

# PLANNING DEPARTMENT TRANSMITTAL TO THE CITY CLERK'S OFFICE

<b>CITY PLANNING CASE:</b>	<b>ENVIRONMENTAL DOCUMENT:</b>	<b>COUNCIL DISTRICT:</b>
CPC-2016-2263-VZC-HD-CUB-CU-ZAA-WDI-SPR	ENV-2016-2264-MND	13 – O'Farrell
<b>PROJECT ADDRESS:</b>		
1715 – 1721 North Wilcox Avenue		
<b>APPLICANT</b>	<b>TELEPHONE NUMBER:</b>	<b>EMAIL ADDRESS:</b>
Adolfo Suaya 6541 Hollywood Blvd., Suite 111 Los Angeles, CA. 90028 <input type="checkbox"/> <b>New/Changed</b>		
<b>APPLICANT'S REPRESENTATIVE</b>	<b>TELEPHONE NUMBER:</b>	<b>EMAIL ADDRESS:</b>
Michael Gonzalez, Gonzalez Law Group, APC. 555 S Flower St, Suite 650 Los Angeles, CA. 90071	<b>213-481-6569</b>	<a href="mailto:mgonzales@gonzalesgroup.com">mgonzales@gonzalesgroup.com</a>
<b>APPELLANT</b>	<b>TELEPHONE NUMBER:</b>	<b>EMAIL ADDRESS:</b>
Lauren "Elle" Farmer 464 S. Lucase Ave., Suite 201 Los Angeles, CA 90017	<b>231-481-8530</b>	<a href="mailto:elle.af4553@gmail.com">elle.af4553@gmail.com</a>
<b>APPELLANT'S REPRESENTATIVE</b>	<b>TELEPHONE NUMBER:</b>	<b>EMAIL ADDRESS:</b>
Gideon Krakov Law Office of Gideon Krakov 801 South Grand Ave., 11 <sup>th</sup> Floor Los Angeles, CA 90017	<b>213-629-2071</b>	<a href="mailto:gk@gideonlaw.net">gk@gideonlaw.net</a> <a href="mailto:jordan@gideonlaw.net">jordan@gideonlaw.net</a>
<b>PLANNER CONTACT INFORMATION:</b>	<b>TELEPHONE NUMBER:</b>	<b>EMAIL ADDRESS:</b>
Oliver Netburn	<b>213-978-1382</b>	<a href="mailto:Oliver.netburn@lacity.org">Oliver.netburn@lacity.org</a>
<b>ENTITLEMENTS FOR CITY COUNCIL CONSIDERATION</b>		
Vesting Zone Change (VZC), Height District Change (HD), Conditional Use Permits (CUB, CU), Zoning Administrator's Adjustment (ZAA), Waiver of Dedication and Improvements (WDI) and Site Plan Review (SPR)		

**FINAL ENTITLEMENTS NOT ADVANCING:**

N/A

**ITEMS APPEALED:**

Conditional Use Permits (CUB, CU), Zoning Administrator’s Adjustment (ZAA), Waiver of Dedication and Improvements (WDI) and Site Plan Review (SPR)

**ATTACHMENTS:**

**REVISED:**

**ENVIRONMENTAL CLEARANCE:**

**REVISED:**

- Letter of Determination
- Findings of Fact
- Staff Recommendation Report
- Conditions of Approval
- Ordinance
- Zone Change Map
- GPA Resolution
- Land Use Map
- Exhibit A - Site Plan
- Mailing List
- Land Use
- Other \_\_\_\_\_

- 
- 
- 
- 
- 
- 
- 
- 
- 
- 
- 
- 

- Categorical Exemption
- Negative Declaration
- Mitigated Negative Declaration
- Environmental Impact Report
- Mitigation Monitoring Program
- Other \_\_\_\_\_

- 
- 
- 
- 
- 
- 

**NOTES / INSTRUCTION(S):**

Attaching Appeal only. All other documents have been transmitted through NOVUS and are in CF-17-0933

**FISCAL IMPACT STATEMENT:**

- Yes                       No

\*If determination states administrative costs are recovered through fees, indicate “Yes”.

**PLANNING COMMISSION:**

- City Planning Commission (CPC)
- Cultural Heritage Commission (CHC)
- Central Area Planning Commission
- East LA Area Planning Commission
- Harbor Area Planning Commission
- North Valley Area Planning Commission
- South LA Area Planning Commission
- South Valley Area Planning Commission
- West LA Area Planning Commission

<b>PLANNING COMMISSION HEARING DATE:</b>	<b>COMMISSION VOTE:</b>
June 8, 2017	9- 0
<b>LAST DAY TO APPEAL:</b>	<b>APPEALED:</b>
August 15, 2017	Yes (August 15, 2017)
<b>TRANSMITTED BY:</b>	<b>TRANSMITTAL DATE:</b>
Rocky Wiles	August 15, 2017

ORIGINAL



APPLICATIONS:

APPEAL APPLICATION

This application is to be used for any appeals authorized by the Los Angeles Municipal Code (LAMC) for discretionary actions administered by the Department of City Planning.

1. APPELLANT BODY/CASE INFORMATION

Appellant Body:

*Per Planning Director JRS*

- Area Planning Commission
- City Planning Commission
- City Council
- Director of Planning

Regarding Case Number: CPC-2016-2263-VZC-HD-CUB-CU-ZAA-WDI-SPR; ENV-2016-2264-MND

Project Address: 1715-1721 North Wilcox Avenue

Final Date to Appeal: 08/15/2017

- Type of Appeal:
- Appeal by Applicant/Owner
  - Appeal by a person, other than the Applicant/Owner, claiming to be aggrieved
  - Appeal from a determination made by the Department of Building and Safety

2. APPELLANT INFORMATION

Appellant's name (print): Lauren "Elle" Farmer

Company: \_\_\_\_\_

Mailing Address: 464 S. Lucase Ave., Suite 201

City: Los Angeles State: CA Zip: 90017

Telephone: (213) 481-8530 E-mail: elle.af4553@gmail.com

- Is the appeal being filed on your behalf or on behalf of another party, organization or company?

Self  Other: \_\_\_\_\_

- Is the appeal being filed to support the original applicant's position?  Yes  No

3. REPRESENTATIVE/AGENT INFORMATION

Representative/Agent name (if applicable): Gideon Kracov

Company: Law Office of Gideon Kracov

Mailing Address: 801 S. Grand Ave., 11th Floor

City: Los Angeles State: CA Zip: 90017

Telephone: (213) 629-2071 E-mail: gk@gideonlaw.net (cc: jordan@gideonlaw.net)

**4. JUSTIFICATION/REASON FOR APPEAL**

Is the entire decision, or only parts of it being appealed?  Entire  Part

Are specific conditions of approval being appealed?  Yes  No

If Yes, list the condition number(s) here: \_\_\_\_\_

Attach a separate sheet providing your reasons for the appeal. Your reason must state:

- The reason for the appeal
- Specifically the points at issue
- How you are aggrieved by the decision
- Why you believe the decision-maker erred or abused their discretion

**5. APPLICANT'S AFFIDAVIT**

I certify that the statements contained in this application are complete and true:

Appellant Signature: *Albe Sumner*

Date: 8/14/17

**6. FILING REQUIREMENTS/ADDITIONAL INFORMATION**

- Eight (8) sets of the following documents are required for each appeal filed (1 original and 7 duplicates):
  - Appeal Application (form CP-7769)
  - Justification/Reason for Appeal
  - Copies of Original Determination Letter
- A Filing Fee must be paid at the time of filing the appeal per LAMC Section 19.01 B.
  - Original applicants must provide a copy of the original application receipt(s) (required to calculate their 85% appeal filing fee).
- All appeals require noticing per the applicable LAMC section(s). Original Applicants must provide noticing per the LAMC, pay mailing fees to City Planning's mailing contractor (BTC) and submit a copy of the receipt.
- Appellants filing an appeal from a determination made by the Department of Building and Safety per LAMC 12.26 K are considered Original Applicants and must provide noticing per LAMC 12.26 K.7, pay mailing fees to City Planning's mailing contractor (BTC) and submit a copy of receipt.
- A Certified Neighborhood Council (CNC) or a person identified as a member of a CNC or as representing the CNC may not file an appeal on behalf of the Neighborhood Council; persons affiliated with a CNC may only file as an individual on behalf of self.
- Appeals of Density Bonus cases can only be filed by adjacent owners or tenants (must have documentation).
- Appeals to the City Council from a determination on a Tentative Tract (TT or VTT) by the Area or City Planning Commission must be filed within 10 days of the date of the written determination of said Commission.
- A CEQA document can only be appealed if a non-elected decision-making body (ZA, APC, CPC, etc.) makes a determination for a project that is not further appealable. [CA Public Resources Code ' 21151 (c)].

This Section for City Planning Staff Use Only		
Base Fee: <u>\$89<sup>00</sup></u>	Reviewed & Accepted by (DSC Planner): <u><i>Editer Macedo</i></u>	Date: <u>08/15/17</u>
Receipt No: <u>0104776445</u>	Deemed Complete by (Project Planner):	Date:
<input type="checkbox"/> Determination authority notified	<input type="checkbox"/> Original receipt and BTC receipt (if original applicant)	

# GIDEON KRACOV

Attorney at Law

801 South Grand Avenue  
11th Floor  
Los Angeles, California 90017

(213) 629-2071  
Fax: (213) 623-7755

gk@gideonlaw.net  
www.gideonlaw.net

August 14, 2017

## VIA HAND DELIVERED

City Council, City of Los Angeles  
C/O Development Services Center  
Department of City Planning  
201 N. Figueroa St., 4<sup>th</sup> Floor  
Los Angeles, CA 90012

**Re: Appeal Application for Whiskey Hotel Project (CPC-2016-2263-VZC-HD-CUB-CU-ZAA-WDI-SPR/ENV-2016-2264-MND); Approved by City Planning Commission on 6/8/17**

Dear Honorable Mayor Garcetti and City Councilmembers:

On behalf of Lauren "Elle" Farmer ("Appellant"), this Office appeals (the "Appeal") the City of Los Angeles ("City") City Planning Commission ("Commission")'s approval on June 8, 2017, of Adolfo Suaya ("Applicant")'s Whiskey Hotel project (CPC 2015-2893-VZC-HD-CUB-ZAA-SPR; ENV-2015-2895-MND) ("Project"), which became effective on July 26, 2017, with the mailing of the Letter of Determination ("LOD"). The LOD identifies August 15, 2017, as the last day to file an appeal.

The Project takes an existing parking-lot and 600 square-foot ("SF") restaurant baseline and adds over 60,000 SF of new development including a 133-room hotel, 3,580 SF of ground floor and rooftop restaurant use, and 103 automobile parking spaces within three parking levels all within a new structure up to seven stories high (appx. 88.5 feet tall). To implement the Project, Applicant requests a Conditional Use Permit to allow sale of full line of alcoholic beverages onsite ("CUB"); Conditional Use Permit to allow commercial uses in the R5 Zone ("CU"); Zoning Administrator's Adjustment permitting a zero-foot southerly yard setback ("ZAA"); Waiver of Dedication and Improvements of the five-foot dedication ("WDI"); Site Plan Review for project creating 50 units or more ("SPR"); and for City Council approval a Vested Zone Change and Height District Change from C4-2D-SN to (T)(Q)C2-2D-SN and removal of the existing "D" Limitation to allow a 88.5-foot, 3.06:1 floor area ratio ("FAR"), in lieu of the otherwise permitted maximum 45-foot, 2:1 FAR development ("VZC/HD") (collectively "Entitlements" or "Project Approvals").

To grant the discretionary Entitlements, the City must make specific findings under the Los Angeles Municipal Code ("LAMC" or "Code"), such as the Project being consistent and in harmony with the General Plan, serving the public's needs and convenience, promoting the general welfare and good zoning practices, necessary to protect the best interest and assuring development compatible with surrounding properties and neighborhood, preventing adverse environmental effects, and not adversely affecting the pertinent community. See LAMC §§ 12.24-W.1(a)(1), 12.32-C.7, -G.1(k), -G.2(a), -G.4(b). Additionally, under the California Environmental Quality Act ("CEQA"), Pub. Res. Code § 21000 *et seq.*, the City must find that the Project would not have a significant effect on the environment based on the Project's Initial Study/Mitigated Negative Declaration ("IS/MND").



Under CEQA, however, there is a strong presumption in favor of requiring preparation of an environmental impact report ("*EIR*"), especially when substantial evidence establishes a "fair argument" that a project may have a significant effect on the environment. See *Laurel Heights Improvement Ass'n v. Regents of the Univ. of Cal.* (1993) 6 Cal.4th 1112, 1123; *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75. Substantial evidence includes facts, reasonable assumptions, and expert opinions supported by facts. See Pub. Res. Code §§ 21080(e), 21082.2(c) and 14 Cal. Code Regs. ("*CEQA Guidelines*") §§ 15064(f)(5), 15384. The fair argument standard is a "low threshold" where lead agencies, like the Department of City Planning ("*City Planning*"), must prepare an EIR whenever there is a reasonable probability or inferences that a project may cause significant effects on the environment – regardless of other evidence in the record or even if the project is beneficial. See e.g. *No Oil, Inc.*, 13 Cal.3d at 83-84; *Parker Shattuck Neighbors v. Berkeley City Council* (2013) 222 Cal.App.4th 768,776; *Friends of "B" Street v. City of Hayward* (1980) 106 Cal.App.3d 988, 1002; see also Pub. Res. Code §§ 21100, 21151; CEQA Guidelines §§ 15063(b)(1), 15384(a).

Here, substantial evidence – ***including unrefuted expert commentary*** – demonstrates serious deficiencies and inaccuracies in the IS/MND that underestimate greenhouse gas ("*GHG*") impacts, mask traffic impacts, and defer analysis for many other significant Project impacts. These deficiencies were neither cured nor adequately addressed in the LOD or City Planning's Response to Comments dated June 6, 2017 ("*Response to Comment*"). Because these impacts directly conflict with the various LAMC and CEQA findings, the Commission erred and abused its discretion when approving the Project based on the record before it.

Therefore, Appellant urges that the City Council reverse the Commission's decision and deny the requested entitlements until a Project-specific EIR is prepared and circulated in compliance with CEQA.

This Appeal application includes the entire administrative record for the Project, including all oral testimony and written documents previously provided such as Matt Hagemann, P.G., C.Hg. air quality and GHG expert comment letter dated May 11, 2017 ("*SWAPE Letter*"); Tom Brohard, P.E. traffic expert comment letter dated May 19, 2017 ("*Brohard Letter*"), and a letter submitted by Appellant dated June 8, 2017 ("*Farmer Letter*"). These materials have already been provided to the City; if not in its possession, let Appellant's lawyer know at once.

All said materials are incorporated by this reference in their entirety. Please ensure that all of these documents are included in the record for the Project and any future action taken by the City. As an appellate body to Commission's approval of a site plan review, the City Council must base its decision "upon evidence in the record, including testimony and documents produced at the hearing before [it]." See LAMC § 16.05-H.4.

## I. REASONS FOR THIS APPEAL

Appellant challenges this Project chiefly on two grounds; (1) City Planning failed to properly assess the Project's environmental impacts, and (2) the Commission cannot make the necessary findings to grant the discretionary Project Approvals. As discussed below, the IS/MND failed to adequately assess various Project-specific environmental impacts—particularly traffic and GHG/air quality impacts in this heavily congested part of Hollywood. These run in the face of mandatory LAMC and CEQA findings. For these reasons, Appellant requests that the City Council reverse the Commission's Project Approvals and require the City to prepare an EIR compliant with CEQA.

## II. APPELLANT HAS STANDING & IS AGGRIEVED

Appellant is a resident of the City of Los Angeles and lives approximately three miles from the Project location and regularly frequents the immediately adjacent areas for work and social events (e.g. eating at nearby restaurants and visiting Amoeba Music a block away from the Project site). Given this proximity, Appellant risk a host of environmental impacts including traffic congestion if the Commission's decision is not reversed and the Project is allowed to be built without further environmental review. Applicant therefore is considered "aggrieved" under LAMC sections 12.24.1-E and 12.24-1.2.

Furthermore, Appellant filled out a speaker card and submitted letters before the Commission during the Project hearing on June 8, 2017. Those comments and this Appeal are made to exhaust remedies under *Pub. Res. Code* section 21177 concerning the Project, and incorporate by this reference all written and oral comments submitted on the Project by any commenting party or agency. It is well established that any party, as Appellant did here, who participates in the administrative process can assert all factual and legal issues raised by anyone. *Citizens for Open Government v. City of Lodi* (2006) 144 Cal.App.4th 865, 875.

## III. COMMISSION ERRED & ABUSED ITS DISCRETION

When granting the Project Entitlements, the Commission: (A) erred in relying on an inadequate IS/MND and problematic LOD and (B) abused its discretion by failing to make the necessary findings.

An IS/MND was prepared for this Project, not a more comprehensive EIR pursuant to CEQA law. This means that the less deferential "fair argument" standard applies. The "fair argument" standard creates a "low threshold" favoring environmental review through an EIR rather than through issuance of a negative declaration, even if other substantial evidence supports the opposite conclusion. *Mejia v. Los Angeles* (2005) 130 Cal.App.4th 322; *Pocket Protectors v. Sacramento* (2005) 124 Cal.App.4th 903. "Substantial evidence includes ... expert opinion." *Pub. Res. Code* § 21080(e)(1); *CEQA Guidelines* § 15064(f)(5). An agency's decision not to require an EIR can be upheld only when there is no credible evidence to the contrary. *Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th 1307, 1318.

When making its decision on, the Commission knew there was a **"fair argument" that the Project's GHG analysis was incomplete and that it may cause traffic impacts in this congested part of Hollywood and that, as a matter of law, the City needed to prepare an EIR.** As indicated in traffic and GHG/air quality expert letters were several substantial issues affecting the validity of the IS/MND's conclusions and that a corrected analysis would reveal additional significant impacts not documented in the IS/MND. Not only was it suggested to prepare a modified GHG impact analysis into a revised environmental document, but also that the document already prepared on its face showed significant cumulative traffic impacts.

Because the MND and LOD were deficient under CEQA, the Commission erred when granting the Project Entitlements without proper analysis of the environmental impacts. Additionally, the Commission could not make the necessary findings on the record before it and therefore, abused its discretion when granting the Project Approvals.

#### IV. SPECIFIC POINTS AT ISSUE

##### A. Under CEQA, The Commission Erred When Relying On An Inadequate IS/MND, Which Council Should Reject And Require An EIR

Multiple impacts are inadequately analyzed under the Project's MND, which is not cured by the LOD that raises additional concerns, specifically the following:

##### 1. GHG Impacts

The CEQA Guidelines and recent decisions by the California Supreme Court, including *Center for Biological Diversity v. Cal. Dept. of Fish and Wildlife* (2015) 62 Cal.4th 204 (commonly referred to as "*Newhall Ranch*"), confirm the importance of undertaking a robust GHG analysis for any and all projects. Here, the IS/MND fails to do this in a way that is supported by "substantial evidence."

i. **Unsubstantiated Carbon Intensity Factor Cut Out Of Whole Cloth:** As set forth in the SWAPE May 11, 2017 letter, the MND's GHG analysis relied upon calculations from the California Emissions Estimator Model ("*CalEEMod*") that included an incorrect carbon dioxide ("*CO<sub>2</sub>*") intensity factor of 840 pounds per megawatt-hour ("*lb/MWhr*"), in lieu of the 1227.89 lb/MWhr, which "underestimated" the Project's operational emissions generated from electricity use. SWAPE letter, pp. 2-3. The MND's justification for this was Senate Bill 350 ("*SB-350*") requiring publicly owned utilities, like Los Angeles Department of Water and Power ("*LADWP*"), to provide 33 percent of its power demands by renewable energy sources by the year 2020. While SWAPE noted this purported justification, the experts indicated that the "840 lb/MWhr value [was] unknown" and that the IS/MND and associated appendices provided "no additional explanation or justification ... where this alternative intensity factor was taken from ... [or] that supports the use of this other CO<sub>2</sub> intensity factor in place of the CalEEMod default value." *Id.* In response, the City Planning merely restates its justification; stating the default value is based on historical LADWP emissions from 2006, that LADWP will increase renewable energy sources by 38 percent by 2019, and that this amount of increase "results in a decrease in the intensity factor ...." See LOD, F-18; Response to Comments, p. 1. Again, no calculations are provided or data demonstrating that LADWP emissions have appreciatively changed since 2006 – these bald statement that modification is consistent with current regulatory standards. *Id.*

ii. **An Updated Analysis Indicate Ghg Emissions Exceeding Thresholds:** In reality, when analysis is performed with proper CalEEMod carbon intensity factor, Project-related construction and operational emissions total 3,017 metric tons of CO<sub>2</sub> equivalents per year ("*MT CO<sub>2</sub>e/year*") or 40.2 MT CO<sub>2</sub>e per year per service population ("*MT CO<sub>2</sub>e/sp/yr*"). *Id.* at 3-5. These exceed significant thresholds recommended by the South Coast Air Quality Management District ("*SCAQMD*") intended to meet GHG reduction goals of lowering statewide emissions to 1990 levels by 2020 pursuant to the California Global Warming Solutions Act of 2006 ("*AB-32*"). Neither the LOD nor Response to Comments address these expert comments, despite being clearly identified by SWAPE:

///

Annual Greenhouse Gas Emissions	
Phase	MT CO <sub>2</sub> e/year
Construction (Amortized) <sup>5</sup>	31
Operational	2,986
<b>Total</b>	<b>3,017</b>
SCAQMD Screening Level	3,000
Threshold Exceeded?	Yes

Source	Emissions	Unit
Total Annual Emissions	3,017	MTCO <sub>2</sub> e/year
Maximum Service Population	75	Employees
Per Capita Annual Emissions	40.2	MTCO <sub>2</sub> e/sp/year
2020 SCAQMD Project Level Efficiency Threshold	4.8	MTCO <sub>2</sub> e/sp/year
Exceed?	Yes	-
Per Capita Annual Emissions	40.2	MTCO <sub>2</sub> e/sp/year
2035 SCAQMD Project Level Efficiency Threshold	3.0	MTCO <sub>2</sub> e/sp/year
Exceed?	Yes	-

iii. **Applicant Must Demonstrate Consistency With Executive Order B-30-15, S-3-05 And SB-32:** In 2015, the Governor issued Executive Order B-30-15 reducing emission targets to 40 percent below 1990 levels by 2030,<sup>1</sup> which was made State law in 2016 with the passage of Senate Bill 32 ("**SB-32**").<sup>2</sup> Additionally, projects must consider long term reduction goals of 80 percent below 1990 levels by 2050 set forth by Executive Order S-3-05.<sup>3</sup> By failing to demonstrate consistency with these mandates, the IS/MND is incomplete and should not be relied upon to determine Project' significance. At minimum, the IS/MND should have demonstrated compliance with the 2030 reduction goals by using one of the methods suggested in *Newhall Ranch*, such as scaling the 40 percent statewide reduction target down to a "project-level." 62 Cal.4<sup>th</sup> at 229-231. Furthermore, the Applicant may not rely on Project design features being consistent with any of the laws listed as AB-32 Reduction Measures (*see* IS/MND, pp. B-38-45), given none were adopted before the more aggressive targets of SB-32 were passed, nor adopted as a "regulatory programs designed to reduce [GHG] emissions from [this] particular activities." *Newhall Ranch*, 62 Cal.4<sup>th</sup> at 229.

The California Supreme Court has made it clear that a finding that GHG impacts are insignificant must be "based to the extent possible on scientific and factual data" and "in a manner calculated to adequately inform the public and decision makers." *Cleveland National Forest Foundation v. San Diego Assn. of Governments* (2017) \_\_ Cal.5<sup>th</sup> \_\_ [2017 Cal. LEXIS 5125, at \*31-32]. Here, that finding cannot be made on the record before the Commission and Council.

///

<sup>1</sup> Governor Brown Establishes Most Ambitious Greenhouse Gas Reduction Target in North America (Apr. 29, 2015) State of California, available at <https://www.gov.ca.gov/news.php?id=18938>.

<sup>2</sup> SB32 text available at [https://leginfo.ca.gov/faces/billNavClient.xhtml?bill\\_id=201520160SB32](https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB32).

<sup>3</sup> Executive Order S-3-05 text available at <https://www.gov.ca.gov/news.php?id=1861>.

iv. **Applicant Cannot Be Credited For GHG Reductions Having Nothing To Do With The Project:** It highly questionable whether the IS/MND can rely on statewide mobile source reduction programs and, most seriously, treating measures having nothing to do with the Project as mitigation for the Project impacts. According to California Air Pollution Control Officers Association ("CAPCOA") on quantifying project-related GHG emissions:

*"... in order for a project or measure that reduces emissions to count as mitigation of impacts, the reductions have to be 'additional.' Greenhouse gas emission reductions that are otherwise required by law or regulation would appropriately be considered part of the existing baseline. Thus, any resulting emission reduction cannot be construed as appropriate (or additional) for purposes of mitigation under CEQA."*<sup>4</sup>

This concept is known as additionality, whereby GHG emission reductions that are otherwise required by law or regulation are appropriately considered part of the baseline and, pursuant to CEQA Guideline section 15064.4(b)(1), a new project's emission should be compared against that existing baseline.<sup>5</sup> ***Emissions reductions that would occur without the Project should not normally qualify as Project mitigation.*** Thus, this Project needs to do its own fair share, with enforceable, detailed Project-specific mitigations – aside from existing statewide and local measures – governed by performance standards to guarantee efficacy.

v. **Project is Overparked Contrary to Smart Growth Policies:** The Project includes 103 parking spaces, more than 37 percent above the 75 required under the Code. See LOD, p. F-17. This is the antithesis of Transit Demand Management ("TDM") and "smart growth" policies of limited parking supply, which encourage alternative forms of transportation, alleviate traffic demand on area roadways, thereby reducing mobile-source GHG emission and vehicles per mile traveled ("VMT")—recognized and advanced by CAPCOA,<sup>6</sup> Southern California Association of Governments ("SCAG"),<sup>7</sup> and expert Mr. Hagemann (see SWAPE Letter, p. 8).

vi. **Feasible Mitigation Measures Are Available To Reduce GHG/NOx Emissions:** As a result of the IS/MND's "incorrect and unreliable" analysis (*id.* at 1), the Project avoids numerous feasible and cost-effective mitigation measures that could reduce the Project's GHG and Nitrogen Oxide ("NOx") emissions (*id.* at 5-11).

By failing to accurately assess the Project's GHG emissions, demonstrate compliance with SB-32 reduction goals, and improperly credit for reduction measures that have nothing to with the Project's, Applicant's GHG analysis is insufficient.

/ / /

---

<sup>4</sup> 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>.

<sup>5</sup> OPR (DEC. 2009) Final Statement of Reasons, pp. 88-89, available at [http://resources.ca.gov/ceqa/docs/Final\\_Statement\\_of\\_Reasons.pdf](http://resources.ca.gov/ceqa/docs/Final_Statement_of_Reasons.pdf).

<sup>6</sup> CAPCOA, *supra* n#, pp. 61-62, 207-209.

<sup>7</sup> SCAG (Apr. 2016) 2016-20140 RTP/SCS, pp. 25, 33, 58, 78, available at <http://scagrtpscs.net/Documents/2016/final/f2016RTPSCS.pdf>.

## 2. Traffic Impacts

i. **No Analysis Of Potential Valet Operations:** The IS/MND provides no analysis of potential valet service, part of the revised LOD,<sup>8</sup> discussing additional information analysis to be conducted in the future. First, a number of potential issues are raised by this operation, which **is exacerbated when the City waives the required dedication**, such as:

- How many on-street parking spaces may be eliminated by valet services taking part on the street, or caused by any overflow of vehicles queued to enter into the Project (e.g. ubers, lyfts, taxis, etc.)?
- What will be the impact of that parking loss on near-by businesses?
- Will operation adversely affect traffic flow along Wilcox as drivers enter and exit the pickup/drop-off zone?
- What happens when the pickup/drop-off zone is fully occupied and another vehicle arrives to take advantage of the valet operation? Will the right-hand lane on Wilcox be blocked to those attempting to access Hollywood Blvd.? Will this result in rear-end collisions or other safety hazards?
- What are the traffic and safety impacts associated with valets driving vehicles between the pickup/drop-off zone and the parking facility entrance/exit locations?

Second, failure to address this potential impacts and formulate mitigation measures amounts to improperly deferred analysis under CEQA. CEQA caselaw requires the City to "craft mitigation measures that would satisfy enforceable performance criteria." *City of Maywood v. Los Angeles Unified School Dist.* (2012) 208 Cal.App.4th 362, 407. The absence of performance standards here violates CEQA. CEQA disallows deferring the formulation of mitigation measures to post-approval studies with no performance standards to guide the mitigation. CEQA Guidelines § 15126.4(a)(1)(B); *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 308-309. An agency may only defer the formulation of mitigation measures when it possesses "'meaningful information' reasonably justifying an expectation of compliance." *Sundstrom*, 202 Cal.App.3d at 308; *see also Sacramento Old City Association v. City Council of Sacramento* (1991) 229 Cal.App.3d 1011, 1028-29 (mitigation measures may be deferred only "for kinds of impacts for which mitigation is known to be feasible").

ii. **The City Masks Cumulative Traffic Impacts:** Germane to both land use consistency and CEQA purposes, the Project's traffic shows the Project will contribute to cumulative traffic impacts that exceed or nearly exceed the City's significance threshold at several intersections. *See* IS/MND, pp. B-114. However, as explained in traffic expert's May 19, 2017, letter, the traffic analysis "masks the overall significant cumulative traffic impacts that will occur during peak hours at three of the eight intersections studied ... [by] focus[ing] on the very small incremental addition to traffic ... generated by the [project]." *See* Brohard Letter, p. 2. In response, City Planning states the study was performed by a "registered professional engineer, consistent with LADOT's Traffic Study Policies and Procedures." *See* City Response, p. 1; *see also* LOD, p. F-18. However, applying the City's thresholds only to the Project's incremental contribution to the change in volume/capacity (" $V/C$ ") (*see* IS/MND, p. B-114), divorced from the context of the 130 other related projects identified is legally inadequate.

---

<sup>8</sup> See LOD, p. C-5 providing new condition 45.

Based on the data provided in the Project's traffic analysis,<sup>9</sup> the table below summarizes the V/C impacts at the affected intersections. Accordingly, the cumulative impact of the Project and the 130 related projects (column I) exceed the City's thresholds (column H) at the identified intersection and therefore create a "collectively significant" traffic impact. See CEQA Guidelines § 15355. For example, during a.m. peak hours at Wilcox and Franklin, the existing condition of 0.781 V/C, LOS C (Columns B & C) increase to 0.882 V/C, LOS D (Columns F & G), caused by the Project and 130 related projects, amounting to a cumulative impact of 0.101 increase in V/C (Column I), which exceeds the 0.20 threshold (Column). Nearly six percent of this cumulative impact is attributable to the Project's incremental contribution (column J) and therefore is cumulatively considerable. See CEQA Guidelines § 15130(a).

Intersection	Peak Hour	A	B	C	D	E	F	G	H	I	J	K
		Existing (E)		Future (F)		Future w/ Project (FP)		Thresholds	Cum. Impact	Project's Incremental Contribution		
		V/C	LOS	V/C	LOS	V/C	LOS	V/C Increase	FP - E	FP - F	PERCENT	
Wilcox / Franklin	am	0.781	C	0.876	D	0.882	D	≥ 0.020	0.101	0.006	5.9%	
Cahuenga / Franklin	am	0.921	E	1.039	F	1.043	F	≥ 0.010	0.122	0.004	3.3%	
Cahuenga / Franklin	pm	0.855	D	0.960	E	0.967	E	≥ 0.010	0.112	0.007	6.3%	
Cahuenga / Hollywood	am	0.792	C	0.940	E	0.946	E	≥ 0.010	0.154	0.006	3.9%	

The City may not improperly focus only on the Project's relatively small contribution to the overall cumulative impact. See *Kings County Farm Bureau, supra*, 221 Cal.App.3d at 720-721 (rejecting determination that less than 1 percent to area emissions was less than significant because analysis improperly focused on the project-specific impacts and did not properly consider the collective effect of the relevant projects on air quality). Nor may the City ignore these comments by claiming discretion in adopting its own thresholds. For example, *East Sacramento Partnership for a Livable City v. City of Sacramento*, (2016) 5 Cal.App.5th 281, involved a residential infill project where an EIR (not performed here) showed cumulative traffic impacts resulting in a LOS of F at several intersections. There, commenters questioned the city's significance threshold, which found these traffic impacts to be less-than-significant because the project was consistent with the city's general plan. In setting aside the EIR, the court noted that while CEQA grants agencies discretion to develop their own thresholds of significance, "[t]hat discretion, however, is not unbounded, as the determination that the Project has no significant environmental impact must be supported by substantial evidence." *Id.* at 300. The court explained:

*"[T]he fact that a particular environmental effect meets a particular threshold cannot be used as an automatic determinant that the effect is or is not significant ... a threshold of significance cannot be applied in a way that would foreclose the consideration of other substantial evidence tending to show the environmental effect to which the threshold relates might be significant. [Citation.]" [Citation].*

*Id.* at 303-304 (emphasis added).

///

<sup>9</sup> IS/MND at Table B-22 & 23, pp. B-113-114.



Here, like in Sacramento, the City's application of LADOT policy automatically minimizes the Project's cumulatively considerable traffic impacts. A cumulative analysis is supposed to be more demanding than a project-only analysis whereby the "threshold of significance for project-related impacts on its own is higher than the threshold for assessing its cumulative impact." *Save Cuyama Valley v. County of Santa Barbara* (2013) 213 Cal.App.4th 1059, 1072. Here, application of the same threshold to both (i) the Project's impact on existing conditions and (ii) the Project's incremental contribution to future conditions, but not (iii) the cumulative impact to future conditions (Project plus related projects), amounts to a less stringent cumulative analysis. *Id.* (upheld use of same thresholds when the application was "undoubtedly more stringent cumulative-impact threshold"). This policy automatically ignores and minimizes the continued deterioration of intersections, like Bundy and Santa Monica, suffering V/C increases cumulatively caused by this Project and the other related projects. *See Al Larson Boat Shop, Inc. v. Board of Harbor Comm'rs*, (1993) 18 Cal.App.4th 729, 749 (upheld where cumulative impacts were not minimized or ignored). This policy systematically labels projects' cumulative impacts as insignificant merely because that impact would be a "drop in the bucket" in an already existing environmental problem – an argument that has been repeatedly rejected by the courts. *Save Cuyama Valley*, 213 Cal.App.4th at 1073 (citing *Kings County Farm Bureau*, 221 Cal.App.3d 692; *Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98; *Los Angeles Unified School Dist. v. City of Los Angeles* (1997) 58 Cal.App.4th 1019).

The City must explain, with substantial evidence, why the Project's 3.3 to 6.3 percent contribution in V/C increases is less than significant.

iii. ***Additional Related Projects May Have Further Underestimated Cumulative Impacts:*** The IS/MND identifies 130 related projects in its cumulative analysis (*see* IS/MND, p. B-137), while 139 related projects were identified in a similar project less than 0.2 miles away from the Project site,<sup>10</sup> which may further underestimate the Project's cumulative traffic impact. The IS/MND does not adequately this, much less explain away with substantial evidence.

### **3. Land Use Inconsistency**

The IS/MND must discuss any inconsistencies between the proposed Project and applicable General Plan. *See* CEQA Guidelines § 15125(d). This inconsistency is particularly acute here when it comes to taking away land zoned for housing, including affordable housing – a topic that the Project IS/MND ignores.

The Project's 133-guestroom hotel will take away the ability to develop housing on the site, especially affordable housing that would be allowed under the site's C4 zoning designation. This is a great concern. According to the UCLA Ziman Center, Los Angeles housing prices have grown about four times faster than incomes since 2000 and "affordable housing production and preservation needs to accelerate."<sup>11</sup> Los Angeles is the least affordable rental market in the country, according to Harvard University's Joint Center for Housing Studies, and has been ranked the second-least affordable region for middle-class people seeking to buy a home.<sup>12</sup> The City of Los Angeles' Housing Needs Assessment indicates that through September 30, 2021, 20,426 additional housing units are

---

<sup>10</sup> *See* Tommie Hotel (Dec. 2016) ENV-2016-4313-MND, p. II-32, available at [http://cityplanning.lacity.org/staffrpt/mnd/Pub\\_122216/ENV-2016-4313.pdf](http://cityplanning.lacity.org/staffrpt/mnd/Pub_122216/ENV-2016-4313.pdf) (last visited 6/7/17).

<sup>11</sup> *See* <http://www.anderson.ucla.edu/Documents/areas/ctr/ziman/2014-08WPrev.pdf>.

<sup>12</sup> *See* <http://www.latimes.com/opinion/editorials/la-ed-affordable-housing-part-1-20150111-story.html>.

needed in the City for very low-income, 12,435 for low-income and 13,728 are for moderate income.<sup>13</sup>

The City's General Plan reflects this urgent need for affordable housing. See *City of Los Angeles General Plan Housing Element Goal 1* "A City where housing production and preservation result in an adequate supply of ownership and rental housing that is safe, healthy and affordable to people of all income levels, races, ages, and suitable for their various needs"; Policy 1.1.1 "Expand affordable home ownership opportunities and support current homeowners in retaining their homeowner status"; Policy 1.1.2 Expand affordable rental housing; Objective 2.5 "Promote a more equitable distribution of affordable housing opportunities throughout the City"; Policy 2.5.1 "Target housing resources, policies and incentives to include affordable housing in residential development, particularly in mixed use development, Transit Oriented Districts and designated Centers"; and Policy 2.5.2 "Foster the development of new affordable housing units citywide and within each Community Plan area."<sup>14</sup>

The same affordability concerns must be addressed under the governing Hollywood Community Plan and Redevelopment Plan. See *City of Los Angeles Hollywood Community Plan Objective 3* "To make provision for the housing required to satisfy the varying needs and desires of all economic segments of the Community . . . [a]dditional low and moderate-income housing is needed in all parts of this Community"; *Hollywood Redevelopment Plan Goal 300.9* "Provide housing choices and increase the supply and improve the quality of housing for all income and age groups, especially for persons with low and moderate incomes; and to provide home ownership opportunities and other housing choices which meet the needs of the resident population"; Goal 410.4 "At least fifteen percent (15%) of all new or rehabilitated units developed within the Project Area by public or private entities or persons other than the Agency shall be for persons and families of low or moderate income; and of such fifteen percent, not less than forty percent (40%) thereof shall be for very low-income households"; and Goal 412 "The social needs of the community include but are not limited to the need for day care facilities, housing for very low and low-income persons including the elderly, the homeless, and runaways, educational and job training facilities, counseling programs and facilities."<sup>15</sup>

By taking away the ability to build housing onsite, this Project likely is General, Community and Redevelopment Plan inconsistent, not in the "general welfare," and the City may be paying mere lip service to the mandates of its governing Plans. ***If the City is going to bless this zero housing Project, real community benefits should be required.***

#### **4. Aesthetic/Historical Resources Impacts**

Here, the Project is surrounded by historical properties (LOD, F-4, F-14-15). However, the Project's shadow analysis fails to identify these buildings as sensitive uses or discuss potential shadow impacts this seven story building will cast. See IS/MND, B-8. These may cause "substantial adverse change in the significance" of these historical resources. Pub. Res. Code § 15064.5(b). It is well-established that architectural and historic resource impacts can be significant impacts that

---

<sup>13</sup> See <http://planning.lacity.org/HousingInitiatives/HousingElement/Text/Ch1.pdf>.

<sup>14</sup> See <http://planning.lacity.org/HousingInitiatives/HousingElement/Text/Ch6.pdf>.

<sup>15</sup> See <http://planning.lacity.org/complan/pdf/HwdCpTxt.pdf>; <http://www.crala.org/internet/site/Projects/Hollywood/upload/HollywoodRedevelopmentPlan.pdf>.

must be studied under CEQA. See Guidelines App. G. Numerous cases deem impacts on these resources as significant. *Ocean View Estates v. Montecito Water Dist.* (2004) 116 Cal.App.4<sup>th</sup> 396, 401; *Quail Botanic Gardens v. City of Encinitas* (1994) 29 Cal.App.4<sup>th</sup> 1597, 1603-1605. A

**5. Deferred Mitigation/Non-Enforceable Performance Standards/ Pre-Commitment**

As discussed above, CEQA disallows differed mitigation. In addition to improperly deferring analysis of a potential future valet service, the LOD anticipated a future "Plan Approval" between 18 months and two years after the Project receives its Certificate of Occupancy. See LOD, p. C-6, F-12. First, there are no performance standards included in this future Plan Approval. Second, this Plan Approval is not included in the adopted Mitigation Monitoring Program attached to the IS/MND (i.e. Exhibit B). Third, this amounts to improper pre-committed by the City that "as a practical matter" limited its ability to reject or take effective steps to mitigate Project impacts. *Save Tara v. City of W. Hollywood* (2008) 45 Cal.4<sup>th</sup> 116, 139.

***B. Council Should Deny the Project Approval Because the Required Land Use Findings Cannot be Made***

The CEQA, land use and other concerns addressed in this Appeal must be adequately addressed in order to make the required City Zoning Code, Community Plan, and Redevelopment Plan findings. ***The entitlements are discretionary, not by right.*** Absent compliance with the issues addressed herein, the Commission could not make the necessary findings and therefore should have rejected Applicant's requested discretionary entitlements. See LAMC § 12.32.F.1 (requiring for zone change "that the public necessity, convenience, general welfare or good zoning practice so require"); § 12.24.E (conditional use permit for alcohol requires that Project "will be compatible with and will not adversely affect or further degrade adjacent properties, the surrounding neighborhood . . ." and "substantially conforms with the purpose, intent and provisions of the General Plan, the applicable community plan . . ."); § 12.28.C.4 (zoning administrator adjustment "will be compatible with and will not adversely affect or further degrade adjacent properties, the surrounding neighborhood, or the public health, welfare and safety" and "is in substantial conformance with the purpose, intent and provisions of the General Plan, the applicable community plan . . ."); § 16.05.F (site plan review findings must show "that the project is in substantial conformance with the purposes, intent and provisions of the General Plan, applicable community plan . . ." and "that the project consists of an arrangement of buildings and structures (including height, bulk and setbacks), off-street parking facilities, loading areas, lighting, landscaping, trash collection, and other such pertinent improvements, that is or will be compatible with existing and future development on adjacent properties and neighboring properties"); and *Hollywood Redevelopment Plan* § 506.2.3 ( in order to grant up to 6:1 FAR Project must be designed "to concentrate high intensity and/or density development in areas with reasonable proximity or direct access to high capacity transportation facilities or which effectively utilize transportation demand management programs" and "[a]ny adverse environmental effects especially impacts upon the transportation and circulation system of the area caused by proposed development shall be mitigated or are overridden by other social, economic or physical considerations, and statements of findings are made").

///

In particular, Appellant wants to call attention to the purported Redevelopment Plan section 506.2.3 required findings that impacts to transportation and circulation caused by the Project are overridden by other social, economic or physical considerations. This required statement of overriding considerations must be supported by substantial evidence in the record and the agency must present an explanation to supply the logical steps between the ultimate finding and the facts in the record. See *Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 515. It has not.

Here, in exchange for giving this Project a host of discretionary development favors, the City is requiring close to nothing. First, the OPA<sup>16</sup> or required Hollywood Redevelopment Plan section 506.2.3 and Ordinance No. 165,660 "D" Limitation DDA or "binding written agreement with the Agency . . . providing for, among other things, Agency review and approval of all plans and specifications, the compliance with all conditions applicable to development in excess of a 4:5:1 site FAR and the provision of adequate assurances and considerations for the purpose of effectuating the objectives of the Plan" are nowhere to be found.

In reality, the proposed findings make no attempt to determine the required "social, economic or physical considerations" of the Project. For example, identifying new jobs created by the Project, in either the construction phase or the operational phase, the likely salary and wage ranges, and whether employees will have the right to collectively bargain. Without this information, the City lacks substantial evidence to make any statement of overriding considerations. The City cannot find that the economic and social benefits of the Project outweigh the environmental costs.

## V. CONCLUSION

Appellant appreciates the opportunity to provide these comments and respectfully urges the City to reverse the Commission's actions and ensure compliance with all LAMC, CEQA, and City Planning requirements. In sum, the record before the Commission established a fair argument that the Project may cause significant environmental impacts and, therefore, require the preparation of a Project-specific EIR. Without which, the genuine impacts cannot be adequately assessed, disclosed, and mitigated to the fullest extent feasible – as required by CEQA. See CEQA Guidelines § 15002(a)(2) & (3).

///

---

<sup>16</sup> In light of CRA/LA dissolution, the appropriate action in order to remove the limitation requiring the OPA or otherwise divest the CRA/LA of its responsibility to enter into OPAs would be to: i) transfer the powers of the former CRA to the City, or ii) amend the Hollywood Redevelopment Plan. Neither has yet occurred. The City is in the process of considering an ordinance to take control from the former CRA's responsibilities. <https://cityclerk.lacity.org/lacityclerkconnect/index.cfm?fa=ccfi.viewrecord&cfnumber=13-1482-S1>; <https://cityclerk.lacity.org/lacityclerkconnect/index.cfm?fa=ccfi.viewrecord&cfnumber=11-0086-S4>; <https://cityclerk.lacity.org/lacityclerkconnect/index.cfm?fa=ccfi.viewrecord&cfnumber=12-0014-S4>. Once the City transfers authority, then it will have the ability to assume the role of the former CRA/LA. In the absence of a successor agency to administer redevelopment activities, the Applicant cannot cherry pick portions of Hollywood Redevelopment Plan that it likes (the FAR increase) while ignoring others (the OPA/DDA requirement).

Whiskey Hotel Project  
L. "Elle" Farmer Appeal Application  
August 14, 2017  
Page 13 of 13

Appellant reserves the right to supplement these comments at future hearings and proceedings for this Project. *See Cmtys. for a Better Env't v. City of Richmond* (2010) 184 Cal.App.4<sup>th</sup> 70, 86 (EIR invalidated based on comments submitted *after* Final EIR completed); *Galante Vineyards v. Monterey Peninsula Water Management Dist.* (1997) 60 Cal.App.4<sup>th</sup> 1109, 1120 (CEQA litigation not limited only to claims made during EIR comment period).

Finally, on behalf of Appellant, 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](mailto:gk@gideonlaw.net) (cc: [jordan@gideonlaw.net](mailto:jordan@gideonlaw.net)).

Thank you for consideration of this Appeal. We ask that they are placed in the administrative record for the Project.

Sincerely,



Gideon Kracov  
Law Office of Gideon Kracov  
Attorney for Appellant, Lauren "Elle" Farmer

Encl.:

Appeal Application Form CP-7769  
Original Letter of Determination mailed December 5, 2016