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Via Email and eComment

September 17, 2024

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Re: Appellant LIUNA's Supplemental Comments on American River One Project (DR22-238) Item No. 15, September 17, 2024 City Council Hearing

Dear Mayor Steinberg, Honorable Councilmembers, and staff:

The following comments are submitted on behalf of Appellant Laborers' International Union of North America, Local Union 185 ("LIUNA") on Agenda Item No. 17 of the upcoming September 17, 2024 City Council hearing for the American River One Project (DR22-238) ("Project"). The Project would include the construction of four residential towers over a podium resulting in 787 dwelling units. The Project is located at 500 & 450 Bercut Drive, within the River District Special Planning District. This letter supplements LIUNA's letters dated June 11, 2024 and September 12, 2024, which are incorporated in their entirety. This letter is in response to City staff's report dated August 17, 2024 ("Staff Report").

The Staff Report states that LIUNA has not submitted new information of a significant impact on indoor air quality. This is incorrect for several reasons. First, the Staff Report argues that the "issues surrounding formaldehyde in building materials have been known and were known" when the 2011 EIR for the River District Specific Plan was certified. To support this argument, the Staff Report cites to the California Air Resources Board's ("CARB") 2007

Composite Wood Products Airborne Toxic Control Measure ("ATCM"), the purpose of which was to regulate and reduce formaldehyde emissions from composite wood products, a common building material. However, in his initial comments, Mr. Offermann cited to a study published in 2020 (Singer, et al., 2020) that was conducted in 2016 to 2018 that found even after the implementation of the CARB ATCM, average indoor emissions of formaldehyde remained at levels that result in a median lifetime cancer risk of 120 per million. (Offermann June 8, 2024 Comments, pp. 3-4.) Prior to the 2020 study, it may have been reasonable to assume the CARB ATCM would reduce cancer risks of formaldehyde emissions in indoor ambient air to safe levels. However, as of the publication of the Singer study, the science indicates that is not the case. The cancer risk calculated by Mr. Offerman based on the results of the 2020 Singer study is significant new information demonstrating that the CARB ATCM does not reduce cancer risks to less than 10 in a million and will exceed the Sacramento Metropolitan Air Quality Management District ("SMAQMD") threshold for cancer risks of 10 per million.

When new significant scientific information was not available at the time of a prior CEQA review, more recent studies showing that a project may have more serious human health or environmental impacts then were identifiable during that CEQA review constitute significant new information requiring a subsequent EIR. (*Security Envt'l Sys. v 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). At the time the 2011 EIR for the River District Specific Plan was certified, the effectiveness of the CARB ATCM and the serious health risk of formaldehyde emissions even from CARB-compliant composite wood finishing materials was not known. Now, there is new information, as provided by Mr. Offermann based on the new information in the 2020 Singer study, showing that even if the Project complies with the CARB ATCM, the Project's indoor air emissions from building materials will still exceed SMAQMD's significance threshold for cancer health risks of 10 per million, creating a significant health impact. (Offermann June 8, 2024 Comments, pp. 3-4.) As a result, the Project cannot be exempt from CEQA.

Second, the Staff Report states that LIUNA has not provided any substantial evidence that the Project will be constructed with building materials containing significant amounts of formaldehyde. However, it is the City's, not the public's, duty to investigate a project's impacts, which in this case includes the duty to investigate what types of building materials a project will include, especially where, as here, they may be toxic to future Project residents. (*Cty. Sanitation Dist. No. 2 v. Cty. of Kern* (2005) 127 Cal.App.4th 1544, 1597–98 ["the lead agency bears a burden to investigate potential environmental impacts"].) Additionally, it is the City's duty to analyze whether the Project may cause a "reasonably foreseeable indirect physical change[s] in the environment," which includes the Project's indirect impacts on indoor air quality. (14 CCR § 15378(a).) Composite wood finishing products are commonly used in residential construction projects, including cabinets, baseboards, flooring, window shades, doors and trim. (Offermann June 8, 2024 Comments, p. 3.) Absent an enforceable mitigation measure prohibiting their use, it is reasonably foreseeable that any residential project attempting to minimize or control costs will be using these materials in their project, which would be toxic to future residents.

Third, the Staff Report argues that Mr. Offermann's reliance on SMAQMD's significance threshold for cancer risks of 10 per million is not applicable because the threshold was not designed to evaluate cancer risks "above *ambient air quality* conditions, i.e., outdoor air, not indoor." This is incorrect. Nowhere does the SMAQMD CEQA Guide, which provides thresholds of significance for air quality emissions, state that "ambient air quality" only refers to outdoor air. Indeed, for example, the New Oxford American Dictionary defines "ambient" as "of or relating to the immediate surroundings of something." (New Oxford American Dictionary, p. 48 (2d ed. 2005). Nor are SMAQMD's emissions thresholds limited to "outdoor air." The immediate surroundings of formaldehyde emissions from this Project is the indoor ambient air where future residents will be spending considerable time breathing. Whether they are exposed to a greater than 10 in a million cancer risk outdoors or indoors does not alter that cancer risk. It is plainly a significant environmental impact that must be addressed in any legitimate CEQA document. Thus, a significance threshold for cancer risks of 10 per million remains relevant and applicable to the Project's indoor toxic air contaminant emissions.

Fourth, the Staff Report contends that it need not "consider the environmental impact of the [P]roject on itself, rather than the environmental impact of the [P]roject on the environment, as CEQA requires." The City misunderstands CEQA's requirements. In *California Building Industry Ass'n v. Bay Area Air Quality Mgmt. Dist.* (2015) 62 Cal.4th 369, 386 ("*CBIA"*), the California Supreme Court expressly held that that potential adverse impacts to future users and residents from pollution generated by a proposed project ***must be addressed*** under CEQA. At issue in *CBIA* was whether the Air District could enact CEQA guidelines that advised lead agencies that they must analyze the impacts of adjacent environmental conditions on a project. The Supreme Court held that CEQA does not generally require lead agencies to consider the environment's effects on a project. (*CBIA*, 62 Cal.4th at 800-801.) However, to the extent a project may exacerbate existing environmental conditions at or near a project site, those would still have to be considered pursuant to CEQA. (*Id*. at 801.) In so holding, the Court expressly held that CEQA's statutory language required lead agencies to disclose and analyze "impacts on ***a project's users or residents*** that arise ***from the project's effects*** on the environment." (*Id*. at 800 [emphasis added].)

Here, 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 residing in and using the residences anticipated by the Project once they are built and begin emitting formaldehyde. Once built, the Project's housing units will begin to emit formaldehyde at levels that pose significant health risks. The Supreme Court in *CBIA* 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.

Fifth, the Staff Report argues that since building materials are regulated by CARB and the California Building Standards Code, that the City is "without jurisdiction to interfere with this comprehensive regulatory scheme." The fact that these regulations exist does not prevent the City from using building materials that would reduce the indoor formaldehyde emissions below a

significance threshold of 10 in a million cancers. This issue is no different from addressing the emissions from diesel trucks necessary to build the project. Although the emissions of those trucks are regulated by CARB and EPA, that is not a rationale for ignoring their ongoing emissions and the health risks they pose. Using safer building materials to protect future Project residents would not interfere with the "comprehensive regulatory scheme" for building materials set out by CARB and the California Building Standards Code. Indeed, CARB itself encourages manufacturers and builders to use products that go beyond the minimum formaldehyde levels required by the ATCM, including the use of "no-added formaldehyde" and "ultra-low emitting" formaldehyde products. (*See, e.g.* *https://ww2.arb.ca.gov/resources/documents/frequently-asked-questions-no-added-formaldehyde-and-ultra-low-emitting*.) As Mr. Offermann explains, mitigation requiring a residential project using composite wood products with no-added formaldehyde resins would reduce these formaldehyde emissions to levels less than 10 in a million (though ultra-low emitting formaldehyde products would not). (Offermann June 8, 2024 Comments, p. 19.)

Lastly, there is no indication in the Staff Report that the City has retained an expert industrial hygienist and indoor environmental engineer with comparable expertise to Mr. Offermann to review his analysis and underlying studies. "[O]pinions rendered by nonexperts … do not amount to substantial evidence." (*Jensen v. City of Santa Rosa*, (2018) 23 Cal.App.5th 877, 894,

For these reasons, City staff is in incorrect in relying on PRC § 21155.4 and CEQA Guidelines § 15182(b) to exempt the Project from CEQA. The City Council should uphold LIUNA's appeal and order staff to prepare a subsequent EIR for the River District Specific Plan and the proposed American River One project.

Sincerely,

Kylah Staley
Lozeau Drury LLP