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*Via E-mail*

October 21, 2021

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Peter Spellman, Vice Chair  
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**Re: Comments Regarding 130 Center Street Project, Item No. CP21-0011  
– October 21, 2021 Planning Commission Meeting, Public Hearings  
Agenda Item No. 1**

Dear Chair Schiffrin, Vice-Chair Spellman, Commissioners Conway, Dawson, Greenberg, Maxwell, and Nielsen, and Mr. Bane:

I am writing on behalf of the **Laborers International Union of North America, Local Union 270** and its members living in the City of Santa Cruz (“LIUNA”), regarding the Commercial Street Hotels Project (“Project”). The Project proposes to demolish several existing structures and construct a six-story mixed use building with 233 units, 2,356 square feet of commercial space and underground parking, and related site improvements on a 1.19 acre site located at 130 Center Street (APN: 007-023-26) by applicant Barry Swenson Builders in the City of Santa Cruz (“City”).

LIUNA is concerned that the City is proposing to approve the Project without environmental review under the California Environmental Quality Act (“CEQA”), Public Resources Code section 21000, *et seq.*, based on the assertion that the Project is eligible for a Class 32 In-fill Exemption.

Certified Industrial Hygienist, Francis “Bud” Offermann, PE, CIH has conducted a review of the Project and the documents provided to the Planning Commission and prepared expert comments on the Project’s indoor air emissions and associated health risks. Mr. Offermann concludes it is likely that the Project will expose future employees

of the Project to significant impacts related to indoor air quality, and in particular, emissions of the cancer-causing chemical formaldehyde. Mr. Offermann is a leading expert on indoor air quality and has published extensively on the topic. Mr. Offermann's expert comments and curriculum vitae are attached as Exhibit A. Because the Project's air quality emissions to indoor air will have significant effects relating to air quality, the City is precluded from relying on the Class 32 In-fill development exemption for the Project. LIUNA respectfully requests that the Commission not approve the Project and instead direct staff to prepare a mitigated negative declaration ("MND") or an environmental impact report ("EIR") for the Project prior to approval in compliance with CEQA.

## I. LEGAL STANDARD

CEQA mandates that "the long-term protection of the environment . . . shall be the guiding criterion in public decisions" throughout California. PRC § 21001(d). A "project" is "the whole of an action" directly undertaken, supported, or authorized by a public agency "which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment." PRC § 21065; CEQA Guidelines, 14 CCR § 15378(a). For this reason, CEQA is concerned with an action's ultimate "impact on the environment." *Bozung v. LAFCO* (1975) 13 Cal.3d 263, 283. CEQA requires environmental factors to be considered at the "earliest possible stage . . . before [the project] gains irreversible momentum," *Id.* 13 Cal.3d at 277, "at a point in the planning process where genuine flexibility remains." *Sundstrom v. Mendocino County* (1988) 202 Cal.App.3d 296, 307.

To achieve its objectives of environmental protection, CEQA has a three-tiered structure. 14 CCR § 15002(k); *Committee to Save the Hollywoodland Specific Plan v. City of Los Angeles* (2008) 161 Cal.App.4th 1168, 1185-86 ("*Hollywoodland*"). First, if a project falls into an exempt category, or it can be seen with certainty that the activity in question will not have a significant effect on the environment, no further agency evaluation is required. *Id.* Second, if there is a possibility the project will have a significant effect on the environment, the agency must perform an initial threshold study. *Id.*; 14 CCR § 15063(a). If the study indicates that there is no substantial evidence that the project or any of its aspects may cause a significant effect on the environment the agency may issue a negative declaration. *Id.*, 14 CCR §§ 15063(b)(2), 15070. Finally, if the project will have a significant effect on the environment, an environmental impact report ("EIR") is required. *Id.* Here, since the City proposes to exempt the Project from CEQA entirely, we are at the first step of the CEQA process.

### A. CEQA Exemptions.

CEQA identifies certain classes of projects which are exempt from the provisions of CEQA. These are called categorical exemptions. 14 CCR §§ 15300, 15354. "Exemptions to CEQA are narrowly construed and "[e]xemption categories are not to be

expanded beyond the reasonable scope of their statutory language.” *Mountain Lion Foundation v. Fish & Game Com.* (1997) 16 Cal.4th 105, 125.

The determination as to the appropriate scope of a categorical exemption is a question of law subject to independent, *i.e.* de novo, review. *San Lorenzo Valley Community Advocates for Responsible Education v. San Lorenzo Valley Unified School Dist.*, (2006) 139 Cal.App.4th 1356, 1375 (“[Q]uestions of interpretation or application of the requirements of CEQA are matters of law. (Citations.) Thus, for example, interpreting the scope of a CEQA exemption presents ‘a question of law, subject to de novo review by this court.’ (Citations).”)

The City asserts the Project is categorically exempt from the requirements of CEQA as an “in-fill” project (Class 32). In order to utilize a Class 32 In-Fill Exemption, the City must have substantial evidence that, among other findings, “[t]he project site has no value as habitat for endangered, rare or threatened species” or where “[a]pproval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.” 14 CCR §§ 15332(c), (d). These factual determinations required to be made in order for the City to invoke the Class 32 In-Fill Exemption must be supported by substantial evidence in the record. *Banker’s Hill, Hillcrest, Park W. Cmty. Pres. Grp. v. City of San Diego* (2006) 139 Cal.App.4th 249, 267-69.

Substantial evidence evident in the record and provided by LIUNA’s experts demonstrates that the City cannot make the prerequisite finding to utilizing a Class 32 In-Fill Exemption that the Project would not result in any significant effects relating to air quality. As a result, the City should prepare an MND or EIR to analyze the Project’s impacts on air quality and the resulting health risks to the Project’s future residents and employees, and the MND or draft EIR should be circulated for public review and comment in accordance with CEQA.

## II. ANALYSIS

### A. The Project Will Have Significant Air Quality Impacts, Precluding Reliance on the Categorical Exemption.

The Project will introduce toxic air contaminants to air inside the Project that poses significant risks to future residents and employees of the proposed building. Formaldehyde is a known human carcinogen and listed by the State of California as a Toxic Air Contaminant (“TAC”). The Monterey Bay Unified Air Pollution Control District (“MBUAPCD”) has established a significance threshold of health risks for carcinogenic TACs of 10 in a million. [https://www.mbard.org/files/f665829d1/CEQA\\_full+%281%29.pdf](https://www.mbard.org/files/f665829d1/CEQA_full+%281%29.pdf). The City’s proposed exemption fails to acknowledge the significant indoor air emissions that will result from the Project.

Mr. Offermann explains that many composite wood products typically used indoors contain formaldehyde-based glues which off-gas formaldehyde over a very long time period. Ex. A, pp. 2-3. He explains, “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.” *Id.*

Mr. Offermann calculates that future residents of the Project will be exposed to a cancer risk from formaldehyde of approximately 120 per million, assuming all materials are compliant with the California Air Resources Board’s formaldehyde airborne toxics control measure. *Id.* at 4. This exceeds MBUAPCD’s CEQA significance threshold for airborne cancer risk from TACs of 10 per million. *Id.* Mr. Offermann stresses that his calculations account for the fact that wood products for the project would be compliant with the most recent CARB standards. *Id.*; *Id.*, Appendix A.

Mr. Offermann calculates that future employees of the Project will be exposed to a cancer risk from formaldehyde of approximately 17.7 per million, assuming all materials are compliant with the California Air Resources Board’s formaldehyde airborne toxics control measure. *Id.* at 5. This again exceeds MBUAPCD’s CEQA significance thresholds for airborne cancer risk from TACs of 10 per million. *Id.* Mr. Offermann stresses that his calculations account for the fact that wood products for the project would be compliant with the most recent CARB standards. *Id.*

Mr. Offermann concludes that these significant environmental impacts must be analyzed, and mitigation measures should be imposed to reduce employees’ formaldehyde exposure. *Id.*, pp. 4-5. He prescribes a methodology for calculating the Project’s formaldehyde emissions in order to do a more project-specific health risk assessment. *Id.* at 6-10. Mr. Offermann also suggests several feasible mitigation measures, such as requiring the use of composite wood products manufactured with CARB approved no-added formaldehyde (NAF) resins, which are readily available. *Id.* at 11-12.

When a Project exceeds a duly adopted CEQA significance threshold, as here, this alone establishes substantial evidence that the project will have a significant adverse environmental impact. 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 Air District’s “published CEQA quantitative criteria” and “threshold level of cumulative significance”); see also *Communities for a Better Env’t. v. California Res. Agency* (2002) 103 Cal.App.4th 98, 110-11 (“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”). It should be noted that the 10

in a million cancer risk significance threshold also has been adopted by other air districts around the State. See, e.g. Bay Area Air Quality Management District, California Environmental Quality Act Air Quality Guidelines (May 2017) ([https://www.baaqmd.gov/~media/files/planning-and-research/ceqa/ceqa\\_guidelines\\_may2017-pdf.pdf?la=en](https://www.baaqmd.gov/~media/files/planning-and-research/ceqa/ceqa_guidelines_may2017-pdf.pdf?la=en)).

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, and in particular the residents and commercial employees, will be 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 direct and cumulative health risks. Mr. Offermann's expert analysis demonstrates that the City cannot make the requisite finding needed to rely on the Class 32 exemption that "the project would not result in any significant effects relating to ... air quality...." 14 CCR § 15332(d).

### **III. Conclusion**

LIUNA respectfully requests that the Planning Commission withdraw the CEQA Exemption and prepare either an MND or EIR to analyze and mitigate the Project's adverse environmental impacts. Thank you for considering these comments.

Sincerely,



Michael R. Lozeau