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City of Fremont  
Planning Division  
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Re: Appeal of Zoning Administrator's decision Approving Dual Branded Warm Springs  
Marriott Hotel - (PLN2020- 00140)

Dear Messrs. Pullen and Wage,

On behalf of the **Laborers International Union of North America, Local Union No. 304 ("LIUNA")**, I am submitting this appeal of the Zoning Administrator's decision on September 9, 2020, approving the Dual Branded Warm Springs Marriott Hotel proposed to be located at 44870 South Grimmer Boulevard (APN 519-0900-000-74) ("Project"). As prescribed by Mr. Wage, an executed Universal Planning Application is attached with the relevant sections identified by Mr. Wage filled out and signed. A check in the amount of \$2,025 also accompanies this appeal letter and the Application form.

Pursuant to Fremont Municipal Code § 18.300.030, the facts and basis for this appeal include the following concerns.

The Project includes the construction and operation of a seven-story, 394 room, 267,084 square-foot hotel building as well as an associated parking garage, bar and lounge. The Project is located within Planning Area 3 of the Warm Springs/South Fremont Community Plan ("Community Plan"). The Old Warm Springs Boulevard South Master Plan ("Master Plan") has been adopted by the City for Area 3. The Master Plan provides for a four-to-five story, 50,000 square foot hotel with up to 150 rooms. The Project would be located on the same site identified by the Master Plan for the smaller hotel.

The Master Plan approved for Area 3 includes only 75,000 square feet of non-residential floor area for Area 3. See [https://fremontcityca.iqm2.com/Citizens/Detail\\_LegiFile.aspx?Frame=&MeetingID\\_1433&MediaPosition=&ID=2629&CssClass=](https://fremontcityca.iqm2.com/Citizens/Detail_LegiFile.aspx?Frame=&MeetingID_1433&MediaPosition=&ID=2629&CssClass=). As the City noted at the time it approved the Master Plan, that was less than the 294,030 square feet of nonresidential uses anticipated by the Community Plan. The City nevertheless approved the Master Plan because the Applicant included in the Master Plan a 250,000-square-foot research and development/office building for the adjacent Area 1. It appears that office building in Area 1 ended up being even larger the 310,330 square-foot Valley Oak

Warm Springs Office Building. In any event, the approved Master Plan for Area 3 only includes 75,000 square feet of non-residential floor area, of which only 50,000 square feet was identified for a hotel on APN 519-0900-000-74. In the Master Plan approval, the City Council expressly approved the inclusion of the resulting Floor Area Ratio for the Master Plan's hotel:

BE IT FURTHER RESOLVED that the City Council hereby approves the Master Plan, including an FAR reduction from 1.5 to 0.57 for the proposed hotel, based on and as conditioned in the Findings and Conditions which are attached to the City Council Staff Report as Exhibit "D".

The Findings and Conditions of Approval for the Master Plan in turn require that "[s]ubsequent project entitlements, including but not limited to Design Review, Tentative Tract Map, and Preliminary Grading Plan, for development of Planning Areas 1 and 3 (as described in the staff report), shall be in accordance with the ... approved Master Plan (as shown in Exhibit "B")...." General Conditions A-5. Moreover, although "building footprints, setbacks, street designs, frontage improvements, and architectural design are conceptual in nature" and thus open to adjustment during future design reviews, the Findings and Conditions do not reserve the approved FAR and hotel sizing approved in the Master Plan for future changes without an amendment to the Master Plan. Lastly, because of the dramatic difference in size and FAR of the proposed Project and the approved size and FAR in the Master Plan, that change is not a minor modification of the Master Plan.

During the Zoning Administrator hearing for the Project, staff indicated that because the Warm Springs/South Fremont Community Plan sets minimum development goals, the City was free to increase the hotel size and FAR approved in the subsequent Master Plan. LIUNA does not see any authority supporting this assertion. Instead, the Warm Springs/South Fremont Community Plan relies on the subsequent Master Plans to work out the details for specified areas of the Community Plan. "Future development proposals must be carefully vetted through a master planning process to maintain compatibility and ensure they meet the goals and vision of the Community Plan." Community plan, p. 25. The careful vetting of the Master Plan resulted in the approval of an upper limit of the size of the hotel and a reduced FAR. This was in light of the additional non-residential uses included in and adjacent to Area 3.

Nothing in the Master Plan corroborates staff's assertion during the Zoning Administrator's hearing that, as long as elements of an approved Master Plan get larger, denser and are consistent with the Community Plan, staff is free to change the Master Plan. On the contrary, to amend the Master Plan, an application must be filed with the Planning Commission and proceed through the process to the City Council as provided in Title 18 of the City's Municipal Code. In particular, "[a]mendments to an approved master plan shall follow the same review and approval process prescribed for the original permit." Section 18.49.050(a)(2)(B). The proposed Project did not propose to amend the Master Plan in order to expand the hotel included in the prior approved Master Plan. In order to proceed, the Master Plan must be amended.

In addition, this appeal questions whether the City has complied with CEQA in approving the Project. The Zoning Administrator relied upon two exemptions to CEQA to support its approval of the Project. These are the Class 32 exemption set forth at CEQA Guidelines § 15332 for Infill Development Projects and the streamlining provision set forth at CEQA Guidelines § 15183. LIUNA's review of the staff report and Project documents indicates that the City cannot

rely upon either of these two exemptions. The Project, through its emission of formaldehyde from finishing materials such as cabinets, doors, baseboards, and other interior features, will have a significant environmental impact on indoor air quality within the Project, and resulting cancer risks to workers. This impact has not previously been addressed for the Project or in the EIR prepared for the Community Plan.

It is the City's obligation to investigate potential environmental impacts from a project's emissions of toxic air contaminant ("TACs"), including formaldehyde. Evaluations of similar projects in California using materials that comply with the California Air Resources Board's ("CARB") airborne toxics control measure for formaldehyde have indicated that hotel and other projects nevertheless will emit significant concentrations of formaldehyde into indoor air at levels resulting in cancer risks to employees in excess of 10 in a million. 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 a significant environmental impact. BAAQMD also has established a significance threshold for cumulative exposure as an excess cancer risk of 100 in one million.

Because the Project's emissions of formaldehyde to indoor air may pose significant health risks to workers, the City cannot make the requisite findings for either Section § 15332 or 15183. In order to utilize Section 15332, the City must find that "[a]pproval of the project would not result in any significant effects relating to ... air quality,..." 14 Cal. Admin. Code § 15332(d). Because the City has not evaluated the Project's potential emissions of formaldehyde to the Project's indoor air, and the resulting health risks to workers, the City has no evidence that this significant air quality effect will not result.

Similarly, 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). The Community Plan 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 the Community Plan area.

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). The City has not identified development standards or the findings identified by Section 15183 addressing indoor air quality and resulting health risk 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.

LIUNA's appeal requests that the Planning Commission vacate the Zoning Administrator's approval of the Project. Any future consideration of the Project would need to include an amendment to the Master Plan. In addition, the Project is not exempt from CEQA based on the Section 15332 and 15183 and consideration of the Project must evaluate the Project's emissions of formaldehyde to indoor air and resulting health risks to the hotel workers in a supplemental EIR or, if appropriate, a mitigated negative declaration.

Sincerely,



Michael R. Lozeau