



Sheppard, Mullin, Richter & Hampton LLP
333 South Hope Street, 43rd Floor
Los Angeles, California 90071-1422
213.620.1780 main
213.620.1398 fax
www.sheppardmullin.com

For 213.617.5567 direct
afraijo@sheppardmullin.com

November 26, 2018

File Number: 49JZ-228501

VIA E-MAIL

Los Angeles City Council
Planning and Land Use Management Committee
200 N. Spring Street
Los Angeles, CA 90012
E-Mail: zina.cheng@lacity.org

Re: Response to Appeals of City Planning Commission's Approval of Selma Wilcox Hotel
(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 1/2 West Selma Avenue and 1600-1604 North Wilcox Avenue ("Site") in the Hollywood area of the City of Los Angeles ("City"). The Applicant is in receipt of the four appeal letters filed following the issuance of the City Planning Commission's Letter of Determination for Case No. CPC-2016-2601-VZC-HD-CUB-ZAA-SPR. The four appellants are Sunset Landmark Investments, LLC represented by the Silverstein Law Firm ("Sunset Appeal"), Southwest Regional Council of Carpenters represented by Wittwer Parkin LLP ("Southwest Appeal"), United Neighborhoods for Los Angeles represented by Mr. Casey Maddren ("UN4LA Appeal"), and Unite Here Local 11 represented by the Law Office of Gideon Kracov ("Unite Here Appeal") (collectively, the "Appeals").

The administrative hearing background for this matter is as follows. On March 28, 2018, the Hearing Officer and Advisory Agency conducted a joint public hearing to consider Case Nos. CPC-2016-2601-VZC-HD-CUB-ZAA-SPR ("CPC Case") and VTT-74406 ("Subdivision Case"). On April 3, 2018, the Applicant withdrew the Subdivision Case, leaving just the CPC Case for consideration. On June 14, 2018, the Applicant requested that the City Planning Commission ("CPC") continue the CPC Case to be considered on July 12, 2018. At the July 12th CPC hearing, the commissioners considered the CPC Case and listened to testimony from the Applicant and members of the public. On August 17, 2018, the CPC published its Letter of Determination and approved the Project and its entitlements and recommended that the City Council do the same. Prior to the expiration of the 20-day appeal period, the City received the Appeals.

The purpose of this letter is to respond to the comments raised in the Appeals. The majority of the points raised in the Appeals have previously been presented in correspondence by the appellants to the City during the administrative process and as such the City as well as the

Applicant have responded at length to these issues. We reference those prior responses wherever appropriate and focus this letter on the new assertions and information presented by the Appeals. We respectfully request that this letter be included in the administrative record and be considered by the Planning and Land Use Management Committee (“PLUM Committee”) at the public hearing scheduled for November 27, 2018.

I. Response to the Sunset Appeal

A. The City Has the Authority to Change the D Limitation Affecting the Site

The Sunset Appeal claims that the City is improperly changing the D Limitation affecting the Site for two reasons. First, it argues that the D Limitation is a mitigation measure in the 1988 Hollywood Community Plan (“HCP”) and therefore, the City fails to meet the legal standard to modify the mitigation measure under the California Environmental Quality Act (“CEQA”). Second, it argues that the D Limitation vis-à-vis the Hollywood Redevelopment Plan requires compliance with a Transportation Plan. Because the Transportation Plan was never prepared by the redevelopment agency, the Sunset Appeal claims that there are unmitigated traffic and safety impacts that the Project’s Initial Study/Mitigated Negative Declaration (“IS/MND”) fails to address. Both arguments fail for the following reasons.

First, the HCP does not identify the D Limitation as a CEQA mitigation measure. Nor does it identify the environmental effects that the D Limitation restrictions intend to mitigate. (See Response to Sunset Landmark comments dated July 9, 2018.) Furthermore, the D Limitation is a zoning classification under the Los Angeles Municipal Code (“LAMC”) and therefore, falls squarely within the scope of the City’s police powers to remove or change the zoning. (See *Lockard v. City of Los Angeles* (1949) 33 Cal.2d 453, 460 [“It is well settled that a municipality may divide land into districts and prescribe regulations governing the uses permitted therein, and that zoning ordinances, when reasonable in object and not arbitrary in operation, constitute a justifiable exercise of police power.”].)

Second, the City can exercise its legislative authority in changing the D Limitation and supersede an old zoning ordinance in accordance with the authority and procedures set forth in LAMC Section 12.32. The individual and cumulative traffic impacts associated with the Project are properly analyzed in the IS/MND. (See Response to Smith Comments dated July 9, 2018.)

For these reasons, the City has the authority to change the D Limitation affecting the Site.

B. The Project’s Density of 114 Hotel Guest Rooms Complies with the C2 Zone and the City’s Longtime Application of LAMC Sections 12.22.A.18 and 12.12.C.4

The Sunset Appeal alleges that the City relies on a facially invalid interpretation of LAMC Sections 12.22.A.18 and 12.12.C.4 to improperly permit the Project’s 114 guest rooms. To the contrary, courts may give deference to an agency’s interpretation of a statute or ordinance; however, the degree of deference is fundamentally situational. (*Yamaha Corp. of Am. v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 12.) Factors to consider include whether the agency offering the interpretation had written the ordinance under review and whether the agency’s

interpretation is one that was consistently maintained and long standing. (*Id.*) In this case, the City's interpretation of the applicable hotel guest room density for the Project has been consistently implemented for numerous hotel projects approved by the City and is consistent with its longtime application of its zoning code as summarized in the City's own Staff Recommendation Report to the City Planning Commission for the Project. (See Response to Sunset Landmark Comments dated June 11.)

As addressed in the City's Staff Recommendation Report for the Project, pursuant to LAMC Section 12.22.A.18, uses permitted within the R5 Zone may be permitted on properties that are zoned CR, C1, C1.5, C2, C4, or C5 when located on a lot which is in an area designated on an adopted community plan as "Regional Center" or "Regional Center Commercial." While the R5 Zone has a minimum requirement of one dwelling unit per 200 square feet of lot area, it is silent on the minimum lot area requirement for hotel guest rooms. The Staff Recommendation Report also provides that in 2009, the Zoning Engineer of the Department of Building and Safety, which is the city department charged with enforcing the zoning code, clarified that the R5 Zone has no lot area regulation for guest rooms and that the zoning code's omission of a density requirement is not an error. Density for guest rooms is limited primarily by the maximum floor area permitted by the Height District (i.e., floor area ratio) and compliance with applicable minimum square footage Building Code regulations for habitable rooms.

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

The Sunset Appeal claims that the record shows that the Project is part of a boutique hotel district that was improperly piecemealed under CEQA and that the City knowingly cooperated with said violation. It points to four separate projects: "Dream Hotel I", "Tao Restaurant", "Wilcox Selma Hotel", which it also occasionally refers to as "Dream Hotel II" or "Tao Hotel", and the "Schrader Hotel". For clarity, attached as Exhibit 1 is a site map, plotting the four properties cited by the Sunset Appeal. Each project is labeled by its accurate applicant entity name, site address, and case number for the record, which are as follows:

1. Applicant: 6417 Selma Hotel LLC ("Dream Hotel Project")
Address: 6415 W. Selma Avenue
Case No.: CPC-2007-3931-ZC-HD-CUB-ZV-SPR
2. Applicant: 6421 Selma Wilcox Hotel, LLC ("Tao Restaurant Project")
Address: 6421 – 6429 ½ W. Selma Avenue, 1600-1604 N. Wilcox Avenue
Case No.: ZA-2015-2671-CUB
3. Applicant: 6421 Selma Wilcox Hotel, LLC ("Selma Wilcox Hotel Project" or "Project")
Address: 6421 – 6429 ½ W. Selma Avenue, 1600-1604 N. Wilcox Avenue
Case No.: CPC-2016-2601-VZC-HD-CUB-ZAA-SPR
4. Applicant: 1600 Hudson, LLC ("Schrader Hotel Project")
Address: 1600-1616 ½ N. Schrader Boulevard, 6533 W. Selma Avenue
Case No.: CPC-2016-3750-VZC-HD-CUP-ZAA-SPR

The Sunset Appeal relies on the following points to argue that the City should prepare an Environmental Impact Report (“EIR”) of the cumulative impacts of the four projects listed above:

1. First, it asserts that Relevant Group, the real estate development company for the Project, Dream Hotel Project, and Tao Restaurant Project has openly marketed the development of “an existing new boutique hotel district” along Selma Avenue.
2. Second, it claims that the applicant entity for the Tao Restaurant Project used the word “hotel” in its entity name, indicating Relevant Group’s intent to develop a hotel.
3. Third, it alleges that the Selma Hotel Project’s IS/MND did not properly include the Tao Restaurant Project and vis-a-versa, that the Tao Restaurant Project’s IS/MND did not properly include the Selma Hotel Project, despite community concerns raised during the administrative process for the Tao Restaurant Project.
4. Fourth, it highlights inconsistencies in the record where the Project is called “Dream Hotel II” or “Tao Hotel”.
5. Fifth, it maintains that the Project’s IS/MND fails to mention or include analysis of the Dream Hotel Project.
6. Sixth, it argues that the Schrader Hotel Project is linked to Relevant Group and the “Hollywood Regional Center” because the project is represented by the same attorney and public outreach consultant.
7. Lastly, it quotes City Planning Commissioner Renee Dake Wilson to argue that her conduct demonstrates the City’s knowing and willful violation of piecemealing laws under CEQA.

The points raised by the Sunset Appeal do not satisfy the fundamental legal test established by the courts to support its claim that all four projects should be analyzed as a single project in a new EIR. As provided by the court in *Laurel Heights v. Regents of Univ. of Cal.* (1988) 47 Cal.3d 376, “[a]n EIR must include an analysis of the environmental effects of future expansion or other action if: (1) it is a reasonably foreseeable consequence of the initial project; and (2) the future expansion or action will be significant in that it will likely change the scope or nature of the initial project or its environmental effects.” As recently discussed by the California Court of Appeals, “the courts have taken a more Goldilocks-esque approach when defining the concept of reasonable foreseeability under CEQA.” (*Citizens Coalition Los Angeles v. City of Los Angeles* (2018) 26 Cal.App.5th 561, 584.) In balancing how broad or narrow CEQA construes the concept of reasonable foreseeability, to get it “just right”, the courts “have deemed a consequence of a project to be reasonably foreseeable only when that consequence is, as a practical matter, sufficiently certain to happen.” (*Id.* at p. 10.) The *Citizens Coalition* court stated that this degree of certainty has been found to be sufficient in five different situations:

1. A consequence is reasonably foreseeable when the agency has already committed itself to undertake the consequence.

2. A consequence is reasonably foreseeable when the project under review presupposes the occurrence of that consequence – that is, when the consequence is a “necessary” and essential component of the project itself.
3. A consequence is reasonably foreseeable when it is itself under environmental review.
4. A consequence is reasonably foreseeable when the agency subjectively “intends” or “anticipates” the consequence, and the project under review is meant to be the “first step” toward that consequence.
5. A consequence is reasonably foreseeable if the project under review creates an incentive that is all but certain to result in the consequence.

(*Id.* at pp. 10–11.) On the other hand, the *Citizens Coalition* court stated that a consequence is not reasonably foreseeable in the following situations:

1. A consequence is not reasonably foreseeable when it is independent of the project under consideration (i.e., not interdependent, serves a different purpose, has different proponents).
2. A consequence is not reasonably foreseeable simply because the project under consideration makes that consequence a possibility – even when the public agency is subjectively aware of that possibility (that is, even when it is a “gleam in [the] planner’s eye”).
3. A consequence is not reasonably foreseeable merely because the project creates an incentive for that consequence to come to pass (unless, as noted above, that incentive makes the consequence all but certain).

(*Id.* at pp. 11–12.)

In accordance with the established piecemealing law under CEQA and the facts presented below, the Project is not a reasonably foreseeable consequence of the other named projects or any other projects in the vicinity. The nature of the applicant’s business model requires individual decisions based on project-specific circumstances and context; it is not amenable to type of grand design opponents imagine. In particular with respect to the projects named by appellants, the ownership is different, vendor management is different, development timelines were distinct, and investor blocks were unique. The Project therefore was not improperly piecemealed.

As an initial matter, the business model of the applicant’s parent development company, the Relevant Group, is limited to self-contained, discrete projects financed largely in accordance with the federal EB-5 program, which allows real estate developers to pool investments from non-US Citizens to fund development in the United States. In exchange for \$500,000 of financing for a business that creates at least 10 new permanent jobs per investment, investors

can obtain a time-limited, conditional visa. Hotel and restaurant projects are particularly good categories for EB-5 investors because they tend to create more long-term jobs than other industries. In addition, because investors are motivated to secure their visas, there is significant pressure to complete proposed deals quickly. In other words, to keep investors on the line, EB-5 projects must be ready to move forward when the capital, from discrete investors, is available.

The right conditions for hotel and restaurant developments, which require a confluence of property rights, investors, management partners, and location-specific need for the development, also must be ripe, and in this instance, each of the Relevant developments in the neighborhood arose as a discrete opportunity from a unique set of facts.

The Dream Hotel Project, for instance was originally approved, meaning entitled for development, just before the Great Recession in 2008 (see Case No. CPC-2007-3931-ZC-HD-CUB-ZV-SPR). Relevant lost the property through foreclosure in 2010, but was able to reacquire it in 2013. In 2014, Relevant revised the hotel construction plans for the property to provide for the development of a ten-story, 182-room hotel (Case No. ZA-2013-3504(ZV)). Construction began in 2014 and was completed in 2017.

Several years after first entitling the Dream Hotel Project, an opportunity arose to lease the neighboring property, which was developed with an auto body shop, non-descript restaurant, apartment complex and a piano bar. Relevant saw the potential for another EB-5 development, either a restaurant or another hotel – or both, in an area where development of tourist amenities was taking off. Considering the timing and availability of the EB-5 funding, as well as the fact that a new 20,624 square foot restaurant with live entertainment, a 6,000 square foot retail space, and three levels of subterranean parking required only ministerial building permits and a permit for alcohol use, Relevant and its joint venture partner (the owner of the property) determined that construction of the Tao Restaurant Project was the best use of the site and the funding at the time.

Although Relevant conceived of the Tao Restaurant long after permitting the Dream Hotel, it was able to finish construction and open the restaurant before the Dream Hotel opened due to the ease of permitting and ability to reuse existing materials and infrastructure. This overlap of construction timelines does not mean that the projects were reasonably foreseeable, let alone reasonably foreseeable *consequences* of one another, when they were being permitted. Given that construction on the hotel was already well underway before the restaurant was entitled, one cannot credibly argue that that Relevant would not have built the hotel without the restaurant. Indeed, Relevant was a year and half into construction on the hotel before construction on the restaurant began. The Selma Wilcox Hotel Project is even further removed from this process.

Similarly, other Relevant EB-5 projects arose organically in the neighborhood in cooperation with distinct hotel operating groups and property owners. A little over a block away on Wilcox, property became available in 2015 that was ideally situated for development of another hotel. This project, under construction as of 2017, is anchored by a Thompson Hotel, a brand recently acquired by Hyatt and previously part of the Two Roads portfolio.

A fourth hotel, also just acquired by Hyatt, is under construction near the Thompson, but came about under very different circumstances. After seeing Relevant's success with developments in the area, Citizen News offered to sell its parking lot property on Selma, which had already been entitled for the development of an office condominium, in 2016. In 2017, Relevant re-permitted the site for a hotel – one of the two types of developments that they specialize in – and began construction in 2018.¹ As the Tommie project is the subject of litigation by neighbors and competitors, it is unclear when it will open its doors to guests.

Given this history, the City did not commit to undertake the Project when it approved and/or considered the projects described by the appellants or the other Relevant projects in the Hollywood area. Each project is entirely independent from the Selma Wilcox Hotel Project in its location, project description, the circumstances giving rise to its development, its investors, its management and, at least initially, in its timing. Each project furthermore underwent environmental review under CEQA, as documented in the mitigated negative declarations prepared for the projects. Neither the City nor the applicant was committed to undertaking the Project when these other Relevant projects were under review and no environmental impacts were overlooked as a result of sequential development and review.

The Project was furthermore not reasonably foreseeable because it was not a necessary and essential component of any of the projects cited by the Sunset Appeal or the other Relevant projects in the Hollywood area. None of these projects presuppose the occurrence of the Project, nor do the projects legally compel or practically presume completion of the Project. Each of the projects mentioned operate on their own and do not rely on the presence of the others. (*Banning Ranch Conservancy v. City of Newport Beach* (2012) 211 Cal.App.4th 1209.) Indeed, with respect to the hotel projects, while guests of one hotel might patronize the restaurants of another, the hotels will primarily compete with, not complement, one another and even if the amenities of one hotel are an ancillary benefit to others, they are not critical components of other hotels' operating plans. "Two projects may properly undergo separate environmental review (i.e., there is no piecemealing) when the projects have different proponents, serve different purposes, or can be implemented independently. (*Id.* at p. 1223, italics added, citing *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 99 ["refinery upgrade and construction of pipeline exporting excess hydrogen from upgraded refinery were 'independently justified separate projects with different project proponents'"]. See also *Santiago County Water Dist. v. County of Orange* (1981) 118 Cal.App.3d 818, 829–30 [An agency, when evaluating sand and gravel mining project, must also analyze water delivery system necessary for operation of the mining project].)

¹ The Sunset Appeal also alleges that the Schrader Hotel Project is part of a so-call hotel district. This project is not an approved project and is pending consideration by the City Planning Commission. The applicant for the Schrader Hotel Project is furthermore not Relevant Group. The development company for the Schrader Hotel Project is KOAR Institutional Advisors. The suggestion that the Schrader Hotel has been improperly piecemealed accordingly has no basis under any of the legal tests created by the courts to identify such projects.

The Project was also not a reasonably foreseeable consequence of other projects because it was not a related project that was/is under review when the City was reviewing any of the projects cited by the Sunset Appeal or any of the other Relevant projects in the area. The Project was filed on July 22, 2016, assigned to City staff on November 23, 2016, and accepted for review by the City on March 22, 2017. Accordingly, the Project was not before the City in 2008 or 2014 when it approved the Dream Hotel Project. Nor was the City reviewing the Project when it approved the Tao Restaurant and Thompson Hotel in 2016.

Where the Project permitting timeline has overlapped with other projects, these developments are not foreseeable consequences for other reasons. For example, although the City is concurrently considering the Schrader Hotel Project, the Selma Wilcox Hotel Project and the Schrader Hotel Project are proposed by two different real estate development companies, are located on distinct city blocks separated by a public street and intervening structures, and will be operated independently by different hotel brands. Similarly, the City's consideration and approval of the Tommie Hotel also partially overlapped with the timeline for the instant Project, but this timing is not dispositive because the projects still have different proponents/investors, are located on separate lots, will likely be operated by different families of hotels, and do not share any infrastructure even suggesting interdependence. (See *Tuolumne County Citizens for Responsible Growth, Inc. v. City of Sonoma* (2007) 155 Cal.App.4th 1214, 1218–24 (*Tuolumne*) [An agency, when evaluating construction of home improvement center, must also examine road alignment consequence that it approved to effectuate (and was a condition of) the home improvement center].)²

The Project is furthermore not a reasonably foreseeable consequence because there is no evidence that the applicant intended, or the City should have anticipated, the Project when the City approved other projects. This is not an instance where an agency is taking action that will necessarily lay the groundwork for future development (e.g., annexing and/or rezoning land). (See *Citizens Coalition Los Angeles v. City of Los Angeles*, *supra*, 26 Cal.App.5th at p. 586, citing cases.) It is also not a case where the action proposed is partial or temporary, yet there is evidence that the action might become whole or permanent (e.g., the partial lease of a building or temporary use of a facility). (*Id.* at pp. 586-587.) No other project was a “first step” towards this Project. This is true whether the piecemealing claim is based on the argument that the Project is part of a larger, multi-phase Dream Hotel project, or part of a larger project to develop a “boutique hotel district.”

² The discussion of the third distinct “situation” where a future consequence is reasonably foreseeable, as described in the *Citizens Coalition* case, is somewhat misleading, as the analysis cites several cases discussing the appropriate scope of the cumulative impacts analysis in a CEQA document. Projects undergoing concurrent review under CEQA may have consequences that the analysis of other projects must consider, but timing alone does not make one project a consequence of another, such that to consider them separately would be piecemealing. In any event, the analysis in the Project IS/MND, which considered the cumulative impacts of a combined Tao Restaurant Project and the Selma Wilcox Project, as well as the Dream Hotel Project and Schrader Hotel Project (in its list of Related Projects) was sufficient.

Arguments to the contrary are based on marketing materials from 2014 and the fact that the applicant for the Tao Restaurant was the Selma Wilcox Hotel, LLC. However these materials only demonstrate that at some point in the past, the applicant had larger aspirations for the development. But those aspirations were far from a reality. The applicant sought financing and created a project company to pursue the development, but ultimately failed to secure the necessary funding for the proposal, which, significantly, was not developed enough to warrant submittal to the City for its consideration until 2016. As explained above, sufficient EB-5 and other financing was available for a limited time for the Tao Restaurant Project and the applicant accordingly pursued the project that was viable. There was nothing treacherous or underhanded in this approach; the applicant had no means of predicting that its failed project would come back and no incentive to propose and permit a project that seemed infeasible at the time.

The theory that the Project is the first of many steps in a piecemealed neighborhood development is likewise based on unsubstantiated conjecture. Appellants have seized upon statements allegedly made by the applicant referring to a vision of a “boutique hotel district” in Hollywood, and suggested that, as in *Arviv Enterprises, Inc. v. South Valley Area Planning Commission*, the developer improperly submitted serial applications for the construction of multiple buildings that are part of a larger plan. (2002) 101 Cal.App.4th 1333, 1336 (“*Arviv*”). In *Arviv*, a developer secured a series of separate permits over a short period of time to build homes of varying size on either side of one street and additional homes on an adjacent street. (*Id.* at p. 1336.) Some homes were approved without any environmental review, while others secured approvals supported by negative declarations. (*Id.*) Eventually, the lead agency required the preparation of a single EIR for all 21 homes in light of *evidence* that the developer “always envisioned a 21-house development” and “never intended a two or three house project.” (*Id.* at p. 1346; see also *Laurel Heights, supra*, 43 Cal.3d at pp. 388, 399 [holding an EIR inadequate where a single project proponent failed to include both phases of its *admitted* plan to occupy a 354,000 square-foot structure on a 10-acre site, which was further documented in the EIR].)

Here, there is no evidence that the developer intended, or even now intends, to build a larger “boutique hotel district” in Hollywood. To the extent one has arisen or is arising out of the numerous, separate projects at various stages of development, this is not the work of a single applicant with a larger design, but the result of numerous developers and investors taking advantage of opportunities consistent with the existing commercial zoning and favorable market conditions. Given the ongoing hotel development boom in the area (see attached map), it is unreasonable to presume that, even if the applicant has spoken of a “boutique hotel district” in Hollywood, that the district refers to just four hotels spread over several blocks, with several intervening developments – including other boutique hotels. Relevant is simply not the architect of a hotel district, if one in fact exists.³

³ In any event, *Arviv* is distinguishable. The case involved an applicant challenging a City’s decision to require the preparation of an EIR for a larger project than the one described by the applicant. The court held that the City had the necessary discretion to do this, but it did not hold

Finally, the Project is not a reasonably foreseeable consequence of another project because no other project in any way created an incentive that guaranteed the Project. The *Citizens Coalition* court described this as “the precursor principle to Field of Dreams ‘if you build it, they will come’ [or] ‘if you zone it, they will build.’” (*Id.* at pp. 591-592.) There is obviously some overlap between this situation and the fourth *Citizens Coalition* scenario above, and as already explained, there is no evidence that the City or the applicant intended to construct the Project as part of earlier projects that were previously approved. There is also no evidence that infrastructure built or approved as part of a prior project was designed with the Project in mind. The one possible exception to this statement is the offsite parking for the Project, which the applicant intends to secure at the Thompson Hotel. However, as explained in detail below in response to the UN4LA Appeal, there is no evidence that the sole reason to construct the parking at the Thompson Hotel was to “provide a catalyst for further development in the immediate area.” (*City of Antioch v. City Council* (1986) 187 Cal.App.3d 1325, 1335-1338.) The Project could have found parking elsewhere, built additional parking on its own, or scaled down the size of its development. One cannot reasonably assert that a multi-story hotel complex is the reasonably foreseeable consequence of the development of 36 unclaimed parking spaces or that the same parking spaces could incentivize the construction of a multi-million dollar hotel.

For the foregoing reasons, the first prong of the *Laurel Heights* court test (the reasonably foreseeable consequence prong) is not satisfied. The Project is completely separate from all other projects because, among other things, the Project is not conditioned upon, nor is it intended to operate as an expansion of, other projects. As for the second prong of the test, which states that the future expansion or action will be significant, and require uniform review as one project, if it will significantly change the scope or nature of the initial project or its environmental effects, the Project would not change the scope of any other projects.

It is further worth noting that, even if the applicant did split a “Tao Hotel” into two projects and segmented their review (an argument that is thoroughly refuted above), this piecemealing was remedied by the City’s preparation of a MND that considers the impacts of the Project compared to existing conditions and a parallel analysis that considers the impacts of a hypothetical development including the hotel and the Tao Restaurant on the environment as it existed before the construction of Tao. The impacts of a larger development have not been improperly masked by segmentation in any event. Indeed, the cure for any improper segmentation would be to require that the City go back and review the larger project in a single document and this has already been done. The second prong of the *Laurel Heights* court test remains unmet. The Sunset Appeal’s failure to demonstrate substantial evidence supported by the law is fatal to its claim. The City prepared a comprehensive and adequate IS/MND.

that CEQA required that the City analyze several single family homes as a single project. The holding of *Arviv* is inapposite here.

II. Response to the Southwest Appeal

A. The Baseline Analysis is Proper

The Southwest Appeal alleges that the use of two baselines – Original Baseline and Current Baseline – is improper and results in undue confusion. However, this allegation does not cite to any evidence demonstrating the impropriety of analyzing alternative baselines intended to provide sufficient information to the City in its consideration of the Project. (*Laurel Heights*, 47 Cal.3d at 394 [CEQA documents are informational documents identifying significant impacts of a project, if any, and mitigation measures for decisionmakers, other agencies, and the public].)

While the CEQA Guidelines provide that the environmental setting as it exists when the EIR is being prepared should *ordinarily* be treated as the baseline for gauging the changes to the environment that will be caused by the project, the California Supreme Court has interpreted these same CEQA Guidelines as awarding lead agencies the discretion to elect to use a different baseline if there is a reasonable basis for doing so. (CEQA Guidelines §§ 15125(a), 15126.2(a); *Neighbors for Smart Rail v. Exposition Metro Line Constr. Auth.* (2013) 57 Cal.4th 439, 447.) Thus, the rule governing the date for establishing the baseline is not rigid and inflexible. (*Communities for a Better Env't v. S. Coast Air Quality Mgmt. Dist.* (2010) 48 Cal.4th 310, 328.)

Moreover, when a project involves modification or expansion of operations at a facility, the level of existing operations may be used to establish the environmental baseline. (*Citizens for E. Shore Parks v. State Lands Comm'n* (2011) 202 Cal.App.4th 549.) The baseline of actual, ongoing operations may be based on an average of historical conditions or on conditions that predate publication of the notice of preparation, provided such a baseline is supported by substantial evidence. (*San Francisco Baykeeper, Inc. v. State Lands Comm'n* (2015) 242 Cal.App.4th 202; *N. County Advocates v. City of Carlsbad* (2015) 241 Cal.App.4th 94.) The information regarding an ongoing operations baseline must be “plainly identified” in the EIR. (*San Joaquin Raptor Rescue Ctr. v. County of Merced* (2007) 149 Cal.App.4th 645.) When a project may change the operations of an existing project, a discussion of the prior project may be necessary to establish baseline operational conditions in order to assess the impacts of the change. (*County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 953.)

The IS/MND clearly and consistently states the Original Baseline, describing the environmental conditions that originally existed at the time of submittal of Case No. ENV-2015-2672-MND, which evaluated the demolition of the then existing structures and the proposed construction of a 20,624 square-foot restaurant, 6,000 square feet of retail, and three levels of subterranean parking (“Approved Project”). (CEQA Guidelines § 15124.) The Current Baseline describes existing environmental conditions, which includes the 20,624 square feet of restaurant, partial construction of three-levels of subterranean parking, and an excavated area.

The MND analyzes the Project against the two baselines described above to measure the Project’s impacts against the physical conditions that existed prior to the Original Baseline and the conditions that exist today, the Current Baseline. Because the construction of the Project

will commence upon completion of the construction of the Approved Project, this dual baseline approach adequately considers the Project in relation to the impact analysis and mitigation required for the development of the Approved Project as well as adequately analyzes the Project after construction and ongoing operation of the Approved Project. (MND, pg. 2-1.) The rational basis and substantial evidence supporting the use of dual baseline approach is provided in Section 2 of the MND. (MND, pg. 2-5 – 2-6.)

B. The IS/MND's Traffic Analysis Does Not Improperly Defer Mitigation Measures

The proposed mitigation for significant impacts at Selma Avenue and Wilcox Avenue is, as stated, implementation of a Transportation Demand Management Plan ("TDM Plan") included as MM-Traffic-2 in the MND. The goal of a TDM Plan is to reduce the number of vehicles in and out of the area. The City of Los Angeles Department of Transportation ("LADOT") provides a list of potential trip generation measures in its Traffic Impact Study Guidelines, December 2016 ("Traffic Guidelines"). These Traffic Guidelines, under the Transportation Mitigation Measures Heading, state: "*In addition to traditional traffic flow considerations, mitigation programs must primarily aim to minimize the demand for trips by single-occupancy vehicles through transportation demand management (TDM) strategies.*" (Traffic Guidelines, pg. 18.) The proposed TDM Plan to mitigate Project impacts is in keeping with this goal.

Effective TDM Plans have been developed throughout the City to reduce vehicle trip generation during the peak hours for all types of projects. The June 11, 2017 and December 6, 2017 LADOT review letters of the Project require a preliminary TDM Plan to be prepared and provided to them for review prior to the issuance of the first building permit for the Project and a final TDM Plan approved by LADOT prior to the issuance of the first certificate of occupancy for the Project. LADOT requires monitoring of the TDM effectiveness until such time that the Project has shown, for three consecutive years, at a minimum of 85-percent occupancy, achievement of the peak hour trip volume reduction requirements. If the monitoring report indicates that goals are not met, penalties are implemented. This will repeat annually as the Project demonstrates compliance or refines the mitigation plan to meet the TDM goals.

This TDM Plan does not result in deferred mitigation. (*Citizens for a Sustainable Treasure Island v. City & County of San Francisco* (2014) 227 Cal.App.4th 1036, 1059; *Friends of Oroville v. City of Oroville* (2013) 219 Cal.App.4th 832, 838 [a mitigation performance standard is sufficient if it identifies the criteria the agency will apply to determine that the impact will be mitigated].) Future studies of potential impacts, like those required under the TDM Plan, are permissible when coupled with remedial measures designed to address impacts identified by the study. (*Defend the Bay v. City of Irvine* (2004) 119 Cal.App.4th 1261, 1275; *Save Panoche Valley v. San Benito County* (2013) 217 Cal.App.4th 503, 524.) In the same vein, when it is uncertain whether a particular impact will occur, an agency may adopt a contingent mitigation measure that will be triggered by specified conditions. (*Save Cuyama Valley v. County of Santa Barbara* (2013) 213 Cal.App.4th 1059, 1070; *Mount Shasta Bioregional Ecology Ctr. v. County of Siskiyou* (2012) 210 Cal.App.4th 184, 208.) An adaptive mitigation plan designed to change in response to future studies must identify the type of actions that may be taken and criteria for their implementation. (Compare *Preserve Wild Santee v. City of Santee* (2012) 210 Cal.App.4th 260 [post-approval formulation of active habitat management plan invalid because EIR did not

describe expected management actions or include management standards] with *City of Hayward v. Bd. of Trustees of Cal. State Univ.* (2015) 242 Cal.App.4th 833 [upholding TDM plan providing for adaptive implementation program based on future monitoring]; *Mission Bay Alliance v. Office of Cmty Inv. & Infrastructure* (2016) 6 Cal.App.5th 160, 188.)

Moreover, as stated in the Project traffic study, the ITE trip generation rates are estimated without regard for the nature of the Project's vicinity in terms of transit, walking, or interaction with the traffic on the surrounding roadways. Project trip reduction credits were noted in the summary trip generation table. Internal trip reductions are for persons who are already on-site and go to another venue on-site. This practice does not create a new vehicle trip. A 50-percent internal trip credit was approved by LADOT and applied to the restaurants because it is highly likely that half or more of the patrons will be guests of the hotel. Some of the patrons of the restaurants will not be driving directly to the Site to eat as their main destination point. Instead, they may be passing by the Site on their way to or from a main destination point. Accordingly, the Project traffic study included an estimated and LADOT-approved reduction of 20-percent pass-by rate for the ground floor restaurant and 10-percent pass-by rate for the rooftop restaurant/bar. Note that the pass-by credits are not applied at the nearest intersection to the Site where turning movements may be needed to access the Site.

Lastly, the City has goals to reduce vehicle trips throughout the City. There is limited on-street parking in Hollywood making it a non-viable alternative. Many drivers consider parking availability when driving to a destination. If there is limited parking both on and off-street, other options such as mass transit and vehicle sharing are more likely to be considered. There is no evidence cited by the Southwest Appeal demonstrating that the TDM Plan is insufficient mitigation.

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

The Southwest Appeal challenges the greenhouse gas ("GHG") impacts conclusions for the Project in the IS/MND based on unsubstantiated opinion. Under Public Resources Code section 21082.2(c), "[a]rgument, speculation, unsubstantiated opinion or narrative, evidence which is clearly inaccurate or erroneous, or evidence of social or economic impacts which do not contribute to, or are not caused by, physical impacts on the environment, is not substantial evidence. Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts."

The Project would be consistent with the growth projections in the South Coast Air Quality Management Plan. The Site's zoning and HCP land use designation allow for the hotel and restaurant uses. As such, their contribution to cumulative air quality impacts in the region have been accounted for in the air quality planning for the South Coast Air Basin.

As acknowledged in the Southwest Appeal, there are no applicable California Air Resources Board, South Coast Air Quality Management District ("SCAQMD"), or City significance thresholds or specific reduction targets, 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 GHG 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, has determined that the Project's contribution to cumulative GHG emissions and global climate change would be less than significant if the Project is consistent with the applicable regulatory plans and policies to reduce GHG emissions, not limited to building efficiency measures. (See *Ctr. for Biological Diversity v. Dept. of Fish & Wildlife* (2015) 62 Cal.4th 204 (“*Newhall Ranch*”) [suggesting variety of possible approaches to determining significance of GHG impacts, including utilization of CEQA Guidelines Section 15064(h)(3)].)

The Southwest Appeal fundamentally misrepresents the analysis included in the IS/MND and its relation to *Newhall Ranch*. In *Newhall Ranch*, the court specifically held that the threshold of significance chosen and the lead agency's determination of significance must be based on substantial evidence, a position later reiterated in subsequent case law. (*Id.* [consistency with meeting statewide emissions reduction goals was acceptable threshold of significance]; *Mission Bay Alliance*, 6 Cal.App.5th 160 [quantitative assessment of GHG emissions not required when EIR includes qualitative assessment of project's adherence to regulatory program with performance-based methodology for reducing GHG emissions]; *Friends of Oroville*, 219 Cal.App.4th at 842; *Citizens for Responsible Env't'l Dev. v. City of Chula Vista* (2011) 197 Cal.App.4th 327, 336; *Santa Clarita Org. for Planning the Env't v. City of Santa Clarita* (2011) 197 Cal.App.4th 1042, 1058.) Substantial evidence supports the chosen threshold. The Project would not conflict with any applicable plan, policy, or regulation of an agency adopted for the purpose of reducing the emissions of GHGs, including those plans adopted by the City and those promulgated in the South Coast Air Quality Management Plans as demonstrated in the IS/MND Chapter 7 contrary to Southwest's implication. In the absence of adopted standards and established significance thresholds, and given this consistency, the IS/MND concludes based on substantial evidence that the Project's impacts are not cumulatively considerable. (*Communities for a Better Env't v. Cal. Resources Agency* (2002) 103 Cal.App.4th 98, 115.)

Moreover, the IS/MND's climate change analysis merely discloses potential emissions in the context of an NAT scenario for informational purposes, but does not base its significance finding on this. Instead, the analysis focuses on consistency with climate change plans at the State, regional, and local level. This approach is consistent with the California Supreme Court's suggestion in *Newhall Ranch* that regulatory consistency as a potential “pathway to compliance,” which states that a lead agency might assess consistency with AB 32's goal in whole or in part by looking to compliance with regulatory programs designed to reduce GHG emissions from particular activities. The Court recognized that to the extent a project's design features comply with or exceed the regulations outlined in the *Climate Change Scoping Plan* and adopted by CARB or other state agencies, a lead agency could appropriately rely on their use as showing compliance with performance-based standards adopted to fulfill a statewide plan for the reduction or mitigation of GHG emissions. This approach is consistent with CEQA Guidelines Section 15064, which provides that a determination that an impact is not cumulatively considerable may rest on compliance with previously adopted plans or regulations, including plans or regulations for the reduction of GHG emissions.

D. The IS/MND Adequately Evaluated Cumulative Impacts

A CEQA document's discussion of cumulative impacts must provide a summary of the cumulative environmental effects that are expected and a reasonable analysis of the cumulative impacts of the relevant projects. (CEQA Guidelines § 15130(b)(4)–(5).) The analysis should focus on significant cumulative impacts to which the Project will contribute; impacts that do not result at least in part from the project should not be evaluated. (CEQA Guidelines § 15130(a)(1).) The analysis should also focus on cumulative impacts rather than attributes of other projects that do not contribute to the cumulative impact. (CEQA Guidelines § 15130(b).)

The description and analysis should reflect the severity of cumulative impacts and the likelihood of their occurrence. (CEQA Guidelines § 15130(b); *City of Long Beach v. Los Angeles Unified Sch. Dist.* (2009) 176 Cal.App.4th 889; *Concerned Citizens of S. Cent. L.A. v. Los Angeles Unified Sch. Dist.* (1994) 24 Cal.App.4th 826.) The discussion need not provide detail as extensive as that required for effects attributable solely to the project. The discussion of cumulative impacts should be guided by standards of practicality and reasonableness. (CEQA Guidelines § 15130(b); *Banning Ranch Conservancy, supra*, 211 Cal.App.4th at p. 1228; *Cadiz Land Co. v. Rail Cycle* (2000) 83 Cal.App.4th 74, 102; *East Bay Mun. Util. Dist. v. Dept. of Forestry & Fire Protection* (1996) 43 Cal.App.4th 1113, 1127.) When specific information on the impacts of potential future cumulative development is not available, a CEQA document is not required to speculate about the cumulative impacts that might occur. (*Preserve Wild Santee v. City of Santee* (2012) 210 Cal.App.4th 260, 277.)

A disagreement over the method used to assess cumulative impacts is not a basis for rejecting the IS/MND analysis as inadequate. (CEQA Guidelines § 15151.) A reasonable, good faith effort to disclose the impact is sufficient. (*Citizens for Open Gov't v. City of Lodi* (2012) 205 Cal.App.4th 296, 320; *Greenbaum v. City of Los Angeles* (1984) 153 Cal.App.3d 391, 411.)

Contrary to the Southwest Appeal, not all future projects must be analyzed in the cumulative analysis. Moreover, Southwest has not demonstrated that the projects identified in the Southwest Appeal qualify as a “probable future project.” (*San Franciscans for Reasonable Growth v. City & County of San Francisco* (1984) 151 Cal.App.3d 61 [a project may be viewed as a probable future project once the environmental review process for the project is underway].) Courts have often noted that because new projects are continually being fed into the environmental review process, lead agencies may set a reasonable cutoff date for the new projects that will be included in the analysis. (*Id.* at 74 n.14; *Friends of the Eel River v. Sonoma County Water Agency* (2003) 108 Cal.App.4th 859, 870.). In *Gray v. County of Madera* (2008) 167 Cal.App.4th 1099, 1127, the court held that the lead agency's mere awareness of a proposed project is insufficient to demonstrate that the project is a probable future project. (See also, *City of Maywood v. Los Angeles Unified Sch. Dist.* (2012) 208 Cal.App.4th 362, 398.)

The City addresses cumulative impacts in the future analysis scenario. An extensive effort to identify other projects in the study area is prepared with information from LADOT and Department of City Planning. These related projects traffic volumes are added to the study intersections determined in the Future Without Project evaluation. Any improvements to the street system that may be implemented by the related projects are not included in the future

analysis. In addition, a 1-percent per year ambient growth rate is added to the existing traffic conditions to account for any growth in the area and/or potential additional related projects not identified in the search for reasonably foreseeable related projects. This 1-percent ambient growth rate that is included in the analysis is conservative because the County of Los Angeles has estimated a smaller growth rate than 1-percent. Based on the Los Angeles County Congestion Management Program (CMP) estimated traffic growth rates for the West/Central Los Angeles area is 0.17-percent per year between 2015 and 2025. A copy of the CMP growth factor from Appendix D, Guidelines for CMP Transportation Impact Analysis, 2010 Congestion Management Program for Los Angeles County is attached as Exhibit A to the Response to Unite Here Comments dated February 27, 2018. This worst-case consideration of future conditions inflates the volume to capacity and level of service at the study intersections. LADOT provides a sliding scale for significant traffic impacts. The higher the level of service (“LOS”), the fewer Project trips that can be added before a significant impact is identified. In this way, the cumulative traffic by the related projects is addressed by the Project.

The State Department of Transportation letter, attached to Response to Unite Here Comments dated February 27, 2018 as Exhibit B includes the number of vehicle trips created by the Crossroads project. The letter also provides a statement that cumulative impacts on the mainline would occur and a reminder to the decision-makers that they should be aware of the cumulative impacts on the mainline and be prepared to mitigate cumulative impacts in the future. As explained in the paragraph above, the City addresses cumulative impacts by incorporating related projects and a 1-percent ambient growth rate to establish the background growth for future conditions. This increase in the background growth allows for less growth by a proposed project before a significant impact occurs. If a significant impact occurs in future conditions with the Project, the impact would then be required to mitigate to a level below significance or disclose a significant unavoidable impact.

III. Response to the UN4LA Appeal

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

The UN4LA Appeal claims that the Project is a reasonably foreseeable consequence of the Dream Hotel Project, Tao Restaurant Project and Beauty and Essex Project. For clarity, attached as Exhibit 2 is a site map, plotting the four properties cited by the UN4LA Appeal. Each project is labeled by its accurate applicant entity name, site address, and case number for the record. The UN4LA Appeal also alleges that the Selma Wilcox Hotel Project satisfies the *Laurel Heights* court’s second-prong which says that the future expansion or action will be significant in that it will likely change the scope or nature of the initial project or its environmental effects. It provides the following facts to support its piecemealing claim: (1) the applicant entity name used for the 2015 Tao Restaurant Project application, 6421 Selma Wilcox Hotel LLC, included the word “hotel”, signaling the developer’s intent to build a hotel project; (2) in 2016, the applicant filed the Selma Wilcox Hotel application for a new hotel project at the same location of the Tao Restaurant Project, using the same applicant entity name, 6421 Selma Wilcox Hotel LLC, thereby confirming the community’s concerns; (3) an online brochure from 2014 describes an EB-5 funding opportunity to invest in “Dream Hotel Hollywood (Phase II),”

which includes the Selma Wilcox Hotel Project, Tao Restaurant Project, and Beauty and Essex Project; and (4) the Project's off-site parking can be accommodated by excess parking located at other Relevant Group projects in the vicinity.

As previously analyzed above in Section I.C of this letter, in accordance with the established piecemealing law under CEQA and the substantial evidence presented above, the Project is not a reasonably foreseeable consequence of the other projects named by the UN4LA Appeal, and therefore the Project was not part of an improperly piecemealed a boutique hotel district or larger Dream Hotel Project. Indeed, as explained above in the response to the Sunset Appeal and below, the evidence that UN4LA relies on consists entirely of speculation and inferences, not substantial evidence – and in any event is limited to theories that the applicant can refute. (Pub. Resources Code, § 21082.2, subd. (c).)

The UN4LA Appeal introduces an additional project not previously cited by the appellants, the Beauty and Essex Project. The City approved this project in 2016 for a conditional use to permit the sale and dispensing of a full line of alcoholic beverages for on-site consumption in conjunction with a restaurant and a zone variance to permit 20 required parking spaces to be provided off-site by lease in lieu of covenant and agreement. This property was already developed with a one-story commercial building that was utilized as a restaurant for over 13 years. This restaurant operates independently and is not conditioned on the development of the Selma Wilcox Hotel Project. The two sites are separated by intervening structures, located on opposing sides of the city block, and do not function as a single project.

The UN4LA Appeal's allegation that off-site and recently constructed on-site parking links the Project, the Thompson Hotel, and the Tao Restaurant is similarly not persuasive. From a land use perspective, the City's zoning code permits such an arrangement. Specifically, LAMC Section 12.21.A.4.g allows for off-site parking on another lot not more than 750 feet from the subject project site. In addition, prior to any issuance of a building permit or certificate of occupancy, the owner of the off-site parking location must execute and record a covenant running with the land for the benefit of the City and must continue to maintain those off-site parking spaces so long as the building or use they are intended to serve is maintained. (LAMC § 12.26.E.5.)

From a CEQA perspective, the fact that excess parking is available at a Relevant Group off-site location within 750 feet of the Project is not dispositive evidence that the Project was a reasonably foreseeable consequence of the another project. As explained above, Relevant permitted the Thompson Hotel and the Tao Restaurant in 2016, over a year before proposing the Project. Even if one assumes that the parking for these projects was overbuilt, it does not follow that the foreseeable consequence of the additional parking would be another hotel. The approval of the Thompson did not “legally compel[] or practically presume[] the completion of” the Project and the reverse is also true – the Project did not legally compel approval of the Thompson. (*Banning Ranch, supra*, 211 Cal.App.4th at p. 1223.) Unlike the case in *Tuolumne County Citizens for Responsible Growth v. City of Sonora*, where approval of a home improvement center was *contingent* upon the completion of a road realignment project, the proposal to accommodate the Project's parking needs by contracting for the use of 36 spaces in the parking structure of the permitted and under construction Thompson Hotel project is not a

condition of this Project. (*Supra*, 155 Cal.App.4th at pp. 1218-1224.) The Project parking conditions are limited to a requirement that parking be constructed in accordance with the LAMC requirements. The parking arrangements thus do not make one project the reasonably foreseeable *consequence* of the other. (Cf. *id.* at pp. 1230-31 [recognizing that while “it was theoretically possible that the home improvement center project could have been completed without the completion of the road realignment”, “[the projects’] independence was brought to an end when the road realignment was added as a condition to the approval of the home improvement center project”]; see also *Plan for Arcadia, Inc. v. City Council of Arcadia* (1974) 42 Cal.App.3d 712, 726 [holding that roadway improvements *required* in the approval of the subject shopping center should be regarded as a single project].)

UN4LA has also failed to point to any evidence that parking at either of the other two projects was built with other projects in mind.

UN4LA’s additional argument – that as a result of improperly piecemealing a single project comprised of the Thompson, Tao, and the Project, the environmental analysis misrepresents the impacts of *construction* on air quality – truly strains all credibility. For construction activities to have a cumulative impact, they would have to occur at the same time. With Tao already constructed and the Thompson nearing completion, there is no way that the Project will combine with others to have cumulative impacts on air during construction that are not already considered in the MND. This piecemealing argument is plainly a red hearing.

B. The City Planning Commission Properly Considered and Made the Requisite Findings to Support its Approval of the Conditional Use Permit for Alcohol

The UN4LA Appeal argues that the City failed to consider the substantial evidence it presented in the record when the City Planning Commission approved the CUB request. To the contrary, the City Planning Commission was in receipt and considered the correspondence from UN4LA dated June 10, 2018, regarding its CUB-related concerns. In addition the Staff Recommendation Report that was transmitted by the Department of City Planning to the City Planning Commission prior to the commissioners action on the matter included a clear summary of the proposed sale of alcoholic beverages, alcohol related conditions of approval, and CUB findings for the commissioners consideration. At the City Planning Commission hearing on July 12, 2018, the commissioners adopted the CUB findings in accordance with its authority and the procedures set forth in LAMC Section 12.24.W.1. Therefore, the City Planning Commission properly considered and made the requisite findings to support its approval of the CUB.

C. The IS/MND Properly Analyzed Operational Noise Impacts

The UN4LA Appeal claims that the proposed live entertainment use was not properly disclosed on the March 28, 2108 hearing notice, nor the July 14, 2018 City Planning Commission agenda. As previously addressed in the Response to Casey Maddren Comments dated June 11, 2018, the Project does not propose any live entertainment use that would require a separate discretionary approval or which would require noticing as part of the currently sought entitlements.

The operating conditions of approval recommended by the Los Angeles Police Department and incorporated as part of the adopted 41 CUB conditions of approval specifically restrict live entertainment activities to address the community concerns related to potential nuisance and effective enforcement. The CUB conditions copied below specifically address the UN4LA Appeal's concerns related to live entertainment and enforceability. The UN4LA Appeal attempts to correlate the current operation at the Dream Hotel Project to establish that the Project in this case will pose a nuisance to the neighborhood and that the operator will fail to comply with the mandatory conditions prescribed for the Project. This assertion is entirely speculative and unsupported by substantial evidence. An operator for the Project has not been selected at this time and therefore, any claim by the UN4LA Appeal that the Project will operate like the Dream Hotel Project is completely unsubstantiated.

All conditions will be recorded on the Site and shall run with the land and be binding on any subsequent owners. (See also, Response to Case Maddren Comments dated June 11, 2018, Response to Harmon Comments dated July 9, 2018, and Response to Geoghan Comments dated July 9, 2018.)

B. Alcohol Related Conditions:

14. Approved herein is the sale and dispensing of a full line of alcoholic beverages for on-site consumption in conjunction with:

a. the operations of a 1,939 square-foot restaurant which may have a maximum of 100 seats (60 indoor and 40 outdoor seats). Outdoor seating located within the public right-of-way shall obtain a revocable permit prior to the issuance of a permit.;

b. the operations of a 114 guest room hotel within:

i. the hotel lobby bar, which may have a maximum of 48 seats;

ii. "mini-bars" located within the hotel guest rooms;

iii. the rooftop outdoor bar and lounge and covered lounge, with a maximum of 187 seats.

15. Hours of operation approved herein are as follows:

a. the 1,939 square-foot restaurant: 6:00 a.m. to 2:00 a.m., daily;

b. the hotel lobby bar: 6:00 a.m. to 2:00 a.m., daily;

c. the rooftop bar and lounge.

i. Outdoor patio areas: 7:00 a.m. to 12:00 a.m. (Midnight), daily

ii. Enclosed patio area: 7:00 a.m. to 12:00 a.m. (Midnight), daily, subject to the following:

When the enclosed bar and lounge doors or windows are open between 7:00 a.m. and 12:00 a.m., any music, sound, noise, or vibration shall not be audible or felt beyond that part of the premises which is under the control of the applicant.

The doors to the rooftop's covered bar and lounge area shall be closed whenever live entertainment, including DJs, and/or amplified music is played in the indoor area.

d. After-hour use of the facilities, other than routine clean-up and maintenance is not permitted.

18. Live Entertainment:

a. Restaurant. Live entertainment, amplified music, or ambient music may be permitted indoors within the 1,939 square-foot restaurant and the outdoor seating area.

b. Hotel.

i. Live entertainment, amplified music, or ambient music may be permitted within the hotel lobby and enclosed rooftop bar and lounge area.

ii. No live entertainment or amplified music shall be permitted in any patio or outdoor areas, including the outdoor rooftop patio or bar and lounge area. Ambient music may be permitted.

c. Live entertainment is subject to any required permits to be reviewed and approved by the Los Angeles Police Commission, as applicable. Live entertainment may include but not be limited to live bands, a DJ or karaoke, provided the latter is not conducted in private rooms.

d. Any ambient or amplified music, sound, vibration or noise emitted that is under the control of the petitioner(s) shall not be audible or otherwise perceivable beyond the subject premises. Any sound, vibration or noise emitted that is under the control of the petitioner which is discernible outside of the subject premises shall constitute a violation of Section 116.01 of the Los Angeles Municipal Code, including any loud, unnecessary or unusual noise that disturbs the peace and quiet of any neighborhood or that causes discomfort. The establishment will make an effort to control any unnecessary noise made by restaurant/hotel staff or any employees contracted by the restaurant or bar facilities located within the hotel facility, or any noise associated with the operation of the establishment, or equipment of the restaurants.

e. No Dance Hall or Hostess Dance Hall, as defined by LAMC Section 12.03, use shall be permitted without the approval of a Conditional Use Permit pursuant to LAMC Section 12.24 W,18. Patron Dancing is not permitted nor shall the Petitioner(s) accommodate or endorse dancing features in any fashion.

f. There shall be no pool table or billiards table, electronic games, coin-operated games, dart games, or video machines maintained upon the premises at any time.

20. [Modified] Security. *Between the hours of 8:00 p.m. and 2:30 a.m., the applicant shall provide a minimum of two (2) security guards in the ground floor hotel restaurant on Thursdays, Fridays and Saturdays. During the hours of 8:00 p.m. and 12:30 a.m., the applicant shall provide a minimum of two (2) security guards in the rooftop enclosed bar/lounge area and in the outdoor rooftop patio areas, Thursday, Fridays, and Saturdays.*

In addition to the security guard requirements delineated above, the applicant shall be required to provide a minimum of two (2) security guards on the premises during the all hours of hotel operation. The additional security employment required per this provision for the ground floor restaurant and bar/lounge areas as well as the rooftop bar/lounge area, will be employed in addition to and in enhancement of the three security guards who are mandated to be employed on the hotel premises during all hours of operation.

The security guards shall not have any other activities other than those that are security related. Security personnel shall be licensed consistent with State law and Los Angeles Police Commission standards and maintain an active American Red Cross first-aid card. The security personnel shall be dressed in such a manner as to be readily identifiable to patrons and law enforcement personnel.

28. *The applicant / hotel operator / restaurant operator shall identify a contact person and provide a 24-hour "hot line" telephone number for any inquiries or complaints from the community regarding the subject facility. Prior to the utilization of this grant, the phone number shall be posted on the site so that is readily visible to any interested party. The hot line shall be:*

a. Posted at the entry, and the cashier or customer service desk,

b. Provided to the immediate neighbors, schools, and the Neighborhood Council, and

c. Responded to within 24-hours of any complains/inquires received on this hotline.

30. *If at any time during the period of the grant, should documented evidence be submitted showing continued violation(s) of any condition(s) of the grant, resulting in a disruption or interference with the peaceful enjoyment of the adjoining and neighboring*

properties, the Director's designee shall have the right to require the applicant to file a plan approval application together with the associated fees and to hold a public hearing to review the applicant's compliance with, and effectiveness of, the conditions of the grant. The applicant shall be required to submit a summary and supporting documentation demonstrating how compliance with each condition of the grant has been attained. Upon review, the Director's Designee may modify, add or delete conditions and reserves the right to conduct the public hearing for nuisance abatement revocation purposes if so warranted by documentation.

37. [Added] Plan Approval. *The applicant shall file a Plan Approval application twenty-four (24) months from the operational date of this determination. The operational date of this determination shall be identified and confirmed by the Department of City Planning. The Plan Approval application shall be subject to filing fees established by the Los Angeles Municipal Code Section 19.01-E. A public hearing shall be conducted subject to notification requirements established by the Los Angeles Municipal Code Section 12.24-D. The purpose of the Plan Approval is to review the effectiveness of, and compliance with the express terms of this grant, including but not limited to the approval of a 20 percent reduction in parking pursuant to LAMC Section 12.24 S. The applicant shall provide documentation which reflect the parking demands of the operation of the hotel and restaurants. Upon review of the effectiveness of and compliance with the conditions, the Zoning Administrator may modify such conditions, delete, or add new ones as appropriate and require a subsequent plan approval, as necessary, and reserves the right to conduct this public hearing for nuisance abatement/revocation purposes.*

38. *Should there be a change in the ownership and/or the operator of the business, the property owner and the business owner or operator shall provide the prospective new property owner and the business owner/operator with a copy of the conditions of this action prior to the legal acquisition of the property and/or the business. Evidence that a copy of this determination has been provided to the prospective owner/operator, including the conditions required herewith, shall be submitted to the BESt (Beverage and Entertainment Streamlined Program) in a letter from the new operator indicating the date that the new operator/management began and attesting to the receipt of this approval and its conditions. The new operator shall submit this letter to the BESt (Beverage and Entertainment Streamlined Program) within 30 days of the beginning day of his/her new operation of the establishment along with the dimensioned floor plan, seating arrangement and number of seats of the new operation.*

IV. Response to Unite Here Appeal

As an initial matter, the Unite Here Appeal contains a generic cover sheet that does not present new specific environmental concerns, and, therefore does not require a detailed response. (CEQA Guidelines § 15088(c); *Flanders Found. v. City of Carmel-by-the-Sea* (2012) 202 Cal.App.4th 603, 615; *Rural Landowners Ass'n v. City Council* (1983) 143 Cal.App.3d 1013, 1020.) The Unite Here Appeal does not raise any new CEQA issues and does not require any change to any conclusion in the IS/MND. There is no substantial evidence in the record or in the Unite Here Appeal showing that subsequent environmental review is necessary or that the

Project may cause significant adverse impacts. (Pub. Res. Code § 21166; CEQA Guidelines § 15162.)

Furthermore, the attached letters provided by SWAPE dated May 31, 2018 and Smith Engineering & Management dated May 30, 2018 are re-dated duplicates of letters already previously reviewed and responded to in responses submitted by CAJA Environmental Services, LLC dated July 9, 2018. The responses are attached hereto as Exhibit 3 and Exhibit 4, and incorporated herein. Likewise, the attached letter from the Silverstein Law Firm dated March 23, 2018 has already been reviewed and responded to by CAJA Environmental Services, LLC dated June 11, 2018, attached hereto as Exhibit 5 and incorporated herein. Lastly, the letter from Unite Here Local 11 is a duplicate of a correspondence already reviewed and responded to in a response submitted by CAJA Environmental Services, LLC dated March 27, 2018, which is attached hereto as Exhibit 6 and incorporated herein.

V. Conclusion

We respectfully request that the PLUM Committee deny the Appeals, approve the entitlements for the Project, certify the EIR, and elevate the case to the City Council for final action.

Very truly yours,

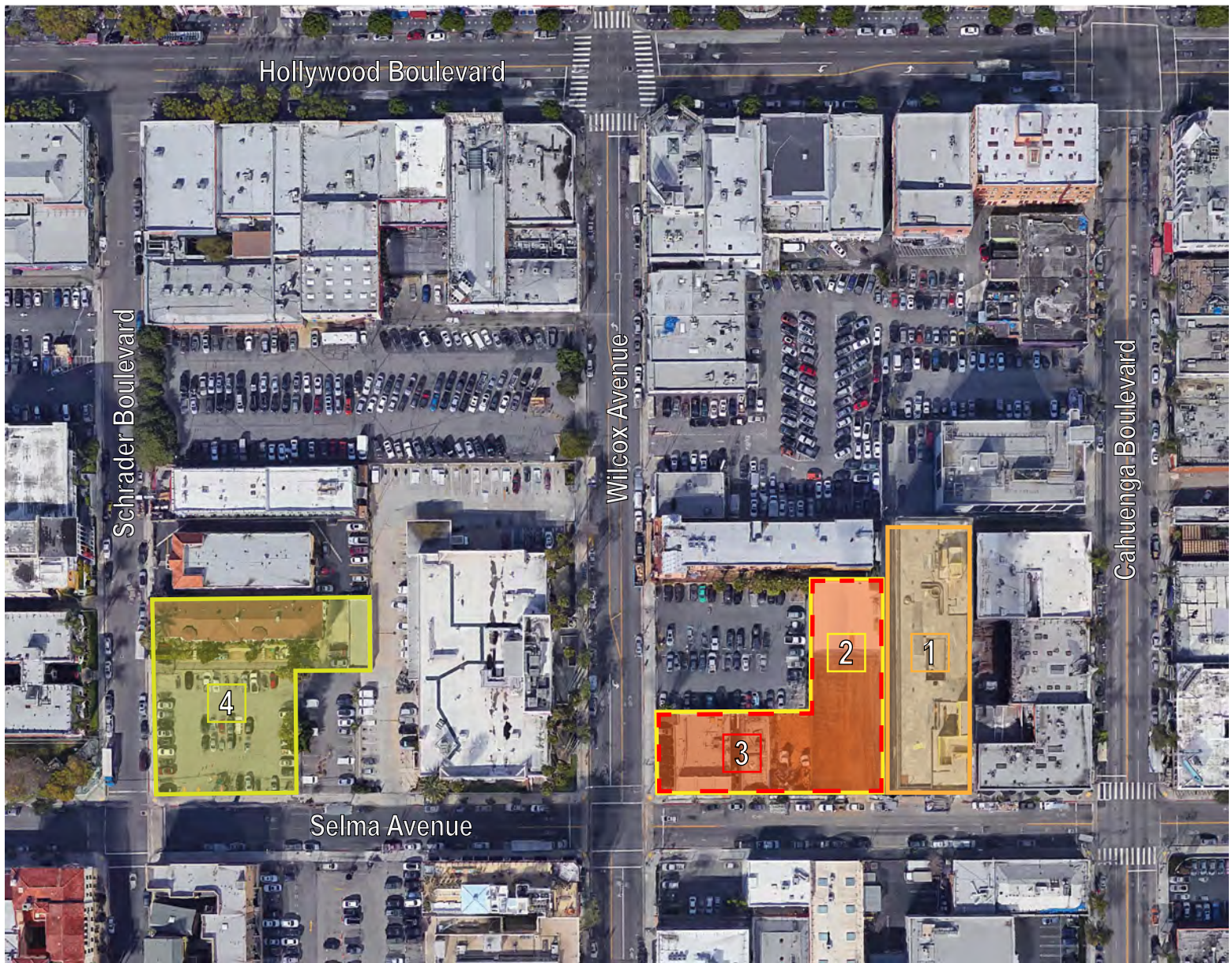


Alfred Fraijo Jr.
for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

SMRH:488494266.1
Attachments

cc: Ms. May Sirinopwongsagon

EXHIBIT 1



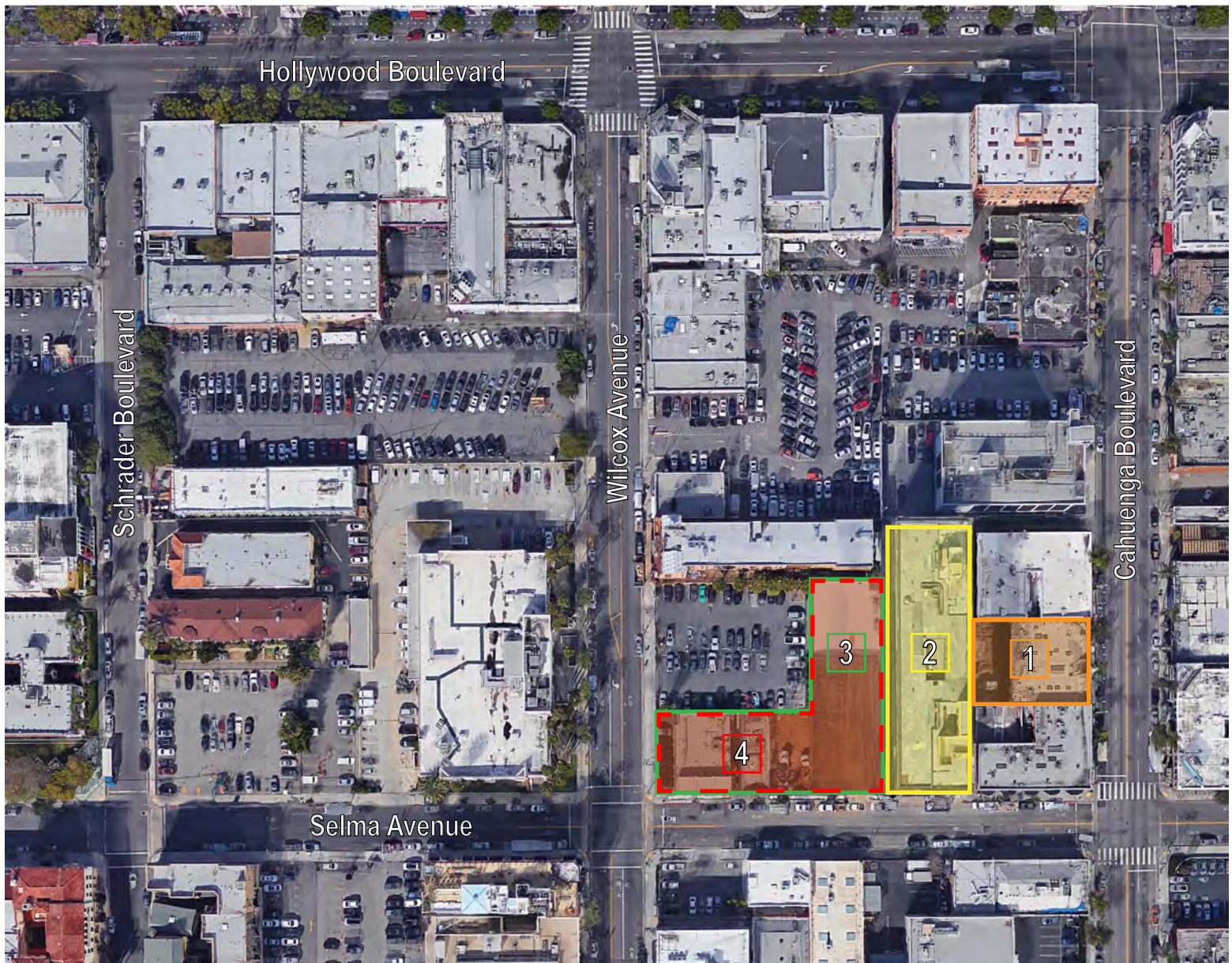
1 **6417 Selma Hotel LLC**
 6415 W. Selma Avenue
 CPC-2007-3931-ZC-HD-CUB-ZV-SPR

2 **6421 Selma Wilcox Hotel, LLC**
 6421-6429 1/2 W. Selma Avenue
 1600-1604 N. Wilcox Avenue
 ZA-2015-2671-CUB

3 **6421 Selma Wilcox Hotel, LLC**
 6421-6429 1/2 W. Selma Avenue
 1600-1604 N. Wilcox Avenue
 CPC-2016-2601-VZC-HD-CUB-ZAA-SPR

4 **1600 Hudson, LLC**
 1600 - 1616 1/2 N. Schrader Boulevard
 6533 W. Selma Avenue
 CPC-2016-3750-VZC-HD-CUP-ZAA-SPR

EXHIBIT 2



1 **1615 Cahuenga, LLC**
1611-1615 Cahuenga Boulevard
ZA-2016-498-CUB-ZV

2 **6417 Selma Hotel LLC**
6415 W. Selma Avenue
CPC-2007-3931-ZC-HD-CUB-ZV-SPR

3 **6421 Selma Wilcox Hotel, LLC**
6421-6429 1/2 W. Selma Avenue
1600-1604 N. Wilcox Avenue
ZA-2015-2671-CUB

4 **6421 Selma Wilcox Hotel, LLC**
6421-6429 1/2 W. Selma Avenue
1600-1604 N. Wilcox Avenue
CPC-2016-2601-VZC-HD-CUB-ZAA-SPR

EXHIBIT 3

July 9, 2018

Los Angeles Department of City Planning
200 N. Spring Street, Los Angeles, CA 90012

Re: Responses to “SWAPE” Comments on the Selma Wilcox Project (Project)

All capitalized terms herein shall have the same meaning as defined in the Summary Response provided by CAJA dated July 9, 2018.

SWAPE Comment 1

We have reviewed the July 2016 Initial Study and Mitigated Negative Declaration (IS/MND) for the Selma Wilcox Hotel Project (“Project”) located in the City of Los Angeles (“City”). A previously approved MND (ENV-2015-2672-MND) for the Project site proposed the development of a 20,624 square-foot restaurant, 6,000 square feet of retail, and three-level subterranean parking structures (“Approved Project”). The eastern portion of the Project site is currently developed with the 20,624-square foot restaurant, one of the proposed parking structures, and an excavated area. The Project Applicant proposes to maintain the 20,624 square foot restaurant and renovate the previously proposed 6,000 square feet of retail space to construct a new 1,939 square foot ground floor restaurant with 100 seats, a 114-guestroom hotel with a lobby bar of approximately 819 square feet (with 48 seats), rooftop pool, amenity deck with a rooftop bar of approximately 5,807 square feet (with 73 seats), and three levels of subterranean parking. The construction of the additional parking structure and newly proposed land uses would occur on the western portion of the 0.495-acre Project site.

Our review concludes that the IS/MND fails to adequately evaluate the Project’s Air Quality and Greenhouse Gas (GHG) impacts. As a result, emissions and health impacts associated with the construction and operation of the proposed Project are underestimated and inadequately addressed. A Project-specific Draft Environmental Impact Report (DEIR) should be prepared to adequately assess and mitigate the potential air quality, health risk, and GHG impacts the Project may have on the surrounding environment.

Response to SWAPE Comment 1

The comment serves as an introduction to the commenter’s concerns, and does not require a detailed response. (CEQA Guidelines § 15088(c); *Flanders Found. v. City of Carmel-by-the-Sea* (2012) 202 Cal.App.4th 603, 615; *Rural Landowners Ass’n v. City Council* (1983) 143 Cal.App.3d 1013, 1020.) The concerns are expanded in the comments below. Each concern is also responded to below.

SWAPE Comment 2

Air Quality

Unsubstantiated Input Parameters Used to Estimate Project Emissions

[The language under this heading is purposely omitted here and we incorporate by reference the language under this heading in the SWAPE Letter.]

Response to SWAPE Comment 2

The inputs are consistent with the Project land uses as discussed further below in **Response to SWAPE Comment 3** and **4**. Other inputs are based on applicant-provided construction data. The

comment does not state a specific error with the inputs.

SWAPE Comment 3

Underestimation of Land Use Sizes

[The language under this heading is purposely omitted here and we incorporate by reference the language under this heading in the SWAPE Letter.]

Response to SWAPE Comment 3

The air quality analysis matches the inputs of the traffic study, which are the trip-generating and emissions-generating uses. The difference in square footages is that some of the spaces are outside the ancillary space for the hotel and thus counted differently.

SWAPE Comment 4

Unsubstantiated Reduction in Number of Vendor Trips

[The language under this heading is purposely omitted here and we incorporate by reference the language under this heading in the SWAPE Letter.]

Response to SWAPE Comment 4

The number of vendor trips per day was supplied by the Applicant based on a discussion with their contractor.

SWAPE Comment 5

Use of Incorrect Trip Purpose Percentage

[The language under this heading is purposely omitted here and we incorporate by reference the language under this heading in the SWAPE Letter.]

Response to SWAPE Comment 5

The traffic study assumed pass-by trip discounts for two land uses (ground floor restaurant and rooftop restaurant) that cumulatively discount the running emissions for 46 trips per day. Pass-by trips do not reduce the start and cold soak emissions associated with starting a trip, merely reduces the running emissions which represent a small portion of emissions from a vehicle trip. The credit for pass-by trips in CalEEMod produces a de minimis reduction of NOx emissions that would not trigger a significant impact for regional NOx emissions or change the finding that NOx emissions are less than the SCAQMD's threshold of significance.

SWAPE Comment 6

Failure to Adequately Evaluate Operational Criteria Air Pollutant Emissions

[The language under this heading is purposely omitted here and we incorporate by reference the language under this heading in the SWAPE Letter.]

Response to SWAPE Comment 6

The analysis in the MND is correct. The MND analyze the Project utilizing the following two baselines, referenced as the Original Baseline and Current Baseline. The Original Baseline will describe the

environmental conditions that originally existed at the time of submittal of Case No. ENV-2015-2672-MND. The MND evaluated the demolition of existing structures and the proposed construction of a 20,624 square-foot restaurant, 6,000 square feet of retail, and three levels of subterranean parking (Approved Project). The Project would be analyzed against the two baselines described above. This way, the Project impacts would be measured against the physical conditions that existed prior to the CUB Approval (Original Baseline), as well as the physical conditions that exist today (Current Baseline).

SWAPE Comment 7

Diesel Particulate Matter Health Risk Emissions Inadequately Evaluated

[The language under this heading is purposely omitted here and we incorporate by reference the language under this heading in the SWAPE Letter.]

Response to SWAPE Comment 7

The MND's analysis of potential health risks from TAC emissions during the construction and operations phase is consistent with SCAQMD's guidance on this topic and their comment letter in response to the Notice of Preparation. OEHHA's guidance is intended to implement the Air Toxics "Hot Spots" Information and Assessment Act (AB 2588) and establishes protocols for analysis but does not establish when projects must prepare an HRA. AB 2588 delegates to SCAQMD (as the local air district) the task of determining when a project must prepare an HRA. SCAQMD recommends, as pertinent to the Project, that health risk assessments be considered for substantial sources of diesel particulate emissions (e.g., truck stops and warehouse distribution facilities) and has provided guidance for analyzing mobile source diesel emissions. Yet since the Project is not the type that would emit substantial diesel PM, no HRA is required under the applicable SCAQMD guidance

Further, the Project does not qualify as a "facility" subject to AB 2588. But even if it did, as set forth in SCAQMD's most recent guidance interpreting the OEHHA guidance, a Project would only require further preliminary analysis—not a complete HRA. The guidance explains that SCAQMD then ranks projects surpassing preliminary thresholds, and only requires HRAs for the highest priority projects. (<http://www.aqmd.gov/docs/default-source/planning/risk-assessment/ab2588-supplemental-guidelines.pdf>). An HRA was not required, and the OEHHA guidance does not apply.

SWAPE Comment 8

Piecemealing of Thompson Hotel and Existing Tao Restaurant Impacts

[The language under this heading is purposely omitted here and we incorporate by reference the language under this heading in the SWAPE Letter.]

Response to SWAPE Comment 8

See **Response to Sunset Landmark Comment 3 [separate response]**.

SWAPE Comment 9

Greenhouse Gas

Failure to Adequately Assess the Project's Greenhouse Gas Impacts

[The language under this heading is purposely omitted here and we incorporate by reference the language under this heading in the SWAPE Letter.]

Response to SWAPE Comment 8

The MND's climate change analysis merely discloses potential emissions in the context of an NAT scenario for informational purposes, but does not base its significance finding on this. Instead, the analysis focuses on consistency with climate change plans at the State, regional, and local level. This approach is consistent with the California Supreme Court's suggestion that regulatory consistency as a potential "pathway to compliance," which states that a lead agency might assess consistency with AB 32's goal in whole or in part by looking to compliance with regulatory programs designed to reduce GHG emissions from particular activities. The Court recognized that to the extent a project's design features comply with or exceed the regulations outlined in the *Climate Change Scoping Plan* and adopted by CARB or other state agencies, a lead agency could appropriately rely on their use as showing compliance with performance-based standards adopted to fulfill a statewide plan for the reduction or mitigation of GHG emissions. This approach is consistent with CEQA Guidelines Section 15064, which provides that a determination that an impact is not cumulatively considerable may rest on compliance with previously adopted plans or regulations, including plans or regulations for the reduction of GHG emissions.

SWAPE Comment 9

Updated Greenhouse Gas Analysis Demonstrates Significant Impact

[The language under this heading is purposely omitted here and we incorporate by reference the language under this heading in the SWAPE Letter.]

Response to SWAPE Comment 9

The commentor's comparison to the purportedly 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 MND did not use a numeric threshold, as neither the City of Los Angeles 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.

SWAPE Comment 10

Newhall Ranch Requires Additionality

[The language under this heading is purposely omitted here and we incorporate by reference the language under this heading in the SWAPE Letter.]

Response to SWAPE Comment 10

See **Response to SWAPE Comment 8** above.

SWAPE Comment 11

Incorrect Use of Green Building Ordinance and City of Los Angeles ClimateLA Implementation Plan to Determine Significance

[The language under this heading is purposely omitted here and we incorporate by reference the language under this heading in the SWAPE Letter.]

Response to SWAPE Comment 11

See **Response to SWAPE Comment 8** and **9** above.

EXHIBIT 4

15350 Sherman Way, Suite 315
Van Nuys, CA 91406
Phone 310-469-6700

July 9, 2018

Los Angeles Department of City Planning
200 N. Spring Street, Los Angeles, CA 90012

Re: Responses to “Smith” Comments on the Selma Wilcox Project (Project)

All capitalized terms herein shall have the same meaning as defined in the Summary Response provided by CAJA dated July 9, 2018.

Smith Comment 1

At your request, I have reviewed the Initial Study / Mitigated Negative Declaration (the “IS/MND”) for the Selma – Wilcox Hotel Project (the “Project”) on an eponomously located site at 6421-6429 W. Selma Avenue and 1600-1604 N. Wilcox Avenue in the Hollywood Community Plan area of Los Angeles. (the “City”). My review is specific to the IS/MND’s traffic and transportation section and its supporting documentation.

My qualifications to perform this review include registration as a Civil and Traffic Engineer in California and over 49 years professional consulting engineering practice in the traffic and transportation industry. I have both prepared and performed adequacy reviews of numerous transportation and circulation sections of environmental impact reports prepared under the California Environmental Quality Act (“CEQA”). My professional resume is attached.

Findings of my review are summarized below.

Response to Smith Comment 1

The comment serves as an introduction to the commenter’s concerns, and does not require a detailed response. (CEQA Guidelines § 15088(c); *Flanders Found. v. City of Carmel-by-the-Sea* (2012) 202 Cal.App.4th 603, 615; *Rural Landowners Ass’n v. City Council* (1983) 143 Cal.App.3d 1013, 1020.) The concerns identified here are expanded in the comments below. Each concern is also responded to in kind below.

Smith Comment 2

Analysis of Traffic Impacts Considers Extra Trips Caused by Reliance on Parking Valets and Location of Part of the Required Parking Off-Site

The IS/MND indicates that 41.9 percent of the Project’s 86 required parking spaces (39 actual spaces) will be located off site at a parking facility within the Thompson Hotel Project and will be serviced by parking valets. In addition, much of the on-site parking would be serviced by the valets as well. However, the traffic analysis sows confusion by evaluating irrelevant scenarios involving traffic patterns that would occur if all travelers arriving by passenger vehicle self-parked on site, before finally recognizing the extra trips produced by valet operations and the location of part of the required parking off-site, almost as an afterthought. It only analyzes the Project including the effects of valet trips relative to the ‘modified baseline’. But it does disclose significant traffic impacts at the Year 2020 level at two intersections in the PM peak hour, those of Selma Avenue with Wilcox Avenue and Hollywood Boulevard with Wilcox Avenue.¹

¹ PM peak hour impacts are also disclosed at these locations in the analyses that do not consider valet traffic but are less intense at the Selma-Wilcox intersection.

Response to Smith Comment 2

The Supplemental Traffic Impact Assessment, dated May 2017, prepared by Overland Traffic Consultants (“Supplemental TIA”) presents a detailed evaluation of the potential traffic impacts associated with providing a portion of the parking on-site and a portion of the parking off-site as well as valet services movement of vehicles. The Supplemental TIA evaluates the impacts under the Current Baseline because it is the more conservative assessment of Project-related traffic.

The Supplemental TIA specifies the location of the parking and the valet zones on Selma Avenue and Wilcox Avenue. The approach and departure patterns for the hotel/restaurant guests and added valet services trips are described in detail. It was estimated that ninety percent (90%) of the vehicles arriving and departing the Project would use valet services with ten percent (10%) self-parking. Two significant traffic impacts are identified. One is located at Hollywood Boulevard & Wilcox Avenue during the PM Peak Hour and the second at Selma Avenue and Wilcox Avenue during the PM Peak Hour. These significant impacts are mitigated to below a level of significance through Transportation Demand Management and Monitoring Program (“TDM Plan”), as identified in the MND.

The Supplemental TIA was reviewed and approved by LADOT. To that end, LADOT provided a letter to Department of City Planning on December 6, 2017 concurring with the results of the Supplemental TIA.

Smith Comment 3

The Functionality of Valet Parking Is Not Demonstrated

The IS/MND discloses that the larger restaurant would have a Limited Live Entertainment permit. This means that diners would tend to arrive at concentrated times that relate to finishing dinner service prior to performance start time rather than in the more dispersed and random arrival pattern at a restaurant without live entertainment events. The IS/MND must analyze the number of valets required and the size of valet transfer zones required to handle concentrated arrivals and departures without causing queues and lane blockages.

Response to Smith Comment 3

The Project does not propose any live entertainment use which would require a discretionary approval or which would require noticing as part of the currently sought entitlements. Furthermore, the operating conditions of approval recommended by the Los Angeles Police Department and recommended by the Department of City Planning in its Staff Recommendation Report to the City Planning Commission include the following condition, which further restricts live entertainment features:

B.16. Live Entertainment:

- a. Restaurant. Live entertainment, amplified music, or ambient music may be permitted indoors within the 1,939 square-foot restaurant and the outdoor seating area.
- b. Hotel.
 - i. Live entertainment, amplified music, or ambient music may be permitted within the within the hotel lobby and enclosed rooftop bar and lounge area.
 - ii. No live entertainment or amplified music shall be permitted in any patio or outdoor areas, including the outdoor rooftop patio or bar and lounge area. Ambient music may be permitted.

- c. Live entertainment is subject to any required permits to be reviewed and approved by the Los Angeles Police Commission, as applicable. Live entertainment may include but not be limited to live bands, a DJ or karaoke, provided the latter is not conducted in private rooms.
- d. Any ambient or amplified music, sound, vibration or noise emitted that is under the control of the petitioner(s) shall not be audible or otherwise perceivable beyond the subject premises. Any sound, vibration or noise emitted that is under the control of the petitioner which is discernible outside of the subject premises shall constitute a violation of Section 116.01 of the Los Angeles Municipal Code, including any loud, unnecessary or unusual noise that disturbs the peace and quiet of any neighborhood or that causes discomfort. The establishment will make an effort to control any unnecessary noise made by restaurant/hotel staff or any employees contracted by the restaurant or bar facilities located within the hotel facility, or any noise associated with the operation of the establishment, or equipment of the restaurants.
- e. No Dance Hall or Hostess Dance Hall, as defined by LAMC Section 12.03, use shall be permitted without the approval of a Conditional Use Permit pursuant to LAMC Section 12.24 W,18. Patron Dancing is not permitted nor shall the Petitioner(s) accommodate or endorse dancing features in any fashion.
- f. There shall be no pool table or billiards table, electronic games, coin-operated games, dart games, or video machines maintained upon the premises at any time.

The vehicle trips associated with the restaurant with live entertainment will not create an unusual circumstance.

The Institute of Transportation Engineers ("ITE") Trip Generation Manual describes a Hotel as "places of lodging that provide sleeping accommodations and supporting facilities such as restaurants, cocktail lounges, meeting and banquet rooms or convention facilities, limited recreational facilities and/or other retail and service shops." It would be reasonably estimated that some components of the ITE hotel use such as meeting and banquet rooms as well as some convention traffic data collected for trip generation entering and exiting percentages rates would have concentrated arrival and departure patterns as would be the case with the proposed limited live entertainment.

The ITE Trip Generation Manual describes a Drinking Place (as used for the evening trip generation of the rooftop restaurant/bar) as a place that "contains a bar, where alcoholic beverages and food are sold, possibly some type of entertainment such as music, television screens, video games or pool tables." This land use specifically includes potential entertainment as part of the data collection which determined the rates used in the analysis.

The locations of the valet zones have been identified. One will be located on the north side of Selma Avenue east of Wilcox Avenue. The second will be located on the east side of Wilcox Avenue north of Selma Avenue. The operations of the valet service will be designed to accommodate vehicles without backing up beyond the valet zones throughout the day. The number of valets in service at any given time of day will be determined based on the hourly demand. These determinations will be proposed by experienced valet operators and submitted to LADOT as required in conditions A.5.c.

The Condition of Approval A.5 indicate requirements for Drop off/Pick up. This condition states:

- b. A drop off/pick up area may be designated off-site, within the area of the subject property's street frontage, for hotel guests and patrons of the establishments on site.
- c. The drop off/pick up areas shall be subject to the review and approval from the Department of Transportation. The approved plan shall be submitted to the Department of City Planning for the file.

Smith Comment 4

The Thompson Hotel Evidently Does Not Have Sufficient Available Parking Spaces To Meet Its Own Requirements Plus Providing 39 Spaces To Meet the Subject Project's Requirements for Parking

Per the Thompson Hotel's IS/MND (Case No. ENV-2014-3707-EAF, then known as the 1541 Wilcox Hotel), the Thompson Hotel would include 144 off-street parking spaces. City code requires it to provide 111 spaces to meet its own needs. To provide 36 spaces to meet the subject Project's off-site parking needs, the Thompson's parking facility would have to contain 147 spaces. So the Selma-Wilcox Project's parking needs cannot be met by the proposed off-site arrangement with the Thompson. Also, it is unknown whether the Thompson has also committed its parking in surplus of code to meet the needs of other off-site individuals or entities.

Response to Smith Comment 4

The comment asserts that the off-site parking location does not have adequate surplus parking spaces to accommodate the Project. Per LAMC Section 12.21.A.4.g, code-required parking may be located either onsite or on another lot within 750 feet. As a general matter, during the building permit process, the Department of Building and Safety will confirm that the off-site parking location has adequate excess parking to meet the Project's parking requirement. Therefore, no building permit shall be issued unless the City determines that the off-site location has adequate parking.

Smith Comment 5

Development of the Subject Hotel as Part of the Tao Group's Holdings in the Cahuenga-Wilcox Block of Selma Avenue Is a Piecemealing That Is Improper Under CEQA

The fact that the prior approved project for the site would have provided 13 more parking spaces² in expensive subterranean structure than City Code required for the uses included at that time is evidence that the applicant had intent for a more extensive development such as now reflected in the subject Project. The notion of a clear and more extensive plan for the area is also evident in postings on the Tao Group's web site (see www.taogroupla.com and <https://hamptonsmagazine.com/tao-group-revitalizes-hollywood-with-restaurants-nightclubs-andbotique-hotels>). Performing separate environmental reviews on parts of what is a clearly related set of developments rather than on the whole of the project is called 'project segmentation' or 'piecemealing', an action that is improper under CEQA. We also note that the limited liability corporation that was listed as the applicant for the Tao restaurant project is the Selma-Wilcox Hotel LLC, the same applicant as the current hotel project – clear evidence that the current hotel project was a part of the plan when that lesser project was applied for.

The traffic analysis in this matter is a classic case of why piecemealing is improper. The subject Project adds traffic to capacity-challenged intersections in the area. So does the Tao restaurant, the initial Dream Hotel and the other developments of the Group. However, when considered on its own, the current hotel project's contributions to Intersection Capacity Utilization fall below thresholds of contribution to be found significant. However, had the whole of the Tao Group's development been evaluated as a single project, there would certainly have been extensive findings of significant traffic impact and mitigation requirements.

The arrangement that the Project would make use of excess parking at the recently developed Thompson Hotel also bears scrutiny. We note that the limited liability companies listed as the applicant for both hotel projects have the same address – 1605 Cahuenga Boulevard. This suggests that the

² After allowable reductions in parking provisions per code.

development of surplus parking on the Thompson site may have been pre-arranged to service the Selma-Wilcox hotel. In such circumstance, both hotels should have been evaluated as a single project for traffic consequences.

Response to Smith Comment 5

For purposes of CEQA coverage, a “project” is defined as comprising “the whole of an action” that has the potential to result in a direct or reasonably foreseeable indirect physical change to the environment. (CEQA Guidelines § 15378(a).) Thus, the term “project” refers to the activity for which approval is sought, not to each separate governmental approval that may be required for the activity to occur. (CEQA Guidelines § 15378(c).) Under this definition of a project, the lead agency must describe the project to encompass the entirety of the activity that is proposed for approval. This ensures that all potential impacts of the proposed project will be examined before it is approved. (CEQA Guidelines § 15378(a), (d).) The project description should not include existing, ongoing activities not proposed for approval even though they may be related to the activity that is proposed for approval. (*El Dorado County Taxpayers for Quality Growth v. County of El Dorado* (2004) 122 Cal.App.4th 1591; see also, *Fat v. County of Sacramento* (2002) 97 Cal.App.4th 1270.) Related activities that are similar in nature and that serve the same purpose are separate projects (as opposed to a single project) if they are independently considered for approval and one activity is not a foreseeable consequence of the other. (*Sierra Club v. West Side Irrig. Dist.* 2005) 128 Cal.App.4th 690 [city’s agreements with two water districts for assignments of rights to Central Valley Project water were separate projects because the assignments were independent of each other and were approved by separate irrigation districts].)

In *Laurel Heights v. Regents of Univ. of Cal.* (1988) 47 Cal.3d 376, the court set forth the standards for determining whether reasonably foreseeable future activities must be included in a project description and for determining whether the impacts of those activities must be analyzed in an environmental document. The court established a two-pronged test (*Id.* at 396):

We hold that an EIR must include an analysis of the environmental effects of future expansion or other action if: (1) it is a reasonably foreseeable consequence of the initial project; and (2) the future expansion or action will be significant in that it will likely change the scope or nature of the initial project or its environmental effects.

This standard is consistent with the principle that environmental considerations do not become submerged by chopping a large project into many little ones – each with a minimal potential impact on the environment – which cumulatively may have disastrous consequences. (*Bozung v. LAFCO* (1975) 13 Cal.3d 263, 283-284.)

The City of Los Angeles used the Critical Movement Analysis (“CMA”) methodology to evaluate signalized intersections. The CMA procedure uses a ratio of the traffic volume to the capacity (“V/C”) to define the proportion of an hour necessary to accommodate all the traffic moving through the intersection. Once the V/C has been calculated a level of service (“LOS”) grade is assigned (A to F) with the higher the letter grade the poorer the operating conditions (0.701 = LOS C, 0.090 = LOS E). Significant traffic impacts are then identified based on the LOS and the increase in the V/C value created by the Project. The better the operating conditions, the more traffic that can be added by a project before a significant traffic impact is identified. The worse the operating conditions, the less the traffic that can be added before a significant traffic impact is identified. For instance, at LOS C an increase of 0.040 or more in the V/C creates a significant impact. However, at LOS E or F an increase of 0.010 or more in the V/C creates a significant traffic impact.

The Supplemental TIA for this Project includes traffic generated by nearby projects constructed prior to May 2015 and 2016 in the existing traffic volume counts and includes estimated future increases in traffic volumes at the study intersections for estimated proposed projects in the future without and with

Project traffic conditions. The related project list on pages 36 through 43 include a total of 136 related projects. The TAO Restaurant is specifically identified in the Current Baseline evaluation in the study. These related projects increase the baseline without project V/C, potentially increase the LOS, and create an environment where less traffic can be added by the Project before a significant impact is identified. Therefore, the influence of other nearby projects creates an environment where traffic conditions are degrading, and less traffic can be added before traffic mitigation is required.

Smith Comment 6

Assumed Mitigation of Intersection Traffic Impacts Is Implausible

The IS/MND assumes that the traffic impacts it discloses will be mitigated by implementation of a Transportation Demand Management (TDM) program that reduces PM peak traffic by 20 or 10 percent. It includes a laundry list of potential elements, none of which are actually committed to. However, this rosy assumption in favor of the Project ignores the nature of the uses involved and the nature of the people who travel to and from those uses. Some employees are generally responsive to elements of typical TDM plans. However, hotel, restaurant and bar workers typically are not traveling during the normal PM peak traffic period so any TDM effects on employees will be irrelevant to mitigation of a PM peak traffic problem. Hotel guests and bar and restaurant patrons are fairly impervious to TDM efforts, so TDM programs are unlikely to make measurable inroads on their travel penchants. Hence, the assumption that a TDM program (still undefined) will achieve a 10 or 20 percent reduction in PM peak traffic is nonsense.

Equally nonsensical is the assumption that if the City will grant the Project a waiver to reduce the required parking spaces by 20, that only a 10 percent effective instead of 20 percent effective TDM program will be necessary. If the Project has 20 parking spaces less than required by code, this will not change the mode choice of those who want to drive and park. Instead, such people will cruise the neighborhood until they find available on-street or off-street parking, thereby making the traffic impacts worse.

Response to Smith Comment 6

Effective TDM Programs have been developed throughout the City to reduce vehicle trip generation during the peak hours for all types of projects. The June 11, 2017 and December 6, 2017 LADOT review letters of the Project require a preliminary TDM Program to be prepared and provided to them for review prior to the issuance of the first building permit for the Project and a final TDM Program approved by LADOT prior to the issuance of the first certificate of occupancy for the Project. LADOT requires monitoring of the TDM effectiveness until such time that the Project has shown, for three consecutive years, at a minimum of 85% occupancy, achievement of the peak hour trip volume reduction requirements.

The City of Los Angeles has goals to reduce vehicle trips throughout the City. There is limited on-street parking in Hollywood making it non-viable alternative. Many drivers consider parking availability when driving to a destination. If there is limited parking both on and off-street, other options such as mass transit and vehicle sharing are more likely be considered.

Smith Comment 7

The Traffic Analysis Fails To Account for the Increasing Importance of Ride-hailing Services

The analysis completely fails to account for the increasing popularity of reliance of ride-hailing services like Uber, Lyft and others (sometimes referred to in the technical literature as Transportation Network Companies). If patrons arrive and depart via one of these services or by conventional taxi, they generate four trips instead of two (the arrival trip, the departure of the transport vehicle, the arrival of

the departure vehicle and its departure). And recent research indicates that a majority of rides on such services are diverted from transit, bike and walking or are induced trips (ones that would not be made if the services were not available).³ In failing to account for Project traffic caused by these increasingly relied-upon services, the IS/MND understates traffic impacts.

Response to Smith Comment 7

As stated, there is a growing reliance on ride-hailing services. The overall effects of these types of services have yet to fully identified or quantified and would be speculative at this time. However, with the change to vehicle miles traveled traffic evaluation rather than CMA analysis, we may find that these trips are typically local and may encourage drivers from longer single driver commutes to and from work when there are reliable short commute for services and entertainments before, during or after a workday.

Because the impacts of ride-hailing services is speculative at best, the MND was not required to analyze the potential impacts of these services. (*Anderson First Coalition v City of Anderson* (2005) 130 Cal.App.4th 1173, 1178; *Alliance of Small Emitters/Metals Indus. v. S, Coast Air Quality Mgmt. Dist.* (1997) 60 Cal.App.4th 55, 66; CEQA Guidelines § 15145.)

Smith Comment 8

Analysis of Construction Impacts on Access, Transit, and Parking Is Inadequate

The IS/MND states that construction workers will park at off-street lots in the project area. While it is undoubtedly true that construction workers, who tend to arrive very early in the work day, will likely to be able to claim spaces in off-street lots, this does not mean there will not be a parking impact when later arriving drivers come and find that their normally used spaces already occupied by construction workers. To make a plausible claim that there will be no construction impacts on parking, the IS/MND must demonstrate that there is surplus off street parking in the area sufficient to accommodate the construction workers' parking without displacing other parkers.

The IS/MND also states at page 3-196 that "Construction activities would be limited to on-site work". It is evident that this statement is incorrect because it is evident that delivery and staging of construction materials would have to take place on-street as well as maintaining dumpsters for removal of construction debris.

Finally, it is obvious that the finding that construction traffic and pedestrian impacts would be mitigated by Mitigation Measure MM-Traffic-1, a Construction Traffic Control/Management Plan is not a fact based conclusion but merely an assumption since the Construction Traffic Control/Management Plan does not exist at present.

Response to Smith Comment 8

LADOT recommends a construction work site traffic plan. This is formally included as a mitigation measure. The Plan itself is an ongoing process that LADOT reviews and approves as the construction schedule and needs are finalized. The details of the mitigation provide clear guidelines of what the plan will include.

This comment is unsubstantiated opinion and speculation. (*Laurel Heights Improvement Ass'n v. Regents of Univ. of Cal.* (1988) 47 Cal.3d 376, 393 [substantial evidence does not include argument, speculation, unsubstantiated opinion or narrative, evidence that is inaccurate or erroneous, not

³ Disruptive Transportation., The Adoption, Utilization and Impacts of Ride-Hailing in the United States, Chewlow, Regina R. and Mishra, Gouri S., University of California Davis Institute of Transportation Studies, October 2017, page 26. See https://itspubs.ucdavis.edu/wpcontent/themes/ucdavis/pubs/download_pdf.php?id=2752

credible, or evidence of economic or social impacts that do not contribute to or are not caused by physical environmental impacts].) The comment does not raise any new CEQA issues and does not require any change to any conclusion in the MND. There is no substantial evidence in the record or in the comment showing that subsequent environmental review is necessary or that the Project may cause significant adverse impacts. (Pub. Res. Code § 21166; CEQA Guidelines § 15162).

Smith Comment 9

Cumulative Impacts Are Improperly Studied

Because the Project has been improperly segmented or piecemealed, cumulative traffic impacts have not been properly analyzed or mitigated.

Moreover, the Los Angeles Department of Transportation's process for identifying a project's cumulative traffic impacts does not comply with CEQA. CEQA requires a lead to agency prepare an EIR for a project when the "project has possible environmental effects that are individually limited but cumulatively considerable." CEQA GUIDELINES § 15065(a)(3). "Cumulatively considerable" means the "incremental effects of an individual project are significant when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects." Id. emph. added.

Here, the MND did not consider the cumulative traffic impacts when the Project's traffic impacts are added to the 136 other "related" development projects (collectively, the "Future Projects") that could be constructed in the vicinity of the Project and are expected to be completed by the anticipated Project buildout date. The IS/MND should have computed the traffic impacts from the Project plus the Future Projects and compared this increase in traffic to the existing traffic baseline conditions. Instead, the IS/MND only analyzed the small incremental traffic addition that will be caused by the Project compared to the Future Projects' traffic impacts. Based on this misguided approach, although the analysis showed that the Project contributed to unacceptable cumulative conditions in the near future (2020) in one or both peak periods at 6 of the 10 intersections studied, the IS/MND concluded that there would the Project would have significant cumulative impact at one of those intersections in one peak period and at one other location still in acceptable but approaching unacceptable condition where the Project contributed a large increase in intersection capacity utilization (ICU). In both circumstances the IS/MND concluded that the Project's cumulative impacts could be mitigated to less than significant through implementation of what we note elsewhere is a completely implausible and still quite uncertain transportation demand management (TDM) plan.

Basically, at the 5 other intersections operating at unacceptable level of service in the cumulative conditions, the IS/MND determined that, since future traffic conditions will already be horrible, adding the Project's traffic will not make them significantly worse. The relevant inquiry is not the relative amount of increased traffic that the Project will cause, but whether any additional amount of Project traffic should be considered significant in light of the already serious problem.

Response to Smith Comment 9

The City addresses cumulative impacts in the future analysis scenario. An extensive effort to identify other projects in the study area is prepared with information from LADOT and Department of City Planning. These related projects traffic volumes are added to the study intersections determined in the Future Without Project evaluation. Any improvements to the street system that may be implemented by the related projects are not included in the future analysis. In addition, a 1% per year ambient growth rate is added to the existing traffic conditions to account for any growth in the area and/or potential additional related projects not identified in the search for reasonably foreseeable related projects. This 1% ambient growth rate that is included in the analysis is conservative because the County of Los Angeles has estimated a smaller growth rate than 1%. Based on the Los Angeles

County Congestion Management Program (“CMP”) estimated traffic growth rates for the West/Central Los Angeles area is 0.17% per year between 2015 and 2025. This worst-case consideration of future conditions inflates the volume to capacity and level of service at the study intersections. LADOT provides a sliding scale for significant traffic impacts. The higher the level of service (“LOS”), the fewer Project trips that can be added before a significant impact is identified. In this way, the cumulative traffic by the related projects is addressed by the Project.

As stated in the previous paragraph, the City addresses cumulative impacts with increase in the background growth for future conditions with related project and ambient growth. This increase in the background growth allows for less growth by a proposed project before a significant impact occurs. If a significant impact occurs in future conditions with the Project, the impact would then be required to mitigate to a level below significance or disclose a significant unavoidable impact.

Smith Comment 10

Conclusion

This concludes my current comments on the Selma-Wilcox Hotel Project IS/MND. Based on the above considerations, there is fair argument that the Project’s traffic and parking impacts are not fully mitigated and hence, the Project cannot be approved under this IS/MND.

Response to Smith Comment 10

The comment constitutes a conclusion to the comment letter. The comment letter does not provide substantial evidence that supports a finding that further CEQA review of the Project beyond the MND is required or the Project may have a significant environmental impact. As analyzed in the MND, the impacts of the Project are less than significant.

EXHIBIT 5

15350 Sherman Way, Suite 315
Van Nuys, CA 91406
Phone 310-469-6700

June 11, 2018

Los Angeles Department of City Planning
200 N. Spring Street, Los Angeles, CA 90012

Re: Responses to “Sunset Landmark” Comments on the Selma Wilcox Project (Project)

All capitalized terms herein shall have meaning as defined in the Summary Response provided by CAJA dated June 8, 2018.

Sunset Landmark Comment 1

This firm and the undersigned represent The Sunset Landmark Investments, LLC (hereinafter “Sunset Landmark”). Please keep this office on the list of interested persons to receive timely notice of all hearings and determinations related to the proposed approval of an eight-story hotel at 6421-6429 W. Selma Avenue and 1600-1604 N. Wilcox Avenue, commonly known as the Selma Wilcox Hotel Project (“Tao Hotel” or “Project”). Pursuant to Public Resources Code Section 21167(f), provide a copy of each and every Notice of Determination issued by the City in connection with this Project. Sunset Landmark adopts and incorporates by reference all Project objections raised by themselves and all others during the environmental review and land use entitlement processes.

Response to Sunset Landmark Comment 1

The comment serves as an introduction to the commenter’s concerns, and does not require a detailed response. (CEQA Guidelines § 15088(c); *Flanders Found. v. City of Carmel-by-the-Sea* (2012) 202 Cal.App.4th 603, 615; *Rural Landowners Ass’n v. City Council* (1983) 143 Cal.App.3d 1013, 1020.) The concerns are expanded in the comments below. Each concern is also responded to below.

Sunset Landmark Comment 2

Sunset Landmark Investments respectfully submits this letter and accompanying exhibits, demanding that the City Council deny all above-referenced applications submitted by the owner/applicant for the following reasons: (1) The entire concept for the Tao Hotel is to create an over-developed, nuisance-generating, “party hotel” as part of a whole line of similar projects developed by the same developer for the purpose of injecting foreign investment money into a place where none of this was planned, and for which the infrastructure is not designed to support. The developer asks for the “sun, the moon, and the stars” when there is not a hint that the scope of this request is appropriate.

Response to Sunset Landmark Comment 2

The comment is unsubstantiated opinion and speculation. (*Laurel Heights Improvement Ass’n v. Regents of Univ. of Cal.* (1988) 47 Cal.3d 376, 393 [substantial evidence does not include argument, speculation, unsubstantiated opinion or narrative, evidence that is clearly inaccurate or erroneous, evidence that is not credible, or evidence of economic or social impacts that do not contribute to or are not caused by physical environmental impacts].) Moreover, this comment does not raise *specific*, significant environmental question, and therefore, does not warrant a response under CEQA. (*Citizens for E. Shore Parks v. State Lands Comm’n* (2011) 202 Cal.App.4th 549.)

Sunset Landmark Comment 3

(2) The City relies upon facially invalid interpretations of LAMC 12.22 A18 and 12.12 C4 (**Exhibit 1** [Summary of Zoning Administrator Interpretation dated May 18, 2000 and Zoning Engineer Memo dated February 10, 2009]) to claim that R5 zone density is permitted on commercially zoned lots in Regional Center Commercial land use designations across the City, including Hollywood, and, even more incredibly,

that the authorized residential unit density limit is “unlimited” as to hotel rooms because City Council failed to specify a guest room limit in LAMC 12.12 C. Based upon these ludicrous interpretations, that are injecting more than double unit density into Regional Commercial Centers across the City without any textual support in the LAMC sections cited, and without environmental review of the cumulative impacts, the City claims the Tao Hotel can have 114 rooms. Thus, the Project as proposed is unlawful because it proposes a project more than 104 hotel rooms which is the lawful number of guest rooms in the C4 or C2 zone in which this site lies. The hotel will therefore be a monster building, twice the size the City planned for in the Hollywood Community Plan, the Hollywood Redevelopment Plan, and the City’s zoning.

Response to Sunset Landmark Comment 3

The comment claims that the City’s interpretation of its code is invalid and therefore, the 114 hotel guest rooms is not permitted in the zone. Los Angeles Municipal Code (“LAMC”) Sections 12.14.C.3 and 12.11.C.4 allow a density of one guest room for every 200 square feet of lot area in the C2 Zone. However, LAMC Section 12.22.A.18.a and two inter-departmental correspondence dated February 27, 2014 (A. Bell) and May 18, 2000 (P. Kim and R. Janovici) provide an exception for properties in the C2 Zone with a land use designation of Regional Commercial to allow the density of the R5 Zone which does not establish a limitation for guest rooms. However, density would be limited by other development regulations, including maximum floor area ratio for the C2 Zone.

Courts may give deference to an agency’s interpretation of a statute or ordinance; however, the degree of deference is fundamentally situational (*Yamaha Corp. of Am. v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 12). “A court assessing the value of an [administrative] interpretation must consider a complex of factors material to the substantive legal issue before it, the particular agency offering the interpretation, and the comparative weight the factors ought in reason to command.” (*Id.*) Factors to consider include whether the agency offering the interpretation had written the ordinance under review and whether the agency’s interpretation is one that was consistently maintained and of long standing. (*Id.*)

The City’s interpretation of LAMC section 12.22.A.18.a is memorialized in inter-departmental correspondence from the Office of the Zoning Administrator and is also featured in the Los Angeles Department of Building and Safety’s (“LADBS”) Zoning Code Manual. Additionally, the Department of City Planning has consistently applied this interpretation to developments combining residential and commercial uses. As such, the Project’s proposed density of 114 rooms complies with the C2 Zone and the City’s longtime application of its zoning code regulations.

Sunset Landmark Comment 4

(3) The Project as proposed is inconsistent with the permanent “D” Development Limitation of 2: 1 Floor Area Ratio (“FAR”) imposed on the site as part of the General Plan Consistency Case 86-835-GPC and applicable City ordinances (**Exhibit 2** [Hollywood General Plan/Zoning Consistency Program]). Having imposed this 2:1 FAR limit in 1988 to protect the Hollywood community from negative environmental impacts as part of an extensive General Plan Consistency process (**Exhibit 3** [Ordinance 165660]), the City has no authority under Government Code Section 65860 or CEQA to remove the permanent “D” Development Limitation until:

a. The City demonstrates that the negative impacts of overdense development on Hollywood’s deficient infrastructure have been mitigated to the maximum extent feasible as part of a lawful comprehensive community planning process (and then comprehensively adjust the 1988 General Plan Consistency Program density restrictions in accordance with the comprehensive review of the community planning process); or

b. The City reduces density on other land in the Community Plan area on a 1 to 1 basis for each parcel of land it purports to increase density (in order to maintain the density limit imposed in the 1988 Hollywood Community Plan and Hollywood General Plan Consistency Program). Such a Floor Area Transfer Program was authorized in the Hollywood Community Plan Section 511, but was never implemented by the former redevelopment agency or its successor agency, CRA/LA; or

c. The City demonstrates compliance with the required enactment of the Transportation Plan identified in the 1988 Hollywood Community Plan Revision process and the 1986/2003 Hollywood Redevelopment Plan process, and guaranteed by the City in Ordinance 165660 to provide a substitute mitigation to the 2: 1 FAR density restriction imposed on these parcels in 1988.

The FAR limit of 2:1 was imposed as a CEQA mitigation measure as part of a comprehensive planning process that occurred in conjunction with the 1988 Hollywood Community Plan Revision **and** the 1988 Hollywood General Plan Consistency Program. As extensively documented in **Exhibit 2**, there is no reasonable dispute that a comprehensive downzoning of Hollywood occurred in 1988 because significant negative impacts would occur if the City's 1946 zoning densities were allowed to be constructed without limitation -- which is what the City is doing on a parcel by parcel based now.

Based upon this zoning history, the Tao Hotel Project is actually asking for a rezoning that authorizes a taller and larger building than allowed by law. The City and Developer, once again presume the City can just enact a new ordinance and it will override Ordinance 165,660 that imposed the 2:1 FAR "D" Development Limitation.

Because the City proposes to erase the FAR density limit without complying with any of these requirements so as to avoid cumulative negative impacts in raising density without protecting the Hollywood community with equally effective mitigation measures, its action is unlawful and cannot be approved. (*Napa Citizens for Honest Govt. v. Napa County Bd. of Supervisors* (2001) 91 Cal.App.4th 342, 358-359 ["We therefore hold that a governing body must state a legitimate reason for deleting an earlier adopted mitigation, and must support that statement of reason with substantial evidence. If no legitimate reason for the deletion has been stated, or if the evidence does not support the governing body's finding, the land use plan, as modified by the deletion or deletions, is invalid and cannot be enforced."]; *Fed. of Hillside & Canyon Ass'n v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1261 [City must assure that mitigation measures "will actually be implemented as a condition of development, and not merely adopted and then neglected or disregarded."].)

The City may not replace the 2:1 FAR density limit of Ordinance 165,660 without a valid reason. Such a valid reason would be that the long awaited Transportation Plan mitigation has been enacted, or a valid new community plan process that includes proper cumulative impact review has been completed. Neither of those things have occurred due to the City's ongoing neglect of the force of law of its general plan.

Response to Sunset Landmark Comment 4

The Project Site is subject to a Development "D" Limitation, which limits the maximum permitted FAR in Height District 2 to 2:1, unless additional FAR is approved by the City Planning Commission, subject to an agreement with the Community Redevelopment Agency (CRA). A Vesting Zone and Height District change from C4-2D to [Q]C2-2D has been requested to permit a maximum FAR of 3.7:1 in lieu of the permitted 2:1 FAR. Based on the Project Site's lot area of 21,610.7 square feet, the maximum allowable building area for a 3.7:1 FAR would be approximately 79,957 square feet, which is consistent with the project design.

The current zoning on the Project Site is not an unchangeable mitigation measure under CEQA or the Hollywood Community Plan EIR. The comment asserts that current zoning on the Project Site was adopted as an "mitigation measure" from a 1988 Hollywood General Plan/Zoning Consistency Program ("Consistency Program") and thus the City cannot modify this mitigation measure by legislative act. As stated in the comment, the premise for the "mitigation measure" argument is that FAR limits in Hollywood (including the Project Site) must remain unchanged until the City enacts a mitigation-based Transportation Specific Plan referenced in the nearly 30-year-old documents. The comment improperly conflates the Consistency Program with CEQA mitigation measures. The two are legally distinct and serve different purposes. Accordingly, the argument fails for several reasons.

First, the City already complied with the Consistency Program. The Consistency Program was born by court mandate following the passage of AB 283 and was subject to judicial oversight. The Consistency Program was an implementation tool for complying with the court's order to make Los Angeles' zoning consistent with its General Plan. It was not mitigation per se under CEQA. The Consistency Program contains no long term prohibition on subsequent zone changes or general plan amendments. Most importantly, the court

determined that the City completed the Consistency Program in 1997. Therefore, despite the comment's attempt to resurrect it, the program cannot, and does not, preclude the City from exercising its legislative power to change the Project Site zoning.

Second, even if the Consistency Program or Program EIR for the Hollywood Community Plan ("Hollywood EIR") are considered mitigation measures, the law does not require mitigation measures to apply in perpetuity. "The claim that once a mitigation measure is adopted it never can be deleted is inconsistent with the legislative recognition of the need to modify land use plans as circumstances change." (*Napa Citizens for Honest Govt.*, 91 Cal.App.4th at 358.) There is no statutory authority for the proposition that a change to the zoning or height district may not include the deletion or modification of earlier adopted mitigation measures. (*Id.*) Accordingly, once adopted, a mitigation measure is not binding for all time. (*Id.* at 359.)

We do not agree that the Consistency Program requires CEQA mitigation. We also do not agree that the Consistency Program and the Hollywood EIR are one and the same. The comment fails because Section 3.3 of the Hollywood EIR states that two primary reasons for revising the Hollywood Community Plan are: (1) because the City is under a court order to bring its General Plan and zoning into conformance by March 1988; and (2) the transportation system and other public facilities are services in Hollywood are at, or approaching, capacity today and cannot accommodate additional development . . . without substantial improvements. As we proved above, the City complied with the court order in 1997. In addition, the City has implemented major transportation improvements in Hollywood to improve transit capacity and accommodate development since the late-1980s.

For example, the City built and opened the Metro Red Line and Purple Line that provide heavy rail service for Hollywood and the Project Site. The City opened the Red Line in the mid-1990s and it is one of the busiest rail lines in the transit system. In addition, the City has updated and adopted a new Mobility Element (incorporated by reference) of the General Plan that further provides for transit options in the Hollywood area. The element further plans for adequate transit and vehicular circulation to accommodate existing conditions and growth. The project design and dedications comply with the Mobility Element. Thus, the City has implemented major improvements to the transit and vehicular network to address issues raised in the Hollywood EIR.

Moreover, Section 5 of the Hollywood EIR analyzed traffic impacts and contains recommendations (which are different than binding mitigation) for next steps to be undertaken by the City. Particularly, it recommends (p. 77) that the City identify transportation improvement options, and an implementation plan, for transportation in the Hollywood Community Plan area. The construction and opening of the Metro lines and the transit-enhanced network of streets in the Mobility Element accomplish the goal of the recommendation above. In addition, it recommends that "TDM/TSM plans should be developed and implemented for large scale commercial developments" in the Hollywood area. The Project includes a TDM plan. Thus, for multiple reasons, the City and the Project have accomplished the goals and recommendations of the Hollywood EIR, if it somehow applied in this case. Simply put, circumstances have changed over the last two decades and the City has transit options that allow for continued development. Accordingly, there is no legal merit to the comment's argument that an old transit plan recommendation can forever constrain the City's legislative land use powers.

Finally, the City retains its authority to approve a zone change and height district change for the Project, and is not required to update the entire Hollywood Community Plan to do so as suggested by the comment. The MND is a project-level document (compared to the program-level scope of the Hollywood EIR) that analyzes potential impacts associated with the zone change and height district change, contains mitigation measures as required by CEQA, and provides substantial evidence to support its impact conclusions for the Project.

Sunset Landmark Comment 5

(4) The former redevelopment agency, its lawful successor CRA/LA, and the Los Angeles City Council have violated their duties imposed by the Hollywood Redevelopment Plan, and cited in Ordinance 165,660 as a valid basis to modify the mitigation measure of the 2:1 FAR limit imposed in 1988, by failing to adopt the mandatory Transportation Plan that must be in place before the CRA/LA has legal authority to authorize any increase on this property above 2:1 FAR. We have confirmed with CRA/LA that it never completed and the

City Council never enacted the Transportation Plan required by the Hollywood Redevelopment Plan before increases in density would be allowed. Because the Hollywood Redevelopment Plan was adopted by City Ordinance Nos. 161202 and 175236, any project approved without the mandatory Transportation Plan violates City Ordinances 161202 and 175236. (**Exhibit 6** [Ordinances Incorporating Hollywood Redevelopment Plan as City Law].) CRA/LA has been sued by Hollywood Heritage for CRA/LA's more than three decade dereliction of duty to complete any of the implementing programs of the Hollywood Redevelopment Plan. This significantly includes failure to complete and adopt a protective and mitigating Transportation Plan. Therefore, this Project as proposed at nearly double the authorized FAR, is unlawful.

Response to Sunset Landmark Comment 5

The Project Site is located within the Hollywood Redevelopment Project Area ("HRPA"). Development within the Regional Center Commercial designation is restricted to an average FAR of 4.5:1. The intent for development within the Regional Center Commercial designation is to provide for economic development and guidance of high quality commercial, recreational, and residential urban environment with an emphasis on entertainment-oriented uses. To exceed an FAR of 4.5:1, the Redevelopment Plan requires the CRA/LA, a Designated Local Authority (successor agency to the former CRA of Los Angeles) to make certain findings and enter into an agreement with applicant to ensure that the proposed project will conform to the Redevelopment Plan. All applications within the HRPA requesting a permit for construction, remodeling, improvements, alterations including seismic compliance, demolition and/or signs must be referred to the CRA for both CEQA clearance and permit approval.

On December 29, 2011, the California Supreme Court issued its decision in *California Redevelopment Ass'n v. Matosantos* (2013) 212 Cal.4th 1457. The decision upheld recently enacted state law dissolving all California redevelopment agencies including the Community Redevelopment Agency of Los Angeles (CRA/LA) and made the dissolution of the agencies effective February 1, 2012. CRA is statutorily prohibited from entering any new agreements and is currently only allowed to wind down CRA affairs, including honoring existing obligations and addressing land use issues consistent with CRA's land use powers under the Redevelopment Plan. To date, the CRA has not transferred its land use powers to the City's Department of City Planning.

As discussed above, the Project's requested entitlements include a height district change to remove the existing "D" limitation and permit a maximum FAR of 3.7:1 in lieu of the permitted 2:1 FAR. Accordingly, the provisions set forth in the existing "D" limitation regarding the CRA/LA do not apply to the Project. Furthermore, the proposed FAR is 3.7:1 and thus does not trigger the CRA/LA findings and agreement requirements in the Hollywood Redevelopment Plan, as the Project does not exceed the 4.5:1 FAR threshold.

Sunset Landmark Comment 6

(5) The MND prepared by the City for the Tao Hotel is fatally flawed and cannot support a project approval. The MND failed to accurately disclose and analyze the current zoning, FAR, height, and residential density elements of the Project in the project description and the land use sections of the MND. Moreover, the MND failed to adequately analyze air quality, land use, noise, traffic, and greenhouse gas emissions.

Response to Sunset Landmark Comment 6

The MND lists the current zoning (C4-2D) in the Project Description in the MND on pages 2-4 and Table 2-1. MND pages 2-6 through 2-10 correctly identify the development regulations applicable to the Project Site. These are also discussed in the Land Use section in the MND on pages 3-117 to 3-119. Moreover, this comment is a red-herring as demonstrated by Response to Comment 3 and Response to Comment 4.

The evidence contained in the MND demonstrates a thorough and conservative analysis of air quality, land use, noise, traffic, and greenhouse gas ("GHG") emissions. This comment simply states that the MND does not contain adequate analysis without providing any further explanation or evidence to support the claim. An introductory or conclusory statement does not require a detailed response. (CEQA Guidelines § 15088(c); *Flanders Found. v. City of Carmel-by-the-Sea* (2012) 202 Cal.App.4th 603, 615; *Rural*

Landowners Ass'n v. City Council (1983) 143 Cal.App.3d 1013, 1020.) A comment that does not raise a significant environmental question does need not be responded to. (*Citizens for E. Shore Parks*, 202 Cal.App.4th 549.) Additionally, under Public Resources Code section 21082.2(c), “[a]rgument, speculation, unsubstantiated opinion or narrative, evidence which is clearly inaccurate or erroneous, or evidence of social or economic impacts which do not contribute to, or are not caused by, physical impacts on the environment, is not substantial evidence. Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts.”

Sunset Landmark Comment 7

(6) This is the fifth alcohol-soaked “Animal House” party hotel proposed by the same developer group within a few hundred feet of each other - yet the City Environmental Review Unit acts as if they are unrelated. This piecemealing of what has been touted in the media as a “new hotel district” by the developer somehow is allowed to roll out bit-by-bit and piece-by-piece without the comprehensive review CEQA requires. Even more astounding is the fact the City actually approved an MND for a piece of this building in 2015 without requiring review of even the whole building. This is professional environmental review malpractice. It used to be that the City enforced CEQA to prevent developer fraudulent applications of pieces of a larger project. *Arviv Enterprises v. South Valley Area Planning Commission* (2002) 101 Cal.App.4th 1333. Now the City colludes to ignore & openly defy CEQA’s duties.

For all of these basic reasons, most of them fundamental planning concepts apparently thrown out the window by the City Planning Director and his employees, the City Planning Commission and Advisory Agency must exercise restraint by not rubberstamping another planning disaster in Hollywood fueled by greed and foreign investors with no stake in the integrity of the City’s planning processes.

Response to Sunset Landmark Comment 7

For purposes of CEQA coverage, a “project” is defined as comprising “the whole of an action” that has the potential to result in a direct or reasonably foreseeable indirect physical change to the environment. (CEQA Guidelines § 15378(a).) Thus, the term “project” refers to the activity for which approval is sought, not to each separate governmental approval that may be required for the activity to occur. (CEQA Guidelines § 15378(c).)

The project description should not include existing, ongoing activities not proposed for approval even though they may be related to the activity that is proposed for approval. (*El Dorado County Taxpayers for Quality Growth v. County of El Dorado* (2004) 122 Cal.App.4th 1591; *Fat v. County of Sacramento* (2002) 97 Cal.App.4th 1270.) Related activities that are similar in nature and that serve the same purpose are separate projects (as opposed to a single project) if they are independently considered for approval and one activity is not a foreseeable consequence of the other. (*Sierra Club v. West Side Irrig. Dist.* 2005) 128 Cal.App.4th 690 [city’s agreements with two water districts for assignments of rights to Central Valley Project water were separate projects because the assignments were independent of each other and were approved by separate irrigation districts].)

In *Laurel Heights v Regents of Univ. of Cal.* (1988) 47 Cal.3d 376, the court set forth the standards for determining whether reasonably foreseeable future activities must be included in a project description and for determining whether the impacts of those activities must be analyzed in an environmental documentation. The court established a two-pronged test: “We hold that an EIR must include an analysis of the environmental effects of future expansion or other action if: (1) it is a reasonably foreseeable consequence of the initial project; and (2) the future expansion or action will be significant in that it will likely change the scope or nature of the initial project or its environmental effects.” (*Id.* at 396.)

For the first prong, the current Project was not a reasonably foreseeable consequence of the existing development because each activity could operate successfully and without the development of the other. Put differently, the proposed hotel project could be approved and developed without the prior approval of the existing on-site development. The project proposes an unforeseen expansion to ensure the land is achieving its best; however, the existing development’s approval was not predicated on and could not predict this subsequent “buildout.”

Moreover, neither the proposed development and the existing development are conditioned upon completion of the other in the way that other piecemealing CEQA cases have articulated. (*Tuolumne County Citizens for Responsible Growth, Inc. v. City of Sonora* (2007) 155 Cal.App.4th 1214 [because there was a strong connection between the road alignment and the completion of the proposed home improvement center, the court concluded that the home improvement center and the road alignment were part of a single CEQA project, even though they could have been completed separately]; *El Dorado County Taxpayers for Quality Growth*, 122 Cal.App.4th at 1600 [future expansion was not a foreseeable consequence of project approval because decision to allow future expansion would depend more on environmental, social, and political factors].)

Put succinctly, both the proposed Project and the existing development are legally required to be independently considered and not a foreseeable consequence of the other. Each development has independent utility and, while on the same site, are not predicated on each other. Denial of the proposed project would not eliminate the effectiveness of the existing development.

Contrary to the statement the project is a party hotel, as identified in the MND as the Project's objective the intent of the Project is to:

- Develop a site that combines hotel, retail, and restaurant uses.
- Support infill development and redevelopment in existing urban areas to reduce "greenfield" development and urban sprawl.
- Respond to the continuous demand for new hotel rooms in the City and specifically in the Hollywood sub-market, as identified in the Report of the Chief Legislative Analyst to the Members of the City's Housing, Community and Economic Development Committee dated August 6, 2013.
- Provide a lodging option for leisure and business travelers, tourists and visiting friends/relatives of local residents.
- Target an underserved segment of the tourist market with a hotel concept in Hollywood with proximity to some of the region's most popular tourist, cultural and entertainment destinations.
- Leverage the billions of public investment dollars on local transit facilities and infrastructure, including the Metro Red Line stations located nearby.
- Construct an iconic, contemporary hotel project on Selma Avenue, near Cahuenga Boulevard.
- Contribute to the economic recovery of the City by developing hotel uses that generate local tax revenues, provide new jobs, and host hotel guests who support local businesses, including dining, shopping and entertainment venues nearby.
- Create an architecturally-inspired development that is economically sustainable and compatible with surrounding land uses.

It is true that the Project is seeking a Conditional Use Beverage ("CUB") for the on-site sale and dispensing of alcoholic beverages incidental to a proposed 114-guestroom hotel and restaurant. The Applicant and the Project will adhere strictly to the requirements and conditions set forth in the CUB, including the Standardized Training for Alcohol Retailers, which requires such training for all employees involved with the sale of alcoholic beverages.

Sunset Landmark Comment 8

III. RELEVANT FACTS AND BACKGROUND.

[The language under this heading is purposely omitted here and we incorporate by reference the language under this heading in the Sunset Landmark Comment Letter.]

Response to Sunset Landmark Comment 8

Please see Response to Comment 4.

Sunset Landmark Comment 9

IV. THE LAWFUL NUMBER OF HOTEL ROOMS IS SET BY THE MUNICIPAL CODE AT 200 SQUARE

FEET OF LOT AREA WHICH IS MUCH LESS THAN THE 114 ROOMS PROPOSED BY THE DEVELOPER

[The language under this heading is purposely omitted here and we incorporate by reference the language under this heading in the Sunset Landmark Comment Letter.]

Response to Sunset Landmark Comment 9

Please see Response to Comment 3.

Sunset Landmark Comment 11

VI. THE CURRENT ZONING OF THE TAO HOTEL WAS ENACTED UNDER THE COMPREHENSIVE GENERAL PLAN CONSISTENCY PROGRAM AS A DOWNZONING MITIGATION MEASURE AND THEREFORE SUCH MITIGATION MEASURE CANNOT BE MODIFIED BY SIMPLE REPEAL, AS THE DEVELOPER HAS ASKED THE CITY TO DO AGAIN AND AGAIN.

[The language under this heading is purposely omitted here and we incorporate by reference the language under this heading in the Sunset Landmark Comment Letter.]

Response to Sunset Landmark Comment 11

This comment contains conclusory statements and does not raise a specific environmental concern related to the Project. No response is required. To the extent a response is required related to the Project's compliance with all applicable land use designations and plans, please see Response to Comment 4.

Sunset Landmark Comment 12

VII. THE FORMER REDEVELOPMENT AGENCY'S FAILURE TO PREPARE A TRANSPORTATION PLAN MEANS THAT NO INCREASES IN DEVELOPMENT DENSITY CAN BE GRANTED UNDER THE "D" DEVELOPMENT LIMITATION.

[The language under this heading is purposely omitted here and we incorporate by reference the language under this heading in the Sunset Landmark Comment Letter.]

Response to Sunset Landmark Comment 12

This comment contains conclusory statements and does not raise a specific environmental concern related to the Project. No response is required. To the extent a response is required related to the Project's compliance with all applicable land use designations and plans, please see Response to Comment 4.

Sunset Landmark Comment 13

VIII. THE MITIGATED NEGATIVE DECLARATION VIOLATES CEQA. BECAUSE THERE IS NO SHOWING THAT SIGNIFICANT IMPACTS ARE NOT POSSIBLE, AN EIR IS REQUIRED.

[The language under this heading is purposely omitted here and we incorporate by reference the language under this heading in the Sunset Landmark Comment Letter.]

Response to Sunset Landmark Comment 13

The comment does not raise any new CEQA issues and does not require any change to any conclusion identified in the MND. There is no substantial evidence in the record or in the comment showing that subsequent environmental review is necessary or that the Project may cause significant adverse impacts (Pub. Res. Code § 21166; CEQA Guidelines § 15162). CEQA Guidelines section 15064 requires the lead agency to determine if a project will have a significant effect based on substantial evidence. CEQA Guidelines section 15382 defines the term "significant effect on the environment" as "a substantial, or

potentially substantial, adverse change in any of the physical conditions within the area affected by the project, including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance.” In compliance with the CEQA Guidelines, and in light of the whole record, the lead agency accurately determined the significant effects of the Project. As demonstrated by the MND, the whole of the record supports the conclusion that the Project, as proposed, would have less than significant impacts.

Sunset Landmark Comment 14

A. The Project Description is Deficient and Masks Potential Significant Impacts.

[The language under this heading is purposely omitted here and we incorporate by reference the language under this heading in the Sunset Landmark Comment Letter.]

Response to Sunset Landmark Comment 14

The MND must include an accurate, stable, and consistent description of the proposed project. (*County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 197.) The project description must contain sufficient specific information about the project to allow a complete evaluation and review of its environmental impacts. (CEQA Guidelines § 15124.) Pursuant to CEQA, a project description, and the accompanying analysis, must be consistent throughout the environmental document. If the project description is inconsistent (*e.g.*, if a project is described differently in different sections of the documents), these shifts prevent the document from serving as a vehicle for intelligent public participation in the decision-making process. (*County of Inyo*, 71 Cal.App.3d at 197.)

Generally, an adequate MND must be “prepared with a sufficient degree of analysis to provide decisionmakers with information which enables them to make a decision which intelligently takes account of environmental consequences.” (*Dry Creek Citizens Coalition v. County of Tulare* (1999) 70 Cal.App.4th 20, 26.) However, the project description “should not supply extensive detail beyond that needed for evaluation and review of the environmental impact.” (CEQA Guidelines § 15124; *Save Round Valley Alliance v. County of Inyo* (2007) 157 Cal.App.4th 1437). In *Dry Creek*, the leading case on the level of detail in a project description, the court noted that the CEQA Guidelines require a “general description” of a project’s characteristics. (70 Cal.App.4th at 28.) This requirement means that the MND must describe the main features of a project, rather than all of the details or particulars. This is consistent with the principle in CEQA Guidelines section 15140, requiring that environmental documents be prepared in plain language so that the public can readily understand them.

The courts have also confirmed that a project description may describe some project components in greater detail than others and need not include information irrelevant to the analysis of significant impacts. (*Sierra Club v. City of Orange* (2008) 163 Cal.App.4th 523, 533 [court rejected claims that the EIR had to describe the area to be annexed precisely, because the map was sufficient to assess significant impacts and consider mitigation measures and alternatives]; *Cal. Oak Found. v. Regents of Univ. of Cal.* (2010) 188 Cal.App.4th 227, 269; *Mount Shasta Bioregional Ecology Ctr. v. County of Siskiyou* (2012) 210 Cal.App.4th 184, 203.)

The historical information Comment 14 seeks to include in the MND is irrelevant, and does not assist in the evaluation and review of the environmental impact of the Project. Please see Response to Comment 3 through Response to Comment 6 and Response to Comment 13. As demonstrated by those Responses to Comment, the MND provides a consistent, stable and finite project description that permits review and evaluation of the Project’s impacts.

Sunset Landmark Comment 15

B. The MND's Land Use Analysis Fails To Disclose Significant Land Use Impacts.

[The language under this heading is purposely omitted here and we incorporate by reference the language under this heading in the Sunset Landmark Comment Letter.]

Response to Sunset Landmark Comment 15

Please see Response to Comment 4 through Response to Comment 6, Response to Comment 13 and Response to Comment 14.

Sunset Landmark Comment 16

In sum, the MND fails on multiple grounds, and as to multiple types of environmental effects, to meet the test for a mitigated negative declaration. It has failed to show no possibility of a significant impact on the environment as to air quality, noise and vibration, greenhouse gas emissions, and traffic. An EIR is clearly required.

Response to Sunset Landmark Comment 16

The comment letter does not provide substantial evidence that supports a finding that further CEQA review of the Project beyond the MND is required or the Project may have a significant environmental impact. As analyzed in the MND, the impacts of the Project are less than significant.

Sunset Landmark Comment 17

The Tao Hotel is an ill-conceived, noise generating nuisance “party hotel” that should have never come out of a Planning Department conference room. Multiple deliberate misconstructions of the LAMC are used to unlawfully increase the residential unit density, FAR, and height of the building. There is no legitimate basis to approve this Project as proposed. Given the numerous hotels of the same developer in the immediate vicinity, it is time for the City to acknowledge that this multi-hotel project must be analyzed comprehensively in a full EIR.

Response to Sunset Landmark Comment 17

The comment constitutes a conclusion to the comment letter. The comment letter does not provide substantial evidence that supports a finding that further CEQA review of the Project beyond the MND is required or the Project may have a significant environmental impact. As analyzed in the MND, the impacts of the Project are less than significant.

EXHIBIT 6



15350 Sherman Way, Suite 315
Van Nuys, CA 91406
Phone 310-469-6700

March 27, 2018

Los Angeles Department of City Planning
200 N. Spring Street, Los Angeles, CA 90012

Re: Responses to Comments on the Selma Wilcox Project (Project)

The City of Los Angeles (City) prepared a Mitigated Negative Declaration (the MND) for ENV-2016-1602-MND (the Project) pursuant to the California Environmental Quality Act (CEQA), CEQA Guidelines and the City's environmental review procedures.

The City received one written comment on the MND:

- Unite Here Local 11, dated January 24, 2017

The individual comments contained within the written comments are provided below and identified as **Comment X**. Responses to the comments are also provided below and identified as "**Response to Comment X**".

Based on our technical review, the written comments do not raise any new CEQA issues and do not require any change to any conclusion in the MND. The written comments do not provide substantial evidence that further review under CEQA is required or that the Project may have a significant environmental impact. As analyzed in the MND, the whole of the record supports the conclusion that the impacts would be less than significant as proposed.

Seth Wulkan

Project Manager

CAJA Environmental Services, LLC

15350 Sherman Way, Suite 315, Van Nuys, CA 91406

Seth@ceqa-nepa.com

310-469-6704 (direct)

310-469-6700 (office)

CAJA is an environmental consulting firm that specializes in environmental planning, research, and documentation for public and private sector clients. For over 25 years, CAJA and its predecessor company Christopher A. Joseph & Associates have offered a broad range of environmental consulting services with a particular emphasis on CEQA and NEPA documentation.

Seth Wulkan has over 10 years of experience and is responsible for all aspects of preparation of environmental review documents. He began his career with CAJA in 2007. Mr. Wulkan is proficient in drafting all sections of environmental review documents; incorporating technical reports into documents; and personally corresponding with public and private sector clients. Mr. Wulkan

regularly participates in team strategy meetings from the beginning of the environmental review process through the final project hearings. Mr. Wulkan graduated with college honors from UCLA and completed a Certificate Program in Sustainability at UCLA Extension

15350 Sherman Way, Suite 315
Van Nuys, CA 91406
Phone 310-469-6700

Unite Here Comment 1

This letter is written on behalf of the 28,000 members of UNITE HERE! Local 11, the hospitality and restaurant employees' union. Our members live and work across LA and Orange County, including in the City of West Hollywood, and, Phoenix, Arizona. The Mitigated Negative Declaration fails to adequately analyze multiple significant environmental impacts from the proposed project. Various points of analysis in the MND are in error, are incomplete, or are absent from it entirely. The MND is inadequate for the purposes of CEQA and local law, and should not be adopted. **A full Project-Specific Environmental Impact Report must be prepared.**

Response to Unite Here 1

The comment serves as an introduction to the commenter's concerns. The concerns are expanded in the comments below. Each concern is also responded to below.

The comment states that the MND prepared for the Project fails to comply with the requirements of CEQA, but bases the statement on unsubstantiated opinion and speculation. (*Laurel Heights Improvement Ass'n v. Regents of Univ. of Cal.* (1988) 47 Cal.3d 376, 393 [substantial evidence does not include argument, speculation, unsubstantiated opinion or narrative, evidence that is clearly inaccurate or erroneous, evidence that is not credible, or evidence of economic or social impacts that do not contribute to or are not caused by physical environmental impacts].) The comment does not raise any new CEQA issues and does not require any change to any conclusion in the MND. There is no substantial evidence in the record or in the comment showing that subsequent environmental review is necessary or that the Project may cause significant adverse impacts (Pub. Res. Code § 21166; CEQA Guidelines § 15162).

CEQA Guidelines section 15064 requires the lead agency to determine if a project will have a significant effect based on substantial evidence. CEQA Guidelines section 15382 defines the term "significant effect on the environment" as "a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project, including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance." In compliance with the CEQA Guidelines, and in light of the whole record, the lead agency accurately determined the significant effects of the Project.

As demonstrated by the MND, the whole of the record supports the conclusion that the Project, as proposed, would have less than significant impacts.

Unite Here Comment 2

The Applicant Improperly Piecemeals Several DREAM Projects

All DREAM projects should proceed together in order to fulfill the basic Legislative goals for CEQA, and comply with the statute. CEQA is constructed around an inclusive definition of "project" for the purpose of preventing public agencies from segmenting projects in a way that diminishes apparent environmental impacts. CEQA mandates "that environmental considerations do not become submerged by chopping a large project into many little ones -- each with a

minimal potential impact on the environment - which cumulatively may have disastrous consequences.” *Bozung v. LAFCO* (1975) 13 Cal.3d 263, 283-84 (1975); *City of Santee v. County of San Diego* (1989) 214 Cal.App.3d 1438, 1452.

Before undertaking a project, the lead agency must assess the environmental impacts of all reasonably foreseeable phases of a project and a public agency may not segment a large project into two or more smaller projects in order to mask serious environmental consequences.

The MND identifies several nearby projects specifically, but fails to note that a critical fact; that these are projects proposed, built, and controlled by applicant. In addition to the proposed project, there are three other major hotel projects built, under construction, or recently approved by the city. They are:

- [open]The Dream Phase I (as it is called by Applicant) with 178 rooms, and at least 4581 sq.ft bar/restaurant use.
- [under construction] A hotel at 12-story hotel at 1541 Wilcox currently under construction by applicant, with 200 hotel rooms. 1862 sq.ft bar, 4595 Restaurant and Bar
- [post-approval] The Tommie Hotel project at 6516 Selma Avenue, approximately 100 feet from the Project Site, would have 212 hotel, rooms, a 2,308 square feet cafe, & 11,148 square feet restaurant/bar use.

From those facts it appears, and with approval of this MND would functionally be, a single major project comprising upwards of 630 hotel rooms, six or more bars/restaurant spaces in addition to the approved and existing 20,624 sq. ft restaurant on this project site and project's proposed 5,041 rooftop bar, approximating nearly 50,000 square feet of active bar/nightclub/bar & restaurant space within 0 to 350 feet of the project site. These large hotels and bar projects taken together would cover major portions of that block of the land along Selma and Wilcox, with significant contiguous portions to their property (such as Dream Phase I and Phase II, and the Tao Restaurant properties). And applicants have stated further goals for up to potentially 2000 hotel rooms in the area.

Applicant Richard Heyman has spoken publicly about his company's intention of creating an "integrated urban resort," as quoted in a July, 2017 LA Times interview by Roger Vincent (see below). However, neither Heyman nor his company have ever properly presented this full plan for an "integrated urban resort" to the City Planning Department, Planning Commission, City Council, or the public, thus abrogating the rights of public input and review under CEQA and engaging in improper project piecemealing.

Response to Unite Here 2

For purposes of CEQA coverage, a "project" is defined as comprising "the whole of an action" that has the potential to result in a direct or reasonably foreseeable indirect physical change to the environment. (CEQA Guidelines § 15378(a).) Thus, the term "project" refers to the activity for which approval is sought, not to each separate governmental approval that may be required for the activity to

occur. (CEQA Guidelines § 15378(c).) Under this definition of a project, the lead agency must describe the project to encompass the entirety of the activity that is proposed for approval. This ensures that all potential impacts of the proposed project will be examined before it is approved. (CEQA Guidelines § 15378(a), (d).) The project description should not include existing, ongoing activities not proposed for approval even though they may be related to the activity that is proposed for approval. (*El Dorado County Taxpayers for Quality Growth v. County of El Dorado* (2004) 122 Cal.App.4th 1591; see also, *Fat v. County of Sacramento* (2002) 97 Cal.App.4th 1270.) Related activities that are similar in nature and that serve the same purpose are separate projects (as opposed to a single project) if they are independently considered for approval and one activity is not a foreseeable consequence of the other. (*Sierra Club v. West Side Irrig. Dist.* 2005) 128 Cal.App.4th 690 [city's agreements with two water districts for assignments of rights to Central Valley Project water were separate projects because the assignments were independent of each other and were approved by separate irrigation districts].)

In *Laurel Heights v Regents of Univ. of Cal.* (1988) 47 Cal.3d 376, the court set forth the standards for determining whether reasonably foreseeable future activities must be included in a project description and for determining whether the impacts of those activities must be analyzed in an environmental document. The court established a two-pronged test (*Id.* at 396):

We hold that an EIR must include an analysis of the environmental effects of future expansion or other action if: (1) it is a reasonably foreseeable consequence of the initial project; and (2) the future expansion or action will be significant in that it will likely change the scope or nature of the initial project or its environmental effects.

This standard is consistent with the principle that environmental considerations do not become submerged by chopping a large project into many little ones – each with a minimal potential impact on the environment – which cumulatively may have disastrous consequences. (*Bozung v. Local Agency Formation Com.* (1975) 13 Cal.3d 263, 283-284.)

For the first prong, the Project is not a reasonably foreseeable consequence of the Dream hotel and/or the Tommie hotel projects because each activity can operate successfully and without the development of the other. Moreover, neither the Project, the Dream hotel nor the Tommie hotel are conditioned upon completion of the other in the way that other piecemealing CEQA cases have articulated. (*Tuolumne County Citizens for Responsible Growth, Inc. v. City of Sonora* (2007) 155 Cal.App.4th 1214 [because there was a strong connection between the road alignment and the completion of the proposed home improvement center, the court concluded that the home improvement center and the road alignment were part of a single CEQA project, even though they could have been completed separately]; *El Dorado County Taxpayers for Quality Growth*, 122 Cal.App.4th at 1600 [future expansion was not a foreseeable consequence of project approval because decision to allow future expansion would depend more on environmental, social, and political factors].)

Put succinctly, all three hotel projects are legally required to be independently considered and not a foreseeable consequence of the other. The hotels have independent utility, are located on separate legal lots and, in the case of the Tommie hotel, located on a separate city block, and are not predicated on each other. Denial of one would not eliminate the effectiveness of the other two. The prior approval of the Tommie hotel and Dream hotel projects and its current independent commercial use demonstrates

severable utility of each hotel project. Moreover, this evidence demonstrates this is not a piecemeal approach, but a conscientious approach to develop separate parcels with similar uses.

For the second prong concerning a change of the initial project, the Project would not change neither the Tommie nor the Dream hotels, and vice versa. As stated above, the City has previously considered and approved the development of the Tommie hotel and Dream hotel projects; the Project's use was neither included nor intended to be a part of the original development of those separately-operated hotels. Furthermore, the Project will not expand the density and/or intensity that is included in the current Tommie hotel and Dream hotel configurations.

Unite Here Comment 3

Traffic Impacts & Cumulative Analysis

MND improperly dismisses future-with-project impacts, and cumulative traffic impacts. The traffic assessment indicates at least 4 significant traffic impacts, at the Hollywood and Wilcox intersection, and the 4A Selma and Wilcox intersection, and for 4B Selma and Wilcox intersection. The stated mitigations are speculative, or based in voluntary action of others neither the city nor the applicant can control or guarantee. Their ephemeral nature of proposed "mitigations" in the Transportation Demand Management and Monitoring Program (TDMMP) for the identified traffic impacts are not brought below a threshold of significance within the scope of the project.

Mitigations of significant impacts cannot be differed in this way. Even if implemented there is no guarantee the TDMMP will function to the levels desired or expected; thus, the project would create significant impacts that would then be incredibly difficult to correct or mitigate effectively. The trip reduction credits applied to analysis within the MND (70% to the 1,809 sq.ft restaurant, 60% to the rooftop bar) represent a 24% total reduction in estimated car trips and are not properly justified, masking other potentially significant impacts from traffic generated by the operation of the hotel.

Response to Unite Here 3

The proposed mitigation for significant impacts at Selma Avenue and Wilcox Avenue is, as stated, implementation of a Transportation Demand Management Plan (TDM Plan) included as MM-Traffic-2 in the MND. The goals of a TDM Plan is to reduce the number of vehicles in and out of the area. The City of Los Angeles Department of Transportation (LADOT) provides a list of potential trip generation measures in their Traffic Impact Study Guidelines, December 2016 (Traffic Guidelines). These Traffic Guidelines, under the Transportation Mitigation Measures Heading, state: "*In addition to traditional traffic flow considerations, mitigation programs must primarily aim to minimize the demand for trips by single-occupancy vehicles through transportation demand management (TDM) strategies.*" (Traffic Guidelines, pg. 18.) The proposed TDM Plan to mitigate Project impacts is in keeping with this goal (Project Plan).

The mitigation monitoring of the TDM Plan includes annual review of the effectiveness of the Project Plan. Requirements are to conduct counts to assure that the TDM goals, which reduce the significant impact below significance, are met. Traditionally, if they are not met, an opportunity to modify the Project

Plan with another monitoring within six (6) months is required. If the TDM goals are still not met, penalties will be implemented.

Mitigation is not deferred with the TDM Plan. (*Citizens for a Sustainable Treasure Island v. City & County of San Francisco* (2014) 227 Cal.App.4th 1036, 1059; *Friends of Oroville v. City of Oroville* (2013) 219 CA4th 832, 838 [a mitigation performance standard is sufficient if it identifies the criteria the agency will apply in determine that the impact will be mitigated].) An obligation to reduce vehicle trips is required with annual monitoring. If the monitoring report indicates that goals are not met, penalties are implemented. This will repeat annually as the Project demonstrates compliance or refines the mitigation plan and they can meet the TDM goals.

As stated in the Project traffic study, the ITE trip generation rates are estimated without regard for the nature of the Project's vicinity in terms of transit, walking, or interaction with the traffic on the surrounding roadways. Project trip reduction credits were noted in the summary trip generation table. Internal trips reductions are for persons who are already on the site and go to another venue on site. This practice does not create a new vehicle trip. A 50% internal trip credit was approved by LADOT and applied to the restaurants because it is highly likely that half or more of the patrons will be guests of the hotel. Some of the patrons of the restaurants will not be driving directly to the site to eat as their main destination point. Instead, they may be passing by the site on their way to or from a main destination point. An estimated and approved by LADOT reduction for a 20% pass-by rate for the ground floor restaurant and 10% pass-by rate for the rooftop restaurant/bar. Note that the pass-by credits are not applied at the nearest intersection to the site where turning movements may be needed to access the site.

Unite Here Comment 4

Additionally, the MND Future Without Project using Current Baseline identifies that six of the ten studied intersections would be at Level of Service E or F during AM and PM peaks by 2020. This MND fails to address the cumulative impacts on traffic from this project plus the dozens of other proposed projects. While a project-specific Environmental Impact Report may be unable to answer every problem arising from the vast array of new development occurring in Hollywood, it is imperative upon DCP and the City to undertake a full and comprehensive cumulative traffic impact study immediately, and with this project.

The State Department of Transportation has repeatedly encouraged the city to do this in letters filed on several other nearby projects (such as Crossroads Hollywood, see attached). By failing to properly study potentially significant cumulative impacts of this and related projects (including adjacent projects *by the same applicant*), this MND serves to mask those potential impacts for the whole of the Hollywood plan area and vital commercial corridors on Sunset and Hollywood Boulevards.

Response to Unite Here 4

The City addresses cumulative impacts in the future analysis scenario. An extensive effort to identify other projects in the study area is prepared with information from LADOT and Department of City Planning. These related projects traffic volumes are added to the study intersections determined in the Future Without Project evaluation. Any improvements to the street system that may be implemented by

the related projects are not included in the future analysis. In addition, a 1% per year ambient growth rate is added to the existing traffic conditions to account for any growth in the area and/or potential additional related projects not identified in the search for reasonably foreseeable related projects. This 1% ambient growth rate that is included in the analysis is conservative because the County of Los Angeles has estimated a smaller growth rate than 1%. Based on the Los Angeles County Congestion Management Program (CMP) estimated traffic growth rates for the West/Central Los Angeles area is 0.17% per year between 2015 and 2025. A copy of the CMP growth factor from Appendix D, Guidelines for CMP Transportation Impact Analysis, 2010 Congestion Management Program for Los Angeles County is attached as Exhibit A. This worst-case consideration of future conditions inflates the volume to capacity and level of service at the study intersections. LADOT provides a sliding scale for significant traffic impacts. The higher the level of service (LOS), the fewer Project trips that can be added before a significant impact is identified. In this way, the cumulative traffic by the related projects is addressed by the Project.

The State Department of Transportation letter, attached hereto as Exhibit B includes the number of vehicle trips created by the Crossroads project. There is then a statement that cumulative impacts on the mainline would occur and a reminder to the decision-makers that they should be aware of the cumulative impacts on the mainline and be prepared to mitigate cumulative impacts in the future. As stated in the previous paragraph, the City addresses cumulative impacts with increase in the background growth for future conditions with related project and ambient growth. This increase in the background growth allows for less growth by a proposed project before a significant impact occurs. If a significant impact occurs in future conditions with the Project, the impact would then be required to mitigate to a level below significance or disclose a significant unavoidable impact.

Unite Here Comment 5

GHG/Climate Analysis Is Flawed and Outdated

MND does not adequately assess potentially significant impacts on air quality and greenhouse gas emissions from mobile sources, fixed sources, and construction activities. As the project as proposed is not in compliance with current zoning as implemented by both the Hollywood Community Plan and site-specific D limitation imposed via ordinance, the conclusion that there is no inconsistency with SCAQMD Air Quality Management Plan, or the rules in use as drafted by the SCAQMD is also in error and may reach potentially significant impacts if the project is built without mitigation measures.

The Project's GHG emissions are likely significant, and the refusal to include any climate change mitigation measures is dubious. Also, although the MND identifies GHG reduction strategies set forth in the Climate Change Scoping Plan, 2016-2040 SCAG RTP/SCS Actions and Strategies, the Green LA Plan (DEIR, 4.4-53), and the LA Sustainable City pLAN, the MND fails to include the vast majority of the measures in the documents as design features or as mitigation measures. Moreover, the Green LA Plan and LA Sustainable City pLAN were not designed to comply with recent GHG laws like SB32, and were never formally reviewed or evaluated in any CEQA document.

Response to Unite Here 5

The comment challenges the air quality and GHG impacts conclusions for the Project in the MND based on unsubstantiated opinion. Under Public Resources Code section 21082.2(c), “[a]rgument, speculation, unsubstantiated opinion or narrative, evidence which is clearly inaccurate or erroneous, or evidence of social or economic impacts which do not contribute to, or are not caused by, physical impacts on the environment, is not substantial evidence. Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts.”

The Project would be consistent with the growth projections in the South Coast Air Quality Management Plan. The site’s zoning and Community Plan land use designations allow for the hotel and restaurant uses. As such, their contribution to cumulative air quality impacts in the region have been accounted for in the air quality planning for the South Coast Air Basin.

Currently, there are no applicable California Air Resources Board, South Coast Air Quality Management District (SCAQMD), or City’s significance thresholds or specific reduction targets, 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 GHG 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, has determined that the Project’s contribution to cumulative GHG emissions and global climate change would be less than significant if the Project is consistent with the applicable regulatory plans and policies to reduce GHG emissions, not limited to building efficiency measures. The Project would not conflict with any applicable plan, policy, or regulation of an agency adopted for the purpose of reducing the emissions of GHGs. In the absence of adopted standards and established significance thresholds, and given this consistency, the MND concludes based on substantial evidence that the Project’s impacts are not cumulatively considerable.

As an initial matter, there is no requirement that the Project be “GHG neutral.” The MND contains the analysis of the Project’s GHG impacts required under CEQA. It is a generally accepted fact that shifting a GHG-emitting activity from one location to another creates no net change in cumulative GHG emissions. A fundamental difficulty in the analysis of GHG emissions is the global nature of the existing and cumulative future conditions. Changes in GHG emissions can be difficult to attribute to a particular planning program or project because the planning effort or project may cause a shift in the locale for some type of GHG emissions, rather than causing “new” GHG emissions. As a result, there is a lack of clarity as to whether an individual project’s GHG emissions represent a net global increase, reduction, or no change in GHGs that would exist if the project were not implemented. The analysis of the Project’s GHG emissions is particularly conservative in that it assumes that all of its GHG emissions are new additions to the atmosphere when they are likely not.

Unite Here Comment 6

Also, the GHG analysis and conclusions in MND is outdated and needs to be recirculated in light of *Newhall Ranch* and the new SB32 targets. In 2016, the Legislature passed SB 32, which codifies a 2030 GHG emissions reduction target of 40 percent below 1990 levels. The MND must also consider the 2050 long-term reduction goal set forth by Executive Order S-3-05, which

requires California to reduce its statewide emissions to 80 percent below 1990 levels by 2050. By failing to demonstrate compliance with these additional reduction goals, the Project's GHG impact analysis is incomplete and inadequate, and the Project's GHG emissions are insufficiently addressed and mitigated.¹

Response to Unite Here 6

The climate change analysis is consistent with the California Supreme Court's ruling in *Ctr. For Biological Diversity v. Cal. Dept. of Fish and Wildlife* (2015) 62 Cal.4th 204 (*Newhall Ranch*) case and does not base its significance finding on comparison to a business-as-usual approach. Rather, it discloses emissions associated with construction and operation of the project for informational purposes and bases its significance findings on CEQA Guidelines and a focus on the Project's consistency with State, regional, and local climate action plans. The GHG analysis analyzes how the Project would be consistent with the goal of reducing 1990 emissions by 40% by 2030 and beyond, as mandated by Executive Order B-30-15. Specifically, the analysis finds that the Project's post-2020 emissions trajectory is expected to follow a declining trend, consistent with the 2030 and 2050 targets and Executive Orders S-3-05 and B-30-15.

Unite Here Comment 7

Project-specific information disclosed in the IS/MND appears to be omitted from the air model used in Appendix C. As a result, the project's construction and operational emissions are underestimated. A Project-specific EIR should be prepared to include an updated GHG analysis that adequately evaluates the impacts that the construction and operation of the Project will have on global climate change and the State's 2035 emissions targets. This apparent discrepancy in land uses between the IS/MND and the air model provided in Appendix C presents a significant issue.

Response to Unite Here 7

The Project as analyzed in the air quality model is consistent with the traffic study and uses the SCAQMD's approved and accepted CalEEMod model for analyzing project impacts for both construction and operations. The GHG analysis does analyze how the Project would be consistent with the 2020 and later goals from both Executive Orders and climate change legislation. For example, the analysis looks at

¹ We also question the MND's reliance on statewide mobile source reduction programs and, most seriously, treating measures having nothing to do with the Project as mitigation for the Project impacts. See *California Air Pollution Control Officers Association, Quantifying Greenhouse Gas Mitigation Measures* pp. 32 and A3 at <http://www.capcoa.org/wp-content/uploads/2010/11/CAPCOA-Quantification-Report-9-14-Final.pdf> ("in order for a project or measure that reduces emissions to count as mitigation of impacts, the reductions have to be 'additional.' Greenhouse gas emission reductions that are otherwise required by law or regulation would appropriately be considered part of the existing baseline. Thus, any resulting emission reduction cannot be construed as appropriate (or additional) for purposes of mitigation under CEQA.") This concept is known as additionality – greenhouse gas emission reductions that are otherwise required by law or regulation are appropriately considered part of the baseline and, pursuant to CEQA Guideline § 15064.4(b)(1), a new project's emission should be compared against that existing baseline. See http://resources.ca.gov/ceqa/docs/Final_Statement_of_Reasons.pdf. Emissions reductions that would occur without the Project should not normally qualify as Project mitigation. Thus, this Project needs to do its own fair share, with enforceable, detailed Project-specific mitigations – aside from existing statewide and local measures -- governed by performance standards to guarantee efficacy.

the goals of reducing 1990 emissions by 40% by 2030 and beyond, as mandated by Executive Order B-30-15. The analysis finds that the Project's post-2020 emissions trajectory is expected to follow a declining trend, consistent with the 2030 and 2050 targets and Executive Orders S-3-05 and B-30-15.

Unite Here Comment 8

The MND Ignores The Need For Housing At The Site

The Project is zoned for apartment or residential. MND p. 3-117. Yet no housing is provided. According to the UCLA Ziman Center, Los Angeles housing prices have grown about four times faster than incomes since 2000 and "affordable housing production and preservation needs to accelerate." <http://www.anderson.ucla.edu/Documents/areas/ctr/ziman/2014-08WPrev.pdf>

Los Angeles is the least affordable rental market in the country, according to Harvard University's Joint Center for Housing Studies, and its been ranked the second-least affordable region for middle-class people seeking to buy a home. <http://www.latimes.com/opinion/editorials/la-ed-affordable-housing-part-1-20150111-story.html>

The City of Los Angeles' Housing Needs Assessment indicates that through September 30, 2021, 20,426 additional housing units are needed in the City for very low-income, 12,435 for low-income, and 13,728 are for moderate income. <http://planning.lacity.org/HousingInitiatives/HousingElement/Text/Ch1.pdf>

The City's General Plan reflects this urgent need for affordable housing. See *City of Los Angeles General Plan Housing Element* Goal 1 "A City where housing production and preservation result in an adequate supply of ownership and rental housing that is safe, healthy and affordable to people of all income levels, races, ages, and suitable for their various needs"; Policy 1.1.1 "Expand affordable home ownership opportunities and support current homeowners in retaining their homeowner status"; Policy 1.1.2 Expand affordable rental housing; Objective 2.5 "Promote a more equitable distribution of affordable housing opportunities throughout the City"; Policy 2.5.1 "Target housing resources, policies and incentives to include affordable housing in residential development, particularly in mixed use development, Transit Oriented Districts and designated Centers"; and Policy 2.5.2 "Foster the development of new affordable housing units citywide and within each Community Plan area". <http://planning.lacity.org/HousingInitiatives/HousingElement/Text/Ch6.pdf>.

The same affordability concerns must be addressed under the governing Hollywood Community Plan and Redevelopment Plan. See *City of Los Angeles Hollywood Community Plan* Objective 3 "To make provision for the housing required to satisfy the varying needs and desires of all economic segments of the Community . . . [a]dditional low and moderate-income housing is needed in all parts of this Community"; *Hollywood Redevelopment Plan* Goal 300.9 "Provide housing choices and increase the supply and improve the quality of housing for all income and age groups, especially for persons with low and moderate incomes; and to provide home ownership opportunities and other housing choices which meet the needs of the resident population"; Goal 410.4 "At least fifteen percent (15%) of all new or rehabilitated units developed within the Project Area by public or private entities or persons other than the Agency shall be for

persons and families of low or moderate income; and of such fifteen percent, not less than forty percent (40%) thereof shall be for very low income households”; and Goal 412 “The social needs of the community include but are not limited to the need for day care facilities, housing for very low and low income persons including the elderly, the homeless, and runaways, educational and job training facilities, counseling programs and facilities.”
<http://planning.lacity.org/complan/pdf/HwdCpTxt.pdf>; <http://www.crala.org/internet/site/Projects/Hollywood/upload/HollywoodRedevelopmentPlan.pdf>.

With no housing component, this Project likely is General, Community and Redevelopment Plan inconsistent, not in the “general welfare,” and the City may be paying mere lip service to the mandates of its governing Plans. This matters to the 28,000 members of Local 11, who wants to ensure that our members and all fellow Angelenos can afford to live in Los Angeles. This Project does nothing to address these affordable housing goals and policies, and the MND is silent on the affordable housing issue and inconsistency related thereto. *The MND should be recirculated to meaningfully address the affordable housing issue, including a housing nexus study.*

Response to Unite Here 8

This comment is a recitation of an unverified study and does not raise any specific environmental issues concerning the Project’s compliance with federal, state, and/or local regulation, and, therefore, does not require a response. (*Citizens for E. Shore Parks v. State Lands Comm’n* (2011) 202 Cal.App.4th 549 [comments that do not raise a significant environmental question need not be responded to].) The Project complies with federal, state and local regulations.

Additionally, this comment does not allege any inconsistency with mandatory objectives or policies related to either the General Plan, the Community Plan or the Redevelopment Plan. Moreover, an applicant is not required to incorporate or analyze any or all of the commenter’s land use suggestions, such as the inclusion of an affordable housing component into this Project. (*In re Bay-Delta Programmatic Env’t Impact Report Coordinated Proceedings* (2008) 43 Cal.4th 1143, 1157, 1164 [the court ruled that the lead agency did not have to assess a use proposed by the petitioners when it would be inconsistent with the fundamental purpose of the project].) The Project at hand is intended to attract more tourists in effort to further the goal of enhancing the Community Plan area. The inclusion of affordable housing would be wholly inconsistent with this primary purpose of the Project, and, therefore, need not be analyzed or implemented.

Unite Here Comment 9

Land Use Findings Cannot Be Made

The CEQA, land use, and other concerns addressed in this letter must be adequately addressed to make the required City Code findings. The entitlements are discretionary, not by right. If the numerous errors and deficiencies discussed herein are not cured, City decisionmakers should reject Relevant Group’s requested discretionary entitlements because the findings cannot be made. Among the specific findings required include:

- The Project conforms with the public necessity, convenience, general welfare and good

zoning practice (see e.g., GPA under LAMC § 12.32.C; VTT under 17.15.C.2; ZC under § 12.32.C.3; CUPs under § 12.24.E.2);

- will enhance the built environment in the surrounding neighborhood or perform a function/service that is essential or beneficial to the community, city, or region (see e.g., CUPs under 12.24.E.1);
- compatible with and will not adversely affect or further degrade adjacent properties (see e.g., CUPs under 12.24.E.2; SPR under § 16.05.F.2);
- substantially conforms to the purpose, intent, and provisions of the General Plan and applicable community or specific plans (see e.g., CUP under LAMC § 12.24.E.3; SPR under § 16.05.F.1).

Response to Unite Here 9

This comment correctly identifies the controlling state and local regulations for the Project-related discretionary approvals sought. As identified in Los Angeles Municipal Code (LAMC), the approval of the Project's entitlements and MND are discretionary determinations that require the decision-maker to make certain findings in compliance with LAMC, CEQA and other land use and planning laws. These required findings include a determination that Project is "consistent and in harmony with the General Plan, preventing adverse effects, and [will not] adversely affect the pertinent community or public health" and is in compliance with the design standards outlined in LAMC section 17.05. Additionally, under the CEQA, the City must find that the Project would not have a significant effect on the environment based on the Project's MND.

As evidenced by the record, the required findings were made and are supported by substantial evidence in the document and in the record.

Unite Here Comment 10

Conclusion

The MND for this project leaves many potentially significant impacts unaddressed on traffic impacts from the project (cumulative and project specific); Air Quality, Greenhouse Gas Emissions, and cumulative project impacts, and the dangers of project piecemealing for what is in actuality a single 2-300 Million Dollar development. The project requires a full Environmental Impact Report be done to properly and completely assess and analyze the myriad significant and cumulative impacts it would have on the environment and residents. The MND is woefully incomplete and should not be adopted. *A full Project-Specific EIR must be prepared.*

Response to Unite Here 10

The comment constitutes a conclusion to the comment letter. The comment letter does not provide substantial evidence that supports a finding that further CEQA review of the Project beyond the MND is required or the Project may have a significant environmental impact. As analyzed in the MND, the impacts of the Project are less than significant.

15350 Sherman Way, Suite 315
Van Nuys, CA 91406
Phone 310-469-6700

Exhibit A

Exhibit D-1
GENERAL TRAFFIC VOLUME GROWTH FACTORS

<u>RSA</u>	<u>Representative City/Place</u>	<u>2010</u>	<u>2015</u>	<u>2020</u>	<u>2025</u>	<u>2030</u>	<u>2035</u>
7	Agoura Hills	1.000	1.020	1.041	1.052	1.063	1.075
8	Santa Clarita	1.000	1.145	1.291	1.348	1.405	1.461
9	Lancaster	1.000	1.214	1.427	1.676	1.924	2.172
10	Palmdale	1.000	1.134	1.267	1.363	1.458	1.553
11	Angeles Forest	1.000	1.151	1.301	1.394	1.487	1.580
12	West S.F. Valley	1.000	1.027	1.054	1.068	1.083	1.097
13	Burbank	1.000	1.024	1.049	1.063	1.077	1.092
14	Sylmar	1.000	1.024	1.049	1.071	1.093	1.114
15	Malibu	1.000	1.027	1.054	1.075	1.096	1.117
16	Santa Monica	1.000	1.014	1.028	1.038	1.049	1.059
17	West/Central L.A.	1.000	1.007	1.014	1.024	1.034	1.044
18	South Bay/LAX	1.000	1.013	1.026	1.035	1.044	1.053
19	Palos Verdes	1.000	1.025	1.051	1.061	1.071	1.081
20	Long Beach	1.000	1.076	1.152	1.160	1.168	1.177
21	Vernon	1.000	1.073	1.146	1.158	1.170	1.182
22	Downey	1.000	1.052	1.104	1.116	1.127	1.139
23	Downtown L.A.	1.000	1.009	1.018	1.030	1.042	1.054
24	Glendale	1.000	1.014	1.027	1.041	1.055	1.068
25	Pasadena	1.000	1.041	1.082	1.098	1.115	1.131
26	West Covina	1.000	1.023	1.046	1.066	1.086	1.106
27	Pomona	1.000	1.081	1.161	1.190	1.219	1.248

$$(1.024 - 1.007)/10 \text{ years} \times 100 = .017\%$$

Exhibit B



Alejandro Huerta <alejandro.huerta@lacity.org>

SCH # 2015101073 Crossroad Hollywood

1 message

Lin, Alan S@DOT <alan.lin@dot.ca.gov>

Thu, Jun 15, 2017 at 7:56 AM

To: OPR State Clearinghouse <State.Clearinghouse@opr.ca.gov>

Cc: "alejandro.huerta@lacity.org" <alejandro.huerta@lacity.org>, "Watson, DiAnna@DOT" <dianna.watson@dot.ca.gov>, "Kibe, Joseph@DOT" <joseph.kibe@dot.ca.gov>, "Saghafi, Abdolhossein@DOT" <abdi.saghafi@dot.ca.gov>, Patrick Gibson <PGibson@gibsontrans.com>, Sarah Drobis <SDrobis@gibsontrans.com>, Emily Wong <ewong@gibsontrans.com>

Hard copy to the Lead Agency.

Alan Lin, P.E.

Project Coordinator

State of California

Department of Transportation

District 7, Office of Transportation Planning


Mail Station 16

100 South Main Street

Los Angeles, CA 90012

[\(213\) 897-8391](tel:(213)897-8391) Office

[\(213\) 897-1337](tel:(213)897-1337) Fax

 LA-2017-00912-DEIR Crossroad Hollywood.pdf
873K

DEPARTMENT OF TRANSPORTATION

DISTRICT 7
100 S. MAIN STREET, MS 16
LOS ANGELES, CA 90012
PHONE (213) 897-8391
FAX (213) 897-1337
TTY 711
www.dot.ca.gov



*Serious Drought.
Making Conservation
a California Way of Life.*

June 15, 2017

Mr. Alejandro Huerta
Department of City Planning
City of Los Angeles
200 N. Spring Street, Room 750
Los Angeles, CA 90012

RE: Crossroad Hollywood
SCH # 2015101073
Ref. IGR/CEQA No. 151044AL-NOP
GTS # LA-2017-00912-DEIR-AL
Vic. LA-101/PM 6.24 to 7.683

Dear Mr. Huerta:

Thank you for including the California Department of Transportation (Caltrans) in the environmental review process for the above referenced project. The project is to redevelop a mixed-use development that integrates Crossroads of the World, a designated City Cultural-Historic Monument.

The Project would retain, preserve, and rehabilitate Crossroads of the World and remove all other existing uses on the Project Site, including surface parking lots and approximately 172,573 square feet of existing floor area consisting of 84 residential units and commercial/retail and office uses. The Project would include eight new mixed-use buildings with residential, hotel, commercial/retail, office, entertainment, and restaurant uses, and one new stand-alone retail building. Upon buildout, the Project would include approximately 1,432,500 square feet of floor area consisting of 950 residential units, 308 hotel rooms, approximately 95,000 square feet of office uses, and approximately 185,000 square feet of commercial/retail uses.

Senate Bill 743 (2013) mandated that CEQA review of transportation impacts of proposed development be modified by using Vehicle Miles Traveled (VMT) as the primary metric in identifying transportation impacts for all future development projects. However, the City may use the Level of Service (LOS) methodology until The Governor's Office of Planning and Research (OPR) complete its CEQA Guideline to implement SB743 (https://www.opr.ca.gov/s_sb743.php).

Caltrans is aware of challenges that the region faces in identifying viable solutions to alleviating congestion on State and Local facilities. With limited room to expand vehicular capacity, this development should incorporate multi-modal and complete streets transportation elements that will actively promote alternatives to car use and better manage existing parking assets. Prioritizing and allocating space to efficient modes of travel such as bicycling and public transit can allow streets to transport more people in a fixed amount of right-of-way.

Caltrans supports the implementation of complete streets and pedestrian safety measures such as road diets and other traffic calming measures. Please note the Federal Highway Administration (FHWA) recognizes the road diet treatment as a proven safety countermeasure, and the cost of a road diet can be significantly reduced if implemented in tandem with routine street resurfacing.

We have the following comments after review the environmental document:

1. CMP methodology is not adequate when analyzing freeway impacts. Consultation with Caltrans is necessary for the Lead Agency and traffic consultant to determine significance criteria of the State facilities for all future projects.
2. The project will generate 15,005 daily trips and 1,283/3879 AM/PM peak hour trips. There are 145 related projects in the project vicinity. Therefore, cumulative impacts on the mainline would occur. As a reminder, the decision makers should be aware of this issue and be prepared to mitigate cumulative traffic impacts in the future.
3. On June 6, 2017, traffic consultant presented a proposal regarding traffic impact locations and potential mitigation measures for Caltrans' consideration. The developer is willing to make a fair share contribution toward future improvements on the State facility, within the Hollywood community area. The developer agrees to sign a Traffic Mitigation Agreement with Caltrans prior to circulation of the FEIR.
4. Storm water run-off is a sensitive issue for Los Angeles and Ventura counties. Please be mindful that projects should be designed to discharge clean run-off water. Additionally, discharge of storm water run-off is not permitted onto State highway facilities without any storm water management plan.
5. Transportation of heavy construction equipment and/or materials, which requires the use of oversized-transport vehicles on State highways, will require a transportation permit from Caltrans. It is recommended that large size truck trips be limited to off-peak commute periods.

Caltrans will continue to work with the Lead Agency and/or traffic consultant closely in an effort to evaluate traffic impacts, identify potential improvements, and complete a Traffic Mitigation Agreement before the FEIR release. If you have any questions, please feel free to contact Alan Lin the project coordinator at (213) 897-8391 and refer to GTS # 07-LA-2017-00912AL-DEIR.

Sincerely,



DIANNA WATSON
IGR/CEQA Branch Chief

cc: Scott Morgan, State Clearinghouse