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File Number: 49JZ-228501

February 22, 2019

VIA ELECTRONIC MAIL ONLY

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

Re: Response to Comment Letters (Council File No. 18-0873)

Dear Honorable City Councilmembers:

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

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

1. Letter submitted by The Silverstein Law Firm on behalf of Sunset Landmark, dated November 27, 2018.

2. Letter submitted by Gideon Kracov on behalf of Rosa Aleman and Jose Contreras, dated January 23, 2019.

The purpose of this letter is to respond to the comments raised in the two comment letters to the extent the letters include any new assertions and information. To streamline the responses, we reference those prior responses wherever appropriate. We respectfully request that this letter be included in the administrative record and be considered by the City Council at the meeting scheduled for February 26, 2019.

I. Response to Sunset Landmark

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

The Silverstein Law Firm letter alleges inadequacies in the Mitigated Negative Declaration's ("MND") noise analysis. In response to these alleged issues, Applicant sought further analysis from expert noise consultants. The construction noise analysis is addressed in a report prepared by DKA Planning (**Attachment A**). As the report shows, DKA Planning evaluated the issues alleged by the Silverstein Law Firm and its hired consultant, Acentech, and concluded that the existing ambient noise environment was accurately discussed, the correct sensitive receptors were used for the study, and the construction noise impacts were adequately analyzed. The operational noise concerns regarding the hotel rooftop deck is addressed in a report prepared by RGD Acoustics (**Attachment B**). RGD Acoustics concludes in this study that the operational noise impacts associated with the proposed hotel rooftop as currently designed would be less than significant.

For the reasons described above, and explored in depth in the reports from DKA Planning and RGD Acoustics, the IS/MND's noise analysis is adequate.

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

The comment letter from the Silverstein Law Firm notes that the Applicant's response letter to PLUM Committee dated November 26, 2018 relies on *Citizens Coalition Los Angeles v. City of Los Angeles* (2018) 26 Cal.App.5th 561, a since de-published case. The Silverstein Law Firm argues that reliance on this case is thus misguided.

Although the reasoning in *Citizens Coalition* cannot be cited in a court of law, nothing prevents the City from finding it persuasive or relying on it for guidance. In any event, the Applicant's PLUM letter clearly does not rely on the case for precedential value. It cites the *Citizens Coalition* case solely for its summary of eight rules to determine whether a consequence is reasonably foreseeable. Each of these eight rules, however, is set forth in either a statute or a published decision.[1] Reliance on these rules, therefore, is proper. In sum, the fact that the *Citizen Coalition* case is not published is irrelevant.

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

The comment letter from the Silverstein Law Firm contends that the City violated Sunset Landmark's due process and fair hearing rights because it did not make four documents publicly

[1] The eight rules to determine whether a consequence is reasonably foreseeable are set forth in the following sources: Cal. Code Regs., tit. 14 § 15165; *Banning Ranch Conservancy v. City of Newport Beach* (2012) 211 Cal.App.4th 1209; *City of Santee v. County of San Diego* (1989) 214 Cal.App.3d 1438; *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376; *City of Antioch v. City Council* (1986) 187 Cal.App.3d 1325; *Christward Ministry v. County of San Diego* (1993) 13 Cal.App.4th 31; *Pala Band of Mission Indians v. County of San Diego* (1998) 68 Cal.App.4th 556; *Aptos Council v. County of Santa Cruz* (2017) 10 Cal.App.5th 266.

available on the Council File Management System ("CFMS")–the City Council's online database–until November 27, 2018 prior to the afternoon PLUM Committee meeting. The four documents include, (1) Department of City Planning's Letter to the File dated November 21, 2018; (2) Planning Department Transmittal Cover Sheet dated November 2018; (3) Communication from Applicant Representative dated November 26, 2018 (published online the day after it was received); and (4) Communication from The Silverstein Law Firm dated November 26, 2018 (same). The City took a reasonable amount of time (i.e., one day) to scan and post the letters online yet the Silverstein Law Firm alleges that the City and the Applicant purposely withheld these documents, including the Silverstein Law Firm's own submissions, to impair the Firm's ability to respond to the claims and provide evidence in rebuttal. the Silverstein Law Firm was aware of what was contained in its own letter and the City processed Appellants' and Applicant's letters in the same way and on the same schedule. This argument has no merit and did not prejudice Appellant in any way.

To start with, the City's standard practice is to have the Department of City Planning staff orally present the project, including any appeals, during the PLUM committee meeting. After this, appellants have the opportunity to respond and address the PLUM Committee on the record. In accordance with this standard practice, the Department of City Planning staff orally presented its response to the Appeals during its presentation to the PLUM Committee on November 27, 2018 and the Silverstein Law Firm, representing Sunset Landmark, was able to respond on the record. The fact that the Department of City Planning staff prepared a Letter to the File dated November 21, 2018, which memorialized the conclusions of its presentation, and that, as a courtesy, the City Clerk posted this document to CFMS prior to the afternoon meeting on November 27, 2018, did not infringe on Sunset Landmark's rights. A City letter or staff report addressed to the PLUM Committee regarding the appeals was not required. If anything, the Letter to the File, which was made a part of the permanent file, only makes the Department's rationale more accessible to the public.

The Los Angeles Municipal Code as well as PLUM Committee rules and policies furthermore do not impose submittal deadlines or any other limitations that would mandate the online posting of correspondence to CFMS. The public are permitted to submit testimony and written evidence to the PLUM Committee prior to and even at the PLUM Committee meeting. The Silverstein Law Firm itself submitted its letter to the City *at* the November 27, 2018 PLUM Committee meeting. If decision makers were required to make eleventh hour comment letters electronically available on the City's website prior to holding a hearing, project opponents could indefinitely delay decisions through endless comment letters. This proposition is untenable and not required by law.

Finally, while the Silverstein Law Firm claims violations of due process and fair hearing rights because they did not have ample time to review the four listed documents, that did not stop them from submitting a 468-page package, including a new technical report from their consultant Acentech, in opposition to the Project. Their many complaints were heard. To the extent they have more, the PLUM Committee is not the final decisionmaker on the matter; it is simply a recommending body of the City Council. As such, the Silverstein Law Firm will have the opportunity to submit further information before and at the final City Council meeting on the Project.

II. Response to Rosa Aleman and Jose Contreras

The comment letter from Rosa Aleman and Jose Contreras, who are residents living approximately 1,875 feet from the Site generally asserts that they will be adversely affected by environmental impacts caused by the Project. The comment letter also states without further explanation that they are concerned with the City's alleged piecemeal CEQA review of other projects proposed by the Applicant near the Site as raised by other Project opponents.

The comment letter attaches two letters responding to the City's and Applicant's response to appeals. One from Smith Engineering & Management dated January 24, 2019 and second from SWAPE dated January 24, 2019.

To evaluate these comments, the Applicant obtained additional analysis from Overland Traffic and CAJA Environmental Services. Overland Traffic, in its supplementary analysis (**Attachment C**), concluded that the TDM plan is adequate, the parking provided on-site complies with the requirements of the Los Angeles Municipal Code, and the MND's traffic analysis adequately analyzed cumulative impacts and ride-sharing services. Finally, CAJA Environmental Services evaluated the allegations in the SWAPE letter and concluded that the MND's greenhouse gas section adequately analyzed the Project's potential greenhouse gas impacts (see CAJA report, **Attachment D**).

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

Very truly yours,

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

SMRH:489571582.1
cc: May Sirinopwongsagon

Attachments

ATTACHMENT A

DOUGLASKIM+ASSOCIATES,LLC

February 22, 2019

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

Re: Responses to "Acentech" Comments on the Selma Wilcox Project

The following letter responds to a summary of comments presented by Acentech's review of the Selma Wilcox Project.

Definitions

1. The definition in the 2017 MND of an Equivalent Noise Level, Leq, is incorrect. The first sentence of the definition indicates "Leq is the average noise level on an energy basis for **any** specific time period." (Emphasis added). An Leq measured during the day does not represent the noise level during late night hours. Thus, the definition should state "…**a** specific time period…", not "…**any** specific time period…".

The comment makes a distinction without a difference. The MND does not claim or otherwise imply that an "Leq measured during the day" would "represent the noise level during late night hours," nor does it actually utilize daytime ambient noise measurements to represent late night conditions at and around the Project's local environment.

Existing Conditions

2. The existing ambient noise environment is not accurately discussed. Table 3.12-3 provides "existing ambient noise level," in terms of dBA Leq. No duration is identified in this table, which is required when stating Leq levels. In addition, since the Leq changes significantly depending on the time of day, the table should report when these measurements were conducted.

Noise reports containing detailed information and statistical data pertaining to the MND's noise measurements are contained in Appendix H. The time, date, and duration of each noise measurement can be found in these reports. The noise levels shown in Table 3.12-3 were measured during daytime on a Tuesday in order to characterize ambient noise conditions that could occur during the Project's construction hours. These measurements were taken during off-peak traffic hours when daytime ambient noise levels are lower. This was done to provide a conservative analysis of the Project's construction noise

during a time period when impacts (i.e. construction-related noise increases) would be more pronounced due to lower baseline ambient noise conditions.

3. On Page 3-148, the first paragraph below Table 3.12-3 states the ambient conditions are within 3 dBA of ambient noise levels measured for the 2015 Approved Project environmental analysis. However, the time and duration of the levels in both the 2017 analysis and the 2015 analysis are not reported. Additionally, since there is no figure showing measurement locations, and the descriptors are different, it is difficult to understand how these two sets of measurements correlate in time or location.

Noise reports containing detailed information and statistical data pertaining to the MND's 2017 noise measurements are contained in Appendix H. The time, date, and duration of each noise measurement can be found in these reports. Appendix H additionally contains a noise receptor map indicating the location of each 2017 noise measurement.

Ultimately, the significance of the Project's construction noise impact was determined with sole regard to the comparison of projected noise increases and 2017 baseline ambient noise conditions. Though a comparison of the impact with the 2015 analysis is included in the MND, this comparison was provided for general informational purposes only and was not material to the determination of significance.

Documents relating to the 2015 analysis, such as detailed noise measurement reports and a map of noise measurement locations, can be found in that analysis and its related appendices. As stated, relevant documents pertaining to the MND's 2017 noise measurements are contained in Appendix H.

4. Page 3-148, second paragraph below Table 3.12-3 discusses complications regarding developing an accurate picture of ambient noise levels. It indicates ongoing construction at the proposed project site as a complication with gathering sound data. Presumably the construction activities are associated with the Proposed Project. Since these activities are generated in large part by the applicant (who is responsible for other nearby construction activities), it shouldn't be a reason to not be able to measure and clearly document a 24-hour measurement. This deficiency further renders the MND inadequate and expands the fair argument that can be made that the project may have significant, unmitigable impacts, and that an EIR should be prepared.

24-hour noise measurements are not always feasible, practical, necessary, or even required. The L.A. CEQA Thresholds Guide does not require, specifically recommend or even suggest the 24-hour measurement of ambient noise levels. Thus, the MND's efforts to characterize 24-hour ambient noise conditions near the Project Site represent an initiative that goes beyond the recommendations of the L.A. CEQA Thresholds Guide, not a deficiency that "renders the MND inadequate." The MND fully discloses all reasonably available information as required by CEQA.

The MND specifically outlines why a 24-hour measurement was not feasible in the same paragraph referenced by the comment. Though ongoing construction was a consideration, the construction activities themselves were not the primary prohibiting factor. Rather, at the time of the analysis, the entire Project Site was "excavated to the depth of the planned three-level subterranean parking garage. As a result, noise monitoring equipment could not be safely positioned on-site and at-grade." Compounding the matter was the presence of perimeter construction barriers and fencing surrounding the site: there was no place to position 24-hour noise-measurement equipment without blocking public right of way (i.e.,

sidewalks or roadways adjacent to the Project Site). Because of this, the MND took what was considered by the lead agency to be the best alternative approach. As detailed in the subsequent paragraphs, periodic noise measurements were taken over the course of a day and the data was used "to represent ambient noise levels in five time bins to construct a 24-hour CNEL noise level." Furthermore, the MND provides a detailed description of the various noise sources and conditions that comprised the noise environment in order to further supplement the informational value of the noise data and the estimated 24-hour CNEL. The MND's use of CNEL weighting itself to "penalize" measured evening and late-night noise levels represents an additional layer of conservatism, as CNEL weighting compensates for humans' increased sensitivity to sound during hours that are generally used for sleep and relaxation as it pertains to residential environments. However, there are no residential uses at the location of the noise measurements. Rather, there are miscellaneous commercial and institutional uses that are not sensitive to the effects of evening and late-night noise levels on sleep and relaxation, or that are closed during those hours. As discussed by the MND, the hotels in the Project's vicinity also would not be adversely affected by noise levels during the hours penalized by CNEL.

Finally, the comment provides no evidence, much less substantial evidence, demonstrating how or why the MND's estimated 24-hour noise measurement is inaccurate or otherwise of no informational value, nor does it provide its own noise measurement(s) to contest the MND's finding. In fact, the comment does not even claim that the MND's estimated 24-hour noise measurement is inaccurate or that an actual 24-hour noise measurement would result in any different determination of significance.

5. Page 3-148, in the third paragraph below Table 3.12-3, no specific measurement location other than "an off-site location immediately adjacent to the Project Site, near the intersection of Selma Avenue and Wilcox Avenue." [sic] The location of the ambient noise measurement should be clearly identified in a figure.

The noise measurements were all taken at the same location at the northeast corner of Selma Avenue and Wilcox Avenue. The City does not require a figure showing the location of ambient noise measurements. However, one will be provided hereto for reference.

6. Page 3-148, the last paragraph, extending on to page 4-148 provides a general discussion that "noise from amplified bar, restaurant, and club music was generally not audible over the din of transportation noise sources..". What measurement period is this in reference to; Friday night, Saturday morning, or both? The 2015 indicates "During the evening, there is ambient noise from live music in nearby bars and restaurants.", implying the ambient noise level is at least partially controlled by the bar events. What changed between now and 2015? What type of events were occurring in the adjacent rooftop bars? Based upon the types of noise generating activities, primarily during nighttime hours, and with the additional noise to be contributed by the proposed project, a fair argument exists that the project independently, and cumulatively, may cause significant, unmitigable noise impacts.

As explained in the MND and shown in Table 3.12-4, the late-evening measurement period began at 10:42 P.M. Friday night and ended at 12:31 A.M. early on Saturday.

The comment requests a comparison between noise sources and ambient conditions present at the time of the 2015 MND analysis versus those present at the time of the 2017 MND analysis, referencing a perceived discrepancy between the two analyses' descriptions of their respective then-existing conditions. However, baseline ambient noise levels at the time of the 2015 MND analysis are not material

to the current MND's determination of significance with regard to operational noise, and any comparison to the 2017 MND's baseline conditions would be further irrelevant. The 2017 MND analyzed the Project's potential operational noise impacts against existing 2017 baseline conditions. Noise measurements used to characterize existing 2017 baseline conditions were included in the 2017 MND, and the noise sources contributing to existing conditions were described in detail. The Project's potential to result in a significant operational noise impact was analyzed by the 2017 MND and found to be less than significant. Though the comment questions the 2017 MND's characterization of existing ambient noise conditions, it offers no alternative noise measurements or study of existing ambient noise conditions in the Project area. The comment provides no evidence, much less substantial evidence, supporting how or why the Project could independently or cumulatively result in "significant, unmitigable noise impacts."

7. Section 111.01 "Definitions" of the Los Angeles Municipal Code requires ambient noise levels to be "…averaged over a period of at least 15 minutes at a location and time of day comparable to that during which the measurement is taken of a particular noise source…" This is indicated in the 2015 MND. The "daytime" measurement, which is used for a 12-hour period in the CNEL calculation, was only a 10-minute measurement. This doesn't comply with the Municipal Code measurement requirements for documenting Leq levels, let alone 24-hour CNEL measurements. The Early Evening measurement is also only a 10-minute measurement. At a minimum, construction activities on the project site should stop to allow for 24-hour Leq measurements over 1-hour periods to be conducted to clearly identify the ambient noise level at the project site. This deficiency further renders the MND inadequate and expands the fair argument that can be made that the project may cause significant, unmitigable impacts, and that an EIR should be prepared.

The Los Angeles Municipal Code requires noise measurements to be at least 15 minutes for the purposes of enforcing municipal noise control provisions; there is no stated or implied applicability to CEQA analysis. The noise measurements in the MND and discussion of Los Angeles Municipal Code noise restrictions were included for informational purposes only to aid in the determination of CEQA impacts. While these noise measurements are used in part to assess the Project's consistency with municipal regulations, they are not regulated by Section 111.01 or any other municipal provisions that govern the protocol and procedures of noise inspectors and others with the authority to enforce municipal noise regulations. Furthermore, the MND properly relies on the significance thresholds set forth in the L.A. CEQA Thresholds Guide and concludes that the Project does not result in a significant impact. Additionally, contrary to the comment, the Los Angeles Municipal Code contains no requirements with regard to the measurement of CNEL. Furthermore, the L.A. CEQA Thresholds Guide also does not instruct that ambient noise measurements should be averaged over a period of at least 15 minutes, nor does it instruct that ambient noise measurements should be performed according to the comment's referenced Section 111.01(a).

Finally, the comment provides no evidence, much less substantial evidence, demonstrating how or why the MND's noise measurements are inaccurate or otherwise of no informational value, nor does it provide its own noise measurements to contest the MND's findings. In fact, the comment does not even claim that the MND's noise measurements are inaccurate, or that other noise measurements would result in any different determination of significance.

The response to Comment 4 discusses why a 24-hour measurement was not feasible.

8. Page 4-150 attempts to rewrite the guidelines established in the City of Los Angeles Noise Element and the L.A. CEQA Guide. The analysis indicates the Proposed Project will be located within a "Normally Unacceptable" Noise Environment as identified in the LA Noise Element. The MND contradicts this by stating the environmental conditions at the Project Site are "not "normally unacceptable" [sic] for these hotels as the City's General Plan would suggest, but conducive for boutique hotels with a focus on nightlife and high-quality dining". [sic] What is the basis of this statement? The evaluation clearly indicates traffic noise is the major contributing noise source in this area of the City. "Predominant noise was caused by motor vehicles traveling on adjacent roadways, including Selma Avenue." (Page 3-85, first paragraph in the 2015 MND) "Noise from amplified bar, restaurant, and club music was generally not audile [sic] over the din of transportation noise…" (Page 3-148, 2017 MND, last paragraph). How is noise from traffic conducive to "high-quality dining"? What about traffic noise is conducive for boutique hotels? Why is traffic noise "a product of the nightlife that these hotels…benefit from…? By this logic, freeway noise wouldn't be an impact to residences because the freeway allows residents to get to work.

The MND's characterization of noise levels at the Project Site and the compatibility of nearby land uses is based on numerous site visits, noise measurements, and analysis. It acknowledges that 24-hour noise levels at the Project Site would be considered "normally unacceptable," but it concludes that under the specific circumstances present here, the noise environment is acceptable for the types of hotels and other uses in the area. The comment contends otherwise, but offers no evidence, much less substantial evidence, or alternative analysis demonstrating why the MND's observation is inaccurate or otherwise misguided. Contrary to the comment's claim, the MND provides a basis for its reasoning. Conversely, the comment offers no insights based on site visits, noise measurements, or analysis. Despite the MND's observation, the Project's operational noise impact was nevertheless analyzed with respect to the L.A. CEQA Thresholds Guide's recommended thresholds, and was found to result in a less than significant impact. It should be clarified that though the comment makes reference to the LA Noise Element, the MND's version of the noise and land use compatibility table (Table 3.12-2) was actually sourced from page I.2-4 of the L.A. CEQA Thresholds Guide. However, the 24-hour noise levels would be considered similarly "normally unacceptable" by either source's noise and land use compatibility table.

9. Page 3-151 indicates demolition will not be required. It also indicates "noise from truck-mounted cranes and forklifts would be intermittent and not capable of substantially raising ambient noise levels at nearby receptors." This statement directly contradicts the table in the Los Angeles CEQA Thresholds Guide Exhibit I.1-1, which indicates movable cranes typically generate 75-88 dBA at 50', and to anticipate 85 dBA, Leq, at 50' for the Structural, and 89 dBA Leq, for the Finishing phases of the construction process. (Appendix C.) More detailed explanation as to why the cranes and other construction trucks required for building are anticipated to be intermittent is warranted.

The L.A. CEQA Thresholds Guide states that construction noise impacts may be calculated by using the noise levels shown in Exhibits I.1-1 and I.1.2., referenced by the comment, or "other applicable references." The noise levels provided in Exhibits I.1-1 and I.1-2 and referenced by the comment were sourced from the EPA's 1971 Noise from Construction Equipment and Operations, Building Equipment and Home Appliances manual, which is nearly 50 years old. The MND noise analysis utilized reference noise levels included in the Federal Highway Administration's Roadway Construction Noise Model, Version

1.1 (FHWA RCNM), which was last updated in 2008. The RCNM contains an extensive construction equipment noise database that better represents noise emissions from modern construction equipment.

The MND provided a detailed quantitative analysis of welding activities. For the reasons detailed in the MND, "welding activities would have the greatest potential to cause sustained and significant noise impacts at nearby receptors," as compared to other construction activities. For example, welding noises could be continuous over the estimated 18-month construction phase, and they would occur at upper building levels with a direct line of sight south path to nearby receptors. Nevertheless, the MND's quantitative analysis showed that welding activities would generate noise below the applicable CEQA threshold and would be less than significant. As discussed below, truck-mounted crane use and other truck activities, including concrete pump- and mixing-truck activities, would generate even less noise than welding activities. Therefore, these activities would also generate noise below the applicable threshold and would be less than significant.

In contrast to welding activities, crane use would not be as extensive over the course of any work day. The Project proposes a mid-rise hotel: a truck-mounted crane would generate noise intermittently when transporting construction materials to and from various Project elevations, but would not be required to operate continuously over the course of a work day. Sporadic noise from truck-mounted crane use would therefore have a reduced influence on surrounding average ambient noise levels and would not constitute a significant effect to the environment.

Other truck-related noise would similarly be less than significant. Trucks would generate noise when delivering construction equipment or materials to the Project, but over the course of a work day, trucks would not generate continuous noises capable of affecting surrounding average ambient noise levels to the same degree as welders could. The one exception to this may relate to concrete pouring, which could require continuous activities from concrete mixing trucks and concrete pumping trucks. However, over the course of the Project's 18-month building construction phase, concrete pouring activities would require only an estimated two weeks of work (ten workdays). Basic industry standard noise management practices would ensure the compliance of concrete pouring-related noises with the statutory requirements of the LAMC, specifically Section 112.05, which institutes a powered construction noise limit of 75 dBA at 50 feet. Regulatory compliance with the Section 112.05 noise limit would subsequently ensure that related noise increases at the nearby Hollywood Walk-In Clinic and Jay Silverman Productions receptors would not exceed the 5 dBA noise increase threshold. Based on FHWA reference noise levels for concrete mixing trucks and pump trucks, even a rudimentary 0.5-inch-thick plywood moveable temporary noise barrier would be capable of reducing the simultaneous noise impact of these vehicles to 67.6 dBA at 50 feet, well below the 75 dBA at 50 feet standard. Such a barrier would be consistent with the potential noise reduction techniques identified by Section 112.05. Related noise levels of 71.9 dBA L_{eq} would be projected at Hollywood Walk-In Clinic, an increase of just 2.3 dBA. Related noise levels of 68.2 dBA L_{eq} would be projected at Jay Silverman Productions, an increase of just 1.1 dBA. Noise levels at Cosmo Lofts would be unaffected, owing to the 350-foot-distance to this receptor. These concrete pouring-related noise levels are comparable to, but slightly below, the welding-related noise levels disclosed in the MND (2.6 dBA increase at Hollywood Walk-In Clinic and a 1.5 dBA increase at Jay Silverman Productions). It bears repeating that the duration of welding activities would also exceed the duration of concrete pouring activities.

Construction noise studies for the Tommie Hotel Project have supported that basic industry standard practices and Section 112.05 regulatory compliance measures are capable of greatly reducing noise related to concrete-pouring activities. For that project, noises associated with typical concrete pouring activities (with a 12-foot temporary noise barrier in place, but inclusive of ambient noise levels) were found to generally range between approximately 62 dBA and 72 dBA at 50 feet, depending on the fluctuating intensity of the work. Time-weighted average noise levels rarely exceeded 70 dBA. The Project's concrete pouring activities would be similar to those for the Tommie Hotel Project, and the Project would incorporate similar temporary noise barriers to achieve Section 112.05 compliance. This noise study further supports the finding that the Project's concrete pouring activities would have a less than significant impact on nearby receptors.

Construction Noise Impacts

10. It is unclear why only three areas are identified as potential Noise Sensitive Receptors. "Dream Hollywood" (identified as "Dream Hotel" in Table 3.12-6?) shares a property line with the Proposed Project. Why is this not included in the evaluation? Mama Shelter is a hotel that is on the southwest intersection of Selma Avenue and Wilcox Avenue. Why is this not considered a noise sensitive receptor? They both should be. Given the types of uses described for the project and their typical dB level, a fair argument exists that the project's noise projection may cause significant, unmitigable impacts to nearby sensitive receptors, including but not limited to these two locations.

As noted in Page 3-151 of the MND, the L.A. CEQA Thresholds Guide considers noise sensitive land uses to include "residences, transient lodgings, schools, libraries, churches, hospitals, nursing homes, auditoriums, concert halls, amphitheaters, playgrounds, and parks." Hotels are typically not considered to be environmentally sensitive to construction noise, as occupants are temporary and construction activities would not occur during nighttime hours. The comment provides no reasoning as to why these hotels should be considered noise sensitive, nor does it provide any evidence, much less substantial evidence, demonstrating why significant impacts could occur at these land uses.

It should be noted that while neither the Hollywood Walk-In Clinic nor Jay Silverman Productions would be considered noise sensitive uses by the L.A. CEQA Thresholds Guide, these uses were nevertheless analyzed out of an abundance of caution given that the former is a medical use and the latter includes a sound stage. However, it would be reasonable to suggest that these receptors are also not environmentally sensitive to construction noise, despite their inclusion in the MND analysis. The Project's nearest noise sensitive use, as defined by the L.A. CEQA Thresholds Guide, would be the Cosmo Lofts multi-family residential receptor, which is located approximately 350 feet east of the Project Site.

11. The Adopted MND identifies the "Hotel Café" as a Noise Sensitive Receptor and the 2018 MND indicates this was not included in the evaluation. No explanation is provided why this Receptor is no longer considered Noise Sensitive. Although the "Hotel Café" is a nightclub, there is a Hotel West Inn that is on top of the Hotel Café. Both should have been included in the analysis and disclosure.

The Hotel Café is not a noise sensitive receptor. As discussed in the previous comment, the L.A. CEQA Thresholds Guide considers "residences, transient lodgings, schools, libraries, churches, hospitals, nursing homes, auditoriums, concert halls, amphitheaters, playgrounds, and parks" to be noise sensitive. As acknowledged by the comment, the Hotel Café is a nightclub, which is none of these things. While not a sensitive receptor, The Hotel Café was included in the 2015 MND for informational purposes. However,

for a variety of reasons, the inclusion of the Hotel Café was not warranted for the 2017 MND. First, analysis for the 2015 MND was completed prior to the completion of the Dream Hollywood hotel. Whereas the 2015 project could have had line of sight to the Hotel Café, the Proposed Project would have no such direct line of sight between construction activities and the receptor. The now-completed Dream Hollywood would in essence act as a barrier between the two properties, making the inclusion of the Hotel Café irrelevant. Additionally, not only is the Hotel Café a non-sensitive nightclub use, but the vast majority of its musical performances occur during nighttime hours when daily construction will have shut down for the night. As a result, there would be no interference from the Project's construction noise, and it would not be considered environmentally sensitive to the Project's construction noise to begin with.

With regard to the Hotel West Inn, as discussed in the previous response, hotels are not considered to be environmentally sensitive to construction noise.

Operational Noise

12. The mechanical noise evaluation is insufficient. No mention is made of the types of equipment anticipated for use with the proposed project, the anticipated location of this equipment, and the elevations at which this equipment would be operating. Wording is provided to indicate mechanical equipment on adjacent properties are not impacting the ambient noise levels. No discussion is provided discussing how this is relevant to the ambient noise evaluation for this proposed project.

Modern HVAC systems include shielding, vibration damping, and other features that greatly reduce their operational noise levels. A brief discussion of HVAC noises present at the Project Site was provided to show that comparable new hotel uses near the Project have no measurable or audible effect on surrounding ambient noise levels due to their HVAC systems. In general, modern HVAC systems have a nominal effect on surrounding ambient noise levels, especially in urban environments such as the Project's. Given the lack of reliable, professionally-sourced reference noise levels for HVAC equipment, an alternative is to analyze the impacts of similar projects as a proxy. For the Proposed Project, two similar, newly-built, mid-rise hotels exist within feet of the Project Site. Over the course of the Project's numerous in situ noise studies, HVAC noises from these hotels were never audible at any locations near the Project Site. There is no reason to suspect that the Project's HVAC noises would differ substantially from the same noises generated by other similar developments. Furthermore, any analysis utilizing an HVAC reference noise level (or any analysis utilizing reference noise levels in general) would be no better than analysis by proxy, as it would almost assuredly rely upon the noise level of one particular HVAC system that may or may not be representative of the Project's system. Analysis by reference noise level may as well be analysis by proxy. The MND analysis may lack an HVAC reference noise level from which to develop a quantitative analysis, but the observed impacts from the nearby Mama Shelter and Dream Hollywood hotels are a far more useful and accurate tool for assessing the Project's potential operational noise impact from HVAC systems. The comment provides no evidence, much less substantial evidence, contesting the MND's finding or otherwise demonstrating how or why the Project would generate substantial noises from HVAC or other mechanical equipment.

13. The Hotel Land Uses and Rooftop Deck analysis section indicates the rooftop area could host events including DJ performances. No explanation of anticipated capacity, or type of amplified DJ performances is provided. It is reasonable to conclude that the proposed project will seek to host existing and appealing such events, which can be extremely loud. Rather than provide data, a general

discussion of other rooftop events is provided instead. In this discussion, no attempt is made to compare the anticipated uses for the 6421 Selma Avenue Project with the events that occurred when the Friday measurements were made. A general "Events" description is not sufficient for evaluating impacts to the surrounding community.

See report prepared by RGD acoustics dated February 22, 2019.

14. The evaluation of noise from the Rooftop Deck states "the greatest noise impacts from the rooftop and other Project events would likely result from secondary noises such as increased pedestrian activity around the project, as well as increased patron and valet traffic to and from the site." While traffic noise is evaluated, one of the "greatest noise impacts" identified in the MND, increased pedestrian traffic, is not evaluated. This is another contributory noise source, and may cause individual and cumulative significant, unmitigable noise impacts.

See report prepared by RGD acoustics dated February 22, 2019.

15. The evaluation for restaurant use assumes face-to-face conversation will create 67 dBA at 1 meter. We assume this is for a single conversation? There is no discussion in this evaluation of the cumulative impact of multiple conversations, which is typical for outdoor seats in a restaurant. Additionally, the report indicates an ambient noise level of 67 dBA can be anticipated in this area. For conversation to be understood, it would be necessary to have the source be significantly (5 dB or more) above the existing ambient noise level. Thus, the assumption of a single conversation generating 67 dBA at 1 meter in an ambient noise environment of 67 dBA, is understating the possible impacts of the outdoor restaurant area.

See report prepared by RGD acoustics dated February 22, 2019.

Traffic Noise

16. The Los Angeles CEQA Thresholds Guide, referenced in the Regulatory Setting of the MND states an increase of 3 dBA in CNEL to or within the "normally unacceptable" category shall be considered a Significant Impact. (See Appendix C, page I.2-3, section 2, "Determination of Significance".) The analysis shows that when considering all anticipated future projects in the area, including this proposed project, a cumulative significant impact is anticipated along Selma Avenue, west of Wilcox Avenue (first paragraph of page 3-161). Thus, a significant impact should be identified as a result of the cumulative effects of all the proposed and existing projects in the area.

The comment refers to the 3.3 dBA impact shown to occur along eastbound Selma Avenue, west of Wilcox Avenue, as a result of additional Project and cumulative future project traffic along this roadway segment (Table 3.12-11). However, the comment incorrectly considers this to be a significant impact based upon its misreading of Table 3.12-11 and its related discussion. First, traffic from ambient traffic growth and related projects alone would raise peak hour ambient noise levels by 3.2 dBA along this roadway segment, in excess of 3 dBA. The Project would have no control over this noise increase, and would only contribute an additional 0.1 dBA to this increase. This incremental effect, which nearly comes down to a rounding error, is not cumulatively considerable. The comment here relies on the "one additional molecule" rule. That is, the comment assumes that *any* increase in an area above the cumulative threshold would constitute a significant impact. This is not the appropriate standard under CEQA. Second, the 3.3 dBA impact shown to occur at this roadway segment is only projected to occur during the A.M. peak hour. This

increase in A.M. peak hour noise would not correspond with a comparable increase in 24 hour CNEL, the averaging period utilized by the Guide's threshold, because project and related project traffic impacts during non-peak hours of travel, especially during late evening and early morning hours, would be greatly reduced. As the peak hour impact would be just fractions above 3 dBA, it is unlikely that the overall impact averaged over 24 hours, as per the threshold, would also be greater than 3 dBA.

Cumulative Impact

17. There is no section of the MND that evaluates the cumulative impacts of the future anticipated projects in the area beyond the traffic analysis. Cumulative impact evaluations are required for the CEQA evaluation process. The MND specifically states "the elevated late evening noise levels that contribute to this environment are, to a large degree, a product of the nightlife that these hotels generate and benefit from themselves." This statement appears to imply there is a cumulative impact to the surrounding community as a result of all the proposed projects in the area.

See report prepared by RGD acoustics dated February 22, 2019.

ATTACHMENT B

22 February 2019

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

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

Dear Mr. Fraijo:

We have completed our analysis of amplified sound from the proposed rooftop bar and lounge. This report summarizes our analysis and findings.

Assumptions

- Rooftop lounge will have “ambient music” throughout the outdoor use areas as shown on the entitlement plan set dated 5/9/18 from technical update #2
- Rooftop deck would include glass or heavy plastic safety wall (minimum height of six feet) around its perimeter (PDF-Noise -1 and COA 5(c))
- Rooftop bar will have “DJ music” in the enclosed bar area as shown on the entitlement plan set dated 5/9/18 from technical update #2

Acoustical Criteria

- Los Angeles CEQA Thresholds Guide
    - o A project would normally have a significant impact on noise if the project causes the ambient noise level measured at the property line of affected uses to increase by 3 dBA in CNEL to or within the “normally unacceptable” or “clearly unacceptable” category or any 5 dBA or greater noise increase (see chart below, Table 1)”

Table 1: Community Noise Exposure (from L.A. CEQA Thresholds Document)

Land Use	Community Noise Exposure CNEL, db: Normally Acceptable	Conditionally Acceptable	Normally Unacceptable	Clearly Unacceptable
Single Family, Duplex, Mobile Homes	50 - 60	55 - 70	70 - 75	above 70
Multi-Family Homes	50 - 65	60 - 70	70 - 75	above 70
Schools, Libraries, Churches, Hospitals, Nursing Homes	50 - 70	60 - 70	70 - 80	above 80
Transient Lodging - Motels, Hotels	50 - 65	60 - 70	70 - 80	above 80
Auditoriums, Concert Halls, Amphitheaters	-	50 - 70	-	above 65
Sports Arena, Outdoor Spectator Sports	-	50 - 75	-	above 70
Playgrounds, Neighborhood Parks	50 - 70	-	67 - 75	above 72
Golf Courses, Riding Stables, Water Recreation, Cemeteries	50 - 75	-	70 - 80	above 80
Office Buildings, Business and Professional Commercial	50 - 70	67 - 77	above 75	-
Industrial, Manufacturing, Utilities, Agriculture	50 - 75	70 - 80	above 75	-

Normally Acceptable: Specified land use is satisfactory, based upon the assumption that any buildings involved are of normal conventional construction without any special noise insulation requirements.
Conditionally Acceptable: New construction or development should be undertaken only after a detailed analysis of the noise reduction requirements is made and needed noise insulation features included in the design. Conventional construction, but with closed windows and fresh air supply systems or air conditioning will normally suffice.
Normally Unacceptable: New construction or development should generally be discouraged. If new construction or development does proceed, a detailed analysis of the noise reduction requirements must be made and needed noise insulation features included in the design.
Clearly Unacceptable: New construction or development should generally not be undertaken.

Source: California Department of Health Services (DHS).

- Los Angeles Municipal Code (LAMC)
  - 112.01b: Audible to human ear at a distance of 150 feet from the property line of the noise source, within any residential zone of the City or within 500 feet thereof, shall be a violation of the provisions of this section
  - 112.01c: Any noise level which exceeds the ambient noise level on the premises of any other occupied property…by more than five (5) decibels shall be a violation of the provisions of this section.
- Project Specific Condition of Approval (Council File No. 18-0873)
  - 18(d): Any ambient or amplified music…that is under the control of the petitioner(s) shall not be audible or otherwise perceivable beyond the subject premises.

Ambient Noise Levels in Community

Ambient noise measurements were made by Veneklasen Associates from January 21 through January 25, 2019 to acquire typical daytime and nighttime noise levels near the project site and nearby residential areas. RGD analyzed the measurement results and identified the following ambient noise levels for use in our analysis:

CEQA Thresholds Guide:
RGD calculated the Community Noise Equivalent Level (CNEL) at the receptor locations utilizing the measured hourly average noise levels (L_{eq}). The CNEL is a weighted 24-hour average noise level that accounts for people's increased sensitivity to noise between the hours of 7 pm and 7 am.

LA Municipal Code and Conditions of Approval 18(d)(COA18(d)):
RGD determined ambient based on the lowest hourly background noise level (L_{90}) during hours of proposed project operation (7 am - 12 midnight).

In general, two frequency weighting methods are used in the analyses:

- *A-weighting (dBA)* is specified in the City noise ordinance when determining increase in noise (LAMC 112.01c) and as well as in the determination of CNEL (CEQA thresholds guide).

- *C-weighting (dBC)* is used for evaluation of audibility (LAMC 112.01b and COA 18(d)) since, unlike A-weighting, it does not de-emphasize low frequency sounds that are present in music.

The ambient sound levels used in our analysis are found in Tables 2 and 3.

Noise Levels from Proposed Project

Ambient Music – This music would be played outdoors through various speakers strategically placed around the perimeter of the roof deck. We used a design noise level of 72 dBA near the center of the roof deck for outdoor ambient music. Ambient music at this level will be plainly audible for the patrons and allow for speech communication between patrons in close proximity to one another.

DJ Music – This music would be played by a DJ, primarily for dancing. This would be much louder than the ambient music. We used a design noise level of 98 dBA for DJ Music indoors based on measurements by DK Associates at the adjacent Dream Hotel. In particular, DK Associates measured 93 dBA on the roof of the Dream Hotel near the outdoor bar. We adjusted the level measured by DJ Associates by five dBA (increase) to account for the likelihood that noise levels inside the project bar (which is indoors) could be louder due to room acoustic factors and DJ preference.

In order to determine noise levels from the project as they would affect nearby land uses, we developed a three-dimensional model of the rooftop areas using a computer program called SoundPLAN. The program uses information on the acoustic properties of the building materials, loudspeaker locations, loudspeaker sound levels, and distance to other properties to determine how the music will propagate from the hotel to the affected receivers.

Impact Assessment

We assessed the potential impact of amplified sound from the project for ambient music and DJ music based on the aforementioned acoustical criteria. For DJ music, we evaluated the bar area enclosed as designed in the entitlement plan set dated 5/9/18 and analyzed in technical update #2.

L.A. CEQA Thresholds Guide:
Table 2 presents the results of the computer modeling for the proposed ambient music in the outdoor lounge and DJ music within the enclosed bar area. The noise levels are presented in terms of CNEL. The table combines the ambient noise level with both the DJ music and Ambient music to determine the combined noise level with the project (Total). The last column called "Increase over Ambient" indicates how much the music from the hotel would increase the ambient noise level.

- *Ambient Music outdoors and DJ Music Indoors*: The project would increase the CNEL by 0.1 dBA or less at all surrounding uses. This is well below the impact threshold of 3 dBA and therefore, not considered an impact.

Table 2: Comparison of Project Music Sound Levels with Ambient Sound Levels (Bar Area Enclosed)

Receptor Location	CNEL, dBA				
	Ambient	Live Music	Ambient Music	Total	Increase over Ambient
Nearest Res. Zone North	70	22	33	70	0.0
Hollywood Hills Res. Zone	63	16	24	63	0.0
Nearest Res. Zone South	65	11	32	65	0.0
Nearest Use East (Dream Hotel)	67	47	51	67	0.1
Nearest Use North (Mark Twain Hotel)	67	34	47	67	0.0
Nearest Use South (Gilbert Hotel)	67	36	44	67	0.0
Nearest Use West (Mama Shelter)	67	33	42	67	0.0

L.A. Municipal Code and COA 18(d)

Table 3 presents the results of the computer modeling for the proposed ambient music in the outdoor lounge and DJ music within the enclosed bar area. The first column indicates the Ambient sound level at the receptor location based on the ambient measurements. The second column is the level of DJ music at the respective location. The third column (DJ Music minus Ambient) compares the DJ music to the Ambient music. The fourth column shows the level of Ambient Music at the receptor and the fifth column (Ambient Music minus Ambient) is the comparison of Ambient Music to Ambient at the receptor. The same five columns are repeated a second time in the tables for C-weighted levels.

The key "takeaway" from Table 3 can be summarized as follows:
If the "DJ Music minus Ambient" or "Ambient Music minus Ambient" column contains a number with a negative value (e.g. -34), this means the sound from the club is 34 dBA or dBC below the ambient. This, in turn, means that the noise source (whether Ambient Music or DJ Music) is less than the Ambient at that receptor location and will a) comply with the LAMC and b) be virtually inaudible. The following summarizes our findings.

- *Ambient Music outdoors and DJ Music Indoors*: As shown in Table 3 that the "DJ Music minus Ambient" and "Ambient Music minus Ambient" columns shows negative numbers in all cases whether A- or C-weighted. This means that the Ambient Music and DJ Music are well below the Ambient noise level and would comply with the LAMC and be virtually inaudible at all receptor locations.

Table 3: Comparison of Project Music Sound Levels with Ambient Sound Levels (Bar Area Enclosed)

Receptor Location	Sound Pressure Level (dB)									
	A-weighted (dBA)					C-weighted (dBC)				
	Ambient	DJ Music	DJ Music minus Ambient	Ambient Music	Ambient Music minus Ambient	Ambient	DJ Music	DJ Music minus Ambient	Ambient Music	Ambient Music minus Ambient
Nearest Res. Zone North	51	21	-29	31	-19	60	38	-22	38	-22
Hollywood Hills Res. Zone	45	15	-29	22	-22	58	33	-25	30	-27
Nearest Res. Zone South	47	10	-37	30	-17	58	26	-32	37	-21
Nearest Use East (Dream Hotel)	58	46	-12	49	-10	67	62	-5	56	-11
Nearest Use North (Mark Twain Hotel)	58	34	-25	46	-13	67	50	-18	53	-15
Nearest Use South (Gilbert Hotel)	58	35	-23	42	-16	67	51	-17	53	-15
Nearest Use West (Mama Shelter)	58	33	-26	40	-18	67	49	-19	50	-18

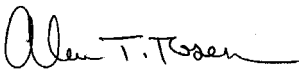
Cumulative Noise

The sound from the project rooftop outdoor lounge has the potential to add to the sound of other nearby hotel rooftop lounges. Since DJ music at the project would occur indoors, the sound level would be significantly lower than the other rooftop lounges that have DJ music occurring outdoors. As a result, we would expect that the contribution of the project to cumulative noise levels would not be cumulatively considerable (less than 1 dBA). Regardless, project condition 18(d) requires that any ambient or amplified music under the control of the petitioner(s) shall not be audible or otherwise perceivable beyond the subject premises.

* * *

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

Sincerely,



Alan Rosen
Principal
RGD Acoustics, Inc.

ATTACHMENT C

CAJA Environmental Services, LLC

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

February 22, 2019

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

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

The City of Los Angeles ("City") prepared a Mitigated Negative Declaration – ENV-2016-1602-MND – ("MND") for a new mixed-use 114 guest room hotel ("Project") located at 6421-6429 ½ West Selma Avenue and 1600-1604 North Wilcox Avenue ("Project Site") pursuant to the California Environmental Quality Act of 1970 (Pub. Res. Code § 21000 *et seq*.) ("CEQA"), CEQA Guidelines[1] and the City's environmental review procedures.

The City received the following one (1) written comment letter related to the Project in response to the Applicant's submissions during and prior to the November 27, 2018 City Planning and Land Use Management Committee ("PLUM") hearing (collectively, the "Comment Letter"):

- Gideon Kracov, January 23, 2019 (which consisted of an Introduction from Kracov, Smith Engineering and Management (Smith Engineering) letter, and SWAPE letter.)

Responses to the comments are provided in standalone response letters. The individual comments within the Comment Letters will be provided and identified as **Comment "X"**. The individual comments within the Comment Letters will be identified as **Response to Comment "X**".

In summary, based on our technical review, the Comment Letter does not raise any new CEQA issues and does not require any change to any conclusion identified in the MND. The Comment Letter does not provide substantial evidence or a fair argument 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 Project would result in impacts below a level of significance.

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 30 years, CAJA and its predecessor

[1] Reference to CEQA Guidelines in the Response to Comments shall mean 14 C.C.R. § 15000 *et seq*.

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 11 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.

CAJA Environmental Services, LLC

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

February 22, 2019

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

Re: Responses to "Smith Engineering" 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 February 22, 2019.

Smith Engineering Comment 1

At your request, I have reviewed the responses to our comments on the Initial Study/Mitigated Negative Declaration for the Selma – Wilcox Hotel Project (the "Project") on an eponymously located site in the Hollywood Community Plan area of Los Angeles. (the "City"). Those comments were made in a letter dated May 30, 2018 and were specific to the IS/MND's traffic and transportation section and its supporting documentation. The current comments herein are in relation to the City's and Applicant's responses to our above described comments in a Letter to File dated November 21, 2018 concerning appeals to Council of the Planning Commission findings regarding the IS/MND and the Applicant's letter to Council dated November 26, 2018 that attempts to rebut the justification for the appeals.

My qualifications to perform this review were thoroughly documented in my letter of May 30, 2018 with my professional resume attached. Those documents are incorporated herein by reference.

Findings of my current review are summarized below.

Response to Smith Engineering Comment 1

The comment serves as an introduction, 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.)

Smith Engineering Comment 2

Issue of Piecemealing

City staff's response to this issue is that the City was aware of the potential objection on the grounds of piecemealing, but that the analysis avoids this concern through the use of the dual baseline approach – one the existing condition at the time the earlier project (ENV-2015-2672-MND) environmental analysis was initiated and the other at the time the current environmental analysis (ENV-2016-2602-MND) was initiated. However, this ignores the cogent evidence presented in our May 30, 2018 comment that the posting at that time on the Tao Group LA website indicating the intent to construct a still larger project within the general site. The City continues to fail to properly address the issue of piecemealing.

Response to Smith Engineering Comment 2

As stated in the July 9, 2018 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.

As also stated in the July 9, 2018 Response to Sunset Landmark Comment 3: The Project is not a reasonably foreseeable consequence of the prior entitlement. Either development could have operated successfully, albeit not concurrently, without the development of the other. Moreover, neither the Project, nor the prior entitlement 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].)

This is furthermore not a case, like *Laurel Heights*, (cite), where the applicant represented all along that it intended to develop a much larger medical facility once the space became available. Here, the permittee of the original entitlements envisioned a larger project at first, scaled back its design when it determined that the planned development was not feasible and/or marketable, and revisited that decision when market conditions changed. Its only option for fully and fairly considering the project at that point was through a dual baseline analysis that could account for the impact of the more ambitious project but would also evaluate the actual conditions on the ground. The structure of the MND clearly demonstrates the impacts of the Project would be mitigated to below a level of significance if the previously approved project was never developed.

CEQA is not designed or intended to be a barrier to development. Its purpose is to facilitate informed decisionmaking and avoidance of significant environmental impacts where feasible. The dual baseline approach ensured that even if the applicant had improperly piecemealed its project, it did not reap the benefits of such action because the City still considered the impacts of a combined restaurant and hotel project as if it the restaurant portion had never been built/remodeled. The applicant has explained its actions, the commenter does not offer any evidence that calls that explanation into question, and even if the commenter were correct, the City has remedied any potential impacts from improper piecemealing.

Smith Engineering Comment 3

Issue of Parking Provision

The staff response to the Project's undersupply of parking is to observe that code allows the applicant to obtain rights to off-site parking anywhere within 750 feet of the Project site. However, the applicant should be required to demonstrate that the parking obtained is currently surplus and that the arrangement is not just a contractual displacement of existing parkers on the selected site.

Response to Smith Engineering Comment 3

As stated in the July 9, 2018 Response to Smith Comment 4: As a general matter, during the building

permit process the Department of Building and Safety will confirm that the off-site parking location complies with the off-site parking requirements set forth in Los Angeles Municipal Code Section 12.21.A.4.g and has adequate excess parking to meet the Project's parking requirement. Furthermore, the Department of Building and Safety will require the recordation of a covenant on the off-site parking location and the Project Site to ensure the continued maintenance of said parking spaces. No building permit shall be issued unless the City determines that the off-site location has adequate parking and requisite parking covenants are recorded.

Smith Engineering Comment 3's suggestion that surplus parking is being used by individuals not contemplated in prior projects that will be displaced is speculative and contrary to the evidence in the record that demonstrates parking has been overbuilt in the area for the contemplated uses.

Smith Engineering Comment 4

Issue of Adequacy of TDM Plan

The staff response to our concerns about a TDM plan as traffic mitigation for this Project states that there are clear performance standards that the TDM plan is required to comply with, that there will be monitoring and that there will be penalties if it is determined that the TDM program does not meet the performance standards. This response ignores the cogent reasons we cite concerning why a TDM program is unlikely to be effective in meeting the performance standards involved considering the challenges of changing the travel patterns to a combination of hotel and restaurant uses. Notwithstanding being only suggested rather than required, the TDM strategies proffered by the City are primarily informational and seemingly already required under LAMC § 12.26.J.[1] Moreover, these and the other strategies show only nominally effectiveness at reducing vehicle trips, much less guaranteeing a 10 or 20 percent reduction in trips generated.[2] The response also ignores the challenges to accurately quantitatively monitoring the effectiveness of a TDM plan at an urban site and the particular uses involved—especially given the City's track record of lacking leadership and enforcement of TDM policy.[3] It also begs the question of how often the City has actually imposed penalties for failure to meet the performance standards. These points also address the Applicant's TDM responses at pages 12 and 13 of the Applicant's November 26, 2018 letter.

Response to Smith Engineering Comment 4

As stated in the July 9, 2018 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

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1 See LADOT (Dec. 2016) Transportation Impact Study Guidelines, p. 20 (noting Code-required TDM measures to be "minimal TDM measures" and "strongly encourages the development of a comprehensive TDM program to eliminate as many new Project single-occupancy vehicle trips from the transportation system as possible."), https://ladot.lacity.org/sites/g/files/wph266/f/COLA-TISGuidelines-010517.pdf.

2 See Smart Growth America (2013) TDM State of the Practice, https://smartgrowthamerica.org/app/legacy/documents/state-of-the-practice-tdm.pdf; US DOT Federal Highway Administration (2012) Integrating Demand Management into the Transportation Planning Process: A Desk Reference, https://ops.fhwa.dot.gov/publications/fhwahop12035/chap10.htm; see also e.g., ENV-2012-3003-EIR (11/9/17) Letter of Determination, pp. F-89-90 (13 percent effectiveness when TDM is coupled with restriping and dedications), http://planning.lacity.org/StaffRpt/InitialRpts/CPC-2013-4051.pdf; ENV-2016-3480-EIR (Nov. 2018) Draft EIR, pp. IV.K-51-55 (to ensure 15 percent reduction, TDM measures required shuttle services to be provided), https://planning.lacity.org/eir/2110_Bay_Street/Deir/DEIR%20Sections/IV.K.%20Transportation-Traffic.pdf .

3 See Transit Cooperative Research Program (Dec. 2002) Public Agency Guidance on Employer-Based TDM Programs, p. I-5 (noting "little or no monitoring and evaluation is going on at the employer level" and that public agencies "were almost unanimous in their lack of information on true program effectiveness."), http://onlinepubs.trb.org/onlinepubs/tcrp/tcrp_webdoc_22-a.pdf; SCAG (7/29/11) FINAL REPORT: Recommended TDM Strategies & Actions For The City Of Los Angeles, pp. ii, 30, 41, 49 (noting the City's lack of citywide strategy, comprehensive policy, or leadership in TDM policy—including "enforcement of TDM requirements was lacking."), https://planning.lacity.org/policyinitiatives/Mobility%20and%20Transportation/TDMStrategies_FinalReport.pdf;

projects.

While Smith Engineering questions the ability of the City of Los Angeles to effectively monitor and impose penalties, the City of Los Angeles and their Department of Transportation (LADOT) does not. The first choice in the LADOT Transportation Impact Study Guidelines, December 2016, Section 4 Mitigation Transportation Impacts, is for a Project to implement a TDM Plan. The TDM Plan will be reviewed and approved by LADOT and will impose the necessary performance standards. Commenter's suggestion that the City does not enforce the performance standards is purely speculative.

Smith Engineering Comment 5

Issue of Cumulative Impacts

The staff response claims that our comment indicates that the cumulative analysis is flawed, but does not provide substantial evidence as to how it is flawed. This claim in the staff response is contrary to fact. For the record, below we reproduce the substantial evidence demonstrating the inadequacies of the cumulative traffic analysis.

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." 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 132 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 the implementation of what we note elsewhere is a completely implausible 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 Engineering Comment 5

As stated in the July 9, 2018 Response to Smith Comment 9: The City addresses cumulative impacts with increase in the background growth for future conditions with related projects 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.

The traffic created by 132 related development projects around the proposed Project are included in the future without project and future with project analysis. This increase in background traffic is added to the study intersections even though some may never be built or built to the intensity currently envisioned and without reduction for potential mitigation required of the related project. In this manner the City of Los Angeles looks at a worst case scenario which inflates the background growth to restrict the amount of Project traffic that may create a potential significant impact.

Note that, while similar, the City of Los Angeles uses a Critical Movement Analysis (CMA) process rather than an ICU process and mentioned in the comment.

Smith Engineering Comment 6

Issue of Failing to Consider Impact of Ride Hailing Services

City staff response on this item is to state that “the rise in popularity of these services is fairly recent and no standards presently exist within DOT’s Transportation Impact Study Guidelines to evaluate how these services positively or negatively impact traffic.” This response is an evasion that is inconsistent with CEQA’s demand for a good faith effort to disclose impact. By the time the subject IS/MND was circulated, it was already eminently clear that ride-hailing services (sometimes called Transportation Network Companies (“TNCs”) in the technical literature) like Uber and Lyft have had a significantly transformative impact on the modes by which people travel, the places to which they travel to fulfill their trip purpose, and in creating induced trips (trips that wouldn’t be made if the services were not available). This is particularly true in dense urban areas like the subject Project’s area. TNCs also create extra VMT in traveling to pick up a call and in circulating after completing a call before getting their next call. They are also known to create operational and safety problems because of the penchant for stopping in travel lanes to pick-up or drop-off passengers rather than pulling to the curb. Rather than pleading ignorance and ignoring the issues, it is incumbent on the City to either (a) analyze and mitigate traffic concerns on a project-by-project basis, or (b) immediately incorporate interim standards concerning TNCs in the City DOT’s Transportation Impact Study Guidelines based on best current knowledge and literature while further research on the topic is completed. Until and unless this is done, the transportation/traffic section of this Project is inadequate.

Response to Smith Engineering Comment 6

As stated in the July 9, 2018 Response to Smith Comment 7: The overall effects of these types of services have yet to be 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

types of 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.

It is questionable, and not yet fully studied, whether most ride hailing services would circulate while waiting for the next call. Counter to this argument is that many service providers will return to a preferred area and/or park while waiting for a next call. In addition, in a community such as Hollywood, it may be that many service providers receive calls quickly after completing another one. In any event, the information needed to characterize life-cycle emissions of the ride sharing services would be speculative at the CEQA analysis level. In addition, such impacts have not been analyzed for similar services like taxis when permitting hotels and the commenter has not presented any evidence as to why these impacts should be treated differently here.

Ride hailing services will share the curbside valet zones, which have been designed to accommodate traffic coming to the project.

Smith Engineering Comment 7

Applicants Responses of July 9, 2018 to Our May 30, 2018 Comments

Response 2 Re Valet Parking

This response fails to address the issue that the IS/MND supplemental analysis only addresses the impact of the project increment relative to the modified baseline. It does not address the impact of the whole project relative to the original baseline.

Response to Smith Engineering Comment 7

As previously explained, the modified baseline included in the Traffic Impact Analysis is the more conservative analysis. This analysis provides for the “worst case” results.

Smith Engineering Comment 8

Response 3 Re Valet Parking

The comment requests analysis of whether the valet curb zone and number of valets on duty would be sufficient to efficiently park and unpark cars without blocking traffic. It notes as a sub-comment that the possibility of live entertainment which, notwithstanding being a purported by-right use, implies a discrete start time and more simultaneous arrivals and departures that warrants greater requirements for the valet curb zone and number of valets needed.

The response merely concerns itself with the issue of whether live entertainment is discretionary under the City’s municipal code. It does not address the critical issues of size of valet curb zone and number of valets on duty.

Response to Smith Engineering Comment 8

The management of the valet services would, upon experience and predetermined need, increase the number of valet service personnel to manage the arrival and departure of customers to the hotel and additional venues. The valet curb zone is set, an increase in valet service personnel manages the

number of vehicles so that the curb space needed is not exceeded. It is standard operation of a hotel when there is an event scheduled at one of the venues, the valet service management would be notified in order to assure adequate personnel during arrival and departure times.

Smith Engineering Comment 9

Response 4 Re Sufficiency of Off-Site Parking At Wilcox Hotel

This response echoes the City's response to this topic which we comment on above. Furthermore, to rely on the Department of Building and Safety to confirm that the off-site parking is adequate to meet the Project's parking requirement, as suggested by Applicant, fails to analyze the impacts caused by the Project's lack of sufficient parking and subsequent induced traffic near the site. Quite simply, the City is placing the proverbial cart-before-horse when it concludes there will be no impact and defers that analysis to a later date.

Response to Smith Engineering Comment 9

The City of Los Angeles code requirements for parking as based on anticipated demand. The Project will be providing code required parking.

As stated above, the Los Angeles Municipal Code allows code-required parking to be located within 750 feet from the use that is serves. The Department of Building and Safety implements this code provision through the building permit process by requiring each applicant to demonstrate adequate excess parking at the off-site location and the recordation of parking covenants on the off-site location as well as the project site. The Project will provide the requisite vehicle parking both on- and off-site in compliance with the Los Angeles Municipal Code. Contrary to the comment, a supplemental traffic study dated June 2017 analyzed the offsite parking located at 1541 Wilcox Avenue. It was found, and LADOT concurred in a letter dated December 6, 2017, that the requirement for a TDM Plan with a 10% effectiveness if the request for reduced parking was approved and 20% effectiveness if the reduced parking is denied would mitigate significant traffic impacts. A TDM with 20% effectiveness would require a Monitoring Program. The monitoring program shall continue 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 requirements. Should the review show that the peak hour trip cap threshold has been exceeded, the project will have one year to attain compliance or be subject to a penalty program. The TDM Plan is required to be submitted to LADOT for review prior to the issuance of the building permit for the project and the final TDM Plan is required to be approved by LADOT prior to the issuance of the first certificate of occupancy.

Smith Engineering Comment 10

Response 5 Re Piecemealing Issue

This response elaborates on the City's response on this topic which we comment on above. No further discussion is necessary.

Response to Smith Engineering Comment 10

See Response to Smith Engineering Comment 2 above, which responds to the piecemealing topic.

Smith Engineering Comment 11

Response 6 Re TDM Adequacy

This response is similar to the City's response to this topic which we comment on above. No further discussion is necessary.

Response to Smith Engineering Comment 11

See Response to Smith Engineering Comment 4 above, which responds to the TDM topic.

Smith Engineering Comment 12

Response 7 Re Ride Hailing Services

This response parallels the City's response to this topic which we comment on above. No further discussion is necessary.

Response to Smith Engineering Comment 12

See Response to Smith Engineering Comment 6 above, which responds to the ride hailing topic.

Smith Engineering Comment 13

Response 8 Re Construction Impacts on Traffic, Bus Service and Parking

The response attempts to deny the obvious consideration that construction loading, hauling and staging would have to take place on street and worker parking would have to take place off-site by labeling the obvious as speculative. The response is inadequate.

Response to Smith Engineering Comment 13

As stated in the July 9, 2018 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.

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 Engineering Comment 14

Response 9 Re Cumulative Analysis

This response parallels the City's response to this topic which we comment on above. No further discussion is necessary.

Response to Smith Engineering Comment 14

See Response to Smith Engineering Comment 5 above, which responds to the cumulative analysis topic.

Smith Engineering Comment 15

Conclusion

This concludes my current comments on the City and the Applicants responses to my comments May 30, 2018 on the IS/MND. The City staff and Applicant responses are inadequate and should not be given credibility in consideration of the appeal.

Response to Smith Engineering Comment 15

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.

ATTACHMENT D

CAJA Environmental Services, LLC

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Phone 310-469-6700

February 22, 2019

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 February 22, 2019.

SWAPE Comment 1

We have reviewed the City's November 2018 Response to Appeals of City Planning Commission's Approval of Selma Wilcox Hotel ("City's Responses") and the Project Applicant's November 2018 Response to Appeals of City Planning Commission's Approval of Selma Wilcox Hotel ("Applicant's Responses") prepared for the Selma Wilcox Hotel Project ("Project") located in the City of Los Angeles ("City"). We previously prepared a May 31, 2018 comment letter on the July 2016 Initial Study and Mitigated Negative Declaration ("IS/MND") prepared for the Project, which is addressed in both the City and Applicant's Response documents. After our review, we find the City's Responses and Applicant's Responses to both be insufficient in addressing the Project's greenhouse gas ("GHG") impacts. As we asserted in our May 2018 letter, a Draft Environmental Impact Report ("DEIR") should be prepared for the Project in order to adequately evaluate the Project's potential impacts.

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.

The comment refers to its previous May 2018 letter. That letter was responded to in a document Response to SWAPE Comments submitted to the City of Los Angeles, dated July 9, 2018.

SWAPE Comment 2

Greenhouse Gas

Unsubstantiated Input Parameters Used to Estimate Project Emissions

Our May comment letter found that several of the values inputted into the IS/MND air quality and GHG model was inconsistent with information disclosed and/or suggested elsewhere in the IS/MND, and gave specific references to underestimated land use sizes, unsubstantiated reduction in the number of vendor trips, and incorrect trip percentages used. In response to our comments, the Applicant merely states that the input values used based on applicant-provided data (Applicant's Responses, pp. 29-30). However, there is no attempt to explain whether the applicant-provided data is reasonable in the face of conflicting data used in the IS/MND. Furthermore, the response fails to address CEQA's requirement for an "accurate, stable and finite project description." *San Joaquin Raptor Rescue Ctr. v. Cnty. of*

Merced (2007) 149 Cal.App.4th 645, 654-655; see also *Citizens for a Sustainable Treasure Island v. City & Cnty. of San Francisco* (2014) 227 Cal.App.4th 1036, 1052 ("only through an accurate view of the project may affected outsiders and public decision-makers balance the proposal's benefit against its environmental cost, consider mitigation measures, assess the advantage of terminating the proposal (i.e., the 'no project' alternative), and weigh other alternatives in the balance."). These input values are critical to the IS/MND modeling of GHG emissions and, thus, any departure from accurate date infects the IS/MND's determinations on the Project's GHG significance.

Response to SWAPE Comment 2

As stated in the previous Response to SWAPE Comments submitted to the City of Los Angeles, dated July 9, 2018, 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 can be attributed to the fact that some of the spaces are outside the ancillary space for the hotel and thus counted differently. Other inputs are based on applicant-provided construction data, which is based on consultation with the applicant's contractor who is intimately familiar with the construction assumptions for the Project. The number of vender trips per day was supplied by the Applicant based on a discussion with their contractor. Commenter has not provided any evidence that these numbers are unreasonable and simply speculates that they are unsubstantiated and/or incorrect. There is thus no evidence to support even an argument that the air quality analysis is flawed.

The Commenter further argues that the analysis of the Project's expected GHG emissions defines the project itself. This interpretation of CEQA's requirement to have a stable and finite project description is completely off base. Under CEQA, "'Project' means an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. (Cal. Pub. Resources Code, § 21065.) SWAPE has not demonstrated that, or even explained how, the project definition has changed in the course of the environmental review.

SWAPE Comment 3

Failure to Adequately Assess the Project's Greenhouse Gas Impacts

Our May comment letter found that the Project's GHG impact was inadequately evaluated for several reasons. First, we found that the IS/MND incorrectly concluded that the Project would be consistent with the California Global Warming Solution Act (i.e., AB 32) by comparing the Project's GHG emissions to the emissions that would be generated by the Project in the absence of any GHG reduction measures, also known as the No Action Taken Scenario ("NAT")[1] to determine significance. Second, we found that the Project failed to demonstrate consistency with the GHG reduction targets specified in Senate Bill 32 ("SB 32"). Third, we found that the Project failed to demonstrate "additionality," whereby GHG emission reductions otherwise required by law or regulation are appropriately considered part of the baseline and, thus, implement more aggressive mitigation measures required for newer developments in order to meet AB 32's long-term GHG reduction goals. Finally, our review demonstrated that the IS/MND incorrectly determined that the Project's impacts would be less than significant because the Applicant asserted that the Project would be compliant with the Green Building Ordinance, ClimateLA Implementation Plan, and other plans—notwithstanding none

[1] IS/MND refers to this scenario as the No Action Taken (NAT) scenario as well. Both terms can be used interchangeably.

being a qualified climate action plan. As a result of the IS/MND's use of improper and alternative methods and thresholds to determine Project significance, we prepared our own analysis of the Project's potential GHG impact and found that the Project's emissions of 1,979 metric tons of carbon dioxide equivalents per year ("MTCO2e/yr") would exceed the South Coast Air Quality Management District's ("SCAQMD") significance threshold of 1,400 MTCO2e/yr, resulting in a significant impact that was unidentified within the IS/MND. In response to our May comments, the City's Responses state,

> "The MND adequately analyzes and utilizes the appropriate standard of consideration regarding the Project's impacts related to GHG" (City's Responses, pp. 13).

The Applicant's Responses state,

> "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" (Applicant's Responses, pp. 14-15).

Furthermore, in response to SWAPE's updated GHG analysis (discussed above), the Applicants Response's state,

> "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" (Applicant's Responses, pp. 32).

While we appreciate the City's and Applicant's effort to respond to our comments, we find these comments to insufficiently in properly addressing the Project's GHG impact and maintain that a DEIR must be prepared in order to adequately evaluate the Project's emissions and impacts. The California Supreme Court has made clear that just because "a project is designed to meet high building efficiency and conservation standards … does not establish that its [GHG] emissions from transportation activities lack significant impacts." *Center for Biological Diversity v. Cal. Dept. of Fish and Wildlife* ("Newhall Ranch") (2015) 62 Cal.4th 204, 229 (citing Natural Resources Agency). Furthermore, compliance with SCAG's Regional Transportation Plan/Sustainable Communities Strategy ("RTP/SCS") is not enough according to the California Air Resources Board ("CARB"), which has recently found that California "is not on track" to meet GHG reductions expected under SB 375 (i.e., Sustainable Communities

Strategy).[2] As warned by CARB, "with emissions from the transportation sector continuing to rise despite increases in fuel efficiency and decreases in the carbon content of fuel, California will not achieve the necessary [GHG] emissions reductions to meet mandates for 2030 and beyond…."[3] This is further supported by two recent climate change reports where scientists described the quickening rate of carbon dioxide emissions as a "speeding freight train" with an unexpected surge in people buying more cars and driving them farther than in the past — "more than offsetting any gains from the spread of electric vehicles."[4]

Response to SWAPE Comment 3

The MND's climate change analysis discloses potential emissions in the context of a No Action Taken (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 may serve as a potential "pathway to compliance," and 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 further 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.

In the absence of any adopted numeric threshold, the significance of the Project's GHG emissions is evaluated consistent with CEQA Guidelines Section 15064.4(b)(2) by considering whether the Project complies with applicable plans, policies, regulations and requirements adopted to implement a statewide, regional, or local plan for the reduction or mitigation of greenhouse gas emissions. For this Project, as a land use development project, the most directly applicable adopted regulatory plan to reduce GHG emissions is the 2016–2040 RTP/SCS, which is designed to achieve regional GHG reductions from the land use and transportation sectors as required by SB 375 and the State's long-term climate goals.

SWAPE Comment 4

Failure to Evaluate Cumulative Greenhouse Gas Impact Consistent with Evolving Scientific Knowledge and Regulatory Schemes

As noted above, the Applicant's Responses assert that there are no "significance thresholds or specific reduction targets, and no approved policy or guidance to assist in determining significance at the Project or cumulative levels" and that "the commentor's comparison to the purportedly threshold is

[2] CARB (Nov. 2018) 2018 PROGRESS REPORT: California's Sustainable Communities and Climate Protection Act, p. 4-7 (emphasis added), https://ww2.arb.ca.gov/sites/default/files/2018-11/Final2018Report_SB150_112618_02_Report.pdf.

[3] Ibid.

[4] New York Times (12/5/18) Greenhouse Gas Emissions Accelerate Like a 'Speeding Freight Train' in 2018 (emphasis added), https://www.nytimes.com/2018/12/05/climate/greenhouse-gas-emissions-2018.html ; see also Global Carbon Project (Dec. 2018) Global Carbon Budget 2018, https://www.earth-syst-scidata.net/10/2141/2018/essd-10-2141-2018.pdf ; R.B. Jackson, et al. (Dec. 2015) Global Energy Growth Is OutpacingDecarbonization, http://iopscience.iop.org/article/10.1088/1748-9326/aaf303/pdf.

misleading and inappropriate." While the Applicant is correct in stating that the SCAQMD Interim Thresholds were never adopted, this does not mean, however, that that they are inapplicable to the proposed Project or otherwise can be ignored as explained below.

It is commonly recognized by California air districts that a project's impact on climate change is cumulative in nature.[5] According to the Technical Advisory prepared by the Office of Planning and Research ("OPR"), "[t]he potential effects of a project may be individually limited but cumulatively considerable[]" and that "[l]ead agencies should not dismiss a proposed project's direct and/or indirect climate change impacts without careful consideration, supported by substantial evidence … [including] analysis should be provided for any project that may significantly contribute to new GHG emissions, either individually or cumulatively, directly or indirectly."[6] Furthermore, OPR rightfully acknowledge, consistent with state regulatory scheme and CEQA case law, that "thresholds cannot be used to determine automatically whether a given effect will or will not be significant; instead, thresholds of significance can be used only as a measure of whether a certain environmental effect will normally be determined to be significant or normally will be determined to be less than significant by the agency."[7] Recognizing this principle, CEQA Guidelines § 15064.7(c) permits the use of thresholds developed by other public agencies.

Similarly, the California Supreme Court has made clear that CEQA demands robust GHG analysis to assess a project's impact on climate change, and while lead agencies have discretion, that discretion must be exercised "based to the extent possible on scientific and factual data" and "stay[ing] in step with evolving scientific knowledge and state regulatory schemes." *Cleveland National Forest Foundation v. San Diego Assn. of Governments* ("Cleveland II") (2017) 3 Cal.5th 497, 504, 515, 518 (quoting CEQA Guidelines § 15064(b)); see also 519 (noting to meet the State's long-term climate goals, "regulatory clarification, together with improved methods of analysis, may well change the manner in which CEQA analysis of long-term [GHG] emission impacts is conducted."). Hence, a GHG analysis which "understates the severity of a project's impacts impedes meaningful public discussion and skews the decisionmaker's perspective concerning the environmental consequences of the project,

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[5] See e.g., SCAQMD (Oct. 2008) Draft Guidance Document – Interim CEQA Greenhouse Gas (GHG) Significance Threshold, p. 1-4-5 (citing the OPR Technical Advisor: "When assessing whether a project's effects on climate change are 'cumulatively considerable' even though its GHG contribution may be individually limited, the lead agency must consider the impact of the project when viewed in connection with the effects of past, current, and probable future projects."), http://www.aqmd.gov/docs/default-source/ceqa/handbook/greenhouse-gases-(ghg)-ceqa-significance-thresholds/ghgattachmente.pdf; Bay Area Air Quality Management District ("BAAQMD") (May 2017) CEQA Air Quality Guidelines, p. 2-1 ("No single project could generate enough GHG emissions to noticeably change the global average temperature [but rather] [t]he combination of GHG emissions from past, present, and future projects contribute substantially to the phenomenon of global climate change and its associated environmental impacts."), http://www.baaqmd.gov/~/media/files/planning-andresearch/ceqa/ceqa_guidelines_may2017-pdf.pdf?la=en; Placer County Air Pollution Control District ("PCAPCD") (Oct. 2016) CEQA thresholds of Significance Justification Report, p. 2 ("CEQA requires that the lead agency review not only a project's direct effects on the environment, but also the cumulative impacts of a project and other projects causing related impacts. When the incremental effect of a project is cumulatively considerable, the lead agency must discuss the cumulative impacts in an EIR. [citing CEQA Guidelines § 15064]"), file:///C:/Users/jorda/Downloads/CEQAThresholdsJustificationReport.pdf; San Luis Obispo County Air Pollution Control District ("SLOAPCD") (Mar. 28, 2012) GHG Threshold and Supporting Evidence, p. 5 ("No single land use project could generate enough GHG emissions to noticeably change the global average temperature. Cumulative GHG emissions, however, contribute to global climate change and its significant adverse environmental impacts. Thus, the primary goal in adopting GHG significance thresholds, analytical methodologies, and mitigation measures is to ensure new land use development provides its fair share of the GHG reductions needed to address cumulative environmental impacts from those emissions.), https://storage.googleapis.com/slocleanairorg/images/cms/upload/files/Greenhouse%20Gas%20Thresholds%20and%20Supporting%20Evidence%204-2-2012.pdf; Sacramento Metropolitan Air Quality Management District ("SMAQMD") (May 2018) Guide to Air Quality Assessment in Sacramento County , p. 6-1-3, ("(GHG) emissions adversely affect the environment through contributing, on a cumulative basis, to global climate change … the District recommends that lead agencies address the impacts of climate change on a proposed project and its ability to adapt to these changes in CEQA documents … [thus urging] evaluating whether the GHG emissions associated with a proposed project will be responsible for making a cumulatively considerable contribution to global climate change."[emphasis original]), http://www.airquality.org/LandUseTransportation/Documents/Ch6GHGFinal5-2018.pdf.

[6] OPR (June 19, 2008) Technical Advisory on CEQA and Climate Change, p. 6, http://opr.ca.gov/docs/june08-ceqa.pdf.

[7] OPR (Nov. 2017) Proposed Updates to the CEQA Guidelines, p. 7 (citing CEQA Guidelines §§ 15064 and 15064.7 and *Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099, 1108-1109), http://opr.ca.gov/docs/20171127_Comprehensive_CEQA_Guidelines_Package_Nov_2017.pdf.

the necessity for mitigation measures, and the appropriateness of project approval." Id., on remand ("Cleveland III"), 17 Cal.App.5th 413, 444; see also *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564 (quoting *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 392).

Here, SCAQMD's multi-tiered approach under its Interim Threshold, although not officially adopted, represents the current standard of evolving scientific data and regulatory scheme notwithstanding even more aggressive efforts taken at the State level. SCAQMD's Interim Thresholds was developed when AB 32 was the governing statute for GHG reductions in California, which requires California to reduce GHG emissions to 1990 levels by 2020. However, in September 2016, before the release of the IS/MND, Governor Brown signed Senate Bill 32 ("SB 32"), which requires California to achieve a new, more aggressive 40 percent reduction in GHG emissions over the 1990 level by the end of 2030. Then in September 2018, Governor Brown issued Executive Order B-55-18 ("EO B-55-18") that committed the State to achieve carbon neutrality no later than 2045.[8] As a result, the Project must comply with SB 32 and EO B-55-18, which would include a more aggressive GHG threshold than contemplated when SCAQMD proposed its Interim Threshold. However, the City and Applicant suggest that the IS/MND can completely ignore the Interim Threshold because SCAQMD failed to adopt these measures. This, however, is not in keeping with the evolving scientific knowledge and state regulatory schemes. Consistent with the edicts of SB 32, other air control districts have adopted more aggressive GHG thresholds for project-level analysis that mirror SCAQMD's Interim Thresholds, including but not limited to the Sacramento Metropolitan Air Quality Management District ("SMAQMD"), Bay Area Air Quality Management District ("BAAQMD"), Placer County Air Pollution Control District ("PCAPCD"), and San Luis Obispo Air Pollution Control District ("SLOAPCD") (as summarized below in Table 1 below[9]). Given the cumulative nature of GHG emissions and consistent with CEQA Guidelines § 15064.7(c), these recommended thresholds complement SCAQMD's Interim Thresholds and further supports the conclusion that they constitute the current standard for evaluating a project's GHG significance.

Table 1: Current GHG Thresholds from Other Air Districts

SMAQMD (May 2018) Guide to Air Quality Assessment[9]

Land Development and Construction Projects		
	Construction Phase	Operational Phase
Greenhouse Gas Emissions (GHG) Thresholds		
GHG as CO2e	1,100 metric tons/year	1,100 metric tons/year

Stationary Source Only		
	Construction Phase	Operational Phase
Greenhouse Gas Emissions (GHG) Thresholds		
GHG as CO2e	1,100 metric tons/year	10,000 metric tons/year

1) Construction phase of all project types – 1,100 MT CO2e/yr.

2) Operational phase of a land development project – 1,100 MT CO2e/yr (noting a 72-room hotel would be equivalent to the 1,100 MT CO2e/yr threshold).[10]

[8] https://www.gov.ca.gov/wp-content/uploads/2018/09/9.10.18-Executive-Order.pdf.

[9] SMAQMD (May 2018), supra fn. 5, p. 6-10-12; see also SMAQMD Thresholds of Significance Table, http://www.airquality.org/LandUseTransportation/Documents/CH2ThresholdsTable5-2015.pdf.

[10] SMAQMD (Apr. 2018) SMAQMD Operational Screening Levels (showing that a 114-room hotel like the Project would exceed the 72-room threshold), http://www.airquality.org/LandUseTransportation/Documents/Ch4+Ch6OperationalScreening4-2018.pdf.

3) Stationary source operational emissions – 10,000 MT CO2e/yr.

BAAQMD (May 2017) CEQA Air Quality Guidelines[11]

GHGs – Projects other than Stationary Sources	Compliance with Qualified GHG Reduction Strategy OR 1,100 MT of CO_2e/yr OR 4.6 MT CO_2e/SP/yr (residents+employees)
GHGs –Stationary Sources	10,000 MT/yr

[11]

While providing 10,000 MT CO2e/yr for stationary-source projects, other projects (e.g., residential, commercial, public land uses):

1) CAP: Compliance with a qualified GHG Reduction Strategy; or

2) Bright Line: Annual emissions less than 1,100 MT CO2e/yr; or

3) Efficiency Level: 4.6 MT CO2e/SP/yr (residents + employees).

PCAPCD (Oct. 2016) CEQA Threshold Significance Justification Report[12]

1) **De Minimis Level** for the operational phases of 1,100 MT CO_2e/yr.
2) **Efficiency Matrix** for the operational phase of land use developments that exceed the De Minimis Level that is dependent on their location (urban v. rural), whether its residential in nature (e.g., single-family, condo, apartment) or non-residential (e.g., general commercial, office, industrial), and service population (i.e., per capita inclusive of residents and jobs for residential projects, or 1,000 square feet of non-residential development).
3) **Bright-line Threshold** of 10,000 MT CO_2e/yr for the construction and operational phases of land use projects as well as the stationary source projects.

Bright-line Threshold 10,000 MT CO2e/yr			
Efficiency Matrix			
Residential		Non-residential	
Urban	Rural	Urban	Rural
(MT CO2e/capita)		(MT CO2e/1,000sf)	
4.5	5.5	26.5	27.3
De Minimis Level 1,100 MT CO2e/yr			

SLOAPCD (Mar. 2012) GHG Thresholds and Supporting Evidence[13]

GHG Emissions Threshold Summary	
Residential and Commercial Projects	Compliance with Qualified GHG Reduction Strategy OR Bright-Line Threshold of 1,150 MT of CO2e/yr. OR Efficiency Threshold of 4.9 MT CO2e/SP*/yr.
Industrial (Stationary Sources)	10,000 MT of CO2e/yr.

[12],

[11] BAAQMD (May 2017), supra fn. 5, p. 2-2-4. Like the SCAQMD area, BAAQMD is designated as a nonattainment area for state/national ozone and particulate matter (PM) and thresholds would seem particularly apt for the Dewey Hotel Project. Compare id .at p. 2-1 with SCAQMD NAAQS/CAAQS Attainment Status (noting "extreme" and "serious" nonattainment for multiple ozone and PM standards), http://www.aqmd.gov/docs/default-source/cleanair-plans/air-quality-management-plans/naaqs-caaqs-feb2016.pdf.

[12] PCAPCD (Oct. 2016), supra fn. 5, p. E-2, 17-22; see also PCAPCD (Nov. 21, 2017) CEQA Thresholds And Review Principles,

1) CAP: Consistency with qualitative reduction strategies (e.g., Climate Action Plans).

2) Bright-Line Threshold: 1,150 MT CO2e/yr after inclusion of emission-reducing features of a proposed project, those still exceeding the threshold would have to reduce their emissions below that level to be considered less than significant.

3) Efficiency-Based Threshold: 4.9 MT CO2e/SP/yr dependent on per capita basis for residential projects or the sum of jobs and residents for mixed-use projects (noting 0.64 employees per 1,000 SF of hotel development).

Although more demanding, the above-listed thresholds adopted by these air districts are analogous with the application of SCAQMD's Tier 3 screening threshold for commercial developments (1,400 MTCO2e/yr) and SCAQMD's Tier 4 efficiency target goals (4.8 MTCO2e/yr/sp for target year 2020 and 3.0 MTCO2e/yr/sp for target year 2035).[14] The overwhelming weight of the actions taken by the other air district, the regulatory agencies with the most expertise in the area of assessing GHG emission impacts, is the most persuasive rationale why the Interim Thresholds apply here as the current standard set of evolving scientific knowledge and regulatory schemes. Thus, only through application of SCAQMD's 1,400 MTCO2e/yr screening threshold and comparison to SCAQMD's Tier 4 efficiency target goals can the City act consistent with the improved methods of analysis that is regularly practiced by other air districts, and furthers CEQA's demand for "'conservative analysis' to afford 'fullest possible protection of the environment.'"[15] Absent this, the IS/MND's GHG analysis is not consistent with evolving scientific knowledge or regulatory standards, nor its conclusion that the Project has an insignificant GHG impact supported by substantial evidence.

Response to SWAPE Comment 4

The Commenter notes that the SCAQMD has yet to formally adopt a GHG significance threshold for residential and commercial land use development projects. The current CEQA Guidelines do not establish a threshold of significance. Lead agencies are to establish thresholds in which a lead agency may appropriately look to thresholds developed by other public agencies, or suggested by other experts, such as California Air Pollution Control Officers Association (CAPCOA), so long as any threshold chosen is supported by substantial evidence (see CEQA Guidelines Section 15064.7(c)). The CEQA Guidelines amendments also clarify that the effects of GHG emissions are cumulative. The CEQA Guidelines were amended in response to SB 97 to specify that compliance with a GHG emissions reduction plan renders a cumulative impact insignificant. To qualify, such a plan or program must be specified in law or adopted by the public agency with jurisdiction over the affected resources

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http://www.placerair.org/landuseandceqa/ceqathresholdsandreviewprinciples.

13 SLOAPCD (Mar. 28, 2012), supra fn. 45, p. 25-30, 42.

14 See SCAQMD (Dec. 5, 2008) Interim CEQA GHG Significance Threshold for Stationary Sources, Rules and Plans, http://www.aqmd.gov/docs/default-source/ceqa/handbook/greenhouse-gases-(ghg)-ceqa-significancethresholds/ghgboardsynopsis.pdf?sfvrsn=2 ; see also SCAQMD (Oct. 2008) Draft Guidance Document – Interim CEQA Greenhouse Gas (GHG) Significance Threshold, http://www.aqmd.gov/docs/defaultsource/ceqa/handbook/greenhouse-gases-(ghg)-ceqa-significance-thresholds/ghgattachmente.pdf ; SCAQMD (Sep. 28, 2010) Minutes for the GHG CEQA Significance Threshold Stakeholder Working Group # 15, http://www.aqmd.gov/docs/default-source/ceqa/handbook/greenhouse-gases-(ghg)-ceqa-significancethresholds/year-2008-2009/ghg-meeting-15/ghg-meeting-15-minutes.pdf.

15 SCAQMD (June 2014) Warehouse Truck Trip Study Data Results and Usage Presentation: Inland Empire Logistics Council, p. 3, http://www.aqmd.gov/docs/default-source/ceqa/handbook/high-cube-warehouse-trip-rate-studyfor-air-quality-analysis/final-ielc_6-19-2014.pdf?sfvrsn=2 ; see also *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 390 ("The foremost principle under CEQA is that the Legislature intended the act to be interpreted in such manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.") (internal citations omitted).

through a public review process to implement, interpret, or make specific the law enforced or administered by the public agency. Examples of such programs include a "water quality control plan, air quality attainment or maintenance plan, integrated waste management plan, habitat conservation plan, natural community conservation plans [and] plans or regulations for the reduction of greenhouse gas emissions." Put another way, CEQA Guidelines Section 15064(h)(3) allows a lead agency to make a finding of non-significance for GHG emissions if a project complies with the California Cap-and-Trade Program and/or other regulatory schemes to reduce GHG emissions. Although GHG emissions can be quantified, as stated previously, CARB, SCAQMD and the City, have yet to adopt project-level significance thresholds for GHG emissions that would be applicable to the Project. Per CEQA Guidelines Section 15064(h)(3), a project's incremental contribution to a cumulative impact can be found not cumulatively considerable if the project will comply with an approved plan program that provides specific requirements that will avoid or substantially lessen the cumulative problem within the geographic area of the project. Thus, in the absence of any adopted, quantitative threshold, the Project would not have a significant effect on the environment if it is found to be consistent with the applicable regulatory plans and policies to reduce GHG emissions:

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

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

SWAPE Comment 5

Failure to Evaluate GHG Impact Consistent with SCAQMD's Tier 4 Guidance

As discussed in our May comment letter, the Project's 1,979 MTCO2e/yr emissions exceed SCAQMD's Tier 3 threshold of 1,400 MTCO2e/yr (as well as the above-listed thresholds adopted by other air districts). According to SCAQMD Interim Thresholds, if a project's emissions exceed the screening-level threshold, a more detailed review of the project's GHG emissions is warranted based on a service population (i.e., per capita) efficiency target.[16] SCAQMD proposed a project-level efficiency target of

[16] SCAQMD (Dec. 5, 2008), supra fn. 15, p. 6; SCAQMD (Sep. 28, 2010), supra fn. 15, p. 2.

4.8 MTCO2e/yr/sp for the year 2020, and a 3.0 MTCO2e/yr/sp efficiency target for the year 2035 (also similar to the above-listed efficiency targets adopted by other air districts). Here, both the 2020 and 2035 efficiency targets are appropriate given the Project is not anticipated to be redeveloped before 2035.

According to the CEQA & Climate Change Report prepared by the California Air Pollution Control Officers Association ("CAPCOA"), a service population is defined as "the sum of the number of residents and the number of jobs supported by the project."[17] Here, utilizing the City's widely reported 80 percent hotel occupancy rate[18] and 1.5 persons per room ratio used by the City,[19] it can be estimated that the proposed 114-room Project will typically serve 137 patrons. While the IS/MND identifies 92 potential jobs supported by the Project (IS/MND, Tbl. 3.13-2, p. 3-181), this expected job creation is significantly higher than estimated by other hotel projects in the City, which demonstrate hotels with a variety of guest amenities and other commercial uses generate roughly 0.55 jobs per hotel room (equivalent to 63 jobs for the 114-room hotel proposed here).[20] Nevertheless, assuming for argument sake the Project will create 92 jobs, the Project's service population would be a maximum of 229 people (92 jobs + 137 patrons). Thus, by dividing the Project's admitted GHG emissions by this service population, the Project would emit approximately 8.64 MTCO2e/yr/sp. When compared to the SCAQMD's 2020 efficiency threshold of 4.8 MT CO2e/sp/yr and the 2035 efficiency target of 3.0 MT CO2e/sp/yr, the Project would result in a significant GHG impact (see Table 2 below).

Table 2: Estimated Total Project Buildout Annual Greenhouse Gas Emissions

Source	Emissions	Unit
Total Annual Emissions	1,979	$MTCO_2e$/year
Maximum Service Population	229	Employees + Guests
Per Service Population Annual Emissions	**8.64**	**$MTCO_2e$/sp/year**
2020 SCAQMD Project Level Efficiency Threshold	4.8	$MTCO_2e$/sp/year
Exceed?	***Yes***	-
Per Service Population Annual Emissions	**8.64**	**$MTCO_2e$/sp/year**
2035 SCAQMD Project Level Efficiency Threshold	3.0	$MTCO_2e$/sp/year
Exceed?	***Yes***	-

As you can see in the table above, the Project is nearly twice as inefficient when compare to SCAQMD's 2020 efficiency target (4.8 MTCO2e/sp/yr) and nearly three times as inefficient when compared to the 2035 efficiency target (3.0 MTCO2e/sp/yr)—thus resulting in a potentially significant

[17] CAPCOA (Jan. 2008) CEQA & Climate Change, p. 71-72, http://www.capcoa.org/wpcontent/uploads/2012/03/CAPCOA-White-Paper.pdf.

[18] City of Los Angeles (2017) Hotel Market Study, p. 3, 7, https://d3n8a8pro7vhmx.cloudfront.net/cd14/pages/2723/attachments/original/1508870241/CD14_Hotel_Market_Study-2017_Full___Report-Final.pdf?1508870241; see also City of Los Angeles (2017) 2017 Annual Report, p. 6, https://ctd.lacity.org/sites/default/files/2017%20CTD%20Annual%20Report.pdf .

[19] Lizard Hotel (DCP Case No. ENV-2015-2356-EIR) Draft EIR, pp. 24, https://planning.lacity.org/eir/SpringStHotel/Deir/DEIR%20Sections/Spring%20St%20Hotel%20IV.E%20Greenhouse%20Gas%20Emissions.pdf.

[20] See e.g., Lizard Hotel (DCP Case No. ENV-2015-2356-EIR) Draft EIR, PDF pp. 24 (120 employees for a 170-room hotel with 7,050-SF restaurant, 3,780-SF rooftop bar/lounge, 1,00-SF gym, 2,940-SF gallery bar, 12,460-SF of open space), https://planning.lacity.org/eir/SpringStHotel/Deir/DEIR%20Sections/Spring%20St%20Hotel%20IV.E%20Greenhouse%20Gas%20Emissions.pdf and https://planning.lacity.org/eir/SpringStHotel/DEIR/DEIR%20Spring%20Street%20Hotel%20Project.html; Bixel Residences (DCP Case No. ENV-2015-3927-MND) MND, PDF pp. 1, 99, 205 (69 new employees for the 126-room extended stay hotel component with two underground parking levels, 8,313-SF open space and providing lounge entertainment, fitness area, and pool/outdoor lounge), http://cityplanning.lacity.org/staffrpt/mnd/Pub_102716/ENV-2015-3927.pdf; Selma Wilcox Hotel (DCP Case No. ENV-2016-2602-MND) MND, PDF pp. 1, 144 (94 hotel jobs for the 114-room hotel with 26,000-plus-SF of restaurant, bar, pool, amenity deck, and rooftop bar uses), https://planning.lacity.org/staffrpt/mnd/Pub_010418/ENV-2016-2602.pdf.

impact. According to CEQA Guidelines § 15064.4(b), if there is substantial evidence that the possible effects of a particular project are still cumulatively considerable notwithstanding compliance with the adopted regulations or requirements, a full CEQA analysis must be prepared for the project. The results of this analysis, which is consistent with evolving scientific knowledge and regulatory schemes, provide substantial evidence that the Project's GHG emissions are still cumulatively considerable notwithstanding compliance with GHG reduction regulations or requirements. Therefore, a full CEQA analysis must be prepared for the Project, and mitigation should be implemented where necessary, per the CEQA Guidelines.

Response to SWAPE Comment 5

CalEEMod calculates the emissions associated with on-road mobile sources associated with residents, employees, visitors, and delivery vehicles visiting the Project Site based on the number of daily trips generated and VMT.

The commenter suggests an analysis based on service population and target efficiencies. 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 6

Newhall Ranch Requires Additionality

As mentioned above, we previously commented on the Project's failure to propose more aggressive mitigation into the Project's design than merely what is required by law or regulation in order to make the Project more GHG efficient. We find the Applicant's response to our comment to be inadequate and maintain that the Project is falling short of going beyond the GHG reduction measures that are already required under various laws and regulations.

Just because "a project is designed to meet high building efficiency and conservation standards … does not establish that its [GHG] emissions from transportation activities lack significant impacts." Newhall Ranch, 62 Cal.4th at 229 (citing Natural Resources Agency).[21] This concept is known as "additionality" whereby GHG emission reductions 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.[22] Hence, a "project should not

[21] See California Natural Resources Agency (Dec. 2009) Final Statement of Reasons for Regulatory Action: Amendments to State CEQA Guidelines Addressing Analysis and Mitigation of GHG Emissions Pursuant to SB-97, p. 23, http://resources.ca.gov/ceqa/docs/Final_Statement_of_Reasons.pdf (while a Platinum LEED® rating may be relevant to emissions from a building's energy use, "that performance standard may not reveal sufficient information to evaluate transportation-related emissions associated with that proposed project").

[22] Ibid., p. 89; see also CAPCOA (Aug. 2010) Quantifying Greenhouse Gas Mitigation Measures, pp. 32, http://www.capcoa.org/wp-content/uploads/2010/11/CAPCOA-Quantification-Report-9-14-Final.pdf ("in practice is that if there is a rule that requires, for example,

subsidize or take credit for emissions reductions which would have occurred regardless of the project." In short, as observed by the Court, newer developments must be more GHG-efficient. See Newhall Ranch, 62 Cal.4th at 226.

Here, the Project fails to provide more aggressive mitigation measures required for newer developments to reach AB 32's long-term goals—such as the net-zero approach utilized in the wake of the Supreme Court's Newhall Ranch decision. See Newhall Ranch, 62 Cal.4th at 226 ("a greater degree of reduction may be needed from new land use projects…."); see also *Californians for Alternatives to Toxics v. Department of Food and Agriculture* (2005) 136 Cal.App.4th 1, 17 ("[c]ompliance with the law is not enough to support a finding of no significant impact under the CEQA."). More should be required for the Project, especially in light of more aggressive targets set by SB 32 and EO B-55-18, including additional feasible mitigation measures and strategies that serve to reduce a project's GHG emissions.[23]

Response to SWAPE Comment 6

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 an acceptable threshold of significance]; Mission Bay Alliance, 6 Cal.App.5th 160 [quantitative assessment of GHG emissions not required when the analysis 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 Envt'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 here supports the chosen threshold; again, commenter submits no contrary evidence (and in any event were such to exist it would not be sufficient to undermine deference owed to the City).

The Project would be consistent with the growth projections in the AQMP. As discussed on pages 3-22 of the MND, a project is consistent with the AQMP, in part, if it is consistent with the population, housing, and employment assumptions that were used in the development of the AQMP. In the case of the 2016 AQMP, two sources of data form the basis for the projections of air pollutant emissions: the City of Los Angeles General Plan and SCAG's RTP.

The Project would not add residents to the AQMP. The Project Site is designated by the Community Plan for commercial uses and is zoned C4, which is a zoning classification that would permit the proposed uses. The requested zone change to C2 would permit the proposed uses at the same density of the existing C4 Zone. As such, the RTP/SCS's assumptions about growth in the City likely accommodate employment growth on the Project Site. As such, the Project does not conflict with the growth assumptions in the regional air plan and this impact is considered less than significant.

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increased energy efficiency in a new building, the project proponent cannot count that increased efficiency as a mitigation or credit unless the project goes beyond what the rule requires; and in that case, only the efficiency that is in excess of what is required can be counted.").

[23] Ibid., CAPCOA (Aug. 2010), p. 1, 16, 51, 82-84; see also CARB (Nov. 2017) App. B-Local Action, p. 7-9, https://www.arb.ca.gov/cc/scopingplan/app_b_local_action_final.pdf; SCAG (Dec. 2011) 2012-2035 RTP/SCS, http://rtpscs.scag.ca.gov/Documents/2012/draft/2012dRTP_04_SCS.pdf; SCAG (Apr. 2016) 2016-2040 RTP/SCS, http://scagrtpscs.net/Documents/2016/final/f2016RTPSCS.pdf; SCAG (Dec. 2015) Draft Program EIR 2016-2040 RTP/SCS, http://scagrtpscs.net/Documents/2016/peir/draft/2016dPEIR_Complete.pdf; City (2015) Plan for a Healthy Los Angeles, http://plan.lamayor.org/wp-content/uploads/2017/03/the-plan.pdf; City (May 2007) GreenLA, http://environmentla.org/pdf/GreenLA_CAP_2007.pdf.

Additionally, Section 3.13, of the MND, demonstrates that the Project would be within the growth projections of SCAG's RTP/SCS.

There are no applicable California Air Resources Board, SCAQMD, or City significance thresholds or specific reduction targets for GHG emissions, and no approved policy or guidance to assist in determining significance at the Project or cumulative levels. Additionally, there is currently no generally accepted methodology to determine whether 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, 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 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 AQMP. 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 GHG impacts are not cumulatively considerable. (*Communities for a Better Env't v. Cal. Resources Agency* (2002) 103 Cal.App.4th 98, 115.)

Moreover, the MND's climate change analysis merely discloses potential emissions for informational purposes, but does not base its significance finding on this. Instead, as per the City in exercising its lawful discretion to set the significance threshold, the analysis focuses on consistency with climate change plans at the State, regional, and local level as per CEQA Guidelines Section 15064.4. 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.

As shown on pages 3-69 to 3-83 of the MND, the Project would not conflict with any applicable plan, policy, or regulation of an agency adopted for the purpose of reducing emissions of GHGs. Furthermore, because the Project is consistent and does not conflict with these plans, policies, and regulations, the Project's incremental increase in GHG emissions as described above would not result in a significant impact on the environment. Therefore, Project-specific impacts with regard to climate change would be less than significant.

SWAPE Comment 7

Incorrect Use of GHG Plans to Determine Significance

As previously stated, our May comment letter addressed the fact that the IS/MND incorrectly relied upon compliance with several regulatory plans and policies not qualified as a CAP. In particular, we found the Project's reliance on compliance with the City's ClimateLA Implementation Plan to be insufficient. In response, the Applicant maintains that "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" (Applicant's Responses, pp. 32).

As stated in our May comment letter, these plans do not meet the criteria for an officially adopted CAP with GHG reduction target for use as a threshold of significance for GHG emissions as required by CEQA Guidelines § 15064.4(b)(3). None of these plans contain actual, quantified, or evidence-supported GHG emissions reductions to meet current GHG reduction targets "adopted by the relevant public agency through a public review process" (id.) are claimed—much less proven to be effective—which preclude their use to establish a lack of significant impact determination. Therefore, the IS/MND's reliance on compliance with this regulatory plan and policy is incorrect and should not be used as a threshold with which to determine the significance of the Project's GHG impact.

Given these plans are neither qualified CAPs, nor proven to be sufficient to reach the State's current long-term GHG reduction goals, we maintain that the Applicant's reliance on these plans to be an inadequate method of evaluating the significance of or reducing the Project's GHG emissions. Alternatively stated, the IS/MND fails to adequately evaluate and mitigate the Project's impacts by ignoring applicable numeric thresholds used by SCAQMD and other air districts (i.e., current state of evolving scientific knowledge and regulatory schemes), and utilizing only compliance with plans that are admittedly ineffective at achieving the State's long-term GHG reduction goals.

Response to SWAPE Comment 7

As stated previously, 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. The consistency analysis demonstrates that the Project complies with or exceeds the plans, policies, regulations and GHG reduction actions/strategies. Therefore, the Project would not conflict with any applicable plan, policy, or regulation of an agency adopted for the purpose of reducing emissions of GHGs.