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February 26, 2019

Via Hand Delivery

Planning and Land Use Management Committee
City Hall, 200 North Spring Street
Los Angeles, CA 90012
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Agenda Item no. 10-11

Date: February 26, 2019

Submitted in PLUM Committee

Council File No: 18-1235 + S1

Item No.: 10 and 11

Deputy: Communication from Appellant

Re: Response to Department of City Planning Appeal Response regarding the Schrader Hotel Project (Council file Nos. 18-1235; 18-1235-S1)

Dear Honorable Committee members:

We write on behalf of the Coalition for Responsible Equitable Economic Development ("CREED LA"),¹ John Ferruccio, Jorge L. Aceves, John P. Bustos, Gerry Kennon, and Chris S. Macias, to respond to the City of Los Angeles ("City") Department of City Planning Appeal Response ("Appeal Response") prepared for the February 12, 2019 PLUM Committee hearing regarding the Hotel project located at 1600-1616 ½ North Schrader Boulevard and 6533 West Selma Avenue ("Project") (VTT-74521-1A, ENV-2016-3751-MND, CPC-2016-3750-VZC-HD-MCUP-ZAA-SPR).

We filed two separate appeals as required under the City Code for the different Project's entitlements and the CEQA document. The Appeal Response contains responses to some of our appeals' arguments. However, the Appeal Response fails to resolve the issues we raised, as detailed below, and our comments still stand.² In short, the MND fails to comply with the requirements of the

¹ CREED LA is an unincorporated association of individuals and labor organizations that may be adversely affected by the potential public and worker health and safety hazards, and the environmental and public service impacts of the Project.

² We incorporate our June 7, 2018 comments; July 18, 2018 comments on the City's response to comments; August 13, 2018 Justification for Appeal; September 11, 2018 Response to Appeal Report; November 6, 2018 Response to Second Appeal Report; December 14, 2018 Justification for Appeal to the Los Angeles City Council (VTT-74521-1A; ENV-2016-3751-MND) and December 26, 2018

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California Environmental Quality Act³ (“CEQA”) because substantial evidence supports a fair argument that the Project may cause: (1) a significant, unmitigated impact on public health from toxic air contaminants (“TACs”), particularly for school-aged children and (2) a significant, unmitigated impact from noise. In addition, and as a result, the City cannot make the findings under the Los Angeles Municipal Code (“City Code”) required for approval of the requested entitlements, including a Master Conditional Use Permit for alcohol sale, Zoning Administrator Adjustment and Site Plan Review.

- (A) There is substantial evidence that the MND fails to properly evaluate and mitigate potentially significant impacts on public health from TAC emissions and substantial evidence supports a fair argument that the Project may result in potentially significant impacts on public health.**

The MND concludes that the Project would result in a less than significant impact from construction and operational TAC emissions without conducting an assessment of health risk impacts, commonly called a health risk assessment (“HRA”), for the Project. We reviewed the environmental analysis with the assistance of technical experts, Soil Water Air Protection Enterprise (“SWAPE”), which found the City’s conclusion unsupported. As SWAPE explained in their previous comment letters, the mere assertion that the Project’s construction will be limited in time, and that the Project’s operation does not involve significant toxic airborne emissions, is not sufficient to support a conclusion the Project will not result in significant impacts on public health.⁴ In order to support such a conclusion, the City must rely on an analysis, such as an HRA.

In the Appeal Response, the City restates its claim that because the Project would be required to comply with the CARB Air Toxics Control Measure, and because it not considered to be a substantial source of diesel particulate matter and not subject to the Air Toxics Hot Spots Information and Assessment Act, “[t]here is no evidence to suggest that the project would generate diesel fuel emissions that are

Justification for Appeal to the Los Angeles City Council (CPC-2016-3750-VZC-HD-MCUP-ZAA-SPR) along with their attachments and exhibits, herein by reference.

³ Pub. Resources Code §§ 21000 et seq.; 14 Cal. Code Regs. §§ 15000 et seq. (“CEQA Guidelines”).

⁴ Letter from Hadley Nolan to Christina Caro re: Comments on the Schrader Hotel Project, June 7, 2018.

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excessive or above acceptable levels” and a detailed HRA is not required.⁵ In addition, the City makes specific claims regarding the information and assumption relied upon in the analysis conducted by SWAPE that was presented to the City, arguing it does not constitute a fair argument that a significant impact would occur.

With regard to the City’s arguments on flaws in SWAPE’s analysis, SWAPE provided a response explaining their assumptions.⁶ In short, SWAPE explain that they updated their analysis to reflect the City’s assumption regarding the number of hours school children spend in school by using a Fraction of Time at Home (FAH) value to reflect 7 hours on school grounds.⁷ SWAPE also explain that contrary to the City’s argument, their analysis does not assume lifetime exposure but is reflective of the expected construction and operations duration, and that an adjustment factor (AF) was used to reflect the hours during the day when construction emissions are expected to occur.⁸ Regarding the time children spend outside and inside while in school, SWAPE note that there is no information regarding the air filtering systems used in the two nearby schools and their maintenance, so the City cannot rely on assumptions regarding their effectiveness in mitigating emissions.⁹

SWAPE show that after updating their analysis to reflect the assumptions above they found that the excess cancer risk from the Project posed to a school child from ages five to fourteen years old is approximately *190 in one million*.¹⁰ This greatly exceeds the SCAQMD’s threshold of 10 in one million. As a result, the Project’s construction and operational emissions present a potentially significant impact to nearby sensitive receptors at the Selma Avenue Elementary School.

SWAPE noted that a screening level analysis is known to be more conservative and tends to err on the side of health protection. However, it shows that a more refined HRA needs to be conducted, as the screening-level HRA

⁵ Department of City Planning, Appeal Response; Council file nos. 18-1235; 18-1235-S1, February 7, 2019 (“Appeal Response”) p. 3.

⁶ See **Exhibit 1**: letter from SWAPE to Nirit Lotan re: Response to Comments on the Schrader Hotel Project, February 11, 2019.

⁷ Exhibit 1, p. 3.

⁸ Exhibit 1, p. 4.

⁹ Exhibit 1, p. 3-4.

¹⁰ Exhibit 1, p. 5.

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demonstrates that construction and operation of the Project may result in a potentially significant health risk impact.¹¹

With regard to the City's duty to properly analyze the potential health impacts of the project, that City argues that:

[T]he project MND does discuss the correlation of TAC emissions and human health impacts. The project MND acknowledges health risks based on the concentration of the substance and duration of exposure, but concludes the project would result in a less than significant impact related to construction TACs.¹²

First, the City ignores the courts' ruling regarding the standard of review for an MND. When an agency prepares an MND and experts have presented conflicting evidence on the extent of the environmental effects of a project, the agency must consider the effects to be significant and prepare an EIR. In short, when "expert opinions clash, an EIR should be done." "It is the function of an EIR, not a negative declaration, to resolve conflicting claims, based on substantial evidence, as to the environmental effects of a project." Therefore, SWAPE's analysis, which is supported by the evidence and indicates a significant impact may occur, is substantial evidence creating a duty on the part of the lead agency to prepare an EIR.

Second, the fact that the MND "discuss the correlation of TAC emissions and human health impacts" is not enough to show the City fulfilled its duty to disclose and analyze the Project's impacts properly.

An EIR "protects not only the environment but also informed self-government."¹³ The Courts have repeatedly ruled that "[a]n EIR must include detail sufficient to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project."¹⁴ In the

¹¹ Exhibit 1, p. 6.

¹² Appeal Response, p. 2.

¹³ *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal. 3d 553, 564.

¹⁴ *Laurel Heights Improvement Assn. v. Regents of Univ. of California*, 47 Cal. 3d 376, 405, 764 P.2d 278, 291 (1988), as modified on denial of reh'g (Jan. 26, 1989)

Friant Ranch Supreme Court decision that was recently published,¹⁵ the Court restated the rule that an EIR must include sufficient information to make the issues it considers clear, and that an agency must make a “reasonable effort to substantively connect” projects’ impacts to their likely health consequences.¹⁶ The Court also made clear it will review the EIR to see not only if substantial evidence supports its conclusions, but also to make sure the EIR provided the required information to enable meaningful participation.¹⁷

While the *Friant Ranch* ruling discussed an EIR, the rationale, requiring the City to “substantively connect” projects’ impacts to their likely health consequences, remains the same. Here, to do that and in light of the evidence provided by SWAPE, the City should have performed a refined health risk assessment to provide concrete information regarding the Project’s potential impacts on the public’ health for those sensitive receptors around the Project, including the nearby school children.

(B) There is substantial evidence that the MND fails to properly evaluate and mitigate potentially significant impacts on noise and substantial evidence supports a fair argument that the Project may result in potentially significant impacts from noise.

The Appeal Response repeats the City’s claim it did not compress the analysis of impacts and mitigation measures. The City argues that the digital audio processor (DAP) in Project Design Feature 2 (PDF-2) is not a mitigation measure and is not relied upon as mitigation and that the City does not need to provide an analysis of the project’s noise impacts before and after implementation of PDF-2 because it is a Project Design Feature, not a mitigation measure.¹⁸ The City also repeats the claim all noise impacts will be mitigated below the threshold of significance.

As explained in our previous comments, the courts have determined that to decide whether an agency improperly compressed analysis and mitigation

¹⁵ *Sierra Club v. Cty. of Fresno*, 6 Cal. 5th 502, 431 P.3d 1151 (2018)

¹⁶ *Sierra Club v. Cty. of Fresno*, 6 Cal. 5th 502, 431 P.3d 1151, 1158 (2018).

¹⁷ *Sierra Club v. Cty. of Fresno*, 6 Cal. 5th 502, 431 P.3d 1151, 1161 (2018).

¹⁸ Appeal Response, p. 3.

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measures, they look to see if the analysis “obfuscates required disclosure of the project's environmental impacts and analysis of potential mitigation measures.”¹⁹ This is exactly what the city did here.

In the Appeal Response, the City expressly states that other specific measures included in PDF-4 “would be implemented in the event external audio equipment produces noise levels that exceed the identified threshold levels.”²⁰ The City admits therefore both that external audio equipment not controlled by the DAP would be allowed in the hotel *and* that the noise it produces can exceed the identified threshold. However, the MND analysis of noise impacts completely relies on the assumption of an always-effective DAP: The Noise Appendix calculations assume noise levels at the 11th floor do not exceed 84.32 dBA,²¹ which is the level that the DAP should achieve. Otherwise, the MND itself states, noise levels will in fact be much higher – reaching up to 104 dBA.²²

In *Lotus v. Department of Transportation*,²³ the Court of Appeal found that an EIR had “disregard[ed] the requirements of CEQA” by “compressing the analysis of impacts and mitigation measures into a single issue.” The Court continued, stating “[a]bsent a determination regarding the significance of the impacts ... it is impossible to determine whether mitigation measures are required or to evaluate whether other more effective measures than those proposed should be considered.”²⁴ Similar to the inadequate analysis contained in the *Lotus* EIR, the MND asserts that incorporation of the PDFs would reduce the Project’s noise impacts to less than significant levels prior to mitigation. The public has no way of telling what the noise impact of the Project would be *without* the design feature and cannot properly evaluate whether the design feature would be effective in reducing the potentially significant impact and what other measures might be needed. This flaw is not theoretical – the city itself admits that equipment not controlled by the DAP will be allowed in the hotel and that noise it produces may exceed the thresholds. But no analysis of the noise impacts without the DAP “design feature” is provided.

¹⁹ *Mission Bay All. v. Office of Cmty. Inv. & Infrastructure*, 6 Cal. App. 5th 160, 185, 211.

²⁰ Appeal Response, p. 3.

²¹ See Neil Shaw comments, September 7, p. 1. To these levels, the MND adds further reductions from distance and from the glass barrier.

²² MND, p. III-106.

²³ *Lotus v. Dep't of Transp.* (2014) 223 Cal. App. 4th 645, 651-52.

²⁴ *Id.*

In addition, the appeal and the comment letters filed to the City constitute a fair argument, supported by substantial evidence, that the Project may have significant impact from noise. Substantial evidence, for purposes of the fair argument standard, includes “fact, a reasonable assumption predicated upon fact, or expert opinion supported by fact.”²⁵ As explained in the expert reports filed by Neil Shaw, an expert on acoustics, the design features and mitigation measures will not be able to mitigate impacts created from live entertainment using outside audio equipment and acoustic instruments. The City must therefore prepare an EIR which will properly analyze the operational noise impacts from the Project and will include sufficient mitigation, as required under CEQA.

(C) The City Cannot Make the Required Findings for the Master Conditional Use to Allow for the Sale and Dispensing of Alcohol on the Site, Because the City Has No Evidence to Support the Required Findings

In the Appeal Response, the City argues it can make the required findings for the MCUP because “the sale and dispensing of alcoholic beverages is anticipated to be an incidental amenity for patrons of the operations of the proposed restaurant and bar/lounge,” because it is not anticipated to create a law enforcement issue and because the Project is conditioned to prevent negative impacts.²⁶ This response, however, is not enough to constitute substantial evidence supporting the required findings.

First, the City ignores in this response the noise and public health impacts the Project may create, as explained above. Until these impacts are addressed, the City cannot make the finding “that the project's location, size, height, operations and other significant features will be compatible with and will not adversely affect or further degrade adjacent properties, the surrounding neighborhood, or the public health, welfare, and safety”, as required under section 12.24.E(2) of the Code.

Second, the City cannot find, as required under section 12.24.E(3) “that the project substantially conforms with the purpose, intent and provisions of the General Plan, the applicable community plan, and any applicable specific plan.”

²⁵ PRC § 21080(e)(1) (emphasis added); *CREED*, 197 Cal.App.4th at 331.

²⁶ Appeal Response, p. 6.

That is because, as explained in the appeal, the Noise Element of the City's General Plan requires employing mitigation measures to address noise impacts on sensitive users, in accordance with CEQA. As explained in our appeal, the City failed to comply with CEQA regarding noise impacts of the Project, and therefore cannot make the required finding.

Finally, the City cannot find, as required under section 12.23.W.1(a) of the Code, that granting of the application will not result in an "undue concentration" of alcohol selling premises and that the proposed use will not detrimentally affect nearby residentially zoned communities. As shown in our appeal, the number of existing licenses on the relevant tract *significantly* exceeds the guidelines set by the California Department of Alcoholic Beverage Control ("ABC"). In addition, the crime rate in this crime reporting district is again significantly higher than the area wide average. This fact, combined with the foreseeable noise impacts and the fact that many of the reported crimes have to do with alcohol and peace disturbance, shows that granting the application will indeed result in undue concertation and a detrimental effect. The fact that the Project "has been conditioned to prevent negative impacts"²⁷ does not change this reality.

(D) The City Cannot Make the Required Findings for the Zoning Administrator's Adjustment to the Required Setbacks, Because the City Has No Evidence to Support the Required Findings

The City cannot make the required finding under Section 12.28 of the City's Code, that the Project "will not adversely affect or further degrade adjacent properties, the surrounding neighborhood, or the public health, welfare and safety." The City's arguments, that "neighboring tenants have been active in their participation in the public process, and no complaints or concerns were expressed regarding this request"²⁸ is besides the point. Given the significant unmitigated impacts the Project may have from noise and on public health, this finding is not supported.

²⁷ Appeal Response, p. 6.

²⁸ Appeal Response, p. 7.

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(E) The City Cannot Make the Required Findings for the Site Plan Review. Because the City Has No Evidence to Support the Required Findings

The City cannot make the finding required under section 16.05.F of the City's Code. The City cannot find that the "project is in substantial conformance with the purposes, intent and provisions of the General Plan, applicable community plan, and any applicable specific plan" or "that any residential project provides recreational and service amenities to improve habitability for its residents and minimize impacts on neighboring properties." This, as explained in our appeal, is due to the unmitigated significant impacts the Project may cause.

Thank you for your attention to this important matter.

Sincerely,



Nirit Lotan

NL:ljl

EXHIBIT 1



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February 11, 2019

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Subject: Response to Comments on the Schrader Hotel Project

Dear Ms. Lotan,

We have reviewed the February 7, 2019 Appeal Response (“February Responses”), which addressed comments we made in a November 5, 2018 comment letter on the November 2018 Department of City Planning Appeal Report (“November Appeal”) prepared for the Schrader Hotel Project (“Project”) located in the City of Los Angeles (“City”). The November Appeal addressed comments made in our September 10, 2018 comment letter on the September 2018 Department of City Planning Appeal Report (“September Appeal”). The September Appeal contained a Response to Comments documents (“September Responses”) that addressed comments we previously made in a July 17, 2018 comment letter on the July 2018 Staff Report (“Staff Report”). The July 2018 Staff Report contained a Response to Comments document (“July Responses”) that addressed comments we previously made in a June 7, 2018 comment letter addressing the inadequacies in the Air Quality and Greenhouse Gas analyses conducted in the April 2018 Initial Study and Mitigated Negative Declaration (IS/MND) for the proposed Project.

Both the June 7, 2018 comment letter and the July 17, 2018 comment letter specifically discussed the April 2018 IS/MND’s and the July 2018 Staff Report’s failure to properly evaluate the health risk impact posed to residential sensitive receptors located near the Project site. In our June 7 comment letter, we found that the Project Applicant failed to prepare a health risk assessment (HRA) for the proposed Project. Thus, we prepared a screening-level HRA to evaluate the Project’s health risk impact and concluded that the health risk posed to adults, children, and infants at a residential receptor located approximately 1 meter from the Project site would be approximately 28, 190, and 310 in one million¹ and that the excess cancer risk over the course of a residential lifetime (assumed to be 30 years) would be approximately 530 in one million.² These risks all greatly exceed the South Coast Air Quality Management District’s (SCAQMD) significance threshold of ten in one million. When the City responded to our June 7 comments in the July 2018 Staff Report by claiming that “there was no evidence to suggest

¹ See SWAPE’s June 7, 2017 comment letter on the Schrader Hotel Project.

² See SWAPE’s June 7, 2017 comment letter on the Schrader Hotel Project.

that the Proposed Project would generate diesel emissions that are excessive or above acceptable levels that already occur within the environment”, we reiterated how critical conducting a proper HRA for the Project was, as demonstrated by the findings of our analysis.³ In response to our July 17, 2018 comment letter discussing the City’s lack of a proper HRA, the City responded by stating, “There is no evidence to suggest that the project would generate diesel fuel emissions that are excessive or above acceptable levels that already occur within the environment. As such, the project is not considered to be a substantial source of diesel particulate matter warranting an HRA...” (September Appeal, pp. 11). In our September 10, 2018 comment letter, we provided a supplemental analysis to further demonstrate that the Project will create a significant health risk to school children attending the Selma Avenue Elementary School and Blessed Sacrament School near the Project site. We prepared a screening level HRA assuming that a school-child receptor attending the Selma Avenue School for 7 years and then attending the Blessed Sacrament School for 2 years would have an excess cancer risk of 850 in one million.⁴ These risks also significantly exceed the SCAQMD’s significance threshold of ten in one million. The November Appeal Report responded by saying “localized thresholds are based on a receptor within a distance of 82 feet from the Project Site. Selma Avenue Elementary School is approximately 350 feet from the Project Site, as such, the localized emissions would be substantially lower at that distance” (pp. 3152-3153). Additionally, the City goes on to argue that SWAPE’s analysis was incorrect because it “assumes children attending Selma Avenue Elementary are on the school property for 10 hours each day, but are on the school property approximately 7 hours after assuming students remain on site for an additional 30 minutes before and after school for pick up and drop off activities” and “thus the daily exposure rate used by SWAPE is significantly overstated and not based on actual exposure times” (pp. 10). Finally, the City argues that the SWAPE analysis used an incorrect cancer potency factor and assumed a constant exposure to Diesel Particulate Matter (DPM) over a 70-year lifetime (pp. 10).

Finally, in our November 5, 2018 comment letter we maintained that a school-child health risk should be conducted citing SCAQMD’s Rule 1401.1. Furthermore, we explained that since AERSCREEN estimates an annual average air concentration, assuming that emissions would be uniformly emitted over 24 hours per day, 7 days per week,^{5, 6} we utilized an Adjustment Factor (AF) in order to account for the fact that a school child would not be exposed to DPM emissions continuously. Instead the school child would be exposed to emissions during school hours, which is also when the majority of Project construction and operational emissions would occur. The Office of Environmental Health and Hazard Association (OEHHA)⁷ clearly states that an AF should be used when conducting an HRA for a nearby school children.^{8,9} Finally, we prepared an updated health risk, changing the AF to assume that students would only be on campus for 7 hours a day, which resulted an excess cancer risk of 1,200 in one million.¹⁰

³ See p. 76 of the Response to Comments included as Attachment A in the July 2018 Planning Department Staff Report for the Schrader Hotel Project.

⁴ See SWAPE’s September 10, 2018 comment letter on the Schrader Hotel Project.

⁵ “AERSCREEN Released as the EPA Recommended Screening Model,” USEPA, April 11, 2011, *available at*: http://www.epa.gov/ttn/scram/guidance/clarification/20110411_AERSCREEN_Release_Memo.pdf

⁶ “Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments.” OEHHA, February 2015, *available at*: <https://oehha.ca.gov/media/downloads/crn/2015guidancemanual.pdf>, p. 5-26

⁷ “Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments.” OEHHA, February 2015, *available at*: <https://oehha.ca.gov/media/downloads/crn/2015guidancemanual.pdf>, p. 4-42

⁸ In order to calculate this an AF, OEHHA suggests the following equation: $AF = [(24 \text{ hours per day}) / (7 \text{ hours per day})] \times [(7 \text{ days per week}) / (5 \text{ days per week})] = 4.8$

⁹ “Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments.” OEHHA, February 2015, *available at*: <https://oehha.ca.gov/media/downloads/crn/2015guidancemanual.pdf>, p. 5-31

¹⁰ See SWAPE’s November 5, 2018 comment letter on the Schrader Hotel Project.

In response to our November 5 2018 letter, the City states,

“However, the SWAPE analysis assumes children attending the Selma Avenue Elementary are on the school property for 10 hours each day, but are on school property approximately 7 hours after assuming students remain on site for an additional 30 minutes before and after school for pick up and drop off activities. Thus the daily exposure rate used by SWAPE is significantly overstated and not based on actual exposure times. Additionally, the SWAPE analysis assumes that children would be exposed to outdoor ambient air quality throughout the entire day. The analysis does not take into consideration that the children would be indoors for a majority of the time they are on campus, where the ambient outdoor air would be filtered through the school’s HVAC system, which are fitted with MERV rated filters. Furthermore, the cancer potency factor used by SWAPE was based on 1.1(mg/kg-day)⁻¹ and an averaging time of 25,550 days (70 years). This factor assumes a constant exposure to Diesel Particulate Matter (DPM) over a 70-year lifetime and does not account for dose or exposure duration. The construction activities of the project would occur for approximately 8 hours a day and 5 days a week. Thus, it is inaccurate to assume that nearby persons would be exposed to any emissions during the evening hours or on weekends. Persons would only be exposed to emissions at times when the emissions are being generated and when the individuals are within a proximate range of exposure to the emissions. Factors such as leaving one’s residence to go to work or school are not considered within SWAPE’s analysis. Thus, the HRA is not based on accurate information or analytical assumptions and therefore does not raise a fair argument that a significant impact would occur. Therefore, the proposed project would result in a less than significant impact related to construction TACs” (February Responses, p. 2-3).

The Project Applicant finds our November 5, 2018 health risk to be overestimated and incorrect because: (1) SWAPE overestimated the duration a student would be on campus; (2) SWAPE failed to account for the time a student spends indoors; and (3) SWAPE assumes continuous exposure. As a result, the Project Applicant determines that SWAPE’s HRA is not accurate. However, we maintain that a screening level HRA finds a significant health risk posed to the maximally exposed individual school child (MEISC). Therefore, a more detailed health risk should be conducted by the Applicant prior to Project Approval.

First, we have provided an updated analysis that includes a Fraction of Time at Home (FAH) value. According to OEHHA guidance, the FAH “can be used to adjust exposure duration and cancer risk from a specific facility’s emissions, based on the assumption that exposure to the facility’s emissions are not occurring away from home.”¹¹ While the FAH is not typically used to estimate the risk posed to the MEISC,¹² we have used it in order to further demonstrate that a significant health risk may occur as a result of Project construction and operation, even if a student is on campus for a shorter period of time. According to the Project Applicant, a student is on a school campus for approximately 7 hours per day. Therefore, in our updated analysis, we used an FAH value of 0.29 (7 hours / 24 hours = 0.29).

Second, the Project Applicant states that SWAPE failed to account for the time a student spends indoors with air filtered through the school’s HVAC system fitted with Minimum Efficiency Reporting Value

¹¹ “Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments.” OEHHA, February 2015, available at: <https://oehha.ca.gov/media/downloads/crnrr/2015guidancemanual.pdf>, p. 8-5

¹² According to OEHHA Guidance, “Facilities with any school within the 1×10^{-6} (or greater) isopleth should use FAH = 1 for the child age groups (3rd Trimester, 0<2 years, and 2<16 years). <https://oehha.ca.gov/media/downloads/crnrr/2015guidancemanual.pdf>, p. 8-5

(MERV) filters. According to the Los Angeles Unified School District's (LAUSD) "School Design Guide," schools are required to,

"Provide air filters with a minimum efficiency of Merv 7. New schools constructed in areas with low outdoor air quality such as near freeways shall be provided with air filters of minimum efficiency of Merv 11."¹³

Since the Selma Avenue Elementary School opened in 1910¹⁴, before the LAUSD guidance was written, they would only be required to provide MERV 7 filters. MERV 7 filters have only been found to remove up to 70% of PM10.¹⁵ However, these filters may need to be replaced every two to three months in order to work effectively.¹⁶ Failure to replace these filters can result in a potential health risk.¹⁷ Furthermore, the Blessed Sacrament School was founded in 1915 and provides a private education¹⁸, therefore it may not have the same MERV requirements as the LAUSD. Therefore, since the MERV filter requirements are unknown for the Blessed Sacrament School and the MERV filters require a strict maintenance schedule that is unknown, SWAPE conducted a conservative analysis, as is required by CEQA, in order to determine the health risk posed to the MEISC.

Third, the February Responses states that SWAPE "assumes a constant exposure to Diesel Particulate Matter (DPM) over a 70-year lifetime." This is completely incorrect. As stated in our September 10, 2018 comment letter, we do use a cancer potency factor of 1.1 (mg/kg-day)⁻¹ and an averaging time of 25,550 days.¹⁹ However, in order to account for the MEISC, we only estimated the cancer risk posed over a nine-year period, consistent with other projects within the SCAQMD's jurisdiction.²⁰ Moreover, we recognize that AERSCREEN calculates an annual average air concentration, assuming that emissions would be uniformly emitted over 24 hours per day, 7 days per week.²¹ Therefore, we have included an adjustment factor (AF) within our calculations.²² OEHHA clearly states that an AF should be used when conducting an HRA for a nearby school children.^{23,24} Therefore, SWAPE's analysis does not assume that a school child would be exposed to DPM continuously for 70 years. Consistent with the February

¹³ "School Design Guide" LAUSD, January 2007, *available at*: http://www.laschools.org/employee/design/fs-design-guide/download/2007_Design_Guide.pdf?version_id=4433927, Book 3, chapter 6, p. 4.

¹⁴ <https://selma-laUSD-ca.schoolloop.com/MissionVision>

¹⁵ <https://www.allfilters.com/airfilter/mervefficiency>

¹⁶ <https://www.allfilters.com/airfilter/changefilter>

¹⁷ A schedule for maintenance is especially important because of recent news reports that indicate maintenance was not conducted as set forth in mitigation measures for a freeway-adjacent project in Los Angeles, leaving residents potentially at risk. <http://www.latimes.com/local/california/la-me-freeway-homes-20141212-story.html#page=1>

¹⁸ http://www.schoolblessedsacrament.org/who_we_are/history

¹⁹ See SWAPE's September 10, 2018 comment letter on the Schrader Hotel Project.

²⁰ The Merge Project located in the City of Eastvale found the cancer risk posed to the MEISC over a nine-year period, *available at*: <https://www.eastvaleca.gov/home/showdocument?id=11890>, Table ES-1, p. ii.

²¹ "Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments." OEHHA, February 2015, *available at*: <https://oehha.ca.gov/media/downloads/cnr/2015guidancemanual.pdf>, p. 5-26

²² See SWAPE's September 10, 2018 comment letter on the Schrader Hotel Project.

²³ In order to calculate the AF, OEHHA suggests the following equation: $AF = [(24 \text{ hours per day}) / (8 \text{ hours per day})] \times [(7 \text{ days per week}) / (5 \text{ days per week})] = 4.2$

²⁴ "Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments." OEHHA, February 2015, *available at*: <https://oehha.ca.gov/media/downloads/cnr/2015guidancemanual.pdf>, p. 5-31

Responses and OEHHA guidance, our updated analysis includes an AF of 4.2^{25,26} for the construction period.²⁷

We calculated the excess cancer risk to school children attending both schools using applicable HRA methodologies prescribed by OEHHA. OEHHA recommends the use of Age Sensitivity Factors (“ASFs”) to account for the heightened susceptibility of young children to the carcinogenic toxicity of air pollution.²⁸ According to the revised guidance, quantified cancer risk should be multiplied by a factor of three for a receptor aged two until sixteen. We used a cancer potency factor of 1.1 (mg/kg-day)⁻¹ and an averaging time of 25,550 days. As discussed above, we applied an AF of 4.2 for the construction period, assuming emissions would occur 8 hours/day, Monday through Friday. We also included a FAH value of 0.29 in order to account for the 7 hours of exposure that a student would be exposed to each school day. An exposure frequency of 180 days per year was used to reflect the number of days in a typical school year, and an exposure duration of approximately 9 years (a student from Pre-K to 8th grade) was used to represent the duration of Project exposure to the school child.²⁹ OEHHA also recommends that the 95th percentile, moderate intensity breathing rates be used to determine risk to children at schools.³⁰ The results of our calculations are summarized in the table below.

The Maximum Exposed Individual Student Receptor (MEISC)

Activity	Location	Duration (years)	Concentration (ug/m3)	Breathing Rate (L/kg-day)	ASF	AF	FAH	Cancer Risk
Construction	Selma Avenue Elementary School	1.50	5.429	640	3	4.2	0.29	1.5E-04
	Construction Duration	1.50						
Operation	Selma Avenue Elementary School	5.50	1.299	640	3	1	0.29	3.1E-05
	Blessed Sacrament School	2.00	0.8742	640	3	1	0.29	7.5E-06
	Operation Duration	7.50						
	Total Exposure Duration	9.00				Student Exposure		1.9E-04

²⁵ In order to calculate the AF for a facility emitting 8 hours per day, 5 days per week, OEHHA suggests the following equation: $AF = [(24 \text{ hours per day}) / (8 \text{ hours per day})] \times [(7 \text{ days per week}) / (5 \text{ days per week})] = 4.2$

²⁶ “Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments.” OEHHA, February 2015, available at: <https://oehha.ca.gov/media/downloads/cnr/2015guidancemanual.pdf>, p. 5-31

²⁷ The Applicant also provided an Appeal Response which stated our previous health risk was “erroneous” as reducing student exposure from 10 hour to 7 hours per day should reduce the cancer risk (Responses to Appeal Letters Received on the Schrader Hotel Project, p. 2-3). In order to address the issue the Applicant had with our September 10, 2017 health risk, we included an FAH as well as changed the AF to account for the 8 hours/day, 5 days/week of construction.

²⁸ “Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments.” OEHHA, February 2015, available at: <https://oehha.ca.gov/media/downloads/cnr/2015guidancemanual.pdf>

²⁹ Our calculations assume that a child attends the Selma Avenue Elementary School for Pre-Kindergarten (1 year) through 5th grade, then subsequently attends the Blessed Sacrament School from 6th-8th grade, for a total exposure duration of 9-years.

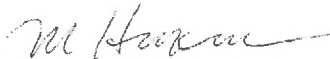
³⁰ “Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments.” OEHHA, February 2015, available at: <https://oehha.ca.gov/media/downloads/cnr/2015guidancemanual.pdf>, p. 5-30, 5-32

The excess cancer risk posed to a school child from ages five to fourteen years old is approximately 190 in one million, based on the updated assumptions described above. This greatly exceeds the SCAQMD's threshold of 10 in one million. As a result, the Project's construction and operational emissions present a potentially significant impact to nearby sensitive receptors at the Selma Avenue Elementary School.


It should be noted that our analysis represents a screening-level health risk assessment, which is known to be more conservative, and tends to err on the side of health protection.³¹ The purpose of a screening-level HRA is to determine if a more refined HRA needs to be conducted. If the results of a screening-level health risk are above applicable thresholds, then the Project should conduct a more refined HRA that is more representative of site-specific concentrations. Our screening-level HRA demonstrates that construction and operation of the Project could result in a potentially significant health risk impact. As a result, a refined HRA must be prepared to examine the air quality impacts generated by Project construction and operation using site-specific meteorology.

SWAPE has received limited discovery regarding this project. Additional information may become available in the future; thus, we retain the right to revise or amend this report when additional information becomes available. Our professional services have been performed using that degree of care and skill ordinarily exercised, under similar circumstances, by reputable environmental consultants practicing in this or similar localities at the time of service. No other warranty, expressed or implied, is made as to the scope of work, work methodologies and protocols, site conditions, analytical testing results, and findings presented. This report reflects efforts which were limited to information that was reasonably accessible at the time of the work, and may contain informational gaps, inconsistencies, or otherwise be incomplete due to the unavailability or uncertainty of information obtained or provided by third parties.

Sincerely,



Matt Hagemann, P.G., C.Hg.



Kaitlyn Heck

³¹ <https://oehha.ca.gov/media/downloads/cnr/2015guidancemanual.pdf> p. 1-5