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Via E-mail

Greg Sandlund, Planning Director
City of Sacramento
Community Development Department
300 Richards Boulevard, 3rd Floor
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Re: Appeal of Planning Commission June 13, 2024 Decision Approving DR22-238, American River One Project (DR22-238) Item No. 8, June 13, 2024 Planning and Design Commission Hearing

Dear Mr. Sandlund:

On June 13, 2024, the Planning and Design Commission approved the American River One Project (DR22-238) ("Project") based on a finding that the Project is exempt from the California Environmental Quality Act ("CEQA") pursuant to Public Resources Code ("PRC") § 21155.4 and CEQA Guidelines, 14 Cal. Code Regs. § 15182(b). **Laborers Union of North America, Local Union 185 ("LIUNA")** appeals the Planning and Design Commission's approval of the Project and exemption determination for the reasons discussed below.

Despite any contrary provision of the Sacramento Municipal Code, the Planning and Decision Commission's decision is appealable to the City Council. CEQA provides that "[i]f a nonelected decisionmaking body of a lead agency certifies an environmental impact report, approves a negative declaration or mitigated negative declaration, or determines that a project is not subject to this division, that certification, approval, or determination may be appealed to the agency's elected decision making body, if any." Pub. Res. Code § 21151(c). Because the City's Planning and Design Commission is not an elected decisionmaking body and the Commission determined the Project is exempt from CEQA, the City must allow an appeal to the City's elected decision making body – the City Council.

LIUNA appeals the Project approval and determination that the Project is exempt from CEQA pursuant to PRC § 21155.4 and CEQA Guidelines § 15182(b) because those provisions contain a significant caveat to the exemption: "[f]urther environmental review shall be conducted ... if any of the events specified in Section 21166 have occurred." PRC § 21155.4. One such event is where "[n]ew information, which was not known and could not have been known at the time the environmental impact report was certified as complete, becomes available." PRC § 21166(c). In the case of the American River One Project, the EIR for the River District Special Plan was certified on February 15, 2011. Thus, new information relating to potentially significant impacts which was not available in early 2011 must still be evaluated in an appropriate CEQA environmental review document for the Project.

LIUNA's comments are based on new information that has come to light since the 2011 EIR for the River District Specific Plan establishing a significant risk to the health of future residents and employees from the Project's use of composite wood finishing materials for the Project's interior spaces that will emit formaldehyde at levels resulting in cancer risks greatly exceeding the 10 in a million cancer risk threshold identified by the Sacramento Metropolitan Air Quality Management District ("SMAQMD"). Of particular concern is new information showing that these excessive health risks will occur even if finishing materials compliant with the California Air Resources Board's Airborne Toxic Control Measure to Reduce Formaldehyde Emissions from Composite Wood Products (Formaldehyde ATCM") are used for the Project. SMAQMD's thresholds of significance are attached as Exhibit A.

In support of its comments, LIUNA has retained indoor air quality expert, Francis Offermann, PE, CIH. Mr. Offermann, a Certified Industrial Hygienist and Professional Mechanical Engineer, concludes that the Project will expose future residents to significant impacts related to indoor air quality, and in particular, emissions for 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. Mr. Offerman's comment letter and curriculum vitae are attached as Exhibit B.

Mr. Offermann explains that many composite wood products typically used in modern home 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." (Ex. B, p. 3.)

Mr. Offermann concludes that future residents of the Project will be exposed to a cancer risk from formaldehyde of approximately 120 per million, *even assuming* that all materials are compliant with the California Air Resources Board's formaldehyde airborne toxics control measure. (Ex. A, p. 4.) This exceeds SMAQMD's CEQA significance threshold for airborne cancer risk of 10 per million. He also concludes that the employees in the commercial spaces of the Project also will be exposed to a cancer-risk from formaldehyde from the Project of 17.7 per million, also exceeding the SMAQMD threshold. (*Id.*, p. 5.) Importantly, Mr. Offermann's conclusions are based on studies conducted in 2019 and therefore were not available when the 2011 River District Specific Plan EIR was approved. (*Id.*, p. 3.)

The CARB requirements are known as the Airborne Toxic Control Measure to Reduce Formaldehyde Emissions from Composite Wood Products (Formaldehyde ATCM"). (17 Cal.Code Regs. § 93120-93120.12.) Composite wood products include hardwood plywood, particleboard ("PB"), and medium density fiberboard ("MDF"). (*Id.*, § 93120(b); § 93120.1(a)(8).) The rules rely on prohibiting the sale, distribution, supply, or manufacturing of plywood, PB, and MDF that exceed formaldehyde emission standards established by the rule. (*Id.*, § 93120.2(a).) The standards were phased in over a period of years. By January 1, 2009, composite wood products had to comply with the Phase 1 emission standards established for each type of product. (*Id.*, § 93120.2(a) (a certain category of hardwood plywood products had until July 1, 2009 to meet the standard applicable to those products).) Each product category then had several years to comply with a lower Phase 2 standard. (*Id.*, § 93120.2(a).) Thus, by January 1, 2010, no hardwood plywood with a veneer core could be sold in California without meeting its Phase 2 formaldehyde

emission standard. (*Id.*) Particle board and MDF products had to comply with their Phase 2 standard by January 1, 2011. Thin MDF had to comply with its applicable standard by January 1, 2012. (*Id.*) The remaining plywoods with composite cores had to comply no later than July 1, 2012. (*Id.*)

Mr. Offermann states with confidence that residences using materials that comply with the Phase 2 formaldehyde emissions standards will pose significant cancer risks based on his review of a follow-up 2019 study to the 2009 New Homes study as well as his own extensive experience studying and evaluating formaldehyde emissions from products and buildings. The 2019 Singer study measured formaldehyde levels in homes built after 2009. Thus, most of the homes included in the study were constructed with materials that were subject to the Phase 2 emission standards. Mr. Offermann's expert comments are substantial evidence that, based on the available data, and without the benefit of the City investigating or gathering any information on formaldehyde emissions from the Project, the Project will have significant health risks on future residents from its emissions of formaldehyde because it is allowed to and likely will use CARB-compliant composite wood materials for its indoor finishing. Because this impact was not addressed in the 2011 EIR for the River District Specific Plan, that EIR is insufficient and inadequate under CEQA and excludes the Project and this potentially significant health impact from being exempted from CEQA review.

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 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"].) Since expert evidence demonstrates that the Project will exceed the SMAQMD's CEQA significance threshold, there is substantial evidence that an "unstudied, potentially significant environmental effect[]" exists. (See *San Mateo Gardens, supra*, 1 Cal.5th at 958.)

The City has a duty to investigate issues relating to a project's potential environmental impacts. (See *County Sanitation Dist. No. 2 v. County of Kern* (2005) 127 Cal.App.4th 1544, 1597-98. ["[U]nder CEQA, the lead agency bears a burden to investigate potential environmental impacts."].) This is especially true for toxic air contaminants such as formaldehyde. The proposed Project will have significant impacts on air quality and health risks by emitting cancer-causing levels of formaldehyde into the air that will expose future residents and employees to cancer risks in excess of SMAQMD's threshold of significance for cancer health risks of 10 per million.

This indoor air quality impact could not have been known until 2019 when the first study was published showing that buildings using composite wood products that comply with the CARB formaldehyde standards vastly exceed CEQA significance thresholds for cancer risk. (Offerman, p. 3.) Therefore, this impact was not known and could not have been known when the 2011 EIR was approved. When scientific information was not available at the time of prior CEQA review, more recent studies showing that a project may have more serious human health or environmental impacts constitute significant new information requiring a subsequent EIR. (*Security Env'tl Sys. v*

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South Coast Air Quality Mgmt. Dist. (1991) 229 Cal.App.3d 110, 124; *Meridian Ocean Sys. v. State Lands Com.* (1990) 222 Cal.App.3d 153, 169). As such, the staff report's conclusion that an exemption is warranted is improper under PRC § 21155.4 and CEQA Guidelines § 15182(b) and subsequent environmental review is required. Mr. Offerman's expert comments are substantial evidence of new significant information and significant effect to air quality and health risks, precluding the City's reliance on these two CEQA exemption provisions.

Additionally, Mr. Offermann suggests mitigating the Project's indoor air quality impacts by requiring all composite wood products used in construction of the Project to be manufactured with CARB-approved no-added formaldehyde (NAF) resins. (Ex. A, pp. 11-13.) Because indoor air quality impacts were not analyzed in the 2011 EIR, the City has not considered the use of NAF composite wood products. Furthermore, such products have only become readily available recently and, thus, could not have been considered in 2011. These mitigation measures also are new information of substantial importance triggering an additional CEQA review. 14 Cal. Admin. Code § 15162(a)(3)(C) & (D). Notably, even compliance with California's green building standards does not address this impact because the building standards do not change the CARB regulations. As Mr. Offermann explains, the use of CARB-compliant composite wood materials pursuant to the green building code does not prevent health risks as high as 12 times the 10 in a million cancer risk threshold. (Offerman comments, pp. 3-4.)

For these reasons, staff is incorrect in relying on PRC § 21155.4 and CEQA Guidelines § 15182(b). A supplemental EIR must be prepared to evaluate the direct and cumulative impacts of formaldehyde emissions to indoor air from the Project's use of composite wood materials on the Project's interior finishing.

Sincerely,



Rebecca Davis
Lozeau Drury LLP