



Item 4

January 8, 2016

Date: 01/26/2016  
Submitted in PLUM Committee  
Council File No: 15-1320  
Item No. 4  
Deputy: Comm from Applicant

*Representative*

Via Hand Delivery and Email to Sharon.Dickinson@lacity.org

Honorable Jose Huizar, Chair  
Honorable Marqueece Harris-Dawson  
Honorable Gilbert Cedillo  
Honorable Mitchell Englander  
Honorable Felipe Fuentes  
City of Los Angeles, Planning Land Use Management Committee  
200 N. Spring Street, Room 395  
Los Angeles, CA 90012  
Attn: Sharon Dickinson, Legislative Assistant

**Re: Appeals from City Planning Commission Approvals  
Council File No. 15-1320; 1523-1541 Wilcox Avenue (“Property”);  
CPC-2014-3706-VZC-ZAA-SPR (“Project”); ENV-2014-3707-MND**

Dear Chair Huizar and Honorable Committee Members:

This firm represents 1541 Wilcox Hotel, LLC (“Applicant”) in regards to the above-referenced approvals. The Project would transform the Property from an underutilized one-story brick structure and surface parking lot to a 200-room hotel with a ground floor restaurant, four levels of subterranean parking and an indoor penthouse restaurant. The hotel is proposed to be operated by the reputable Thompson Hotel brand and will bolster Hollywood’s tourism and entertainment industries.

For background, at its September 10, 2015 meeting, the City Planning Commission (“CPC”) unanimously approved the quasi-judicial Zoning Administrator’s Adjustment and Site Plan Review; recommended that the City Council approve the legislative Vesting Zone and Height District Change; and adopted the associated Mitigated Negative Declaration (“MND”). On October 19, 2015 the CPC issued its corrected letter of determination (the “Determination”).<sup>1</sup> Consistent with its obligations under the Hollywood Redevelopment Plan, the Applicant is finalizing a draft Owner Participation Agreement (“OPA”) with CRA/LA, a Designated Local Authority, the successor to the Community Redevelopment Agency of the City of Los Angeles (“CRA/LA”).

<sup>1</sup> The previous letter of determination, issued October 16, 2015 included errors in the Property address, Council District and final appeal date.

This letter is in response to three appeals filed by Fran Offenhauser on behalf of Hollywood Heritage (the “**Heritage Appeal**”); Stephan Nourmand on behalf of Sunset Landmark Investment LLC (the “**Landmark Appeal**”); and David Carrera (the “**Carrera Appeal**”). We respectfully request that this letter be included in the administrative record and be considered by the Planning and Land Use Management Committee (“**PLUM Committee**”) before the public hearing scheduled for January 12, 2015.

**1. The Project is Consistent With and Implements the General Plan Framework Element and the Hollywood Community Plan**

As noted in the findings accompanying the CPC’s recommended approval of the Vesting Zone and Height District Change, the Project advances numerous Goals, Objectives and Policies in the General Plan Framework Element relating to economic development, supporting tourism, promoting infill development in existing centers, and encouraging new development in proximity to rail, bus and in identified Regional Centers. The Heritage Appeal disputes the findings by asserting the Project is located within a “lower intensity” commercial district. Nothing could be further from the truth. Not only is the Project located within a Regional Center as designated by the General Plan Framework and Hollywood Community Plan, the Project’s immediate surroundings are increasingly characterized by high-intensity infill development. In fact, the Determination documents *four* developments in the Project vicinity exceeding an FAR of 4.6 to 1. Moreover, the City enjoys broad discretion to balance competing policy objectives and determine general plan consistency. Given the Property’s proximity to two Metro Red Line subway stations and Rapid Bus service, the City may appropriately determine that the Property is an appropriate location for infill development to foster transit usage and bolster the Hollywood tourism economy. Substantial evidence supports a finding of consistency with the General Plan Framework Element.

Despite robust support in the Determination, the Landmark Appeal asserts that the Project is inconsistent with the Hollywood Community Plan. As articulated in the Determination, the Project advances the Objectives and Policies of the Hollywood Community Plan encouraging economic development, promoting entertainment and tourism and concentrating development within the Hollywood Center between Sunset and Hollywood Boulevards. The Landmark Appeal fails to identify specific provisions of the Hollywood Community Plan undermining these findings. Substantial evidence in the Determination supports a finding of consistency with the Hollywood Community Plan.

**2. The Vesting Zone and Height District Change Findings are Proper**

With no factual basis, the Landmark Appeal challenges the new D Limitation recommended in the Determination and asserts that the new D Limitation relies on the rescinded Hollywood Community Plan Update. Specifically, the Landmark Appeal maintains that the 3 to 1 by-right “base” FAR incorporated into the new D Limitation improperly assumed the Hollywood Community Plan

Update remained in effect. In fact, the Determination correctly states the existing by-right FAR is 2 to 1 and the maximum FAR of the Project is 5.4 to 1. The new D Limitation recommended by CPC, however, supersedes the previous D Limitation and includes a by-right FAR of 3 to 1 for any development other than the Project. The City Council may properly exercise its legislative power to approve such an ordinance. Thus, the Determination accurately characterizes the existing by-right FAR and the proposed increase in FAR.

The Heritage Appeal erroneously asserts that removal of the existing D Limitation and imposition of a new D Limitation require approval of and an OPA with CRA/LA, a Designated Local Authority. The requested Zone and Height District Change, however, operates independent of the requirements of the existing D Limitation. As authorized by LAMC Section 12.32 F and 12.32 G.4, the Zone and Height District Change Ordinance will include a new D Limitation superseding the previous D Limitation. The previous D Limitation's procedural requirements for prior approvals do not apply to the City Council's legislative authority to establish and supersede previous Ordinances. Thus, the removal of the D Limitation is proper.

The Carrera Appeal maintains that the Project is bound to the street width standards of the Transportation Element. This contention fundamentally misunderstands the City Council's authority to condition approval of Vesting Zone and Height District Changes to impose a subsequently-enacted policy, such as the Mobility Element. Unlike vested rights conferred by common law<sup>2</sup> or statute<sup>3</sup>, the vested rights conferred by LAMC Section 12.32 Q are subject to conditions imposed by the City Council or City Planning Commission. Consistent with its legislative authority, the City Council may properly impose "T" Condition 2(c) requiring compliance with Mobility Element dedications. Any lingering doubts were put to rest on December 22, 2015, when the Applicant submitted a letter to the PLUM Committee waiving its vested rights with respect to the Transportation Element and consenting to "T" Condition 2(c) requiring compliance with Mobility Element dedications. The Carrera Appeal's contention has no foundation and the City Council may properly approve the Project based on Mobility Element standards.

### **3. The Project Complies with the Hollywood Redevelopment Plan**

In yet another unsubstantiated claim, the Landmark Appeal contends the Project is not exempt from Site Plan Review pursuant to LAMC Section 16.05 D.3 without an OPA. The Project, however, does not rely on this exemption and requests Site Plan Review, as approved by the CPC. This firm notified CRA/LA of the requested Owner Participation Agreement on April 23, 2015.<sup>4</sup> A draft Owner

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<sup>2</sup> See *Avco Community Developers, Inc. v. South Coast Regional Comm'n*, 17 Cal. 3d 785 (1976), cert. denied, 429 U.S. 1083 (1977).

<sup>3</sup> See vested rights pursuant to an approved development agreement in California Government Code Section 65866 or an approved vesting tentative map in California Government Code Section 66498.1(b).

<sup>4</sup> Email to Craig Bullock, Special Operations Officer, CRA/LA, a Designated Local Authority.

Participation Agreement is nearing completion and will be decided on by the CRA/LA Board in the near future.

The Heritage Appeal also contests compliance with the Hollywood Redevelopment Plan, yet its precise claims are unclear. The Heritage Appeal recites the Redevelopment Plan requirement that projects exceeding 4.5 to 1 FAR shall obtain a binding written agreement with the Redevelopment Agency, yet acknowledges in the following paragraph that the Applicant has initiated the process of obtaining a binding OPA. The Heritage Appeal fails to articulate any defects in process. The City Council may properly approve the Project while arrangements for an OPA are being finalized between the Applicant and CRA//LA.

#### **4. The Project Does Not Request a Variance**

The Landmark Appeal raises a series of unsubstantiated arguments regarding variance findings and City Charter limitations on the use of a variance. As discussed in greater detail below, the Project as proposed does not request a variance. The Landmark Appeal's extensive recitation of the variance findings in LAMC Section 12.27 and City Charter Section 562 are irrelevant. Instead of a variance, the Project properly utilizes a Vesting Zone and Height District Change and a Zoning Administrator's Adjustment to achieve the proposed FAR, height and setbacks. Separately, the Carrera Appeal asserts the Project's proposed rooftop operations are not permitted. The approved plans, however, make no reference to outdoor eating or dining. The City Council may properly deny the appeals and affirm the unanimous determination of the City Planning Commission.

#### **5. The Approved Hours of the Indoor Rooftop Restaurant are Proper**

Considering the Project's location in the urban core of Hollywood, where tourism and entertainment are a primary economic engine, the Carrera Appeal's request for reduced hours of operation from 1 a.m. to midnight daily is contrary to good planning practice. Not only is the indoor restaurant area enclosed and set back from the perimeter of the structure, it is also located within the required six-foot plexi-glass sound barrier on the perimeter of the structure. Moreover, the Determination already imposes stringent conditions on noise generation for the rooftop: live entertainment is not permitted and only ambient background music is permitted between the hours of 7 a.m. and 10 p.m., Sunday through Wednesday and 7 a.m. to 11 p.m. Thursday through Saturday. Given the robust safeguards on noise generation from the indoor restaurant and outdoor rooftop areas, it is difficult to imagine any disturbance resulting from operation of the rooftop. Further restrictions on the operation of the indoor rooftop restaurant are not only unnecessary, they would also undermine the Project's potential contribution to tourism and entertainment industries in Hollywood. The condition of approval addressing hours of rooftop operation is valid.

## **6. The MND Adequately Analyzes Noise Impacts and Discloses All Potential Environmental Impacts from the Project**

### Construction Noise

The Carrera Appeal recycles the same arguments advanced in the March 19, 2015 Acentech letter asserting the Project will cause significant and unmitigated construction impacts. To begin, the Acentech letter fails to account for revisions incorporated into the MND recirculated subsequently on July 16, 2015. Notably, Mitigation Measure 12-3 removed the phrase “[W]here feasible” – thereby rendering the construction scheduling mitigation mandatory. Subsequently, the letter from Pomeroy Environmental Services (the “Pomeroy Letter”) dated January 7, 2016 and attached hereto, confirms the analysis and conclusions of the MND. In particular, the Pomeroy Letter substitutes and strengthens Mitigation Measure 12-3 to detail specific restrictions on simultaneous operation of heavy construction equipment on-site and incorporates standards, and to require noise monitoring at adjacent residences during the most impactful periods of each phase of construction. The Pomeroy Letter further enhances Mitigation Measure 12-4 to incorporate specific criteria for heavy construction equipment.

Given the shortcomings and oversights in the Acentech letter, it cannot substantiate a fair argument supported by substantial evidence of a significant noise impact. Contrary to the assertion in the Carrera Appeal, the MND appropriately provides the analysis required by the City of Los Angeles CEQA Thresholds Guide and concludes that periodic construction noise will be less than significant after accounting for the detailed mitigation measures included in the Pomeroy Letter. The MND’s noise analysis is adequate and the City Council may appropriately approve the Project and adopt the MND.

### Shade/Shadow

The Landmark Appeal asserts the Project will cast shadows over adjacent residential properties. The Landmark Appeal fails to specify which property will be impacted, how long it will be shaded, whether outdoor portions or merely structures are shaded, or how shade/shadow analysis relates to the City of Los Angeles CEQA Thresholds Guide. CEQA Section 21082.2(c) provides that mere argument, speculation and unsubstantiated opinion, such as those advanced in the Landmark Appeal, cannot constitute substantial evidence. Because the Landmark Appeal provides no clue as to where the alleged shade/shadow impacts would occur, it cannot constitute substantial evidence of a Project impact. On the other hand, the MND properly applies the City of Los Angeles CEQA Thresholds Guide and incorporates shade-shadow models to substantiate its conclusions. Referring to the hourly and seasonal shade/shadow analysis included in Appendix B, the MND at pages 4-5 and 4-6 appropriately concludes the Project will not have a significant impact.

Historic

Making another unsubstantiated assertion, the Landmark Appeal claims the Determination failed to account for the Project's proximity to the Citizen News Building. Not only does the Determination impose a "Q" Qualified Condition mandating that the podium height shall be consistent with the Citizen News Building, the Cultural Resources Report attached to the MND as Appendix D includes robust analysis of the structure. The report notes that the historic significance of the Citizen News Building is not dependent upon its height, visual dominance or the public visibility of its utilitarian southern elevation. Further, the report concludes the Project would not diminish the integrity of the Citizen News Building. Rather than acknowledge the extensive analysis included in the MND, the Landmark Appeal simply claims the matter was not adequately addressed. Mere argument, speculation and unsubstantiated opinion cannot constitute substantial evidence of a Project impact according to CEQA Section 21082.2(c). The Landmark Appeal fails to substantiate a fair argument of a Project impact and the City Council may properly adopt the MND.

**7. Conclusion**

The Project offers a unique opportunity to revitalize the urban core of Hollywood and bolster the entertainment- and tourism-dependent Hollywood economy. Located within walking distance of robust transit opportunities, the Project is ideally situated for the transit-friendly development espoused by City leaders. For the reasons set forth above, we urge the denial of the appeals and the approval of the Project and adoption of the MND consistent with the unanimous recommendation of the City Planning Commission.

Very truly yours,



Michael Gonzales  
Gonzales Law Group APC

Attachment

cc: Client (email only)  
Chris Robertson, Planning Director, CD13 (email only)



## TECHNICAL MEMORANDUM

To: Mr. Michael Gonzales, Gonzales Law Group APC  
From: Mr. Brett Pomeroy, Pomeroy Environmental Services  
Date: January 7, 2016  
Re: 1541 Wilcox Hotel Initial Study/Mitigated Negative Declaration (Construction Noise)

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Pomeroy Environmental Services (PES) is pleased to provide this technical memorandum confirming the adequacy of the construction noise analysis and required mitigation measures disclosed in the Initial Study/Mitigated Negative Declaration (IS/MND) published July 2015 for the 1541 Wilcox Hotel Project (Project) in the City of Los Angeles (City). In addition, as allowed under Section 15074.1(a) through 15074.1(d) of the State CEQA Guidelines, this technical memorandum proposes to partially delete and substitute original mitigation measures for more effective mitigation measures.

The construction noise analysis was conducted in a manner consistent with the Noise Chapter of the City of Los Angeles CEQA Thresholds Guide, the City's Noise Ordinance/Los Angeles Municipal Code (LAMC Sections 41.40 112.02, and 112.05), and the Department of City Planning's implementation of construction noise analyses under the California Environmental Quality Act (CEQA). Page I.1-2 in the City of Los Angeles CEQA Thresholds Guide states *"The City of Los Angeles Noise Ordinance addresses noise generated at construction sites, including permissible hours of construction, increases in ambient noise levels, and the technical feasibility of reducing noise from certain construction equipment."* Footnote 2 therein states *"Refer to Sections 41.40, 112.02, and 112.05 of the Los Angeles Municipal Code (LAMC). Technical infeasibility means that specified noise limitations cannot be achieved despite the use of mufflers, shields, sound barriers and/or any other noise reduction devices or techniques during operation of the equipment."* As the City has historically relied upon the City of Los Angeles CEQA Thresholds Guide and LAMC Sections 41.40, 112.02, and 112.05 to address construction noise impacts under CEQA, the Project's construction noise analysis and mitigation measures were appropriately based on these methodologies.

Page 4-94 of the IS/MND identifies the construction noise thresholds considered in the analysis. Construction-related noise impacts would be significant if, as indicated in LAMC Section 112.05, noise from construction equipment within 500 feet of a residential zone exceeds 75 dBA at a distance of 50 feet from the noise source. However, the above noise limitation does not apply where compliance is technically infeasible. Technically infeasible means that the above noise limitation cannot be complied with despite the use of mufflers, shields, sound barriers and/or any

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other noise reduction device or techniques during the operation of the equipment. Additionally, as defined in the City of Los Angeles CEQA Thresholds Guide threshold for construction noise impacts, a significant impact could occur if construction activities lasting more than one day would increase the ambient noise levels by 10 dBA or more at any off-site noise-sensitive location. Furthermore, the City of Los Angeles CEQA Thresholds Guide also states that construction activities lasting more than ten days in a three-month period, which would increase ambient exterior noise levels by 5 dBA or more at a noise sensitive use, would also normally result in a significant impact.

Although the IS/MND discloses the Project's peak construction noise levels could exceed the 5 dBA increase over ambient conditions as established in the City of Los Angeles CEQA Thresholds Guide, the provisions set forth in LAMC 112.05 acknowledge that in some cases meeting such specified noise limitations may be infeasible, as described in detail above. The IS/MND qualifies this consideration in great detail, which has been further summarized below. LAMC Section 112.05 (Maximum Noise Level Of Powered Equipment Or Powered Hand Tools) regulates noise from construction equipment in any residential zone of the City or within 500 feet thereof, and LAMC Section 41.40 (Noise Due To Construction, Excavation Work – When Prohibited) regulates noise from construction activities in all other zones. Specifically, LAMC Section 112.05 sets maximum noise levels at 50 feet from the source between the hours of 7:00 a.m. and 10:00 p.m. in any residential zone of the City or within 500 feet thereof. The limitations in LAMC Section 112.05 shall not apply where compliance therewith is technically infeasible. Technical infeasibility shall mean that said noise limitations cannot be complied with despite the use of mufflers, shields, sound barriers and/or other noise reduction device or techniques during the operation of the equipment. For construction activities not located within a residential zone or within 500 feet thereof, LAMC Section 41.40 does not set limits to maximum construction noise levels permitted, but rather limits construction impacts by permitted hours of operation.

It should be noted that although the Project Site is not located in a residential zone or within 500 feet thereof, the Project's construction noise analysis conservatively considered the noise limitations and requirements in LAMC Section 112.05 due to the adjacent residential uses operating in a commercial zone. In good faith effort and in the spirit of full disclosure under CEQA, the IS/MND identified peak construction noise levels for sensitive receptors operating in a commercial zone. Furthermore, and although not required, the IS/MND conservatively illustrated compliance with LAMC Section 112.05 through the application of mitigation measures that would reduce construction related noise levels to the maximum extent feasible, including the use of mufflers, shields, sound barriers and/or other noise reduction device or techniques prescribed in

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LAMC Section 112.05. See Mitigation Measures 12-1 through 12-7 in the published IS/MND. Thus, the construction noise analysis in the IS/MND appropriately identified specific and feasible mitigation ensuring the Project would reduce noise levels to the maximum extent feasible, meeting and exceeding the standards in the City of Los Angeles CEQA Thresholds Guide and LAMC. As such, the IS/MND appropriately concluded construction noise impacts would be less than significant.

With respect to the Project's worst-case peak construction noise levels identified in Table 4-21, page 4-97 of the published IS/MND states: "It should be noted, however, that any increase in noise levels at off-site receptors during construction of the project would be temporary in nature, and would not generate continuously high noise levels, although occasional single-event disturbances from construction are possible. In addition, the construction noise during the heavier initial periods of construction (i.e., demolition, grading and site preparation/foundation work) would typically be reduced in the later construction phases (i.e., interior building construction at the proposed buildings) as the physical structure of the proposed structure would break the line-of-sight noise transmission from the construction area to the nearby sensitive receptors." The estimated peak construction noise levels in Table 4-21 of the published IS/MND note noise levels immediately adjacent to the heaviest construction distances in an effort to disclose peak impacts. Footnote A in Table 4-21 states: "It should be noted that the peak noise level increase at the nearby sensitive receptors during project construction represents the highest composite noise level that would be generated periodically during a worst-case construction activity and does not represent continuous noise levels occurring throughout the construction day or period." Thus, although temporary noise increases during construction are possible, the IS/MND appropriately concluded construction noise impacts would be less than significant because the Project would include mitigation measures to reduce construction noise to the maximum extent feasible, consistent with the methodology outlined in the City of Los Angeles CEQA Thresholds Guide and the LAMC.

The following addresses public comments requesting additional mitigation measures to identify a construction schedule and the anticipated noise levels for each piece of equipment; limit simultaneous operations of construction equipment; and implement a sound program to measure construction equipment and ensure noise limits are achieved. Page 4-94 of the IS/MND states the project would require the use of heavy equipment for demolition, excavation and foundation preparation, the installation of utilities, paving, and building construction. The IS/MND states the data pertaining to the types of construction equipment and activities that would occur at the project site are presented in Table 4-18, Noise Range of Typical Construction Equipment, and

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Table 4-19, Typical Outdoor Construction Noise Levels, respectively, at a distance of 50 feet from the noise source. The IS/MND identifies estimates of peak noise levels which take into account both the number of pieces and spacing of heavy construction equipment that are typically used during each phase of construction.

As described in detail previously, feasible mitigation measures for construction sites in the City are clearly defined in the City of Los Angeles CEQA Thresholds Guide and the LAMC. Page I.1-2 in the City of Los Angeles CEQA Thresholds Guide states *"The City of Los Angeles Noise Ordinance addresses noise generated at construction sites, including permissible hours of construction, increases in ambient noise levels, and the technical feasibility of reducing noise from certain construction equipment."* Footnote 2 therein states *"Refer to Sections 41.40, 112.02, and 112.05 of the Los Angeles Municipal Code (LAMC). Technical infeasibility means that specified noise limitations cannot be achieved despite the use of mufflers, shields, sound barriers and/or any other noise reduction devices or techniques during operation of the equipment."* As stated previously, the Draft IS/MND included mitigation measures to reduce construction noise to the maximum extent feasible, consistent with the methodology outlined in the City of Los Angeles CEQA Thresholds Guide and the LAMC. Specifically, Mitigation Measure 12-4 requires the use of mufflers and shields, Mitigation Measure 12-6 requires the use of a noise barrier achieving an approximate reduction of 10 dBA, and Mitigation Measures 12-1, 12-2, 12-3, 12-5, and 12-7 constitute 'other noise reduction devices or techniques' as prescribed. Thus, the Draft IS/MND required mitigation measures to reduce construction noise to the maximum extent feasible as prescribed in the Los Angeles CEQA Thresholds Guide and LAMC, and no additional mitigation measures were required to support the less than significant impact conclusion in the Draft IS/MND.

Nevertheless, as allowed under Section 15074.1(a) through 15074.1(d) of the State CEQA Guidelines, Mitigation Measures 12-3 and 12-4 have been partially deleted and substituted for a more effective mitigation measures. Specifically, Section 15074.1(a) of the State CEQA Guidelines states: *"As a result of the public review process for a proposed mitigated negative declaration, including any administrative decisions or public hearings conducted on the project prior to its approval, the lead agency may conclude that certain mitigation measures identified in the mitigated negative declaration are infeasible or otherwise undesirable. Prior to approving the project, the lead agency may, in accordance with this section, delete those mitigation measures and substitute for them other measures which the lead agency determines are equivalent or more effective."* And, Section 15074.1(d) of the State CEQA Guidelines states: *"Equivalent or more effective" means that the new measure will avoid or reduce the significant effect to at least the*

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*same degree as, or to a greater degree than, the original measure and will create no more adverse effect of its own than would have the original measure. It should also be noted that Section 15074.1(c) of the State CEQA Guidelines states: "No recirculation of the proposed mitigated negative declaration pursuant to Section 15072 is required where the new mitigation measures are made conditions of, or are otherwise incorporated into, project approval in accordance with this section."*

Therefore, as a result of the public review process and consistent with the State CEQA Guidelines, Mitigation Measures 12-3 and 12-4 have been deleted and substituted below. ~~Strikethrough~~ text indicates deletions and underline text indicates the substitution.

**12-3** Construction activities during all phases, including ~~and~~ demolition, shoring, excavation and lagging, subterranean garage, and concrete structure, activities shall be scheduled so as to avoid operating several pieces of equipment simultaneously, which causes high noise levels. Specifically, the maximum allowable heavy equipment to operate simultaneously on site has been identified for each construction phase below. In addition, noise monitoring at off-site sensitive receptors shall be conducted on the peak construction days for each construction phase to ensure the peak construction noise levels disclosed in the Draft IS/MND would not be exceeded. The applicant shall submit an acoustic report to the Department of City Planning documenting the construction noise levels observed for each phase at the property line of adjacent residences. Noise monitoring and observations shall be conducted once during each phase of construction and shall be coordinated with the contractor to take place during peak noise-generating operations during each construction phase.

Maximum Simultaneous On-Site Heavy Equipment

<u>Demolition:</u>	<u>One excavator and one dump truck</u>
<u>Shoring:</u>	<u>One hydraulic drill rig</u>
<u>Excavation &amp; Lagging:</u>	<u>One loader/dozer, one dump truck, and one small pump</u>
<u>Subterranean Garage:</u>	<u>Two concrete pumps</u>
<u>Concrete Structure:</u>	<u>Three concrete pumps</u>

**12-4** Where feasible, the project contractor shall use power construction equipment with state-of-the-art noise shielding and muffling devices, including equipment having a manufacturing date after 2012 and shall have engines certified to meet at least AQMD Tier 3. Stationary concrete pumps shall be shielded with noise blankets.

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In conclusion, the Draft IS/MND required mitigation measures to reduce construction noise levels to the maximum extent feasible as prescribed in the Los Angeles CEQA Thresholds Guide and LAMC, and no additional mitigation measures were required to support the less than significant impact conclusion in the Draft IS/MND. Nevertheless, as a result of the public review process and consistent with the State CEQA Guidelines described above, Mitigation Measures 12-3 and 12-4 have been substituted for more effective mitigation measures that will avoid or reduce the effect to at least the same degree as, or to a greater degree than, the original measures.



Item 4

January 22, 2016

Date: 01/26/2016

Submitted in PLUM Committee

Council File No: 15-1320

Item No. 4

Via Hand Delivery and Email to Sharon.Dickinson@lacity.org

Deputy: Comm from Applicant Representative

Honorable Jose Huizar, Chair  
Honorable Marqueece Harris-Dawson  
Honorable Gilbert Cedillo  
Honorable Mitchell Englander  
Honorable Felipe Fuentes  
City of Los Angeles, Planning Land Use Management Committee  
200 N. Spring Street, Room 395  
Los Angeles, CA 90012  
Attn: Sharon Dickinson, Legislative Assistant

**Re: Response to Submittal from Appellant Sunset Landmark Investment, LLC;  
Council File No. 15-1320; 1523-1541 Wilcox Avenue ("Property");  
CPC-2014-3706-VZC-ZAA-SPR ("Project"); ENV-2014-3707-MND**

Dear Chair Huizar and Honorable Committee Members:

This firm represents 1541 Wilcox Hotel, LLC ("**Applicant**") in regards to the above-referenced approvals. This letter responds to claims and assertions submitted by January 11, 2016 on behalf of Appellant Sunset Landmark Investment, LLC (the "**Landmark Appeal**"). The Landmark Appeal is rife with baseless speculation which cannot constitute substantial evidence of a significant environmental effect and fundamentally misunderstands the requested entitlements. Substantial evidence in the October 19, 2015 City Planning Commission letter of determination (the "**Determination**") supports the entitlement findings. The Committee may properly deny the appeal and approve the Mitigated Negative Declaration ("**MND**").

**I. The Entitlements are Proper**

Consistency with the Mobility Element

The Determination includes substantial evidence supporting a finding that the Project is consistent with the Mobility Element. The Determination notes that the Project's ground floor design, including a spacious arrival, an outdoor eating area and a restaurant, will encourage pedestrian activity. The Determination emphasizes the Project's proximity to the Metro Red Line and Rapid 704 bus. Finally, the Determination notes the Project dedicates an additional 3-foot sidewalk easement beyond that required for Wilcox Avenue to achieve the standard width sidewalk recommended for designated Avenue III streets. The City enjoys broad discretion to balance

competing policy objectives and determine general plan consistency. The Landmark Appeal fails to challenge the substantial evidence supporting a finding of consistency.

The Landmark Appeal further asserts the Project is required to comply with the former Transportation Element, rather than the Mobility Element. The vested rights conferred by Section 12.32 Q are explicitly subject to conditions imposed by the City Council or the City Planning Commission. Consistent with its authority, the City Planning Commission did, and the City Council may also, impose "T" Condition 2(c) requiring compliance with Mobility Element dedications. The Applicant further submitted a letter to the Council File on December 22, 2015 waiving its vested rights to the Transportation Element and consenting to "T" Condition 2(c). The assertion has no foundation in law and the condition is proper.

#### Consistency with the Hollywood Community Plan and Hollywood Redevelopment Plan

The Landmark Appeal advances the same arguments this firm responded to in its January 8, 2016 submittal to this Committee. Please refer to that submittal for a complete response. Substantial evidence supports a finding of consistency with the Hollywood Community Plan and the Hollywood Redevelopment Plan.

#### Vesting Zone and Height District Change

Substantial evidence in the Determination supports the findings that the Project advances the public necessity, convenience, general welfare and good zoning practice. The Zone and Height District Change is in conformance with the public necessity by accommodating hotel demand on an under-utilized site to increase the number of hotel rooms in Hollywood and support the local tourism and entertainment industry. It advances the public convenience by offering new upscale hotel accommodations in walking distance of transit and ample tourism and entertainment destinations. It advances the general welfare by expanding employment opportunities within walking distance of transit and housing. It is consistent with good zoning practice by concentrating entertainment and employment uses in a designated Regional Center near robust mass transit.

The Landmark Appeal asserts the Project must obtain an Owner Participation Agreement from CRA/LA, yet fails to acknowledge that the Applicant is already in the process of finalizing an agreement. The appeal further asserts that the Project is required to make findings included within the D Limitation, yet fails to address the City's legislative authority to enact a Zone and Height District Change revising the D Limitation. The Project complies with the procedural and substantive requirements of the Los Angeles Municipal Code and the Hollywood Redevelopment Plan. The City may properly approve the Vesting Zone and Height District Change.

#### Yard Adjustment

Misconstruing the requested Zoning Administrator's Adjustment for a minor yard deviation, the Landmark Appeal suggests the Project proposes zero-foot setbacks for the full extent of the Project's length and height. In fact, as clearly articulated in the Determination, the requested yard deviation is intended to address the unique circumstance affecting the Property due to existing

improvements, specifically the adjacent Hollywood Citizen News building. Because the Hollywood Citizen News Building is an historic resource, it would be impractical and infeasible to propose a structure with a podium that did not align with it. The Adjustment authorizes relief only on the second floor level and only for the portion of the Project abutting Wilcox Avenue, so the extent of the requested relief is narrowly tailored to respond to the unique conditions affecting the Property. Substantial evidence supports the Adjustment findings.

#### Site Plan Review

The Landmark Appeal fails to address the thorough justifications included in the Determination, and simply asserts the Project fails to meet the findings. Substantial evidence in the Determination support the Site Plan Review findings.

#### Multiple Approvals

The Landmark Appeal asserts the Applicant is required to re-submit the application including the Conditional Use Permit for on-site alcohol sales. To begin, the Conditional Use Permit is not necessary for the approval and construction of the hotel, and may be properly separated from the Vesting Zone and Height District Change, Adjustment and Site Plan Review. The appeal further ignores the explicit text of Los Angeles Municipal Code Section 12.36 B: “The procedures and time limits set forth in this Section shall apply *only to multiple approvals filed concurrently, except that, prior to a public hearing*, the Director may require an applicant to amend an application for a project requiring multiple approvals to ensure that all relevant approvals are reviewed concurrently.” (Emphasis added.) The italicized language states explicitly that the requirements of the Multiple Approvals Ordinance shall not apply to subsequently-filed entitlements. Moreover, subsequent to a public hearing on any of the requested approvals, the Director has no authority to require simultaneous filing of related applications. The City may properly approve the entitlements without an accompanying Conditional Use Permit for on-site alcohol consumption.

## **II. No Substantial Evidence of a Project Impact -- The MND is Adequate**

#### Noise

The Landmark Appeal relies on the March 19, 2015 Acentech letter asserting the Project will cause significant and unmitigated construction and operational noise impacts. The Acentech letter fails to account for substantial changes to the Project in the intervening nine months. Specifically, the Project description does not permit live entertainment on the roof deck and significantly restricts the hours for even ambient background music (MND p. 2-9). Mitigation measures require plexiglass sound barriers on the perimeter of the roof (p. 2-35). Given the numerous changes to the Project to reduce operational noise, the Acentech letter cannot possibly constitute substantial evidence of a Project impact.

The Landmark Appeal further recycles the Acentech letter to assert construction noise impacts. In fact, the response from Pomeroy Environmental Services, dated January 7, 2016 and

attached to this firm's January 8<sup>th</sup> submittal to the Committee, illustrates that the proposed substitute mitigation measures will reduce noise impacts to less than significant. No substantial evidence supports a fair argument of a significant noise impact.

#### Traffic and Parking

The Landmark Appeal speculates, without any evidence whatsoever, that the Project fails to adequately analyze traffic impacts. Contrary to the appeal's assertion, the Project's traffic analysis assumed the ground-floor restaurant was an independent trip generator (Table 4-28). The appeal simply asserts the Project would not stimulate *transit* usage, yet fails to present any rationale and altogether ignores the trip reduction due to walking, bicycling and colocation of uses. The appeal asserts the MND failed to analyze parking impacts, despite state legislation stating that parking impacts from transit priority developments such as the Project shall not be considered significant impacts on the environment.<sup>1</sup> The Landmark Appeal fails to relate traffic and parking impacts to an environmental impact, beyond mere speculation. The comments are mere speculation and cannot constitute substantial evidence of an environmental impact.

#### Utilities

The Landmark Letter attempts to construe a condition of approval as a mitigation measure, and fails to articulate any reasonable possibility that extensive excavation and piping would be needed. The comment is mere speculation and cannot constitute substantial evidence of an environmental impact.

#### Historic Resources and Views

The Landmark Appeal asserts the Project will have a substantial aesthetic impact due to height and hours of operation. The appeal fails to acknowledge existing high-rise precedents within 1,000 feet of the Project site, and it is unclear from the appeal how hours of operation could conceivably relate to an aesthetic impact. The appeal's assertion that the Project would obstruct views of the Hollywood Sign, located 2.5 miles north of the Project site, lacks any basis in reality. Any view corridor across the Project site to the Hollywood Sign would also pass through the 11-story high-rise at 6464 Sunset Boulevard or the multi-story structures at 6515 Sunset and the Hollywood Athletic Club. Moreover, CEQA provides that aesthetic impacts from transit priority developments such as the Project shall not be considered significant impacts on the environment.<sup>2</sup>

The Landmark Appeal recites the thresholds for significant impacts to historic resources and simply asserts that the Project would have an impact due to construction and the Hollywood Fault. The Landmark Appeal fails to articulate whether potential impacts would result from vibrations, shoring, or impacts during a seismic event. Readers can only speculate from the

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<sup>1</sup> Public Resources Code Section 21099(d). See MND p. 4-1 confirming the Project qualifies for the exemption as an "employment center project."

<sup>2</sup> Id.

appeal's general comment. In fact, the MND already analyzes the potential impacts of construction vibrations on the Hollywood Citizen News Building and complies with Building Code requirements for building separation to avoid collisions during earthquakes.

#### Economic Impacts

The Landmark Appeal assumes that the Project's restaurant and bar would pull so many customers from existing businesses as to push them out of business. The assertion that the 200-room Project would result in a net reduction in business for nearby restaurant and hospitality uses in the Project vicinity defies logic. Moreover, indirect aesthetic impacts of the Project shall not be considered significant impacts on the environment pursuant to Public Resources Code Section 21099(d).

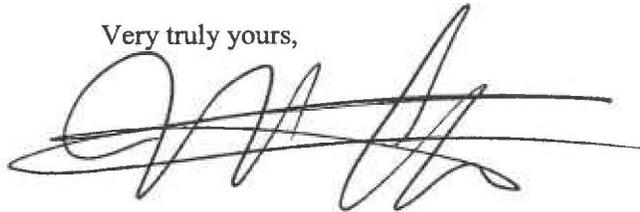
#### Non-Renewable Resources

The Landmark Appeal simply asserts the Project will have significant impacts on water and natural resource usage, yet fails to provide any numerical support or analysis of significance. In fact, the MND concludes Project impacts on water are less than significant (p. 4-143; p. 4-145). Contrary to the appeal's assertion, CEQA does not require an MND to include analysis of growth-inducing impacts; CEQA Guidelines Section 15126.2(c) applies only to Environmental Impact Reports.

### **III. Conclusion**

The Landmark Appeal fails to challenge the substantial evidence supporting the required findings. It fails to provide any evidence to substantiate its assertions of environmental impacts, and seeks to require analysis for aesthetic and parking impacts despite clear statutory language exempting the Project. The City Council may properly approve the requested entitlements and adopt the MND.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Michael Gonzales', with a long horizontal flourish extending to the right.

Michael Gonzales

cc: Client (email only)  
Chris Robertson, Planning Director, CD13 (email only)