



T 510.636.4200
F 510.636.4205

1000 Harrison Street, Ste. 150
Sunnyvale, CA 94086

www.lozeaudrury.com
info@lozeaudrury.com

October 17, 2023

By E-mail

David Carnahan, City Clerk
City Hall
456 W. Olive Way
Sunnyvale, CA 94086
cityclerk@sunnyvale.ca.gov

George Schroeder, Principal Planner
Community Development Department
603 All American Way,
Sunnyvale, CA 94086
gschroeder@sunnyvale.ca.gov

Shila Bagley, Associate Planner
Community Development Department
603 All American Way,
Sunnyvale, CA 94086
sbagley@sunnyvale.ca.gov

Re: Appeal of the City of Sunnyvale Planning Commission's Decision to Approve the Special Development Permit, Tentative Parcel Map, and CEQA Determinations Pursuant to 15162 and 15168(c)(2) and (4) for the 1150-1170 Kifer Road Project (File #: 2022-7168)

Dear Mr. Carnahan, Mr. Schroeder, and Ms. Bagley:

I am writing on behalf of the **Laborers International Union of North America, Local Union No. 270 ("LIUNA")** and its members living and/or working in or around the City of Sunnyvale ("City"). LIUNA hereby appeals the Planning Commission's decision to approve the Special Development Permit, Tentative Parcel Map, and CEQA determinations pursuant to 15162 and 15168(c)(2) and (4) on October 9, 2023, for the project known as 1150-1170 Kifer Road located at 1150-1170 Kifer Road (File #: 2022-7168) (APNs: 205-50-034 and 205-50-035) in the City of Sunnyvale, California by applicant Prometheus Real Estate Group ("Project"). These appeals are filed pursuant to City of Sunnyvale Municipal Code section 19.98.070, establishing procedures for the appeal of a final decision of the Planning Commission to the City Council by filing a written appeal with the City Clerk.

In the prior 2016 Lawrence Station Area Plan Environmental Impact Report, State Clearinghouse No. 2013082030 ("2016 EIR") and 2021 Lawrence Station Area Plan Update/Intuitive Surgical Corporate Campus Project Subsequent Environmental Impact Report, State Clearinghouse No. 2019012022 ("2021 SEIR"), the City did not evaluate the Project's indoor air emissions of formaldehyde. Since 2016, new information regarding the inability of existing regulations adopted by the California Air Resources Board to reduce indoor air emissions of formaldehyde to levels approaching 10 in a million cancer risks has become available since 2016. (See Comments of Francis J. Offermann PE, CIH re: Indoor Air Quality: 1150-1170 Kifer Apartments Project, San Jose, CA (Oct. 9, 2023). As LIUNA's expert consultant determined, the Project's emission of formaldehyde to indoor air in the proposed buildings will result in cancer risks to residents of 120 cancers per million, well above the applicable threshold of 10 in a million. Because this information regarding the inability of the 2009 California Air Resources Control

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Board's Airborne Toxics Control Measure for formaldehyde in composite wood products to eliminate the health risks posed by formaldehyde emissions to indoor air of residential projects was not available at the time of the 2016 EIR, that impact must be considered in the review of the Project. Likewise, because at the program EIR stage, the City could not have known of the type of interior finishing products any given project was proposing to use, the presence of high levels of formaldehyde from composite wood materials also is new information that must be addressed for the Project.

The 2021 SEIR did not involve any new residential projects within the plan area adopted in 2016, instead addressing expanding the Lawrence Station Area Plan boundary to encompass the Intuitive Surgical Corporate Campus Project and rezoning within that expanded area. The current Project falls within the 2016 plan area. No issue of residential formaldehyde emissions within that area was within the scope of the 2021 SEIR.

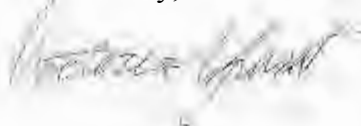
As a result, pursuant to CEQA Guidelines § 15162, a subsequent EIR must be prepared for the Project in order to address the “[n]ew information of substantial importance” presented by Mr. Offermann, “which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete” and which shows that “[t]he project will have one or more significant effects not discussed in the previous EIR...” 14 Cal. Admin. Code § 15162(a)(3)(A). *See also* 14 Cal. Admin. Code § 15168 (only “[i]f the agency finds that pursuant to Section 15162, no subsequent EIR would be required, the agency can approve the activity as being within the scope of the project covered by the program EIR, and no new environmental document would be required”].)

In addition, because the prior 2016 EIR, and to the extent relevant the 2021 SEIR, found that the overall Area Plan project would have a significant and unavoidable cumulative impact to air quality from construction activities, the City must consider and adopt a statement of overriding considerations for that impact for this Project prior to its approval. The Environmental Checklist's conclusion that simply because the Project itself would not cause a significant impact, is not sufficient evidence to demonstrate that the Project would not contribute to the cumulative construction emission impact recognized in the prior EIRs.

This appeal incorporates the prior comments submitted on behalf of LIUNA as well as the indoor air analysis conducted for the Project by Francis J. Offermann, PE CIH, which are attached hereto as Attachment 1.

LIUNA requests that the City Council vacate the MND, the Special Development Permit, and the Tentative Parcel Map, and instruct staff to prepare a subsequent EIR for the Project prior to reconsidering the proposed permit and map.

Sincerely,



Victoria Yundt
Lozeau Drury LLP