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November 14, 2018

VIA HAND DELIVERY & EMAIL

Matthew VanOosten, Senior Planner
Community Development Department, City of Mountainview
City Hall, Plaza Conference Room
500 Castro Street
Mountain View, CA 94041
matthew.vanoosten@mountainview.gov

Re: Comments on Item 4.3 of Nov. 14, 2018 Zoning/Subdivision Committee Hearing; Hotel/Office Mixed-Use Project on Hope Street Lots 4 and 8 (PL-2018-084)

Dear Mr. VanOosten:

On behalf of UNITE HERE Local 19 and Mountain View resident Sarah McDermott (collectively "Commentors"), this Office submits the following comments to the City of Mountain View ("City") regarding the the above-referenced hotel/office mixed-use development ("Project") proposed by the Robert Green Company ("Applicant") located in the City on Lot 4 (hotel component) and Lot 8 (office component) fronting Hope Street ("Site").

According to the one-page hearing agenda, the Community Development Department is recommending that the City Council approve the Project's various land use permits ("Entitlements") and adoption of an In-Fill Development Categorical Exemption ("CE") (collectively "Project Approvals"). However, as discussed below, substantial evidence demonstrates that the Project conflicts with applicable provisions of the Mountain View Municipal Code ("MVMC" or "Code") and may cause significant environmental impacts recognized by the California Environmental Quality Act, Pub. Res. Code § 21000 *et seq*., ("CEQA"). For these reasons, Commentors respectfully urge that the City withhold all Project Approvals until a more through CEQA analysis is prepared, such as a mitigated negative declaration ("MND") or Environmental Impact Report ("EIR").

This letter outlines potential CEQA impacts and Code conflicts posed by the Project based on documents available to this Office.[1]

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[1] Please note that this Office contacted the Community Development Department to confirm whether additional documents concerning CEQA impacts were available to the public (e.g., noise studies, traffic report, air quality/greenhouse gas ["GHG"] study, preliminary construction plans, etc.). As of the date of this letter, no response was received, and the comments herein are based on documents otherwise available on the City's website (accessed in November 2018).

A. PROJECT PIECEMEALING AND DEFERRED ANALYSIS

Under CEQA, a project's CEQA review must assess the whole of an action, and the formation of mitigation measures should not be deferred to post-approval actions. Cite. Here, the 29-page proposed Findings of Approval includes 195 Conditions of Approval ("COAs"),[2] which reference many future actions and/or studies that will serve as the basis of formulating mitigation measures, such as:

- Future sign program application (COAs 38-39),
- Future construction parking plan (COA 46),
- Future geotechnical technical report (COA 56),
- Future Traffic Demand Management ("TDM") program (COA 59),
- Future on- and off-site utility/infrastructure improvements (COAs 62-100),
- Future excavation permit (COA 84),
- Future construction and demolition debris management plan (COA 108),
- Future solid waste management plan (COA 110),
- Future construction plan (COA 119), and
- Future traffic control plans (COA 120).

These actions and plans may affect the analysis and mitigation of various CEQA impacts including but not limited to the following resources: aesthetics, air quality, cultural/historic, geology/soils, greenhouse gas ("GHG") emissions, hazards and hazardous materials, noise, population and housing, public services, traffic, utility services, and their respective cumulative impacts.

B. CEQA DOES NOT ALLOW PROJECT-SPECIFIC MITIGATION MEASURES IN CATEGORICAL EXEMPTIONS

The Class 32 CE used here is for in-fill development projects, which is only appropriate if the project is compliant with all applicable zoning designations and regulations, as well as not resulting in any significant traffic, noise, air quality, or water quality effects. CEQA Guidelines § 15332. However, as discussed herein, the Project does not comply with all applicable zoning regulations, and there appears to be no analysis supporting with substantial evidence that the Project's construction and operations will not have a significant impact on resources mentioned above.

Furthermore, CEQA does not allow a lead agency to use project-specific mitigation measures to reduce project impacts as a means to qualify for a categorical exemption and evade a more demanding CEQA review (e.g., MND, EIR). Here, for example, the 93-page Project Plans includes an expert tree report concerning the removal of numerous trees.[3] Therein, the expert recommends 15 measures to be taken during the Project's construction to protect trees,[4] which were subsequently included in the Proposed Findings of Approval (COA 34). The inclusion of these mitigation measures is an admission by the City that the Project may have a potential environmental impact that warrants further analysis via a MND or EIR. Furthermore, the presence

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[2] Proposed Findings of Approval, http://laserfiche.mountainview.gov/Weblink/0/edoc/223165/2%20-%20Draft%20Findings%20Report.pdf.
[3] Project Plans, Sheets L.0.06.01 & L30.06.02, http://laserfiche.mountainview.gov/Weblink/0/edoc/223166/3%20-%20Project%20Plans.pdf.
[4] *Ibid*., (pp. 5-6).

of so many protected trees constitutes an unusual circumstance that further suggests a categorical exemption is inappropriate for this Project. *See Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086; *see also* C*ommittee to Save the Hollywoodland Specific Plan v. City of Los Angeles* (2008) 161 Cal.App.4th 1168, 1187 (approval set aside where City failed to consider proffered evidence regarding historical wall).

C. HAZARDOUS WASTE

The Project includes the development of two sites (Lot 4 and Lot 8), each including three subterranean parking-levels reaching 35 to 37 feet below grade.[5] While the proposed Findings of Approval references a preliminary "construction logistics plan" (COA 119), that construction plan is not readily available. Excavation may result in the release of unknown legacy contaminants impacting the surrounding area. For example, the Department of Toxic Substances Control ("DTSC")'s EnviroStor database and the State Water Resources Control Board ("SWRCB")'s GeoTracker database identify 12 DTSC/SWRCB cleanup sites located within the area bounded by W. Evelyn Ave. (north), California St. (south), Franklin St. (west), and Bush St. (east)—ten of which are roughly 600 feet from the Project Site.[6] CEQA requires the full disclosure of any potential legacy hazardous substances at the Project Site and, if present, the City must craft adequate mitigation measures including enforceable performance criteria.

D. CONSTRUCTION RELATED IMPACTS

Absent the preliminary construction logistics plan mentioned above,[7] documents available to this Office reveal only that the construction period will occur over a 20-month period,[8] and include the replacement of 149 existing parking spaces.[9] There is no discussion of what construction process will be employed (e.g., impact pile driving); list of the type of construction equipment to be employed (e.g., dozers, cranes, pile drivers); phasing of construction (e.g., site clearing, excavation, concrete pours of foundation, buildup of upper floors); or identification of nearby sensitive receptors (e.g., residents, parks, schools, historic resources).

Here, there are numerous sensitive receptors, such as some of the City's oldest buildings along Castro St. within the City's Historic Retail District (adjacent to the west of Lot 4);[10] people congregating outside at the City Transit Center (132 feet north of Lot 4);[11] 33 homes bounded by W. Evelyn Ave./View St./Villa St./Bush St. (215-550 feet east of Lot 8); and numerous residential units located at 224 View St. (261-448 feet southeast of Lot 8). These sensitive receptors, as well as other stakeholders, will be impacted by various impacts associated with the construction of the Project, such as:

- Parking and traffic impacts associated with the temporary loss of 149 spaces during the construction period causing congestion around the Project Site.

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[5] Project Plans, *supra* fn. 3, Sheets A.4.11.01, A.8.11.01.
[6] DTSC, EnviroStor (map showing DTSC and SWRCB cleanup sites near the Project Site), http://www.envirostor.dtsc.ca.gov/?surl=s0rtq.
[7] Proposed Findings of Approval, *supra* fn. 2, (COA 119).
[8] Project Plans, *supra* fn. 3, Sheet G.0.00.02.
[9] City (5/17/16) Council Report for Item 6.2, p. 2, http://mountainview.legistar.com/gateway.aspx?M=F&ID=d1049601-20fa-4992-b816-3a8526617340.pdf.
[10] City (Nov. 2015) Downtown Precise Plan, pp. 1, 22, 24, 72-73, https://www.mountainview.gov/civicax/filebank/blobdload.aspx?blobid=2768.
[11] Google Maps, https://goo.gl/i4f96d.

- Air quality impacts associated with emission emanating from excavation and other construction activities, such as diesel particulate matter (a known human carcinogen)[12] stemming from heavy-duty construction trucks accessing the Project Site.
- Noise and vibration impacts associated with construction activities such as pile driving,[13] wood-frame construction,[14] as well as numerous heavy-duty construction trucks accessing the Project Site.

E. LAND USE IMPACTS

Under the Downtown Precise Plan ("Precise Plan"),[15] Lot 4 (location of the proposed hotel with other retail and restaurant uses) is within subarea H known as the Historic Retail District (p. 3 [Fig. 2]). Based on the Project plans, the Project's hotel component has two glaring inconsistencies with the Precise Plan, including:

- **Hotel Height**: The hotel structure on Lot 4 will be five-stories[16] reaching heights 57'-6'' to 58'-6'' tall (depending on plans submitted by the Applicant).[17] However, the Precise Plan dictates that development on Lot 4 be limited to four stories reaching no higher than 55 feet tall (pp. 75-76). In fact, the Precise Plan anticipates future development of Lot 4 (pp. 80, 93-95), showing a rending of a mixed-use project with no more than four stories (55'-0'' max) and avoiding large uninterrupted expanses of horizontal and vertical wall surface, which collectively maintains the present scale and character of buildings in the Historic Retail District.
- **Hotel Massing**: The hotel structure includes a long seemingly flat wall along Hope Street that dwarfs the adjacent single-story structures,[18] which was raised as an issue during the public hearing held by the Development Review Committee ("DRC").[19] As discussed above, the Precise Plan includes a rendering of the type of mixed-use development that avoids this type of large wall surfaces.

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[12] California Air Resources Board, Overview: Diesel Exhaust & Health, https://ww2.arb.ca.gov/resources/overview-diesel-exhaust-and-health.

[13] Federal Transit Administration ("FTA") (May 2006) Transit Noise And Vibration Impact Assessment, pp. 12:12-12:13 (Tbls. 12-2 & 12-3) (noting pile driving can cause vibrations up to 1.518 in/sec PPV and 112 VdB at 25 feet, which exceed FTA thresholds of significance of 0.2 in/sec PPV with respect to structural damage within 100 feet of pile driving activities, and 80 VdB with respect to human response within 300 feet of pile driving activities), https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/FTA_Noise_and_Vibration_Manual.pdf.

[14] National Institute for Occupational Safety and Health (Jan. 2003) Study and Reduction of Noise from a Pneumatic Nail Gun, p. 2 (noting pneumatic nail gun have been measured at about 100 dBA at a distance of three feet), http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.561.7860&rep=rep1&type=pdf.

[15] Downtown Precise Plan, *supra* fn, 10, https://www.mountainview.gov/civicax/filebank/blobdload.aspx?blobid=2768.

[16] Project Plans, *supra* fn. 3, Sheets G.0.00.01 (Project Information – Lot 4), G.0.00.02 (01 Project Description).

[17] *See e.g.,* Project Plans, *supra* fn. 3, Sheet A.4.10.01 (showing Lot 4 parapet at 131'- 6'' median sea level ["MSL"], which is 58'-6'' above the lowest Lot 4 grade at 73'-0'' MSL); City DRC (9/5/18) Item 2.1, DRC Study Vignettes for Lots 4 & 8 Hope Street, PDF p. 22 ("Hotel Section" rendering showing 57'-6'' to parapet), http://laserfiche.mountainview.gov/Weblink/0/edoc/221078/2.1%20-%20Hope%20Street%20Lots%204%20and%208.pdf;

[18] Project Plans, *supra* fn. 3, Sheets A.0.01.22, A.4.10.00

[19] City DRC (9/5/18), *supra* fn. 17, PDF p. 2.

For these reasons, the Project's hotel component is not consistent with applicable land use plans and policies—particularly as it relates to impacts on the City's unique Historic Retail District.[20] Hence, there is a fair argument that the Project's size and scale may have aesthetic and land use impacts on the historic character of the community. *See e.g., Protect Niles v. City of Fremont* (2018) 25 Cal.App.5th 1129 (held project's visual impact on a historic commercial "main street" recognized as sensitive by the city required further study than provided in MND).

F. GHG IMPACTS:

This Office is unaware of any study performed quantifying and analyzing the Project's construction and operational GHG emissions. This type of analysis is common for other large projects in the City,[21] which typically includes emissions modeling (via CalEEMod modeling) that estimates the Project GHG emissions in metric tons of carbon dioxide equivalent emissions per year ("$MTCO_2e/yr$"). Thereafter, emissions are divided by the project's service population to determine the project's GHG efficiency ("$MTCO_2e/yr/sp$") and compare that figure to applicable project-level efficiency targets, such as:

- 4.6 $MTCO_2e/yr/sp$ by 2020 target year, per Bay Area Air Quality Management District ("BAAQMD") recommendations in compliance of the California Global Warming Solutions Act (2006) (commonly referred as "AB 32").
- 4.5 $MTCO_2e/yr/sp$ by 2030 target year, per City's Greenhouse Gas Reduction Program ("GGRP") adopted in 2012.

Here, it is unknown whether the Project meets the above-listed efficiency targets after giving due consideration to all direct/indirect emissions associated with the Project's component uses (e.g., hotel, office, retail, restaurant), and the reasonable service population associated with the project.[22, 23] Furthermore, neither BAAQMD's 2020 target nor the City's GGRP 2030 target account for recent legislative enactments made in Sacramento regarding GHG goals; such as Senate Bill 32

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[20] *See e.g.,* General Plan, p. 52 ("Policy LUD 9.1: Height and setback transitions. Ensure that new development includes sensitive height and setback transitions to adjacent structures and surrounding neighborhoods."), https://www.mountainview.gov/civicax/filebank/blobdload.aspx?blobid=10702; Precise Plan, *supra* fn. 10, p. 72 ("New development in the Historic Retail District … should be sensitive infill development within the small parcel increments of the area."), pp. 81-82 ("New development should preserve the rhythm and fine-grained pedestrian scale of existing buildings within the Historic Retail District by respecting the relatively narrow building increments, which are predominantly 25 to 50'in width."), p. 83 ("Building facades should respond to the relatively narrow increments of development (25'to 50') with variation in fenestration, building materials and/or building planes.")

[21] *See e.g.,* 700 East Middlefield Road LinkedIn Office Project (May 2018) Draft EIR, pp. 98-99, https://www.mountainview.gov/civicax/filebank/blobdload.aspx?BlobID=26452; 777 West Middlefield Road Project (Nov. 2018) Draft EIR, pp. 3.6-10-3.6-14, https://www.mountainview.gov/civicax/filebank/blobdload.aspx?BlobID=27781; 555 East Evelyn Avenue Residential Project (Oct. 2018) Draft EIR, pp. 77-78, https://www.mountainview.gov/civicax/filebank/blobdload.aspx?BlobID=27583.

[22] City (5/17/16) Economic Development Subsidy Report, p. 5 (using the median office jobs anticipated for the Project, the City anticipates 381 permanent, full-time jobs associated with the Project), http://mountainview.legistar.com/gateway.aspx?M=F&ID=ccf9db86-bc46-46e1-9166-5305123d6e54.pdf.

[23] Reasonable assumptions must be used to calculated number of hotel patrons served by the Project's hotel component giving due consideration to prevailing occupancy rates and the average number of guests to occupy each room.

(2016) ("SB 32") requiring even further reductions by 2030, nor Governor Brown's Executive Order B-55-18 ("EO B-55-18") for the State to achieve carbon neutrality no later than 2045.[24] Hence, notwithstanding the Project's consistency with GGRP and other applicable plans, these plans are no longer sufficient to determine that a project's GHG contribution is less than significant in furthering the State's goals under SB 32 or EO B-55-18.

Furthermore, reliance on standard GHG mitigation measures for some activities is not sufficient under GHG caselaw. As the California Supreme Court has made clear, just because "a project is designed to meet high building efficiency and conservation standards … does not establish that its [GHG] emissions from transportation activities lack significant impacts." *Center for Biological Diversity v. Cal. Dept. of Fish and Wildlife* ("*Newhall Ranch*") (2015) 62 Cal.4th 204, 229 (citing Natural Resources Agency).[25] This concept is known as "additionality" whereby GHG emission reductions otherwise required by law or regulation are appropriately considered part of the baseline and, pursuant to CEQA Guideline § 15064.4(b)(1), a new project's emission should be compared against that existing baseline.[26] Hence, a project should not subsidize or take credit for emissions reductions which would have occurred regardless of the project. In short, as observed by the Court, newer developments must be more GHG-efficient. *See Newhall Ranch,* 62 Cal.4th at 226.

Here, the Project fails to provide more aggressive mitigation measures required for newer developments to reach AB 32's long-term goals—such as the net-zero approach utilized in the wake of the Supreme Court's *Newhall Ranch* decision. *See Newhall Ranch*, 62 Cal.4th at 226 ("a greater degree of reduction may be needed from new land use projects ...."); *see also Californians for Alternatives to Toxics v. Department of Food and Agriculture* (2005) 136 Cal.App.4th 1, 17 ("[c]ompliance with the law is not enough to support a finding of no significant impact under the CEQA."). More should be required for the Project, including those new, feasible mitigation measures found in CAPCOA's *Quantifying Greenhouse Gas Mitigation Measures,*[27] which attempt to reduce GHG levels.

Quite simply, the failure to adequately analyze the Project's GHG emissions or require more aggressive GHG reduction measures fails the court's demand for robust GHG analysis and is not "in step with evolving scientific knowledge and state regulatory schemes." *Cleveland National Forest Foundation v. San Diego Assn. of Governments* ("*Cleveland II*") (2017) 3 Cal.5th 497, 504, 515, 518 (quoting CEQA Guidelines § 15064(b)); *see also* 519 (noting to meet the State's long-term climate goals, "regulatory clarification, together with improved methods of analysis, may well change the manner in which CEQA analysis of long-term [GHG] emission impacts is conducted."). Hence, a GHG analysis which "understates the severity of a project's impacts impedes meaningful public discussion and skews the decisionmaker's perspective concerning the environmental consequences

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[24] https://www.gov.ca.gov/wp-content/uploads/2018/09/9.10.18-Executive-Order.pdf.

[25] *See* OPR (Dec. 2009) Final Statement of Reasons For Regulatory Action, p. 23 available at http://resources.ca.gov/ceqa/docs/Final_Statement_of_Reasons.pdf (while a Platinum LEED® rating may be relevant to emissions from a building's energy use, "that performance standard may not reveal sufficient information to evaluate transportation-related emissions associated with that proposed project").

[26] *Ibid.,* p. 89; *see also* California Air Pollution Control Officers Association ("CAPCOA") (Aug. 2010) Quantifying Greenhouse Gas Mitigation Measures, pp. 32, A3 available at http://www.capcoa.org/wp-content/uploads/2010/11/CAPCOA-Quantification-Report-9-14-Final.pdf ("in practice is that if there is a rule that requires, for example, increased energy efficiency in a new building, the project proponent cannot count that increased efficiency as a mitigation or credit unless the project goes beyond what the rule requires; and in that case, only the efficiency that is in excess of what is required can be counted.").

[27] *Ibid*.

of the project, the necessity for mitigation measures, and the appropriateness of project approval." *Id*., on remand ("*Cleveland III*"), 17 Cal.App.5th 413, 444; *see also Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564 (quoting *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 392).

G. CONCLUSION

The issues discussed above constitute a fair argument that the Project may have significant impacts on numerous resources and that the relied on Class 32 CE that applies only where a project complies with all zoning regulations and will not cause traffic, air quality, noise, or water quality impacts—which the City has yet to demonstrate on the record made available to this Office. For this reason, Commentors respectfully request that the City deny all Project Approvals until the Project undergoes a CEQA-compliant MND or EIR to adequately analyze the issues discussed above. Further, Commentors reserve the right to supplement these comments at future hearings and proceedings for this Project. *See Galante Vineyards v. Monterey Peninsula Water Management Dist.* (1997) 60 Cal.App.4th 1109, 1120 (CEQA litigation not limited only to claims made during EIR comment period).

Finally, on behalf of Commentors, this Office requests, to the extent not already on the notice list, all notices of CEQA actions, Appeal hearing and any approvals, Project CEQA determinations, or public hearings to be held on the Project under state or local law requiring local agencies to mail such notices to any person who has filed a written request for them. *See* Pub. Res. Code §§ 21080.4, 21083.9, 21092, 21092.2, 21108, 21167(f) and Gov. Code § 65092. Please send notice by electronic and regular mail to: Gideon Kracov, Esq., 801 S. Grand Avenue, 11th Fl., Los Angeles, CA 90017, gk@gideonlaw.net (cc: jordan@gideonlaw.net).

Sincerely,

Gideon Kracov
Attorney for Commentors

November 20, 2018

Staff responses to letter from Gideon Kracov on behalf of Unite Here Local 19 and Mountain View resident Sarah McDermott (collectively "commenters") received on November 14, 2018.

Staff has reviewed the issues raised in the comment letter and has determined they lack merit in concluding that the project does not qualify as Categorically Exempt under Section 15332 Class 32 and the City should deny the project applications until the project undergoes a CEQA-compliant Mitigated Negative Declaration or Environmental Impact Report.

Heritage Trees (UNITE HERE letter, pp. 2–3): UNITE HERE claims that the inclusion of mitigation measures to be taken to protect trees during construction "is an admission by the City that the Project may have a potential environmental impact." They further argue that the existence of so many protected trees constitutes an unusual circumstance. Here, the requirements related to the removal of trees necessary for the Project are considered standard conditions of approval, rather than mitigation measures. (See Mountain View City l Code, § 32.35.b.) Moreover, because this issue is unrelated to air, noise, water or traffic, evidence of tree removal as a significant impact is only implicated if an exception to the exemption, e.g., unusual circumstances exception, applies. (See CEQA Guidelines, § 15300.2,) To prove the unusual circumstances exception applies, a challenger must prove both (1) unusual circumstances that distinguish the project from others in the exempt class and (2) a significant environmental effect that is due to those circumstances. (*Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086.) UNITE HERE provides only a conclusory statement that the presence of protected trees constitutes an unusual circumstance—but provides no underlying evidence of why or that a significant environmental effect results. The City finds that the removal of the proposed trees is necessary for the Project, meets the findings required under the City Code, and does not constitute an unusual circumstance with implementation of standard City conditions of approval.

Land Use/Aesthetics (UNITE HERE letter, pp. 4–5): UNITE HERE claims there is a fair argument that the Project's size and scale may have aesthetic land use impacts, and is inconsistent with the Downtown Precise Plan. For example, UNITE HERE claims that the hotel structure will reach heights of 57′ to 58′, which is higher than the 55′ maximum allowed by the zoning. UNITE HERE also claims that the hotel includes a wall that "dwarfs the adjacent single-story structures" and is inconsistent with a rendering of mixed-use developments in the Precise Plan. The City finds the Project to be consistent with applicable General Plan and Downtown Precise Plan zoning designations, policies, and regulations. (See CEQA Guidelines, § 15332, subd. (a).) Evidence of aesthetic impacts is inconsequential, unless it meets the criteria to find an exception to the exemption exists, similar to the unusual circumstances exception. The City finds that approval of the project with the exception to the number of stories and allowances for architectural projections above the 55′ height limit as allowed by p. 75 of the Downtown Precise Plan, which provides: "Decorative roof treatments and architectural features may exceed the

maximum 55' height limit upon design approval as provided for in the Administrative Section." The Projects size and scale, including any aesthetic characteristics therefore does not constitute an unusual circumstance.

Piecemealing (UNITE HERE letter, p. 2.): UNITE HERE claims that the City impermissibly piecemeals the Project because there are a number of additional approvals necessary, including sign program application, construction parking plan, geotechnical report, excavation permit, etc. The level of detail required for the additional approvals identified by UNITE HERE is not necessary to understand the impacts to traffic, noise, water quality, or air quality, which are the only effects for which the City needs to make a determination regarding under the infill exemption. (See *Dry Creek Citizens Coalition v. County of Tulare* (1999) 70 Cal.App.4th 20, 26-36; *Citizens for Sustainable Treasure Island v. City and County of San Francisco* (2014) 227 Cal.App.4th 1036, 1054 [the "resolution of all hypothetical details prior to approval" is not required].)

Hazardous Waste (UNITE HERE letter, p. 3): UNITE HERE claims excavation of subterranean parking may result in the release of unknown legacy contaminants. This concern does not implicate traffic, air quality, water quality, or noise, so again would need to be tied to an exception to the exemption, which UNITE HERE fails to do. UNITE HERE offers no underlying facts to support the presence of contaminated soil at the project site, i.e., this comment is speculation. (See Pub. Resources Code, §21080, subd. (e) [speculation is not substantial evidence].) Nevertheless, COA 51 addresses the process that will be followed if contaminated soil is discovered, e.g., use of BMPs, the types of which are specifically enumerated in the condition of approval.

Construction-Related Impacts (UNITE HERE letter, pp. 3–4): UNITE HERE comments that there is no discussion of the construction process, i.e., phasing, types of equipment, or identification of sensitive receptors. They identify nearby sensitive receptors claiming various impacts associated with construction—congestion caused by loss of 149 parking spaces during construction, air quality impacts, noise and vibration impacts. The findings of approval address noise (COA 31–33), construction-related impacts (COA 34–45). UNITE HERE ignores these altogether. These conditions of approval could serve as the basis for any no-impact determination.

GHG Impacts (UNITE HERE letter, pp. 5–7): UNITE HERE comments that there was no study quantifying and analyzing the Project's construction and operational GHG emissions was completed. This comment lacks merit because the Project is categorically exempt from CEQA review, and therefore no GHG emissions analysis would be required. Further, UNITE HERE provides no evidence of a significant GHG impact due to unusual circumstances.

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Via Email and Hand-Delivery November 14, 2018

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Re: Hope Street Lots 4 and 8, Robert Green for the Robert Green Company, PL-2018-084; APN: 150-20-004 and 150-02-072 – Administrative Zoning Hearing, Agenda Item 4.3

Dear Ms. Williams and Mr. VanOosten:

I am writing on behalf of the Laborers International Union of North America, Local Union 270 and its members living in Santa Clara County and the City of Mountain View ("LiUNA"), regarding the Hope Street Lots 4 and 8 project, aka PL-2018-084. The project proposes to construct a 120,518 square foot five-story hotel building with three levels of subterranean parking and a 52,506 square foot mixed-use office building with three levels of subterranean parking as well on both sides of Hope Street between Villa Street and West Evelyn Avenue ("Project").

The City proposes to rely upon the Class 32 Infill Exemption in order to comply with the California Environmental Quality Act ("CEQA") for the Project. The Class 32 In-Fill exemption can only be applied where "[a]pproval of the project would

not result in any significant effects relating to traffic, noise, air quality, or water quality." 14 Cal. Admin. Code § 15332(d).

One component of an air quality impact analysis under CEQA is evaluating the health risk impacts of toxic air contaminant ("TACs") emissions contributed by a proposed project both individually and cumulatively with other nearby TAC sources. Certified Industrial Hygienist, Francis "Bud" Offermann, PE, CIH, has conducted a review of the Project and the staff report regarding the Project's indoor air emissions. Indoor Environmental Engineering Comments (Nov. 13, 2018) (attached as Exhibit A). Mr. Offermann is one of the world's leading experts on indoor air quality and has published extensively on the topic. As discussed below and set forth in Mr. Offermann's comments, the Project's emissions of formaldehyde to air will result in very significant cancer risks to future employees using the Project. As a result of this significant effect to air quality, the Project may not rely upon the Class 32 In-Fill exemption to forego the preparation of an environmental impact report ("EIR") for the Project.

Mr. Offermann explains that many composite wood products typically used in home, apartment, hotel and office building 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 particle board. These materials are commonly used in residential, commercial, and hotel building construction for flooring, cabinetry, baseboards, window shades, interior doors, and window and door trims." Offermann Comment, p. 2.

Formaldehyde is a known human carcinogen. Mr. Offermann calculates that future employees using the hotel and office building of the Project will be exposed to a cancer risk from formaldehyde of approximately 18.4 cancers per million, assuming all materials are compliant with the California Air Resources Board's formaldehyde airborne toxics control measure. Offermann Comment, p. 4. This is almost double the BAAQMD's CEQA significance threshold for airborne cancer risk of 10 per million. Mr. Offermann concludes that this significant environmental impact should be analyzed in an EIR and mitigation measures should be imposed to reduce the risk of formaldehyde exposure. *Id*., pp. 6-7. Mr. Offermann suggests several feasible mitigation measures, such as requiring the use of no-added-formaldehyde composite wood products, which are readily available. *Id*. Mr. Offermann also suggests requiring air ventilation systems which would reduce formaldehyde levels. *Id*.

When a Project exceeds a duly adopted CEQA significance threshold, as here, that is substantial evidence that the project will have a significant adverse environmental impact and an EIR is required. 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 BAAQMD'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"). The California Supreme Court made clear the substantial importance that an air district significance threshold plays in providing substantial evidence of a significant adverse impact. *Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310, 327 ("As the [South Coast Air Quality Management] District's established significance threshold for NOx is 55 pounds per day, these estimates [of NOx emissions of 201 to 456 pounds per day] constitute substantial evidence supporting a fair argument for a significant adverse impact"). Since expert evidence demonstrates that the Project will exceed the BAAQMD's CEQA significance threshold, there is substantial evidence that the Project will have significant adverse impacts and an EIR is required.

The failure of the CEQA Analysis to address the Project's formaldehyde emissions is contrary to California Supreme Court decision in *California Building Industry Ass'n v. Bay Area Air Quality Mgmt. Dist.* (2015) 62 Cal.4th 369, 386 ("*CBIA"*). In that case, the Supreme Court expressly holds 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 386-87. 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 388. 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 387 (emphasis added).)

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 working in and 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 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.

The Supreme Court's reasoning is well-grounded in CEQA's statutory language. CEQA expressly includes a project's effects on human beings as an effect

on the environment that must be addressed in an environmental review. "Section 21083(b)(3)'s express language, for example, requires a finding of a 'significant effect on the environment' (§ 21083(b)) whenever the 'environmental effects of a project will cause substantial adverse effects *on human beings,* either directly or indirectly.'" (*CBIA*, 62 Cal.4th at 800 (emphasis in original.) Likewise, "the Legislature has made clear—in declarations accompanying CEQA's enactment—that public health and safety are of great importance in the statutory scheme." (*Id*., citing e.g., §§ 21000, subds. (b), (c), (d), (g), 21001, subds. (b), (d).) It goes without saying that the hundreds of future employees at the Project are human beings and the health and safety of those employees are intended to be beneficiaries of CEQA's safeguards.

In addition to failing to provide any substantial evidence that the above-described health risks to future users of the Project will not be present, the staff report also fails to address the likely significant impacts the Project will have on traffic and air emissions of NOx and toxic air contaminants to the surrounding community. The staff report does not provide any evidence demonstrating that approval of the Project would not result in any significant effects relating to traffic and air quality. 14 Cal. Admin. Code § 15332(d). The approach to this Project also is inconsistent with other similar projects where a project-specific air analysis was completed in order to attempt to substantiate the use of the in-fill exemption. *See* SWAPE Comment, p. 2 (attached as Exhibit B). Moreover, air modeling of this combined hotel, office building and extensive underground parking may very well indicate emissions exceeding the Bay Area Air Quality Management District ("BAAQMD") thresholds of significance. *Id.* Likewise, a traffic analysis likely could identify traffic impacts from the Project. In the absence of any analyses of these likely impacts, the exemption determination is not supported by substantial evidence. *See Davidon Homes v. City of San Jose* (1997) 54 Cal.App.4th 106, 115. LIUNA requests that the Zoning Administrator continue the hearing in order to allow staff to consider whether the Project will have such impacts and to allow the public to review and comment on any analyses relating to that inquiry.

For the above reasons, the CEQA Analysis for the Project and its reliance on the Class 22 In-Fill exemption should be withdrawn, an EIR should be prepared, and the draft EIR should be circulated for public review and comment in accordance with CEQA. Thank you for considering these comments.

Sincerely,

Michael R. Lozeau
Lozeau | Drury LLP

Attachments

EXHIBIT A

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Date: November 13, 2018

To: Michael R. Lozeau
Lozeau | Drury LLP
410 12th Street, Suite 250
Oakland, California 94607

From: Francis J. Offermann PE CIH

Subject: Indoor Air Quality: Lots 4 and 8 Hope Street, Mountain View, CA

Pages: 9

Indoor Air Quality Impacts

Indoor air quality (IAQ) directly impacts the comfort and health of building occupants, and the achievement of acceptable IAQ in newly constructed and renovated buildings is a well-recognized design objective. For example, IAQ is addressed by major high-performance building rating systems and building codes (California Building Standards Commission, 2014; USGBC, 2014). Indoor air quality in homes is particularly important because occupants, on average, spend approximately ninety percent of their time indoors with the majority of this time spent at home (EPA, 2011). Some segments of the population that are most susceptible to the effects of poor IAQ, such as the very young and the elderly, occupy their homes almost continuously. Additionally, an increasing number of adults are working from home at least some of the time during the workweek. Indoor air quality also is a serious concern for workers in hotels, offices and other business establishments.

The concentrations of many air pollutants often are elevated in homes and other buildings relative to outdoor air because many of the materials and products used indoors contain and release a variety of pollutants to air (Hodgson et al., 2002; Offermann and Hodgson,

2011). The primary source of formaldehyde indoors is composite wood products manufactured with urea-formaldehyde resins, such as plywood, medium density fiberboard, and particle board. These materials are commonly used in residential, commercial, and hotel building construction for flooring, cabinetry, baseboards, window shades, interior doors, and window and door trims. With respect to indoor air contaminants for which inhalation is the primary route of exposure, the critical design and construction parameters are the provision of adequate ventilation and the reduction of indoor sources of the contaminants.

Indoor Formaldehyde Concentrations Impact. In the California New Home Study (CNHS) of 108 new homes in California (Offermann, 2009), 25 air contaminants were measured, and formaldehyde was identified as the indoor air contaminant with the highest cancer risk as determined by the California Proposition 65 Safe Harbor Levels (OEHHA, 2017), No Significant Risk Levels (NSRL) for carcinogens. The NSRL is the daily intake level calculated to result in one excess case of cancer in an exposed population of 100,000 (i.e., ten in one million cancer risk) and for formaldehyde is 40 µg/day. The NSRL concentration of formaldehyde that represents a daily dose of 40 µg is 2 µg/m^3, assuming a continuous 24-hour exposure, a total daily inhaled air volume of 20 m^3, and 100% absorption by the respiratory system. All of the CNHS homes exceeded this NSRL concentration of 2 µg/m^3. The median indoor formaldehyde concentration was 36 µg/m^3, and ranged from 4.8 to 136 µg/m^3, which corresponds to a median exceedance of the 2 µg/m^3 NSRL concentration of 18 and a range of 2.3 to 68.

Therefore, the cancer risk of a resident living in a California home with the median indoor formaldehyde concentration of 36 µg/m^3, is 180 per million as a result of formaldehyde alone. Assuming a residential project will be built using typical materials and construction methods used in California, there is a fair argument that future residents will experience a cancer risk from formaldehyde of approximately 180 per million. The CEQA significance threshold for airborne cancer risk is 10 per million, as established by the Bay Area Air Quality Management District (BAAQMD, 2017).

Besides being a human carcinogen, formaldehyde is also a potent eye and respiratory irritant. In the CNHS, many homes exceeded the non-cancer reference exposure levels (RELs) prescribed by California Office of Environmental Health Hazard Assessment (OEHHA, 2017). The percentage of homes exceeding the RELs ranged from 98% for the Chronic REL of 9 $\mu g/m^3$ to 28% for the Acute REL of 55 $\mu g/m^3$.

In January 2009, the California Air Resources Board (CARB) adopted an airborne toxics control measure (ATCM) to reduce formaldehyde emissions from composite wood products, including hardwood plywood, particleboard, medium density fiberboard, and also furniture and other finished products made with these wood products (California Air Resources Board 2009). While this formaldehyde ATCM has resulted in reduced emissions from composite wood products sold in California, they do not preclude that homes built with composite wood products meeting the CARB ATCM will have indoor formaldehyde concentrations that are below cancer and non-cancer exposure guidelines.

A follow up study to the California New Home Study (CNHS) was conducted in 2016-2018 (Chan et. al., 2018), and found that the median indoor formaldehyde in new homes built after the 2009 CARB formaldehyde ATCM had lower indoor formaldehyde concentrations, with a median indoor concentrations of 25 $\mu g/m^3$ as compared to a median of 36 $\mu g/m^3$ found in the 2007 CNHS.

Thus, while new homes built after the 2009 CARB formaldehyde ATCM have a 30% lower median indoor formaldehyde concentration and cancer risk, the median lifetime cancer risk is still 125 per million for homes built with CARB compliant composite wood products which is more than 12 times the NSRL 10 in a million cancer risk.

With respect to this project, Lots 4 and 8 Hope Street, Mountain View, CA, according to the DRC Study Report Vignettes (DRC , 2018) this project will be a combination of hotel and commercial space.

The hotel and commercial space guests and customers are expected to have short-term exposures (e.g. less than a week), but employees are expected to experience longer-term

exposures (e.g. 40 hours per week, 50 weeks per year). The longer-term exposures for employees are anticipated to result in significant cancer risks resulting from exposures to formaldehyde released by the building materials and furnishing commonly found in residences, commercial spaces, and hotels.

Assuming that the hotel and commercial spaces are constructed with CARB Phase 2 Formaldehyde ATCM materials, and are ventilated with the minimum code required amounts of outdoor air, the indoor formaldehyde concentrations for both spaces are likely similar to those concentrations observed in residences built with CARB Phase 2 Formaldehyde ATCM materials, which is a median of 25 $\mu g/m^3$.

Assuming that the hotel and commercial space employees work 8 hours per day and inhale 20 m^3 of indoor air per day, the formaldehyde dose per work-day is 167 µg/day.

Assuming that the hotel and commercial space employees work 5 days per week and 50 weeks per year for 45 years (start at age 20 and retire at age 65) the average 70-year lifetime formaldehyde daily dose is 73.6 µg/day.

This is 1.84 times the NSRL of 40 µg/day and represents a cancer risk of 18.4 per million, which exceeds the CEQA cancer risk of 10 per million.

Outdoor Air Ventilation Impact. Another important finding of the CNHS, was that the outdoor air ventilation rates in the homes were very low. Outdoor air ventilation is a very important factor influencing the indoor concentrations of air contaminants, as it is the primary removal mechanism of all indoor air generated air contaminants. Lower outdoor air exchange rates cause indoor generated air contaminants to accumulate to higher indoor air concentrations. Many homeowners rarely open their windows or doors for ventilation as a result of their concerns for security/safety, noise, dust, and odor concerns (Price, 2007). In the CNHS field study, 32% of the homes did not use their windows during the 24-hour Test Day, and 15% of the homes did not use their windows during the entire preceding week. Most of the homes with no window usage were homes in the winter field session. Thus, a substantial percentage of homeowners never open their windows,

especially in the winter season. The median 24-hour measurement was 0.26 ach, with a range of 0.09 ach to 5.3 ach. A total of 67% of the homes had outdoor air exchange rates below the minimum California Building Code (2001) requirement of 0.35 ach. Thus, the relatively tight envelope construction, combined with the fact that many people never open their windows for ventilation, results in homes with low outdoor air exchange rates and higher indoor air contaminant concentrations.

This project, Lots 4 and 8 Hope Street, Mountain View, CA is located close to roads with moderate to high traffic, including the Central Expressway, and is also across the street from the Caltrain Mountain View Station. Thus, as a result of nearby roadway vehicle traffic and the Caltrans train traffic, this project is expected to be a noise impacted site.

As a result of the high traffic related outdoor noise levels, the current project will likely require mechanical supply of outdoor air ventilation air to allow for a habitable interior environment with closed windows and doors. Such a ventilation system would allow windows and doors to be kept closed at the occupant's discretion to control exterior noise within residential interiors.

Indoor Air Quality Impact Mitigation Measures

The following are recommended mitigation measures to minimize the impacts upon indoor quality:

- indoor formaldehyde concentrations
- outdoor air ventilation
- $PM_{2.5}$ outdoor air concentrations

Indoor Formaldehyde Concentrations Mitigation. Use only composite wood materials (e.g. hardwood plywood, medium density fiberboard, particleboard) for all interior finish systems that are made with CARB approved no-added formaldehyde (NAF) resins or ultra-low emitting formaldehyde (ULEF) resins (CARB, 2009).

Outdoor Air Ventilation Mitigation. Provide each habitable room with a continuous mechanical supply of outdoor air that meets or exceeds the California 2016 Building Energy Efficiency Standards (California Energy Commission, 2015) requirements of the greater of 15 cfm/occupant or 0.15 cfm/ft^2 of floor area. Following installation of the system conduct testing and balancing to insure that required amount of outdoor air is entering each habitable room and provide a written report documenting the outdoor air flow rates. Do not use exhaust only mechanical outdoor air systems, use only balanced outdoor air supply and exhaust systems or outdoor air supply only systems. Provide a manual for the hotel and commercial space management that describes the purpose of the mechanical outdoor air system and the operation and maintenance requirements of the system.

$PM_{2.5}$ Outdoor Air Concentration Mitigation. Install air filtration with a minimum efficiency of MERV 13 to filter the outdoor air entering the mechanical outdoor air supply system. Install the air filters in the system such that they are accessible for replacement by the hotel and commercial space maintenance staff. Include in the mechanical outdoor air ventilation system manual instructions on how to replace the air filters and the estimated frequency of replacement.

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EXHIBIT B

SWAPE Technical Consultation, Data Analysis and Litigation Support for the Environment

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November 13, 2018

Michael Lozeau
Lozeau | Drury LLP
410 12th Street, Suite 250
Oakland, CA 94607

Subject: **Comments on the Recommendation for Zoning Permit No. PL-2018-084 at Hope Street Lots 4 & 8**

Dear Mr. Lozeau:

The Draft Findings Report ("Report") for the Project at Hope Street Lots 4 and 8 claims that the Project is categorically exempt pursuant to Section 15332 ("In-Fill Development Projects") of the California Environmental Quality Act (CEQA) Guidelines (p. 1). Review of the Report, however, reveals that this claim is entirely unsubstantiated, as the Project Applicant fails to analyze the Project's potential air quality impacts whatsoever.

According to Section 15332 of the CEQA Guidelines, a project can only be characterized as an in-fill development and qualify for a Class 32 Categorical Exemption if "approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality."[1] The Report acknowledges this requirement yet fails to prepare any analysis of air quality impacts resulting from Project implementation. The Report states that the Applicant will require construction contractors to implement basic construction mitigation measures recommended by the Bay Area Air Quality Management District (BAAQMD) to reduce fugitive dust emissions, listing five potential measures (p. 10). The Project Applicant, however, makes no effort to quantify the proposed Project's air quality impacts or the emissions reductions associated with the specified mitigation measures. As a result, the Applicant fails to adequately evaluate and disclose potential air pollutant, health risk, and greenhouse gas emissions impacts that Project construction and operation may have on the surrounding environment.

Not only is the Project's failure to evaluate air quality impacts incorrect according to CEQA Guidelines, it is also inconsistent with analyses conducted for other mixed-use projects claiming a Class 32 Categorical Exemption. For example, the mixed-use 1910 Noma project located within BAAQMD jurisdiction

[1] CEQA Guidelines Section 15332, *available at:* http://resources.ca.gov/ceqa/guidelines/art19.html

prepared a quantitative air quality impact study and compared the proposed Project's air pollutant emissions to applicable BAAQMD thresholds in an effort to demonstrate that the project would result in a less than significant air quality impact.[2] Additionally, the 949 S. Hope Street project conducted an air quality impact analysis for the proposed a mixed-use building.[3] The 949 S. Hope Street project quantitatively compared the proposed project's air quality pollutant emissions to South Coast Air Quality Management District (SCAQMD) thresholds in an effort to demonstrate project significance.

Furthermore, our review of the above-mentioned projects and several other CEQA projects that proposed similar land uses and land use sizes were found to result in significant construction and/or operational criteria air pollutant emissions and health risk impacts as a result of project activities. For example, our analysis of the 1910 North Main Street project, which proposed to construct a six and seven-story mixed use building with 135 residential units, 10,000 square feet of commercial space, and 217 parking spaces on a 0.97-acre lot, found that the project would result in a significant operational health risk impact.[4] Our review of the Schrader Hotel project, which proposed to construct a 198-room hotel, 5,557 square feet of commercial space, and a three-level subterranean parking garage with 100 spaces, found that the project would result in significant construction-related ROG emissions as well as significant construction and operational health risk impacts.[5] Thus, the Applicant cannot simply assert that there will not be any significant impacts resulting from the Project without first preparing an adequate evaluation of the all potential impacts.

Our review of the Draft Findings Report for the Hope Street Lots 4 and 8 Project reveals that the Project Applicant makes no effort to demonstrate consistency with CEQA Guidelines Section 15332 as well as fails to provide an impact analysis comparable to those prepared by other mixed-use projects claiming a Class 32 Categorical Exemption. Until the Project Applicant prepares a satisfactory evaluation of the Project's air quality emissions which adequately assesses and mitigates the Project's potential air pollutant impacts, the Project cannot be characterized as an in-fill development exempt from the provisions of CEQA and should not be approved.

Sincerely,

Matt Hagemann, P.G., C.Hg.

Hadley Nolan

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[2] 1910 Noma Project Staff Report, August 2018, *information available at*: http://www.walnut-creek.org/departments/community-and-economic-development/planning-zoning/new-development-projects#noma

[3] 949 S. Hope Street Project Class 32 Categorical Exemption Assessment Technical Memorandum. Prepared by ESA, March 2018.

[4] *See* SWAPE's September 11, 2018 comment letter on the 1910 North Main Street Project.

[5] *See* SWAPE's June 7, 2018 comment letter on the IS/MND prepared for the Schrader Hotel project.

November 20, 2018

Staff responses to letter from Micahel R. Lozeau on behalf of the Laborers International Union of North America Local Union 270 and its members living in Santa Clara County and the City of Mountain View (LiUNA) received on November 14, 2018.

Staff has reviewed the issues raised in the comment letter and has determined they lack merit in concluding that the project does not qualify as Categorically Exempt under Section 15332 Class 32 and the City should prepare an Environmental Impact Report prior to consideration of the project.

Indoor Air Quality (LiUNA letter, pp. 1–4): This is the primary issue raised by LiUNA. They submit evidence, in the form of a memo regarding indoor air quality and the impacts of formaldehyde emissions, prepared by Indoor Environmental Engineering. The memo explains that composite wood products such as cabinetry, baseboards, window shades, etc.) contain glues, which off-gas formaldehyde. These comments lack merit for the following reasons. COA 127 requires the Project to comply with current codes, including CAL Green, which requires that all composite wood products used on the interior of a building "shall meet the requirements for formaldehyde as specified in ARB's Air Toxics Control Measure for Composite Wood (17 CCR 93120 et seq.)." (Cal. Code Regs., tit. 24, § 5.504.4.5.) An agency may cite a project's compliance with regulatory standards to support the conclusion that the project will not result in significant impacts. (CEQA Guidelines, § 15126.4, subd. (a)(1)(B); *City of Maywood v. Los Angeles Unified School Dist.* (2009) 208 Cal.App.4th 362, 409–413 [cleanup of high school site performed under supervision of regulatory agency supported conclusion that impact would be insignificant]; *Tracy First v. City of Tracy* (2009) 177 Cal.App.4th 912, 933–934 [compliance with energy standards in building code]; *Oakland Heritage* (2011) 195 Cal.App.4th 884, 896 [upholding city's use of regulatory standard to determine whether impact will be significant].) Moreover, the evidence provided by LiUNA's regarding indoor air quality does not rise to the level of substantial evidence because it is generalized and does not address the specific impacts of this Project. (See *Save the Plastic Bag Coalition v. City of Manhattan Beach* (2011) 52 Cal.4th 155.)

LiUNA's argument that the unusual circumstances exception applies similarly lacks merit. The analysis of potential toxins could apply to any building, and therefore does not demonstrate an unusual circumstance. Finally, the issuance of a building permit (COA 93) "shall be presumed to be ministerial" under CEQA absent any discretionary provision in the ordinance. (CEQA Guidelines, § 15268, subd. (b); *Friends of Juana Briones House v. City of Palo Alto* (2010) 190 Cal.App.4th 286, 302–303.) Other than Building Code and Fire Code requirements the City has limited discretionary authority over the specific type of composite wood products that may be used in the Project.

Traffic and Outdoor Air Quality (LiUNA letter, p. 4): LiUNA also makes a cursory comment that the staff report fails to address the likely significant impacts the Project will have on traffic and air emissions of NOx and TACs. The City prepared a Traffic Impact Analysis (TIA) for the

project which concludes that all traffic impacts of the project were less-than-significant and within City standards. Because the Project is categorically exempt from CEQA review, and therefore no air quality emissions analysis would be required. As LiUNA makes no attempt to provide evidence of a significant air emission impact due to unusual circumstances, this conclusion lacks merit.