



February 7, 2019

[vial email: jason.hernandez@lacity.org]

Jason Hernandez
City of Los Angeles
Department of City Planning
Central Projects Planning Division
200 North Spring Street, Room 621
Los Angeles, CA 90012

**Re: RESPONSES TO APPEAL LETTERS RECEIVED ON THE SCHRADER HOTEL
PROJECT – MND [ENV-2016-3751-MND], VTT 74521-1A, AND CPC-2016-3750-VZC-HD-
MCUP-ZAA-SPR**

Dear Mr. Hernandez,

As you are aware, Parker Environmental Consultants prepared the Initial Study/Mitigated Negative Declaration (IS/MND) for the Schrader Hotel Project. On August 3, 2018, the Advisory Agency adopted the MND and approved VTT 74521-1A. On December 5, 2018, the City Planning Commission (CPC) published its Letter of Determination in which it approved all the requested entitlements for the Proposed Project and its letter of determination in which it denied the appeal and sustained the Advisory's Agency's decision. The following two appeal letters, both filed by Adams Broadwell Joseph & Cardozo on behalf of the Coalition for Responsible Equitable Economic Development ("CREED LA"), were submitted to the Department of City Planning on the tract map determination and the CPC's letter of determination, respectively:

1. Adams Broadwell Joseph & Cardozo, Nirit Lotan, on behalf of CREED LA, December 14, 2018.
2. Adams Broadwell Joseph & Cardozo, Nirit Lotan, on behalf of CREED LA, December 26, 2018.

Parker Environmental has reviewed these appeal letters and have prepared the following responses for the lead agency's review and consideration. It should be noted that the issues presented in the appeal letters were previously raised in comment letters and previous appeal letters and were addressed in our prior responses, which were submitted to you on July 12, 2018; August 2, 2018; and October 17, 2018. These comments and responses were incorporated into the City's staff reports and are contained within the administrative record. For purposes of addressing these filed appeals, this response letter addresses issues pertaining to CEQA and the associated environmental issues. Any issues regarding zoning, entitlements,

and other non-environmental issues are addressed separately in a response letter by Project Applicant representative, Sheppard, Mullin, Richter, & Hampton LLP. As explained in the attached responses, the IS/MND satisfies the environmental review requirements pursuant to the California Environmental Quality Act (CEQA) (P.R.C. 21000-21189.3), the State CEQA Guidelines (C.C.R. Title 14, Chapter 3, 15000-15387), and the City of Los Angeles' policies for implementing CEQA.

CEQA and Environmental Issues

The Appeal Letter to the Vesting Tentative Tract Map, dated December 14, 2018 and the Appeal Letter to the CPC's Letter of Determination regarding Case No. CPC-2016-3750-VZC-HD-MCUP-ZAA-SPR raise environmental issues that were previously raised in the Appellant's prior appeal letter, dated September 11, 2018; namely, on toxic air contaminants ("TACs") and impacts from operational noise. The following responses address the issues raised in both appeal letters, as the appeal for Case No. CPC-2016-3750-VZC-HD-MCUP-ZAA-SPR incorporates the comments and issues raised in the Vesting Tentative Tract Map (VTT 74521-1A) appeal.

“(1) There is substantial evidence that the Project will have significant impacts on public health from TAC emissions and may result in potentially significant impacts on public health.”

The Appellant reasserts in both appeal letters that the Proposed Project would have a significant impact to students of Selma Avenue Elementary School and the Blessed Sacrament School from the Proposed Project's TACs during construction. This issue was raised in their September 11, 2018 and November 6, 2018 appeal letters. Specifically, responses to this issue are located in the Appeal Responses Letter, dated October 17, 2018 (see Response to Comment 1A.2 through Response to Comment 1A.4). In addition, the MND did evaluate the health risks posed to school children, though not in the specific format as requested by the appellant. CEQA does not require a lead agency to conduct every test or perform all research, study, and experimentation recommended or demanded by commenters (See CEQA Guidelines Section 15204).

The Appellant discusses that SWAPE revised their preliminary HRA and cancer risk assessment to reflect the City's arguments regarding their HRA (Exhibit 5 of the December 26, 2018 Appeal Letter). In the revised HRA, SWAPE acknowledges that students would be on campus for seven hours per day instead of 10 hours, which was originally utilized in their September 10, 2018 analysis. SWAPE therefore updated the analysis to reflect the City's assumption of seven hours per day. However, the revised HRA calculates a higher cancer risk of 1200 per one million, compared to their original calculation of 850 per one million. Reducing the student exposure from 10 hours to 7 hours per day should reduce the cancer risk, which SWAPE's revised HRA does not prove. Therefore, SWAPE's revised HRA does not provide new credible evidence regarding TAC impacts to nearby students. The appellant does not raise any new issues, nor do they provide any new substantial evidence to support their claim. As the claims and assertions presented by

the appellant are erroneous and supported by speculative assumptions, they do not present a fair argument that an HRA is warranted.

“(2) There is substantial evidence that the Project may result in potentially significant impacts from noise.”

The Appellant reasserts in both appeal letters that the Proposed Project would result in unmitigated operation noise impacts, specifically, regarding noise from live entertainment and the efficacy of the glass barriers and the complaint system. This issue was previously addressed in Response to Comment 1.3 and 1.4 of the October 17, 2018 correspondence to the City Planning Department.

The Appellant raises the issue that the Proposed Project does not conform with the “purpose, intent and provision of the General Plan, the applicable community plan, and any applicable specific plan.” Specifically, the Proposed Project does not conform to the following General Plan Noise Element’s goals and objectives:

- Goal: “A city where noise not does reduce the quality of urban life.”
- Objective 2: “Reduce or eliminate non-airport related intrusive noise, especially relative to noise sensitive uses.”
- Objective 3: “reduce or eliminate noise impacts associated with proposed development of land and changes in land use.”

These goal and objectives are related to the Noise Element of the General Plan. The assertion that the Proposed Project does not conform to the community plan is speculative and is not supported by any evidence from the appellant. Additionally, the Project Site is not subject to any specific plan. The Proposed Project would not result in any unmitigated operational noise impacts. Response to Comment 1.3 and 1.4 of the October 17, 2018 correspondence to the City Planning Department discusses the efficiency of Project Design Features and Mitigation Measures that would mitigate operational noise impacts.

As discussed above, the assertions and claims raised by the appellant do not present a fair argument that the Proposed Project would result in a significant impact from operational noise and TAC emissions. Based on the information contained in the appeal letters and the responses to the appeal letters (attached hereto), there is no substantial evidence (or a fair argument supported by substantial evidence) that the Proposed Project will have a significant effect on the environment requiring the preparation of an Environmental Impact Report (EIR) or triggering the need for recirculation of the IS/MND pursuant to Section 15073.5 of the State CEQA Guidelines. Accordingly, these responses may be incorporated into the record and no additional environmental analysis is required.

Mr. Jason Hernandez
City of Los Angeles
Department of City Planning, Central Project Planning Division
Re: Shrader Hotel Project - Responses to Appeal Letters
February 7, 2019
Page 4 of 4

Should you have any questions regarding any of the responses please contact me at (661) 257-2282 or by email at shane@parkerenvironmental.com.

Sincerely,

A handwritten signature in blue ink, reading "Shane E. Parker". The signature is fluid and cursive, with the first name "Shane" and last name "Parker" being more prominent than the middle initial "E".

Shane E. Parker

Attachments:

- A. *Copies of the Appeal Letters*



23822 Valencia Boulevard, Suite 301
Valencia, CA 91355
(661) 257-2282 (tel)
www.parkerenvironmental.com

ORIGINAL



APPLICATIONS:

APPEAL APPLICATION

This application is to be used for any appeals authorized by the Los Angeles Municipal Code (LAMC) for discretionary actions administered by the Department of City Planning.

1. APPELLANT BODY/CASE INFORMATION

Appellant Body:

☐ Area Planning Commission ☐ City Planning Commission ☒ City Council ☐ Director of Planning

Regarding Case Number: VTT-74521-1A

Project Address: 1600-1616 1/2 N Schrader Boulevard and 6533 Selma Avenue

Final Date to Appeal: 12/17/2018

Type of Appeal: ☐ Appeal by Applicant/Owner
 ☒ Appeal by a person, other than the Applicant/Owner, claiming to be aggrieved
 ☐ Appeal from a determination made by the Department of Building and Safety

2. APPELLANT INFORMATION

Appellant's name (print): Coalition for Responsible Equitable Economic Development c/o Tanya A. Gulesserian

Company: _____

Mailing Address: 601 Gateway Blvd., Suite 1000

City: South San Francisco State: CA Zip: 94080

Telephone: (650) 589-1660 E-mail: tgulesserian@adamsbroadwell.com

- Is the appeal being filed on your behalf or on behalf of another party, organization or company?
☐ Self ☒ Other: Coalition for Responsible Equitable Economic Development (CREED LA)
- Is the appeal being filed to support the original applicant's position? ☐ Yes ☒ No

3. REPRESENTATIVE/AGENT INFORMATION

Representative/Agent name (if applicable): Tanya A. Gulesserian

Company: Adams Broadwell Joseph & Cardozo

Mailing Address: 601 Gateway Boulevard, Suite 1000

City: South San Francisco State: CA Zip: 94080

Telephone: (650) 589-1660 E-mail: tgulesserian@adamsbroadwell.com

4. JUSTIFICATION/REASON FOR APPEAL

Is the entire decision, or only parts of it being appealed? ☒ Entire ☐ Part

Are specific conditions of approval being appealed? ☐ Yes ☒ No

If Yes, list the condition number(s) here: _____

Attach a separate sheet providing your reasons for the appeal. Your reason must state:

- The reason for the appeal
- How you are aggrieved by the decision
- Specifically the points at issue
- Why you believe the decision-maker erred or abused their discretion

5. APPLICANT'S AFFIDAVIT

I certify that the statements contained in this application are complete and true:

Appellant Signature: *Laya Guri*

Date: 12-12-18

6. FILING REQUIREMENTS/ADDITIONAL INFORMATION

- ✓ Eight (8) sets of the following documents are required for each appeal filed (1 original and 7 duplicates):
 - ✓ Appeal Application (form CP-7769)
 - ✓ Justification/Reason for Appeal
 - ✓ Copies of Original Determination Letter
- ✓ A Filing Fee must be paid at the time of filing the appeal per LAMC Section 19.01 B.
 - Original applicants must provide a copy of the original application receipt(s) (required to calculate their 85% appeal filing fee).

N/A All appeals require noticing per the applicable LAMC section(s). Original Applicants must provide noticing per the LAMC, pay mailing fees to City Planning's mailing contractor (BTC) and submit a copy of the receipt.

N/A Appellants filing an appeal from a determination made by the Department of Building and Safety per LAMC 12.26 K are considered Original Applicants and must provide noticing per LAMC 12.26 K.7, pay mailing fees to City Planning's mailing contractor (BTC) and submit a copy of receipt.

N/A A Certified Neighborhood Council (CNC) or a person identified as a member of a CNC or as representing the CNC may not file an appeal on behalf of the Neighborhood Council; persons affiliated with a CNC may only file as an individual on behalf of self.

N/A Appeals of Density Bonus cases can only be filed by adjacent owners or tenants (must have documentation).

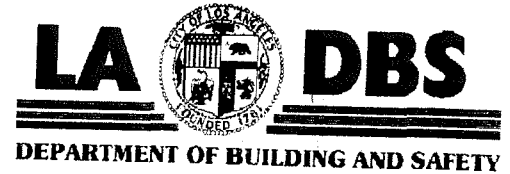
N/A Appeals to the City Council from a determination on a Tentative Tract (TT or VTT) by the Area or City Planning Commission must be filed within 10 days of the date of the written determination of said Commission.

N/A A CEQA document can only be appealed if a non-elected decision-making body (ZA, APC, CPC, etc.) makes a determination for a project that is not further appealable. [CA Public Resources Code ' 21151 (c)].

This Section for City Planning Staff Use Only		
Base Fee: <u>89.00</u>	Reviewed & Accepted by (DSC Planner): <u>Rina Lara</u>	Date: <u>12/17/18</u>
Receipt No:	Deemed Complete by (Project Planner):	Date:
<input checked="" type="checkbox"/> Determination authority notified		<input type="checkbox"/> Original receipt and BTC receipt (if original applicant)

Office: Van Nuys
Applicant Copy
Application Invoice No: 52088

City of Los Angeles
Department of City Planning



LA Department of Building and Safety
VN ZABE 202168316 12/17/2018 9:24:12 AM

City Planning Request

NOTICE: The staff of the Planning Department will analyze your request and accept your application, regardless of whether or not you obtain the service.

This filing fee is required by Chapter 1, Article

Receipt #: 0202588095 \$109.47
Total: \$109.47
Check \$109.47

Applicant: CREED LA (B:650-5891660)
Representative: ADAM BROADWELL JOSEPH & CARDOZA - GULESSERIAN, T
Project Address: 1608 N SCHRADER BLVD, 90028

NOTES:

VTT-74521-2A			
Item	Fee	%	Charged Fee
Appeal by Aggrieved Parties Other than the Original Applicant *	\$89.00	100%	\$89.00
Case Total			\$89.00


Item	Charged Fee
*Fees Subject to Surcharges	\$89.00
Fees Not Subject to Surcharges	\$0.00
Plan & Land Use Fees Total	\$89.00
Expediting Fee	\$0.00
Development Services Center Surcharge (3%)	\$2.67
City Planning Systems Development Surcharge (6%)	\$5.34
Operating Surcharge (7%)	\$6.23
General Plan Maintenance Surcharge (7%)	\$6.23
Grand Total	\$109.47
Total Invoice	\$109.47
Total Overpayment Amount	\$0.00
Total Paid (this amount must equal the sum of all checks)	\$109.47

LA Department of Building and Safety
VN ZABE 202168316 12/17/2018 9:24:12 AM
PLAN & LAND USE \$106.80
DEV SERV CENTER SURCH-PLANNING \$2.67

Sub Total: \$109.47

Council District: 13
Plan Area: Hollywood
Processed by LARA, RINA on 12/17/2018

Receipt #: 0202588095

Signature: 

ADAMS BROADWELL JOSEPH & CARDOZO

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

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RACHAEL E. KOSS
NIRIT LOTAN
MILES F. MAURINO
COLLIN S. MCCARTHY

LAURA DEL CASTILLO
Of Counsel

December 14, 2018

Via Hand Delivery

City Council
City of Los Angeles
C/o Planning Department Appeals Clerk
Marvin Braude Constituent Service Center
6262 Van Nuys Boulevard, Suite 251
Van Nuys, CA 91401

Re: **Justification for Appeal to the Los Angeles City Council of the
December 5, 2018 City Planning Commission Determination in Case
No. VTT-74521-1A; ENV-2016-3751-MND; Related Case: CPC-2016-
3750-VZC-HDMCUP-ZAA-SPR**

Dear Honorable Mayor Garcetti and City Council Members:

On behalf of Coalition for Responsible Equitable Economic Development ("CREED LA"),¹ we are writing to appeal the City Planning Commission ("Planning Commission") approval of a Vesting Tentative Tract Map for the Schrader Hotel Project, VTT-74521-1A, ("Project") and the adoption of the Initial Study/Mitigated Negative Declaration ("MND") for the Project ENV-2016-3751-MND.

The Project is located at 1600-1616 ½ N. Schrader Boulevard and 6533 W. Selma Avenue ("Project Site") in the City of L.A. ("City") and includes the demolition of a surface parking lot for the construction, use, and maintenance of a mixed-use hotel that would contain 191 guestrooms, 2,850 square feet of ground floor commercial use, three levels of subterranean parking and a roof terrace. The project is proposed by 1600 Hudson, LLC ("Applicant"). We submitted comments on the Project on June 7, 2018 and responses to the City's response to our comments on July 18, 2018, urging the City to deny all discretionary approvals requested by 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.

4267-018acp

Applicant for the Project. On August 13 we filed an appeal on the Advisory Agency's approval of the Vesting Tentative Tract Map and adoption of the MND. The appeal was heard by the Planning Commission on November 8, 2018. On December 5, 2018 the Planning Commission published its letter of determination in which it denied the appeal and sustained the Advisory Agency's decisions.

Pursuant to the City appeal procedures, we have attached the Appeal Application (form CP-7769) and the original Letter of Determination ("LOD"), and have provided seven (7) duplicate copies of the complete packet. We have also enclosed a check for the appeal fee.

The reason for this appeal is that the Planning Commission abused its discretion and violated the California Environmental Quality Act ("CEQA") when it approved the Vesting Tentative Tract Map and adopted the MND. CEQA requires that the potential impacts of this Project be evaluated in an environmental impact report ("EIR"), not in an MND, because substantial evidence exists that the Project may have significant, unmitigated environmental impacts on public health and from noise.

Our June 7, 2018 comment letter on the Project², our July 18, 2018 comments on the City's response to comments³, our August 13, 2018 Justification for Appeal⁴, our September 11, 2018 Response to Appeal Report⁵ and our November 6, 2018 Response to Second Appeal Report⁶ are attached hereto, and the specific reasons for this appeal are set forth in detail in these letters and summarized below.

² See **Exhibit 1**: Letter from Christina M. Caro to Darlene Navarrete re: Comments on the Mitigated Negative Declaration for the Schrader Hotel Project (Environmental Case Numbers NG-18-028-PL, ENV-2016-3751, ENV-2016-3751-A, ENV-2016-3751-B, ENV-2016-3751-C, ENV-2016-3751-D, ENV-2016-3751-E, ENV-2016-3751-E1, ENV-2016-3751-E2, ENV-2016-3751-F, ENV-2016-3751-G, ENV-2016-3751-H), June 7, 2018.

³ See **Exhibit 2**: Letter from Tanya A. Gulesserian and Nirit Lotan to Mindy Nguyen and Jason Hernández re: Re: Schrader Hotel Project Mitigated Negative Declaration, July 18, 2018.

⁴ See **Exhibit 3**: Letter from Tanya A. Gulesserian and Nirit Lotan re: Justification for Appeal to the City of Los Angeles Planning Commission of the August 3, 2018 Advisory Agency's Determination in Case No. VTT-74521; ENV-2016-3751-MND; Related Case: CPC-2016-3750-VZC-HDMCUP-ZAA-SPR, August 13, 2018.

⁵ See **Exhibit 4**: Letter from Tanya A. Gulesserian and Nirit Lotan re: Response to Department of City Planning Appeal Report regarding the Schrader Hotel Project (VTT-74521-1A, ENV-2016-3751-MND), September 11, 2018.

⁶ See **Exhibit 5**: Letter from Nirit Lotan re: Response to Department of City Planning Appeal Report regarding the Schrader Hotel Project (VTT-74521-1A, ENV-2016-3751-MND), November 6, 2018.

In its Letter of Determination the Planning Commission states it concurs with the responses to our comments that were prepared by the environmental consultant that was retained for the Project and the that “the lead agency finds that, with imposition of the mitigation measures described in the MND, there is no substantial evidence that the proposed project will have a significant effect on the environment.”⁷ However, as explained in our previous letters and summarized below, substantial evidence supports a fair argument that the Project may cause: (1) a significant, unmitigated impact on public health from toxic air contaminants (“TACs”), and (2) a significant, unmitigated impact from noise.

(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 explains in their comment letter, 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.⁸ In order to support such a conclusion, the City must rely on an analysis, such as an HRA.

In our July 18, 2018 comments on the City’s response to comments we showed that the Court of Appeal has repeatedly held that a CEQA document must analyze impacts of projects on human health.⁹ In *CBE v. Richmond*, the court held that a CEQA document is inadequate where it “does not address the public health or other environmental consequences of processing heavier crude [thereby emitting TACs], let alone analyze, quantify, or propose measures to mitigate those

⁷ Los Angeles City Planning Commission, Letter of Determination, December 5, 2018, p. F-1.

⁸ Letter from Hadley Nolan to Christina Caro re: Comments on the Schrader Hotel Project, June 7, 2018.

⁹ See Exhibit 2, p. 4-6.

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impacts.”¹⁰ In *Bakersfield*,¹¹ the court held that an EIR for a commercial shopping center was inadequate because it failed to correlate adverse air quality impacts to resulting adverse health impacts on surrounding communities. In *Berkeley Keep Jets Over the Bay Com. v. Bd. of Port Comrs.*,¹² the court held that an EIR must include a “human health risk assessment.”¹³

In its August 2, 2018 response to comments,¹⁴ the City attempts to distinguish this long line of court rulings that establish an agency’s duty to perform an HRA to properly analyze potentially significant impacts on public health. This duty, however, remains applicable in this case. In addition, the City’s response violates CEQA because it ignores substantial evidence supporting a fair argument that the Project may have significant impacts on public health. SWAPE provided an expert opinion, supported by substantial evidence, that the Project may result in a significant impact on public health; after reviewing the City’s response, SWAPE maintains that the Project may have significant impacts on public health.¹⁵ The City must therefore prepare an EIR to analyze and mitigate the potentially significant impact, as required by law.

Moreover, in our September 11, 2018 response to Appeal Report¹⁶ we provided supplemental health risk assessment from SWAPE to evaluate the health risk posed specifically to school children attending the Selma Avenue Elementary School and the Blessed Sacrament School located near the Project site, which have not been addressed or evaluated in any report or analysis prepared for the Project. SWAPE’s analysis found that the excess cancer risk to a school child from ages five

¹⁰ *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 82 (“*CBE v. Richmond*”). See also *Californians for Alternatives to Toxics v. Cal. Dep’t of Food & Agric.* (2006) 136 Cal.App.4th 1, 16, (EIR on statewide application of pesticide was inadequate when it failed to independently evaluate risks of toxic exposure

¹¹ 124 Cal.App.4th at 1219-20 (“on remand, the health impacts resulting from the adverse air quality impacts must be identified and analyzed in the new EIR’s.”).

¹² *Berkeley Keep Jets Over the Bay Com. v. Bd. of Port Comrs.* (“*Berkeley Jets*”) (2001) 91 Cal.App.4th 1344.

¹³ *Id.* at 1369.

¹⁴ Parker Environmental Consultants. Responses to comments received on the Schrader Hotel Project [ENV-2016-3751-MND] August 2, 2018. (“Response to Comments, August 2, 2018”).

¹⁵ Letter from Hadley Nolan to Nirit Lotan re: Comments on the Schrader Hotel Project, July 17, 2018, p.2.

¹⁶ See **Exhibit 4.**

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to fourteen years old is approximately 850 in one million, which greatly exceeds the SCAQMD's threshold of ten in one million.¹⁷

In its second Appeal Report, prepared for the November 8, 2018 City Planning Commission hearing, the City argued against SWAPE's assumptions used in its supplemental analysis. First, the City argued SWAPE incorrectly assumed that a receptor would be continuously exposed to DPM emissions over a 70-year lifespan, and therefore, the cancer risk was overestimated. As SWAPE explained in response¹⁸, an adjustment factor (AF) was included in the analysis to properly account for that fact, and therefore, contrary to the City's argument, SWAPE's analysis does not assume that a school child would be exposed to DPM continuously for 70 years.¹⁹

Second, the City argued that school children will be on site seven hours and not ten hours a day, as was SWAPE's assumption. SWAPE therefore updated the analysis to reflect the City's assumption.²⁰

SWAPE's updated analysis found that when accounting for the City's assumptions, the excess cancer risk to a school child from ages five to fourteen years old is approximately 1,200 in one million.²¹ This risk greatly exceeds the SCAQMD's threshold of ten in one million.

SWAPE provides substantial evidence that under the applicable SCAQMD rules and OEHHA Guidelines the Project will cause a significant health impact that the City must disclose and analyze by preparing a health risk assessment to account for potential health impacts caused by the Project's construction.²² As shown by SWAPE's analysis, substantial evidence supports a fair argument that the Project will have significant impact on public health from construction

¹⁷ See Letter from Hadley Nolan to Nirit Lotan, Response to Comments on the Schrader Hotel Project, September 10, 2018, p. 4.

¹⁸ See Letter from Hadley Nolan to Nirit Lotan, Response to Comments on the Schrader Hotel Project, November 5, 2018.

¹⁹ See Letter from Hadley Nolan to Nirit Lotan, Response to Comments on the Schrader Hotel Project, November 5, 2018, p. 2-3.

²⁰ See Letter from Hadley Nolan to Nirit Lotan, Response to Comments on the Schrader Hotel Project, November 5, 2018, p. 3.

²¹ See Letter from Hadley Nolan to Nirit Lotan, Response to Comments on the Schrader Hotel Project, November 5, 2018, p. 4.

²² See Letter from Hadley Nolan to Nirit Lotan, Response to Comments on the Schrader Hotel Project, November 5, 2018, p. 2.

emissions. The Planning Commission violated CEQA when it failed to account for this evidence and failed to prepare a proper health risk analysis, as required under the law.

(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 MND concludes that impacts from noise will be less than significant after the application of four “Project Design Features” (PDFs), which include physical and operational noise-attenuating features as well as limitations on hours of operations, and mitigation measure N-7, which establishes a “complaint system.”²³ The MND’s reliance on these PDFs and measure N-7 does not constitute substantial evidence that the Project will not result in significant impacts for at least two reasons. First, the City analysis violates CEQA by improperly compressing the analysis of impacts and mitigation measures and improperly relying on design features for mitigation without ever disclosing the actual impact. Second, we reviewed the environmental analysis with the assistance of Neil Shaw, an expert acoustical engineer, who found that the mitigation measures and design features will not mitigate the noise impacts from the Project’s operation and, therefore, a potentially significant impact remains for this Project.

1. The city violated CEQA by improperly compressing the analysis of impacts and mitigation measures and relying on design features for mitigation without disclosing the Project’s impacts

In *Lotus v. Department of Transportation*,²⁴ 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.”²⁵ 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

²³ MND, p. II-40/41, III-103/104

²⁴ *Lotus v. Dep’t of Transp.* (2014) 223 Cal. App. 4th 645, 651-52.

²⁵ *Id.*

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significant levels prior to mitigation. The public has no way of telling what is the noise impact of the Project *without* the design feature, and cannot properly evaluate whether it is effective in reducing the impact.

In its August 2, 2018 response, the City tries to distinguish the Court decision in *Lotus* by arguing that the Project's design features are "by definition, part of the Proposed Project"²⁶ and not mitigation measures. While this argument may be valid for the plexiglass barrier which the City argues "is a required component of the Project's design for safety purposes,"²⁷ the City completely fails to explain how PDF-2, the digital audio processor, qualifies as part of the Project. In contrast to the glass barrier, which the City argues is "clearly shown on the Proposed Site Plan,"²⁸ the audio processor, as Mr. Shaw explains, "is an add-on added specifically to mitigate the sound from the installed sound system."²⁹ Mr. Shaw further explains:

Such a system is not commonly a part of sound systems, and definitely not an inherent part of the design and operation of a hotel. This is a mitigation measure, aimed at reducing levels of sound and mitigating its impacts, since the reason a digital signal processor is added to a sound system is to control, that is, mitigate, the noise impact from the sound system.³⁰

Not only is the system not "part of the project," but the City's reliance on it clearly "obfuscates required disclosure of the project's environmental impacts and analysis of potential mitigation measures."³¹ The City's analysis fails to disclose what would be the impact from each of the Project's activities in each of its open spaces and, instead, provides only a post-mitigation assessment that is based on the *unsupported* assumption that the digital processor is a hundred percent successful in mitigating *all* noise impacts. The public is therefore deprived of the opportunity to know what the Project's actual noise impacts will be, and of meaningfully assessing the effectiveness of the digital processor as a mitigation measure, which, in any event, lacks performance measures and is unenforceable.

²⁶ City of Los Angeles Response to Comments, August 2, 2018, p. 44.

²⁷ City of Los Angeles Response to Comments, August 2, 2018, p. 44.

²⁸ City of Los Angeles Response to Comments, August 2, 2018, p. 44.

²⁹ See letter from Neil Shaw to Nirit Lotan re: Schrader Hotel Project –City of Los Angeles Response (August 2, 2018), August 10, 2018, p. 1.

³⁰ See letter from Neil Shaw to Nirit Lotan re: Schrader Hotel Project –City of Los Angeles Response (August 2, 2018), August 10, 2018, p. 1.

³¹ *Mission Bay All. v. Office of Cmty. Inv. & Infrastructure*, 6 Cal. App. 5th 160, 185, 211, 4267-018acp

The City must provide the public an analysis of the Project's impacts *before and after* application of the digital processor project design feature, and explain if and how this alleged feature is applicable to all the *different types* of noise impacts the Project will create, including noise from crowds, music and live entertainment. By failing to do so, the City violated CEQA.

2. The design features and mitigation measures will not mitigate the impact below the threshold of significance; substantial evidence supports a fair argument that the Project may result in significant, unmitigated and undisclosed impacts from noise.

Even assuming the City may rely on the design features as “part of the project,” which it may not, the design features and complaint measure proposed for the Project clearly fail to ensure that noise impacts would be mitigated to below the threshold of significance.

The audio processor fails to mitigate potentially significant noise impacts from live entertainment. In its August 2, 2018 response to comments the City argues the system described in PDF-2 “would apply to all amplified sound within the proposed hotel and outdoor area” and that “[e]ntertainers would be prohibited from bringing in outside equipment that bypasses the hotel’s audio system control.”³² The first Appeal Report included a statement admitting that in fact, outside equipment will be allowed on the hotel’s premises³³ and in the second Appeal Report the City backtracked and again argued that “outside equipment and acoustic instruments are prohibited”.³⁴ There are three main problems with this argument.

First, the MND includes no language to support this assertion – it includes no prohibition on outside equipment. At the very least, the city must add language to the MND and the MMP that clearly prohibits bringing in outside equipment.

Second, the City lacks any evidence that a prohibition from bringing in outside equipment that bypasses the hotel’s audio system control is feasible and would reduce significant impacts. As Mr. Shaw explains, live bands are allowed

³² City of Los Angeles Response to Comments, August 2, 2018, p. 45.

³³ City of Los Angeles Department of City Planning Appeal Report prepared for the September 13, 2018 City Planning Commission hearing, p. A-8.

³⁴ City of Los Angeles, Schrader Hotel Project Responses to Comments, October 2018, p. 9.
4267-018acp

and, by definition, bring in their own instrument amplifiers and their own sound systems. “This portable instrument equipment is not designed to be controlled by, nor has any means of connecting to, a digital audio processor such as that in PDF-2.”³⁵ As Mr. Shaw explains, some instruments, such as drum kits and other impulsive instruments, “*cannot* be controlled by the audio system in such a way to limit the impulsive sounds.”³⁶ Therefore, noise from these instruments may cause a specific, significant unmitigable impact on noise.

Third, the measure lacks any reporting, inspection or other procedures for the City and the public to be able to enforce the measure. Therefore, it is vague and unenforceable.

In its second Appeal Report the City argues that “it is not required to analyze a “hypothetical scenario that will not occur.” However, the City’s *own* MND analysis admits that noise from amplified music can reach the level of 104 dBA.³⁷ Nothing is hypothetical about this level, but the city fails to properly analyze it, despite substantial evidence supporting a fair argument that any live entertainment not controlled by the DAP may reach these levels.

At the hearing, some Planning Commissioners commented on the fact that the area is part of a busy entertainment district and that there are other similar establishments that were allowed to operate under similar conditions. These arguments have no bearing on the City’s duty under CEQA. Under CEQA, the City must analyze the Project’s impact on noise against the existing conditions and the established thresholds. The City failed to do this.

The glass barrier will not mitigate potentially significant noise impacts. As explained in our July 18, 2018 response and in Mr. Shaw’s comments,³⁸ the proposed barrier is not high and massive enough to properly mitigate low frequency impulsive sounds, which have long wavelengths, and that will be produced from amplified music. The City failed to respond to this comment regarding the Project’s potentially significant noise impact.

³⁵ See letter from Neil Shaw to Nirit Lotan re: Schrader Hotel Project –City of Los Angeles Response (August 2, 2018), August 10, 2018, p. 2.

³⁶ See letter from Neil Shaw to Nirit Lotan re: Schrader Hotel Project –City of Los Angeles Response (August 2, 2018), August 10, 2018, p. 2.

³⁷ MND, p. III-106.

³⁸ See letter from Neil Shaw to Nirit Lotan, Schrader Hotel Project - Mitigated Negative Declaration ENV-2016-3751-MND - Noise Impact Review, July 16, 2018, p. 3.

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The complaint system will not mitigate potentially significant noise impacts. In its August 2, 2018 response, the City argues that the complaint system established in PDF-4 requires the immediate closing of doors and window to the enclosed area upon the receipt of any complaint between 7:00 a.m. and 12:00 a.m. “even if such noise does not exceed the thresholds of significance,” thus allegedly mitigating any potential significant impact. There are three main problems with the design feature.

First, it is completely unenforceable. The City fails to explain how neighbors in buildings across the street on different floors will be able to know, sometimes in the middle of the night, if the windows of a structure on the 11th floor are closed. The City’s seems to rely on the fact that the Applicant is required to provide the adjacent residential buildings with a phone number for complaints as a guarantee that the mitigation will be effective.³⁹ However, just having the phone number will not solve the abovementioned problem. Moreover, The City’s mitigation monitoring program sets the monitoring frequency of this measure as “annually,” rendering it useless in violation of CEQA.

Second, the City seems to assume that, because neighbors will be able to complain, and the operator will have to close the windows regardless of the noise level, somehow this will prevent significant noise impacts. However, as Mr. Shaw explains, “noise from such establishments does not necessarily become gradually louder.”⁴⁰ In other words, the sensitive receptors around the Project may be exposed to noise impacts beyond the threshold of significance; even assuming that closing the windows will occur, this will be done *after the fact* and after a significant impact has already occurred.

Third, the measure lacks any reporting, inspection or other procedures for the City and the public to be able to enforce the measure. Therefore, it is vague and unenforceable.

Because there is substantial evidence supporting a fair argument that the Project will have significant impacts on public health and from noise, the City’s project design features and complaint measure lack performance standards, are

³⁹ City of Los Angeles Department of City Planning Appeal Report prepared for the November 8, 2018 City Planning Commission hearing, p. A-9.

⁴⁰ See letter from Neil Shaw to Nirit Lotan re: Schrader Hotel Project –City of Los Angeles Response (August 2, 2018), August 10, 2018, p. 2.

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unenforceable and would not reduce significant impacts, the Planning Commission's approval of the Vesting Tentative Tract Map and adoption of the MND violate CEQA and must be overturned. We urge the City Council to grant our appeal and order the preparation of an EIR for the Project.

Thank you for your attention to this important matter.

Sincerely,

Nirit Lotan / mfb

Nirit Lotan

NL:acp

ORIGINAL



APPLICATIONS:

APPEAL APPLICATION

This application is to be used for any appeals authorized by the Los Angeles Municipal Code (LAMC) for discretionary actions administered by the Department of City Planning.

1. APPELLANT BODY/CASE INFORMATION

Appellant Body:

☐ Area Planning Commission ☐ City Planning Commission ☒ City Council ☐ Director of Planning

Regarding Case Number: CPC-2016-3750-VZC-HD-MCUP-ZAA-SPR (Related:VTT-74521-1A; ENV-2016-3751-M

Project Address: 1600-1616 ½ N. Schrader Boulevard and 6533 W. Selma Avenue

Final Date to Appeal: 12/26/2018

Type of Appeal:

- ☐ Appeal by Applicant/Owner
☒ Appeal by a person, other than the Applicant/Owner, claiming to be aggrieved
☐ Appeal from a determination made by the Department of Building and Safety

2. APPELLANT INFORMATION

Appellant's name (print): Coalition for Responsible Equitable Economic Development c/o Nirit Lotan

Company: _____

Mailing Address: 601 Gateway Blvd, Suite 1000

City: South San Francisco

State: CA

Zip: 94080

Telephone: (650) 589-1660

E-mail: nlotan@adamsbroadwell.com

- Is the appeal being filed on your behalf or on behalf of another party, organization or company?

☐ Self

☒ Other: Coalition for Responsible Equitable Economic Development (CREED LA)

- Is the appeal being filed to support the original applicant's position?

☐ Yes

☒ No

3. REPRESENTATIVE/AGENT INFORMATION

Representative/Agent name (if applicable): Nirit Lotan

Company: Adams Broadwell Joseph & Cardozo

Mailing Address: 601 Gateway Blvd, Suite 1000

City: South San Francisco

State: CA

Zip: 94080

Telephone: (650) 589-1660

E-mail: nlotan@adamsbroadwell.com

4. JUSTIFICATION/REASON FOR APPEAL

Is the entire decision, or only parts of it being appealed? ☒ Entire ☐ Part

Are specific conditions of approval being appealed? ☐ Yes ☐ No

If Yes, list the condition number(s) here: _____

Attach a separate sheet providing your reasons for the appeal. Your reason must state:

- The reason for the appeal
- How you are aggrieved by the decision
- Specifically the points at issue
- Why you believe the decision-maker erred or abused their discretion

5. APPLICANT'S AFFIDAVIT

I certify that the statements contained in this application are complete and true:

Appellant Signature: _____

Date: 12/21/2018

6. FILING REQUIREMENTS/ADDITIONAL INFORMATION

- ✓ • Eight (8) sets of the following documents are required for each appeal filed (1 original and 7 duplicates):
 - Appeal Application (form CP-7769)
 - Justification/Reason for Appeal
 - Copies of Original Determination Letter
- A Filing Fee must be paid at the time of filing the appeal per LAMC Section 19.01 B.
 - Original applicants must provide a copy of the original application receipt(s) (required to calculate their 85% appeal filing fee).
- NA • All appeals require noticing per the applicable LAMC section(s). Original Applicants must provide noticing per the LAMC, pay mailing fees to City Planning's mailing contractor (BTC) and submit a copy of the receipt.
- NA • Appellants filing an appeal from a determination made by the Department of Building and Safety per LAMC 12.26 K are considered Original Applicants and must provide noticing per LAMC 12.26 K.7, pay mailing fees to City Planning's mailing contractor (BTC) and submit a copy of receipt.
- NA • A Certified Neighborhood Council (CNC) or a person identified as a member of a CNC or as representing the CNC may not file an appeal on behalf of the Neighborhood Council; persons affiliated with a CNC may only file as an individual on behalf of self.
- NA • Appeals of Density Bonus cases can only be filed by adjacent owners or tenants (must have documentation).
- ✓ • Appeals to the City Council from a determination on a Tentative Tract (TT or VTT) by the Area or City Planning Commission must be filed within 10 days of the date of the written determination of said Commission.
- NA • A CEQA document can only be appealed if a non-elected decision-making body (ZA, APC, CPC, etc.) makes a determination for a project that is not further appealable. [CA Public Resources Code ' 21151 (c)].

This Section for City Planning Staff Use Only		
Base Fee: <u>\$89.00</u>	Reviewed & Accepted by (DSC Planner): <u>Annam Vidal</u>	Date: <u>12/26/18</u>
Receipt No: <u>0202590498</u>	Deemed Complete by (Project Planner):	Date:
<input type="checkbox"/> Determination authority notified	<input type="checkbox"/> Original receipt and BTC receipt (if original applicant)	

Office: Van Nuys
 Applicant Copy
 Application Invoice No: 52312



Scan this QR Code® with a barcode reading app on your Smartphone. Bookmark page for future reference.

LA Department of Building and Safety
 VN ZABE 202168960 12/26/2018 9:54:53 AM

Receipt #: 0202590498

NOTICE: The staff of the Pl:
 your applica

\$109.47

Total: \$109.47

ame full and impartial consideration to
 yone to represent you.

This filing fee is required by Chapter 1, Article 9, L.A.M.C.

Applicant: ADAMS BROADWELL JOSEPH & CARDOZO - LOTAN, NIRIT (B:650-5891660)
Representative:
Project Address: 1608 N SCHRADER BLVD, 90028

NOTES:

CPC-2016-3750-VZC-HD-MCUP-ZAA-SPR-1A			
Item	Fee	%	Charged Fee
Appeal by Aggrieved Parties Other than the Original Applicant *	\$89.00	100%	\$89.00
Case Total			\$89.00

Item	Charged Fee
*Fees Subject to Surcharges	\$89.00
Fees Not Subject to Surcharges	\$0.00
Plan & Land Use Fees Total	\$89.00
Expediting Fee	\$0.00
Development Services Center Surcharge (3%)	\$2.67
City Planning Systems Development Surcharge (6%)	\$5.34
Operating Surcharge (7%)	\$6.23
General Plan Maintenance Surcharge (7%)	\$6.23
Grand Total	\$109.47
Total Invoice	\$109.47
Total Overpayment Amount	\$0.00
Total Paid (this amount must equal the sum of all checks)	\$109.47

Department of Building and Safety
 VN ZABE 202168960 12/26/2018 9:54:53 AM

Council District: 13
 Plan Area: Hollywood
 Processed by VIDAL, ANNA on 12/26/2018

PLAN & LAND USE \$106.80
 DEV SERV CENTER SURCH-PLANNING \$2.67

Sub Total: \$109.47

Signature: *Ann M. Vidal*

Receipt #: 0202590498

1/11/18

ADAMS BROADWELL JOSEPH & CARDOZO

A PROFESSIONAL CORPORATION

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NIRIT LOTAN
MILES F. MAURINO
COLLIN S. MCCARTHY

LAURA DEL CASTILLO
Of Counsel

December 26, 2018

Via Hand Delivery

City Council
City of Los Angeles
C/o Planning Department Appeals Clerk
Marvin Braude Constituent Service Center
6262 Van Nuys Boulevard, Suite 251
Van Nuys, CA 91401

Re: **Justification for Appeal to the Los Angeles City Council of the
December 5, 2018 City Planning Commission Determination in
Case No. CPC-2016-3750-VZC-HD-MCUP-ZAA-SPR (Related case
VTT-74521-1A; ENV-2016-3751-MND)**

Dear Honorable Mayor Garcetti and City Council Members:

On behalf of Coalition for Responsible Equitable Economic Development ("CREED LA"),¹ we are writing to appeal the City Planning Commission ("Planning Commission") approval of (1) a Master Conditional Use pursuant to LAMC Section 12.24 W.1, (2) a Zoning Administrator's Adjustment pursuant to LAMC Section 12.28 and (3) a Site Plan Review pursuant to LAMC Section 16.05.

The Project is located at 1600-1616 ½ N. Schrader Boulevard and 6533 W. Selma Avenue ("Project Site") in the City of L.A. ("City") and includes the demolition of a surface parking lot for the construction, use, and maintenance of a mixed-use hotel that would contain 191 guestrooms, 2,850 square feet of ground floor commercial use, three levels of subterranean parking and a roof terrace ("Project"). The Project is proposed by 1600 Hudson, LLC ("Applicant"). We submitted comments on the Project on June 7, 2018 and responses to the City's response to our

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.

December 26, 2018

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comments on July 18, 2018, urging the City to deny all discretionary approvals requested by the Applicant for the Project. On August 13, we filed an appeal of the Advisory Agency's approval of the Vesting Tentative Tract Map and adoption of the MND. The appeal was heard by the Planning Commission on November 8, 2018. On December 5, 2018, the Planning Commission published its Letter of Determination in which it approved all the requested entitlements for the Project, and its letter of determination in which it denied the appeal and sustained the Advisory Agency's decisions.

Pursuant to the City appeal procedures, we have attached the Appeal Application (form CP-7769) and the original Letter of Determination ("LOD") and have provided seven (7) duplicate copies of the complete packet. We have also enclosed a check for the appeal fee.

The reason for this appeal is that the Planning Commission abused its discretion and violated the City Code when it approved the entitlements listed above. As explained below, the City cannot make the findings under the City of Los Angeles Municipal Code ("Code") required to approve the entitlements. The Planning Commission also violated the California Environmental Quality Act ("CEQA") by making CEQA findings based on an environmental document that does not satisfy the legal requirements under CEQA (ENV-2016-3751-MND).

Our June 7, 2018 comment letter on the Project,² our July 18, 2018 comments on the City's response to comments,³ our August 13, 2018 Justification for Appeal,⁴

² See **Exhibit 1**: Letter from Christina M. Caro to Darlene Navarrete re: Comments on the Mitigated Negative Declaration for the Schrader Hotel Project (Environmental Case Numbers NG-18-028-PL. ENV-2016-3751. ENV-2016-3751-A. ENV-2016-3751-B. ENV-2016-3751-C. ENV-2016-3751-D. ENV-2016-3751-E. ENV-2016-3751-E1. ENV-2016-3751-E2. ENV-2016-3751-F. ENV-2016-3751-G. ENV-2016-3751-H), June 7, 2018.

³ See **Exhibit 2**: Letter from Tanya A. Gulesserian and Nirit Lotan to Mindy Nguyen and Jason Hernández re: Re: Schrader Hotel Project Mitigated Negative Declaration, July 18, 2018.

⁴ See **Exhibit 3**: Letter from Tanya A. Gulesserian and Nirit Lotan re: Justification for Appeal to the City of Los Angeles Planning Commission of the August 3, 2018 Advisory Agency's Determination in Case No. VTT-74521; ENV-2016-3751-MND; Related Case: CPC-2016-3750-VZC-HDMCUP-ZAA-SPR, August 13, 2018.

December 26, 2018

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our September 11, 2018 Response to Appeal Report⁵ and our November 6, 2018 Response to Second Appeal Report⁶ are attached hereto.

(A) 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

Under the City's Code, the Commission must make a number of findings before it can grant a master conditional use for alcohol sale. The City failed to support its findings with evidence, and in fact, the evidence shows the City cannot make the required findings.

(i) Section 12.24.E(1) of the Code

First, the City cannot find, as required under section 12.24.E(1) of the Code, "that the project will enhance the built environment in the surrounding neighborhood or will perform a function or provide a service that is essential or beneficial to the community, city, or region."

In its decision, the Commission states that "[t]he proposed hotel will serve to provide temporary residency for tourist and business travelers within close proximity to commercial and employment centers, as well as regional servicing public transit," and that the sale of alcohol is anticipated to "be an incidental amenity" for the operations of the proposed restaurant and bar/lounge, "which would provide an additional amenity for those who are employed or visiting the Hollywood area."⁷

These Commission statements fail to explain what the essential or beneficial service is the hotel will provide to the community or even to the City. As the Commission acknowledges, this area is already developed with many hotels,

⁵ See **Exhibit 4**: Letter from Tanya A. Gulesserian and Nirit Lotan re: Response to Department of City Planning Appeal Report regarding the Schrader Hotel Project (VTT-74521-1A, ENV-2016-3751-MND), September 11, 2018.

⁶ See **Exhibit 5**: Letter from Nirit Lotan re: Response to Department of City Planning Appeal Report regarding the Schrader Hotel Project (VTT-74521-1A, ENV-2016-3751-MND), November 6, 2018.

⁷ Los Angeles City Planning Commission, Letter of Determination for Case no. CPC-2016-3750-VZC-HDMCUP-ZAA-SPR, December 5, 2018, p. F-10

restaurants, and various retail and commercial uses.⁸ There is no evidence that yet another alcohol selling restaurant is essential or beneficial, especially given that the concentration of existing alcohol-sale licenses in the area greatly exceeds the guidelines set by the California Department of Alcoholic Beverage Control, as the Commission acknowledges.⁹

(ii.) Sections 12.24.E(2) and 12.23.W.1(a)(1) of the Code

Second, the City cannot make the required findings under section 12.24.E(2) “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.” A similar finding is required under Section 12.23.W.1(a)(1) of the Code, requiring the City to find that “the proposed use will not adversely affect the welfare of the pertinent community.”

Here, the Project will create adverse effects both on public health and welfare due to both the emission of toxic air contaminants (“TAC”) from construction as well as due to significant noise from the hotel operations. Those potentially significant and significant impacts were not properly analyzed or mitigated by the City, as required by CEQA:

- (1) There is substantial evidence that the Project will have significant impacts on public health from TAC emissions and may result in potentially significant impacts on public health.

As described in detail in Exhibits 1-5, we reviewed the environmental analysis with the assistance of technical experts, Soil Water Air Protection Enterprise (“SWAPE”). SWAPE found that the City failed to assess the Project’s impacts from TACs by failing to conduct an assessment of health risk impacts, commonly called a health risk assessment (“HRA”), for the Project.

⁸ Los Angeles City Planning Commission, Letter of Determination for Case no. CPC-2016-3750-VZC-HDMCUP-ZAA-SPR, December 5, 2018, p. F-10

⁹ Los Angeles City Planning Commission, Letter of Determination for Case no. CPC-2016-3750-VZC-HDMCUP-ZAA-SPR, December 5, 2018, p. F-12.

SWAPE prepared an HRA to evaluate the health risk posed to sensitive receptors around the Project, and a supplemental HRA to evaluate the health risk posed specifically to school children attending the Selma Avenue Elementary School and the Blessed Sacrament School located near the Project site. SWAPE's analysis found that the excess cancer risk for sensitive receptors and school children around the Project greatly exceeds the threshold of significance set by the South Coast Air Quality Management District (SCAQMD). Despite this substantial evidence, the City failed to prepare an HRA for the Project and failed to mitigate the Project's significant impacts on public health.

- (2) There is substantial evidence that the Project may result in potentially significant impacts from noise.

As explained in detail in Exhibits 2-5, we reviewed the environmental analysis for the Project with the assistance of Neil Shaw, an expert acoustical engineer, who found that the mitigation measures, conditions of operations and design features will not mitigate the noise impacts from the Project's operation and, therefore, a potentially significant impact remains for this Project.

First, Mr. Shaw explains that the digital audio processor ("DAP") described in PDF-2 fails to mitigate potentially significant noise impacts from live entertainment which is allowed on the premises. This is because the City does not prohibit anywhere in its conditions of approval the use of outside equipment. Such equipment, explains Mr. Shaw, *either will not or cannot be controlled by the DAP*, and the noise produced by outside equipment (for example, drum kits) will not be mitigated by it. Moreover, the measure lacks any reporting, inspection or other procedures for the City and the public to be able to enforce the measure.

Second, Mr. Shaw explained that the glass barrier will not mitigate potentially significant noise impacts.¹⁰ The reason is that the proposed barrier is not high and massive enough to properly mitigate low frequency impulsive sounds, which have long wavelengths, and that will be produced from amplified music.

Finally, we explained that the complaint system established by the City which requires closure of doors and windows in response to complaints will not

¹⁰ See letter from Neil Shaw to Nirit Lotan, Schrader Hotel Project - Mitigated Negative Declaration ENV-2016-3751-MND - Noise Impact Review, July 16, 2018, p. 3.

December 26, 2018

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mitigate potentially significant noise impacts. First, because the complaint system is unenforceable, and the neighbors have no way of knowing if the windows and doors were actually closed. More importantly, because the closure of windows and doors is done *after the fact* and after the noise impact has already occurred.

The Commission failed to discuss the public health impact from construction in its findings. With regard to noise, it acknowledges the existence of multi-family developments with the area,¹¹ but argues that conformance with the design features, operational conditions and operating hours will ensure operations will not adversely affect the surrounding properties and communities.¹² However, as explained above and in the expert opinions presented to the Commissions, those design features will fail to mitigate the noise, mainly because the City failed to prohibit the use of outside equipment and acoustic instruments, which cannot be and will not be mitigated by the proposed design features.

Therefore, the City cannot make the findings required under section 12.24.E(2) and Section 12.23.W.1(a)(1) of the Code, because the Project will adversely affect the public health and welfare of the surrounding communities.

(iii.) Section 12.24.E(3) of the Code

Third, 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.”

The noise element of the City’s General Plan defines its Goal as “A city where noise does not reduce the quality of urban life.”¹³ Objective 2, regarding nonairport noise, is to “Reduce or eliminate nonairport related intrusive noise, especially relative to noise sensitive uses”. “Noise sensitive uses” are defined in the plan and include, among others, multi-units dwellings, hotels, houses of worship, libraries, parks and schools, all located within 1,000 feet of the Project’s site, as acknowledged

¹¹ Los Angeles City Planning Commission, Letter of Determination for Case no. CPC-2016-3750-VZC-HDMCUP-ZAA-SPR, December 5, 2018, p. F-11.

¹² Los Angeles City Planning Commission, Letter of Determination for Case no. CPC-2016-3750-VZC-HDMCUP-ZAA-SPR, December 5, 2018, p. F-11.

¹³ Noise Element of the Los Angeles City General Plan, p. 3-1.

by the Commission.¹⁴ Objective 3, regarding land use development, is to “reduce or eliminate noise impacts associated with proposed development of land and changes in land use.”¹⁵

Program 11 for implementing the land use objective requires that “[f]or a proposed development project that is deemed to have a potentially significant noise impact on noise sensitive uses, as defined by this chapter, require mitigation measures, as appropriate, in accordance with California Environmental Quality Act and city procedures.” As explained above and in Exhibits 2-5, the City failed to comply with CEQA in its analysis and mitigation of noise impacts. The City, therefore, cannot find that the Project conforms with the General Plan.

(iv.) Section 12.23.W.1(a) of the Code

Finally, under section 12.23.W.1(a) the city is required to make the following findings:

(2) that the granting of the application will not result in an undue concentration of premises for the sale or dispensing for consideration of alcoholic beverages, including beer and wine, in the area of the City involved, giving consideration to applicable State laws and to the California Department of Alcoholic Beverage Control’s guidelines for undue concentration; and also giving consideration to the number and proximity of these establishments within a one thousand foot radius of the site, the crime rate in the area (especially those crimes involving public drunkenness, the illegal sale or use of narcotics, drugs or alcohol, disturbing the peace and disorderly conduct), and whether revocation or nuisance proceedings have been initiated for any use in the area; and

(3) that the proposed use will not detrimentally affect nearby residentially zoned communities in the area of the City involved, after giving consideration to the distance of the proposed use from residential buildings, churches, schools, hospitals, public playgrounds and other similar uses, and other

¹⁴ Los Angeles City Planning Commission, Letter of Determination for Case no. CPC-2016-3750-VZC-HDMCUP-ZAA-SPR, December 5, 2018, p. F-13

¹⁵ Noise Element of the Los Angeles City General Plan, p. 3-1.

December 26, 2018

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establishments dispensing, for sale or other consideration, alcoholic beverages, including beer and wine.

The number of existing licenses on the relevant tract *significantly* exceeds the guidelines set by the California Department of Alcoholic Beverage Control (“ABC”). In fact, the Commission states that while the ABC criteria allocates 3 on-site and 2 off-site licenses to the subject tract, there are *no less than 56 active licenses* on the tract, including 53 on-site and 3 off-site licenses.¹⁶

The commission argues that “[c]oncentration can be undue when the addition of a license will negatively impact a neighborhood” and that the conditions imposed on the Project by the City will “safeguard the welfare of the community.”¹⁷ However, just in the next paragraphs, the commission admits that the crime rate in the applicable crime reporting district is again significantly higher than the area wide average: the applicable district had a total of 1,777 crimes reported in 2017, compared to an average of 191 crimes Citywide. The City again tries to argue that the conditions imposed on the Project will reduce its impacts but fails to support this conclusion with any evidence.

Specifically, it is worthwhile to note that many of the reported crimes are alcohol-related, and that these crimes include crimes that may have further impact on noise nuisance, such as public drunkenness, disturbing the peace and disorderly conduct. This will further exacerbate the noise impacts that will be created by the Project. The City therefore cannot find that this extremely high concentration is not “undue” or that it will not detrimentally affect the community, as required under its Code.

¹⁶ Los Angeles City Planning Commission, Letter of Determination for Case no. CPC-2016-3750-VZC-HDMCUP-ZAA-SPR, December 5, 2018, p. F-12.

¹⁷ Los Angeles City Planning Commission, Letter of Determination for Case no. CPC-2016-3750-VZC-HDMCUP-ZAA-SPR, December 5, 2018, p. F-12.

(B) 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

Under Section 12.28 of the City's Code, the Commission must make three findings to approve an adjustment to the required setbacks. The Commission cannot make these findings as they are not supported by the evidence.

First, the City cannot find that "[i]n light of the project as a whole including any mitigation measures imposed, 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 explained in detail above, the Project's operations will have significant impacts from noise, which will adversely affect the adjacent properties and the public' welfare. The Commission completely ignored that issue in its findings.

Second, the City cannot find that the Project "is in substantial conformance with the purpose, intent and provisions of the General Plan, the applicable community plan, and any specific plan" because, as explained above, the Project is not conforming with the Noise Element of the General Plan and will create significance noise impacts.

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

Under section 16.05.F of the City's Code, the Commission must make specific findings before it approves a Site Plan Review. The Commission cannot make these findings as they are not supported by the evidence.

First, 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." As explained above, the Project does not conform with the Noise Element of the General Plan and will create significance noise impacts.

Second, the City cannot find “that any residential project provides recreational and service amenities to improve habitability for its residents and minimize impacts on neighboring properties”. This is because, as explained above, the amenities provided by the Project, including the open rooftop and sale of alcohol will not minimize, but exacerbate the noise impacts on neighboring properties.

(D) The City Cannot Make the Required CEQA Findings Because It Failed to Properly Analyze and Mitigate the Project’s Impacts

As part of its LOD, the Commission finds that the Project was assessed in a Mitigated Negative Declaration and that no major revisions are required to the Mitigated Negative Declaration, and no subsequent EIR or negative declaration is required for the approval of the Project.¹⁸ Under “CEQA Findings,” the Commission states that it “concurs with the responses” to our comments by the City’s consultant and finds that “with imposition of the mitigation measures described in the MND, there is no substantial evidence that the proposed project will have a significant effect on the environment.”¹⁹

As explained in detail in our justification for appeal that was filed regarding the Commission’s decision in Case no. VTT-74521-1A, ENV-2016-3751-MND²⁰ and which is fully incorporated herein, substantial evidence supports a fair argument that the Project may cause a significant, unmitigated impact on public health from toxic air contaminants (“TACs”), and a significant, unmitigated impact from noise. Because the City failed to analyze and mitigate those potentially significant and significant impacts as required under CEQA, it cannot make the CEQA findings required for the approval of the rest of the discretionary entitlements for the Project and must prepare an EIR that is circulated for public review and comment prior to consideration of any permit for the Project.

¹⁸ Los Angeles City Planning Commission, Letter of Determination for Case no. CPC-2016-3750-VZC-HDMCUP-ZAA-SPR, December 5, 2018, p. 1.

¹⁹ Los Angeles City Planning Commission, Letter of Determination for Case no. CPC-2016-3750-VZC-HDMCUP-ZAA-SPR, December 5, 2018, p. F-20.

²⁰ Letter from Nirit Lotan to the City Council re: Justification for Appeal to the Los Angeles City Council of the December 5, 2018 City Planning Commission Determination in Case No. VTT-74521-1A; ENV-2016-3751-MND; Related Case: CPC-2016-3750-VZC-HDMCUP-ZAA-SPR, December 14, 2018.

December 26, 2018

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Thank you for your attention to this important matter.

Sincerely,

A handwritten signature in black ink, appearing to be 'Nirit Lotan', written over a long, thin diagonal line that extends from the bottom left towards the center.

Nirit Lotan

NL:lj1

Attachments