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**ITEM #3 (CF No. 18-0873)**

March 5, 2019

**LETTER TO FILE:**

Response to Additional Documents received for Case No. CPC-2016-2601-VZC-HD-CUB-ZAA-SPR

Project Address(s): 6421-6429 ½ West Selma Avenue and 1600-1604 North Wilcox Avenue  
Council File No.: 18-0873

On February 26, 2019, the City Council held a regularly scheduled meeting for which this item, Case No. CPC-2016-2601-VZC-HD-CUB-ZAA-SPR, was placed on the agenda for consideration. The actions before the City Council included the adoption of the Vesting Zone Change and Height District Change to (T)(Q)C2-2D and the appeal of City Planning Commission's approval of the Conditional Use, Adjustment, and Site Plan Review for the continued maintenance of a 20,624 square-foot restaurant and the construction of a new 1,939 square-foot restaurant and a 114 guestroom hotel over three levels of subterranean parking (Project).

The item was placed on the agenda for the City Council meeting on February 26, 2019, which was posted on February 22, 2019 in accordance with Rule No. 6 of the Council Rules that were adopted on December 19, 1986 and last amended in January 2019. On February 26, 2019, the case was continued for one week until March 5, 2019. The item was placed on the agenda for the City Council meeting for March 5, 2019, which was posted on March 1, 2019 in accordance with Rule No. 6 of the Council Rules.

Planning Staff has prepared this written response to address comments which have been received since the item was heard before the Planning and Land Use Management Committee (PLUM) on November 27, 2018. After the PLUM Hearing, up until the end of business day on March 4, 2019, the City has received the following documents:

1. Letter on behalf of Rosa Aleman and Jose Contreras ("Commenters") from Gideon Kracov dated January 23, 2019
2. Response to Comment Letters (Council File No. 18-0873) from Alfred Fraijo Jr., Sheppard Mullin, dated February 22, 2019
3. Oppose 6421 Selma Wilcox Hotel from Casey Maddren dated February 24, 2019
4. Objection to Lack of Hearing Notice for Selma-Wilcox Hotel Project from Daniel E. Wright, The Silverstein Law Firm, dated February 25, 2019
5. Objection to Selma-Wilcox Hotel Project, from Daniel E. Wright, The Silverstein Law Firm, dated February 26, 2019
6. Letter on behalf of Rosa Aleman, Jose Contreras, Romulus Zamora, and Reneice Edwards ("Commenters") from Gideon Kracov dated February 26, 2019
7. Mitigated Negative Declaration and Related Approvals for the Property Located at 6421-9429 ½ West Selma Avenue and 1600-1604 North Wilcox Avenue (File Number 18-0873, February 26, 2019 Agenda Item No. 1) from Nicholas Whipps, Wittwer Parkin, dated February 26, 2019

8. Objection to Lack of Proper Mailed Notice and Posted Notice as Required by LAMC Section 12.24, 16.05H, 12.28C for City Council Land Use Appeal Hearing, and Error In Referring An Item Required By Law for City Council Hearing To A Committee of Less Than The Entire City Council from Daniel E. Wright, The Silverstein Law Firm, dated March 1, 2019

It is noted that while Mr. Kracov is listed as the representative of one of the appellants, Unite Here Local 11, the letters which are referenced herein were submitted on behalf of individuals referred to as "Commenters" and not on behalf of the appellant, Unite Here Local 11. It is also noted that Mr. Maddren is listed as an appellant on behalf of United Neighborhoods for Los Angeles, the letter which was received on February 24, 2019 did not state that it was on behalf of United Neighborhoods for Los Angeles.

In reviewing the letters, the comments can be summarized and addressed in one of the following issues:

1. The City violated the appellant's due process and fair hearing rights
2. The Mitigated Negative Declaration (MND) is inadequate
3. The approval of the CUB fails to consider substantial evidence in the record

Planning Staff has provided the following written response to the comments received after PLUM. The comments have been summarized herein and may be found in their entirety in the administrative record.

1. *The City violated the appellant's due process and fair hearing rights*

In letters submitted to the City dated November 27, 2018, February 25, 2019, February 26, 2019, and March 1, 2019, Mr. Wright of The Silverstein Law Firm alleges that the City has violated the appellant's due process and fair hearing rights due to the lack of proper noticing for hearings, improper referral to a committee in lieu of the full City Council, or the withholding of documents.

The City did not violate the appellant's due process and fair hearing rights due to lack of proper noticing for hearings or improper referral to a committee in lieu of the full City Council. As the Project required approval of multiple Legislative and/or Quasi-judicial Approvals, the application was processed in accordance with the procedures established in Section 12.36 of the Los Angeles Municipal Code (LAMC). After a determination and recommendation was issued by the City Planning Commission (CPC) and subsequent appeals filed, the case was scheduled for a public hearing before the PLUM Committee. The PLUM Committee was established by Resolution in accordance with Charter Section 242(b), which states that the Council shall establish committees "to enable it to carry out its duties." The PLUM Committee was established to oversee land use matters and "report to Council any information or recommendations necessary to enable the Council to properly legislate." On November 27, 2018, the PLUM Committee held a properly noticed public hearing in which Planning Staff, all four appellants, the applicant, and the public were afforded the right to speak and make a presentation for or against the project. After listening to the testimony, the PLUM Committee did not request any additional information or clarification and made a recommendation to adopt the Vesting Zone Change and Height District Change, to modify a Condition No. 21(b), and to deny the appeals. The item was then agendaized appropriately for a regularly scheduled meeting before the full City Council on February 26, 2019. The Council, at its discretion, continued the item to March 5, 2019 to review and consider information submitted to the administrative record on February 22, 2019. This process is consistent with the requirements of the LAMC, Council Rules, and the

processing of other Legislative Approvals, as defined by LAMC Section 12.36, and appeals within the City and is not unique to this case.

As discussed in the Department of City Planning (DCP)'s Letter to File dated February 22, 2019, the City did not violate the appellant's due process or fair hearing rights by withholding any documents. Mr. Wright makes unfounded and unsubstantiated claims that the City backdated the Letter to File documents and that Planning Staff's silence on the delay of the letter's availability on the Council File Management System (CFMS) is an admission that the withholding of the letter is for the purpose of denying a fair hearing. The administrative record provides evidence that both Letter to Files were prepared, dated, and transmitted appropriately by Planning Staff and that they were not backdated. The Letter to Files do not contain notice of a hearing date nor a determination on the requested actions or appeals. The Letter to Files were made available upon requested or if there was an inquiry as to whether a response to the appeals was prepared. The administrative record provides evidence that the City provided timely notice of all hearings and that determination letters were sent to Mr. Wright or a representative from his office as requested.

2. *The Mitigated Negative Declaration (MND) is inadequate*

In the letters received from Mr. Kracov, Mr. Maddren, Mr. Silverstein, and Mr. Whipps, the individuals argue that the MND which was prepared for the project is inadequate because there is substantial evidence that the project may have significant, unmitigatable impacts as it relates to Air Quality, Greenhouse Gases, Noise, and Traffic/Transportation. The comments raised regarding the analysis of the Project's impacts are consistent with arguments previously raised and addressed as part of the administrative record.

*Air Quality*

In a letter submitted by Mr. Whipps on behalf of the Southwest Regional Council of Carpenters, Mr. Whipps comments that the discussion of the air quality impacts remains inadequate and that the analysis is reliant upon a threshold of significance that was never adopted by the Southern California Air Quality Management District (SCAQMD). The comments made by Mr. Whipps are general in nature and do not provide any substantial evidence to support the claim that the air quality analysis remains inadequate. The City as lead agency may establish project specific thresholds of significance so long as they are supported with substantial evidence. (See CEQA Guidelines, section 15064.7. For this project, the City has used the Appendix G threshold questions related to Air Quality as the project's thresholds of significance. Furthermore, the City may use thresholds recommended by other public agencies or experts so long as they are supported with substantial evidence. (See CEQA Guidelines, section 15064.7(c).) Use of these thresholds is supported with substantial evidence.

*Greenhouse Gases (GHG)*

In a letter dated January 23, 2019, Mr. Kracov submitted a letter which attaches a response from SWAPE, dated January 24, 2019 which provides a response to the City's Letter to File dated November 21, 2018 and the Applicant's Response to Appeals dated November 26, 2018. The responses are consistent with comments previously raised by SWAPE, which have previously been addressed as part of the administrative record. In analyzing the Project's potential impacts related to GHG, the City utilized its discretion to analyze the Project's potential impacts consistent with Section 15064(h)(3) of the CEQA Guidelines. The analysis of the Project relies on project specific information that is consistent with other aspects of the project, such as the traffic analysis, and analyzes the Project's consistency with previously approved plans and adopted programs related to the reduction of GHG Emissions. SWAPE's comments are speculative in nature and do not provide any evidence

to support how or why the use of project specific information is unreasonable or that the methodology utilized by the City is inconsistent with Section 15064 of the CEQA Guidelines.

#### *Noise*

In a letter dated February 24, 2019, Mr. Maddren's comments are broad in nature and are largely related to the operations of the adjacent hotel known as the Dream Hotel. The comments are consistent with those which have previously been raised and addressed in the administrative record. The comments do not provide any new information or substantial evidence to support that the analysis of the Project's noise impacts is inaccurate.

In a letter dated February 22, 2019, Mr. Fraijo submitted a response to a letter submitted by Mr. Silverstein dated November 27, 2018. The letter from Mr. Silverstein is a 468-page letter, submitted at the PLUM Hearing, which included a report from Acentech dated November 27, 2018, which reviews the acoustical evaluation in the MND. The report submitted by Acentech relies largely on making a distinction in word choices that do not affect the analysis of the Project's potential impacts as it relates to noise because the MND and related technical studies adequately describe the parameters in which the analysis is based upon. The report is broad in nature and does not provide substantial evidence to support its conclusion that the analysis in the MND is inaccurate. As discussed in Mr. Fraijo's letter, the applicant sought further analysis, prepared by DKA Planning dated February 22, 2019 and RGD Acoustics dated February 22, 2019, to evaluate the claims raised by Mr. Silverstein and Acentech. Planning Staff has reviewed the additional analysis prepared by DKA Planning and RGD Acoustics and has determined that the analysis is supplemental in nature and further clarifies or amplifies the previously prepared technical studies conducted as part of the analysis in the MND. The additional studies do not change the analysis or the conclusions in the MND, which determined that potential impacts would be less than significant with the implementation of Project Design Features and compliance with regulatory measures. It should be noted that the conclusion that the Project's noise impacts would be less than significant was prior to the applicant proactively revising the design of the rooftop and before the imposition of operational conditions by the City that were intended to address general concerns from the public and are unrelated to the environmental analysis of the Project. The redesign of the Project and additional operational conditions would establish a more conservative operational setting than what was analyzed in the MND and was determined to have less than significant impacts.

In a letter dated February 26, 2019, Mr. Wright attached a response from Acentech, dated February 26, 2019, which again is broad in nature and does not provide any substantial evidence to support that the analysis in the MND is inaccurate. Mr. Wright refers to *Laruen "Elle" Farmer et al. v. City of Los Angeles (BS169855)* as a basis for establishing a fair argument that construction and operational noise of the Selma Wilcox Hotel will be cumulatively significant when combined with the hotel located within 200 feet of the project site. It should be noted that the Superior Court has not issued a final order in this litigation. Instead the court has permitted the City an opportunity to clarify the noise analysis prepared for that project. In addition, a trial court's ruling does not establish any binding precedent on other projects reviewed by the City. Additionally, Mr. Wright further claims that the additional studies submitted by the applicant require the MND to be recirculated. The analysis and conclusions in the MND are based on the technical study that was included as Appendix H of the MND and are not based on the supplemental studies submitted by the applicant on February 22, 2019. The applicants prepared the supplemental studies as a response to allegations first raised by Mr. Silverstein on November 27, 2018, almost ten months since the end of the publication period of the MND. The submittal of the technical studies by the applicant does not require the MND to be republished, as argued by Mr. Wright. Section 15073.5(c)(4) of the CEQA Guidelines permits new information to be added provided that it "merely clarifies, amplifies, or makes insignificant modifications to the

negative declaration.” As such, the letter does not establish that the MND requires recirculation.

*Traffic/Transportation*

In a letter dated January 23, 2019, Mr. Kracov submitted a letter which attaches a response from Smith Engineering and Management, dated January 24, 2019 which provides a response to the City’s Letter to File dated November 21, 2018 and the Applicant’s Response to Appeals dated November 26, 2018. The comments do not contain any new information or substantial evidence to support the comments that the analysis and conclusions of the MND are inaccurate. The responses submitted by Smith Engineering and Management are largely speculative in nature and are related to the City’s operations, rather than substantiating claims that the analysis is inaccurate. The analysis and conclusions of the MND are based on a Traffic Impact Analysis which was prepared in accordance with the Department of Transportation’s Transportation Impact Study Guidelines. The analysis, including a supplemental valet parking analysis was reviewed and approved by the Department of Transportation, and it was determined that impacts would be less than significant with the implementation of the identified mitigation measures.

*Piecemealing*

Mr. Kracov, Mr. Maddren, and Mr. Silverstein alleges that the MND, Case No. ENV-2016-2602-MND, which was prepared for the Project is inadequate because it was illegally piecemealed repeats arguments previously raised and addressed as part of the administrative record. The comments argue that the Project was either piecemealed from the previously approved Tao Restaurant or from a larger plan formulated by the applicant to establish a “hotel district” around the Project Site. The comments do not contain any new information or substantial evidence to support the arguments which have not already been thoroughly addressed in the administrative record and the MND. Planning Staff refers to previous discussions related to these comments in the Staff Recommendation Report to CPC, the Letter to File dated November 21, 2018, and the discussions before CPC on July 12, 2018 and PLUM on November 27, 2018. As further discussed in the referenced documents, the MND that is before the City Council for consideration has adequately and thoroughly addresses the issues related to both aspects of piecemealing raised Mr. Kracov, Mr. Maddren, and Mr. Silverstein.

*Regulatory Compliance Measures*

In a letter dated February 26, 2019, Mr. Wright alleges that the use of Regulatory Compliance Measures violates the CEQA process. Regulatory Compliance Measures are existing, and reasonably anticipated, regulations that are based on local, state, or federal regulations or laws that the Project would be required to comply with independent of the CEQA review process. By their very nature, projects are required to comply with these regulations at the time of obtaining a permit. As the Regulatory Compliance Measures are not project specific or a result of the development of any one particular project, they are not considered Mitigation Measures and are included as part of the analysis to establish a baseline of a project’s potential impacts.. As Regulatory Compliance Measures are not Mitigation Measures, they are not required to be incorporated as part of the mitigation monitoring program and were provided for informational purposes only. As such, the comment made by Mr. Wright is broad in nature and does not provide evidence to support his claims that the analysis is inconsistent with CEQA.

3. *The approval of the CUB fails to consider substantial evidence in the record*

In a letter dated February 24, 2019, Mr. Maddren comments that DCP failed to rationally evaluate statistics related to crime, a letter from the Chief of the LAPD, and the impact of

violent crime in Hollywood over the past four years. This comment is consistent with arguments previously raised and addressed as part of the administrative record.

Mr. Maddren fails to note that the applicant continuously met with LAPD to address public safety concerns and that LAPD attended the public hearings in support of the project provided that the conditions recommended by LAPD were incorporated as part of the approval. The determination letter dated August 17, 2018 reflects conditions that were submitted by LAPD that were available prior to the CPC taking action on the case. On November 27, 2018, the PLUM Committee recommended that the City Council modify Condition No. 21(b), as recommended by Planning Staff, to further restrict the number of special events which may occur on the site as recommended by LAPD. As reflected in the administrative record and findings related to the CUB contained in the determination letter, the CPC and PLUM Committee considered the substantial evidence in the record in approving the CUB.

In conclusion, Planning Staff has reviewed all comments submitted to the administrative record and finds that no new information or substantial evidence has been submitted to the record which establishes a fair argument that the project may have a significant effect on the environment and that an EIR is required. The MND, Case No. ENV-2016-2602-MND, which was prepared for the Project adequately addresses all the issues raised by the appellants or interested parties, and that the CPC, as well as PLUM Committee, considered all of the information within the administrative record in making its determination and recommendation to the City Council.

Inquiries regarding this matter shall be directed to May Sirinopwongsagon, Planning Staff for the Department of City Planning at (213)978-1372 or [may.sirinopwongsagon@lacity.org](mailto:may.sirinopwongsagon@lacity.org)