everywhere I looked there were hordes of mourning doves pecking at the ground while walking along with house finches, white-crowned sparrows and killdeer, often flushing and relocating in reaction to people walking along the trails on the west side, often with leashed dogs.

Smallwood Comments, p. 2. Dr. Smallwood notes the incremental development of the shoreline of Bay Farm Island has left very little undeveloped habitat on Bay Farm adjacent to the open Bay waters, incrementally forcing the once incredible concentration of bird life that was found here in 1973 to a few parcels. As Dr. Smallwood explains, "One of the greatest concentrations of shorebirds in the world has been reduced to a desperate avian foothold upon a 5.5-acre patch of upland that bridges a constructed lagoon and the Bay." *Id.*, p. 7. As habitat has been reduced on Bay Farm, the importance of each undeveloped parcel has become ever more important to the bird species in the area, as evidenced by the concentration of birdlife at and near the site observed by Dr. Smallwood.

Dr. Smallwood identifies a number of serious impacts the project will have on birdlife. First and foremost is the fact that many birds will collide with the five-story, window-clad building located at the edge of San Francisco Bay. Smallwood Comments, pp. 13-21. Although initially identified as a concern by a lone scientist in a paper published in the late 1970s, only in the last few decades has the problem of bird collisions with buildings become common knowledge. Indeed, only last month did the City of Alameda take steps to incorporate policies into its municipal code intended to implement some measures intended to hopefully reduce bird collisions for certain new buildings in the City. Despite this attention, no analysis of this serious impact has been prepared for the project. Nor was this issue addressed at all by the 1974 EIR, not having come to light until some years later.

One of Dr. Smallwood's specialized areas of expertise is the effect of human structures on wildlife, in particular bird strikes or collisions with buildings, wind turbines, transmission lines, and other features. In his comment on this project, Dr. Smallwood has evaluated the available studies of rates of bird strikes with buildings. Dr. Smallwood calculates that, based on that available data, the expected mean average of bird strikes with the proposed five-story hotel covered with windows is about 337 strikes per year. Smallwood Comments, p. 17. Applying a 95 percent confidence level, Dr. Smallwood estimates that the range of bird collisions would be from 7 to 2,100 bird deaths per year from this building. *Id.* Over a 50-year lifetime for the project, Dr. Smallwood estimates that, "[a]fter 50 years the toll from this average annual fatality rate would be 16,850 bird

deaths, with an empirically founded upper-end possibility of 105,050 deaths.” *Id.* Some of these species would be sensitive species, including the fully protected brown pelican.

These many bird deaths do not happen in isolation. As Dr. Smallwood notes,

The existing conditions – the developed area – is undoubtedly killing many birds each year. Not only are windows killing many birds, but so too are house cats, feral cats, electric distribution lines, electric power poles, and autos. This said, the proposed project will add a level of impact that is entirely missing from the CEQA review. Constructing a five-story building will not only take aerial habitat from birds, but it will also interfere with the movement of birds in the region and it will result in large numbers of annual window collision fatalities.

Smallwood Comments, p.16.

Dr. Smallwood’s observations of the site and the surrounding area also indicate that the project likely will pose a significant impact on wildlife movement from the Bay shore to the upland area as well as to the nearby lagoon. As Dr. Smallwood states:

Not only would the project remove what must now be critically important stop-over habitat (Runge et al. 2014, Taylor et al. 2011, Warnock 2010), but it would replace the open space with a building posing as another barrier to movement through the area by migratory or dispersing volant wildlife. The earlier EIR (City of Alameda 1973, 1989) also neglected to address the project’s impact on wildlife movement in the region.

Smallwood Comments, p. 13.

Dr. Smallwood also has reviewed the more recent survey conducted by Monk & Associates on September 10, 2018. Dr. Smallwood points out that the Monk survey was not a detection survey and, hence, does not provide substantial evidence of the absence of any particular species from the site, including for example burrowing owls. Dr. Smallwood explains:

Monk & Associates (2018) surveyed the site on 10 September 2018, but that survey was a preconstruction survey, not a detection survey. Detection surveys are designed for supporting species absence determinations, whereas preconstruction surveys are intended to follow up on detection surveys just prior to construction; preconstruction surveys are intended to detect the readily detectable animals that might have arrived at a project site since the detection surveys and to salvage nests or individual animals before the tractor blade scrapes them away. Preconstruction surveys are not designed for supporting absence determinations.

Smallwood Comments, p. 9.

Dr. Smallwood also identifies the project's likely impacts on birds and wildlife from its artificial lighting. "Neither the earlier EIR (City of Alameda 1973, 1989) nor the Staff Report (City of Alameda (2018) addressed the project's impacts on wildlife that would be caused by the addition of artificial lighting." Smallwood Comments, p. 13. Dr. Smallwood's evaluation continues:

Artificial lighting causes a variety of substantial impacts on a variety of wildlife species (Rich and Longcore 2006). At the site of the proposed project I am particularly concerned about the project's lighting impacts on wildlife residing in Bay waters, including harbor seals, California brown pelicans, double-crested cormorants, and other species. Added lighting could cause displacement or altered activity patterns of at least some species. An EIR should be prepared to address potential lighting impacts on Bay wildlife, and how those impacts could be mitigated.

Id. Dr. Smallwood's expert opinion on these many wildlife impacts is substantial evidence of a likely impact of the project.

D. There is substantial evidence of a fair argument that the hotel project will have a significant GHG emission impacts.

The Bay Area Air Quality Management District ("BAAQMD") has established screening thresholds for greenhouse gas emissions. A project exceeding the screening threshold indicates it is likely to exceed BAAQMD's threshold of significant for GHG emissions of 1,100 MT of CO₂e/yr. The screening threshold for a hotel is 83 rooms. BAAQMD CEQA Guidelines, p. 3-2 (May 2017) (http://www.baaqmd.gov/~media/files/planning-and-research/ceqa/ceqa_guidelines_may2017-pdf.pdf?la=en). The project's proposed 177 rooms is more than double the BAAQMD screening threshold. As a result, a quantitative analysis of the project's GHG emissions from its operations must be conducted and addressed in an EIR in order to disclose and compare the project's GHG emissions to BAAQMD's numeric significance threshold.

A similar sized hotel project was recently proposed in San Jose. The San Jose project includes 166 rooms (slightly smaller than the proposed Alameda hotel) and has similar features including, for example, a restaurant. GHG emissions modeling was conducted for that similar sized hotel. The modeling for that slightly smaller hotel calculated that hotel's operation would emit 1,528 MT of CO₂e/year, well in excess of BAAQMD's significance threshold. See City of San Jose, Revised Public Review Draft Initial Study – Mitigated Negative Declaration for AC by Marriott – West San Jose, File No. H17-023 (Oct. 2018) (GHG excerpt attached as Exhibit E). The size of the project

and the analysis of a similar related project in San Jose are substantial evidence of a fair argument that the hotel project may have a significant GHG emission impact.

III. Alternatively, Assuming Staff is Right That the Hotel Project is the Same Project Addressed by the 1974 EIR, New Information and New Circumstances Have Arisen in the Interim 44-years That Require Significant Revisions to the 1974 EIR.

Even assuming that the zoning change reviewed by the 1974 EIR somehow equates to reviewing a hotel project, numerous substantial changes in the development plans have occurred, new information of substantial importance has arisen, and substantial changes in circumstances have taken place that require a wholesale revision of that dated EIR.

When changes to a project's circumstances or new substantial information comes to light subsequent to the certification of an EIR for a project, the agency must prepare a subsequent or supplemental EIR if the changes are "[s]ubstantial" and require "major revisions" of the previous EIR. *Friends of Coll. of San Mateo Gardens v. San Mateo Cty. Cmty. Coll. Dist.* (2016) 1 Cal.5th 937, 943. "[W]hen there is a change in plans, circumstances, or available information after a project has received initial approval, the agency's environmental review obligations "turn[] on the value of the new information to the still pending decisionmaking process." *Id.*, 1 Cal.5th at 951–52. The agency must "decide under CEQA's subsequent review provisions whether project changes will require major revisions to the original environmental document because of the involvement of new, previously unconsidered significant environmental effects." *Id.*, 1 Cal.5th at 952. Section 21166 and CEQA Guidelines § 15162 "do[] not permit agencies to avoid their obligation to prepare subsequent or supplemental EIRs to address new, and previously unstudied, potentially significant environmental effects." *Id.*, 1 Cal.5th at 958.

Section 15162 provides, in relevant part,

- (a) When an EIR has been certified or a negative declaration adopted for a project, no subsequent EIR shall be prepared for that project unless the lead agency determines, on the basis of substantial evidence in the light of the whole record, one or more of the following:
- (1) Substantial changes are proposed in the project which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;
 - (2) Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or

(3) New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the negative declaration was adopted, shows any of the following:

- (A) The project will have one or more significant effects not discussed in the previous EIR or negative declaration;
 - (B) Significant effects previously examined will be substantially more severe than shown in the previous EIR;
 - (C) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or
 - (D) Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.
- (b) If changes to a project or its circumstances occur or new information becomes available after adoption of a negative declaration, the lead agency shall prepare a subsequent EIR if required under subdivision (a).

14 Cal. Admin. Code § 15162(a)-(b). All of the evidence indicates that the project considered by the 1974 EIR has undergone significant changes to the project and its circumstances requiring substantial revisions to that 44-year old EIR and, not surprisingly, that new information and mitigations are now available that must be considered in an EIR.

A. Substantial changes are proposed in the project which will require major revisions of the previous EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects.

Assuming the proposed hotel is the same project as was considered in 1974, it is a substantial change to that project. As discussed above, the only project that was considered regarding the 51-acre business park was to rezone the area from residential to commercial. The use of the area as an office park was mentioned as a conceptual possibility. No specific proposal of how many buildings, how much office space, locations, or specific uses was identified. All of the maps of the business park area are simple outlines with no proposal to fill in the blank on the zoning map. The only mention of size beyond the land footprint zoned commercial, is an estimate that the newly zoned area "could accommodate roughly 567,000 square feet of building area, of which about 450,000 would be usable office space." 1974 EIR, p. IV-48. The hotel alone would contain 113,000 square feet of hotel space – about one-fourth of the entire square footage of office space estimated in the 1974 EIR. That amount of additional space when compared to the 1974 EIR is substantial. Given that the office space within the

business park is now greater than 1.2 million square feet, a further increase to 1.3 million square, more than doubling any office park anticipated by the 1974 EIR also is a substantial change.

Significant revisions are necessary for the 1974 EIR to address the individual and cumulative impacts of this massively expanded development beyond that estimated generally in the 1974 EIR. Revisions are necessary to address for the first time, significant impacts of destroying what was, as of 1973, "[o]ne of the greatest concentrations of shorebirds in the world" and developing mitigations for that impact. See Smallwood Comments, p. 7. Likewise, Dr. Smallwood discusses the substantial incremental impact of that additional development on wildlife access to open areas in this portion of Bay Farm adjacent to the Bay. *Id.*, pp. 8-9. The additional visual, air pollution, traffic and noise impacts of the greatly expanded business park would require entirely new discussions and analyses to be added to the 1974 EIR. The fact that workers throughout this large expanse of office parks are being exposed to cancer-causing levels of formaldehyde would require a new discussion and new mitigation within the EIR. See Offermann Comments. Similarly, an entirely new analysis and disclosure of GHG emissions must be added to the EIR to address the development beyond anything envisioned in the 1974 EIR.

B. Substantial changes have occurred with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects.

Our review of the project has disclosed a number of dramatically altered circumstances requiring a re-write of the 1974 EIR in order to address numerous environmental impacts of the Harbor Bay development. Some of the more dramatic changes in circumstances include:

- The impacts and apparent failure of the burrowing owl relocations that occurred many years after the 1974 EIR was certified. The 1974 EIR references statements by Elsie Roemer noting that, at the time, burrowing owls were "fairly common." 1974 EIR, p. F-2. Dr. Smallwood describes the current plight of burrowing owls in the area:

Available evidence indicates burrowing owls have declined to their last 1-2 successful breeding pairs in western Alameda County (Trullo et al. 2018). Ironically, the only species for which mitigation was attempted in the 1989 EIR have since been extirpated from all but one site across western Alameda County, and even at that one site the species is essentially extirpated, with only 1 to 2 pairs remaining in 2018.

Smallwood Comments, p. 10. Nor have any owls relocated to the vicinity of Oakland Airport fared well in recent years. See Center For Biological Diversity, Petition for Listing the California Population of the Western Burrowing Owl (*Athene Cunicularia Hypugaea*) as an Endangered or Threatened Species Under the California Endangered Species Act (attached as Exhibit F); Smallwood Comments, p. 10. The ongoing plight of burrowing owls in western Alameda county, and beyond, is a substantial change of circumstances from those considered in 1974 requiring major revision of the EIR.

- The traffic impacts considered in the 1974 EIR only extended to 1995. Smith Comments, p. 2. The EIR fails to address the changes in traffic that have occurred over the last 23 years. Given the numerous intersections on Bay Farm Island with a LOS F, those traffic circumstances have grown to significant levels of impact.

These changed circumstances are substantial changes in circumstances and indicate that the severity of the 1974 project's impacts on burrowing owls and traffic is much more extensive than anticipated in that prior EIR. Substantial revisions are necessary to cure this deficiency.

C. New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence in 1974, shows that the project will have one or more significant impacts that were not considered or are more severe.

Several of the impacts described above involve new information (i.e. information available after 1974) that demonstrates significant impacts from not only the proposed hotel but the overall development of the Harbor Bay project. Because staff indicates that the hotel is the same project reviewed in 1974, many of these impacts must be addressed for, not only the proposed hotel, but also the portions of the project that have already been constructed.

As discussed above, the hotel project will have significant impacts on air quality and health risks by emitting cancer-causing levels of formaldehyde into the air that will expose workers to cancer risks well in excess of BAAQMD's threshold of significance. Information regarding the health risks posed by the use of formaldehyde-based products in building construction was not known in 1974. The main studies, some of which Mr. Offermann was involved, were not published until 2009. Offermann Comments, pp. 2-3. Hence, these threats are significant new information vis-à-vis the 1974 EIR.

Not only is it true that the hotel will pose these health risks to workers, but it also is true of all of the offices and residences that have been built since 1974. To the extent the hotel is part of the 1974 project, the discretionary approval of that piece of the

project opens up the entire project to review and revision of the EIR to address this substantial health risk. Indeed, the risks to the residents of the residential buildings constructed as part of the project have even higher cancer risks of 125 up to 180 cancers per million in gross exceedance of the BAAQMD threshold. Offermann Comments, pp. 2-3. Formaldehyde continues to emit from building materials many decades after its initial installation. As a result, mitigations are still available to long-time residents, including air filters or potentially retrofitting flooring or other sources. Initially however, CEQA requires the City to react to this new information, disclose it in a revised EIR, and determine the appropriate mitigations that should be implemented. Because, according to staff, the 1974 project is being reopened by the proposed hotel, the City's duty to update the EIR with this important health risk information and mitigations is triggered now.

In addition, there is significant new information regarding the impact of the proposed hotel, as well as all of the office buildings already built in the business park, and the thousands of homes constructed as part of the project, on birds colliding into those many buildings. Although not available to a typical resident in the 1970s, the very first study of bird strikes with buildings was not published until 1976, almost three years after the 1974 EIR's certification. Smallwood Comments, p. 13. The issue was not more publicly disseminated until several notable reports issued in 1989. *Id.*, pp. 14-15. Either way, the significance of bird fatalities from collisions with buildings like the hotel is significant new information. As shown above, bird strikes even with the one five-story hotel will be significant. As part of the overall project considered in 1974, every office building as well as the homes must be considered in addressing this significant impact recognized post-1974 and formulating appropriate mitigation measures.

D. Mitigation measures previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the project.

The 1974 EIR includes as a mitigation measure for the project that “[e]lectric vehicles will be provided each house for internal trips.” 1974 EIR, p. I-12. This mitigation was to address air pollution, traffic and noise. See *id.*, p. I-20 (noise analysis calls for “[a] maximum use of electrically powered vehicles in the project area”); pp. IV-146-147 (modest mitigation for air quality); p. IV-233 (“special electric cars which will be available to all residents”). For traffic, the 1974 EIR states:

The major negative impacts associated with the project area will be the extensive traffic generation the project will produce in a location least able to absorb such traffic. The developer, in response to this factor, has instigated an extensive system of alternative transportation systems including pedestrian pathways, bicycle pathways, and **electrically powered vehicles available with each home** as an alternative to the second car.

1974 EIR, p. I-21 (emphasis added). Each unit of the residential portion of the project was to provide an enclosed parking space for the electric vehicle. See 1974 EIR, p. II-10 ("In addition to these resident parking spaces there will be guest parking and one enclosed parking space per unit for an electric car); *Id.*, p. II-19.

According to the 1989 Addendum addressing Village V, the City purportedly modified this mitigation measure when the number of residents to be built for the overall project was reduced in number from 4,950 units to 3,200 units. See 1989 Addendum, p. 5-6. However, there is no mention of any modification of the EIR analyzing the impacts of eliminating that mitigation measure relied upon in the 1974 EIR. Nevertheless, the 1989 Addendum modifying Village V carries forward this mitigation, though purporting to add a feasibility condition that was not present in the 1974 EIR. The mitigation for Village V in the 1989 Addendum provides that:

In the event such technology becomes feasible, applicant should provide an electric car for each house sold in Village V as proposed in the HBI Master Plan for local Alameda trips, to mitigate air and noise impacts of traffic and reduce use of gasoline.

1989 Addendum, p. 4-23. The 1989 Addendum then concludes that, at the time, "[w]hile the technology of electric-powered vehicles has improved and has become somewhat less costly than in 1976, providing electric cars for the new homes in Village 5 would not be a viable mitigation measure at this time." *Id.*, p. 5-6.

Of course, given the current ready availability of electric cars, especially the smaller, local vehicles envisioned by the 1974 EIR and the 1989 Addendum, electric vehicles are now entirely feasible. Alameda Municipal Power acknowledges their feasibility, offering rebates and otherwise encouraging the use of electric vehicles. See <https://www.alamedamp.com/environment/electric-vehicles>. There is a wide assortment of smaller electric vehicles consistent with those included in the 1974 EIR and the 1989 Addendum. See, e.g. <http://motoelectricvehicles.com/neighborhood-electric-vehicle>. The feasibility and availability of smaller electric vehicles cannot reasonably be questioned. This new information must be assessed in an EIR that fully explores the implementation of this long-stated mitigation measure.

E. Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment.

Lastly, numerous mitigation measures addressing the above issues have been identified by the attached expert comments. None of these measures were addressed in the 1974 EIR. Every identified mitigation measure is significant new information that post-dates the 1974 EIR. In addition, the Project's GHG emissions can be reduced by requiring solar panels, electric shuttles, and other GHG reducing measures that were not available and not considered in the 1974 EIR. A new EIR should be prepared to

provide a process consistent with CEQA that would ensure that the 44-year old review of the Harbor Bay project is brought up to current environmental standards and all impacts and mitigations be addressed and disclosed to the public for review and comment.

IV. CONCLUSION

In light of the above comments, staff's recommendation to rely on the 44-year old EIR should be withdrawn, a relevant and updated EIR either for the hotel project or the entire Bay Harbor project 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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