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June 2, 2020

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Re: Comments Regarding Proposed Hotel Project at 1296 Lawrence Station Road (File # 20-0508) – Planning Commission Agenda Item No. 1

Dear Chair Howard, Vice-Chair Simons, Commissioners Harrison, Howe, Olevson, Rheaume and Weiss, and Ms. Cha,

I am writing on behalf of the Laborers International Union of North America, Local Union 270 and its members living in the City of Sunnyvale ("LiUNA"), regarding the project known as Hotel Project at 1296 Lawrence Station Road by applicant Baywood Hotels. The project proposes to construct and operate a six-story extended-stay hotel with 128 rooms and parking for 80 vehicles including a parking structure for 60 cars on a parcel located at 1296 Lawrence Station Road on APN 104-33-012. Certified Industrial Hygienist, Francis "Bud" Offermann, PE, CIH has reviewed the documents provided to the Planning Commission and prepared expert comments on the Project's indoor air emissions and associated health risks. Mr. Offermann's comments and his curriculum vitae are attached as Exhibit A. Expert biologist Shawn Smallwood, Ph.D., has reviewed the Project's potential impacts on birds from collisions with its windows and structures. Dr. Smallwood's comments are attached as Exhibit B.

LIUNA respectfully requests that the Commission continue its consideration of the project until a later date. LIUNA is deeply concerned that the lack of our and other members of the public's ability to provide direct, oral comments to the Commission is in

violation of the Brown Act and Article I, section 3 of the California Constitution. On a more practical front, LIUNA also is concerned that an essential document – the City's 2017 draft EIR for the Land Use and Transportation Element ("LUTE") of the General Plan has not been made available to the public or, presumably, the Commission members. LIUNA does not believe the Commission can make an informed decision of the application of the Section 15183 CEQA exemption proposed by staff which exemption requires review of the contents of the full EIR relied upon by staff in recommending the use of the exemption and not just the responses to comments and several edits contained in the final EIR (which is provided).

Accordingly, we ask the Commission to continue consideration of the Project until after the COVID-19 State of Emergency is lifted. The state of emergency makes it impossible for the public to actively participate in person at public meetings at which the Project will be considered. Since the Project does not pose any emergency, there is no reason that its consideration cannot be continued until after the state of emergency is lifted and the City is once again able to conduct regular meetings with public attendance. The absence of an opportunity for the public to make oral comments to the Commission is in clear violation of the Brown Act. The failure of the public and the Commissioners to access the draft LUTE EIR also makes it impossible for the public to provide fully informed comments and for the Commissioners to make an informed decision.

A. The City Must Comply with the Ralph M. Brown Act as Codified Regardless of the Governor's Executive Orders.

The process for receiving public input identified by the Planning Commission is limited to written comments submitted within 4 hours of the start of the meeting, e-mails that will be read by staff at the meeting and voice mail messages that will be played at some point during the meeting. Our review of the Brown Act and the California Constitution leads us to conclude that anything less than a provision of oral comments to the Commission during the agenda item for the Project is inconsistent with the Brown Act.

To the extent that Governor Newsom's Executive Order ("EO") N-29-20 of March 17, 2020 ("March 17 EO") and EO N-35 20 of March 21, 2020 ("March 21 EO") modified, amended, or otherwise revised the Brown Act, the EOs are invalid under the California Constitution, article I, section 3(b)(7) ("section 3(b)(7)").

In 2014, California voters passed Proposition 42 which amended the California Constitution to read, in relevant part:

> [E]ach local agency is hereby required to comply with . . . the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code), and with any subsequent statutory enactment amending either act, enacting a successor act, or amending any successor act that contains findings demonstrating that the statutory enactment furthers the purposes of this section.

Cal. Const., art. I § 3(b)(7).

By the plain language of section 3(b)(7), local agencies are required to comply with the Brown Act as codified. Furthermore, "statutory enactment"—not executive order—is the only constitutionally permissible means of amending the Brown Act under section 3(b)(7). Black Law's Dictionary defines "statute" as "[a]n act of the legislature; a particular law enacted and established by the will of the legislative department of government, expressed with the requisite formalities." Since the California legislature has not amended the Brown Act, the California Constitution requires that local agencies comply with the Brown Act as codified regardless of Governor Newsom's EOs.

In both the March 17 EO and March 21 EO, Governor Newsom cites Government Code sections 8567 and 8571 as the authority for his power to amend the Brown Act during the COVID-19 state of emergency. (March 17 EO, p. 1; March 21 EO, p. 1.) However, neither of these provisions are part of the Constitution, unlike the Brown Act itself. Therefore, neither of those provisions grant—nor could they grant—the executive the power to override the California Constitution. Government Code section 8567 states:

> (a) The Governor may make, amend, and rescind orders and regulations necessary to carry out the provisions of this chapter. The orders and regulations shall have the force and effect of law. . . .
> (b) Orders and regulations, or amendments or rescissions thereof, issued during a state of war emergency or state of emergency shall be in writing and shall take effect immediately upon their issuance. Whenever the state of war emergency or state of emergency has been terminated, the orders and regulations shall be of no further force or effect.

Gov. Code § 8657.

Government Code section 8571 states:

> During a state of war emergency or a state of emergency the Governor may suspend any regulatory statute, or statute prescribing the procedure for conduct of state business, or the orders, rules, or regulations of any state agency . . . where the Governor determines and declares that strict compliance with any statute, order, rule, or regulation would in any way prevent, hinder, or delay the mitigation of the effects of the emergency. (

Gov. Code § 8571.

Although these provisions allow the Governor to make orders and regulations to carry out the Government Code (including the Brown Act) and to suspend certain statutes, Government Code §§ 8567 and 8571 do not grant the Governor the authority to override the California Constitution, which requires compliance with the Brown Act subject to amendment only by the legislative branch. Cal. Const., art. I § 3(b)(7). Most importantly, neither of these provisions are in the Constitution. It is black-letter law that a statutory provision may not contradict a Constitutional provision. As such, to the extent that a local agency relies on Governor Newsom's March 17 EO and March 21 EO instead

of on the Brown Act directly, the agency is in violation of the California Constitution, article I, section 3(b)(7).

B. The Brown Act Requires That the Public Be Allowed to Comment Orally at a Hearing.

The Brown Act already contains provisions for conducting public meetings by teleconferencing and video conferencing. Under the Brown Act, "[T]he legislative body of a local agency may use teleconferencing for the benefit of the public and the legislative body of a local agency in connection with any meeting or proceeding authorized by law." Gov. Code § 54953(b)(1). The Brown Act defines "teleconference" as "a meeting of a legislative body, the members of which are in different locations, connected by electronic means, through either audio or video, or both." Gov. Code § 54953(b)(4).

When a local agency uses teleconferencing, the Brown Act requires that the teleconference information be available in the meeting agenda and that the teleconference be accessible to the public. Gov. Code § 54953(b)(3). Importantly, the Brown Act further requires that the agenda "provide an opportunity for members of the public to address the legislative body directly pursuant to Section 54954.3 at each teleconference location." Gov. Code § 54953(b)(3). The above requirement of section 54953(b)(3) of the Brown Act allows for the use of teleconferencing to satisfy the requirements of section 54954.3 that members of the public have the opportunity to comment on an agenda item either before or during a meeting. Gov. Code § 54954.3(a) ("Every agenda for regular meetings shall provide an opportunity for members of the public to directly address the legislative body on any item of interest to the public, before or during the legislative body's consideration of the item"). Directly addressing the legislative body refers to speaking to the body. Gov. Code § 54954.3(b)(1) (authorizing reasonable regulation including time restrictions for "each individual speaker"). As such, any public meeting conducted by teleconference but does not allow for oral public comment during the meeting is in violation of the Brown Act.

C. Local Agencies Must Allow for Public Comment During a Public Meeting.

The Brown Act does contain emergency provisions—however, none of these provisions provide for prohibiting public comment during a meeting.

First, the Brown Act allows public meetings in certain emergency circumstances with limited (one-hour) or no prior notice. Gov. Code § 54956.5. Second, the Brown Act contains authority allowing action on items not included on a posted regular agenda in certain emergency situations. Gov. Code § 54954.2(b)(2). Lastly, in certain emergency situations, the Brown Act allows for a public meeting location to change without notice as long as local media is notified "by the most rapid means of communication available at the time." Gov. Code § 54954(e). The Project does not qualify as an "emergency" within the meaning of the Brown Act.

Notably, the emergency provisions above in the Brown Act pertain only to notice, location, and agency action. No provision of the Brown Act contemplates abrogating the

public's right to provide comment during a public meeting either in-person or, if necessary, by teleconferencing or video conferencing. *See* Gov. Code §§ 54953(b)(1), (b)(3), (b)(4).

D. Alternatively, Assuming the Governor's EOs Can Modify the Brown Act, the Commission's Public Comment Procedures Are Inconsistent with the EOs.

Even if Governor Newsom's March 17 EO and March 21 EO were valid under the California Constitution as to the Brown Act, a local agency which does not permit public comment during a public meeting fails to comply with those orders. The March 17 EO explicitly states:

> All state and local bodies are urged to use sound discretion and to make reasonable efforts to adhere as closely as reasonably possible to the provisions of the Bagley-Keene Act and the Brown Act, and other applicable local laws regulating the conduct of public meetings, in order to maximize transparency and provide the public access to their meetings.

March 17 EO, p. 4.

Many municipalities are making public comment during teleconferenced meetings possible, which shows that adherence to the Brown Act provisions discussed above is possible during the COVID-19 state of emergency. For example, the Cities of San Francisco, Los Angeles, and other cities allow members of the public to directly address the decision-making body through Zoom or other teleconference services during the virtual meeting. Thus, any local agency which does not provide for public comment during a public meeting—teleconferenced or otherwise—is in violation of the California Constitution, article I, section 3(b)(7) and the Brown Act as well as in violation of Governor Newsom's executive orders.

E. The Planning Commission and the Public Have Not Been Provided the Documents Necessary to Consider 14 Cal. Admin. Code § 15183.

Staff is proposing that the City rely upon 14 Cal. Admin. Code § 15183 in order to satisfy the requirements of the California Environmental Quality Act. Staff is relying upon a previous environmental impact report ("EIR") prepared for the City's Land Use and Transportation Element ("LUTE") of the General Plan and certified in April 2017 (State Clearinghouse No. 2015062013). In order to consider and apply that exemption, the Commission as well as the public must be able to review that previous EIR in order to prepare comments and, in terms of the Commission, make the necessary findings and certifications required by Section 15183.

Such a review is now hindered because the only portion of the 2017 EIR available to the Commission, as indicated by the documents linked to the agenda item for the Project, is the final EIR for the 2017 LUTE. As the Commission members are well aware, the final EIR includes copies of comments submitted on the draft EIR and a few excerpts of the draft EIR that were altered as a result of the comments or staff's review. However,

the final EIR does not reproduce the entire EIR or, in this case, even a modest portion of the EIR. The draft EIR is not posted on-line by the City or anywhere else we could locate. Likewise, the State Clearinghouse's CEQAnet listing does not include a link to the draft LUTE EIR. In response to our e-mail inquiry, staff provided a link which described as leading to the EIR documents, but it required a password and we were unable to acess any documents. Our further inquiries with staff were not responded to prior to the time we needed to complete this letter in order to submit it by 3 pm today.

Given the few days notice provided by the Planning Commission, the public's ability to comment on the City's proposed use of the Section 15183 has been seriously compromised by the absence of this critical document. Likewise, the Commission's ability to consider the prior draft EIR and to consider the requisite findings for employing the Section 15183 exemption has been compromised or rendered impossible by the absence of the draft EIR. Accordingly, LIUNA requests that the Commission's consideration of the Project be continued until a future Planning Commission meeting and an opportunity by the Commission members and the public to access and review the sections of the EIR being relied upon by staff in proposing the Section 15183 exemption.

F. Section 15183 Does Not Exempt the Project From Conducting Environmental Review Under CEQA of the Project Significant Impacts from Emissions of Indoor Air Pollution, Including the Toxic Air Contaminant Formaldehyde, and Impacts From Bird Strikes on New Building Structure and Windows.

The City may not rely on 14 Cal. Admin. Code § 15183 for the Project. Section 15183 does not relieve the City of reviewing environmental effects that "[w]ere not analyzed as significant effects in a prior EIR on the zoning action, general plan or community plan with which the project is consistent." 14 Cal. Admin. Code § 15183(b)(2). Section 15183 also excludes exempting impacts that are "peculiar" to the Project. Peculiar is a term of art specifically defined by the regulation:

> An effect of a project on the environment shall not be considered peculiar to the project or the parcel for the purposes of this section if uniformly applied development policies or standards have been previously adopted by the city or county with a finding that the development policies or standards will substantially mitigate that environmental effect when applied to future projects, unless substantial new information shows that the policies or standards will not substantially mitigate the environmental effect.

14 Cal. Admin. Code § 15183(f). LIUNA is informed and believes that the LUTE EIR did not address the potential significant environmental impacts of indoor air pollution, in particular formaldehyde emissions, on users of subsequent projects to be built in Sunnyvale. Likewise, LIUNA is informed and believed that the LUTE EIR did not address the impacts of bird strikes with new buildings to be constructed in Sunnyvale.

Nor has the City identified development standards or the findings identified by Section 15183 addressing these two categories of impacts that could make those impacts

not peculiar to the Project. The City does not identify a development standard addressing formaldehyde emissions adopted by the City along with a finding that such standard would substantially mitigate the carcinogenic impact of these emissions. Accordingly, formaldehyde emissions from the proposed hotel and the resulting exposure to employees at the hotel is an impact that is peculiar to the Project and not excluded from CEQA review by Section 15183.

As for bird strikes, the City has adopted some loose recommendations for buildings in Sunnyvale to consider bird strike impacts. However, the various recommendations contained in the guidelines do not qualify as development standards pursuant to Section 15183. Nor has the City appeared to have made a finding that compliance with the recommendations would avoid a Project's potential significant impacts from bird strikes. Indeed, the guidelines make clear that, especially for buildings not within 300-feet of water, a project's application of any of the identified guidelines would have to be presented to the City's decision-making body to determine if they addressed impacts from bird strikes. City of Sunnyvale, Bird Safe Building Design Guidelines (Jan. 28, 2014) ("These guidelines could be used as part of a project's review. Staff could include a discussion relative to the guidelines in staff reports in order to give decision-makers information necessary to review this aspect of a project's impact").

The staff memo submitted to the Planning Commission also errs in its reading of Section 15183(b)(1) and (2). Section 15183(b) provides:

> (b) In approving a project meeting the requirements of this section, a public agency shall limit its examination of environmental effects to those which the agency determines, in an initial study or other analysis:
> (1) Are peculiar to the project or the parcel on which the project would be located,
> (2) Were not analyzed as significant effects in a prior EIR on the zoning action, general plan or community plan with which the project is consistent,
> (3) Are potentially significant off-site impacts and cumulative impacts which were not discussed in the prior EIR prepared for the general plan, community plan or zoning action, or
> (4) Are previously identified significant effects which, as a result of substantial new information which was not known at the time the EIR was certified, are determined to have a more severe adverse impact than discussed in the prior EIR.

14 Cal. Admin. Code §15183(b). Thus, Section 15183 requires the application of CEQA's environmental review provisions to any environmental effects that are peculiar to the project or its parcel. §15183(b)(1). Likewise, CEQA must be applied to any significant impacts that were not addressed in the prior planning EIR. §15183(b)(2). Section 15183 does not say that, even if an impact is peculiar or not addressed in the relevant EIR, the exemption still applies if the City nevertheless applies uniform development policies or standards. Such a reading is circular and would render the exemption's definition of "peculiar" meaningless.

The CEQA Consistency memo suggests that the exemption can apply even where there is a peculiar impact attributable to the Project if the peculiar impact is substantially mitigated "by the imposition of uniformly applied development policies or standards." CEQA Consistency memo, p. 6. This passage fails to understand that a peculiar impact is an impact for which there are no "uniformly applied development policies or standards … previously adopted by the city or county with a finding that the development policies or standards will substantially mitigate that environmental effect." 14 Cal. Admin. Code § 15183(f). By definition, if an impact is peculiar, no uniform standards are available which would trigger the exemption. The City's application of guidelines to a project for which no such finding has been made would have to be addressed in an initial study and the City would have to make a determination of whether a mitigated negative declaration or EIR is necessary.

The CEQA Consistency memo also suggests that even where an environmental effect was not analyzed as a significant effect in a prior EIR, the application of uniform standards would allow for the exemption to apply. CEQA Consistency Memo, p. 6. However, Section 15183(b) excludes unanalyzed environmental effects, instead requiring the "examination of environmental effects … which … [w]ere not analyzed as significant effects in a prior EIR on the … general plan … with which the project is consistent." 14 Cal. Admin. Code § 15183(b)(2). Contrary to the memo's suggestion, Section 15183's exemption does not extend to impacts previously unanalyzed in a general plan EIR but for which uniform development guidelines now exist.

G. The Project May Have Significant Environmental Impacts From Its Emission of Formaldehyde to Indoor Air.

One component of an air quality impact analysis under CEQA is evaluating the health risk impacts of toxic air contaminant ("TACs") emissions contributed by a proposed project as well as cumulatively with other nearby TAC sources. Certified Industrial Hygienist, Francis "Bud" Offermann, PE, CIH, has conducted a review of the Project, the IIS, and relevant documents regarding the Project's indoor air emissions. Indoor Environmental Engineering Comments (June 2, 2020) (attached). Mr. Offermann is one of the world's leading experts on indoor air quality, in particular emissions of formaldehyde, and has published extensively on the topic. As discussed below and set forth in Mr. Offermann's comments, the Project's emissions of formaldehyde to air will result in significant cancer risks to future workers at the Project. As a result of this significant effect to air quality, the Project may not rely upon Section 15183 to forego the preparation of an EIR or at least a negative declaration for the Project.

The Bay Area Air Quality Management District ("BAAQMD") has established significance thresholds for a project's TAC emissions as well as cumulative emissions from a project and other nearby TAC sources. BAAQMD considers an increased risk of contracting cancer that is 10.0 in one million chances or greater, to be significant risk for a single source. BAAQMD also has established a significance threshold for cumulative exposure as an excess cancer risk of 100 in one million.

LIUNA is infirmed and believes that the LUTE EIR does not address the significant indoor air emissions that will result from the Project or other projects in the City. As a result, LIUNA is unaware of any discussion of impacts or health risks, or possible mitigations for significant emissions of formaldehyde to air from the Project.

Mr. Offermann explains that many composite wood products typically used in home, hotel and office building 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 particleboard. These materials are commonly used in building construction for flooring, cabinetry, baseboards, window shades, interior doors, and window and door trims." Offermann Comment, pp. 2-3.

Formaldehyde is a known human carcinogen. Mr. Offermann states that there is a fair argument that future workers at the Project will be exposed to a cancer risk from formaldehyde of approximately 16.4 per million, assuming all materials are compliant with the California Air Resources Board's formaldehyde airborne toxics control measure. Offermann Comment, p. 4. This risk level exceeds the BAAQMD's CEQA significance threshold for airborne cancer risk of 10 per million. 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*., p. 4. He prescribes a methodology for estimating the Project's formaldehyde emissions in order to do a more project-specific health risk assessment. *Id*., pp. 5-9. 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. 11-12. Mr. Offermann also suggests requiring air ventilation systems which would reduce formaldehyde levels. *Id*. Since the LUTE EIR does not analyze this impact at all, none of these or other mitigation measures have been considered. Accordingly, the City cannot rely on Section 15183 to forego preparing either a negative declaration or a supplemental EIR for the Project. The Project's formaldehyde emissions are peculiar to the Project because the City has not adopted any uniformly applied policy or standard nor made any finding that any such standard would mitigate the impacts identified by Mr. Offermann.

The carcinogenic formaldehyde emissions identified by Mr. Offermann are not an existing environmental condition. Those emissions to the air will be from the Project. People will be employed in and using the Project once it is built and begins emitting formaldehyde. Once built, the Project will begin to emit formaldehyde at levels that pose significant health risks. The Supreme Court in *California Building Industry Ass'n v. Bay Area Air Quality Mgmt. Dist.* (2015) 62 Cal.4th 369, 386 expressly finds that this type of air emission and health impact by the project on the environment and a "project's users and residents" must be addressed in the CEQA process. Because the Project itself will pose significant health risks to the project's workers, an EIR or MND for the Project also would have to evaluate the cumulative health risks posed by the Project's indoor air pollution combined with the significant air pollution from the nearby highway as well. This potential significant health risk impact also precludes the application of the section 15183 exemption to this Project. 14 Cal. Admin. Code §15183(b); Offermann Comments, pp. 10-11. In addition, even assuming the LUTE EIR addressed indoor air emissions of toxic air

contaminants, the recent studies identified by Mr. Offermann demonstrating that the CARB formaldehyde airborne toxics control measure do not prevent health risk exposures greater than 10 in a million in homes, offices and hotels is substantial new information which was not known at the time the LUTE EIR was certified and shows that formaldehyde emissions have a more severe adverse impact than would have been contemplated in 2010. For all of these reasons, the City cannot rely on the Section 15183 exemption to eliminate CEQA review of the Project.

H. The Project May Have Significant Environmental Impacts by Causing Fatal Bird Strikes on its Structure and Windows.

LIUNA is informed and believes that the LUTE EIR does not address projects' potential impacts on birds through collisions with proposed buildings and expanses of glass windows. Expert biologist Shawn Smallwood, Ph.D., has reviewed the Project's potential impacts on birds. See Smallwood Comments, attached as Exhibit B.

Full disclosure of the potential impact on wildlife of window collisions is especially important because "[w]indow collisions are often characterized as either the second or third largest source of human-caused bird mortality." Smallwood Comments, p. 3. Dr. Smallwood identifies the severe cumulative impact to birds already occurring in California and across the United States, noting a recent study identifying a 29% decline in overall bird abundance across North America over the past 48 years. *Id.*, p. 1. Dr. Smallwood also notes the increasing cumulative impact of expanding glass facades on buildings throughout the Bay area and elsewhere and the likelihood that collisions with these surfaces are increasing and resulting in cumulative impacts to bird populations. *Id*., p. 2.

The Project as designed does not appear to have incorporated any meaningful bird safe design features or evaluated the proposed building's impacts on bird strikes. Dr. Smallwood compares the Project with the recommendations included in the City's Bird Safe Building Design Guidelines and notes the Project's inconsistency with many of the recommendations. For example, rather than avoiding large expanses of glass near open areas and tall landscaping near glass walls, the Project's plans depict large expanses of glass (based on the plans, Dr. Smallwood estimates at least 802 m^2 associated with the Project) and adjacent tall landscaping adjacent that will be constructed adjacent to open areas and 80 m from extensive open space across Highway 237. Smallwood Comments, p. 2. Rather than avoiding free-standing galls walls as recommended in the guidelines, the Project plans depict glass-walled rails on long pedestrian ramps on two sides of the building which studies indicate are deadly to birds. *Id.* Likewise, glass building corners also should be avoided according to the guidelines but are prominent features of the proposed building. *Id*. There is no information provided to address the importance of building lighting on bird strikes. *Id*. Thus, rather than mitigate bird strikes, the proposed building appears to exacerbate the rate of bird strikes that will occur.

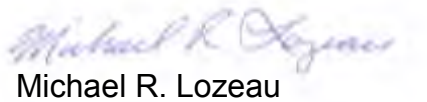
In addition, Dr. Smallwood reviewed numerous studies and the depicted building design in order to calculate the number of bird collisions per m^2 of glass windows per year. *Id*., pp. 5-6. According to his calculations, the Project's estimated 802 m^2 of glass windows would result in an estimated 62 bird deaths per year. *Id*., p. 6. Looking ahead,

Dr. Smallwood notes that "[t]he 50-year toll from this average annual fatality rate would be 3,088 bird deaths" at a confidence level of 95 percent. *Id*. These potential impacts were not considered in the LUTE EIR. They also are peculiar to this Project due to the absence of any finding by the City that the recommendations in the City's Bird Safe Building Design Guidelines could prevent this Project's or any project's impacts relating to bird strikes. As a result, the City cannot rely upon Section 15183 to bypass any CEQA review for this Project. A proper environmental review for the Project should include, among other things, details of window placements, window extent, types of glass, and anticipated interior and exterior landscaping and lighting. (Id., pp. 7-10.) An MND or EIR then should discuss the likely magnitude of bird collisions with the Project as well as the particular species that would be most likely to collide with the Project and evaluate the direct and cumulative impacts of those bird fatalities.

CONCLUSION

The Commission should take the time necessary to consider these comments, make sure it reviews the necessary documents before exempting a project from CEQA, and allow the City to further consider whether its public comment procedures comply with the Brown Act by continuing its consideration of the Project. Thank you for considering these comments.

Sincerely,



Michael R. Lozeau

Kelly Cha

From: Kelly Cha
Sent: Thursday, June 04, 2020 2:22 AM
To: Kelly Cha
Subject: FW: Planning Commission Agenda Public Hearing Item 1 - Lawrence Station Road Hotel - Verbal Comments for LIUNA Local 270

From: Michael Lozeau <michael@lozeaudrury.com>
Sent: Tuesday, June 2, 2020 5:24 PM
To: PlanningCommission AP <PlanningCommission@sunnyvale.ca.gov>
Cc: Hannah Hughes <hannah@lozeaudrury.com>
Subject: Planning Commission Agenda Public Hearing Item 1 - Lawrence Station Road Hotel - Verbal Comments for LIUNA Local 270

Michael Lozeau on behalf of Laborers International Union of North America, Local Union 270.

The Commission should not take action tonight and continue its consideration until a later date or alternatively deny use of the proposed CEQA exemption for the following reasons:

1. take steps to comply with the Brown Act by facilitating direct oral comments at upcoming Commission meetings;

2. Make provisions for providing access to the City's 2017 draft EIR for the Land Use and Transportation Element. The FEIR included in the agenda packet only reproduces comments and responses and small excerpts of the draft EIR where edits were made. The Commission cannot rationally apply CEQA Guidelines section 15183 without being able to review the full EIR on which that exemption depends.

3. Section 15183 does not authorize the City to exempt itself from environmental review of at least two issues raised by LIUNA in written comments earlier today:

   a. The Project may have significant environmental impacts from its emission of the toxic air contaminant formaldehyde to indoor air in the hotel. LIUNA's expert consultant calculates a cancer risk to hotel workers of 16.4 per million which exceeds the air quality district threshold of significance of 10 in a million. These impacts also need to be considered cumulatively with health risks from TACs from the nearby highway.

   b. The Project also may have significant impacts on birds from bird collisions with the building, especially its large glass windows and other features. Biologist Dr. Shawn Smallwood provides his expert comments on this impact.

   Neither of these impacts were addressed in the LUTE EIR and they are both peculiar to the project because the City has not adopted uniform standards addressing these impacts or a finding that any such standards eliminate these impacts. As a result, Section 15183 does not exempt CEQA's review processes to these impacts.

Thank you again for considering these comments.

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