

GIDEON KRACOV

Attorney at Law

801 South Grand Avenue
11th Floor
Los Angeles, California 90017

(213) 629-2071
Fax: (213) 623-7755

gk@gideonlaw.net
www.gideonlaw.net

January 23, 2019

VIA EMAIL:

Sharon Dickinson
c/o City Council, City of Los Angeles
200 N. Spring Avenue
Los Angeles, CA 90012
sharon.dickinson@lacity.org

May Sirinopwongsagon
Department of City Planning,
200 N. Spring Street, Room 763
Los Angeles, CA 90012
may.sirinopwongsagon@lacity.org

**Re: Council File No. 18-0873;
Selma-Wilcox Hotel Project (CPC-2016-2601, ENV-2016-2602, VTT-74406)**

Dear Ms. Dickinson and Ms. Sirinopwongsagon:

On behalf of Rosa Aleman and Jose Contreras (collectively "Commenters"), this Office submits the attached expert traffic and environmental comment letters regarding the referenced hotel development ("Project") proposed by the Relevant Group ("Applicant") located at 6421 W. Selma Avenue in Hollywood ("Site"). These comments raise environmental concerns regarding the Project and its compliance with the California Environmental Quality Act ("CEQA"), and in response to Applicant's submissions during and prior to the Planning and Land Use Management Committee hearing held on November 27, 2018.

Ms. Aleman and Mr. Contreras both live approximately 1,875 feet from the Project site and regularly frequents the immediately adjacent areas for work and social events, and will be adversely affected by any environmental impacts caused by the approval of the Project. In addition to the impacts associated with this specific Project, Commenters are also concerned with the City's piecemeal CEQA review of multiple other projects proposed by the Applicant near the Site, as raised by other objectors to this Project.¹

Currently, the Project has yet to be scheduled for a hearing by the City Council. Please have these documents forwarded to Council, as well as place a copy in the administrative record for the Project. If you have any issues, please don't hesitate to contact me.

Sincerely,



Gideon Kracov
Law Office of Gideon Kracov

Enclosure

¹ http://clkrep.lacity.org/onlinedocs/2018/18-0873_pc_1-14-19.pdf.





SMITH ENGINEERING & MANAGEMENT

January 24, 2019

Mr. Gideon Kracov, Esq.
Law Office of Gideon Kracov
801 S Grand Ave., 11th Floor
Los Angeles, CA, 90017

**Subject: Selma – Wilcox Hotel Project IS/MND (Case ENV-2016-2602-
MND) P 18023**

Dear Mr. Kracov:

At your request, I have reviewed the responses to our comments on the Initial Study/Mitigated Negative Declaration for the Selma – Wilcox Hotel Project (the "Project") on an eponymously located site in the Hollywood Community Plan area of Los Angeles. (the "City"). Those comments were made in a letter dated May 30, 2018 and were specific to the IS/MND's traffic and transportation section and its supporting documentation. The current comments herein are in relation to the City's and Applicant's responses to our above described comments in a Letter to File dated November 21, 2018 concerning appeals to Council of the Planning Commission findings regarding the IS/MND and the Applicant's letter to Council dated November 26, 2018 that attempts to rebut the justification for the appeals.

My qualifications to perform this review were thoroughly documented in my letter of May 30, 2018 with my professional resume attached. Those documents are incorporated herein by reference.

Findings of my current review are summarized below.

Issue of Piecemealing

City staff's response to this issue is that the City was aware of the potential objection on the grounds of piecemealing, but that the analysis avoids this concern through the use of the dual baseline approach – one the existing condition at the time the earlier project (ENV-2015-2672-MND) environmental analysis was initiated and the other at the time the current environmental analysis (ENV-2016-2602-MND) was initiated. However, this ignores the cogent evidence presented in our May 30, 2018 comment that the posting at that time on the Tao Group LA website indicating the intent to construct a still larger project within the general site. The City continues to fail to properly address the issue of piecemealing.

Issue of Parking Provision

The staff response to the Project's undersupply of parking is to observe that code allows the applicant to obtain rights to off-site parking anywhere within 750 feet of the Project site. However, the applicant should be required to demonstrate that the parking obtained is currently surplus and that the arrangement is not just a contractual displacement of existing parkers on the selected site.

Issue of Adequacy of TDM Plan

The staff response to our concerns about a TDM plan as traffic mitigation for this Project states that there are clear performance standards that the TDM plan is required to comply with, that there will be monitoring and that there will be penalties if it is determined that the TDM program does not meet the performance standards. This response ignores the cogent reasons we cite concerning why a TDM program is unlikely to be effective in meeting the performance standards involved considering the challenges of changing the travel patterns to a combination of hotel and restaurant uses. Notwithstanding being only suggested rather than required, the TDM strategies proffered by the City are primarily informational and seemingly already required under LAMC § 12.26.J.¹ Moreover, these and the other strategies show only nominally effectiveness at reducing vehicle trips, much less guaranteeing a 10 or 20 percent reduction in trips generated.² The response also ignores the challenges

¹ See LADOT (Dec. 2016) Transportation Impact Study Guidelines, p. 20 (noting Code-required TDM measures to be “minimal TDM measures” and “strongly encourages the development of a comprehensive TDM program to eliminate as many new Project single-occupancy vehicle trips from the transportation system as possible.”), <https://ladot.lacity.org/sites/g/files/wph266/f/COLA-TISGuidelines-010517.pdf>.

² See Smart Growth America (2013) TDM State of the Practice, <https://smartgrowthamerica.org/app/legacy/documents/state-of-the-practice-tdm.pdf>; US DOT Federal Highway Administration (2012) Integrating Demand Management into the Transportation Planning Process: A Desk Reference, <https://ops.fhwa.dot.gov/publications/fhwahop12035/chap10.htm>; see also e.g., ENV-2012-3003-EIR (11/9/17) Letter of Determination, pp. F-89-90 (13 percent effectiveness when TDM is coupled with restriping and dedications), <http://planning.lacity.org/StaffRpt/InitialRpts/CPC-2013-4051.pdf>; ENV-2016-

to accurately quantitatively monitoring the effectiveness of a TDM plan at an urban site and the particular uses involved—especially given the City’s track record of lacking leadership and enforcement of TDM policy.³ It also begs the question of how often the City has actually imposed penalties for failure to meet the performance standards. These points also address the Applicant’s TDM responses at pages 12 and 13 of the Applicant’s November 26, 2018 letter.

Issue of Cumulative Impacts

The staff response claims that our comment indicates that the cumulative analysis is flawed, but does not provide substantial evidence as to how it is flawed. This claim in the staff response is contrary to fact. For the record, below we reproduce the substantial evidence demonstrating the inadequacies of the cumulative traffic analysis.

Because the Project has been improperly segmented or piecemealed, cumulative traffic impacts have not been properly analyzed or mitigated.

Moreover, the Los Angeles Department of Transportation’s process for identifying a project’s cumulative traffic impacts does not comply with CEQA. CEQA requires a lead to agency prepare an EIR for a project when the “project has possible environmental effects that are individually limited but cumulatively considerable.” GUIDELINES § 15065(a)(3). “Cumulatively considerable” means the “incremental effects of an individual project are significant when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.” *Id.* *emph. added.*

Here, the MND did not consider the cumulative traffic impacts when the Project’s traffic impacts are added to the 132 other “related” development projects (collectively, the “Future Projects”) that could be constructed in the vicinity of the Project and are expected to be completed by the anticipated Project buildout date. The IS/MND should have computed the traffic impacts from the Project *plus* the Future Projects and compared this increase in traffic to the existing traffic baseline conditions. Instead, the IS/MND only analyzed the small incremental traffic addition that will be caused by the Project compared to the

3480-EIR (Nov. 2018) Draft EIR, pp. IV.K-51-55 (to ensure 15 percent reduction, TDM measures required shuttle services to be provided), https://planning.lacity.org/eir/2110_Bay_Street/Deir/DEIR%20Sections/IV.K.%20Transportation-Traffic.pdf.

³ See Transit Cooperative Research Program (Dec. 2002) Public Agency Guidance on Employer-Based TDM Programs, p. I-5 (noting “little or no monitoring and evaluation is going on at the employer level” and that public agencies “were almost unanimous in their lack of information on true program effectiveness.”), http://onlinepubs.trb.org/onlinepubs/tcrp/tcrp_webdoc_22-a.pdf; SCAG (7/29/11) FINAL REPORT: Recommended TDM Strategies & Actions For The City Of Los Angeles, pp. ii, 30, 41, 49 (noting the City’s lack of citywide strategy, comprehensive policy, or leadership in TDM policy—including “enforcement of TDM requirements was lacking.”), https://planning.lacity.org/policyinitiatives/Mobility%20and%20Transportation/TDMStrategies_FinalReport.pdf;

Future Projects' *traffic* impacts. Based on this misguided approach, although the analysis showed that the Project contributed to unacceptable cumulative conditions in the near future (2020) in one or both peak periods at 6 of the 10 intersections studied, the IS/MND concluded that there would be the Project would have significant cumulative impact at one of those intersections in one peak period and at one other location still in acceptable but approaching unacceptable condition where the Project contributed a large increase in intersection capacity utilization (ICU). In both circumstances, the IS/MND concluded that the Project's cumulative impacts could be mitigated to less than significant through the implementation of what we note elsewhere is a completely implausible transportation demand management (TDM) plan.

Basically, at the 5 other intersections operating at unacceptable level of service in the cumulative conditions, the IS/MND determined that, since future traffic conditions will already be horrible, adding the Project's traffic will not make them significantly worse. The relevant inquiry is not the relative amount of increased traffic that the Project will cause, but whether any additional amount of Project traffic should be considered significant in light of the already serious problem.

Issue of Failing to Consider Impact of Ride Hailing Services

City staff response on this item is to state that "*the rise in popularity of these services is fairly recent and no standards presently exist within DOT's Transportation Impact Study Guidelines to evaluate how these services positively or negatively impact traffic.*" This response is an evasion that is inconsistent with CEQA's demand for a good faith effort to disclose impact. By the time the subject IS/MND was circulated, it was already eminently clear that ride-hailing services (sometimes called Transportation Network Companies ("TNCs") in the technical literature) like Uber and Lyft have had a significantly transformative impact on the modes by which people travel, the places to which they travel to fulfill their trip purpose, and in creating induced trips (trips that wouldn't be made if the services were not available). This is particularly true in dense urban areas like the subject Project's area. TNCs also create extra VMT in traveling to pick up a call and in circulating after completing a call before getting their next call. They are also known to create operational and safety problems because of the penchant for stopping in travel lanes to pick-up or drop-off passengers rather than pulling to the curb. Rather than pleading ignorance and ignoring the issues, it is incumbent on the City to either (a) analyze and mitigate traffic concerns on a project-by-project basis, or (b) immediately incorporate interim standards concerning TNCs in the City DOT's Transportation Impact Study Guidelines based on best current knowledge and literature while further research on the topic is completed. Until and unless this is done, the transportation/traffic section of this Project is inadequate.

Applicants Responses of July 9, 2018 to Our May 30, 2018 Comments

Response 2 Re Valet Parking

This response fails to address the issue that the IS/MND supplemental analysis only addresses the impact of the project increment relative to the modified baseline. It does not address the impact of the whole project relative to the original baseline.

Response 3 Re Valet Parking

The comment requests analysis of whether the valet curb zone and number of valets on duty would be sufficient to efficiently park and unpark cars without blocking traffic. It notes as a sub-comment that the possibility of live entertainment which, notwithstanding being a purported by-right use, implies a discrete start time and more simultaneous arrivals and departures that warrants greater requirements for the valet curb zone and number of valets needed.

The response merely concerns itself with the issue of whether live entertainment is discretionary under the City's municipal code. It does not address the critical issues of size of valet curb zone and number of valets on duty.

Response 4 Re Sufficiency of Off-Site Parking At Wilcox Hotel

This response echoes the City's response to this topic which we comment on above. Furthermore, to rely on the Department of Building and Safety to confirm that the off-site parking is adequate to meet the Project's parking requirement, as suggested by Applicant, fails to analyze the impacts caused by the Project's lack of sufficient parking and subsequent induced traffic near the site. Quite simply, the City is placing the proverbial cart-before-horse when it concludes there will be no impact and defers that analysis to a later date.

Response 5 Re Piecemealing Issue

This response elaborates on the City's response on this topic which we comment on above. No further discussion is necessary.

Response 6 Re TDM Adequacy

This response is similar to the City's response to this topic which we comment on above. No further discussion is necessary.

Response 7 Re Ride Hailing Services

This response parallels the City's response to this topic which we comment on above. No further discussion is necessary.

Response 8 Re Construction Impacts on Traffic, Bus Service and Parking

The response attempts to deny the obvious consideration that construction loading, hauling and staging would have to take place on street and worker parking would have to take place off-site by labeling the obvious as speculative. The response is inadequate.

Response 9 Re Cumulative Analysis

This response parallels the City's response to this topic which we comment on above. No further discussion is necessary.

Conclusion

This concludes my current comments on the City and the Applicants responses to my comments May 30, 2018 on the IS/MND. The City staff and Applicant responses are inadequate and should not be given credibility in consideration of the appeal.

Sincerely,

Smith Engineering & Management
A California Corporation



Daniel T. Smith Jr., P.E.
President



Technical Consultation, Data Analysis and
Litigation Support for the Environment

2656 29th Street, Suite 201
Santa Monica, CA 90405

Matt Hagemann, P.G., C.Hg.
(949) 887-9013
mhagemann@swape.com

January 24, 2019

Gideon Kracov
Attorney at Law
801 S. Grand Ave., 11th Fl.
Los Angeles, CA 90017

Subject: Response to Comments on the Selma Wilcox Hotel Project (ENV-2016-2602-MND)

Dear Mr. Kracov,

We have reviewed the City's November 2018 Response to Appeals of City Planning Commission's Approval of Selma Wilcox Hotel ("City's Responses") and the Project Applicant's November 2018 Response to Appeals of City Planning Commission's Approval of Selma Wilcox Hotel ("Applicant's Responses") prepared for the Selma Wilcox Hotel Project ("Project") located in the City of Los Angeles ("City"). We previously prepared a May 31, 2018 comment letter on the July 2016 Initial Study and Mitigated Negative Declaration ("IS/MND") prepared for the Project, which is addressed in both the City and Applicant's Response documents. After our review, we find the City's Responses and Applicant's Responses to both be insufficient in addressing the Project's greenhouse gas ("GHG") impacts. As we asserted in our May 2018 letter, a Draft Environmental Impact Report ("DEIR") should be prepared for the Project in order to adequately evaluate the Project's potential impacts.

Greenhouse Gas

Unsubstantiated Input Parameters Used to Estimate Project Emissions

Our May comment letter found that several of the values inputted into the IS/MND air quality and GHG model was inconsistent with information disclosed and/or suggested elsewhere in the IS/MND, and gave specific references to underestimated land use sizes, unsubstantiated reduction in the number of vendor trips, and incorrect trip percentages used. In response to our comments, the Applicant merely states that the input values used based on applicant-provided data (Applicant's Responses, pp. 29-30). However, there is no attempt to explain whether the applicant-provided data is reasonable in the face of conflicting data used in the IS/MND. Furthermore, the response fails to address CEQA's requirement for an "accurate, stable and finite project description." *San Joaquin Raptor Rescue Ctr. v. Cnty. of Merced* (2007) 149 Cal.App.4th 645, 654-655; *see also Citizens for a Sustainable Treasure Island v. City & Cnty. of San Francisco* (2014) 227 Cal.App.4th 1036, 1052 ("only through an accurate view of the project may affected outsiders and public decision-makers balance the proposal's benefit against its environmental

cost, consider mitigation measures, assess the advantage of terminating the proposal (i.e., the ‘no project’ alternative), and weigh other alternatives in the balance.”). These input values are critical to the IS/MND modeling of GHG emissions and, thus, any departure from accurate data infects the IS/MND’s determinations on the Project’s GHG significance.

Failure to Adequately Assess the Project’s Greenhouse Gas Impacts

Our May comment letter found that the Project’s GHG impact was inadequately evaluated for several reasons. First, we found that the IS/MND incorrectly concluded that the Project would be consistent with the California Global Warming Solution Act (i.e., AB 32) by comparing the Project’s GHG emissions to the emissions that would be generated by the Project in the absence of any GHG reduction measures, also known as the No Action Taken Scenario (“NAT”)¹ to determine significance. Second, we found that the Project failed to demonstrate consistency with the GHG reduction targets specified in Senate Bill 32 (“SB 32”). Third, we found that the Project failed to demonstrate “additionality,” whereby GHG emission reductions otherwise required by law or regulation are appropriately considered part of the baseline and, thus, implement more aggressive mitigation measures required for newer developments in order to meet AB 32’s long-term GHG reduction goals. Finally, our review demonstrated that the IS/MND incorrectly determined that the Project’s impacts would be less than significant because the Applicant asserted that the Project would be compliant with the Green Building Ordinance, ClimateLA Implementation Plan, and other plans—notwithstanding none being a qualified climate action plan. As a result of the IS/MND’s use of improper and alternative methods and thresholds to determine Project significance, we prepared our own analysis of the Project’s potential GHG impact and found that the Project’s emissions of 1,979 metric tons of carbon dioxide equivalents per year (“MTCO₂e/yr”) would exceed the South Coast Air Quality Management District’s (“SCAQMD”) significance threshold of 1,400 MTCO₂e/yr, resulting in a significant impact that was unidentified within the IS/MND. In response to our May comments, the City’s Responses state,

“The MND adequately analyzes and utilizes the appropriate standard of consideration regarding the Project’s impacts related to GHG” (City’s Responses, pp. 13).

The Applicant’s Responses state,

“There are no applicable California Air Resources Board, South Coast Air Quality Management District (“SCAQMD”), or City significance thresholds or specific reduction targets, and no approved policy or guidance to assist in determining significance at the Project or cumulative levels. Additionally, there is currently no generally accepted methodology to determine whether GHG emissions associated with a specific project represent new emissions or existing, displaced emissions. Therefore, consistent with CEQA Guidelines Section 15064(h)(3), the City, as lead agency, has determined that the Project’s contribution to cumulative GHG emissions and global climate change would be less than significant if the Project is consistent with the applicable

¹ IS/MND refers to this scenario as the No Action Taken (NAT) scenario as well. Both terms can be used interchangeably.

regulatory plans and policies to reduce GHG emissions, not limited to building efficiency measures” (Applicant’s Responses, pp. 14-15).

Furthermore, in response to SWAPE’s updated GHG analysis (discussed above), the Applicants Response’s state,

“The commentor’s comparison to the purportedly threshold is misleading and inappropriate, as the SCAQMD never adopted this or any other interim guidance. The fact that the SCAQMD Governing Board considered the draft threshold in 2008, nearly a decade ago, and did not adopt it with no further action provides a strong rationale as to why the SCAQMD draft threshold should not be considered in the analysis of GHG emissions for the Project. The MND did not use a numeric threshold, as neither the City of Los Angeles nor the SCAQMD has adopted a numeric threshold applicable to the Project. Instead, a significance determination was made based on consistency with applicable regulatory plans and policies to reduce GHG emissions, including CARB’s *Climate Change Scoping Plan*, SCAG’s RTP/SCS, and the City’s ClimateLA implementation plan” (Applicant’s Responses, pp. 32).

While we appreciate the City’s and Applicant’s effort to respond to our comments, we find these comments to insufficiently in properly addressing the Project’s GHG impact and maintain that a DEIR must be prepared in order to adequately evaluate the Project’s emissions and impacts. The California Supreme Court has made clear that just because “a project is designed to meet high building efficiency and conservation standards ... does not establish that its [GHG] emissions from transportation activities lack significant impacts.” *Center for Biological Diversity v. Cal. Dept. of Fish and Wildlife (“Newhall Ranch”)* (2015) 62 Cal.4th 204, 229 (citing Natural Resources Agency). Furthermore, compliance with SCAG’s Regional Transportation Plan/Sustainable Communities Strategy (“RTP/SSCS”) is not enough according to the California Air Resources Board (“CARB”), which has recently found that California “is not on track” to meet GHG reductions expected under SB 375 (i.e., Sustainable Communities Strategy).² As warned by CARB, “with emissions from the transportation sector continuing to rise despite increases in fuel efficiency and decreases in the carbon content of fuel, California will not achieve the necessary [GHG] emissions reductions to meet mandates for 2030 and beyond ...”³ This is further supported by two recent climate change reports where scientists described the quickening rate of carbon dioxide emissions as a “speeding freight train” with an unexpected surge in people buying more cars and driving them farther than in the past — “more than offsetting any gains from the spread of electric vehicles.”⁴

² CARB (Nov. 2018) 2018 PROGRESS REPORT: California’s Sustainable Communities and Climate Protection Act, p. 4-7 (emphasis added), https://ww2.arb.ca.gov/sites/default/files/2018-11/Final2018Report_SB150_112618_02_Report.pdf.

³ *Ibid.*

⁴ New York Times (12/5/18) Greenhouse Gas Emissions Accelerate Like a ‘Speeding Freight Train’ in 2018 (emphasis added), <https://www.nytimes.com/2018/12/05/climate/greenhouse-gas-emissions-2018.html>; see also Global Carbon Project (Dec. 2018) Global Carbon Budget 2018, <https://www.earth-syst-sci->

Failure to Evaluate Cumulative Greenhouse Gas Impact Consistent with Evolving Scientific Knowledge and Regulatory Schemes

As noted above, the Applicant's Responses assert that there are no "significance thresholds or specific reduction targets, and no approved policy or guidance to assist in determining significance at the Project or cumulative levels" and that "the commentor's comparison to the purportedly threshold is misleading and inappropriate." While the Applicant is correct in stating that the SCAQMD *Interim Thresholds* were never adopted, this does not mean, however, that they are inapplicable to the proposed Project or otherwise can be ignored as explained below.

It is commonly recognized by California air districts that a project's impact on climate change is cumulative in nature.⁵ According to the Technical Advisory prepared by the Office of Planning and Research ("OPR"), "[t]he potential effects of a project may be individually limited but cumulatively considerable[]" and that "[l]ead agencies should not dismiss a proposed project's direct and/or indirect climate change impacts without careful consideration, supported by substantial evidence ... [including] analysis should be provided for any project that may significantly contribute to new GHG emissions,

data.net/10/2141/2018/essd-10-2141-2018.pdf; R.B. Jackson, et al. (Dec. 2015) Global Energy Growth Is Outpacing Decarbonization, <http://iopscience.iop.org/article/10.1088/1748-9326/aaf303/pdf>.

⁵ See e.g., SCAQMD (Oct. 2008) Draft Guidance Document – Interim CEQA Greenhouse Gas (GHG) Significance Threshold, p. 1-4-5 (citing the OPR Technical Advisor: "When assessing whether a project's effects on climate change are 'cumulatively considerable' even though its GHG contribution may be individually limited, the lead agency must consider the impact of the project when viewed in connection with the effects of past, current, and probable future projects."), [http://www.aqmd.gov/docs/default-source/ceqa/handbook/greenhouse-gases-\(ghg\)-ceqa-significance-thresholds/ghgattachmente.pdf](http://www.aqmd.gov/docs/default-source/ceqa/handbook/greenhouse-gases-(ghg)-ceqa-significance-thresholds/ghgattachmente.pdf); Bay Area Air Quality Management District ("BAAQMD") (May 2017) CEQA Air Quality Guidelines, p. 2-1 ("No single project could generate enough GHG emissions to noticeably change the global average temperature [but rather] [t]he combination of GHG emissions from past, present, and future projects contribute substantially to the phenomenon of global climate change and its associated environmental impacts."), http://www.baaqmd.gov/~media/files/planning-and-research/ceqa/ceqa_guidelines_may2017-pdf.pdf?la=en; Placer County Air Pollution Control District ("PCAPCD") (Oct. 2016) CEQA thresholds of Significance Justification Report, p. 2 ("CEQA requires that the lead agency review not only a project's direct effects on the environment, but also the cumulative impacts of a project and other projects causing related impacts. When the incremental effect of a project is cumulatively considerable, the lead agency must discuss the cumulative impacts in an EIR. [citing CEQA Guidelines § 15064]"), <file:///C:/Users/jorda/Downloads/CEQAThresholdsJustificationReport.pdf>; San Luis Obispo County Air Pollution Control District ("SLOAPCD") (Mar. 28, 2012) GHG Threshold and Supporting Evidence, p. 5 ("No single land use project could generate enough GHG emissions to noticeably change the global average temperature. Cumulative GHG emissions, however, contribute to global climate change and its significant adverse environmental impacts. Thus, the primary goal in adopting GHG significance thresholds, analytical methodologies, and mitigation measures is to ensure new land use development provides its fair share of the GHG reductions needed to address cumulative environmental impacts from those emissions."), <https://storage.googleapis.com/slocleanair-org/images/cms/upload/files/Greenhouse%20Gas%20Thresholds%20and%20Supporting%20Evidence%204-2-2012.pdf>; Sacramento Metropolitan Air Quality Management District ("SMAQMD") (May 2018) Guide to Air Quality Assessment in Sacramento County, p. 6-1-3, ("(GHG) emissions adversely affect the environment through contributing, on a cumulative basis, to global climate change ... *the District recommends that lead agencies address the impacts of climate change on a proposed project and its ability to adapt to these changes in CEQA documents* ... [thus urging] evaluating whether the GHG emissions associated with a proposed project will be responsible for making a cumulatively considerable contribution to global climate change." [emphasis original]), <http://www.airquality.org/LandUseTransportation/Documents/Ch6GHGFinal5-2018.pdf>.

either individually or cumulatively, directly or indirectly.”⁶ Furthermore, OPR rightfully acknowledge, consistent with state regulatory scheme and CEQA case law, that “thresholds cannot be used to determine automatically whether a given effect will or will not be significant; instead, thresholds of significance can be used only as a measure of whether a certain environmental effect will normally be determined to be significant or normally will be determined to be less than significant by the agency.”⁷ Recognizing this principle, CEQA Guidelines § 15064.7(c) permits the use of thresholds developed by other public agencies.

Similarly, the California Supreme Court has made clear that CEQA demands robust GHG analysis to assess a project’s impact on climate change, and while lead agencies have discretion, that discretion must be exercised “based to the extent possible on scientific and factual data” and “stay[ing] in step with evolving scientific knowledge and state regulatory schemes.” *Cleveland National Forest Foundation v. San Diego Assn. of Governments* (“*Cleveland II*”) (2017) 3 Cal.5th 497, 504, 515, 518 (quoting CEQA Guidelines § 15064(b)); *see also* 519 (noting to meet the State’s long-term climate goals, “regulatory clarification, together with improved methods of analysis, may well change the manner in which CEQA analysis of long-term [GHG] emission impacts is conducted.”). Hence, a GHG analysis which “understates the severity of a project’s impacts impedes meaningful public discussion and skews the decisionmaker’s perspective concerning the environmental consequences of the project, the necessity for mitigation measures, and the appropriateness of project approval.” *Id.*, on remand (“*Cleveland III*”), 17 Cal.App.5th 413, 444; *see also* *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564 (quoting *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 392).

Here, SCAQMD’s multi-tiered approach under its *Interim Threshold*, although not officially adopted, represents the current standard of evolving scientific data and regulatory scheme notwithstanding even more aggressive efforts taken at the State level. SCAQMD’s *Interim Thresholds* was developed when AB 32 was the governing statute for GHG reductions in California, which requires California to reduce GHG emissions to 1990 levels by 2020. However, in September 2016, before the release of the IS/MND, Governor Brown signed Senate Bill 32 (“SB 32”), which requires California to achieve a new, more aggressive 40 percent reduction in GHG emissions over the 1990 level by the end of 2030. Then in September 2018, Governor Brown issued Executive Order B-55-18 (“EO B-55-18”) that committed the State to achieve carbon neutrality no later than 2045.⁸ As a result, the Project must comply with SB 32 and EO B-55-18, which would include a more aggressive GHG threshold than contemplated when SCAQMD proposed its *Interim Threshold*. However, the City and Applicant suggest that the IS/MND can completely ignore the *Interim Threshold* because SCAQMD failed to adopt these measures. This, however, is not in keeping with the evolving scientific knowledge and state regulatory schemes.

⁶ OPR (June 19, 2008) Technical Advisory on CEQA and Climate Change, p. 6, <http://opr.ca.gov/docs/june08-ceqa.pdf>.

⁷ OPR (Nov. 2017) Proposed Updates to the CEQA Guidelines, p. 7 (citing CEQA Guidelines §§ 15064 and 15064.7 and *Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099, 1108-1109), http://opr.ca.gov/docs/20171127_Comprehensive_CEQA_Guidelines_Package_Nov_2017.pdf.

⁸ <https://www.gov.ca.gov/wp-content/uploads/2018/09/9.10.18-Executive-Order.pdf>.

Consistent with the edicts of SB 32, other air control districts have adopted more aggressive GHG thresholds for project-level analysis that mirror SCAQMD’s *Interim Thresholds*, including but not limited to the Sacramento Metropolitan Air Quality Management District (“SMAQMD”), Bay Area Air Quality Management District (“BAAQMD”), Placer County Air Pollution Control District (“PCAPCD”), and San Luis Obispo Air Pollution Control District (“SLOAPCD”) (as summarized below in Table 1 below). Given the cumulative nature of GHG emissions and consistent with CEQA Guidelines § 15064.7(c), these recommended thresholds complement SCAQMD’s *Interim Thresholds* and further supports the conclusion that they constitute the current standard for evaluating a project’s GHG significance.

Table 1: Current GHG Thresholds from Other Air Districts

SMAQMD (May 2018) Guide to Air Quality Assessment ⁹		
Land Development and Construction Projects		
	Construction Phase	Operational Phase
Greenhouse Gas Emissions (GHG) Thresholds		
GHG as CO ₂ e	1,100 metric tons/year	1,100 metric tons/year

Stationary Source Only		
	Construction Phase	Operational Phase
Greenhouse Gas Emissions (GHG) Thresholds		
GHG as CO ₂ e	1,100 metric tons/year	10,000 metric tons/year

- 1) Construction phase of all project types – 1,100 MT CO₂e/yr.
- 2) Operational phase of a land development project – 1,100 MT CO₂e/yr (noting a 72-room hotel would be equivalent to the 1,100 MT CO₂e/yr threshold).¹⁰
- 3) Stationary source operational emissions – 10,000 MT CO₂e/yr.

BAAQMD (May 2017) CEQA Air Quality Guidelines ¹¹	
GHGs – Projects other than Stationary Sources	Compliance with Qualified GHG Reduction Strategy OR 1,100 MT of CO ₂ e/yr OR 4.6 MT CO ₂ e/SP/yr (residents+employees)
GHGs – Stationary Sources	10,000 MT/yr

While providing 10,000 MT CO₂e/yr for stationary-source projects, other projects (e.g., residential, commercial, public land uses):

- 1) **CAP:** Compliance with a qualified GHG Reduction Strategy; or
- 2) **Bright Line:** Annual emissions less than 1,100 MT CO₂e/yr; or
- 3) **Efficiency Level:** 4.6 MT CO₂e/SP/yr (residents + employees).

⁹ SMAQMD (May 2018), *supra* fn. 5, p. 6-10-12; see also SMAQMD Thresholds of Significance Table, <http://www.airquality.org/LandUseTransportation/Documents/CH2ThresholdsTable5-2015.pdf>.

¹⁰ SMAQMD (Apr. 2018) SMAQMD Operational Screening Levels (showing that a 114-room hotel like the Project would exceed the 72-room threshold), <http://www.airquality.org/LandUseTransportation/Documents/Ch4+Ch6OperationalScreening4-2018.pdf>.

¹¹ BAAQMD (May 2017), *supra* fn. 5, p. 2-2-4. Like the SCAQMD area, BAAQMD is designated as a nonattainment area for state/national ozone and particulate matter (PM) and thresholds would seem particularly apt for the Dewey Hotel Project. Compare *id.* at p. 2-1 with SCAQMD NAAQS/CAAQS Attainment Status (noting “extreme” and “serious” nonattainment for multiple ozone and PM standards), <http://www.aqmd.gov/docs/default-source/clean-air-plans/air-quality-management-plans/naqs-caqs-feb2016.pdf>.

PCAPCD (Oct. 2016) CEQA Threshold Significance Justification Report¹²

- 1) **De Minimis Level** for the operational phases of 1,100 MT CO₂e/yr.
- 2) **Efficiency Matrix** for the operational phase of land use developments that exceed the De Minimis Level that is dependent on their location (urban v. rural), whether its residential in nature (e.g., single-family, condo, apartment) or non-residential (e.g., general commercial, office, industrial), and service population (i.e., per capita inclusive of residents and jobs for residential projects, or 1,000 square feet of non-residential development).
- 3) **Bright-line Threshold** of 10,000 MT CO₂e/yr for the construction and operational phases of land use projects as well as the stationary source projects.

Bright-line Threshold 10,000 MT CO₂e/yr			
Efficiency Matrix			
Residential		Non-residential	
Urban	Rural	Urban	Rural
(MT CO ₂ e/capita)		(MT CO ₂ e/1,000sf)	
4.5	5.5	26.5	27.3
De Minimis Level 1,100 MT CO₂e/yr			

SLOAPCD (Mar. 2012) GHG Thresholds and Supporting Evidence¹³

GHG Emissions Threshold Summary	
Residential and Commercial Projects	Compliance with Qualified GHG Reduction Strategy OR Bright-Line Threshold of 1,150 MT of CO₂e/yr. OR Efficiency Threshold of 4.9 MT CO₂e/SP*/yr.
Industrial (Stationary Sources)	10,000 MT of CO₂e/yr.

- 1) **CAP:** Consistency with qualitative reduction strategies (e.g., Climate Action Plans).
- 2) **Bright-Line Threshold:** 1,150 MT CO₂e/yr after inclusion of emission-reducing features of a proposed project, those still exceeding the threshold would have to reduce their emissions below that level to be considered less than significant.
- 3) **Efficiency-Based Threshold:** 4.9 MT CO₂e/SP/yr dependent on per capita basis for residential projects or the sum of jobs and residents for mixed-use projects (noting 0.64 employees per 1,000 SF of hotel development).

Although more demanding, the above-listed thresholds adopted by these air districts are analogous with the application of SCAQMD’s Tier 3 screening threshold for commercial developments (1,400 MTCO₂e/yr) and SCAQMD’s Tier 4 efficiency target goals (4.8 MTCO₂e/yr/sp for target year 2020 and 3.0 MTCO₂e/yr/sp for target year 2035).¹⁴ The overwhelming weight of the actions taken by the other air

¹² PCAPCD (Oct. 2016), *supra* fn. 5, p. E-2, 17-22; see also PCAPCD (Nov. 21, 2017) CEQA Thresholds And Review Principles, <http://www.placerair.org/landuseandceqa/ceqathresholdsandreviewprinciples>.

¹³ SLOAPCD (Mar. 28, 2012), *supra* fn. 45, p. 25-30, 42.

¹⁴ See SCAQMD (Dec. 5, 2008) Interim CEQA GHG Significance Threshold for Stationary Sources, Rules and Plans, [http://www.aqmd.gov/docs/default-source/ceqa/handbook/greenhouse-gases-\(ghg\)-ceqa-significance-thresholds/ghgboardsynopsis.pdf?sfvrsn=2](http://www.aqmd.gov/docs/default-source/ceqa/handbook/greenhouse-gases-(ghg)-ceqa-significance-thresholds/ghgboardsynopsis.pdf?sfvrsn=2); see also SCAQMD (Oct. 2008) Draft Guidance Document – Interim CEQA Greenhouse Gas (GHG) Significance Threshold, [http://www.aqmd.gov/docs/default-source/ceqa/handbook/greenhouse-gases-\(ghg\)-ceqa-significance-thresholds/ghgattachmente.pdf](http://www.aqmd.gov/docs/default-source/ceqa/handbook/greenhouse-gases-(ghg)-ceqa-significance-thresholds/ghgattachmente.pdf); SCAQMD (Sep. 28, 2010) Minutes for the GHG CEQA Significance Threshold Stakeholder Working Group # 15,

district, the regulatory agencies with the most expertise in the area of assessing GHG emission impacts, is the most persuasive rationale why the *Interim Thresholds* apply here as the current standard set of evolving scientific knowledge and regulatory schemes. Thus, only through application of SCAQMD's 1,400 MTCO₂e/yr screening threshold and comparison to SCAQMD's Tier 4 efficiency target goals can the City act consistent with the improved methods of analysis that is regularly practiced by other air districts, and furthers CEQA's demand for "'conservative analysis' to afford 'fullest possible protection of the environment.'"¹⁵ Absent this, the IS/MND's GHG analysis is not consistent with evolving scientific knowledge or regulatory standards, nor its conclusion that the Project has an insignificant GHG impact supported by substantial evidence.

Failure to Evaluate GHG Impact Consistent with SCAQMD's Tier 4 Guidance

As discussed in our May comment letter, the Project's 1,979 MTCO₂e/yr emissions exceed SCAQMD's Tier 3 threshold of 1,400 MTCO₂e/yr (as well as the above-listed thresholds adopted by other air districts). According to SCAQMD *Interim Thresholds*, if a project's emissions exceed the screening-level threshold, a more detailed review of the project's GHG emissions is warranted based on a service population (i.e., per capita) efficiency target.¹⁶ SCAQMD proposed a project-level efficiency target of 4.8 MTCO₂e/yr/sp for the year 2020, and a 3.0 MTCO₂e/yr/sp efficiency target for the year 2035 (also similar to the above-listed efficiency targets adopted by other air districts). Here, both the 2020 and 2035 efficiency targets are appropriate given the Project is not anticipated to be redeveloped before 2035.

According to the CEQA & Climate Change Report prepared by the California Air Pollution Control Officers Association ("CAPCOA"), a service population is defined as "the sum of the number of residents and the number of jobs supported by the project."¹⁷ Here, utilizing the City's widely reported 80 percent hotel occupancy rate¹⁸ and 1.5 persons per room ratio used by the City,¹⁹ it can be estimated that the proposed 114-room Project will typically serve 137 patrons. While the IS/MND identifies 92 potential jobs supported by the Project (IS/MND, Tbl. 3.13-2, p. 3-181), this expected job creation is significantly

[http://www.aqmd.gov/docs/default-source/ceqa/handbook/greenhouse-gases-\(ghg\)-ceqa-significance-thresholds/year-2008-2009/ghg-meeting-15/ghg-meeting-15-minutes.pdf](http://www.aqmd.gov/docs/default-source/ceqa/handbook/greenhouse-gases-(ghg)-ceqa-significance-thresholds/year-2008-2009/ghg-meeting-15/ghg-meeting-15-minutes.pdf).

¹⁵ SCAQMD (June 2014) Warehouse Truck Trip Study Data Results and Usage Presentation: Inland Empire Logistics Council, p. 3, http://www.aqmd.gov/docs/default-source/ceqa/handbook/high-cube-warehouse-trip-rate-study-for-air-quality-analysis/final-ielc_6-19-2014.pdf?sfvrsn=2; see also *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 390 ("The foremost principle under CEQA is that the Legislature intended the act to be interpreted in such manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.") (internal citations omitted).

¹⁶ SCAQMD (Dec. 5, 2008), *supra* fn. 15, p. 6; SCAQMD (Sep. 28, 2010), *supra* fn. 15, p. 2.

¹⁷ CAPCOA (Jan. 2008) CEQA & Climate Change, p. 71-72, <http://www.capcoa.org/wp-content/uploads/2012/03/CAPCOA-White-Paper.pdf>.

¹⁸ City of Los Angeles (2017) Hotel Market Study, p. 3, 7, https://d3n8a8pro7vhmx.cloudfront.net/cd14/pages/2723/attachments/original/1508870241/CD14_Hotel_Market_Study-2017_Full_Report-Final.pdf?1508870241; see also City of Los Angeles (2017) 2017 Annual Report, p. 6, <https://ctd.lacity.org/sites/default/files/2017%20CTD%20Annual%20Report.pdf>.

¹⁹ Lizard Hotel (DCP Case No. ENV-2015-2356-EIR) Draft EIR, pp. 24, <https://planning.lacity.org/eir/SpringStHotel/Deir/DEIR%20Sections/Spring%20St%20Hotel%20IV.E%20Greenhouse%20Gas%20Emissions.pdf>.

higher than estimated by other hotel projects in the City, which demonstrate hotels with a variety of guest amenities and other commercial uses generate roughly 0.55 jobs per hotel room (equivalent to 63 jobs for the 114-room hotel proposed here).²⁰ Nevertheless, assuming for argument sake the Project will create 92 jobs, the Project’s service population would be a maximum of 229 people (92 jobs + 137 patrons). Thus, by dividing the Project’s admitted GHG emissions by this service population, the Project would emit approximately 8.64 MTCO₂e/yr/sp. When compared to the SCAQMD’s 2020 efficiency threshold of 4.8 MT CO₂e/sp/yr and the 2035 efficiency target of 3.0 MT CO₂e/sp/yr, the Project would result in a significant GHG impact (see Table 2 below).

Table 2: Estimated Total Project Buildout Annual Greenhouse Gas Emissions

Source	Emissions	Unit
Total Annual Emissions	1,979	MTCO ₂ e/year
Maximum Service Population	229	Employees + Guests
Per Service Population Annual Emissions	8.64	MTCO₂e/sp/year
2020 SCAQMD Project Level Efficiency Threshold	4.8	MTCO ₂ e/sp/year
Exceed?	Yes	-
Per Service Population Annual Emissions	8.64	MTCO₂e/sp/year
2035 SCAQMD Project Level Efficiency Threshold	3.0	MTCO ₂ e/sp/year
Exceed?	Yes	-

As you can see in the table above, the Project is nearly twice as inefficient when compare to SCAQMD’s 2020 efficiency target (4.8 MTCO₂e/sp/yr) and nearly three times as inefficient when compared to the 2035 efficiency target (3.0 MTCO₂e/sp/yr)—*thus resulting in a potentially significant impact*. According to CEQA Guidelines § 15064.4(b), if there is substantial evidence that the possible effects of a particular project are still cumulatively considerable notwithstanding compliance with the adopted regulations or requirements, a full CEQA analysis must be prepared for the project. The results of this analysis, which is consistent with evolving scientific knowledge and regulatory schemes, provide substantial evidence that the Project’s GHG emissions are still cumulatively considerable notwithstanding compliance with GHG-reduction regulations or requirements. Therefore, a full CEQA analysis must be prepared for the Project, and mitigation should be implemented where necessary, per the CEQA Guidelines.

²⁰ See e.g., Lizard Hotel (DCP Case No. ENV-2015-2356-EIR) Draft EIR, PDF pp. 24 (120 employees for a 170-room hotel with 7,050-SF restaurant, 3,780-SF rooftop bar/lounge, 1,00-SF gym, 2,940-SF gallery bar, 12,460-SF of open space), <https://planning.lacity.org/eir/SpringStHotel/Deir/DEIR%20Sections/Spring%20St%20Hotel%20IV.E%20Greenhouse%20Gas%20Emissions.pdf> and <https://planning.lacity.org/eir/SpringStHotel/DEIR/DEIR%20Spring%20Street%20Hotel%20Project.html>; Bixel Residences (DCP Case No. ENV-2015-3927-MND) MND, PDF pp. 1, 99, 205 (69 new employees for the 126-room extended stay hotel component with two underground parking levels, 8,313-SF open space and providing lounge entertainment, fitness area, and pool/outdoor lounge), http://cityplanning.lacity.org/staffrpt/mnd/Pub_102716/ENV-2015-3927.pdf; Selma Wilcox Hotel (DCP Case No. ENV-2016-2602-MND) MND, PDF pp. 1, 144 (94 hotel jobs for the 114-room hotel with 26,000-plus-SF of restaurant, bar, pool, amenity deck, and rooftop bar uses), https://planning.lacity.org/staffrpt/mnd/Pub_010418/ENV-2016-2602.pdf.

Newhall Ranch Requires Additionality

As mentioned above, we previously commented on the Project’s failure to propose more aggressive mitigation into the Project’s design than merely what is required by law or regulation in order to make the Project more GHG efficient. We find the Applicant’s response to our comment to be inadequate and maintain that the Project is falling short of going beyond the GHG reduction measures that are already required under various laws and regulations.

Just because “a project is designed to meet high building efficiency and conservation standards ... does not establish that its [GHG] emissions from transportation activities lack significant impacts.” *Newhall Ranch*, 62 Cal.4th at 229 (citing Natural Resources Agency).²¹ This concept is known as “additionality” whereby GHG emission reductions otherwise required by law or regulation are appropriately considered part of the baseline and, pursuant to CEQA Guideline § 15064.4(b)(1), a new project's emission should be compared against that existing baseline.²² Hence, a “project should not subsidize or take credit for emissions reductions which would have occurred regardless of the project.”²³ In short, as observed by the Court, newer developments must be more GHG-efficient. *See Newhall Ranch*, 62 Cal.4th at 226.

Here, the Project fails to provide more aggressive mitigation measures required for newer developments to reach AB 32’s long-term goals—such as the net-zero approach utilized in the wake of the Supreme Court’s *Newhall Ranch* decision. *See Newhall Ranch*, 62 Cal.4th at 226 (“a greater degree of reduction may be needed from new land use projects”); *see also Californians for Alternatives to Toxics v. Department of Food and Agriculture* (2005) 136 Ca1.App.4th 1, 17 (“[c]ompliance with the law is not enough to support a finding of no significant impact under the CEQA.”). More should be required for the Project, especially in light of more aggressive targets set by SB 32 and EO B-55-18, including additional feasible mitigation measures and strategies that serve to reduce a project’s GHG emissions.²³

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²¹ *See* California Natural Resources Agency (Dec. 2009) Final Statement of Reasons for Regulatory Action: Amendments to State CEQA Guidelines Addressing Analysis and Mitigation of GHG Emissions Pursuant to SB-97, p. 23, http://resources.ca.gov/ceqa/docs/Final_Statement_of_Reasons.pdf (while a Platinum LEED® rating may be relevant to emissions from a building’s energy use, “that performance standard may not reveal sufficient information to evaluate transportation-related emissions associated with that proposed project”).

²² *Ibid.*, p. 89; *see also* CAPCOA (Aug. 2010) Quantifying Greenhouse Gas Mitigation Measures, pp. 32, <http://www.capcoa.org/wp-content/uploads/2010/11/CAPCOA-Quantification-Report-9-14-Final.pdf> (“in practice is that if there is a rule that requires, for example, increased energy efficiency in a new building, the project proponent cannot count that increased efficiency as a mitigation or credit unless the project goes beyond what the rule requires; and in that case, only the efficiency that is in excess of what is required can be counted.”).

²³ *Ibid.*, CAPCOA (Aug. 2010), p. 1, 16, 51, 82-84; *see also* CARB (Nov. 2017) App. B-Local Action, p. 7-9, https://www.arb.ca.gov/cc/scopingplan/app_b_local_action_final.pdf; SCAG (Dec. 2011) 2012-2035 RTP/SCS, http://rtpscs.scag.ca.gov/Documents/2012/draft/2012dRTP_04_SCS.pdf; SCAG (Apr. 2016) 2016-2040 RTP/SCS, <http://scagrtpscs.net/Documents/2016/final/f2016RTPSCS.pdf>; SCAG (Dec. 2015) Draft Program EIR 2016-2040 RTP/SCS, http://scagrtpscs.net/Documents/2016/peir/draft/2016dPEIR_Complete.pdf; City (2015) Plan for a Healthy Los Angeles, <http://plan.lamayor.org/wp-content/uploads/2017/03/the-plan.pdf>; City (May 2007) GreenLA, http://environmentla.org/pdf/GreenLA_CAP_2007.pdf.

Incorrect Use of GHG Plans to Determine Significance

As previously stated, our May comment letter addressed the fact that the IS/MND incorrectly relied upon compliance with several regulatory plans and policies not qualified as a CAP. In particular, we found the Project's reliance on compliance with the City's ClimateLA Implementation Plan to be insufficient. In response, the Applicant maintains that "the MND did not use a numeric threshold, as neither the City of Los Angeles nor the SCAQMD has adopted a numeric threshold applicable to the Project. Instead, a significance determination was made based on consistency with applicable regulatory plans and policies to reduce GHG emissions, including CARB's *Climate Change Scoping Plan*, SCAG's RTP/SCS, and the City's ClimateLA implementation plan" (Applicant's Responses, pp. 32).

As stated in our May comment letter, these plans do not meet the criteria for an officially adopted CAP with GHG reduction target for use as a threshold of significance for GHG emissions as required by CEQA Guidelines § 15064.4(b)(3). None of these plans contain actual, quantified, or evidence-supported GHG emissions reductions to meet current GHG reduction targets "adopted by the relevant public agency through a public review process" (id.) are claimed—much less proven to be effective—which preclude their use to establish a lack of significant impact determination. Therefore, the IS/MND's reliance on compliance with this regulatory plan and policy is incorrect and should not be used as a threshold with which to determine the significance of the Project's GHG impact.

Given these plans are neither qualified CAPs, nor proven to be sufficient to reach the State's current long-term GHG reduction goals, we maintain that the Applicant's reliance on these plans to be an inadequate method of evaluating the significance of or reducing the Project's GHG emissions. Alternatively stated, the IS/MND fails to adequately evaluate and mitigate the Project's impacts by ignoring applicable numeric thresholds used by SCAQMD and other air districts (i.e., current state of evolving scientific knowledge and regulatory schemes), and utilizing only compliance with plans that are admittedly ineffective at achieving the State's long-term GHG reduction goals.

Sincerely,



Paul E. Rosenfeld, Ph.D.



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



Hadley Nolan