

March 4, 2019

File Number: 49JZ-228501

VIA ELECTRONIC MAIL ONLY

Los Angeles City Council
200 N. Spring Street
Los Angeles, California 90012
E-Mail: sharon.gin@lacity.org

Re: Response to Letters Dated February 26, 2019 (Council File No. 18-0873)

Dear Honorable City Councilmembers:

This firm represents 6421 Selma Wilcox Hotel, LLC (“Applicant”) regarding the proposed 114-key mixed-use hotel development (“Project”) located at 6421-6429 ½ West Selma Avenue and 1600-1604 North Wilcox Avenue (“Site”) in the Hollywood area of the City of Los Angeles (“City”). On November 27, 2019, the Planning and Land Use Management (“PLUM”) Committee of the Los Angeles City Council has recommended approval of the Project and denial of the four appeals filed by the Sunset Landmark Investments, LLC (“Sunset Landmark”) represented by the Silverstein Law Firm, Southwest Regional Council of Carpenters (“Southwest Carpenters”) represented by Wittwer Parkin LLP, United Neighborhoods (“UN4LA”) for Los Angeles represented by Mr. Casey Maddren, and Unite Here Local 11 (“Unite Here”) represented by the Law Office of Gideon Kracov (collectively, the “Appeals”). The City Council continued the Project at its meeting on February 26, 2019 to a date certain of March 5, 2019.

The Applicant is in receipt of the following three letters submitted to the City:

1. Letter submitted by The Silverstein Law Firm on behalf of Sunset Landmark, dated February 26, 2019;
2. Letter submitted by Gideon Kracov on behalf of Rosa Aleman, Jose Contreras, Romulus Zamora, and Reneice Edwards, dated February 26, 2019;
3. Letter submitted by Wittwer Parkin on behalf of Southwest Regional Council of Carpenters, dated February 26, 2019; and
4. Letter submitted by The Silverstein Law Firm on behalf of Sunset Landmark, dated March 1, 2019.

As a general matter, the letters repeat claims raised in prior correspondence from the appellants and do not present new arguments or information. Accordingly, to streamline the responses, we reference those prior responses as appropriate. We respectfully request that this letter be

included in the administrative record and be considered by the City Council at the meeting scheduled for March 5, 2019.

I. Response to Sunset Landmark

A. The IS/MND's Noise Analysis is Adequate

The Sunset Landmark letter reiterates its prior allegation that the Initial Study/Mitigated Negative Declaration's ("IS/MND") noise analysis is inadequate and the Project has unmitigable construction, operational, and cumulative noise impacts. The Sunset Landmark letter encloses a new report prepared by Acentech, which restates two prior points regarding: (1) hotel uses should have been included as noise sensitive receptors in the evaluation of construction noise; and (2) ambient noise measurements are improper.

Regarding the first point, the recent response by Douglas Kim + Associates, LLC ("DKA") dated February 22, 2019 explains that hotel occupants are temporary, and that construction activities would not occur during nighttime hours when hotel guests are more sensitive to noise. As such, DKA concluded that the hotels surrounding the Project would not be sensitive to the Project's construction noise impacts.

Regarding the second point, DKA's response dated February 22, 2019 explains that the noise measurement requirements specified in the Los Angeles Municipal Code ("LAMC") for noise inspectors to apply when enforcing the LAMC's noise provisions are not well suited to a CEQA impacts analysis and should not, and certainly need not, be applied in this context. As also previously discussed, the L.A. CEQA Thresholds Guide ("Guide") contains no guidelines explicitly instructing that a 24-hour noise measurement should be taken in order to represent daily CNEL. Under the "Methodology to Determine Significance" section of the Guide's chapter on operational noise (Page I.2-4 and I.2-5), the Guide states that a description of the environmental setting should include, "Quantification of ambient noise levels ... measured in CNEL." The Guide then lists three methodologies that may be used to determine ambient noise levels. No stated methodology specifically calls for the 24-hour measurement of ambient noise levels. In fact, the Guide's second recommended methodology does not rely on field measurements at all. The second methodology recommends that the LAMC's "Presumed Ambient Noise Levels" for day and nighttime noise levels at various zones may be used to represent ambient noise conditions. As this recommended methodology does not require field measurements at all, but instead relies on hypothetical noise levels set forth by the LAMC, it cannot be said that the L.A. CEQA Thresholds Guide requires 24-hour noise measurements to represent CNEL.

The Sunset Landmark letter also encloses a court order regarding the Tommie Hotel Project located at 6516-6526 West Selma Avenue in Hollywood. Sunset Landmark relies on the court order to assert that the Project will result in cumulatively significant construction and operational noise impacts. As a general matter, Sunset Landmark misstates the outcome of the Tommie Hotel Project court proceedings. The court granted interlocutory remand to enable the City to clarify and fix the narrow and limited construction noise issue identified in the order. It also held that the additional measures adopted after public comment on the MND to reduce operation

noise from rooftop events needed to be recirculated. The City is in the process of completing this scope now. At no point, however, has the City or the court determined that the construction and operational noise impacts of the Tommie Hotel cannot be mitigated to an insignificant level. Sunset Landmark's suggestion that the court may ultimately conclude that construction and operational noise impacts in the area are unmitigable is purely speculative and at this point baseless, given that nothing in the Court's order even hints at this outcome.

Accordingly, the IS/MND's noise analysis is adequate.

B. The City Prepared a Comprehensive and Adequate IS/MND, with a Full and Accurate Project Description that Adequately Assesses All Project Impacts

As previously addressed in Applicant's letter to the PLUM Committee dated November 26, 2018, the City prepared a comprehensive and adequate IS/MND. In Sunset Landmark's letter it reiterates its prior piecemealing claims and does not present any substantial evidence to support its allegations or even attempt to respond to the explanation proffered by the Applicant regarding the realities of its development decisions. As such, no further response is warranted beyond the information already provided to the City by the Applicant. The Applicant has reasonably explained that its projects are separate and independent and that while they see an evolution in the neighborhood that complements their efforts, they are not the architects of a preconceived master plan.

C. Sunset Landmark Fails to Demonstrate It Was Deprived Due Process And Fair Hearing

The Applicant previously responded in its letter dated February 22, 2019 to this claim and demonstrated that Sunset Landmark failed to establish that the City violated its due process and fair hearing rights with regards to the PLUM Committee meeting. With regards to the allegation that the City denied the appellants due process and fair hearing rights at the City Council meeting scheduled on February 26, 2019 because Sunset Landmark could not thoroughly investigate the City's factual claims in its February 22, 2019 Letter to the File, the City Council voted to continue the item one week from the meeting date (Tuesday, March 5, 2019), and thus the Project was not considered. This accommodation irrefutably gave the public ample time to review the City's Letter to the File, even though it was not legally required.

Sunset Landmark complains that the Applicant's letter to the City Council dated February 22, 2019, was not made available sooner. The Los Angeles Municipal Code as well as the City Council Rules do not impose submittal deadlines or any other limitations on correspondence from an applicant, appellant, or member of the public. Indeed, despite Sunset Landmark's concerns about due process and fair hearing rights, they submitted their own letter, including a new technical letter from Acentech, on the very day of the scheduled City Council meeting. Their assertion that a fair hearing would allow appellants, and only appellants, to submit eleventh hour comment letters lacks credibility.

Sunset Landmark also argues that the letter prepared by RGD in response to the November 27, 2018 Acentech letter contains significant, new information that requires circulation for public

comment. The information in the RGD letter, however, merely clarifies, amplifies, or makes insignificant modifications to the IS/MND. Specifically, the RGD letter responds to the Acentech comments with information regarding the operational noise analysis for the rooftop deck. See RGD's brief letter attached as Exhibit 1, which addresses some of the points raised by Sunset Landmark about the methodology applied in the RGD letter. Neither letter substantively changes the content of the IS/MND or demonstrates that a fair argument can be made regarding potentially significant impacts of the Project that are not already addressed in the analysis.

II. Response to Rosa Aleman, Jose Contreras, Romulus Zamora, and Reneice Edwards

A. The City Prepared a Comprehensive and Adequate IS/MND, with a Full and Accurate Project Description that Adequately Assesses All Project Impacts

For the reasons stated above in Section I.B of this letter, the appellant fails to present any substantial evidence to support its piecemealing allegations. The Applicant as well as the City has repeatedly addressed these claims.

In particular, the appellant speculates that the Citizen News Project located at 1545-1551 North Wilcox Avenue, which is currently under consideration by the City Zoning Administrator, is a part of the Applicant's "hotel/entertainment district." The appellant asserts that the Citizen News Project will lease offsite parking from other Relevant projects to accommodate the Citizen News operations. To be clear, the Citizen News Project does not require any parking under the Los Angeles Municipal Code. Any offsite parking provided for that project would be a private matter, handled in the developer's discretion as needed to improve the functionality and convenience. The applicant has furthermore not yet assessed whether additional parking is available in the neighborhood or where.

B. The IS/MND's Greenhouse Gas Analysis is Adequate

Regarding the appellant's assertion that the City should have utilized the SCAQMD's Tier 3 and Tier 4 thresholds, please see the previous Response to SWAPE Comments (Response 5) submitted to the City of Los Angeles, dated February 22, 2019:

The appellant suggests an analysis based on service population and target efficiencies. The appellant's comparison to the purported threshold is misleading and inappropriate, as the SCAQMD never adopted this or any other interim guidance. The fact that the SCAQMD Governing Board considered the draft threshold in 2008, nearly a decade ago, and did not adopt it with no further action provides a strong rationale as to why the SCAQMD draft threshold should not be considered in the analysis of GHG emissions for the Project. The IS/MND did not use a numeric threshold, as neither the City nor the SCAQMD has adopted a numeric threshold applicable to the Project. Instead, a significance determination was made based on consistency with applicable regulatory plans and policies to reduce GHG emissions, including CARB's Climate Change Scoping Plan, SCAG's RTP/SCS, and the City's ClimateLA implementation plan.

Regarding the appellant's claim that the City erred in its methodology, please see the previous Response to SWAPE Comments (Response 4) submitted to the City of Los Angeles, dated February 22, 2019:

The Commenter notes that the SCAQMD has yet to formally adopt a GHG significance threshold for residential and commercial land use development projects. The current CEQA Guidelines do not establish a threshold of significance. Lead agencies are to establish thresholds in which a lead agency may appropriately look to thresholds developed by other public agencies, or suggested by other experts, such as California Air Pollution Control Officers Association (CAPCOA), so long as any threshold chosen is supported by substantial evidence (see CEQA Guidelines Section 15064.7(c)). The CEQA Guidelines amendments also clarify that the effects of GHG emissions are cumulative. The CEQA Guidelines were amended in response to SB 97 to specify that compliance with a GHG emissions reduction plan renders a cumulative impact insignificant. To qualify, such a plan or program must be specified in law or adopted by the public agency with jurisdiction over the affected resources through a public review process to implement, interpret, or make specific the law enforced or administered by the public agency. Examples of such programs include a "water quality control plan, air quality attainment or maintenance plan, integrated waste management plan, habitat conservation plan, natural community conservation plans [and] plans or regulations for the reduction of greenhouse gas emissions." Put another way, CEQA Guidelines Section 15064(h)(3) allows a lead agency to make a finding of non-significance for GHG emissions if a project complies with the California Cap-and-Trade Program and/or other regulatory schemes to reduce GHG emissions. Although GHG emissions can be quantified, as stated previously, CARB, SCAQMD and the City, have yet to adopt project-level significance thresholds for GHG emissions that would be applicable to the Project. Per CEQA Guidelines Section 15064(h)(3), a project's incremental contribution to a cumulative impact can be found not cumulatively considerable if the project will comply with an approved plan program that provides specific requirements that will avoid or substantially lessen the cumulative problem within the geographic area of the project. Thus, in the absence of any adopted, quantitative threshold, the Project would not have a significant effect on the environment if it is found to be consistent with the applicable regulatory plans and policies to reduce GHG emissions:

- Executive Orders S-3-05 and B-30-15;
- AB 32 Scoping Plan
- SCAG's SCS; and
- Appropriate transportation and air quality plans from the City, including the Green Building Ordinance, ClimateLA Implementation Plan, and Mobility Plan.

This approach was taken in the IS/MND as demonstrated on pages 3-69 to 3-83. The analysis of a project's GHG emissions is inherently a cumulative impacts analysis because climate change is a global problem and the emissions from any single project alone would be negligible. Accordingly, the analysis took into account the potential for the Project to contribute to the cumulative impact of global climate change. The analysis shows that the Project is consistent with AB 32 Scoping Plan, particularly its emphasis on the identification of emission reduction opportunities that promote economic growth while achieving greater energy efficiency and accelerating the transition to a low-carbon economy. The analysis also shows that the Project is consistent with the 2016–2040 RTP/SCS' plans, policies, and regulatory requirements to reduce regional GHG emissions from the land use and transportation sectors. In addition, the Project would comply with the LA Green Plan, which emphasizes improving energy conservation and energy efficiency, increasing renewable energy generation, and changing transportation and land use patterns to reduce auto dependence. Furthermore, the Project would comply with the aspirations of the ClimateLA Implementation Plan. For these reasons, the IS/MND's GHG analysis is adequate.

III. Response to Southwest Regional Council of Carpenters

Regarding the appellant's assertion that the City has adopted an illegal analytical approach There are no applicable California Air Resources Board, SCAQMD, or City significance thresholds or specific reduction targets for emissions, and no approved policy or guidance to assist in determining significance at the Project or cumulative levels. Additionally, there is currently no generally accepted methodology to determine whether air quality emissions associated with a specific project represent new emissions or existing, displaced emissions. Therefore, consistent with CEQA Guidelines Section 15064(h)(3), the City, as lead agency, determined that the Project's contribution to cumulative air quality emissions would be less than significant if the Project is consistent with the applicable regulatory plans and policies.

Further, SCAQMD recommends that any construction-related emissions and operational emissions from individual development projects that exceed the project-specific mass daily emissions thresholds identified above also be considered cumulatively considerable. Individual projects that generate emissions not in excess of SCAQMD's significance thresholds would not contribute considerably to any potential cumulative impact. SCAQMD neither recommends quantified analyses of the emissions generated by a set of cumulative development projects nor provides thresholds of significance to be used to assess the impacts associated with these emissions.

SheppardMullin

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Based on the substantial evidence provided herein, we respectfully request that the City Council approve the PLUM Committee's recommendation and deny the Appeals and approve the Project.

Very truly yours,



Alfred Fraijo Jr.
for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

SMRH:489644555.1

cc: May Sirinopwongsagon

Attachments

Exhibit 1

4 March 2019

Alfred Fraijo Jr.
Sheppard Mullin
303 South Hope St., 43rd Floor
Los Angeles, CA 90071-1422

Subject: Acoustical Study
Project: Selma Hotel Rooftop Bar and Lounge
RGD #: 19-001

Dear Mr. Fraijo:

We have reviewed the 26 February 2019 letter from the Silverstein Law Firm (Silverstein letter). This letter responds to comments about our acoustical study.

General Discussion

The Silverstein letter references our acoustical study on Page 10 of 12:

"Embedded in the 49 page letter is a 6 page report of a new acoustical study conducted by RGD Acoustics. This letter reports that new ambient noise measurements were made by Veneklasen Associates from January 21 through January 25, 2019. The letter does not describe the methodology or disclose the data or show the location of the noise monitors."

In our study, we included a section entitled "Ambient Noise Levels in the Community" which generally addresses the method used to determine the ambient noise levels. In that section we describe the date of the measurements, the acoustic metrics used in our analysis and the methodology we employed to extract the ambient data from the measurements. The ambient noise level data used in our analysis is summarized in Tables 2 and 3 of our study. The following sections provide some additional information.

Location of Ambient Noise Monitors

The monitoring locations were chosen to represent each of the four areas analyzed in our study. Aerial maps (Figures 1-5) showing the monitoring locations can be found at the end of this letter. The following describes each location:

Nearest Residential Area North: Wilcox Ave. between Yucca St. and Hollywood Blvd. in front of an existing residential building. The noise monitor was mounted on a utility pole about 10 feet above the roadway.

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Nearest Residential Area South: N. Hudson Ave. between Sunset Blvd. and Leland Way across the road from of an existing residential building. The monitor was mounted on a tree about 10 feet above the roadway.

Hollywood Hills Residential Zone: Bonair Place between Whitney Terrace and N. Las Palomas Ave. The noise monitor was mounted on a utility pole in front of an existing residence about 10 feet above ground.

Nearest Uses (hotels and commercial uses surrounding site): West side of Dream Hotel rooftop deck overlooking the project site. The noise monitor was mounted at the top of the perimeter glass wall surrounding the roof deck.

Ambient Data and Methodology

The ambient noise measurements were made with a monitoring system that utilizes precision integrating sound level meters (Type 1) by Bruel and Kjaer. The monitoring system acquired sound level data, continuously, in one-second and five-minute intervals during the entire monitoring period.

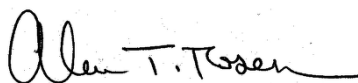
The first step in our data processing involved calculation of hourly average (L_{eq}) and background (L_{90}) noise levels from the raw monitoring data. This information was then used to determine the CNEL and the ambient L_{90} (in dBA and dBC) during the hours of project operation and is shown in Tables 2 and 3 of our study.

As ambient noise levels increase, intrusive sounds such as music from a distant rooftop bar would tend to become less audible. Therefore, to be conservative, we selected the lowest hourly L_{90} during project hours of operation for our analysis of audibility.

* * *

This concludes our discussion. Please do not hesitate to contact us if you have any questions.

Sincerely,



Alan Rosen
Principal
RGD Acoustics, Inc.



Figure 1: Noise Measurement Locations Overview

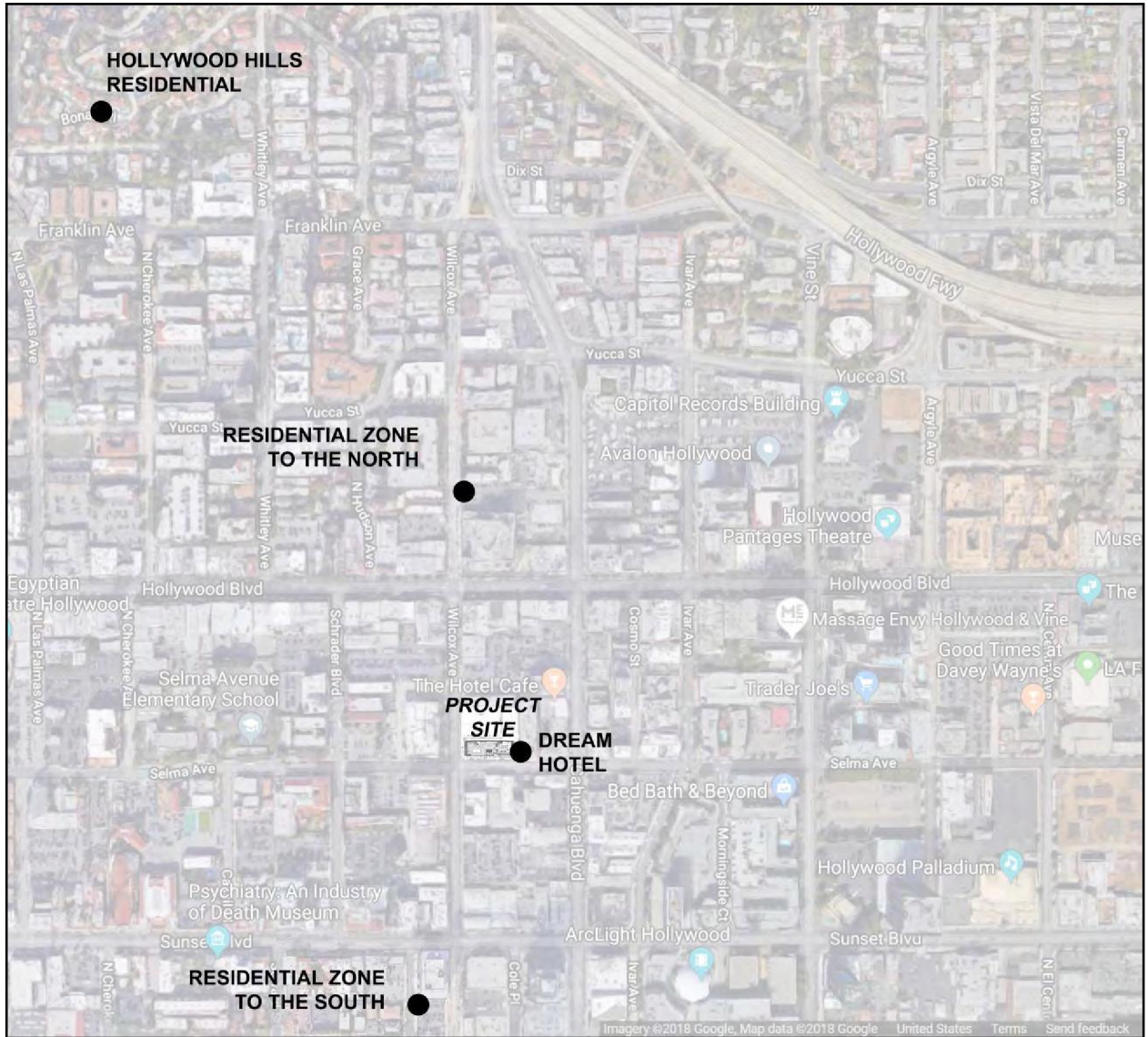


Figure 2: Noise Measurement Location: Residential Zone to North

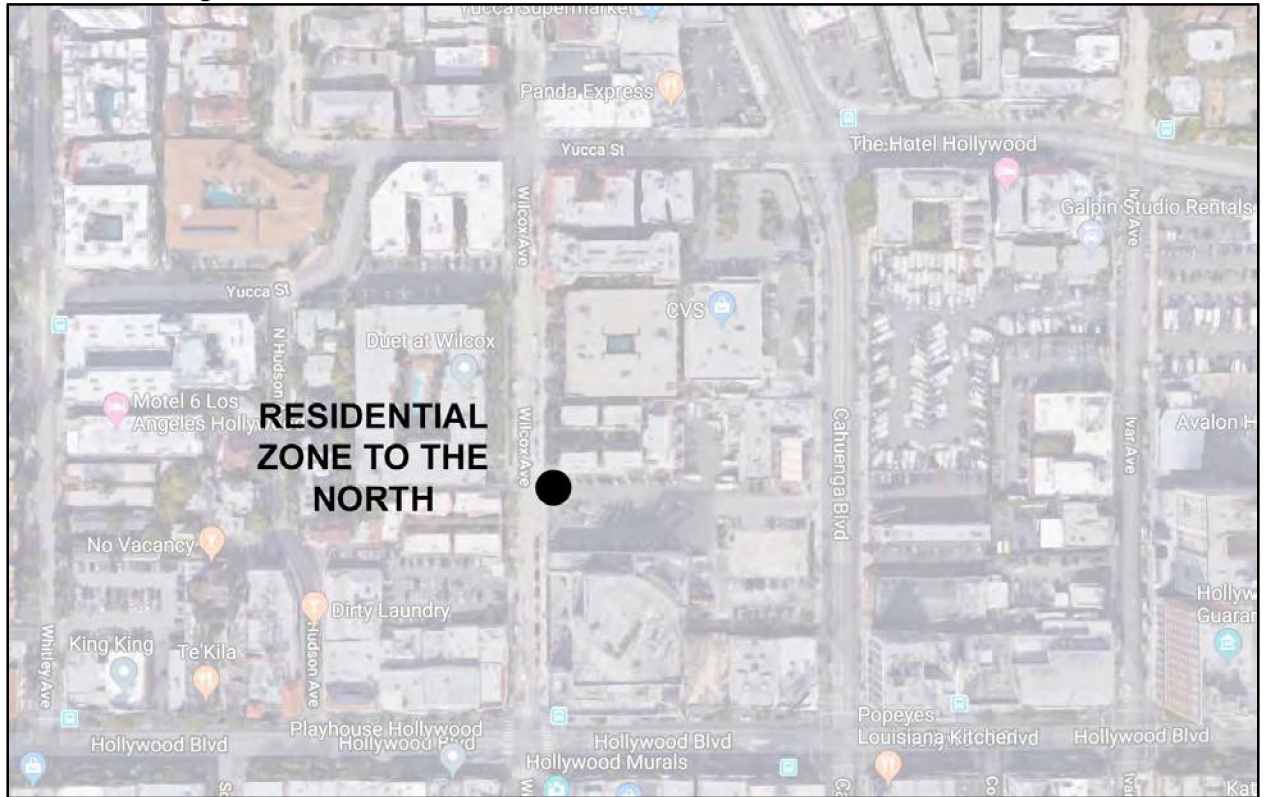


Figure 3: Noise Measurement Location – Residential Zone to South

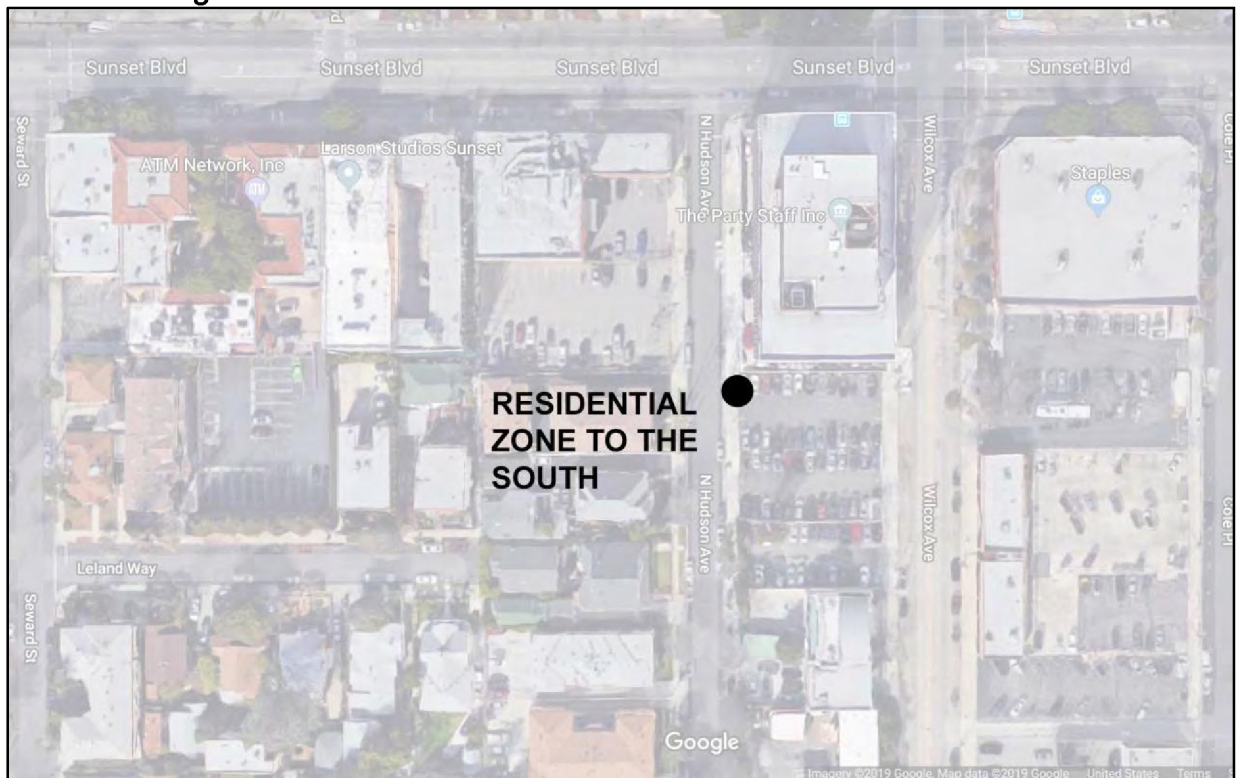


Figure 4: Noise Measurement Location - Hollywood Hills Residential

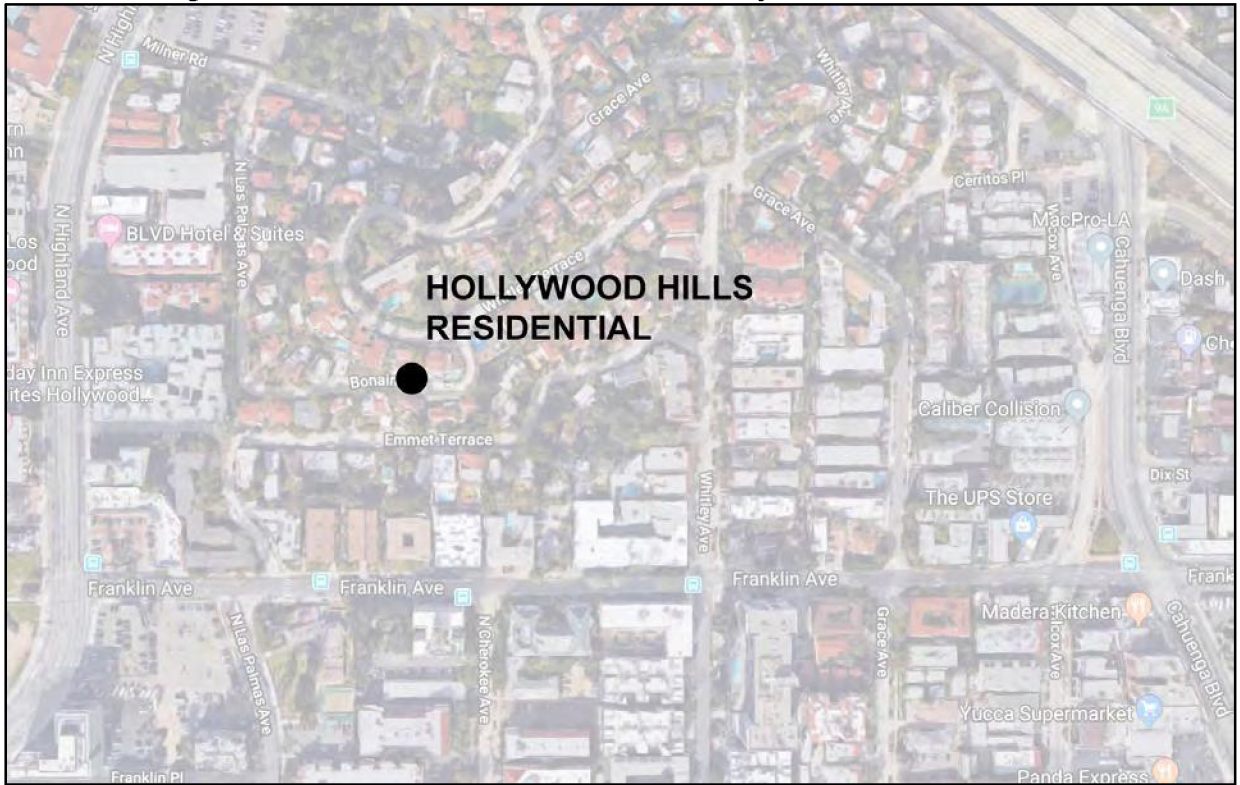


Figure 5: Noise Measurement Location - Dream Hotel

