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July 25, 2018

VIA EMAIL

Chairman Huizar and Honorable Committee Members
Los Angeles City Council
Planning and Land Use Management Committee
200 N. Spring Street
Los Angeles, CA 90012-4801
Attn: Sharon Dickinson, Deputy City Clerk
clerk.plumcommittee@lacity.org

Los Angeles Department of City Planning
200 N. Spring Street
Los Angeles, CA 90012-2601
Attn: Darlene Navarrete
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Re: Comment Letter on Purported July 5, 2018 Negative Declaration for Lyric Theatre (520 North La Brea Ave.): ENV-2016-2549-ND; Council File No. 18-0166-S1

Dear Chairman Huizar, Honorable Committee Members, and Ms. Navarrete:

On behalf of Yeshiva Rav Isacsohn Torath Emeth Academy (“Torath Emeth”), an orthodox Jewish school serving over 1,000 children from ages 2 to 14, this letter supplements our appeal (and June 15, 2018 letter) of the Mitigated Negative Declaration (“MND”) approved by the Central Area Planning Commission (“APC”) with regard to the proposed conditional use permits (“CUP”) for the Lyric concert venue, nightclub and theater project (the “Project”).¹

This letter provides additional comments with respect to a completely new Negative Declaration (“ND”) for the Project issued by the Planning Department on July 5, 2018 without any notification to us, the appellant or the community long after our appeal (and others) was filed and reflects an abandonment of the prior approved MND. The only item before the Planning and Land Use Management Committee is the appeal of the MND. The Planning Department’s action to issue a new ND is a violation of the California Environmental Quality Act (“CEQA”) and other laws.

On March 20, 2018, Torath Emeth filed an appeal of the MND associated with the CUP for the Project that the APC adopted in its March 14, 2018 determination letter. On March 23, 2018, many of the other sensitive uses in the community also filed appeals of the MND,

¹ The Lyric intends to sell and serve alcohol for on-site consumption with dancing in the midst of orthodox Jewish schools, synagogues, a senior assisted living facility, a senior nursing home and rehabilitation facility and an adjacent residential area. In total, there are at least 13 sensitive uses within 1,000 feet of the Lyric.

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including Jewish Learning Exchange (a synagogue located at 512 N. La Brea, directly adjacent to the Lyric), Bnos Devorah High School (461 N. La Brea), City View Villa (an assisted living facility located at 515 N. La Brea), La Brea Rehabilitation Center, LLC (505 N. La Brea), Rabbinical Council of California, and Congregation Kollel Yechiel Yehuda. We incorporate by reference our appeal and our letter of June 15, 2018 into comments on the ND.

Now, ***with no notice to any appellant***, the Planning Department without compliance with procedural due process and California law is proposing a completely new ND be adopted for the Project.

Setting aside that the ND was not before the APC, like the MND before it, this new ND prepared by the City for the Project remains totally inadequate under CEQA. The law requires a lead agency to prepare an environmental impact report (“EIR”) for a project *whenever substantial evidence in the record supports a “fair argument” that a project may have a significant effect on the environment.*² This standard sets a low threshold for the preparation of an EIR. The record contains extensive evidence, including expert reports, demonstrating that the Project would result in potentially significant environment effects. The low threshold clearly has been met.

Further, the City Council has ***no jurisdiction over the ND*** and *cannot* consider it in acting on Torath Emeth’s and others’ CEQA appeals. Public Resources Code section 21151(c), the statute governing CEQA appeals to the City Council, is clear—“[i]f a nonelected decisionmaking body of a local lead agency certifies an environmental impact report, ***approves a*** negative declaration or ***mitigated negative declaration***, or determines that a project is not subject to this decision, ***that*** certification, ***approval***, or determination may be appealed to the agency’s elected decisionmaking body, if any.” (Emphasis added.) The ND was not before the APC and is not before this Committee and the Council. Not only was the ND never before the APC, appellants of the MND were never properly notified of the ND, and as a result, the ND has absolutely no place before the City Council. If the City and/or Lyric Theatre desire to rely on the ND, Lyric must make a new application for a conditional use permit and restart the process.

Accordingly, we respectfully request that since the Planning Department has admitted that the MND was not adequate (by creating a new CEQA document), the City Council should grant the appeals by Torath Emeth and the other appellants, reverse the APC’s adoption of the MND for the Project, and require the preparation of an EIR for the Project.

The City Council should grant the requests on the following grounds:

1. **The City Council does not have jurisdiction over the ND.** As noted briefly above, Public Resources Code section 21151(c) specifically provides that the Council may hear appeals of negative declarations and mitigated declarations which have been approved by a planning commission. Under CEQA, these documents are not interchangeable. The MND for the Project was appealed to the City Council—the ND was not. Indeed, the ND was never seen

² *Quail Botanical Gardens Foundation, Inc. v. City of Encinitas* (1994) 29 Cal.App.4th 1597, 1602.

or approved by any other decisionmaking body. As is clear under the procedures outlined in the December 30, 2005, Deputy Director of City Planning Robert H. Sutton (“Sutton Memo”) memorandum (See Exhibit A), the only item before the Council is the MND. The plain language of section 21151(c) is reinforced by the Sutton Memo, which states that “the **Council only has the environmental appeal in front of them[.]**” (Emphasis added.)³ Neither the statute nor the City’s own procedures outlined in the Sutton Memo contemplate that the Council may review a wholly new document, never appealed and not before the prior decisionmaking body, and substituted at the eleventh hour. If the City seeks to rely on the ND as CEQA clearance for the Project—which would violate CEQA for the many reasons outlined in this letter—the City would need to restart the consideration of the Project.⁴

2. **Insufficient Notice of ND to State Agencies.** Lead agencies must submit copies of a proposed ND to the State Clearinghouse of the Office of Planning and Research for distribution to state agencies if a state agency will exercise jurisdiction with respect to the project.⁵ “While the lead agency is encouraged to contact the regional and district offices of state responsible agencies, the lead agency **must, in all cases**, submit documents to the State Clearinghouse for distribution in order to comply with the review requirements of this section.”⁶ Here, the Department of Alcoholic Beverage Control (“ABC”) has concurrent jurisdiction over the Project, as Lyric needs to obtain an ABC license in order to sell alcoholic beverages to its patrons. Thus, the City was required to submit the ND to the State Clearinghouse for distribution to state agencies. As of July 24, 2018, CEQAnet – the State Clearinghouse’s online database for CEQA documents – showed no submissions to the State Clearinghouse from the City for the ND.

3. **Impermissibly Short Comment Period.** When a proposed ND must be submitted to the State Clearinghouse for state agency review, the required period of state agency review and comment is at least 30 days.⁷ The public review period set by the lead agency must be at least as long as the State Clearinghouse review period.⁸ As noted above, the City was required to submit the ND to the State Clearinghouse for state agency review, including by ABC. However, the City provided a comment period (without notification to the appellants) of only 20

³ Exhibit A (Sutton Memo) at #5. The Sutton Memo also states that “[t]he filing of an appeal stays proceedings in the matter until the City Council has made a decision.” Because the Council has not made a decision on the MND, no further action from the Planning Department is permissible. *Id.* at #3.

⁴ Indeed, both the ZA and the Area Planning Commission on appeal relied heavily on the MND in approving the Project’s CUP.

⁵ Pub. Res. Code, § 21082.1, subd. (c)(4); CEQA Guidelines, §§ 15073, subd. (d), 15205, subd. (b)(2).

⁶ CEQA Guidelines, § 15205, subd. (f); see also *Schenck v. County of Sonoma* (2011) 198 Cal.App.4th 949, 958 (finding that published or posted notice is insufficient to satisfy CEQA requirements, “[r]ather the lead agency must send copies of the proposed negative declaration or mitigated negative declaration to the State Clearinghouse for distribution to the state agencies, and ‘shall also give notice’ by publication, posting, and mailing.”) (citation omitted).

⁷ Pub. Res. Code, § 21091, subd. (b); CEQA Guidelines, §§ 15073, subd. (a), 15105, subd. (b).

⁸ *Id.*, § 21091, subd. (c).

days on the ND, 10 days less than the minimum 30-day comment period required. This short comment period was unlawful and prejudiced the public and appellants.

4. **Insufficient Notice of ND to Public.** Notice of intent to adopt an ND must be mailed to all owners and occupants of property contiguous to the project.⁹ In addition to the buildings directly adjacent to the Project, 525 North Sycamore Avenue, a 102-unit condominium complex, is located directly behind the Project, contiguous with the Project's lot. Torath Emeth understands that notice of the ND was not mailed to *anyone*, much less the owners and occupants of property contiguous to the Lyric.

5. **Insufficient Notice of ND to Appellants.** Notice of intent to adopt an ND must be mailed to all parties who have previously submitted written requests for notice.¹⁰ Torath Emeth and all other appellants, through their CEQA appeals, requested written notice of any further developments regarding the Project's CEQA compliance. It would be absurd if the appellants of an MND were not considered to have requested notice of an ND being substituted for the MND on the very same project, using the same case number (ENV-2016-2549) and Council file number (CF 18-0166-S1). Thus, the City has provided entirely insufficient notice to state agencies, the public-at-large, and parties who have requested notice.

6. **Inaccurate Project Description.** Like the project description in the MND, the project description in the ND inaccurately describes the proposed use as allowing "the sale and dispensing of a full line of alcoholic beverages for on-site consumption and patron dancing in conjunction with a 3,516 square-foot theater with live entertainment with 128 seats, with hours of operation from 10:00 a.m. to 2:00 a.m. daily."

The project description fails to mention that this is essentially a concert venue and nightclub and as shown on the project plans in the case file the operational configuration with the dance floor shows that there would be no seating in the area in front of stage. There is no mention regarding how often the Lyric would operate in this concert venue and nightclub configuration – standing room with no seating. No restrictions are imposed requiring seating. And it was clearly stated at the APC hearing that the facility will be primarily used at night as a concert venue. As a result, the Lyric can operate in this configuration up to 360 days per year. The project description in the ND fails to mention that in the concert venue and nightclub configuration the occupancy of the Lyric could be up to 318 persons, not 128 persons. The Lyric speakers confirmed this capacity for events with no seating in the stage area. A venue that sells and serves alcohol for on-site consumption from 10:00 a.m. to 2:00 a.m. nightly in combination with patron dancing for up to 318 patrons is a concert venue and nightclub, not a theater.

As discussed further below, the use of this facility as a concert venue and nightclub will have significant impacts on the sensitive uses in the area. As a result of the inaccurate and incomplete project description, the ND fails to accurately disclose the potential range of impacts

⁹ Pub. Res. Code, § 21092, subd. (b)(3); CEQA Guidelines, § 15072, subd. (b).

¹⁰ *Ibid.*

and assess the significant impacts that will occur as a result of the project operating as a concert venue and nightclub.

7. **Misleading and Inaccurate Description of Project Impacts.** As a result of the planned operation of the Lyric as a concert venue and nightclub for up to 318 patrons serving alcohol until 2:00 a.m., the adjacent sensitive uses and the residential community surrounding the Lyric will be significantly impacted in many ways up to 360 days per year. As a preliminary matter, the ND takes the legally incorrect position that with respect to almost every environmental impact area, the Lyric would result in “No Impact.” But the ND states that a “‘No Impact’ answer is adequately supported if the referenced information sources *show that the impact simply does not apply to projects like the one involved* (e.g., the project falls outside a fault rupture zone). A ‘No Impact’ answer *should be explained where it is based on project-specific factors as well as general standards* (e.g., the project will not expose sensitive receptors to pollutants based on a project-specific screening analysis).” (ND, p. 4 of 39 [emphasis added].) The ND does not meet these evaluation standards. Many of the potential environmental impact areas listed in the Initial Study Checklist *do* apply to the Lyric (including, but not limited to, Aesthetics, Air Quality [Odors], Land Use & Planning, Transportation & Traffic, and Mandatory Findings of Significance). These impact areas should have been analyzed in far greater detail than provided in the ND, and appropriate conclusions reached with respect to the potential significance of the impact. To that end, as described further below, the record demonstrates that because there is a reasonable probability that the Lyric could result in a significant impact, an EIR must be prepared.¹¹

8. **The ND Reveals that the Project Would Result in Potentially Significant Noise Impacts, None of Which Are Mitigated.** Noise is an important planning and environmental issue of concern in the City of Los Angeles. Objective 2 (non-airport) of the Noise Element of the City’s General Plan is to “[r]educe or eliminate non-airport related intrusive noise, especially relative to noise-sensitive uses” and Policy 2.1 is to “[e]nforce and/or implement applicable City, State, and federal regulations intended to mitigate proposed noise producing activities, reduce intrusive noise and alleviate noise that is deemed a public nuisance.”

The ND fails to fully and accurately study Lyric’s noise impacts on the community. Indeed, the ND contains several errors, fails to include mitigation measures where required, and ignores potentially significant impacts on the neighboring community. In particular, under Impact Nos. XII.a., XII.c., XII.d.,¹² the ND concludes that such impacts would be less than significant and would “not result in significant increases in noise levels,” but stated in the MND for the same project that “mitigation measures have been included to reduce impacts to less than significant levels.” (MND, p. 27 of 34.) More specifically, under Impact XII.a., the MND stated

¹¹ *Appellant reserves the right to supplement this comment letter with further evidence and argument.*

¹² Impact No. XII.a. asks whether the project would result in “[e]xposure of persons to or generation of noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies.” Impact No. XII.c. asks whether the project would result in “[a] substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project.” Impact No. XII.d. asks whether the project would result in “[a] substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project.”

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that mitigation measures have been included “[g]iven the potential to impact neighboring sensitive uses.” And under Impact XII.c., the MND stated that the Lyric will result in the increase of ambient noise levels in the project vicinity, that excessive noise may occur, and that mitigation measures have been included “[g]iven the potential to impact neighboring sensitive uses.”

Now, the ND appears to retract those statements and depend entirely on a flawed and inaccurate report prepared by Acentech which is rebutted in whole by the attached memorandum prepared by noise experts Acoustical Engineering Services (AES). See **Exhibit B** attached to this letter. This is a major legal deficiency in the ND, admitted in the MND, and as a matter of law the City *cannot* approve the Lyric project without any measures to mitigate these potentially significant impacts. As AES demonstrates in the memorandum, *applying the correct approach to studying the Project’s potential noise impacts under the Los Angeles Municipal Code reveals that the Project would result in a potentially significant impact on the environment.* Accordingly, CEQA requires the City to prepare an EIR for the Project. See **Exhibit B**.

Outside of these errors, the ND also fails to study properly the Lyric’s potential noise impacts. Under the *L.A. CEQA Thresholds Guide* (Thresholds Guide),¹³ the document that the City uses in assessing projects’ potential impacts under CEQA, if a proposed project introduces a stationary noise source likely to be audible beyond the property line of the project site, further analysis is necessary. (Thresholds Guide at p. I.2-2.)¹⁴ The ND contains no analysis at all.

But the Thresholds Guide instructs that the City is to determine—using an applicable noise model—“the noise level from stationary sources at the property line by evaluating the decibel output of each source, the distance to the property line and the path over which the sound travels,” and assess whether the project would cause the ambient noise level to increase above a certain dBA, depending on the surrounding land use types. (Thresholds Guide at p. I.2-3 to -4.)¹⁵ The Thresholds Guide states that noise-sensitive uses include residences, transient lodgings, schools, libraries, churches, hospitals, nursing homes, auditoriums, concert halls, amphitheaters, playgrounds, and parks.¹⁶ As well documented during hearings and in the case file, there are numerous sensitive uses within 1,000 feet of the Lyric, including a condominium complex that is less than 30 feet from the back of the Lyric building (525 N. Sycamore). As such, because the

¹³ L.A. CEQA Thresholds Guide: Your Resource for Preparing CEQA Analyses in Los Angeles, <http://www.environmentla.org/programs/Thresholds/Complete%20Threshold%20Guide%202006.pdf>.

¹⁴ The Thresholds Guide defines “stationary noise sources” to include “public assembly that may occur at commercial . . . facilities.” (Thresholds Guide at p. I.2-2, fn. 2.)

¹⁵ Los Angeles Municipal Code Section 111.03 establishes the presumed ambient noise levels for the different zones throughout the City during daytime (7:00 a.m. to 10:00 p.m.) and nighttime (10:00 p.m. to 7:00 a.m.) hours when ambient noise measurements are not taken. For a residential zone such as the RD1.5 zone immediately to the east (rear) of the Lyric along both sides of Sycamore Avenue, the presumed ambient noise level is 40 dBA(L_{eq}) during nighttime hours (10:00 p.m. to 7:00 a.m.).

¹⁶ Similarly, the General Plan Noise Element defines noise-sensitive land uses as single-family and multi-unit dwellings, long-term care facilities (including convalescent and retirement facilities), dormitories, motels, hotels, transient lodging, and other residential uses; houses of worship; hospitals; libraries; schools; auditoriums; concert halls; outdoor theaters; nature and wildlife preserves; and parks.

Lyric project will result in new stationary sources at the project site (public assembly up to 318 persons), the ND needed to study whether that massive increase in persons above existing conditions would exceed the applicable significance thresholds in the Thresholds Guide and propose mitigation measures to reduce potential impacts. The ND only discusses noise generated from within the Lyric, but completely ignores noise impacts generated in the community when upwards of 300 people come to and leave the venue between 10:00 a.m. and 2:00 a.m. seven days a week. Also to be clear, although there is a limit of 318 at any one time, there can be multiple shows and events in any given day. With the many adjacent noise-sensitive uses, evidence in the record demonstrates that potentially significant noise impacts would occur from operation of the Lyric. Not only is the ND deficient in its analysis, this evidence obligates the City to prepare an EIR to evaluate the potential impact in further detail.

Furthermore, Los Angeles Municipal Code Section 116.01 expressly states, “notwithstanding any other provisions of [Los Angeles Municipal Code chapter XI] and in addition thereto, it shall be unlawful for any person to willfully make or continue, or cause to be made or continued, any loud, unnecessary, and unusual noise *which disturbs the peace or quiet of any neighborhood or which causes discomfort or annoyance to any reasonable person of normal sensitiveness residing in the area.* The standard which may be considered in determining whether a violation of the provisions of this section exists may include, but not be limited to, the following:

- (a) The level of noise;
- (b) Whether the nature of the noise is usual or unusual;
- (c) Whether the origin of the noise is natural or unnatural;
- (d) The level and intensity of the background noise, if any;
- (e) *The proximity of the noise to residential sleeping facilities;*
- (f) The nature and zoning of the area within which the noise emanates;
- (g) The density of the inhabitation of the area within which the noise emanates;
- (h) *The time of the day and night the noise occurs;*
- (i) The duration of the noise;
- (j) Whether the noise is recurrent, intermittent, or constant; and
- (k) Whether the noise is produced by a commercial or noncommercial activity.”

People leaving concerts and nightclubs after 10:00 p.m. are often loud and disruptive as they leave such venues. Even with security personnel at the door, once patrons are away from the Lyric there will be no one or any means to prevent patrons walking into or through the neighborhood from being disruptive and causing intrusive noise that will be a public nuisance to

the sensitive uses in the immediate vicinity of the Lyric. Disruptions to the peace and quiet of the residential neighborhoods in the vicinity of the Lyric seven nights a week will be a significant impact.

In sum, the record clearly shows that the Project would result in potentially significant noise impacts. An EIR must be prepared.

10. **The Project Would Result in Potentially Significant Land Use Compatibility Impacts.** The ND states: “A significant impact would occur if the proposed project physically divided an established community. The project would not create a physical barrier with an established community. The Project is a request for the sale of alcohol for on-site consumption and patron dancing in conjunction with a proposed theater with live entertainment located with an existing building in an urbanized area. Therefore, no impact would occur.” (ND, p. 28 of 39.) This analysis finds no support in the record and fails to comply with CEQA.

The ND fails to accurately study the significant land use compatibility impacts that would result from the establishment of a concert venue and nightclub within the midst of several sensitive uses surrounding the project site. Under the Thresholds Guide, CEQA documents are to address the potential for projects to create situations of incompatibility between land uses or activities. The Thresholds Guide states:

Such incompatibility may result from environmental impacts associated with the proposed land use. Examples of incompatibility include land uses, which create noise, odor, safety hazards, visual, or other environmental impacts which conflict with surrounding land uses and the activities and conditions typically associated with those land uses. In addition, a project may disrupt the physical arrangement of an established community by introducing new infrastructure or isolating land uses that could interrupt the typical activities or change the land use conditions in a community.

(Thresholds Guide, Page H.2-1.) Then the Thresholds Guide lists screening questions, to which a “yes” response indicates further study *must be performed* in an Initial Study, MND, or EIR. (*Id.*, Page H.2-2.) One of the screening questions is particularly important here:

- Would the project include a land use type that is incompatible with existing or proposed adjacent land uses (due to size, intensity, density or type of use)?

(*Id.*, Page H2-1.) The ND fails to fully describe all of the several sensitive uses within 1,000 feet of the project site: Torath Emeth (school with over 1,000 children ages 2-14), Jewish Learning Exchange (a synagogue), La Brea Rehabilitation Center (nursing home and rehabilitation), Bnos Devorah High School, Congregation Kollel Yechiel Yehuda, Bais Yaakov School for Girls, Bikur Cholim House, Congregation Levi Yizchok, the over 100-unit condo complex at 525 N. Sycamore, etc. Clearly the answer to the screening question is “yes.”

But the ND summarily and incorrectly concludes that no land use compatibility impact would occur because no physical barrier would be created by the project. The Thresholds Guide states that the determination of whether a project creates a significant land use compatibility impact must consider the following factors:

- The extent of the area that would be impacted, the *nature and degree of impacts*, and the *type of land uses* within that area;
- The extent to which existing *neighborhoods, communities, or land uses* would be *disrupted*, divided or isolated, and the *duration of the disruptions*; and
- The number, degree, and type of *secondary impacts to surrounding land uses* that could result from implementation of the proposed project.

The criteria includes disruption of a community not just a physical barrier. The Thresholds Guide also states that a significant land use compatibility impact may be indicated by the presence of one or more significant project impacts, which suggest that the location or intensity of the proposed project could conflict with existing uses and consider whether nuisance impacts from the proposed project would conflict with those uses. Conflicts with the sensitive uses within the immediate vicinity of the project site already occur. Members of the community testified that they have encountered public urination and broken bottles on La Brea Avenue and in the neighborhood following events at the Lyric. Again, a disruption to the existing community not just a physical barrier. The ND fails to study these impacts or provide any mitigation measures to reduce impacts. In addition, the evidence in the record is clear that such impacts would in fact occur as a result of the Lyric project. If a new nightclub surrounded by existing sensitive uses on every side does not create a significant land use compatibility impact, such an impact could never be possible, and that would yield an absurd result, which the law disfavors. CEQA requires more than what the City did in this instance. *An EIR needs to be prepared to study and mitigate the Lyric's potential land use compatibility impacts in further detail.*

11. **The Project Would Result in Potentially Significant Traffic Impacts.** The Project also would result in potentially significant neighborhood intrusion traffic and parking impacts. As explained in the attached memorandum from Gibson Transportation Consulting, the Project could result in an additional 150-200 vehicle trips from a sold out performance and the Project does not have a single parking space. The addition of a seven-day-a week concert venue and nightclub open until 2:00 a.m. discharging upwards of 300 people in the community would adversely impact the community. Because of the Project's lack of parking, the parking demand for such vehicle trips would spill into the adjacent residential neighborhoods. The MND fails to study these impacts. *See* the Gibson Transportation Consulting letter included with **Exhibit C** to this letter.

12. **The Project Would Result in Potentially Significant Neighborhood Intrusion Impacts.** The Thresholds Guide recognizes that traffic generated by a project may result in neighborhood intrusion impacts; or, in other words, impacts resulting from project traffic shifting to local streets in residential neighborhoods. (Thresholds Guide, Page L.4-1.) The ND entirely ignored the likelihood that the Lyric project will result in such impacts. Under the Threshold

Guide, if a project generates more than 120 daily vehicle trips to a local residential street, further study is necessary. Here, as explained in the letter from Gibson Transportation Consulting, the Lyric project could result in an additional 150-200 vehicle trips from a sold out performance. Because of the project's lack of parking, the parking demand for such vehicle trips would spill into the adjacent residential neighborhoods, including the residential neighborhood directly east of the Lyric, which is the closest to the venue. The ND should have studied this issue in further detail instead of ignoring it, and conducted the analysis required under the Thresholds Guide. (See Thresholds Guide, Pages L.4-2 to L.4-4.) The ND's failure to do so violated CEQA.

13. **The Project Would Result in Potentially Significant Impacts from Odors.**

The Thresholds Guide asks whether a project has “the potential to create . . . an objectionable odor . . . that could impact sensitive receptors.” The ND fails to examine potential odor impacts to sensitive users such as children, worshipers, and residents that will occur with over 300 people making their way to and from the Lyric. With the legalization of marijuana, there is a significantly increased prospect that children, worshipers, and residents walking to and from schools, synagogues, and their homes will be exposed to marijuana smoke and other odor nuisances created by nightclub patrons. This issue needed to be further studied in the ND.

14. **The Project Would Potentially Result in Urban Decay and Blight.** Members of the orthodox Jewish community that surround the project site walk during the day, the evening and night. There frequently are afternoon, early evening and nighttime events at the adjacent schools, and study and worship at the synagogues often extend well into the night. Conflicts with the sensitive uses within the immediate vicinity of the Lyric already occur. Members of the community testified that they have encountered public urination and broken bottles on La Brea Avenue and in the neighborhood following events at the Lyric. The likelihood of increasing blight and urban decay due to additional nightclub activity at the Lyric could further exacerbate the problem. If the members of the community feel unsafe because nuisances continue to increase and crime continues to exceed the city-wide standards, they may have to relocate which would lead to additional blight and the degradation of the area. The ND fails to study potential urban decay impacts.

15. **Mandatory Findings of Significance.** Section 15065(a)(4) of the CEQA Guidelines states that a lead agency *must* find that a project may have a significant effect on the environment and thereby require an EIR for the project when substantial evidence in the record demonstrates that “The environmental effects of [the] project will cause *substantial adverse effects* on human beings, either directly or indirectly.” (Emphasis added.) That test is met here. Under this standard, a change to the physical environment that might otherwise be minor must be treated as significant if people will be significantly affected. As the record shows, there are over a dozen sensitive uses surrounding the project site and the project will result in changes to the physical environment that will substantially effect hundreds of individuals. In addition, over 50 letters and emails opposing the Project have been submitted to the record, and approximately 700 people signed a petition in opposition to the Project. As such, an EIR must be prepared.¹⁷

¹⁷ See *Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903 (finding fair argument that project may have a significant effect because it had potential to cause adverse impacts affecting hundreds of nearby residents).

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In sum, it is clear that substantial evidence in the record supports a fair argument that the Project may have a significant effect on the environment. Accordingly, an EIR must be prepared before the City can take any action to approve the Project.

In addition, the City Council has no jurisdiction over the ND and cannot consider it on an appeal of the Area Planning Commission's adoption of the MND.

Should you have any questions, please feel free to contact me at (213) 891-8983 or winston.stromberg@lw.com, or my partner George Mihlsten at (213) 891-8196 or george.mihlsten@lw.com.

Very truly yours,



Winston P. Stromberg
of LATHAM & WATKINS LLP

Attachments

cc: Councilmember Paul Koretz, Council District 5, Attn: Jeff Ebenstein & Aviv Kleinman
Shawn Kuk, Planning Director, Council District 14
Vince Bertoni, Director of City Planning
Lisa Webber, Deputy Director of Planning
Michael Feuer, City Attorney
John Fox, Deputy City Attorney
George J. Mihlsten, Latham & Watkins LLP
David F. Thompson, Latham & Watkins LLP
Rabbi Goldenberg, Yeshiva Rav Isacsohn Torath Emeth Academy

EXHIBIT A

MEMORANDUM

Date: December 30, 2005

To: All Planners
Barbara Greaves, City Clerk's Office

From: Robert H. Sutton, Deputy Director

Re: TEMPORARY PROCEDURES - Filing an Environmental Appeal Under CA
Public Resources Code Section 21151 (c) (CEQA)

The California Environmental Quality Act (CEQA), Section 21151 (c), permits appeal of certain decisions by a non-elected decision-making body of a local lead agency, as follows:

1) certification of an environmental impact report, 2) approval of a negative declaration or mitigated negative declaration, or 3) determination that a project exempt from CEQA. These decisions may be appealed to the agency's elected decision-making body, if any.

In consultation with the City Attorney's Office the following temporary procedures have been set up:

1. An aggrieved party can file a 21151 (c) appeal within the next five meeting days of the City Council during which the City Council has convened in regular session, after the mailing of the non-elected decision-making body's decision. Any appeal not filed within the specified time will not be considered.
2. The appeal shall be filed at one of the Department of City Planning's Public Counters on a form provided by the Department. The appeal needs to set forth the points on how the Environmental Document fails to comply with CEQA.
3. The filing of an appeal stays proceedings in the matter until the City Council has made a decision
4. The City Clerk will notify the applicant 15, but **not** less than 10 days prior to the PLUM hearing on the Section 21151 (c) appeal.
5. As the Council only has the environmental appeal in front of them, if the Council finds that the Environmental Document failed to comply with CEQA the related case will need to be remanded back.
6. The intent is for Council to act with 30 days from the expiration of the appeal period.

The above temporary procedure for implementing CEQA Section 21151 (c) appeals is only utilized when the city's final decision, including all appeals, on a discretionary project is made by a non-elected official or body. For the Planning Department this occurs when the appeal process ends with the City Planning Commission or the Area Planning Commission.

As this process evolves we will keep you informed.

EXHIBIT B

**The Lyric Theatre – Mitigated Negative Declaration (MND)
Noise Comments**

Acoustical Engineering Services (AES), a recognized acoustical consulting firm specializing in the completion of noise analyses for environmental documents, has reviewed the analysis of potential noise impacts in the MND for the proposed Lyric Theatre Project, including the appended letter from Acentech regarding noise impacts dated October 25, 2016. Based on our review of these documents, and as described in more detail below, noise impacts from the proposed operation of the Lyric Theatre would be significant.

AES Review of Section XII. Noise of the Initial Study/MND

Pages 26 and 27 of the MND state: *“Given the potential to impact neighboring sensitive uses, mitigation measures have been included to reduce impacts to less than significant levels.”* However, no specific quantitative analysis has been provided to disclose these impacts and no mitigation measures have been included to address such impacts or to demonstrate that the measures would reduce impacts to less than significant levels.

Page 27 of the MND states: *“excessive noise may occur during different special events that the theater venue hosts. Given the potential to impact neighboring sensitive uses, mitigation measures have been included to reduce impacts to less than significant levels.”* However, no description of the special events has been provided and thus, no associated analysis of potential impacts has been included to quantify the impacts associated with the potential “excessive noise” levels. In addition, no mitigation measures have been provided to reduce the impacts from the excessive noise levels to less than significant levels.

Pages 27 and 28 of the MND state: *“Any tenant improvement activities would result in a temporary increase in ambient noise levels in the project area on an intermittent basis.”* However, no analysis has been provided to address the temporary increase in ambient noise levels and no mitigation measures have been provided to mitigate this impact or demonstrate that impacts associated with the temporary increase in noise levels would be reduced to less than significant levels.

Acentech Letter Dated 10/25/2016

The letter from Acentech references July 7, 2015 acoustical measurements, however the letter does not include the detailed data from the measurements or indicate the times when the measurements were conducted. In particular, the letter does not include any evidence that the ambient noise levels were conducted during the late night hours associated with operation of the Project. Furthermore, the exact location of the noise measurement is not specified. The location of the measurement on the theatre roof should be specified given the differing noise levels along

the sides of the building. In addition, the Acentech letter states that the noise level at the residential building west of the site (56 dBA) was extrapolated from the measurement noise levels at the Lyric Theatre roof. However, no explanation of how the extrapolation was made is provided, including whether or not an area source methodology was used.

The Acentech letter references Los Angeles Municipal Code (LAMC) Section 112.01(c), which limits noise not to exceed the ambient noise level by more than 5 dBA. However, the Lyric Theater operates as a concert venue, nightclub and theater, which would generate loud sound levels associated with amplified sound systems. Therefore, LAMC Section 111.02(b) is also applicable, which provides a 5 dBA penalty for repeated impulsive noise. Impulsive sound, per LAMC Section 111.01(e), includes musical base drum beats (typical of concert/dance music).

The Acentech letter also states: *"The extrapolated noise level at the 3rd floor balcony of the west residential multi-family complex was calculated to be 56 dBA, 4 dB below the measured ambient noise level."* However, this conclusion is not correct based on the following:

- a. The analysis is provided for a residential multi-family residential building located approximately 90 feet west of the Lyric Theatre. However, there is a multi-family residential building approximately 60 feet east of the Lyric Theatre. The noise analysis should have been appropriately conducted for this residential building to the east, which is closer to the Lyric Theatre where measured noise levels would have been higher.
- b. The noise analysis assumed the measured ambient noise level (58 dBA) at the residential building would be the same as the ambient measured at the Lyric Theatre roof. However, the ambient noise at the closest residential building to the east would likely be lower than ambient noise at the roof of the Lyric Theatre, as it is located further from La Brea Avenue and shielded by the commercial buildings along the east side of La Brea Avenue. Thus, the data in the Acentech letter uses a higher ambient noise level, which inaccurately results in reduced impacts.
- c. Based on the lack of data in the Acentech letter, it is not clear as to how the noise level at the residential building west of the Project could be extrapolated from the measured noise level at the Lyric Theatre roof. The analysis should instead be based on actual measurements at the residential building.
- d. Per LA CEQA Thresholds Guide, the potential noise impact associated with the Project operational noise is based on the increase in the ambient noise level as generated by the Project noise source. In order to determine the increase in the ambient noise level, the Project noise level is added to ambient noise level. As such, the assumed ambient noise level of 58 dBA at the residential building to the west

when added to the Lyric Theatre noise level of 56 dBA would be equal to 60 dBA, which would result in a 2 dBA increase over the ambient, not 4 dBA below the ambient as stated in the Acentech letter.¹

- e. Importantly, per LAMC Section 111.02(b), a 5 dBA penalty must be added to the measured offending noise level. Therefore, the Lyric Theatre noise level at the residential building, with the 5 dBA penalty would be 61 dBA (56 dBA estimated Lyric Theatre noise + 5 dBA penalty). As such, the overall noise level at the residential building with the 5 dBA penalty for impulsive sound would be 63 dBA (58 dBA ambient + 61 dBA Lyric Theater noise), which would be 5 dBA above the ambient noise level. In addition, as noted above, these values do not account for the noise levels at the closer building to the east, which would be higher, nor do they account for the likely lower ambient noise level.

The LA CEQA Thresholds Guide for operational noise impacts states that “A project would normally have a significant impact on noise levels from project operations if the project causes the ambient noise level measured at the property line of affected uses to increase by 3 dBA in CNEL to or within the "normally unacceptable" or "clearly unacceptable" category, **or any 5 dBA or greater noise increase.**” (LA CEQA Thresholds Page I.2-3.) Based on the above, noise from the Lyric Theatre at adjacent residential uses would exceed the ambient by 5 dBA, which would result in significant impacts. These impacts have not been mitigated in the MND.

¹ Sound levels are measured in decibels (dBA). Therefore, addition of sound levels are performed based on logarithmic (energy) basis. For example, addition of 56 dB and 58 dB = $10 * \text{Log}[10^{(56/10)} + 10^{(58/10)}] = 60$ dBA.

EXHIBIT C



March 19, 2018

Council President Wesson and Honorable Councilmembers
Los Angeles City Council
200 North Spring Street
Los Angeles California 90012

RE: Appeal of MND for Nightclub, Case No. ENV 2016-2549-MND
The Lyric Theater
520, 520 ½, 522 N. La Brea Avenue
Los Angeles, California

Dear Council President Wesson and Honorable Councilmembers:

I am President of Gibson Transportation Consulting, Inc., a firm that provides traffic engineering, transportation planning, and parking consulting services to public and private sector clients in Southern California and throughout the western United States. I have 49 years of experience in transportation and parking consulting for large developments and for municipalities. I am registered as a Professional Engineer in both Civil Engineering and Traffic Engineering by the State of California, hold a national registration as a Professional Traffic Operations Engineer, and I am a Fellow of the Institute of Transportation Engineers.

This letter, which I submit in support of the appeal of the mitigated negative declaration (MND) for the Lyric Theater project, is based on decades of experience as a transportation engineer, and my familiarity with traffic and parking patterns and behaviors in Los Angeles through my work on dozens of proposed development projects. The Lyric Theater project recently received approval from the Central Area Planning Commission for alcohol and dancing conditional use permits (CUP) (as well as adoption of the MND) to allow the venue to operate as a nightclub and concert venue. This approval seems ill-advised given the venue's impact on the adjacent neighborhoods, which will certainly increase as a result of the expanded operations allowed by the recently approved CUPs.

The MND states that the Lyric Theater can hold up to 318 patrons for a concert or performance. At a average auto occupancy of 1.5 to 2.0 people per car, approximately 150-200 cars will approach the venue for a sold-out performance. The problem with this scenario is that the venue has no on-site parking supply. As expected, and confirmed by social media and testimony at the Central Area Planning Commission, the parking demand created by the venue simply spills into the single and multi-family residential neighborhoods that are directly adjacent to the venue.

The Lyric project proposes to accommodate this parking demand through the use of an off-site valet parking service, but there are multiple problems with this scenario:

1. The adjacent neighborhood, with commercial and institutional (schools, synagogues, etc.) uses along La Brea, and residential uses both east and west

of La Brea, does not have any large concentration of off-street parking that could accommodate the valet parking demand.

2. The Lyric Theater is landlocked in the middle of the block with no obvious location for a valet pick-up/drop off area. Metered curb parking along the east side of La Brea in front of the venue would have to be eliminated during every event. To accommodate the anticipated demand, a substantial portion of the block would have to be dedicated to the pick-up/drop off area.
3. Given the fact that a fee would be charged for the valet parking service, there is a strong possibility that many patrons would choose to avoid the fee and instead park for free in the adjacent neighborhoods.
4. Valet parking service for an entertainment venue is a costly and difficult operation. The patrons tend to arrive in a large group before the scheduled start time and leave all at once immediately after the conclusion of the show. Thus, a large valet staff is needed to process the pre- and post-show demand which adds considerably to the expense of the operation. This is made more complicated by the fact that the likely valet parking locations will be spread out in multiple locations a distance from the venue. This will lead to long wait times and thus increase the patron's likelihood of looking for parking in the neighborhood.
5. The use of rideshare (Lyft, Uber) would tend to reduce the parking demand, but increase the traffic congestion because each pre- and post-event trip would actually be two trips by the rideshare vehicle. In addition, there is no designated area for the rideshare pick-up/drop off so the rideshare vehicles would compete with the valet service for limited curb space.

Clearly an entertainment venue with no parking supply has the high potential to create intrusion problems for the adjacent neighborhoods. The Lyric Theater has 13 sensitive uses (synagogues, schools, senior residences, nursing home and rehabilitation center) within 1,000 feet of the venue and stable single-family neighborhoods east and multi-family neighborhoods immediately west of La Brea. An entertainment venue open until 2 a.m. does not seem compatible with the existing, established uses.

It is difficult to see how the operation of The Lyric Theater could possibly “enhance the built environment in the surrounding neighborhood” – a finding necessary to approve the CUPs.

The City Council should grant the appeal of the MND and reverse the decision of the Central Area Planning Commission, and require the preparation of an environmental impact report (EIR) that studies parking impacts and neighborhood intrusion impacts, and provides mitigation measures to reduce such impacts as feasible. With respect to these issues, mitigation measures should be incorporated that include a valet parking operation plan identifying:



- off-site parking supply with leases in place,
- valet staffing plan,
- authorization from the Los Angeles Department of Transportation to utilize on-street metered spaces,
- a valet parking fee structure,
- plan for rideshare pick-up/drop off locations,
- financial penalties for neighborhood parking, and
- annual monitoring program.

I would be happy to answer any questions on any of the points above.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Patrick A. Gibson', with a long horizontal flourish extending to the right.

Patrick A Gibson, P.E., PTOE
President