

C.F. 18-0166-S1

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LATHAM & WATKINS LLP

June 15, 2018

VIA CERTIFIED MAIL AND 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

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2018 JUN 18 PM 2:54
CITY CLERK'S OFFICE
PLUM COMMITTEE

Re: June 19, 2018 PLUM Committee Meeting Agenda Item 13: CEQA Appeal of MND for Lyric Theatre (520 N. La Brea Ave.): Council File No. 18-0166-S1

Dear Chairman Huizar and Honorable Committee Members:

Yeshivath Torath Emeth Academy, an orthodox Jewish school serving over 1,000 children from ages 4 to 17, as well as many other nearby religious and community sensitive uses, strongly oppose the City's use of a Mitigated Negative Declaration (MND) as CEQA clearance for the planned operation of the Lyric Theatre (located at 520 N. La Brea Avenue) as a concert venue, nightclub and theater with alcohol service (the "Project"). 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, and a senior nursing home and rehabilitation facility. In total, there are at least 13 sensitive uses within 1,000 feet of the Lyric.¹

The MND prepared by the City for the Project is 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. As the record demonstrates, that low threshold clearly has been met here based on the extensive submissions today regarding potential environmental impacts including expert reports.

Accordingly, we respectfully request that the City Council grant the appeals by Torath Emeth and the other appellants, reverse the Central Los Angeles Area Planning Commission's adoption of the MND for the Project, and require the preparation of an EIR.

¹ In addition to Torath Emeth, other sensitive uses located nearby include the Jewish Learning Exchange (a synagogue), Bnos Devorah High School, Congregation Kollel Yechiel Yehuda, Bais Yaakov School for Girls, Bikur Cholim House, Congregation Levi Yizchok, City View (seniors residences/assisted living), La Brea Rehabilitation Center (nursing home/rehabilitation), and residential uses.

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

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As explained in further detail in our appeal statement, a copy of which is attached to this letter as Exhibit A,³ the Council should grant the appeal on the following grounds:

1. **Inaccurate Project Description.** The project description in the MND inaccurately describes the proposed use as allowing the sale and dispensing of alcoholic beverages for on-site consumption and patron dancing in conjunction with a theater with live entertainment. The project description fails to mention that this is essentially a concert venue and nightclub.
2. **Misleading and Inaccurate Description of Project Impacts.** The MND takes the legally incorrect position that with respect to almost every environmental impact area, the Project would result in “No Impact.” As the record demonstrates and elaborated below, because there is a fair argument the Project could result in a significant impact, an EIR must be prepared.
3. **The MND Reveals that the Project Would Result in Potentially Significant Noise Impacts, None of Which Are Mitigated.** The MND fails to fully and accurately study the Project’s noise impacts on the community. In particular, the MND concludes that the Project’s potential noise impacts would be potentially significant, and states that “mitigation measures have been included to reduce impacts to less than significant levels.” However, *the MND does not contain ANY mitigation measures to address potentially significant noise impacts.* This is a major legal deficiency in the MND and as a matter of law the City *cannot approve* the Project without any measures to mitigate these potentially significant impacts.

In addition, as the attached memorandum prepared by noise experts Acoustical Engineering Services (AES) explains, the letter prepared by Acentech regarding the Project’s noise attached to the MND contains a flawed and inaccurate analysis. 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 attached to this letter.

4. **The Project Would Result in Potentially Significant Land Use Compatibility Impacts.** The MND 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. The local community is one of the few orthodox areas in the City. Community members, including children, frequently walk to afternoon, early evening, and nighttime events at the schools and synagogues. Study and worship at the synagogues often extend well into the night. Placing a nightclub and concert venue with alcohol service in this community is fundamentally inconsistent with this community.

5. **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

³ The appeal statement included in the online version of the Council File does not include any even pages. As such, we are including the appeal statement here to ensure that the PLUM Committee has all of the correct documents.

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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 A to this letter.

6. **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.⁴

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.

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: Los Angeles City Councilmember Paul Koretz, Council District 5, Attn: Jeff Ebenstein
Michael Feuer, Los Angeles City Attorney
George J. Mihlsten, Latham & Watkins LLP
David F. Thompson, Latham & Watkins LLP
Rabbi Goldenberg, Yeshivath Torath Emeth Academy

⁴ 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).

EXHIBIT A



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:

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

Regarding Case Number: ENV 2016-2549 (MND)

Project Address: 520 North La Brea Avenue

Final Date to Appeal:

- 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): Rabbi Berish Goldenberg

Company: Yeshivath Torath Emeth Academy

Mailing Address: 540 North La Brea Avenue

City: Los Angeles State: CA Zip: 90036

Telephone: (323) 549-3170 E-mail:

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

Self, Other: Yeshivath Torath Emeth Academy

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

3. REPRESENTATIVE/AGENT INFORMATION

Representative/Agent name (if applicable): George Mihalsten Esq. / David Thompson

Company: Latham & Watkins LLP

Mailing Address: 355 South Grand Avenue, Suite 100

City: Los Angeles State: CA Zip: 90071

Telephone: (213) 485-1234 E-mail: george.mihalsten@lw.com / david.thompson@lw.com

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

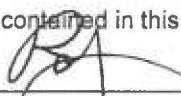
If Yes, list the condition number(s) here: _____

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:  Date: 3-1-15

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:	Reviewed & Accepted by (DSC Planner):	Date:
Receipt No:	Deemed Complete by (Project Planner):	Date:
<input type="checkbox"/> Determination authority notified		<input type="checkbox"/> Original receipt and BTC receipt (if original applicant)

CEQA CASE APPEAL STATEMENT

CEQA Case No: ENV 2016-2549-MND
Related Case No: ZA 2016-2548(CUB)(CUX)

Project: The Lyric Theater – Mitigated Negative Declaration (MND) for Nightclub
520, 520½, 522 North La Brea Avenue

Appeal Statement

Pursuant to Public Resources Code section 21151(c) and California Code of Regulations, title 14, section 15074(f), Appellant Yeshivath Torath Emeth Academy appeals the Central Area Planning Commission's adoption of the Initial Study/Mitigated Negative Declaration (MND) for the Lyric Theater Project. The Central Area Planning Commission disregarded substantial evidence in the record in its decision to adopt the MND to allow the Lyric Theater ("Lyric") located at 520, 520½, 522 North La Brea Avenue to operate as a concert venue, nightclub and theater. The Lyric intends to sell and serve alcohol for on-site consumption with dancing in the midst of orthodox Jewish schools (children ages 4-17), synagogues, a senior assisted living facility, and a senior nursing home and rehabilitation facility. In total, there are at least 13 sensitive uses within 1,000 feet of the Lyric.

The concerned parents, residents, rabbis, and business owners in this predominantly orthodox Jewish community that live, worship, and work in the area submitted a petition signed by approximately 700 members of the community expressing their concern with the proposed nightclub and concert venue. The case file documents that the following sensitive uses are located on the same block well within 500 feet of the Lyric: Yeshivath Torath Emeth Academy (school with over 1,000 children ages 4-17), Jewish Learning Exchange (a synagogue), City View (seniors residences and assisted living), and La Brea Rehabilitation Center (nursing home and rehabilitation). Other sensitive uses within 1,000 feet of the proposed nightclub include single and multi-family residences, Bnos Devorah High School, Congregation Kollel Yechiel Yehuda, Bais Yaakov School for Girls, Bikur Cholim House, Congregation Levi Yizchok, and the Al & Hedi Azuz child and family services.

Furthermore, there is a clear over concentration of alcohol within the area. The Associate Zoning Administrator documented that there are 13 on-site and 3 off-site ABC alcohol licenses in the census tract exceeding the ABC's licensing criteria of 2 on-site and 1 off-site licenses in the subject census tract (Census Tract 1919.02). The Associate Zoning Administrator also documents that in 2015 the 221 reported crimes in the Crime Reporting District No. 706 exceeded both the citywide average of 181 crimes and the high-crime reporting district of 217 crimes. The addition of a seven-day-a week concert venue and nightclub open until 2:00 a.m. discharging upwards of 300 people in this area of sensitive uses would likely increase the need for police services and potentially increase crime in the area.

Substantial evidence in the record supports a fair argument that the Lyric project may have a significant effect on the environment, and thus an environmental impact report (EIR) must be prepared before the City can take any action to approve the project. Under the California Environmental Quality Act (CEQA), "significant effect upon the environment" is defined as "a

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substantial or potentially substantial adverse change in the environment.” (Public Resources Code § 21068; 14 Cal. Code Regs. § 15382.) A project “may” have a significant effect on the environment if there is a “reasonable probability” that it will result in a significant impact. (*No Oil, Inc. v City of Los Angeles* (1974) 13 Cal.3d 68, 83, n.16; *Sundstrom v County of Mendocino* (1988) 202 Cal.App.3d 296, 309.) *If any aspect of the project may result in a significant impact on the environment, an EIR must be prepared.* This standard sets a “low threshold” for preparation of an EIR. (*Consolidated Irrig. Dist. v City of Selma* (2012) 204 Cal.App.4th 187, 207; *Nelson v County of Kern* (2010) 190 Cal.App.4th 252.)

Here, it is clear from the evidence in the record including the testimony given at the Commission hearing and the fact that the proposed concert venue will be located literally next door to a synagogue, a few feet from a school, across from a senior residence, and near another 10 sensitive uses, that the threshold is met. *An EIR must be prepared before the City can take any action on the Lyric project.*

Inaccurate Project Description

The project description in the MND 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 Central Area Planning Commission 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 MND 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 in this appeal, 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 MND fails to accurately disclose the potential range of impacts and assess the significant impacts that will occur as a result of the project operating as a concert venue and nightclub.

Significant Impacts on the Environment

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 MND takes the legally incorrect position that with respect to almost every

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environmental impact area, the Lyric would result in “No Impact.” But the MND 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).” (MND, p. 5 of 34 [emphasis added].) The MND 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 MND, 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.¹

Noise

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 MND fails to fully and accurately study Lyric’s noise impacts on the community. Indeed, the MND 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. and XII.c.,² the MND concludes that such impacts would be less than significant, but then states in the explanation of such impacts 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 states that mitigation measures have been included “[g]iven the potential to impact neighboring sensitive uses.” And under Impact XII.c., the MND states 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.” Even though the MND admits that there would be potentially significant noise impacts on neighboring sensitive uses, *in reality the MND does not contain ANY mitigation measures to address potentially significant noise impacts*. This is a major legal deficiency in the

¹ *Appellant reserves the right to supplement this appeal statement with further evidence and argument.*

² 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.”

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MND and as a matter of law the City *cannot* approve the Lyric project without any measures to mitigate these potentially significant impacts.

Outside of these legal errors, the MND also fails to study properly the Lyric’s potential noise impacts. Under the *L.A. CEQA Thresholds Guide* (Thresholds Guide),³ 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.)⁴ The MND 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.)⁵ The Thresholds Guide states that noise-sensitive uses include residences, transient lodgings, schools, libraries, churches, hospitals, nursing homes, auditoriums, concert halls, amphitheatres, playgrounds, and parks.⁶ As well documented during hearings and in the case file, there are numerous sensitive uses within 1,000 feet of the Lyric. As such, because the Lyric project will result in new stationary sources at the project site (public assembly up to 318 persons), the MND 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 MND 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

³ 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>.

⁴ 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.)

⁵ 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.).

⁶ 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.

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MND 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.

Land Use Compatibility

The MND 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. Therefore, no impact would occur.” (MND, p. 25 of 34.) This analysis finds no support in the record and fails to comply with CEQA.

The MND 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:

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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 MND fails to fully describe all of the several sensitive uses within 1,000 feet of the project site: Yeshivath Torath Emeth Academy (school with over 1,000 children ages 4-17), 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, and the Al & Hedi Azuz child and family services. Clearly the answer to the screening question is “yes.”

But the MND 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 MND 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

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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.

Parking

It is also important to note that the Lyric has not one parking space on site. The project applicants acknowledge in their application and the case file confirms that the Lyric has no on-site parking and no off-street parking is proposed for its patrons. There are no public parking lots or structures within the vicinity of the Lyric. With up to 318 people at any one time within the Lyric with potentially a greater number of people patronizing the venue throughout any given night, the parking in the vicinity of the Lyric will be significantly impacted on many days and nights. The MND fails to examine parking impacts. See the attached letter from Gibson Transportation Consulting.

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 MND 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 attached 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 MND 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 MND's failure to do so violated CEQA.

Odors

The Thresholds Guide asks whether a project has "the potential to create . . . an objectionable odor . . . that could impact sensitive receptors." The MND 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 MND.

Urban Decay/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.

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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 MND fails to study potential urban decay impacts.

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.) (See also Public Resources Code section 21083(b)(3).) 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. As such, an EIR must be prepared. (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].)



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

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 was 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 at 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.