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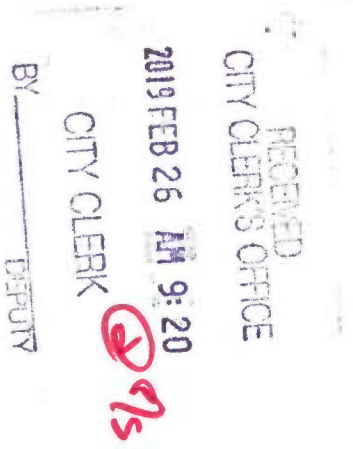
ORIGINAL

February 26, 2019



VIA HAND DELIVERY

Hon. Herb Wesson, President
Los Angeles City Council
c/o Los Angeles City Clerk
200 N. Spring Street, Room 395
Los Angeles, CA 90012

Re: **Objection to Selma-Wilcox Hotel Project**
Objections to the Los Angeles City Council Meeting re: the Site Plan Review, Zone Change, District Change, Conditional Use Permit, Mitigated Negative Declaration and all other entitlements for the Tao Hotel/Dream II Hotel/Selma Wilcox Hotel project located at 6421-6429 ½ W. Selma Avenue, Los Angeles; CPC-2016-2601-VZC-HD-CUB-ZAA-SPR; ENV-2016-2602-MND, Council File 18-0873, City Council Meeting Agenda Item No. 1.

Honorable President Wesson and Los Angeles City Councilmembers:

I. INTRODUCTION.

This firm and the undersigned represent The Sunset Landmark Investments, LLC (hereinafter "Sunset Landmark"). Please keep this office on the list of interested persons to receive timely notice of all hearings and determinations related to the proposed approval of an eight-story mixed-use building at 6421-6429 ½ W. Selma Avenue, commonly known as either the Tao Hotel, Dream Hotel II, or Selma Wilcox Hotel ("Project"). Sunset Landmark adopts and incorporates by reference all Project objections raised by all others during the environmental review and land use entitlement processes.

In addition to our prior objections, we submit these additional objections to you and for the record.

II. THE MND IS IMPROPER AND ILLEGAL, INCLUDING BECAUSE A FAIR ARGUMENT EXISTS THAT THE PROJECT MAY HAVE SIGNIFICANT, UNMITIGABLE CONSTRUCTION, OPERATIONAL AND CUMULATIVE NOISE IMPACTS.

Previous correspondence in the record before the City establish that the parent company of Selma Wilcox Hotel LLC, the applicant in this case, is Relevant Group. Relevant is the real party in interest in numerous hotel, restaurant, and night clubs within a 200 hundred feet of the intersection of Selma Avenue and Wilcox Avenue where the Selma Wilcox Hotel is proposed. The piecemeal rollout of multiple pieces of the overall project envisioned by Relevant Group has serious cumulative implications regarding construction and operational noise.

Please see a further Acentech report, attached hereto at **Exhibit 1**, and incorporated in full by this reference. This report demonstrates serious deficiencies in the noise analysis of the Selma Wilcox Hotel project.

In addition, since the PLUM Committee considered this case, the Los Angeles Superior Court, Dept. SE-G, in the case of Lauren "Elle" Farmer et al. v. City of Los Angeles (BS169855), has issued a decision finding that Relevant Group's related hotel project within 200 feet would have significant construction, operational and cumulative noise impacts to the surrounding area, all virtually unmitigated. Attached hereto at **Exhibit 2** is a copy of the court's decision finding that the nearby hotel project owned by Relevant Group has unmitigated significant noise impacts. Given that a court has adjudicated the nearby construction site at risk of injecting unmitigated noise into the community, there is a fair argument that construction and operational noise of the Selma Wilcox hotel will be cumulatively significant when combined with the noise of the other hotel project owned by Relevant Group within 200 feet. On this basis, and in combination with the observations regarding the City's flawed study process, the City lacks substantial evidence that the Selma Wilcox Hotel will not have a significant construction, operational, and cumulative noise impact.

III. THE PROJECT HAS BEEN ILLEGALLY PIECEMEALED FROM A LARGER EFFORT BY THE SAME DEVELOPER TO BUILD A CLUSTER OF HOTELS.

CEQA forbids piecemeal review of the significant environmental impacts of a project. Bozung v. Local Agency Formation Com. (1975) 13 Cal.3d 263, 283-284; Arviv Enterprises, Inc. v. South Valley Area Planning Com. (2002) 101 Cal.App.4th 1333, 1340. Rather, CEQA mandates "that environmental considerations do not become submerged by chopping a large project into many little ones—each with a minimal potential impact on the environment—which cumulatively may have disastrous consequences." Bozung, 13 Cal.3d at 283–284. Thus, the term "project" as used for CEQA purposes is defined broadly as "the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment...." Guidelines § 15378(a).

Planning Commissioner Dake Wilson stated that she "could see" why the developer first applied only for the building permit and CUB for alcohol for the Tao Restaurant, parking garage, and one-story retail, and then later switched to reveal the discretionary plans for the hotel. She said it made her "not trust anything" the developer said. But then, instead of declaring that this open and defiant piecemealing of the Project had to be enforced by the City, she shrugged her shoulders and voted to approve the project. This is a dereliction of the City's duty under CEQA. In fact, in a rare showing of dissent, two City Planning Commissioners voted against approval of this Project.

Not only is this hotel project piecemealed to get it under construction without proper environmental review, it is part of a larger project that is not yet fully disclosed with the other hotels. This completely forecloses proper cumulative review and puts the City Council into the position of thinking it "must" approve the unfinished building to avoid an eyesore. This conduct has been outrageous manipulation of the City for which the City Planning staff actively participates in a cover up of serious violations of law.

In fact, due to City officials refusing to require an EIR to study the cumulative impacts of these Projects, United Neighbors 4 Los Angeles filed with the Los Angeles District Attorney and the California Attorney General a complaint letter calling for investigation of City Planning officials and Planning Commissioners for violation of Government Code Section 1222. That law provides that a public officer's willful violation of a legal duty imposed by law shall be a misdemeanor. The UN4LA complaint was exhaustively documented to establish how Relevant Group apparently is using a

series of shell corporations to apply for project entitlements and permits under different names in order to evade the duty to analyze the entire two block project of "party hotels" in an EIR.

On the afternoon of February 22, 2019, Relevant Group's attorneys submitted to the administrative record a letter and purported rebuttal of appeal letters filed against this Project. However, their rebuttal letter offered no counter argument or evidence to show that UN4LA's criminal complaint is without basis. The silence of the Relevant Group's attorneys in the face of the UN4LA complaint letter is an admission that the piecemealing of the Selma Wilcox Hotel is true and ongoing in defiance of the law.

IV. THE CITY VIOLATED APPELLANTS' DUE PROCESS AND FAIR HEARING RIGHTS AT THE NOVEMBER 27, 2018 PLUM COMMITTEE HEARING.

The City on the day of the PLUM Committee hearing dumped about 100 pages of detailed ostensible rebuttal to the appeals just hours before the hearing, and the City's "Letter to the File" – bearing a date of November 21, 2018, but not made public on that date, or emailed to us in this modern age. Instead, the City posted the backdated Letter to the File to the Council File just hours before the public hearing.

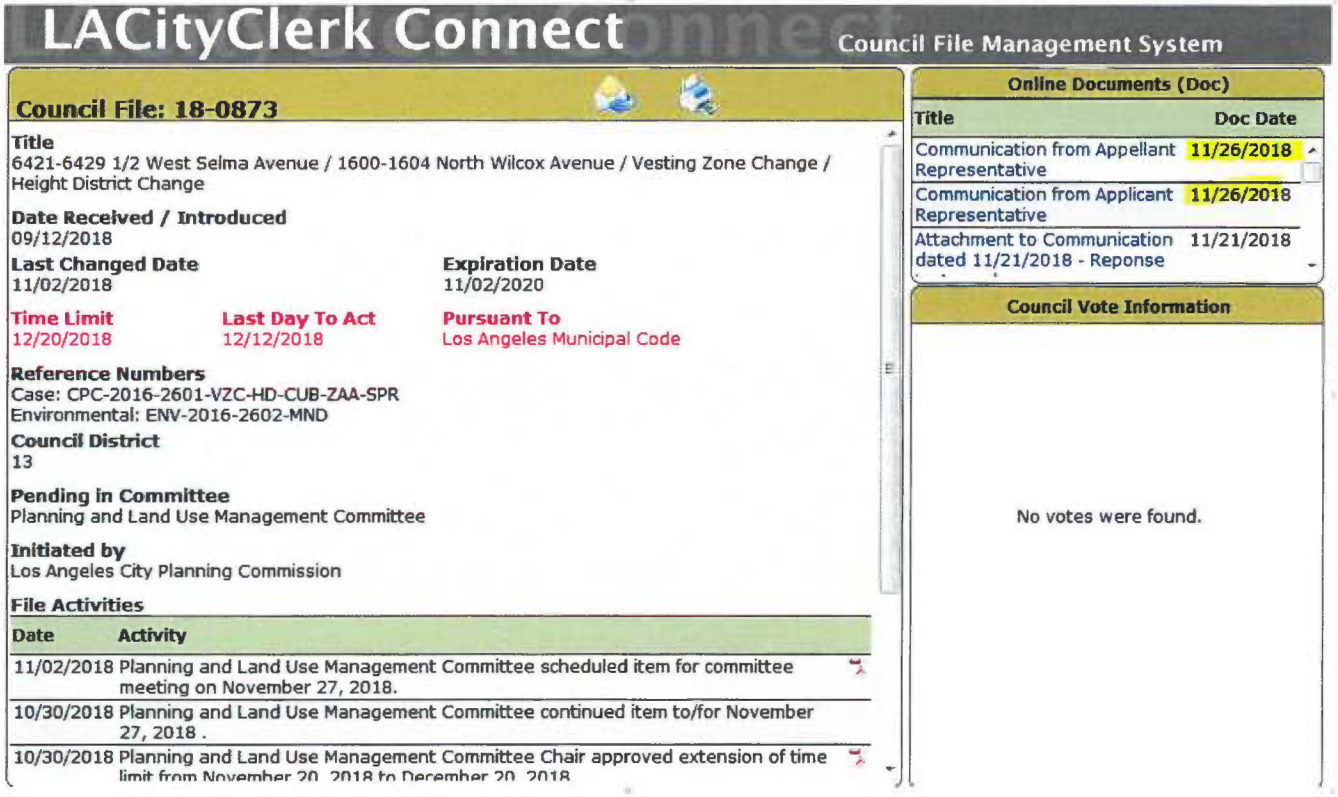
There is only one purpose for the City and developer holding back these documents: to impair the ability of Appellants to review the arguments, identify weaknesses, draft responses to these claims, and develop evidence in rebuttal. The City's actions constitute a violation of Appellants' due process and fair hearing rights, including under Code Civ. Proc. § 1094.5.

From The Nov. 27, 2018 LACityClerkConnect Website:

Four documents were added on Nov. 27, i.e., they were not available on Nov. 26:

Title	Doc. Date	Comments:
Communication from Appellant Representative (TSLF letter)	11/26/2018	Was added on 11/27/18. Was not available on 11/26/18.
Communication from Applicant Representative (Sheppard Mullin letter)	11/26/2018	Was added on 11/27/18. Was not available on 11/26/18.
Attachment to Communication dated 11/21/2018 – Response to Appeal (11-21-18 City of Los Angeles Letter/Response to Appeals (**includes Staff Responses**)).	11/2**1**/2018	Was added on 11/2**7**/18. Was not available online on 11/2**6**/18.
Communication from Department of City Planning – Supplemental Transmittal	11/2**1**/2018	Was added on 11/2**7**/18. Was not available online on 11/2**6**/18.

11-27-18 Screenshot of full image to show set-up of LACityClerkConnect website (Online Documents are shown on the upper right corner).



LACityClerk Connect — Council File Management System

Council File: 18-0873

Title
6421-6429 1/2 West Selma Avenue / 1600-1604 North Wilcox Avenue / Vesting Zone Change / Height District Change

Date Received / Introduced
09/12/2018

Last Changed Date
11/02/2018

Expiration Date
11/02/2020

Time Limit
12/20/2018

Last Day To Act
12/12/2018

Pursuant To
Los Angeles Municipal Code

Reference Numbers
Case: CPC-2016-2601-VZC-HD-CUB-ZAA-SPR
Environmental: ENV-2016-2602-MND

Council District
13

Pending in Committee
Planning and Land Use Management Committee

Initiated by
Los Angeles City Planning Commission

File Activities

Date	Activity
11/02/2018	Planning and Land Use Management Committee scheduled item for committee meeting on November 27, 2018.
10/30/2018	Planning and Land Use Management Committee continued item to/for November 27, 2018 .
10/30/2018	Planning and Land Use Management Committee Chair approved extension of time limit from November 20, 2018 to December 20, 2018

Online Documents (Doc)

Title	Doc Date
Communication from Appellant Representative	11/26/2018
Communication from Applicant Representative	11/26/2018
Attachment to Communication dated 11/21/2018 - Reponse	11/21/2018

Council Vote Information

No votes were found.

11-27-18 Multiple Screenshots to show the four documents that were added on November 27, 2018 (11-27-18) under "Online Documents:"

Online Documents (Doc)

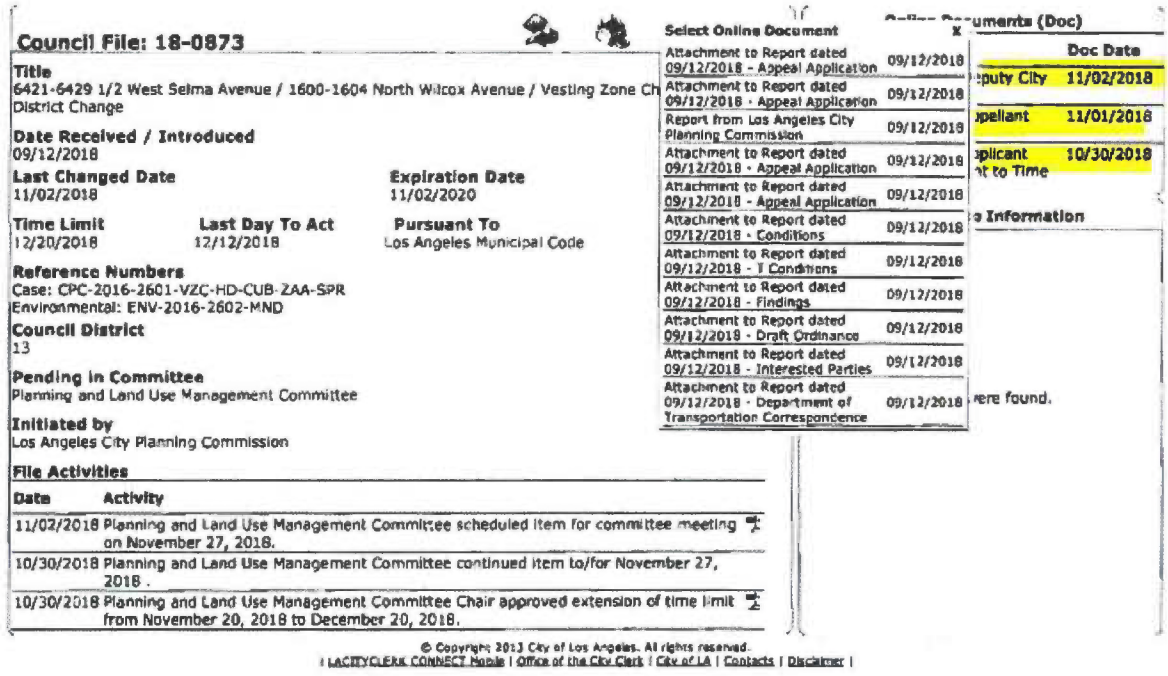
Title	Doc Date
Communication from Appellant Representative	11/26/2018
Communication from Applicant Representative	11/26/2018
Attachment to Communication dated 11/21/2018 - Reponse	11/21/2018

Title	Doc Date
to Appeal	
Communication from Department of City Planning - Supplemental Transmittal	11/21/2018
Communication from Deputy City Clerk (Re-Notice)	11/02/2018

Online Documents (Doc)

Title	Doc Date
City Clerk (Re-Notice)	
Communication from Appellant Representative	11/01/2018
Communication from Applicant Representative - Consent to Time Limit Extension	10/30/2018

Nov. 26 Screenshot showing that the top document under "Online Documents" was "Communication from Deputy City Clerk (Re-Notice)" dated 11/02/2018.



Council File: 18-0873

Title
6421-6429 1/2 West Selma Avenue / 1600-1604 North Wilcox Avenue / Vesting Zone Ch
District Change

Date Received / Introduced
09/12/2018

Last Changed Date
11/02/2018

Expiration Date
11/02/2020

Time Limit
12/20/2018

Last Day To Act
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Pursuant To
Los Angeles Municipal Code

Reference Numbers
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Council District
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Select Online Document	
Attachment to Report dated 09/12/2018 - Appeal Application	09/12/2018
Attachment to Report dated 09/12/2018 - Appeal Application	09/12/2018
Report from Los Angeles City Planning Commission	09/12/2018
Attachment to Report dated 09/12/2018 - Appeal Application	09/12/2018
Attachment to Report dated 09/12/2018 - Appeal Application	09/12/2018
Attachment to Report dated 09/12/2018 - Conditions	09/12/2018
Attachment to Report dated 09/12/2018 - T Conditions	09/12/2018
Attachment to Report dated 09/12/2018 - Findings	09/12/2018
Attachment to Report dated 09/12/2018 - Draft Ordinance	09/12/2018
Attachment to Report dated 09/12/2018 - Interested Parties	09/12/2018
Attachment to Report dated 09/12/2018 - Department of Transportation Correspondence	09/12/2018

uments (Doc)

Doc Date
puty City 11/02/2018
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ere found.

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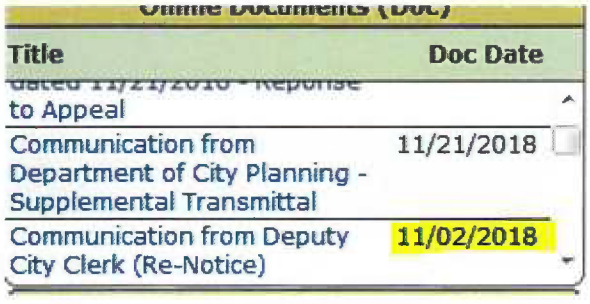
Nov. 27 Screenshot showing the 11/02/2018 document below the newly added 11/21/2018 City Trasmittal of its Response to the Appeal.



Title	Doc Date
dated 11/21/2018 - Reponse to Appeal	
Communication from Department of City Planning - Supplemental Transmittal	11/21/2018
Communication from Deputy City Clerk (Re-Notice)	11/02/2018

The City waited about 90 days from the time of our November 27, 2018 complaint of a due process and fair hearing violation to respond. Because I was referring to the City Council File throughout yesterday, February 25, 2019, I observed that sometime around the 2:00 p.m. to 3:00 p.m. hour, the City posted another backdated "Letter to the File" that purports to dispute that Appellant's due process and fair hearing rights were not violated by the placement of a backdated response to appeals in the City Council File. This "Letter to the File" is dated Friday, February 22, 2019, yet in fact, it was made available to the public, and not emailed to us, about 18 hours before the City Council meeting today. (See **Exhibit 3** for City Clerk notice of posting showing the different dates.) The use of backdated documents or withholding of documents from public view until just hours before a public hearing is an intentional effort to deprive the land use appellants of an opportunity to respond before the administrative record closes.

Yesterday's backdated February 22, 2019 Letter to the File makes this Orwellian claim: **"This letter is intended to respond to general statements made in documents received at the PLUM hearing and is not intended to provide additional rebuttal statements to arguments raised at or after the hearing."** It is a bit difficult to think this Letter to the File is anything but a rebuttal to due process and fair hearing violations documented in our November 27, 2018 objection letter.

The City claims that its 15-page November 21, 2018 Letter to the File was transmitted "to the City Clerk's Office on the same day." The City then **offers no explanation** how its November 21, 2018 Letter was not posted in the City Council File until November 27, 2018 – just hours before the PLUM Committee hearing – when the City knew all 4 land use appellants would have no opportunity to respond to the 15 pages of appeal rebuttal arguments. The City knows the facts surrounding how its Letter to the File was created, dated, and placed in the City Council File and its silence is an admission that the withholding of its appeal rebuttal arguments was for the purpose of denying a fair hearing.

The City's February 22, 2019 Letter to the File also claims that because it summarized its 15-page November 21, 2018 Letter to the File orally at the hearing, there was no denial of due process. However, the Letter addresses more issues than the cursory oral presentation made at the hearing. And the City intended to rely upon its backdated November 21, 2018 Letter to the File because at time stamp 1:12:56 to 1:13:08, the City Planner specifically told the PLUM Committee that a detailed letter addressing the appeal had been placed in the Council File. Therefore, the City plans to in litigation to rely on

the rebuttals made in this letter even though it was withheld from the public and the land use appellants for at least six days.

Additionally, Appellant is informed and believes that the City conducted what is known within the City as a pre-PLUM meeting prior to the PLUM Committee meeting where the land use appeals were considered. Appellant contends that the Project and the land use appeals were substantively discussed at the pre-PLUM meeting and a consensus reached by representatives of the members of the City Councilmembers on the PLUM Committee. Not only would the development of a consensus on this Project and appeal outside the PLUM Committee meeting constitute a violation of the Ralph M. Brown Act, it would also deprive quasi-judicial land use appellants of their fair hearing rights. For all of these reasons the City Council must reverse the project approvals and send the Project back for lawful hearings before the PLUM Committee.

V. THE CITY CONTINUES TO DENY APPELLANTS' DUE PROCESS AND FAIR HEARING RIGHTS AT THE CITY COUNCIL FEBRUARY 26, 2019 HEARING.

The City's February 22, 2019 Letter to the File was backdated or improperly withheld from posting to the City Council File on February 25, 2019. (See **Exhibit 3** for City Clerk notice of posting showing the different dates.) These actions, following the same pattern as when happened at the November 27, 2018 PLUM Committee hearing, did not permit Sunset Landmark or its attorneys to thoroughly investigate some of the City's factual claims in trying to defend against the City's false claims that the land use appellants were afforded due process and fair hearings. For this reason, today's City Council hearing also is denial of due process that warrants its reversal, with direction to conduct a fair hearing where all parties can have their positions fully developed in the administrative record.

In addition to the City's backdated or withheld February 22, 2019 Letter to the File, also on February 22, 2019, the Applicant's attorneys themselves filed a 49 page letter to rebut arguments and information they have known for the three months since the November 27, 2018 PLUM Committee hearing. Embedded in the 49 page letter is a 6 page report of a new acoustical study conducted by RGD Acoustics. This letter reports that new ambient noise measurements were made by Veneklasen Associates from January 21 through January 25, 2019. The letter does not describe the methodology or disclose the data or show the location of the noise monitors. The letter claims that the noise from the rooftop of this additional "party hotel" will not be significant.

The time to have conducted ambient noise studies was prior to the release of the MND for public comment. The public holds an important position in the CEQA process, and public participation cannot be thwarted by the City allowing a developer to conduct studies that should have been performed in the first place, and then relying on such studies without recirculating the information to expose it to critical public review and comment. Accordingly, the only thing the Applicant's attorney letter establishes is that the MND must be recirculated under CEQA.

Additionally, we note that although the new noise monitoring was conducted in January, all of the consultant letters, as well as the attorney's letter are simultaneously dated February 22, 2019. They all were dated so as to be inserted into the City Council File with only one business day prior to the City Council meeting. Thus, the actions of the Applicant's attorneys were also calculated to avoid permitting the land use appellants to critically review and respond prior to the City Council's final hearing.

VI. THE CITY'S REGULATORY COMPLIANCE MEASURE PROCESS VIOLATES CEQA.

The City purports to rely upon numerous regulatory compliance measures. By merely citing the existence of these measures, the City asserts that for each topic on the CEQA Guidelines Checklist where regulatory compliance is cited, the impacts of this particular Project will be mitigated beneath the level of significance. But the MND fails in each case of the use of a regulatory compliance measure to set forth the threshold of significance, analyze how or why use of a particular regulatory compliance measure will in fact mitigate the Project's possible impacts beneath the level of significance. In this way, the MND is faulty because it fails to establish with substantial evidence that application of the regulatory compliance measure in this case will clearly result in no significant impact. Because the City has adopted a mitigation monitoring program that fails to identify which regulatory compliance measure will apply to the project, or how their enforcement is actually monitored by the City, there is no assurance that any of the regulatory compliance measures will be applied to this Project. For these reasons the City has failed to proceed in accordance with law.

Additionally, in some cases the City has used the existence of a regulatory compliance measure but delayed actually conducting the studies necessary to gather data that establishes that application of the regulatory program to the Project will in fact clearly establish the Project will not have a significant impact. Thus, in every case where the City cites a regulatory program but has failed to conduct the necessary studies, or

postponed them to the time of building permit, the City has violated CEQA including CEQA Guideline Section 15126.4(a)(1)(B).

VII. CONCLUSION.

In a time when former PLUM Committee members have come under even greater scrutiny for improper decisions and elevating the interests of favored developers over the rights of the citizens you were elected to represent, and based on the totality of evidence showing the illegal processing of the Project, including via the subject MND, we urge the City Council to grant the appeals and deny the Project and its requested approvals.

Very truly yours,

DANIEL E. WRIGHT
FOR
THE SILVERSTEIN LAW FIRM, APC

DEW:vl
Encl.

EXHIBIT 1

ACENTECH

601 South Figueroa Street #4050
Los Angeles CA 90017
213 330 4237
acentech.com

February 26, 2019

Daniel Wright, Esq.
The Silverstein Law Firm, APC
215 North Marengo Avenue, 3rd Floor
Pasadena, California 91101-1504

Subject: **Selma Wilcox Hotel Project**
Douglas Kim + Associates 2-22-2019 Letter
Acentech Project No. 631222

Mr. Wright:

Thank you for forwarding on the letter from Douglas Kim + Associates addressing Acentech's concerns with the MND previously submitted for the Selma Wilcox project. Acentech has not have enough time to provide a detailed response to the information presented with the Douglas Kim + Associates letter since today is the first business day after the applicant submitted the letter to the City. Because this information is intended to be discussed in a City Council meeting tomorrow, rather than provide a detailed review, we offer this letter to identify some of the more apparent errors in the response.

Construction Noise Impact on Hotels Not Studied in MND Page 7, point 10

Acentech previously questioned why hotels were not included as "Noise Sensitive Receptors" in the evaluation of construction noise. The Douglas Kim + Associates response quotes the L.A. CEQA Thresholds Guide, stating it "considers noise sensitive receptors to include, residences, **transient lodgings**, schools...", and the same letter states "Hotels are typically not considered to be environmentally sensitive..." (The emphasis was added by Acentech for clarity).

Page I.1-3 of the L.A. CEQA Thresholds Guide, I.D "Evaluation of Screening Criteria requires the reviewer to "Consult a map showing the location of noise sensitive uses within 500 feet of the project site. Noise sensitive uses include residences, **transient lodgings**, schools..." (The emphasis was added by Acentech for clarity).

The State of California charges a transient occupancy tax, which it requires for the occupancy of a hotel, motel, inn, boarding house, or similar sleeping accommodation for a period of 30 days or less. This occupancy is often referred to transient occupant, or guest. The guest occupies a property known as lodging, or an accommodation, or a unit. Thus, the intent of the L.A. CEQA Thresholds Guide is to include hotels and other transient lodgings as noise sensitive receptors.

Because transient lodgings were not included in the MND's study of construction noise, the MND lacks substantial evidence there will be no significant noise impact.

Ambient Noise Measurement does not Follow City Requirements Page 4, point 7

The response regarding insufficient ambient noise measurement durations does not provide an appropriate response. Acentech mentioned at a minimum, to evaluate any ambient noise level, the Los Angeles Municipal Code requires a continuous 15-minute measurement. Since there are no other defined minimum durations in evaluating ambient noise levels, it stands to reason, no noise measurement should be shorter than 15-minutes. Especially when attempting to translate short duration measurements into a 24-hour metric (CNEL).

There is no shortcut offered by the L.A. CEQA Thresholds Guide to estimate the 24-hour metric, CNEL. Also, the L.A. CEQA Thresholds Guide uses the CNEL metric to evaluate impact to noise sensitive receptors. The Guide also clearly defines what the 24-hour metric is, on page I.1-2. "The Community Noise Equivalent Level (CNEL) represents an energy average of the A-weighted noise levels over a **24-hour period** with 5 dBA and 10 dBA increases added for nighttime noise between the hours of 7:00 p.m. and 10:00 p.m and 10:00 p.m and 7:00 a.m., respectively." (The emphasis was added by Acentech for clarity).

Without following the prescribed method of determining the metric, and also, making measurements that are not even long enough duration to document ambient noise levels in terms of Leq by the City of Los Angeles, the MND attempts to describe the existing ambient noise environment. There is no technical basis for the methods used to determine the 24-hour metric, despite it clearly contradicting methods prescribed by the City of Los Angeles.

Because the ambient noise measurement was inconsistent with recognized measurement methods, the conclusions in the MND, that there will be no significant construction or operational noise is essentially speculation.

A more detailed response is not feasible, but further response could be prepared, should we be given the appropriate amount of time to respond to the Douglas Kim + Associates letter. Please feel free to contact me should any questions arise.

Sincerely,

ACENTECH INCORPORATED

Aaron Bétit
Principal Consultant

EXHIBIT 2

SUPERIOR COURT FOR THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

SOUTHEAST DISTRICT/NORWALK COURT

LAUREN ELLE FARMER ET AL, Plaintiff, vs. CITY OF LOS ANGELES ET AL, Defendant	Case No.: BS169855 ORDER/RULING

Petitioners Farmer, Hernandez, and Hollywood for the Environment and Equitable Development's petition for writ of mandate is GRANTED as to the 1st cause of action, and DENIED as to the 2nd cause of action.

Petitioners Farmer, Hernandez, and Hollywood for the Environment and Equitable Development seek a peremptory writ of mandate, setting aside City of Los Angeles's land use entitlements. Petitioners file the instant writ on two grounds: 1) the mitigated negative declaration ("MND") violated CEQA; and 2) City violated its own zoning laws in approving the entitlements.

JUDICIAL NOTICE is taken of Petitioner and Respondent's Exhibits.

Project Description

The Tommie Hotel Project is a 212 room hotel located at 6516-6526 West Selma Avenue in Hollywood.

Standard

Where a writ is issued for the purpose of inquiring into the validity of any final administrative order or decision made as the result of a proceeding in which by law a hearing is required to be given, evidence is required to be taken, and discretion in the determination of facts is vested in the inferior tribunal, corporation, board, or officer, the case shall be heard by the court sitting without a jury. (CCP 1094.5(a).) The inquiry in such a case shall extend to the questions whether the respondent has proceeded without, or in excess of, jurisdiction; whether there was a fair trial; and whether there was any prejudicial abuse of discretion. Abuse of discretion is established if the respondent has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence.

(CCP 1094.5(b).) Where it is claimed that the findings are not supported by the evidence, in cases in which the court is authorized by law to exercise its independent judgment on the evidence, abuse of discretion is established if the court determines that the findings are not supported by the weight of the evidence. In all other cases, abuse of discretion is established if the court determines that the findings are not supported by substantial evidence in the light of the whole record. (CCP 1094.5(c).)

1st CAUSE OF ACTION: CEQA VIOLATIONS

A public agency must prepare an EIR whenever substantial evidence supports a "fair argument" that a proposed project may have a significant effect on the environment. (Pub. Res. Code 21100, 21151; 14 CCR 15002(f)(1), (f)(2); No Oil, Inc. v. City of Los Angeles (1974) 13 Cal. 3d 68, 75.)

The purpose of the environmental assessment and initial study is to "enable an applicant or lead agency to modify a project, mitigating adverse impacts before an EIR is prepared, thereby enabling the project to qualify for a negative declaration." (14 CCR 15063(c)(2).) A negative declaration shall be prepared if there is no substantial evidence in light of the whole record before the lead agency that a project will have a significant effect on the environment. (Pub. Res. Code 21080(c); San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus (1996) 42 Cal. App. 4th 608 617.)

"Mitigated negative declaration" means a negative declaration prepared for a project when the initial study has identified potentially significant effects on the environment, but (1) revisions in the project plans or proposals made by, or agreed to by, the applicant before the proposed negative declaration and initial study are released for public review would avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment would occur, and (2) there is no substantial evidence in light of the whole record before the public agency that the project, as revised, may have a significant effect on the environment. (Pub. Res. Code 21064.5.)

In the present action, Petitioners contend that the Project will have significant environmental impacts on: Noise, GHG, Traffic, Land Use, and Air Quality.

Noise

The MND discloses, "According to the L.A. CEQA Thresholds Guide, a significant impact would occur if construction activities lasting more than 10 days in a three-month period would increase the ambient noise levels by 5 dBA or more." (AR 268.) Thereafter, the MND admits that "construction activities associated with the proposed Project would increase daytime noise levels... by more than 5 dBA." (AR 270.)

The MND then states that "compliance with the noise regulations under [LAMC 41.40] would reduce construction noise impacts to the maximum extent feasible. These regulations would not permit construction activities to occur during recognized sleep hours for nearby residences... these regulations would ensure that construction-related noise impacts would be less than significant and no mitigation measures are required." (AR 270.)

No mitigation measures are proposed to combat "significant" construction noise.

Respondents contend that the Threshold Guide is a "voluntary tool" that is appropriate under "normal" conditions, but different thresholds may apply under other circumstances. (Leisy Decl., Ex. G, pp. 30, 34-35) According to Respondents, City determined that its noise ordinances were a "more appropriate threshold for this Project." (Opposition, 15:11.) However, LAMC 41.40 is merely an ordinance that prohibits construction between the hours of 9:00 p.m. and 7:00 a.m. It does not provide any guidance regarding "significance" thresholds/measurements for noise impacts.

Further, the LA CEQA Thresholds Guide states that its guide is appropriate for projects located within City boundaries under "normal" conditions. The MND does not present any facts showing that this project is subject to a different threshold because its conditions are "abnormal."

The court therefore finds that Petitioner has produced substantial evidence of a "fair argument" that the project may have a "significant" effect on noise impacts for which no mitigation measures have been proposed.

Like in Keep Our Mountains Quiet v. County of Santa Clara (2015) 236 Cal.App.4th 714, 732, an EIR is required even if evidence shows the Project will not generate noise in excess of County's noise ordinance.

Respondents contend that Keep Our Mountains Quiet is distinguishable because there, the project concerned an environmentally-sensitive location, and the MND failed to mitigate "significant" noise impacts to wildlife. However, such does not change the analysis or application of the case to the instant facts. Here, the MND admits that construction noise impacts would be "significant" pursuant to the LA CEQA Thresholds Guide, but the MND failed to mitigate any such noise impacts. Such evidence constitutes substantial evidence of a "fair argument" that the project may have a "significant" effect on noise impacts.

Respondents also contend that any mitigation would be "infeasible," but no such analysis of the infeasibility of alternatives is included in the MND.

Finally, Respondents' authorities are not on point. Respondents rely on San Francisco Beautiful v. City and County of San Francisco (2014) 226 Cal.App.4th 1012, 1033, for the general proposition that an agency may rely on generally applicable regulations to conclude that an impact will be less than significant. However, San Francisco Beautiful cites Tracy First v. City of Tracy (2009) 177 Cal.App.4th 912, 932–934, and Tracy First opined that reliance on the California Building Energy Efficiency Standards is sufficient to determine a significant energy impact because these building standards "are meant to promote energy efficiency, as the name implies. In other words, they 'reduce the wasteful, inefficient, and unnecessary consumption of energy.'" The court concluded that reliance on this regulation is adequate because the Project is 25 percent better than what is required by the state standards. Here, LAMC 41.40 provides no standard against which to measure the construction noise impact of "more than 5 dBA." (AR 270.) LAMC 41.40 simply prohibits noise during certain hours. There is no "significance"

threshold to measure the project's noise against. Thus, the conclusion that these regulations would ensure that "construction-related noise impacts would be less than significant and no mitigation measures are required" (AR 270) is not based on any standard of measurement.

Similarly, National Parks & Conservation Assn. v. County of Riverside (1999) 71 Cal.App.4th 1341, 1358-1359, does not support Respondents. There, the regulation relied upon actually measured "levels of" significance and insignificance. There is no such measurement of "significance" versus "insignificance" in LAMC 41.40.

Sierra Club v. Tahoe Regional Planning Agency (E.D. Calif. 2013) 916 F. Supp.2d 1098 is also distinguishable because the standards of review are different. Sierra Club dealt with a situation where an EIR was prepared, and therefore, the deferential standard applied. Here, only an MND and no EIR was prepared, and therefore, the fair argument test, a low threshold test for requiring the preparation of an EIR applies. (No Oil, Inc. v. City of Los Angeles, 13 Cal.3d at 84.)

Furthermore, regarding the operational noise impact from rooftop events, the court finds that City's reliance on the additional measures adopted after circulation of the MND to contend that the significant noise impact (AR 2485, 5461) has been mitigated is improper pursuant to Gentry v. Murrieta (1995) 36 Cal.App.4th 1359, 1380 – "if there was substantial evidence to support a fair argument that the Project would have a significant effect… then the City could not adopt new mitigation conditions aimed at this effect without recirculating its proposed negative declaration. Nevertheless, the City added mitigation condition… without recirculating. In so doing, it abused its discretion."

Accordingly, the court finds that the MND is defective, and cannot be upheld. Thus, writ of mandate is GRANTED as to the 1st cause of action.

2nd CAUSE OF ACTION: VIOLATIONS OF LAMC, CHARTER, AND 1998 HOLLYWOOD COMMUNITY PLAN

Petitioners contend that absent an exception under LAMC 12.22.C, the project site is limited to 104 guestrooms. (See also LAMC 12.14, 12.16.C.3, AR 1243 and 11350.)

Petitioners contend that City relies on the wrong exemption in LAMC 12.22.A.18 because the Project does not contain "residential units." However, LAMC considers hotels a residential use. (LAMC 12.03 definition of "Hotel: A residential building designated or used for or containing six or more guest rooms.") The Project is located in a commercial district with public transit, and is therefore the type of project contemplated by Section 12.22-A.18.

Further, the court finds that the Zoning Administrator Interpretation of LAMC 12.22-A.18 is reasonable. The City is divided into various zones and land use designations based on use type and intensity. Land use and lot area relate to one another from a planning perspective. Thus, in the absence of an express provision for lot area in the section relating to mixed-use developments in commercial zones, City's determination that LAMC's reference to R5 uses included R5 lot are standard for the density of those uses is reasonable. (AR 2489, 4223.)

Finally, the court finds that City properly exercised its legislative authority in changing the "D" limitation. There are no restrictions on the City's legislative authority to supersede old zoning ordinances and adopt new ones. (Riggs v. City of Oxnard (1984) 154 Cal.App.3d 526, 530-531.) A "D" limitation is nothing more than a Special Zoning Classification governed by LAMC 12.32. (AR 11476-11477.)

Writ of mandamus is DENIED as to 2nd cause of action for Violations of LAMC, Charter, and 1998 Hollywood Community Plan.

Remaining CEQA Issues:

Because the MND is defective based on the construction and operational noise impacts, the court need not address the remaining CEQA issues. "[S]ection 21005 does not require [the court] to address additional alleged defects that may be addressed in a completely different and more comprehensive manner upon further CEQA review following remand." (North Coast Rivers Alliance v. Kawamura (2015) 243 Cal.App.4th 647, 682; see also Washoe Meadows Community v. Department of Parks & Recreation (2017) 17 Cal.App.5th 277, 290-291 – court declines to address the recirculation of improper deferral of formulating mitigation measures issues because they could "ultimately be rendered moot" upon a revised EIR".)

However, out of an abundance of caution, the court will analyze the remaining issues below:

GHG

When assessing the significance of greenhouse gas emissions, an agency should consider these factors among others: (1) The extent to which the project may increase or reduce greenhouse gas emissions as compared to the existing environmental setting; (2) Whether the project emissions exceed a threshold of significance that the lead agency determines applies to the project; (3) The extent to which the project complies with regulations or requirements adopted to implement a statewide, regional, or local plan for the reduction or mitigation of greenhouse gas emissions.... 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, an environmental impact report must be prepared for the project. (Center for Biological Diversity v. Department of Fish & Wildlife (2015) 62 Cal. 4th 204, 217.)

The lead agency shall have discretion to determine, in the context of a particular project, whether to: (1) Use a model or methodology to quantify greenhouse gas emissions resulting from a project, and which model or methodology to use. The lead agency has discretion to select the model or methodology it considers most appropriate provided it supports its decision with substantial evidence. The lead agency should explain the limitations of the particular model or methodology selected for use; and/or (2) Rely on a qualitative analysis or performance based standards. (Guideline 15064.4(a).)

The MND relies upon a 2010 Draft Threshold per person GHG efficiency target goal of reducing GHG emissions to 1990 levels by 2020, modeled after AB 32, the Global Warming Solutions Act of 2006. (AR 233.) Based on this threshold, the GHG per person is significant if it exceeds

a 4.8 metric ton a year per person threshold. (AR 235.) City's analysis showed that the GHG impacts were less than significant.

Petitioners contend that this threshold is outdated, and was replaced by SB 32 in September 2016 (just three months before the MND was published), when Governor Brown enacted H&S Code 38566 to achieve a 40% reduction in GHG emissions over the 1990 level by the end of 2030. The court finds that this objection lacks merit because City has broad "discretion" to select an appropriate model or methodology. (Guideline 15064.4(a)(1).) "Proposed reduction with Assembly Bill 32's reduction goal is a proper methodology within the agencies' discretion." (Center for Biological Diversity v. Department of Fish & Wildlife (2015) 62 Cal. 4th 204, 248.)

Notwithstanding such, City did conduct supplemental GHG analysis based on a 2035 significance threshold consistent with SB 32. (See AR 4201-4202; AR 5386-5388.) Under the 2035 threshold, the Project's GHG emissions would remain less than significant. (AR 4202, 5387.) City's experts explained that in 2035, the GHG emissions would be further reduced by new vehicle emissions standards and Cal Green Building Standards. (AR 5387-88.)

Accordingly, the court finds that Petitioners failed to establish a fair argument that the project will have significant effect on GHG.

Traffic Impacts

Petitioners contend the MND did not consider cumulative traffic impacts when the Project's traffic impacts are added to the 139 other "related" development projects that could be constructed in the vicinity of the Project. However, Table IV-30 (AR 306) did consider cumulative future project scenarios. See Column 8 of 9, labeled "Future + Project" "Change". Thus, the MND concluded that the cumulative impacts would be less than significant. Further, the LA Department of Transportation peer reviews the traffic analysis and found that it "accounted for other known development projects in evaluating potential cumulative impacts." (AR 1200.)

Accordingly, the court finds that Petitioners failed to establish a fair argument that the project will have significant effect on traffic.

Air Quality

Petitioners contend the MND fail to discuss exposure to diesel emissions from the trucks. (AR 211-212, 5120-5121.)

However, City performed an analysis of potential air quality impacts. (AR 206-213.) The MND's analysis was supported by a technical study using California Emissions Estimator Model, as recommended by SCAQMD. (AR 346-347.) The analysis determined that all emissions would fall under the applicable thresholds of significance, and therefore would be less than significant without mitigation. City's analysis of construction-related air quality impacts does include emissions associated with heavy diesel trucks. (AR 5388.) SCAQMD concurs with

City's assessment and "does not consider diesel-related cancer risks from construction to be an issue due to the short-term nature of construction activities." (Id.)

Accordingly, the court finds that Petitioners failed to establish a fair argument that the project will have significant effect on air quality.

IT IS SO ORDERED.

Dated: DEC 19 2018

JOHN A. TORRIBIO
JUDGE OF THE SUPERIOR COURT

EXHIBIT 3

From: City Clerk <Clerk-ENSLA@lacity.org>
To: <veronica@robertsilversteinlaw.com>
Date: 11/27/2018 8:00 PM
Subject: LACityClerk Connect - Council File Update

You are receiving this email because you have subscribed to the Council File Management System in order to receive updates to specific City Council Files. Please click on the links below to view the documents that match your subscription.

Council File Number: 18-0873
Council File Title: 6421-6429 1/2 West Selma Avenue / 1600-1604 North Wilcox Avenue / Vesting Zone Change / Height District Change
Latest Action Taken:

Date	Activity
11/27/2018	**Document:** A new online document has been added: 'Attachment to Communication dated 11/21/2018 - Reponse to Appeal' with Doc Date: 11/21/2018
11/27/2018	**Document:** A new online document has been added: 'Communication from Applicant Representative' with Doc Date: 11/26/2018
11/27/2018	**Document:** A new online document has been added: 'Communication from Department of City Planning - Supplemental Transmittal' with Doc Date: 11/21/2018
11/27/2018	**Document:** A new online document has been added: 'Communication from Appellant Representative' with Doc Date:11/26/2018

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Council File Number: 17-1054
Council File Title: South Los Angeles Community Plan Update / General Plan Amendment / Zone Change / Community Plan Implementation Overlay (CPIO)
Latest Action Taken:

Date	Activity
11/27/2018	**Document:** A new online document has been added: 'Communication from Department of City Planning - Supplemental Transmittal' with Doc Date: 11/21/2018
11/27/2018	**Document:** A new online document has been added: 'Attachment to Communication dated 11/21/2018 - Final Exhibit D: Draft Zone and Height Ordinance' with Doc Date: 11/21/2018

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Council File Number: 17-1053
Council File Title: Southeast Los Angeles Community Plan Update / General Plan Amendment / Zone Change / Community Plan Implementation Overlay (CPIO)
Latest Action Taken:

Date	Activity
11/27/2018	**Document:** A new online document has been added: 'Communication from Department of City Planning - Supplemental' with Doc Date: 11/21/2018
11/27/2018	**Document:** A new online document has been added: 'Attachment to Communication dated 11/21/2018 - Final Exhibit D: Draft Zone and Height Ordinance' with Doc Date: 11/21/2018

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Office of the City Clerk
Council & Public Services Division
City of Los Angeles
Email: Clerk-ENSLA@lacity.org

From: City Clerk <Clerk-ENSLA@lacity.org>
To: <veronica@robertsilversteinlaw.com>
Date: 2/25/2019 8:01 PM
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Council File Number: 18-0873
Council File Title: 6421-6429 1/2 West Selma Avenue / 1600-1604 North Wilcox Avenue / Vesting Zone Change / Height District Change
Latest Action Taken:

Date	Activity
02/25/2019	**Document:** A new online document has been added: 'Communication from Public' with Doc Date: 02/25/2019
02/25/2019	**Document:** A new online document has been added: 'Communication from Appellant Representative' with Doc Date:02/25/2019
02/25/2019	**Document:** A new online document has been added: 'Communication from Department of City Planning - Vesting Zone Change and Height District Change' with Doc Date: 02/22/2019

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