



APPLICATIONS:

APPEAL APPLICATION

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

1. APPELLANT BODY/CASE INFORMATION

Appellant Body:

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

Regarding Case Number: CPC-2016-2601-VZC-HD-CUB-ZAA-SPR; ENV-2016-2602-MND

Project Address: 6421-6429 W. Selma Avenue

Final Date to Appeal: 09/06/2018

Type of Appeal:

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

2. APPELLANT INFORMATION

Appellant's name (print): Elle Farmer

Company: Unite Here Local 11

Mailing Address: 464 Lucas Ave., Ste. 201

City: Los Angeles

State: CA

Zip: 90017

Telephone: (213) 481-8530

E-mail: lfarmer@unitehere11.org

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

☐ Self ☒ Other: Self and Unite Here Local 11

- Is the appeal being filed to support the original applicant's position? ☐ Yes ☐ No

3. REPRESENTATIVE/AGENT INFORMATION

Representative/Agent name (if applicable): Gideon Kracov

Company: Law Office of Gideon Kracov

Mailing Address: 801 S. Grand Ave., 11th Floor

City: Los Angeles

State: CA

Zip: 90017

Telephone: (213) 629-2071

E-mail: gk@gideonlaw.net (cc: jordan@gideonlaw.net)

4. JUSTIFICATION/REASON FOR APPEAL

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

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

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

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

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

5. APPLICANT'S AFFIDAVIT

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

Appellant Signature: Elle Farmer

Date: 9/5/18

6. FILING REQUIREMENTS/ADDITIONAL INFORMATION

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

This Section for City Planning Staff Use Only		
Base Fee: <u>\$89.00</u>	Reviewed & Accepted by (DSC Planner): <u>0102938753</u>	Date: <u>09/05/18</u>
Receipt No: <u>01029</u>	Deemed Complete by (Project Planner):	Date:
☒ Determination authority notified		☐ Original receipt and BTC receipt (if original applicant)

**Re: Appeal Justification for Dream II Hotel Project (6421-29 W. Selma Avenue);
CPC-2016-2601-VZC-HD-CUB-ZAA-SPR, ENV-2016-2602-MND;
CPC Approval Made Effective by Aug. 17, 2018 Letter of Determination**

UNITE HERE Local 11 and Elle Farmer (collectively "Appellants"), hereby respectfully appeals (the "Appeal") the City Planning Commission ("CPC") approval of the above-referenced hotel development ("Project") proposed by 6421 Selma Wilcox Hotel, LLC ("Applicant"), located at 3421-6429 ½ W. Selma Avenue and 1600-04 N. Wilcox Avenue ("Site"). Under the Los Angeles Municipal Code ("LAMC" or "Code") and the California Environmental Quality Act ("CEQA"), Pub. Res. Code § 21000 *et seq.*, this Appeal challenges both the Project's various land use approvals ("Entitlements") and its Mitigated Negative Declaration ("MND") (collectively "Project Approvals"). According to Letter of Determination dated August 17, 2018, September 06, 2018 is the last day to file an appeal.

REASON FOR THE APPEAL: The Project's MND fails to comply with CEQA. In particular, the MND fails to adequately analyze the environmental impacts of the Project, fails to adequately describe the entire project, and fails to propose all feasible mitigation measures to reduce Project impacts. Additionally, the discretionary entitlements are not by right, and the required land use findings cannot be made without an adequate CEQA review. Thus, the findings made by CPC are not supported by substantial evidence.

SPECIFIC POINTS IN ISSUE: The specific points at issue were fully outlined in the comment letters submitted to CPC, including expert comments establishing a fair argument of potentially significant impacts. These comments letters include but not limited to those attached hereto this Appeal.

HOW ARE YOU AGGRIEVED BY THE DECISION: Appellants and its members live in the vicinity of the Project Site, breathe the air, suffer traffic congestions, and will suffer other environmental impacts of the Project unless it is properly analyzed and mitigated. Additionally, Appellants are committed to the assurance of responsible development in Los Angeles and informed decision-making by public officials regarding projects that may cause significant impacts to the environment in the City of Los Angeles. Hence, the granting this Appeal will confer substantial benefit not only to Appellants but also the public, including citizens, residents, businesses and taxpayers affected by the Project, and will result in the enforcement of important public rights.

HOW DID THE DECISION-MAKER ERRED OR ABUSED THEIR DISCRETION: The CPC approved the Project Approvals even though there is substantial evidence demonstrating that the MND fails to comply with CEQA. The CPC failed to respond to substantial evidence presented concerning the MND's legal deficiencies. Without an adequate CEQA review, the various Code-required land use findings cannot be made with substantial evidence, such as the findings required under LAMC §§ 12.24 subds. W & S, 12.28, 12.32 subds. F & Q, 16.05.

Appellants respectfully reserve the right to supplement this appeal justification at future hearings and proceedings for this Project. *Galante Vineyards v. Monterey Peninsula Water Management Dist.* (1997) 60 Cal.App.4th 1109, 1120 (CEQA litigation not limited only to claims made during EIR comment period).



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

May 31, 2018

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

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

Dear Mr. Kracov,

We have reviewed the July 2016 Initial Study and Mitigated Negative Declaration (IS/MND) for the Selma Wilcox Hotel Project ("Project") located in the City of Los Angeles ("City"). A previously approved MND (ENV-2015-2672-MND) for the Project site proposed the development of a 20,624 square-foot restaurant, 6,000 square feet of retail, and three-level subterranean parking structures ("Approved Project"). The eastern portion of the Project site is currently developed with the 20,624-square foot restaurant, one of the proposed parking structures, and an excavated area. The Project Applicant proposes to maintain the 20,624 square foot restaurant and renovate the previously proposed 6,000 square feet of retail space to construct a new 1,939 square foot ground floor restaurant with 100 seats, a 114-guestroom hotel with a lobby bar of approximately 819 square feet (with 48 seats), rooftop pool, amenity deck with a rooftop bar of approximately 5,807 square feet (with 73 seats), and three levels of subterranean parking. The construction of the additional parking structure and newly proposed land uses would occur on the western portion of the 0.495-acre Project site.

Our review concludes that the IS/MND fails to adequately evaluate the Project's Air Quality and Greenhouse Gas (GHG) impacts. As a result, emissions and health impacts associated with the construction and operation of the proposed Project are underestimated and inadequately addressed. A Project-specific Draft Environmental Impact Report (DEIR) should be prepared to adequately assess and mitigate the potential air quality, health risk, and GHG impacts the Project may have on the surrounding environment.

Air Quality

Unsubstantiated Input Parameters Used to Estimate Project Emissions

The IS/MND for the Project relies on emissions calculated from the California Emissions Estimator Model Version CalEEMod.2016.3.1 ("CalEEMod").¹ CalEEMod provides recommended default values based on site specific information, such as land use type, meteorological data, total lot acreage, project type and typical equipment associated with project type. If more specific project information is known, the user can change the default values and input project-specific values, but CEQA requires that such changes be justified by substantial evidence.² Once all of the values are inputted into the model, the Project's construction and operational emissions are calculated, and "output files" are generated. These output files disclose to the reader what parameters were utilized in calculating the Project's air pollutant and GHG emissions, and make known which default values were changed as well as provide a justification for the values selected.³

When reviewing the Project's CalEEMod output files, located in Appendix C, we found that several of the values inputted into the model are not consistent with information disclosed in the IS/MND and are not consistent with guidance set forth by the South Coast Air Quality Management District (SCAQMD) for mixed-use projects. As a result, emissions associated with the Project are greatly underestimated. A Project-specific DEIR should be prepared that adequately assesses the potential impacts that construction and operation of the Project may have on regional and local air quality and global climate change.

Underestimation of Land Use Sizes

As previously stated, the IS/MND relies upon CalEEMod to estimate the Project's construction and operational emissions. Review of the CalEEMod output files for the Project's proposed land uses demonstrates that the sizes inputted into the model are inconsistent with information disclosed in the IS/MND. As a result, the Project's construction and operational emissions are underestimated.

According to the IS/MND, the Project would include "the construction of a new 1,939 square-foot ground floor restaurant (new restaurant) and a 114-guestroom hotel (hotel)" (p. 1). Furthermore, the hotel would include an "approximately 5,807 square-foot rooftop bar with 73 seats" (p. 2-7). In order to accurately estimate the emissions resulting from the Project's proposed land uses, the Project Applicant should have modeled these specific land uses and land use sizes within CalEEMod. Review of the Project's CalEEMod output files, found Appendix C-1, however, demonstrates that the proposed restaurant and bar land use sizes were underestimated in the model (Appendix C-1, pp. 1, pp. 21, and pp. 37).

¹ CalEEMod website, available at: <http://www.caleemod.com/>

² CalEEMod User Guide, p. 2, 9, available at: http://www.aqmd.gov/docs/default-source/caleemod/01_user-39-s-guide2016-3-2_15november2017.pdf?sfvrsn=4

³ CalEEMod User Guide, p. 7, 13, available at: http://www.aqmd.gov/docs/default-source/caleemod/01_user-39-s-guide2016-3-2_15november2017.pdf?sfvrsn=4 (A key feature of the CalEEMod program is the "remarks" feature, where the user explains why a default setting was replaced by a "user defined" value. These remarks are included in the report.)

6421 Selma Avenue Future
Los Angeles-South Coast County, Annual

1.0 Project Characteristics

1.1 Land Usage

Land Use	Size	Metric	Lot Acreage	Floor Surface Area	Population
Hotel	114,000	Room	0.45	50,024.00	0
Quality Restaurant	5.04	1000sqft	0.03	5,041.00	0
High Turnover (Sit Down Restaurant)	1.51	1000sqft	0.03	1,810.00	0
Enclosed Parking with Elevator	102,000	Space	4.50	40,800.00	0

As you can see in the excerpt above, the proposed bar - modeled as a Quality Restaurant - and the proposed restaurant are underestimated by approximately 767 square feet and 129 square feet, respectively. The inconsistency found between the square footage inputted into the model and the square footage discussed in the IS/MND presents a significant issue. Land use square footage is important for determining the impact from emissions generated by architectural coating activities and energy consumption⁴, and for determining the amount of ground to be prepared, graded, paved, etc.⁵ Therefore, by underestimating the square footage, the Project's construction and operational emissions are underestimated.

Unsubstantiated Reduction in Number of Vendor Trips

The number of vendor trips used to estimate the Project's construction-related emissions was artificially reduced from the CalEEMod default value, without providing proper justification for doing so. As a result, the Project's construction-related emissions are underestimated.

Review of the Project's CalEEMod output files demonstrates that the number of vendor trips was reduced from the CalEEMod default value of 16 trips to 2 trips while estimating the Project's construction-related emissions (see excerpt below) (Appendix C-1, pp. 2, pp. 22, pp. 38).

Table Name	Column Name	Default Value	New Value
tblTripsAndVMT	VendorTripNumber	16.00	2.00

As demonstrated in the excerpt above, the Project Applicant manually reduced the number of vendor trips expected to occur during construction. According to the "User Entered Comments & Non-Default Data" table in the Project's CalEEMod output files, the only explanation for this manual decrease in the number of vendor trips is "Developer information" (Appendix C-1, pp. 1, pp. 21, and pp. 37). Neither the IS/MND nor any of the associated appendices provide any further information verifying that there will only be 2 vendor trips occurring during construction or as to why this reduction was applied. As previously mentioned, according the CalEEMod User's Guide any changes to the model's defaults must

⁴ CalEEMod User's Tips, available at: <http://www.aqmd.gov/docs/default-source/caleemod/Model/2013.2.2/caleemod-usertips-april2014.pdf?sfvrsn=0>

⁵ CalEEMod User's Tips, available at: <http://www.aqmd.gov/docs/default-source/caleemod/Model/2013.2.2/caleemod-usertips-april2014.pdf?sfvrsn=0>, p. 11

be properly justified.⁶ Because the Project Applicant failed to provide the “developer information” that was relied upon to make this reduction, we are unable to verify this value. Therefore, unless the Project Applicant can provide substantial evidence and reasoning as to why this factor should have been altered, we find the Project’s air quality model to be incorrect and should not be relied upon to determine Project significance.

Use of Incorrect Trip Purpose Percentage

Review of the Project’s CalEEMod output files demonstrates that the model double counts the number of pass-by trips expected to occur throughout Project operation. As a result, the Project’s operational emissions are underestimated.

CalEEMod separates the operational trip purposes in three categories: primary, diverted, and pass-by trips. According to Appendix A of the CalEEMod User’s Guide, the primary trips utilize the complete trip lengths associated with each trip type category. Diverted trips are assumed to take a slightly different pass than a primary trip and are assumed to be 25% of the primary trip lengths. Pass-by trips are assumed to be 0.1 miles in length and are a result of no diversion from the primary route.⁷ Review of the Project’s CalEEMod output files demonstrates that the trip purpose percentage was divided amongst primary, diverted, and pass-by trip types for the Project’s proposed retail land uses (see excerpt below) (Appendix C-1, pp. 12-13, pp. 33).

4.3 Trip Type Information

Land Use	Miles			Trip %			Trip Purpose %		
	H-W or C-W	H-S or C-C	H-O or C-NW	H-W or C-W	H-S or C-C	H-O or C-NW	Primary	Diverted	Pass-by
High Freeway (Set Down)	16.00	8.40	6.90	8.50	73.50	10.00	97	20	43
Hotel	16.00	8.40	6.90	18.45	91.65	19.00	55	29	3
Quick Restaurant	16.00	8.40	6.90	12.00	88.00	16.00	36	18	44
Enclosed Parking with Elevator	16.50	8.40	6.90	0.00	0.00	0.00	0	0	0

However, as demonstrated in the Traffic Impact Analysis (TIA), pass-by trips for the restaurant land uses were already accounted for in the TIA’s Traffic Generation calculations (see excerpt below) (Table 2, Appendix TIA, p. 10).

⁶ CalEEMod User’s Guide, p. 1, *available at*: http://www.aqmd.gov/docs/default-source/caleemod/01_user-39-s-guide2016-3-2_15november2017.pdf?sfvrsn=4

⁷ “CalEEMod User’s Guide, Appendix A: Calculation Details for CalEEMod.” SCAQMD, *available at*: http://www.aqmd.gov/docs/default-source/caleemod/02_appendix-a2016-3-2.pdf?sfvrsn=6, p. 20

Table 2
Estimated Project Traffic Generation

ITE Code	Description	Size	Daily	AM Peak Hour			PM Peak Hour		
				Total	In	Out	Total	In	Out
	<u>Proposed Project</u>								
310	Hotel	114 Rooms	931	60	36	24	68	35	33
932	Ground Floor Restaurant	1,800 sf	230	20	11	9	18	11	7
	Internal Trips	50%	(115)	(10)	(5)	(5)	(9)	(5)	(4)
	Pass-By	20%	(23)	(2)	(1)	(1)	(2)	(1)	(1)
	Subtotal Lobby/Restaurant/Bar		92	8	5	3	7	5	2
931/925	Roof-top Restaurant/Bar	5,041 sf	453	4	3	1	57	37	20
	Internal Trips	50%	(227)	(2)	(1)	(1)	(29)	(19)	(10)
	Pass-By	10%	(23)	(0)	(0)	(0)	(3)	(2)	(1)
	Subtotal Rooftop Restaurant/Bar		204	2	2	0	26	17	9
	NET Proposed Project		1,227	70	43	27	100	56	44

Therefore, the CalEEMod model should have divided the trip purpose between primary and diverted trips for the restaurant land uses, as pass-by trips are already accounted for in the 1,227-daily trip total. By spreading the trip purpose percentages amongst the three categories, the model is accounting for pass-by trips that have already been accounted for in the TIA. Because the proposed Project's CalEEMod model incorrectly allocates the Project's operational trips to the various categories of trip purposes, the emissions associated with these trips are underestimated, and as a result, the Project's operational emissions are underestimated. An updated CalEEMod model must be prepared in a DEIR in order to accurately estimate the Project's operational emissions.

Failure to Adequately Evaluate Operational Criteria Air Pollutant Emissions

The IS/MND's operational air quality analysis concludes that "long-term operation of the Project would not violate any air quality standard or contribute substantially to an existing or project air quality violation for regional and localized air quality" (p. 3-28). However, this significance determination is based on a flawed analysis that greatly underestimates the Project's operational emissions.

As previously stated, the proposed Project would change a portion of the land uses from the previously Approved Project (p. 2-7). In order to determine the potential air quality impact resulting from operation of the Project, the IS/MND only estimates the proposed Project's criteria air pollutant emissions using CalEEMod and compares these emissions estimates to thresholds (p. 3-28). The IS/MND explains the methodology used to assess the Project's air quality impact, stating,

"The Adopted MND analyzed the operational impacts of the 20,624 square-foot restaurant and 6,000 square feet of commercial retail and determined that impacts were less than significant. The Project would not affect the 20,624 square-foot restaurant which was analyzed as part of the Approved Project and would change the use of the previously analyzed 6,000 square-foot commercial retail space, and add the operation of a 114 guestroom hotel and three levels of

subterranean parking. The hotel would include ancillary uses such as a lobby bar and rooftop bar and dining area. As indicated in Table 3.3-7, the operations of the Project would have less than significant impacts” (p. 3-27 - 3-28).

As stated in the excerpt above, the restaurant and parking structure that are currently on-site will be in operation at full Project build out and were found to be “less than significant” from the previous MND. The tables below demonstrate the criteria air pollutant emissions generated by the Approved Project and the Project site’s proposed land uses (see excerpts below) (p. 3-22 and p. 3-28).

Table 3.3-4
Current Baseline Estimated Existing Daily Operations Emissions

Emission Source	Pounds per Day					
	VOC	NO _x	CO	SO _x	PM ₁₀	PM _{2.5}
Area Sources	1	<1	<1	<1	<1	<1
Energy Sources	<1	1	1	<1	<1	<1
Mobile Sources	7	20	82	<1	4	4
Total Operations	8	21	83	<1	14	4
<i>Source: DKA Planning 2017 based on CalEEMod 2016.3.1 model runs.</i>						

Table 3.3-7
Estimated Daily Operations Emissions - Unmitigated

Emissions Source	Pounds Per Day					
	VOC	NO _x	CO	SO _x	PM ₁₀	PM _{2.5}
Area Sources	1	<1	<1	<1	<1	<1
Energy Sources	<1	1	1	<1	<1	<1
Mobile Sources	2	9	24	<1	6	2
Net Regional Total	4	10	25	<1	6	2
Regional Significance Threshold	55	55	550	150	150	55
Exceed Threshold?	No	No	No	No	No	No
Net Localized Total	1	1	1	<1	<1	<1
Localized Significance Threshold	-	74	680	-	2	1
Exceed Threshold?	N/A	No	No	N/A	No	No
<i>Source: DKA Planning 2017 based on CalEEMod 2016.3.1 model runs. Data in Appendix to this IS/MND. Numbers may not add up due to rounding.</i>						

The tables above clearly demonstrate that the operational emissions from the Approved Project and the proposed Project were evaluated separately. This is completely incorrect, at full Project operation the

Project site will generate emissions from both the Approved Project and the proposed Project. Simply because the prior site's MND found that the Approved Project's operational emissions would be "less than significant" does not mean that new land uses on the site should be evaluated independently of the entire site. Therefore, in order to accurately determine the Project significance, the Project Applicant must compare the operational emissions resulting from all land uses on-site. Prior to Project Approval, an updated analysis should be conducted that compares all operational emissions to thresholds.

Diesel Particulate Matter Health Risk Emissions Inadequately Evaluated

The IS/MND concludes that the Project would have a less than significant impact on the health of nearby sensitive receptors, yet fails to conduct a quantified construction or operational health risk assessment (HRA) to support its conclusion (p. 3-31). The IS/MND attempts to justify this finding by comparing the Project's construction and operational criteria air pollutant emissions (CO, NOx, PM10, and PM2.5) to the South Coast Air Quality Management District's (SCAQMD) Localized Significance Thresholds (LSTs) (p. 3-31 - 3-32). While the LST method assesses the impacts of pollutants at a local level, it only evaluates impacts from criteria air pollutants. As a result, health impacts from exposure to TACs, such as diesel particulate matter (DPM), were not analyzed, thus leaving a gap within the IS/MND's analysis.

Additionally, the IS/MND attempts to further justify the omission of an operational HRA, by stating,

"Finally, TAC emissions are not expected to be significant, as the Project does not include typical sources of acutely and chronically hazardous TACs such as industrial manufacturing processes and automotive repair facilities. In addition, SCAQMD recommends that health risk assessments be conducted for substantial sources of diesel particulate emissions (e.g., truck stops and warehouse distribution facilities) and has provided guidance for analyzing mobile source diesel emissions. The Project is not anticipated to generate a substantial number of truck trips. Based on the limited activity of TAC sources, the Project would not warrant the need for a health risk assessment associated with on-site activities, and any minimal TAC impacts are expected to be less than significant" (p. 3-32).

These justifications for omitting a quantified construction and operational HRA are incorrect for several reasons.

First, according to the IS/MND, the following sensitive receptors are located within the vicinity of the Project site:

"The nearest off-site residential uses are approximately 300 feet to the west of Schrader Boulevard, north of Selma Avenue (1611 N. Schrader Boulevard, 1616 N. Schrader Boulevard, and 1618 N. Schrader Boulevard); approximately 360 feet to the west of the project site at the southeast corner of Schrader Boulevard and Selma Avenue (1544-1552 N. Schrader Boulevard); and approximately 330 feet east of the Project Site at N. Cosmo Street (Cosmo Lofts).

- Selma Avenue Elementary School (6611 Selma Avenue) is approximately 700 feet west of the Site

- Selma Park (6567 Selma Avenue) is approximately 475 feet west of the Site” (p. 2-6).

As you can see in the excerpt above, there are numerous sensitive receptors located near the Project site. Construction of the proposed buildings and parking land uses will require the use of off-road equipment and heavy-duty on-road hauling trucks, which both emit DPM emissions, a known human carcinogen (Appendix C, pp. 6). Furthermore, once operational, the Project will generate additional vehicle trips that will emit substantial amounts of DPM emissions (Appendix C, pp. 12). Finally, Rule 1401.1 was established by the SCAQMD to be more health protective for school children located near facilities that emit toxic air contaminants (TACs).⁸ According to the SCAQMD’s *Risk Assessment Procedures for Rules 1401, 1401.1, & 212*, which describes the procedures for preparing risk assessments, “Rule 1401.1 is designed to be more health protective for school children than Rule 1401 by establishing more stringent risk requirements related to facility-wide cancer risk and non-cancer acute and chronic HI for new and relocated facilities emitting toxic air contaminants near schools, thereby reducing the exposure of toxic emissions to school children.”⁹ Therefore, due to the close proximity of numerous sensitive receptors to the Project site (including an elementary school), and the potential for the Project to emit substantial amounts of TACs, the health risk from the Project’s construction and operational emissions should have also been evaluated by the IS/MND. By failing to do so, the Project’s air quality impacts are not adequately addressed or evaluated.

Second, according to the Final Localized Significance Threshold Methodology document prepared by the SCAQMD, the LST analysis is only applicable to NO_x, CO, PM₁₀, and PM_{2.5} emissions, which are collectively referred to as criteria air pollutants.¹⁰ Because the LST method can only be applied to criteria air pollutants, this method cannot be used to determine whether emissions from DPM will result in a significant health risk impact to nearby sensitive receptors. By failing to prepare an HRA in addition to the LST analysis, the IS/MND fails to provide a comprehensive analysis of the sensitive receptor impacts that may occur as a result of exposure to substantial air pollutants. Furthermore, the SCAQMD provides a specific numerical threshold of 10 in one million for determining a project’s health risk impact, which supports the requirement of an HRA in addition to the LST analysis. Therefore, in order to determine the Project’s health risk impact, the IS/MND should have conducted an assessment that compares the Project’s health risk to the SCAQMD specific numeric threshold of 10 in one million.

Third, just because the Project does not propose land uses that would “include typical sources of acutely and chronically hazardous TACs”, and, simply because the Project Applicant asserts that “the Project is not anticipated to generate a substantial number of truck trips” does not mean that an HRA for the proposed Project is not needed. According to the SCAQMD, the lead air pollution control agency for the

⁸ “Risk Assessment Procedures for Rules 1401, 1401.1, & 212,” SCAQMD, *available at*: <http://www.aqmd.gov/docs/default-source/planning/risk-assessment/riskassprocjune15.pdf?sfvrsn=2>, p. 1

⁹ “Risk Assessment Procedures for Rules 1401, 1401.1, & 212,” SCAQMD, *available at*: <http://www.aqmd.gov/docs/default-source/planning/risk-assessment/riskassprocjune15.pdf?sfvrsn=2>, p. 3

¹⁰ “Final Localized Significance Threshold Methodology,” SCAQMD, Revised July 2008, *available at*: <http://www.aqmd.gov/docs/default-source/ceqa/handbook/localized-significance-thresholds/final-lst-methodology-document.pdf>

proposed Project, preparation of an HRA is not restricted to specific land uses that may involve use of carcinogenic or non-carcinogenic TACs. Instead, the SCAQMD recommends performing an HRA for any project that is expected to generate mobile emissions from diesel powered equipment and trucks. According to SCAQMD's Mobile Source Toxics Analysis page on AQMD's website (emphasis added),

"In August 2002, the SCAQMD's Mobile Source Committee approved the 'Health Risk Assessment Guidance for Analyzing Cancer Risks from Mobile Source Diesel Emissions.' This document provided guidance for analyzing cancer risks from diesel particulate matter from mobile sources at facilities such as truck stops and warehouse distribution centers. Subsequently, SCAQMD staff revised the aforementioned document to expand the analysis to provide technical guidance for analyzing cancer risks from potential diesel particulate emissions impacts from truck idling and movement (such as, but not limited to, truck stops, warehouse and distribution centers, or transit centers), ship hotelling at ports, and train idling. This revised guidance document titled, 'Health Risk Assessment Guidance for Analyzing Cancer Risks from Mobile Source Diesel Idling Emissions for CEQA Air Quality Analysis' was presented to and approved by the SCAQMD's Mobile Source Committee at its March 28, 2003 committee meeting. It is suggested that projects with diesel powered mobile sources use the following guidance document to quantify potential cancer risks from the diesel particulate emission".¹¹

As you can see in the excerpt above, the SCAQMD explicitly states that in the event that the proposed Project generates or attracts vehicular trips, a mobile source HRA must be prepared. The SCAQMD does not state that the preparation of an HRA should be restricted to specific land uses, nor does it state that mixed-use projects are exempt from this recommendation. Rather, all the SCAQMD states is that "it is suggested that projects with diesel powered mobile sources" use the SCAQMD's Health Risk Assessment Guidance "to quantify potential cancer risks from the diesel particulate emission."¹² Once operational, the Project's commercial land uses, such as the proposed restaurants and hotel, will result in frequent truck deliveries, generating large amounts of diesel exhaust over the duration of Project operation (Appendix C, pp. 12). As such, the IS/MND should have conducted a construction and operational HRA, as long-term exposure to DPM and other TACs may result in a significant health risk impact and therefore, should be properly assessed.

Finally, the omission of a quantified health risk is inconsistent with the most recent guidance published by Office of Environmental Health Hazard Assessment (OEHHHA), the organization responsible for providing recommendations and guidance on how to conduct health risk assessments in California. In February of 2015, OEHHHA released its most recent *Risk Assessment Guidelines: Guidance Manual for*

¹¹ "Mobile Source Toxics Analysis." SCAQMD, available at: <http://www.aqmd.gov/home/regulations/ceqa/air-quality-analysis-handbook/mobile-source-toxics-analysis>

¹² "Mobile Source Toxics Analysis," SCAQMD, available at: <http://www.aqmd.gov/home/regulations/ceqa/air-quality-analysis-handbook/mobile-source-toxics-analysis>

Preparation of Health Risk Assessments, which was formally adopted in March of 2015.¹³ This guidance document describes the types of projects that warrant the preparation of an HRA. As previously stated, construction activities for the proposed Project will produce emissions of DPM through the exhaust stacks of construction equipment over an approximate 456-day period (p. 2-11). The OEHHA document recommends that all short-term projects lasting at least two months be evaluated for cancer risks to nearby sensitive receptors.¹⁴ Once construction is complete, Project operation will generate truck trips, which will generate additional exhaust emissions, thus continuing to expose nearby sensitive receptors to DPM emissions. The OEHHA document recommends that exposure from projects lasting more than 6 months should be evaluated for the duration of the project, and recommends that an exposure duration of 30 years be used to estimate individual cancer risk for the maximally exposed individual resident (MEIR).¹⁵ Even though we were not provided with the expected lifetime of the Project, we can reasonably assume that the Project will operate for at least 30 years, if not more. Therefore, per SCAQMD and OEHHA guidelines, health risk impacts from Project construction and operation should have been evaluated by the IS/MND. These recommendations reflect the most recent HRA policy, and as such, an assessment of health risks to nearby sensitive receptors from construction and operation should be included in a revised CEQA evaluation for the Project.

For the reasons mentioned above, we find the IS/MND to be inadequate and unreliable. By failing to prepare an HRA, the IS/MND fails to provide a comprehensive analysis of the sensitive receptor impacts that may occur as a result of exposure to the Project's potentially substantial air pollutant emissions. In an effort to demonstrate the potential risk posed by Project construction and operation to nearby sensitive receptors, we prepared a simple screening-level HRA. The results of our assessment, as described below, provide substantial evidence that the Project's construction and operational DPM emissions may result in a potentially significant health risk impact that was not previously identified.

In order to conduct our screening level risk assessment we relied upon AERSCREEN, which is a screening level air quality dispersion model.¹⁶ The model replaced SCREEN3, and AERSCREEN is included in the OEHHA¹⁷ and the California Air Pollution Control Officers Associated (CAPCOA)¹⁸ guidance as the appropriate air dispersion model for Level 2 health risk screening assessments ("HRSAs"). A Level 2 HRSA utilizes a limited amount of site-specific information to generate maximum reasonable downwind concentrations of air contaminants to which nearby sensitive receptors may be exposed. If an

¹³ "Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments." OEHHA, February 2015, available at: <https://oehha.ca.gov/media/downloads/crn/2015guidancemanual.pdf>

¹⁴ "Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments." OEHHA, February 2015, available at: <https://oehha.ca.gov/media/downloads/crn/2015guidancemanual.pdf>, p. 8-18

¹⁵ "Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments." OEHHA, February 2015, available at: <https://oehha.ca.gov/media/downloads/crn/2015guidancemanual.pdf>, p. 8-6, 8-15

¹⁶ "AERSCREEN Released as the EPA Recommended Screening Model," USEPA, April 11, 2011, available at: http://www.epa.gov/ttn/scram/guidance/clarification/20110411_AERSCREEN_Release_Memo.pdf

¹⁷ "Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments." OEHHA, February 2015, available at: <https://oehha.ca.gov/media/downloads/crn/2015guidancemanual.pdf>

¹⁸ "Health Risk Assessments for Proposed Land Use Projects," CAPCOA, July 2009, available at: http://www.capcoa.org/wp-content/uploads/2012/03/CAPCOA_HRA_LU_Guidelines_8-6-09.pdf

unacceptable air quality hazard is determined to be possible using AERSCREEN, a more refined modeling approach is required prior to approval of the Project.

We prepared a preliminary health risk screening assessment of the Project's construction and operational impact to sensitive receptors using the annual PM₁₀ exhaust estimates from the IS/MND's CalEEMod model. As previously stated, the IS/MND states that the nearest sensitive receptor is approximately 300 feet, or 91 meters, away from the Project site (p. 2-6). Consistent with recommendations set forth by OEHHA, we used a residential exposure duration of 30 years, starting from the infantile stage of life. We also assumed that construction and operation of the Project would occur in quick succession, with no gaps between each Project phase. The annual emissions from the CalEEMod model indicate that construction activities will generate approximately 334 pounds of DPM over the 456-day construction period. The AERSCREEN model relies on a continuous average emission rate to simulate maximum downward concentrations from point, area, and volume emission sources. To account for the variability in equipment usage and truck trips over Project construction, we calculated an average DPM emission rate by the following equation.

$$\text{Emission Rate} \left(\frac{\text{grams}}{\text{second}} \right) = \frac{334 \text{ lbs}}{456 \text{ days}} \times \frac{453.6 \text{ grams}}{\text{lb}} \times \frac{1 \text{ day}}{24 \text{ hours}} \times \frac{1 \text{ hour}}{3,600 \text{ seconds}} = 0.003845 \text{ g/s}$$

Using this equation, we estimated a construction emission rate of 0.003845 grams per second (g/s). The IS/MND's annual CalEEMod output files for the proposed land uses and the annual CalEEMod emissions from the Approved Project, found in Appendix C-2, on the Project site indicate that operational activities will generate approximately 79 pounds of DPM per year over the 28.75-years of operation. Applying the same equation used to estimate the construction DPM emission rate, we estimated the following emission rate for Project operation.

$$\text{Emission Rate} \left(\frac{\text{grams}}{\text{second}} \right) = \frac{79 \text{ lbs}}{365 \text{ days}} \times \frac{453.6 \text{ grams}}{\text{lb}} \times \frac{1 \text{ day}}{24 \text{ hours}} \times \frac{1 \text{ hour}}{3,600 \text{ seconds}} = 0.001136 \text{ g/s}$$

Using this equation, we estimated an operational emission rate of 0.001136 g/s. Construction and operational activity was simulated as a 0.495-acre rectangular source in AERSCREEN, with dimensions of 65 meters by 31 meters. A release height of three meters was selected to represent the height of exhaust stacks on operational equipment and other heavy-duty vehicles, and an initial vertical dimension of one and a half meters was used to simulate instantaneous plume dispersion upon release. An urban meteorological setting was selected with model-default inputs for wind speed and direction distribution.

The AERSCREEN model generates maximum reasonable estimates of single-hour DPM concentrations from the Project site. EPA guidance suggests that in screening procedures, the annualized average concentration of an air pollutant be estimated by multiplying the single-hour concentration by 10%.¹⁹ For example, for the MEIR the single-hour concentration estimated by AERSCREEN for Project

¹⁹ http://www.epa.gov/ttn/scram/guidance/guide/EPA-454R-92-019_OCR.pdf

construction is approximately 4.943 $\mu\text{g}/\text{m}^3$ DPM at approximately 100 meters. Multiplying this single-hour concentration by 10%, we get an annualized average concentration of 0.4943 $\mu\text{g}/\text{m}^3$ for Project construction at the MEIR. For Project operation, the single-hour concentration at the MEIR estimated by AERSCREEN is approximately 1.461 $\mu\text{g}/\text{m}^3$ DPM at approximately 100 meters downwind. Multiplying this single-hour concentration by 10%, we get an annualized average concentration of 0.1461 $\mu\text{g}/\text{m}^3$ for Project operation at the MEIR.

We calculated the excess cancer risk to the residential receptors located closest to the Project site using the applicable health risk assessment methodologies prescribed by OEHHA and the SCAQMD. Consistent with the construction schedule proposed by the IS/MND, the annualized average concentration for construction was used for the first 1.25 years of the infantile stage of life (0-2 years). The annualized average concentration for operation was used for the remainder of the 30-year exposure period, which makes up the remainder of the infantile stage of life (0-2 years), the child stages of life (2 to 16 years) and adult stage of life (16 to 30 years). Consistent with OEHHA guidance, we used Age Sensitivity Factors (ASFs) to account for the heightened susceptibility of young children to the carcinogenic toxicity of air pollution.²⁰ According to the updated guidance, quantified cancer risk should be multiplied by a factor of ten during the first two years of life (infant) and should be multiplied by a factor of three during the child stage of life (2 to 16 years). Furthermore, in accordance with guidance set forth by OEHHA, we used 95th percentile breathing rates for infants.²¹ We used a cancer potency factor of 1.1 (mg/kg-day)⁻¹ and an averaging time of 25,550 days. The results of our calculations are shown below.

The Maximum Exposed Individual at an Existing Residential Receptor (MEIR)					
Activity	Duration (years)	Concentration ($\mu\text{g}/\text{m}^3$)	Breathing Rate (L/kg-day)	ASF	Cancer Risk
Construction	1.25	0.4943	1090	10	1.0E-04
Operation	0.75	0.1461	1090	10	1.8E-05
Infant Exposure Duration	2.00			Infant Exposure	1.2E-04
Operation	14.00	0.1461	572	3	5.3E-05
Child Exposure Duration	14.00			Child Exposure	5.3E-05
Operation	14.00	0.1461	261	1	8.0E-06
Adult Exposure Duration	14.00			Adult Exposure	8.0E-06
Lifetime Exposure Duration	30.00			Lifetime Exposure	1.8E-04

²⁰ "Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments." OEHHA, February 2015, available at: <https://oehha.ca.gov/media/downloads/crn/2015guidancemanual.pdf>

²¹ "Supplemental Guidelines for Preparing Risk Assessments for the Air Toxics 'Hot Spots' Information and Assessment Act," June 5, 2015, available at: <http://www.aqmd.gov/docs/default-source/planning/risk-assessment/ab2588-risk-assessment-guidelines.pdf?sfvrsn=6>, p. 19

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

The excess cancer risk posed to adults, children, and infants at the MEIR located approximately 100 meters away, over the course of Project construction and operation are approximately 8.0, 53, and 120 in one million, respectively. Furthermore, over the course of a residential lifetime (30 years) at the MEIR is approximately 180 in one million. Consistent with OEHHA guidance, exposure was assumed to begin in the infantile stage of stage to provide the most conservative estimates of air quality hazards. The infant, child, and lifetime cancer risks exceed the SCAQMD's threshold of 10 in one million.

It should be noted that our analysis represents a screening-level HRA, which is known to be more conservative, and tends to err on the side of health protection.²² The purpose of a screening-level HRA, however, is to determine if a more refined HRA needs to be conducted. If the results of a screening-level health risk are above applicable thresholds, then the Project needs to conduct a more refined HRA that is more representative of site specific concentrations. Our screening-level HRA demonstrates that construction and operation of the Project could result in a potentially significant health risk impact, when correct exposure assumptions and up-to-date, applicable guidance are used. As a result, a refined HRA must be prepared to examine air quality impacts generated by Project construction and operation. A Project-specific DEIR must be prepared to adequately evaluate the Project's health risk impact, and should include additional mitigation measures to reduce these impacts to a less-than-significant level.

Piecemealing of Thompson Hotel and Existing Tao Restaurant Impacts

Review of the IS/MND indicates that the Project is proposing to locate a portion of its parking spaces at an off-site Thompson Hotel location (p. 3-118), and the rest in the existing Tao underground garage. Specifically, the IS/MND states that approximately 41.9 percent of the Project's 86 required parking spaces (39 actual spaces) will be located off site at a parking facility within the recently permitted Thompson Hotel Project studied by its IS/MND (Case No. ENV-2014-3707-EAF, then known as the 1541 Wilcox Hotel) (p. 3-118). The IS/MND explains,

"There will be a minimum of 50 total underground on-site parking spaces to serve the Project and 36 off-site spaces. The remaining 36 spaces will be accommodated by parking structure as part of the permitted and under construction Thompson Hotel Project at 1541 Wilcox Avenue. There may be a possibility of expanding the number of parking spaces within the garage through a more efficient parking-attendant stacked parking system" (p. 3-118).

The IS/MND for the proposed Project, however, fails to prepare any kind of air quality analysis on the combined impacts resulting from construction and operation of the 36-space parking Thompson parking, or the existing 50 Tao underground structure in combination with the proposed Project. They should have been studied together. Additionally, the IS/MND states that the Project's impacts will be analyzed using two baselines, referred to as the Original Baseline and Current Baseline (p. 1). The IS/MND states that the Current Baseline describes the existing environmental conditions "which includes the 20,624 square feet of restaurant, partial construction of three-levels of subterranean

²²<https://oehha.ca.gov/media/downloads/cnr/2015guidancemanual.pdf>, p. 1-5

parking, and an excavated area" (p. 1). Furthermore, the IS/MND states in addition to the parking spaces that would be provided at the off-site parking facility (Thompson Hotel), the remaining 50 parking spaces would be provided in the existing Tao three-level "partial" subterranean parking structure (p. 1). Thus, the IS/MND has not properly evaluated the entirety of the Project's impacts, as impacts from the Thompson Hotel development and the existing Tao parking structure were not evaluated within this IS/MND, but rather in other environmental documents (see Case No. ZA-2015-2671(CUB) and ENV-2015-2672-MND). The IS/MND's lack of such cumulative analyses is concerning and results in a classic case of piecemealing. According to the Association of Environmental Professionals (AEP) piecemealing is prohibited by CEQA.²³ In regard to piecemealing, AEP states the following,

"Piecemealing or segmenting means dividing a project into two or more pieces and evaluating each piece in a separate environmental document, rather than evaluating the whole of the project in one environmental document. This is explicitly forbidden by CEQA, because dividing a project into a number of pieces would allow a Lead Agency to minimize the apparent environmental impacts of a project by evaluating individual pieces separately, each of which may have a less-than-significant impact of the environment, but which together may result in a significant impact. Segmenting a project may also hinder developing comprehensive mitigation strategies. In general, if an activity or facility is necessary for the operation of a project, or necessary to achieve the project objectives, or a reasonably foreseeable consequence of approving the project, then it should be considered an integral project component that should be analyzed within the environmental analysis."²⁴

As described above, failing to analyze all potential impacts in the same environmental document can lead to piecemealing.²⁵ The environmental impacts, including air quality of both hotels and the Tao restaurant site, have been studied separately when in fact they should be studied together, given the interdependence and interconnected utility of their operation. In order to avoid piecemealing, the IS/MND should have evaluated the potential air quality impacts resulting from both hotels and the Tao restaurant. By failing to prepare such an analysis, the IS/MND fails to provide a comprehensive evaluation of all the Project's potential impacts. For example, when the air quality impacts from the Thompson hotel and proposed Project are combined we find that the combined construction-related

²³ "CEQA Portal Topic Paper," AEP, available at: <https://ceqaportal.org/tp/Project%20Description%2003-23-161.pdf>

²⁴ *Ibid.*

²⁵ We have been informed that a clear and more extensive interrelated plan for the area is also evident in: 1) postings on the Tao Group's web site (see www.taogroupla.com and <https://hamptons-magazine.com/tao-group-revitalizes-hollywood-with-restaurants-nightclubs-and-botique-hotels>); 2) the fact that the limited liability corporation that was listed as the applicant for the Tao restaurant project is the Selma-Wilcox Hotel LLC, the same applicant as the current hotel project – clear evidence that the current hotel project was a part of the plan when that lesser project was applied for; and 3) the fact that the limited liability companies listed as the applicant for both hotel projects have the same address – 1605 Cahuenga Boulevard – suggesting that the development of surplus parking on the Thompson site may have been pre-arranged to service the Selma-Wilcox hotel.

NOx emissions would be approximately 112 pounds per day (lbs/day)²⁶, which exceeds the SCAQMD's threshold of 100 lbs/day. Thus, because the IS/MND for the proposed Project failed to evaluate these emissions, it failed disclose a significant construction-related air quality impact.

Greenhouse Gas

Failure to Adequately Assess the Project's Greenhouse Gas Impacts

In an effort to comply with CEQA and the California Global Warming Solution Act, AB 32, the IS/MND compares the Project's construction and operational greenhouse gas (GHG) emissions to the emissions that would be generated by the Project in the absence of any GHG reduction measures, also known as a the No Action Taken Scenario (NAT).²⁷ According to the IS/MND, "the Project is consistent with the reduction target as a numeric threshold (15.3) set forth in the 2014 Revised AB 32 Scoping Plan" (p. 3-71). Using this method, the IS/MND concludes that because the Project would achieve a 34 percent reduction in GHGs between the NAT and As Proposed scenarios that is consistent with the AB 32 Scoping Plan's statewide reduction goals, that the Project would have a less than significant GHG impact (p. 3-71, p. 3-73). The use of this threshold to determine whether or not the Project would result in a significant GHG impact, however, is flawed and should not be relied upon to determine impact significance, as recent law made by the California Supreme Court case *Center for Biological Diversity et al. v. California Department of Fish and Wildlife and the Newhall Land and Farming Company* 2015 Cal. LEXIS 9478 (*Newhall Case*),²⁸ makes clear that this approach utilized in the IS/MND to achieve compliance with AB 32 is improper. The *Newhall* Case concludes that lead agencies cannot use the statewide GHG emission reduction percentage as the CEQA threshold to determine whether a specific project-level proposed Project has significant GHG emissions.²⁹ As a result, this method of determining Project significance is incorrect and should not be relied upon.

The IS/MND incorrectly relies on the NAT methodology to determine the Project's GHG impacts. According to the IS/MND, the Project would have to achieve a 15.3 percent reduction from NAT that is consistent with the CARB Scoping Plan to result in a less than significant GHG impact (p. 3-71). Using the anticipated year of Project build out, the IS/MND takes the statewide reduction goal for 2020 and determines the percent reduction from NAT that the Project would need to meet in order to achieve statewide goals (p. 3-71). Using a straight-line comparison between Project-specific and statewide GHG emission reductions, the Project would reduce its GHG emissions by 34 percent, which, according to the IS/MND, is consistent with the statewide reduction goal (p. 3-71). As a result, the IS/MND concludes that the Project would have a less than significant GHG impact (p. 3-73). The use of a "straight-line" comparison between Project-specific and statewide GHG emissions, both by the Newhall Ranch EIR and

²⁶ When the "Demolition – Building + Grading" construction NOx emissions from the 1541 Wilcox Hotel IS/MND (85.08 lbs/day) is added to the proposed Project's construction-related NOx emissions (26.56 lbs/day) (Appendix C-1, pp. 23), we find that that the combined emissions, totaling 111.64 lbs/day, would result in a significant impact.

²⁷ IS/MND refers to this scenario as the No Action Taken (NAT) scenario as well. Both terms can be used interchangeably.

²⁸ <https://caselaw.findlaw.com/ca-supreme-court/1719578.html>

²⁹ <http://www.arb.ca.gov/cc/ab32/ab32.htm>

the Selma Wilcox Hotel Project IS/MND, however, is flawed, because the percent reduction required by the proposed Project at the project-level is not directly comparable to the percent reduction required to meet the statewide goal. Reducing the Project's emissions to below statewide business as usual levels would not be sufficient to reduce the entire state's GHG impacts to below a level of significance unless all developments currently in operation, and all future projects in California, of any size, were also required to reduce their emission to below business as usual by the same percentage. The *Newhall Case* makes clear that this approach utilized in the IS/MND to achieve compliance with AB 32 is improper. The *Newhall Case* concludes that agencies cannot use the statewide GHG emission reduction percentage as the CEQA threshold to determine whether a specific project has significant GHG emissions.³⁰ As explained in the *Newhall Case*, there is currently "no substantial evidence that Newhall Ranch's project-level reduction of 31 percent in comparison to business as usual is consistent with achieving AB 32's statewide goal of a 29 percent reduction from business as usual..."³¹ As the *Newhall Case* explained in striking down the California Fish and Wildlife GHG analysis (emphasis added):

"The Scoping Plan set out a statewide reduction goal and a framework for reaching it—a set of broadly drawn regulatory approaches covering all sectors of the California economy and projected, if implemented and followed, to result in a reduction to 1990-level greenhouse gas emissions by the year 2020. The plan expressed the overall level of conservation and efficiency improvements required as, among other measures, a percentage reduction from a hypothetical scenario in which no additional regulatory actions were taken. But the Scoping Plan nowhere related that statewide level of reduction effort to the percentage of reduction that would or should be required from individual projects, and nothing DFW or Newhall have cited in the administrative record indicates the required percentage reduction from business as usual is the same for an individual project as for the entire state population and economy. Plaintiffs put forward one ready reason to suspect that the percent reduction is not the same, and that in fact a greater degree of reduction may be needed from new land use projects than from the economy as a whole ... The administrative record does not establish a firm ground for the efficiency comparison the EIR makes and thus, for this reason as well, does not substantially support the EIR's conclusion that Newhall Ranch's 31 percent emissions savings over business as usual satisfies the report's significance criterion of consistency with the Scoping Plan's 29 percent statewide savings by 2020 ... The EIR simply assumes that the level of effort required in one context, a 29 percent reduction from business as usual statewide, will suffice in the other, a specific land use development."³²

As stated above, the Scoping Plan is in no way related to the statewide level of reduction or to the percentage of reduction that would or should be required from individual projects, and nothing in the Newhall EIR or in the IS/MND for the proposed Project, indicates that the required percent reduction from business as usual is the same for an individual project as for the entire state population and

³⁰ <http://www.arb.ca.gov/cc/ab32/ab32.htm>

³¹ <https://caselaw.findlaw.com/ca-supreme-court/1719578.html>

³² <https://caselaw.findlaw.com/ca-supreme-court/1719578.html>

economy. The lead agencies for the *Newhall* Case and the IS/MND for the Selma Wilcox Hotel Project improperly used the statewide percentage goal as a significance threshold for GHG emissions. The *Newhall* Case makes clear that the Project may in fact have to do far better. As such, the Project Applicant must identify an acceptable method of compliance with CEQA and AB 32 for the Project's GHG emissions, and must determine a Newhall-compliant alternative threshold for the Project-specific GHG emissions.

Updated Greenhouse Gas Analysis Demonstrates Significant Impact

Because the method used within the IS/MND to determine whether or not the Project would have a significant GHG impact is flawed, alternative thresholds and methods should be relied upon to adequately determine the Project's GHG impact.

In December 2008, the SCAQMD released its *Interim CEQA GHG Significance Threshold for Stationary Sources, Rules, and Plans* report.³³ According to this Interim Guidance, the SCAQMD proposes the use of a 3,000 metric tons of carbon dioxide equivalents per year (MT CO₂e/yr) threshold for mixed use developments, a 3,500 MT CO₂e/yr threshold for residential developments, a 1,400 MT CO₂e/yr threshold for commercial developments, and a 10,000 MT CO₂e/yr threshold for industrial projects.

Although the City of Los Angeles has not formally adopted these thresholds, these thresholds are designed for application at the project level and thus provide at least a more, conservative relevant way of screening to determine the significance of the Project's GHG emissions than the IS/MND's illogical comparison of statewide reduction percentage goals to project-level reduction percentages.³⁴ Because the proposed Project is a commercial project, the most appropriate screening threshold to apply to the Project would be the 1,400 MT CO₂e/yr threshold recommended by the SCAQMD for commercial developments.

When the emissions estimated in the IS/MND for the proposed Project are compared to this commercial threshold, we find that the Project's GHG emissions would exceed the SCAQMD's threshold (see table below).

³³ [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)

³⁴ Even this threshold likely is outdated. It was circulated by a South Coast AQMD Working Group that has not met since 2010 and that was never adopted by any agency "by ordinance, resolution, rule, or regulation" as required by CEQA GUIDELINES § 15064.7(b) or (c). It was not crafted to comply with the more aggressive goals of SB32, which did not exist in 2010. A GHG significance finding must be "based to the extent possible on scientific and factual data," in step with evolving scientific knowledge and state regulatory schemes" and presented "in a manner calculated to adequately inform the public and decision makers." *Cleveland National Forest Found. v. San Diego Assn. of Gov'ts.* (2017) 3 Cal.5th 497, 504–507, 518–519.

Proposed Project's Annual Greenhouse Gas Emissions	
Phase	MT CO₂e/year
Construction (Amortized)	21
Proposed Project Operational	1,958
Total	1,979
SCAQMD Significance Threshold	1,400
Exceed?	Yes

As you can see in the table above, the proposed Project would generate 1,979 MT CO₂e/yr, which exceeds the 1,400 MT CO₂e/yr screening threshold. The proposed Project's emissions demonstrate that the Project would result in a potentially significant GHG impact that was not previously examined or identified in the IS/MND. Furthermore, these emissions are most likely underestimated since, as previously mentioned, the IS/MND relies on a flawed CalEEMod model that underestimates emissions and also fails to account for emissions generated by the Approved Project. As a result, an updated GHG analysis should be conducted in a project-specific DEIR that adequately estimates the Project's GHG emissions, and additional mitigation should be incorporated, where necessary.

Failure to Utilize GHG Reduction Targets Specified in Senate Bill

AB 32 requires California to reduce GHG emissions to 1990 levels by 2020.³⁵ However, in September 2016, prior to the release of the IS/MND, Governor Brown signed Senate Bill 32, enacting HEALTH & SAFETY CODE § 38566. AR 305. This statute ("SB 32") requires California to achieve a new, more aggressive 40% reduction in GHG emissions over the 1990 levels by 2030.³⁶ "This 40 percent reduction is widely acknowledged as a necessary interim target to ensure that California meets its longer-range goal of reducing greenhouse gas emissions to 80 percent below 1990 levels by the year 2050."³⁷ Therefore, by failing to demonstrate consistency with the reduction targets set forth by SB 32, the Project may conflict with an applicable plan, policy, or regulation adopted for the purpose of reducing GHG emissions. As a result, the Project may have a potentially significant impact that was not previously addressed in the IS/MND, and as such, a DEIR should be prepared.

SB 32³⁸ requires emissions reductions above those mandated by AB 32 to reduce GHG emissions 40 percent below their 1990 levels by 2030. 1990 statewide GHG emissions are estimated to be approximately 431 million MTCO₂e (MMTCO₂e).³⁹ Therefore, by 2030 California will be required to reduce statewide emissions by 172 MMTCO₂e (431 x 40%), which results in a statewide limit on GHG emissions of 259 MMTCO₂e. 2020 "business-as-usual" levels are estimated to be approximately 509 MMTCO₂e.⁴⁰ Therefore, in order to successfully reach the 2030 statewide goal of 259 MMTCO₂e,

³⁵ HEALTH & SAFETY CODE § 38500 *et seq.*; AR 235, 470.

³⁶ *Ibid.*

³⁷ *Cleveland*, 3 Cal.5th at 519.

³⁸ https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB32

³⁹ <http://www.arb.ca.gov/cc/inventory/data/bau.htm>

⁴⁰ http://energyinnovation.org/wp-content/uploads/2015/04/CA_CapReport_Mar2015.pdf

California would have to reduce its emissions by 49 percent below the “business-as-usual” levels. This reduction target indicates that compliance with these more aggressive reduction goals, beyond what is mandated by AB 32, will be necessary.

This 49 percent reduction target should be considered as a threshold of significance against which to measure Project impacts. Because the proposed Project is unlikely to be redeveloped again prior to 2030, the 2030 goals are applicable to any evaluation of the Project’s impacts. A DEIR should be prepared to demonstrate the Project’s compliance with these more aggressive measures specified in SB 32. Specifically, the Project should demonstrate, at a minimum, a reduction of 49 percent below “business-as-usual” levels. It should be noted that this reduction percentage is applicable to statewide emissions, which is not directly applicable to a project-level analysis. As a result, an additional analysis would need to be conducted to translate the new statewide targets into a project-specific threshold against which Project GHG emissions can be compared. A DEIR should be prepared to quantify any reductions expected to be achieved by mitigation measures, shown by substantial evidence that such measures will be effective, and should demonstrate how these measures will reduce the emissions below the new 2030 significance threshold.

Newhall Ranch Requires Additionality

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).⁴¹ 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.⁴² Hence, a “project should not subsidize or take credit for emissions reductions which would have occurred regardless of the project.”⁴³ 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

⁴¹ See Final Statement of Reasons for Regulatory Action: Amendments to State CEQA Guidelines Addressing Analysis and Mitigation of GHG Emissions Pursuant to SB-97 (“*Final Statement of Reasons*”) (Dec. 2009), p. 23 available at 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”).

⁴² See Final Statement of Reasons, p. 89; see also California Air Pollution Control Officers Association (“CAPCOA”) (Aug. 2010) Quantifying Greenhouse Gas Mitigation Measures, pp. 32, A3 available at <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.”).

⁴³ *Supra* fn 30.

the Supreme Court's *Newhall Ranch* decision. See *Center for Biological Diversity v. Cal. Dept. of Fish and Wildlife* (2015) 62 Cal.4th 204, 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, including those new, feasible mitigation measures found in CAPCOA's *Quantifying Greenhouse Gas Mitigation Measures*, which attempt to reduce GHG levels.

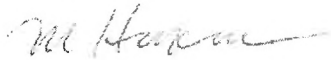
Incorrect Use of Green Building Ordinance and City of Los Angeles ClimateLA Implementation Plan to Determine Significance

The IS/MND states that the Project would result in a less than significant GHG impact if the Project was found to be consistent with several applicable regulatory plans and policies (p. 3-69). Specifically, the IS/MND notes that compliance with the Green Building Ordinance and ClimateLA Implementation Plan would result in a less than significant impact (p. 3-69). While the IS/MND mentions Green Building Ordinance standards, and points to various Project characteristics required by City ordinances or state statutes to conserve energy, the Green Building Ordinance and ClimateLA Implementation Plan do not meet the criteria for an officially adopted GHG reduction target for use as a threshold of significance for GHG emissions as required by GUIDELINES § 15064.4(b)(3). No actual, quantified, or evidence-supported GHG emissions reductions to meet current GHG reduction targets in a plan "adopted by the relevant public agency through a public review process" [GUIDELINES § 15064.4(b)(3)] are claimed, much less proven, for these measures, precluding their use to establish a lack of significant impact. Therefore, the IS/MND's reliance on compliance with these regulatory plans and policies is incorrect and should not be used as a threshold with which to determine the significance of the Project's GHG impact. By using these plans to determine Project significance, the IS/MND fails to adequately evaluate and mitigate the Project's impacts.

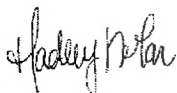
Sincerely,



Paul E. Rosenfeld, Ph.D.



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



Hadley Nolan



SMITH ENGINEERING & MANAGEMENT

May 30, 2018

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 Initial Study / Mitigated Negative Declaration (the "IS/MND") for the Selma – Wilcox Hotel Project (the "Project") on an eponomously located site at 6421-6429 W. Selma Avenue and 1600-1604 N. Wilcox Avenue in the Hollywood Community Plan area of Los Angeles. (the "City"). My review is specific to the IS/MND's traffic and transportation section and its supporting documentation.

My qualifications to perform this review include registration as a Civil and Traffic Engineer in California and over 49 years professional consulting engineering practice in the traffic and transportation industry. I have both prepared and performed adequacy reviews of numerous transportation and circulation sections of environmental impact reports prepared under the California Environmental Quality Act ("CEQA"). My professional resume is attached.

Findings of my review are summarized below.

Analysis of Traffic Impacts Considers Extra Trips Caused by Reliance on Parking Valets and Location of Part of the Required Parking Off-Site

The IS/MND indicates that 41.9 percent of the Project's 86 required parking spaces (39 actual spaces) will be located off site at a parking facility within the

TRAFFIC • TRANSPORTATION • MANAGEMENT

5311 Lowry Road, Union City, CA 94587 tel: 510.489.9477 fax: 510.489.9478

Thompson Hotel Project and will be serviced by parking valets. In addition, much of the on-site parking would be serviced by the valets as well. However, the traffic analysis sows confusion by evaluating irrelevant scenarios involving traffic patterns that would occur if all travelers arriving by passenger vehicle self-parked on site, before finally recognizing the extra trips produced by valet operations and the location of part of the required parking off-site, almost as an afterthought. It only analyzes the Project including the effects of valet trips relative to the 'modified baseline'. But it does disclose significant traffic impacts at the Year 2020 level at two intersections in the PM peak hour, those of Selma Avenue with Wilcox Avenue and Hollywood Boulevard with Wilcox Avenue.¹

The Functionality of Valet Parking Is Not Demonstrated

The IS/MND discloses that the larger restaurant would have a Limited Live Entertainment permit. This means that diners would tend to arrive at concentrated times that relate to finishing dinner service prior to performance start time rather than in the more dispersed and random arrival pattern at a restaurant without live entertainment events. The IS/MND must analyze the number of valets required and the size of valet transfer zones required to handle concentrated arrivals and departures without causing queues and lane blockages.

The Thompson Hotel Evidently Does Not Have Sufficient Available Parking Spaces To Meet Its Own Requirements Plus Providing 39 Spaces To Meet the Subject Project's Requirements for Parking

Per the Thompson Hotel's IS/MND (Case No. ENV-2014-3707-EAF, then known as the 1541 Wilcox Hotel), the Thompson Hotel would include 144 off-street parking spaces. City code requires it to provide 111 spaces to meet its own needs. To provide 36 spaces to meet the subject Project's off-site parking needs, the Thompson's parking facility would have to contain 147 spaces. So the Selma-Wilcox Project's parking needs cannot be met by the proposed off-site arrangement with the Thompson. Also, it is unknown whether the Thompson has also committed its parking in surplus of code to meet the needs of other off-site individuals or entities.

Development of the Subject Hotel as Part of the Tao Group's Holdings in the Cahuenga-Wilcox Block of Selma Avenue Is a Piecemealing That Is Improper Under CEQA

The fact that the prior approved project for the site would have provided 13 more parking spaces² in expensive subterranean structure than City Code required for

¹ PM peak hour impacts are also disclosed at these locations in the analyses that do not consider valet traffic but are less intense at the Selma-Wilcox intersection.

² After allowable reductions in parking provisions per code.

the uses included at that time is evidence that the applicant had intent for a more extensive development such as now reflected in the subject Project. The notion of a clear and more extensive plan for the area is also evident in postings on the Tao Group's web site (see www.taogrouppla.com and <https://hamptons-magazine.com/tao-group-revitalizes-hollywood-with-restaurants-nightclubs-and-botique-hotels>). Performing separate environmental reviews on parts of what is a clearly related set of developments rather than on the whole of the project is called 'project segmentation' or 'piecemealing', an action that is improper under CEQA. We also note that the limited liability corporation that was listed as the applicant for the Tao restaurant project is the Selma-Wilcox Hotel LLC, the same applicant as the current hotel project – clear evidence that the current hotel project was a part of the plan when that lesser project was applied for.

The traffic analysis in this matter is a classic case of why piecemealing is improper. The subject Project adds traffic to capacity-challenged intersections in the area. So does the Tao restaurant, the initial Dream Hotel and the other developments of the Group. However, when considered on its own, the current hotel project's contributions to Intersection Capacity Utilization fall below thresholds of contribution to be found significant. However, had the whole of the Tao Group's development been evaluated as a single project, there would certainly have been extensive findings of significant traffic impact and mitigation requirements.

The arrangement that the Project would make use of excess parking at the recently developed Thompson Hotel also bears scrutiny. We note that the limited liability companies listed as the applicant for both hotel projects have the same address – 1605 Cahuenga Boulevard. This suggests that the development of surplus parking on the Thompson site may have been pre-arranged to service the Selma-Wilcox hotel. In such circumstance, both hotels should have been evaluated as a single project for traffic consequences.

Assumed Mitigation of Intersection Traffic Impacts Is Implausible

The IS/MND assumes that the traffic impacts it discloses will be mitigated by implementation of a Transportation Demand Management (TDM) program that reduces PM peak traffic by 20 or 10 percent. It includes a laundry list of potential elements, none of which are actually committed to. However, this rosy assumption in favor of the Project ignores the nature of the uses involved and the nature of the people who travel to and from those uses. Some employees are generally responsive to elements of typical TDM plans. However, hotel, restaurant and bar workers typically are not traveling during the normal PM peak traffic period so any TDM effects on employees will be irrelevant to mitigation of a PM peak traffic problem. Hotel guests and bar and restaurant patrons are fairly impervious to TDM efforts, so TDM programs are unlikely to make measurable inroads on their travel penchants. Hence, the assumption that a TDM program

(still undefined) will achieve a 10 or 20 percent reduction in PM peak traffic is nonsense.

Equally nonsensical is the assumption that if the City will grant the Project a waiver to reduce the required parking spaces by 20, that only a 10 percent effective instead of 20 percent effective TDM program will be necessary. If the Project has 20 parking spaces less than required by code, this will not change the mode choice of those who want to drive and park. Instead, such people will cruise the neighborhood until they find available on-street or off-street parking, thereby making the traffic impacts worse.

The Traffic Analysis Fails To Account for the Increasing Importance of Ride-hailing Services

The analysis completely fails to account for the increasing popularity of reliance of ride-hailing services like Uber, Lyft and others (sometimes referred to in the technical literature as Transportation Network Companies). If patrons arrive and depart via one of these services or by conventional taxi, they generate four trips instead of two (the arrival trip, the departure of the transport vehicle, the arrival of the departure vehicle and its departure). And recent research indicates that a majority of rides on such services are diverted from transit, bike and walking or are induced trips (ones that would not be made if the services were not available).³ In failing to account for Project traffic caused by these increasingly relied-upon services, the IS/MND understates traffic impacts.

Analysis of Construction Impacts on Access, Transit, and Parking Is Inadequate

The IS/MND states that construction workers will park at off-street lots in the project area. While it is undoubtedly true that construction workers, who tend to arrive very early in the work day, will likely to be able to claim spaces in off-street lots, this does not mean there will not be a parking impact when later arriving drivers come and find that their normally used spaces already occupied by construction workers. To make a plausible claim that there will be no construction impacts on parking, the IS/MND must demonstrate that there is *surplus* off street parking in the area sufficient to accommodate the construction workers' parking without displacing other parkers.

The IS/MND also states at page 3-196 that "*Construction activities would be limited to on-site work*". It is evident that this statement is incorrect because it is

³ *Disruptive Transportation,, The Adoption, Utilization and Impacts of Ride-Hailing in the United States*, Chewlow, Regina R. and Mishra, Gouri S., University of California Davis Institute of Transportation Studies, October 2017, page 26. See https://itspubs.ucdavis.edu/wp-content/themes/ucdavis/pubs/download_pdf.php?id=2752

evident that delivery and staging of construction materials would have to take place on-street as well as maintaining dumpsters for removal of construction debris.

Finally, it is obvious that the finding that construction traffic and pedestrian impacts would be mitigated by Mitigation Measure MM-Traffic-1, a Construction Traffic Control/Management Plan is not a fact based conclusion but merely an assumption since the Construction Traffic Control/Management Plan does not exist at present.

Cumulative Impacts Are Improperly Studied

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." CEQA 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 136 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 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 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 implementation of what we note elsewhere is a completely implausible and still quite uncertain transportation demand management (TDM) plan.

Mr. Gideon Kracov, Esq.
May 30, 2018
Page 6

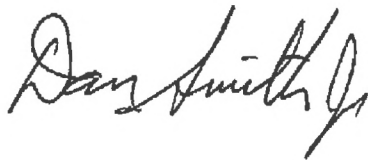
Basically, at the 5 other intersections operating at unacceptable level of service in the cumulative conditions, the IS/MND determined that, since future traffic conditions will already be horrible, adding the Project's traffic will not make them significantly worse. The relevant inquiry is not the relative 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.

Conclusion

This concludes my current comments on the Selma-Wilcox Hotel Project IS/MND. Based on the above considerations, there is fair argument that the Project's traffic and parking impacts are not fully mitigated and hence, the Project cannot be approved under this IS/MND.

Sincerely,

Smith Engineering & Management
A California Corporation



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

Attachment 1
Resume of Daniel T. Smith Jr., P.E.



SMITH ENGINEERING & MANAGEMENT

DANIEL T. SMITH, Jr. President

EDUCATION

Bachelor of Science, Engineering and Applied Science, Yale University, 1967
Master of Science, Transportation Planning, University of California, Berkeley, 1968

PROFESSIONAL REGISTRATION

California No. 21913 (Civil) Nevada No. 7969 (Civil) Washington No. 29337 (Civil)
California No. 938 (Traffic) Arizona No. 22131 (Civil)

PROFESSIONAL EXPERIENCE

Smith Engineering & Management, 1993 to present, President.
DKS Associates, 1979 to 1993, Founder, Vice President, Principal Transportation Engineer.
De Launay, Catier & Company, 1968 to 1979, Senior Transportation Planner.
Personal specialties and project experience include:

Litigation Consulting. Provides consultation, investigations and expert witness testimony in highway design, transit design and traffic engineering matters including condemnations involving transportation access issues; traffic accidents involving highway design or traffic engineering factors; land use and development matters involving access and transportation impacts; parking and other traffic and transportation matters.

Urban Corridor Studies/Alternatives Analysis. Principal-in-charge for State Route (SR) 102 Feasibility Study, a 35-mile freeway alignment study north of Sacramento. Consultant on I-280 Interstate Transfer Concept Program, San Francisco, an AA/EIS for completion of I-280, demolition of Embarcadero freeway, substitute light rail and commuter rail projects. Principal-in-charge, SR 238 corridor freeway/expressway design/environmental study, Hayward (Calif.). Project manager, Sacramento Northeast Area multi-modal transportation corridor study. Transportation planner for I-80N West Terminal Study, and Harbor Drive Traffic Study, Portland, Oregon. Project manager for design of surface segment of Woodward Corridor LRT, Detroit, Michigan. Directed staff on I-80 National Strategic Corridor Study (Sacramento-San Francisco), US 101-Sonoma freeway operations study, SR 92 freeway operations study, I-880 freeway operations study, SR 152 alignment studies, Sacramento RTD light rail system study, Tamien Corridor LRT AA/EIS, Fremont-Warm Springs BART extension plan/EIR, SRs 70/99 freeway alternatives study, and Richmond Parkway (SR 93) design study.

Area Transportation Plans. Principal-in-charge for transportation element of City of Los Angeles General Plan Framework, shaping nation's largest city two decades into 21st century. Project manager for the transportation element of 300-acre Mission Bay development in downtown San Francisco. Mission Bay involves 7 million sq ft office/commercial space, 8,500 dwelling units, and community facilities. Transportation features include relocation of commuter rail station, extension of MUNI-Metro LRT, a multi-modal terminal for LRT, commuter rail and local bus; removal of a quarter mile elevated freeway, replacement by new ramps and a boulevard; an internal roadway network overcoming constraints imposed by an internal tidal basin; freeway structure and rail facilities; and concept plans for 20,000 structured parking spaces. Principal-in-charge for circulation plan to accommodate 9 million sq ft of office/commercial growth in downtown Bellevue (Wash.). Principal-in-charge for 64 acre, 2 million sq ft multi-use complex for EMC adjacent to San Jose International Airport. Project manager for transportation element of Sacramento Capitol Area Plan for the state governmental complex, and for Downtown Sacramento Redevelopment Plan. Project manager for Napa (Calif.) General Plan Circulation Element and Downtown Riverfront Redevelopment Plan, on parking program for downtown Walnut Creek, on downtown transportation plan for San Mateo and redevelopment plan for downtown Mountain View (Calif.); for traffic circulation and safety plans for California cities of Davis, Pleasant Hill and Hayward, and for Salem, Oregon.

TRAFFIC • TRANSPORTATION • MANAGEMENT

5311 Lowry Road, Union City, CA 94587 tel: 510.489.9477 fax: 510.489.9478

Mr. Gideon Kracov, Esq.
May 30, 2018
Page 8

Transportation Centers. Project manager for Daly City Intermodal Study which developed a \$7 million surface bus terminal, traffic access, parking and pedestrian circulation improvements at the Daly City BART station plus development of functional plans for a new BART station at Colma. Project manager for design of multi-modal terminal (commuter rail, light rail, bus) at Mission Bay, San Francisco. In Santa Clara Long Range Transit Development Program, responsible for plan to relocate system's existing timed-transfer hub and development of three satellite transfer hubs. Performed airport ground transportation system evaluations for San Francisco International, Oakland International, Sea-Tac International, Oakland International, Los Angeles International, and San Diego Lindberg.

Campus Transportation. Campus transportation planning assignments for UC Davis, UC Berkeley, UC Santa Cruz and UC San Francisco Medical Center campuses; San Francisco State University; University of San Francisco; and the University of Alaska and others. Also developed master plans for institutional campuses including medical centers, headquarters complexes and research & development facilities.

Special Event Facilities. Evaluations and design studies for football/baseball stadiums, indoor sports arenas, horse and motor racing facilities, theme parks, fairgrounds and convention centers, ski complexes and destination resorts throughout western United States.

Parking. Parking programs and facilities for large area plans and individual sites including downtowns, special event facilities, university and institutional campuses and other large site developments; numerous parking feasibility and operations studies for parking structures and surface facilities; also, resident preferential parking.

Transportation System Management & Traffic Restraint. Project manager on FHWA program to develop techniques and guidelines for neighborhood street traffic limitation. Project manager for Berkeley, (Calif.), Neighborhood Traffic Study, pioneered application of traffic restraint techniques in the U.S. Developed residential traffic plans for Menlo Park, Santa Monica, Santa Cruz, Mill Valley, Oakland, Palo Alto, Piedmont, San Mateo County, Pasadena, Santa Ana and others. Participated in development of photo/radar speed enforcement device and experimented with speed humps. Co-author of Institute of Transportation Engineers reference publication on neighborhood traffic control.

Bicycle Facilities. Project manager to develop an FHWA manual for bicycle facility design and planning, on bikeway plans for Del Mar, (Calif.), the UC Davis and the City of Davis. Consultant to bikeway plans for Eugene, Oregon, Washington, D.C., Buffalo, New York, and Skokie, Illinois. Consultant to U.S. Bureau of Reclamation for development of hydraulically efficient, bicycle safe drainage inlets. Consultant on FHWA research on effective retrofits of undercrossing and overcrossing structures for bicyclists, pedestrians, and handicapped.

MEMBERSHIPS

Institute of Transportation Engineers Transportation Research Board

PUBLICATIONS AND AWARDS

Residential Street Design and Traffic Control, with W. Homburger *et al.* Prentice Hall, 1989.

Co-recipient, Progressive Architecture Citation, *Mission Bay Master Plan*, with I.M. Pei WRT Associated, 1984.

Residential Traffic Management, State of the Art Report, U.S. Department of Transportation, 1979.

Improving The Residential Street Environment, with Donald Appleyard *et al.*, U.S. Department of Transportation, 1979.

Strategic Concepts in Residential Neighborhood Traffic Control, International Symposium on Traffic Control Systems, Berkeley, California, 1979.

Planning and Design of Bicycle Facilities: Pitfalls and New Directions, Transportation Research Board, Research Record 570, 1976.

Co-recipient, Progressive Architecture Award, *Livable Urban Streets, San Francisco Bay Area and London*, with Donald Appleyard, 1979.

Conformed Copy

THE SILVERSTEIN LAW FIRM
A Professional Corporation

215 NORTH MARENGO AVENUE, 3RD FLOOR
PASADENA, CALIFORNIA 91101-1504

PHONE: (626) 449-4200 FAX: (626) 449-4205

DAN@ROBERTSILVERSTEINLAW.COM
WWW.ROBERTSILVERSTEINLAW.COM

March 23, 2018

VIA HAND DELIVERY

May Sirinopwongsagon
Planning Commission Hearing Officer
Los Angeles Advisory Agency
Department of City Planning
200 N. Spring Street, Room 621
Los Angeles, CA 90012



Re: TAO HOTEL - Objections to the Site Plan Review, Zone Change, Height District Change, Conditional Use Permit-Alcohol, Mitigated Negative Declaration and all other entitlements for the Selma Wilcox Hotel Project located at 6421-6429 W. Selma Ave. and 1600-1604 N. Wilcox Ave; CPC-2016-2601-VZC-HD-CUB-ZAA-SPR; VTT-74406; ENV-2016-2602-MND and related cases.

NOTE: In a separate, but coordinated cover letter, we attach a single copy of the voluminous exhibits that support this Project comment letter for the record. This Project comment letter (original and 3 copies) will be submitted without multiple reproduction of the Exhibits, and reference can be made to the record for the supporting documentation.

Dear Ms. Sirinopwongsagon and Advisory Agency:

I. INTRODUCTION.

This firm and the undersigned represent The Sunset Landmark Investments, LLC (hereinafter "Sunset Landmark"). Please keep this office on the list of interested persons to receive timely notice of all hearings and determinations related to the proposed approval of an eight-story hotel at 6421-6429 W. Selma Avenue and 1600-1604 N. Wilcox Avenue, commonly known as the Selma Wilcox Hotel Project ("Tao Hotel" or "Project"). Pursuant to Public Resources Code Section 21167(f), provide a copy of each and every Notice of Determination issued by the City in connection with this Project. Sunset Landmark adopts and incorporates by reference all Project objections raised by themselves and all others during the environmental review and land use entitlement processes.

II. CITY COUNCIL MUST DENY ALL APPLICATIONS FOR TAO HOTEL BECAUSE THE PROJECT AS PROPOSED IS UNLAWFUL.

Sunset Landmark Investments respectfully submits this letter and accompanying exhibits, demanding that the City Council deny all above-referenced applications submitted by the owner/applicant for the following reasons:

- (1) The entire concept for the Tao Hotel is to create an over-developed, nuisance-generating, "party hotel" as part of a whole line of similar projects developed by the same developer for the purpose of injecting foreign investment money into a place where none of this was planned, and for which the infrastructure is not designed to support. The developer asks for the "sun, the moon, and the stars" when there is not a hint that the scope of this request is appropriate.
- (2) The City relies upon facially invalid interpretations of LAMC 12.22 A18 and 12.12 C4 (**Exhibit 1** [Summary of Zoning Administrator Interpretation dated May 18, 2000 and Zoning Engineer Memo dated February 10, 2009]) to claim that R5 zone density is permitted on commercially zoned lots in Regional Center Commercial land use designations across the City, including Hollywood, and, even more incredibly, that the authorized residential unit density limit is "unlimited" as to hotel rooms because City Council failed to specify a guest room limit in LAMC 12.12 C. Based upon these ludicrous interpretations, that are injecting more than double unit density into Regional Commercial Centers across the City without any textual support in the LAMC sections cited, and without environmental review of the cumulative impacts, the City claims the Tao Hotel can have 114 rooms. Thus, the Project as proposed is unlawful because it proposes a project more than 104 hotel rooms which is the lawful number of guest rooms in the C4 or C2 zone in which this site lies. The hotel will therefore be a monster building, twice the size the City planned for in the Hollywood Community Plan, the Hollywood Redevelopment Plan, and the City's zoning.
- (3) The Project as proposed is inconsistent with the permanent "D" Development Limitation of 2:1 Floor Area Ratio ("FAR") imposed on the site as part of the General Plan Consistency Case 86-835-GPC and applicable City ordinances (**Exhibit 2** [Hollywood General Plan/Zoning

Consistency Program]). Having imposed this 2:1 FAR limit in 1988 to protect the Hollywood community from negative environmental impacts as part of an extensive General Plan Consistency process (**Exhibit 3** [Ordinance 165660]), the City has no authority under Government Code Section 65860 or CEQA to remove the permanent "D" Development Limitation until:

- a. The City demonstrates that the negative impacts of overdense development on Hollywood's deficient infrastructure have been mitigated to the maximum extent feasible as part of a lawful comprehensive community planning process (and then comprehensively adjust the 1988 General Plan Consistency Program density restrictions in accordance with the comprehensive review of the community planning process); or
- b. The City reduces density on other land in the Community Plan area on a 1 to 1 basis for each parcel of land it purports to increase density (in order to maintain the density limit imposed in the 1988 Hollywood Community Plan and Hollywood General Plan Consistency Program). Such a Floor Area Transfer Program was authorized in the Hollywood Community Plan Section 511, but was never implemented by the former redevelopment agency or its successor agency, CRA/LA; or
- c. The City demonstrates compliance with the required enactment of the Transportation Plan identified in the 1988 Hollywood Community Plan Revision process and the 1986/2003 Hollywood Redevelopment Plan process, and guaranteed by the City in Ordinance 165660 to provide a substitute mitigation to the 2:1 FAR density restriction imposed on these parcels in 1988.

The FAR limit of 2:1 was imposed as a CEQA mitigation measure as part of a comprehensive planning process that occurred in conjunction with the 1988 Hollywood Community Plan Revision and the 1988 Hollywood General Plan Consistency Program. As extensively documented in **Exhibit 2**, there is no reasonable dispute that a comprehensive downzoning of Hollywood occurred in 1988 because significant negative impacts would occur if the City's 1946 zoning densities were allowed to be constructed

without limitation -- which is what the City is doing on a parcel by parcel based now.

Based upon this zoning history, the Tao Hotel Project is actually asking for a rezoning that authorizes a taller and larger building than allowed by law. The City and Developer, once again presume the City can just enact a new ordinance and it will override Ordinance 165,660 that imposed the 2:1 FAR "D" Development Limitation.

Because the City proposes to erase the FAR density limit without complying with any of these requirements so as to avoid cumulative negative impacts in raising density without protecting the Hollywood community with equally effective mitigation measures, its action is unlawful and cannot be approved. Napa Citizens for Honest Government v. Napa County Board of Supervisors (2001) 91 Cal.App.4th 342, 358-359 ("We therefore hold that a governing body must state a legitimate reason for deleting an earlier adopted mitigation, and must support that statement of reason with substantial evidence. If no legitimate reason for the deletion has been stated, or if the evidence does not support the governing body's finding, the land use plan, as modified by the deletion or deletions, is invalid and cannot be enforced.") See also Federation of Hillside & Canyon Associations v. City of Los Angeles (2000) 83 Cal.App.4th 1252, 1261 (City must assure that mitigation measures "will actually be implemented as a condition of development, and not merely adopted and then neglected or disregarded.")

The City may not replace the 2:1 FAR density limit of Ordinance 165,660 without a valid reason. Such a valid reason would be that the long awaited Transportation Plan mitigation has been enacted, or a valid new community plan process that includes proper cumulative impact review has been completed. Neither of those things have occurred due to the City's ongoing neglect of the force of law of its general plan.

- (4) The former redevelopment agency, its lawful successor CRA/LA, and the Los Angeles City Council have violated their duties imposed by the Hollywood Redevelopment Plan, and cited in Ordinance 165,660 as a valid basis to modify the mitigation measure of the 2:1 FAR limit imposed in 1988, by failing to adopt the mandatory Transportation Plan that must be in place before the CRA/LA has legal authority to authorize any increase on

this property above 2:1 FAR. We have confirmed with CRA/LA that it never completed and the City Council never enacted the Transportation Plan required by the Hollywood Redevelopment Plan before increases in density would be allowed. Because the Hollywood Redevelopment Plan was adopted by City Ordinance Nos. 161202 and 175236, any project approved without the mandatory Transportation Plan violates City Ordinances 161202 and 175236. (**Exhibit 6** [Ordinances Incorporating Hollywood Redevelopment Plan as City Law].) CRA/LA has been sued by Hollywood Heritage for CRA/LA's more than three decade dereliction of duty to complete any of the implementing programs of the Hollywood Redevelopment Plan. This significantly includes failure to complete and adopt a protective and mitigating Transportation Plan. Therefore, this Project as proposed at nearly double the authorized FAR, is unlawful.

- (5) The MND prepared by the City for the Tao Hotel is fatally flawed and cannot support a project approval. The MND failed to accurately disclose and analyze the current zoning, FAR, height, and residential density elements of the Project in the project description and the land use sections of the MND. Moreover, the MND failed to adequately analyze air quality, land use, noise, traffic, and greenhouse gas emissions.
- (6) This is the fifth alcohol-soaked "Animal House" party hotel proposed by the same developer group within a few hundred feet of each other – yet the City Environmental Review Unit acts as if they are unrelated. This piecemealing of what has been touted in the media as a "new hotel district" by the developer somehow is allowed to roll out bit-by-bit and piece-by-piece without the comprehensive review CEQA requires. Even more astounding is the fact the City actually approved an MND for a piece of this building in 2015 without requiring review of even the whole building. This is professional environmental review malpractice. It used to be that the City enforced CEQA to prevent developer fraudulent applications of pieces of a larger project. Arviv Enterprises v. South Valley Area Planning Commission (2002) 101 Cal.App.4th 1333. Now the City colludes to ignore and openly defy CEQA's duties.

For all of these basic reasons, most of them fundamental planning concepts apparently thrown out the window by the City Planning Director and his employees, the City Planning Commission and Advisory Agency must exercise restraint by not

rubberstamping another planning disaster in Hollywood fueled by greed and foreign investors with no stake in the integrity of the City's planning processes.

III. RELEVANT FACTS AND BACKGROUND.

The Project site sits within a portion of the Hollywood Community Plan specifically planned and zoned in the 1980s to comply with the mandate of Government Code Section 65860, subdivision (d) ("AB 283"). AB 283 required the City to make its zoning consistent with its General Plan land use designations.

The land use densities adopted in the 1988 Hollywood Community Plan were less dense than the land use densities allowed in the City's 1946 Zoning Ordinance. To make its zoning consistent with the 1988 Hollywood Community Plan, the City Council adopted numerous ordinances, including Ordinance No. 165660, to limit density and height because the area was so distant from high capacity transit. (**Exhibits 2 & 3.**) The City staff, as it has done for four previous hotel projects by this developer, ignores the 2:1 FAR limitation placed on the Project site (via the 1990 Ordinance No. 165660 to restrict these parcels using a "D" Development Limitation), which was specifically imposed to avoid City-acknowledged area wide significant environmental impacts if development was allowed to proceed at the densities under the City's 1946 Zoning ordinance and its 1973 Hollywood Community Plan.

Under the City's Hollywood General Plan Consistency Program, the widespread use of "D" Development Conditions like the one imposed on the Tao Hotel parcel were determined by the City Council to be necessary to bring the City's 1988 Hollywood Community Plan and zoning into conformity, as mandated by Government Code Section 65860(d) and the settlement agreement in litigation brought to enforce the City's mandatory duty to make its zoning consistent with its General Plan. The City made express findings that the "D" Development limitations were imposed to avoid environmental impacts – thus, the mitigation of impacts was incorporated into the City's zoning rules and general plan in order to make the mitigation measure legally enforceable.

Now the developer asks the City to override Ordinance No. 165,660, just like it purported to do on this developer's other projects in the vicinity. In accordance with the Napa and Hillside Federation cases cited above, the City has to show it has a valid basis to allow a density increase when the long-delayed CRA/LA transportation plan required in Ordinance 165,660 as a mitigation measure has never been completed. The developer offers no legitimate basis to take the proposed action. The entire project concept is a

giant noise-generating party hotel proposed next to sensitive receptors who have already bitterly complained about the nuisance noise from the other hotel of this developer.

IV. THE LAWFUL NUMBER OF HOTEL ROOMS IS SET BY THE MUNICIPAL CODE AT 200 SQUARE FEET OF LOT AREA WHICH IS MUCH LESS THAN THE 114 ROOMS PROPOSED BY THE DEVELOPER.

The number of hotel rooms permitted by the express language of LAMC Sections 12.16 or 12.14 is set forth. The math is simple: Divide the appropriate lot size square feet by 200 sf per unit equals the authorized number of hotel rooms. These facts are verifiable. At the moment, the lawful number of units cannot be determined because it appears that the developer has engaged in some kind of piecemeal scheme to count lot area of another building that is not part of this project. Further study of this highly improper process requires the Advisory Agency and Planning Hearing Officer to sever the two projects and count only the lot area where the Tao Hotel is proposed.

Nowhere in the environmental review documents is there a complete, honest, and open explanation of the staff's "logic" and math showing how it determined that 114 hotel rooms was permissible. The Planning staff's obscuring of the basis of their decision telegraphs that even City staff lacks confidence in the legality of a May 18, 2000 Zoning Administrator Interpretation of the zoning code and the February 10, 2009 Zoning Engineer memo. As summarized at page 222 of the LADBS Zoning Manual, the Zoning Administrator claims without any credible basis that a reference in LAMC 12.22-A.18 to R5 land uses are permissible. Closer examination of this "interpretation" reveals that it is a fabrication. The ZAI is unlawful because the Zoning Administrator has undertaken to re-write the Municipal Code, which is a power only held by the City Council.

Additionally, because of the

The plain language of Section 12.22-A.18 does not authorize R5 residential density for a mixed use project in the regional center commercial land use designation. The first portion of LAMC Section 12.22-A.18 provides:

"18. Developments Combining Residential and Commercial Uses. Except where the provisions of Section 12.24.1 of this Code apply, notwithstanding any other provision of this chapter to the contrary, the

following uses shall be permitted in the following zones subject to the following limitations: (Amended by Ord. No. 163,679, Eff. 7/18/88.)

(a) Any use permitted in the R5 Zone on any lot in the CR, C1, C1.5, C2, C4 or C5 Zones provided that such lot is located within the Central City Community Plan Area or within an area designated on an adopted community plan as "Regional Center" or "Regional Commercial". Any combination of R5 uses and the uses permitted in the underlying commercial zone shall also be permitted on such lot." (Emphasis added.)

The express language applies only to permitted uses, not to permitted residential dwelling unit density expressed in lot area regulation. It is silent as to residential dwelling unit density. Thus, the "theory" that LAMC Section 12.22-A,18 "allows" R5 residential dwelling unit density is incorrect, and omission of any reference to it by City staff has the effect of misleading the public.

Even more damning however is the fact that LAMC Section 12.22C, where one would expect to find exceptions stated for lot area residential unit densities, is silent on the question of whether R5 density ought to be allowed in commercially zoned lots in Regional Center land use designations. Silence in no way can be interpreted by a City official as authority to provide for such an exception – especially one which would more than double hotel room densities without any environmental review or notice to anyone.

The undisclosed Zoning Administrator Interpretation of LAMC Section 12.22-A,18(a) is void as contrary to the plain language of the law. If the City Planner is relying on a May 18, 2000 Zoning Administrator Interpretation of LAMC 12.22-A as the basis to allow a R5 zone residential unit density in the Tao Hotel, that reliance is unlawful. The Interpretation reads as follows:

"One question related to density that arises is whether to apply R5 lot area requirements or R3 / R4 lot area requirements as referenced in the lot area requirements of C zones. In the enforcement of this section, the Zoning Administrator has determined that the lot area requirements of the R5 zone are to be applied to projects subject to this

section. Although it is not explicitly stated in the section, the last sentence of the section implies applying area requirements of R5 zone, not R3 or R4 zone. This interpretation has been confirmed by the Office of Zoning Administrator who reviewed the original staff report for the ordinance.” (Emphasis added.)

While the Zoning Administrator may possess the authority to clarify an ambiguity in a municipal code provision, he or she has no authority to re-write a City ordinance. Only the City Council has that authority. There is no lawful basis to “interpret” LAMC Section 12.22A18(a) related to authorized “uses” as permitting R5 residential unit density which if it was allowed as the Zoning Administrator claims, the exception would be written into LAMC Section 12.22C – Lot Area.

Stacking one misreading of the LAMC on top of another the City is also relying upon the City’s Zoning Manual, page 66, which asserts that because LAMC Section 12.12C4, related to rules for the R5 Zone, is silent as to minimum lot area per hotel guest room, it must be interpreted to mean guest room density is “unlimited.” This contention is contrary to basic principles for the construction of a law or ordinance. If the residential unit density for R5 zones was “unlimited”, it would say so – it would not be silent. Omission means no authority is granted. If the omission is a mistake, then the proper action of the Zoning Administrator or Zoning Engineer would be to refer the problem to the City Planning Commission for review and enactment of a legislative amendment. The Zoning Engineer does not possess the legislative power of the City Council – especially when releasing unlimited density into thousands of acres of Regional Center Commercial land would have huge environmental impacts.

Additionally, for any code provision to permit “unlimited” density is inconsistent with the entire concept of having a General Plan. The purpose of the General Plan is to determine anticipated future population, and plan for that growth by allocating where in the City the densities are needed and appropriate to meet the expected demand within the planning time frame. To suggest that any part of a zoning code, which implements the density limits of a General Plan, can allow “unlimited” density, is to create a giant loophole that would encourage abusive project applications such as the over dense, noise generating, party hotel that Tao Hotel is destined to become.

The City Planning staff appears to have relied upon the improper Zoning Administrator and Zoning Engineer Interpretations as a pretense to more than double the residential dwelling unit density for the Tao Hotel above that authorized in the LAMC

Sections 12.14 and 12.16. The May 18, 2000 Zoning Administrator Interpretation and the February 10, 2009 Zoning Engineer memo are void because they violate the plain language of LAMC Section 12.22A18(a) and the absence of an exception in LAMC Section 12.22 C. And even if this were so, under no circumstances may a City staff member seize upon the absence of a residential unit density limit in LAMC Section 12.12 C4 to "mean" the sky's the limit. That is not how zoning ordinances work. While the Zoning Administrator or Zoning Engineer may have authority to make reasonable interpretations of language actually used by the City Council, he or she has no authority to devise "interpretations," untethered to any fair reading of a municipal code provision. If this is not true, then the Zoning Administrator and Zoning Engineer just became a Los Angeles super legislature to re-write City Council laws. Of course, this is not lawful behavior.

VI. THE CURRENT ZONING OF THE TAO HOTEL WAS ENACTED UNDER THE COMPREHENSIVE GENERAL PLAN CONSISTENCY PROGRAM AS A DOWNZONING MITIGATION MEASURE AND THEREFORE SUCH MITIGATION MEASURE CANNOT BE MODIFIED BY SIMPLE REPEAL, AS THE DEVELOPER HAS ASKED THE CITY TO DO AGAIN AND AGAIN.

Since 1971, the Legislature has required in Government Code Section 65860(a) that all general law cities and counties make their zoning consistent with the adopted general plan. In this way, the Legislature sought to ensure that real planning occurred for the future development of cities and counties, and that the zoning actually implemented it.

Although this law did not apply to charter cities, most of them voluntarily undertook to make their zoning consistent with their general plan – except one. Los Angeles' 1946 zoning code had densities far in excess of the capability of the City's infrastructure to hold it – 10 million people. The City's first community plans concluded after environmental review that the infrastructure could only support between 4 and 5 million residents.

The City Council refused to downzone to make its zoning law consistent with the density its community plans said could realistically be accommodated. Thus, the City Council during the mid- and late-1970s continued to allow developers to construct projects consistent with the 1946 zoning, but grossly inconsistent with the general plans of the City.

A. The Legislature In 1979 Mandated That Los Angeles Make Its Zoning Ordinances (Codes) Consistent With Its General Plans.

Responding to calls for intervention, the State Legislature in Assembly Bill 283 ("AB 283") amended Government Code section 65860 to add subdivision (d) that applied to the City of Los Angeles:

"(a) County or city zoning ordinances shall be consistent with the general plan of the county or city by January 1, 1974. A zoning ordinance shall be consistent with a city or county general plan only if: (i) The city or county has officially adopted such a plan, and (ii) The various land uses authorized by the ordinance are compatible with the objectives, policies, general land uses, and programs specified in such a plan.

* * *

(d) Notwithstanding Section 65803, this section shall apply in a charter city of 2,000,000 or more population to a zoning ordinance adopted prior to January 1, 1979, which zoning ordinance shall be consistent with the general plan of such city by July 1, 1982." (Emphasis added)

Subdivision (d) required the City to make all of its zoning ordinances (municipal code provisions) and zoning maps consistent with its adopted general plan no later than 1981, and then after amendment, 1982. The City instead sued the State of California claiming that the act was unconstitutional.

After the City won in the trial court, the State prevailed in the Court of Appeal and the California Supreme Court denied review. Thus, the Court of Appeal's decision in City of Los Angeles v. State of California (1982) 138 Cal.App.3d 526 made the consistency requirement between general plans and zoning ordinances a mandatory duty of the City.

B. Center For Law In The Public Interest Sues To Force City To Comply With The State Consistency Requirement Of AB 283 (Government Code § 65860(d)).

Because the Court of Appeal decision did not order the City to comply with state law, the City continued to drag its feet in commencing proceedings to downzone properties to make all zoning ordinances and maps conform with City general plans. The Center for Law In The Public Interest then initiated litigation seeking a writ of mandate to force the City to comply with the state law. In Federation of Hillside and Canyon Associations et al. v. City of Los Angeles (C 526616), the Superior Court quickly issued a writ ordering the City to make its zoning code consistent within 120 days. For reasons not relevant to the issues in this case, the City ultimately entered into a stipulated judgment with the Federation and other plaintiffs to take longer to complete the project under a court-appointed monitor to oversee the consistency process and report back to the Court – a process which ended up taking more than a decade.

C. The Hollywood Community Plan Zoning Map Was Made Consistent With The Hollywood Community Plan In Case Numbers 83-368 and 86-835-GPC And Supported With Recirculation Of The Original Hollywood Community Plan EIR (EIR No. CPC-1070-GP/ZC) and the Hollywood Redevelopment Plan EIR (SCH No. 85052903).

As the City carried out the AB 283 consistency process under the supervision of a court monitor, it complied with CEQA by recirculating the Hollywood Community Plan EIR in May 1988 and the January 1986 Hollywood Redevelopment Plan EIR in May 1988. The General Plan Consistency Program, as explained under oath by the City's former Planning Director, was necessary to significantly reduce the City's zoning density to conform with its 35 community plans. (**Exhibit 2** [Hollywood General Plan Consistency Proceedings; Declaration of Cal Hamilton].) From spring of 1988 to early 1990, the City carried out the Hollywood General Plan Consistency Program to bring itself in compliance with Government Code Section 65680(d) and the Hillside Federation settlement agreement. (**Exhibit 2.**) The downzoning of the Hollywood Community Plan, in the form of changes to the Community Plan and imposition of permanent "D" Development and "Q" Qualified Conditions, were expressly required as a mitigation measure to avoid infrastructure failures across the Hollywood Community Plan area – until the CRA and City implemented a Transportation Plan. (*Id.*) Documents of the City and CRA acknowledge that these reductions in density were required until such time as the Transportation Plan was enacted. (**Exhibit 2.**)

A similar process was carried out for every community plan across the City until 200,000 lots were downzoned to protect the City's residents from serious negative impacts of deficient public services infrastructure to support the overly-intense City zoning map densities dating back to 1946.

The subject properties for the Tao Hotel (SubArea 90) were expressly down zoned as to FAR to 2:1, as set in Ordinance 165,660. (**Exhibit 3.**) In downzoning these lots, the City was made findings relied upon by the public and the monitoring court in the Hillside Federation litigation that it would enforce the mitigation measure of downzoning by incorporating the changes into zoning, including the zoning changes now in place on the Project Site for the Tao Hotel. These limits of density remain in place and binding today because, incredibly, 30 years later neither the former CRA, nor its successor agency, nor the City, ever enacted the promised Transportation Plan to provide the required planning framework and infrastructure to enable increases in authorized density. The record in this case is devoid of any evidence the Transportation Plan was ever enacted, and in fact we have verified with CRA/LA it was never enacted. In fact, Hollywood Heritage has sued the CRA/LA for non-performance and completion of any of the Hollywood Redevelopment Plan implementing programs, including the never completed Transportation Plan.

Our Court of Appeal, in a case against the City of Los Angeles over its General Plan Framework, made quite clear that when the City adopts mitigation measures to implement a general plan, it has a duty to make sure they are carried out:

"CEQA requires the agency to find, based on substantial evidence, that the mitigation measures are 'required in, or incorporated into, the project' . . . ([Public Resources Code] § 21081; [CEQA] Guidelines, § 15901, subd. (b).) In addition, the agency 'shall provide that measures to mitigate or avoid significant effects on the environment are fully enforceable through permit conditions, agreements, or other measures.' ([Public Resources Code] § 21081.6, subd. (b))(fn.4) and must adopt a monitoring program to ensure that the mitigation measures are implemented. ([Public Resources Code] § 21081.6, subd. (a)). The purpose of these requirements is to ensure that feasible mitigation measures *will actually be implemented* as a condition of development, and not

merely adopted and then neglected or disregarded.
(See [Public Resources Code § 21002.1, subd. (b).](fn.
5))”

[Footnote 4 by the Court]: “A public agency shall provide that measures to mitigate or avoid significant effects on the environment are fully enforceable through permit conditions, agreements, or other measures. Conditions of project approval may be set forth in referenced documents which address required mitigation measures or, in the case of the adoption of a plan, policy, regulation, or other public project, incorporating the mitigation measures into the plan, policy, regulation, or project design.” (§ 21081.6, subd. (b).) **In the context of this statute, to incorporate mitigation measures into a project means to amend the project so that the mitigation measures necessarily will be implemented, such as by reducing the scope of the project or requiring that mitigation measures be implemented as a condition of the project.** (See Guidelines, § 15126.4, subd. (a)(1)(A), and former § 15126, subd. (c), both distinguishing mitigation measures proposed by the project proponent from those ‘required as conditions of approving the project.’)”

[Footnote 5 by the Court]: “‘Each public agency shall mitigate or avoid the significant effects on the environment of projects that it carries out or approves whenever it is feasible to do so.’ (§ 21002.1, subd. (b).)” Federation of Hillside and Canyon Associations v. City of Los Angeles (2000) 83 Cal.App.4th 1252, 1260-1261 (italic emphasis by the Court, bold and underline emphasis added.)

Based upon this precedent, there can be no serious claim by the City that it does not have a legal duty to assure full implementation of the Hollywood Community Plan General Plan Consistency Program in order to protect the health, safety and environmental welfare of the community. That includes maintaining the permanent D

Limitation until alternative mitigation measures are comprehensively evaluated and imposed to protect the Hollywood community.

D. Because The FAR Restrictions Were Adopted Environmental Mitigation Measures To Avoid Significant Impacts, The City Council May Not Amend Or Delete These Mitigation Measure Enactments Without Full Disclosure And Analysis In An EIR, As Well As A Comprehensive Planning Process That Accounts For The Potential Cumulative Negative Impacts Of Ignoring General Plan Consistency Program Measures.

This case, like many cases in Hollywood recently, poses the question of whether the City may bring its Hollywood Community Plan and zoning into consistency with the density projections underlying the Plan for a moment in time (1988) (what would be called "paper consistency"), and then begin an incremental parcel by parcel removal of the density limits imposed as a mitigation measure to comply with the Community Plan's density limits. The answer is obvious: such modification of community-wide mitigation may not be removed or changed without a new comprehensive general plan and zoning consistency process such as what occurs in association with amendment of an entire community plan. Nor, of course, has any proper or adequate level of disclosure and analysis of this type been provided in the instant MND, further rendering it deficient and in violation of CEQA.

This conclusion is supported by two important limitations on the City Council's authority. First, parcel-based general plan amendments were prohibited as part of the 1969 City Charter amendments to the Planning Department provisions. These critical Charter amendments were enacted by the People to: (1) enforce the comprehensive planning goals of the People in having a meaningful General Plan, and (2) eliminate the very parcel-based rezoning scam that led to the conviction of a City Councilmember for bribery.

Second, the adoption of the City's General Plan Consistency recommendations for Hollywood was a comprehensive set of recommended reductions in permitted FAR, height, and uses intended to enforce the density planned for in the 1988 Hollywood Community Plan. These critical reductions in density, collectively brought Hollywood's zoning density into consistency with its general plan density.

It is still unclear how quickly after the City certified to the Court in the Hillside Federation case that the City's general plan consistency was "complete" that it began to

quietly allow developers to apply for general plan amendments and/or zoning changes to change that reduced density zoning without maintaining the protective effect of the density limits until alternative plans, like the Transportation Plan of the CRA, were in place.

Parcel-by-parcel, the City is asserting it has the authority to simply rezone every parcel in the City without regard to whether the present zoning, FAR limits, permanent "D" or "Q" conditions were imposed as a mitigation measure of the City's General Plan Consistency Program. The Palladium Project, the Columbia Square Project, 5901 Sunset Project, the Dream, Wilcox and Selma Hotels (the same applicant as the Tao Hotel) and many other projects within a short distance from the Tao Hotel, all include rezoning that purported to lawfully wipe out General Plan Consistency mitigation measures imposed on those lots. Incredible density increases are being authorized, including as proposed in this Project, without disclosure in the MND or the Staff Recommendation Report to the public or analysis of the potential negative cumulative impact on the Hollywood General Plan Consistency Program.

In essence, the City has embarked on a giant expansion of density in Hollywood without even bothering to lawfully complete a Hollywood Community Plan Update that analyzed it and justified changes to the current limitations imposed on many parcels of land in the Hollywood Community Plan area.

In recent years, the City undertook to revise and update the Hollywood Community Plan. Unfortunately, the City Planning Department's environmental review and planning process for that comprehensive planning activity went off the rails. The trial court, the Hon. Allan Goodman, found the City's planning and environmental review process for the Hollywood Community Plan Update ("HCPU") was "fatally flawed". Multiple groups sued the City over the HCPU because it used demonstrably false and inflated population projections to try to justify massive increases in density. Additionally, the City failed to properly conduct environmental analysis related to the HCPU.

Accordingly, neither in the EIR for the now rescinded HCPU, nor in the EIR or MND for individual projects where the City proposes to wipe out protective mitigation measures of the General Plan Consistency Program, including the MND in this case, has the City ever analyzed and accounted for its incremental increases in density without regard to the potential negative impacts on the community. The City has simply presumed it can do it because no one has previously objected to it.

Our client and many other community organizations strenuously object. The City could only remove General Plan Consistency Program mitigation down zoning as part of the next comprehensive update of its Hollywood Community Plan, and only if it does so in full compliance with CEQA. That clearly has not yet happened. In the alternative, assuming that a parcel-based general plan amendment is lawful, which it is not, then any rezoning that upzones parcel(s) in the Hollywood Community Plan area could only be lawful if the City Council downzones other parcel(s) to maintain the cumulative protective balance of the General Plan Consistency Program. Such a density transfer program was contemplated in Section 511 of the Hollywood Redevelopment Plan, but like the 30 year absence of an adopted Transportation Plan, the redevelopment agency nor CRA/LA ever completed a Density Transfer program in Hollywood. With each unmitigated parcel-by-parcel removal of a General Plan Consistency Program mitigation zoning provision, the City has engaged in an extremely serious and unaccounted for densification of the Hollywood Community Plan area that is inconsistent with the density for which it is currently planned.

VII. THE FORMER REDEVELOPMENT AGENCY'S FAILURE TO PREPARE A TRANSPORTATION PLAN MEANS THAT NO INCREASES IN DEVELOPMENT DENSITY CAN BE GRANTED UNDER THE "D" DEVELOPMENT LIMITATION.

Even if the "D" Development Limitation remained in place on the Tao Hotel property, its density could not be properly increased because the former redevelopment agency and the Los Angeles City Council have failed for 30 years to prepare a Transportation Plan intended as a substitute mitigation measure. As written in plain language and as explained in a letter from CRA in August 1988, the intent of all the reductions in density adopted as part of the Consistency Program was to keep them in place until the Transportation Plan was completed. Thus, the program intent was expressly acknowledged by the CRA itself.

Since 1986, when the Hollywood Redevelopment Plan was first approved, the former redevelopment agency committed to developing and adopting a Transportation Plan. This critical plan has never been completed and it has been sued over the failure to do so twice. Nonetheless, the former redevelopment agency, and now the CRA/LA, has begun approving development permits in the Redevelopment Plan area without knowing whether or not the cumulative impact of development has reach critical thresholds. The Redevelopment Plan EIR specifically concluded that Hollywood would have unacceptable levels of traffic service when average FAR for the entire Plan area reached 2:1. We now possess evidence that the City has reached the 2:1 density which obligates

CRA/LA to immediately commence a plan to reduce the impacts on the infrastructure of Hollywood. CRA/LA refuses to acknowledge that the 2:1 threshold has been reached and is shirking its duties under the Hollywood Redevelopment Plan that would entitle any owner to access the land use benefits of the Plan.

Under the Plan, the former redevelopment agency, and now the CRA/LA, was required to prepare a plan for how to constrain and protect Hollywood's transportation infrastructure if average FAR reached 2:1. Recently, Barron McCoy of the CRA/LA gave a letter to the City of Los Angeles claiming that development activity has not yet reached 2:1, but his letter was unsupported with any evidence. It was bold assertion with no supporting evidence, substantial or otherwise, behind it. If the City and the CRA/LA cannot show their math, they have no credible evidence to support proceeding to approve any more increases in development such as the Tao Hotel, until such time as they can prove it.

We understand that the former redevelopment agency, and the CRA/LA, has not submitted any of the required transportation monitoring reports to the City for years. In the absence of an adopted and enforceable Transportation Plan, and ongoing noncompliance with monitoring commitments of the former redevelopment agency, there would be no valid basis for the City or CRA/LA to allow any increase in density.

The developer's attorneys in the other cases by the developer tried to skirt this issue by claiming that since the 1988 Hollywood Community Plan and the Hollywood General Plan/Zoning Consistency Program were adopted, the Metrorail Red Line was added as a transportation improvement. The Hollywood Community Plan, Hollywood Redevelopment Plan and the Hollywood General Plan/Zoning Consistency Program all took into account the planned subway improvement. (Exhibit 2.) It is shown on the maps and zoning was put in place to encourage the greatest density immediately adjacent to the stations. The Red Line is a "red herring" of the developer's attorneys. All plans acknowledged that the former redevelopment agency was required to undertake and develop major street improvements, improve traffic management systems, carry out transportation demand management initiatives, in order to avoid system failure at average FAR densities above 2:1 throughout the Hollywood core. The utter failure to complete a transportation plan lies at the feet of the former redevelopment agency and the Los Angeles City Council. No one should be distracted by the waving of a Red Line subway map by the developer's attorneys. They cannot make excuses for the City and redevelopment agency's failures.

By approving Land Use Entitlements for the Tao Hotel project, the City would violate the General Plan/Zoning Consistency Program's limitation placed on the property because the Project cannot be approved for FAR above 2:1 without a completed CRA/LA Transportation Plan. The permanent "D" Development Limitation cannot be removed from this parcel of land without the City and CRA/LA satisfying all of its requirements, including a completed Transportation Plan. Since 1986, the former redevelopment agency had failed to complete and enact the Transportation Specific Plan to avoid significant impacts from increased density development -- an ongoing violation being carried forward by the CRA/LA -- the Tao Hotel site may only be developed to a density of 2:1. Having approved the Project with a density nearly two times the authorized density, the City Council would violate law if it approved this Project as currently proposed.

**VIII. THE MITIGATED NEGATIVE DECLARATION VIOLATES CEQA,
BECAUSE THERE IS NO SHOWING THAT SIGNIFICANT IMPACTS
ARE NOT POSSIBLE, AN EIR IS REQUIRED.**

The City has chosen to prepare a mitigated negative declaration ("MND") for the Tao Hotel project, just like it did for the Wilcox Hotel, the Selma Hotel, and a chunk of the proposed Tao Hotel. The choice blatantly and unquestionably violates the California Environmental Quality Act ("CEQA"), found at Public Resources Code § 21000, *et seq.*, because the evidence in the MND shows that the Project will likely have a significant impact in several areas examined herein.

An MND may only be used for a project where the public agency can demonstrate that, with the mitigation measures incorporated in the MND, "*clearly no* significant effect on the environment would occur, and [] there is *no* substantial evidence in light of the whole record before the public agency that the project, as revised, *may* have a significant impact on the environment." (CEQA § 21064.5, emphasis added; Guidelines § 15070 (b), 15369.5.) Thus, the MND here must show "clearly" that there is *no* substantial evidence that the Tao Hotel may cause a significant impact on the environment in Hollywood. The City must prepare an EIR if there is any substantial evidence in the record that would support a fair argument that a significant impact is possible, regardless of any other evidence in the record. Parker Shattuck Neighbors v. Berkeley City Council (2013) 222 Cal.App.4th 768,776; Friends of "B" Street v. City of Hayward (1980) 106 Cal.App.3d 988, 1002. The determination of whether a fair argument exists is a question of law. Sierra Club v. County of Sonoma (1992) 6 Cal.App.4th 1307, 1319.

A strong presumption in favor of requiring preparation of an Environmental Impact Report ("EIR") is built into CEQA. This presumption is reflected in what is known as the "fair argument" standard, under which an agency must prepare an EIR whenever substantial evidence in the record supports a fair argument that a project may have a significant effect on the environment. Laurel Heights Improvement Ass'n v. Regents of the Univ. of Cal. (1993) 6 Cal.4th 1112, 1123; No Oil, Inc. v. City of Los Angeles (1974) 13 Cal.3d 68, 75.

Under CEQA and the CEQA Guidelines, if a project may cause a significant effect on the environment, then the lead agency must prepare an EIR. Pub. Res. Code §§ 21100, 21151. A project "may" have a significant effect on the environment if there is a "reasonable probability" that it will result in a significant impact. No Oil, Inc. v. City of Los Angeles, *supra*, 13 Cal.3d at 83 n. 16. If any aspect of the project may result in a significant impact on the environment, an EIR must be prepared even if the overall effect of the project is beneficial. CEQA Guidelines § 15063(b)(1).

The fair argument test is a "low threshold" test for requiring the preparation of an EIR. No Oil, *supra*, 13 Cal.3d at 84. This standard reflects a preference for requiring an EIR to be prepared, and a preference for resolving doubts in favor of environmental review. Mejia v. City of Los Angeles (2005) 130 Cal.App.4th 322, 332.

CEQA Guidelines Section 15384(a) defines "substantial evidence" as "enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached . . ." (Emphasis added.) Under Pub. Res. Code Sections 21080(e), 21082.2(c), and CEQA Guidelines Sections 15064(f)(5) and 15384, facts, reasonable assumptions predicated on facts, and expert opinions supported by facts can constitute substantial evidence.

An agency must prepare an EIR whenever it can be fairly argued on the basis of substantial evidence that a project may have a significant environmental impact. If there is substantial evidence both for and against preparing an EIR, then the agency must prepare the EIR.

There is substantial evidence in the MND, considered together with its technical appendices, showing the possibility that the Tao Hotel will cause a significant adverse impact on the environment in several topic areas. Substantial evidence supports a fair argument that there will in fact be a significant effect as to construction noise. Further, the MND fails to show "clearly" that there will be no significant impact on air quality,

greenhouse gas emissions, land use, and cumulative traffic. The evidence in the City's own CEQA document shows conclusively that a full environmental impact report is required for this Project. Gentry v. City of Murietta (1995) 36 Cal.App.4th 1359, 1399-1400 ("an agency may adopt a negative declaration only if there is no substantial evidence that the project 'may' have a significant effect on the environment." [Emphasis in original.]

A. The Project Description is Deficient and Masks Potential Significant Impacts.

The City did not provide a full and accurate Project description for the MND circulated to the public for review. Nowhere does the MND disclose that the Project as proposed conflicted with the current C4 or proposed C2 zoning limitations on residential unit density (number of hotel rooms). And while it begrudgingly acknowledged that there was a "D" Development Limitation that restricted the FAR to 2:1, there was no disclosure to the public and decision makers that the City committed in 1988 to the density limit on the Project site unless or until a density transfer program was created under Hollywood Redevelopment Plan Section 511, or a Transportation Plan was created under Section 518.1 thereof. In fact, none of the terms of Ordinances 165,660 are described that would have illustrated that the current law does not allow anything close to the massive size of the Tao Hotel.

Additionally, the MND's use of not one but two baselines is an open admission that the City's MND for the "Tao Restaurant and Retail Project" was nothing but analysis of a chunk of an overall project that was required, at a minimum, to be analyzed in the same environmental document. Under what theory did the City approve an MND for a partial complete building, and then issued building permits for it when an application for another piece of the same building was to be later sought? What kind of three card Monte game is the City playing with the public and those whose lives are affected by this Project?

It is time for the City Hearing officers to stop signing their names to facially invalid environmental review documents, and require this development scam to prepare a full EIR for all of his known and unknown hotel aspirations.

"Where an agency fails to provide an accurate project description, or fails to gather information and undertake an adequate environmental analysis in its initial study, a negative declaration is inappropriate." Nelson v. County of Kern (2010) 190 Cal.App.4th 252, 267 (emphasis added).

"An accurate and complete project description is necessary for an intelligent evaluation of the potential environmental impacts of the agency's action." City of Redlands v. County of San Bernardino (2002) 96 Cal.App.4th 398, 406. 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 . . . and weigh other alternatives in the balance.' [Citations omitted]." Center for Sierra Nevada Conservation v. County of El Dorado (2012) 202 Cal.App.4th 1156, 1171.

Here, in violation of CEQA, the City's project description fails to include the full zoning history of the site, including the fact that Ordinance 165,660 imposed the 2:1 FAR limit as an adopted mitigation measure for the Hollywood Community Plan and Hollywood General Plan/Zoning Consistency Program EIRs. The project description also omits the City's "logic" in applying a May 2000 Zoning Administrator Interpretation and February 2009 Zoning Engineer memo to enable the reviewing public to comprehend that the Project involved a building with more than twice the number of hotel rooms as allowed by the correctly applied zoning code for the applicable commercial zoning. If the City is relying on a Zoning Interpretation, it must be cited and appended to the environmental review documents instead of gaslighting the public by pretending this reality does not exist.

On more than one occasion, when the City or CEQA consultants for developers have no answer regarding violations of land use laws of the City, they simply omit the analysis. This was done here. By purposely omitting key aspects of the zoning history and various interpretations it relied upon, such omissions led to a fatally flawed analysis of other issues in the MND.

B. The MND's Land Use Analysis Fails To Disclose Significant Land Use Impacts.

In City Planning Case No. 86-835 GPC [General Plan Consistency], the City prepared and/or recirculated an EIR for the Hollywood Community Plan in support of the consistency program. (**Exhibit 2.**) At various times in 1988-1990, the City approved resolutions and enacted ordinances to impose PERMANENT "D" Development Limitations of Subarea Map parcels throughout the Hollywood Community Plan and Redevelopment Plan area.

In Ordinance 165,660 dated May 6, 1990, as part of AB 283 compliance under City Planning Case 86-835- GPC, the City enacted the ordinance that imposed the

permanent "D" Development Limitation on the Tao Hotel property, which was located within Subarea 90 on the General Plan Consistency map. (**Exhibit 2.**) LAMC Section 12.32 regarding D Development conditions expressly provides that "D" Development Limitations are permanent (until revised in the next community plan revision process).

The City's supporting EIR for these actions (Hollywood Plan Revision Environmental Impact Report (SCH NO. 87-112504)) concluded that without reductions in authorized density to mitigate or avoid significant environmental impacts, the City's infrastructure in Hollywood would suffer overwhelming impacts that endangered public health and safety (including police and fire response times). The imposition of the AB 283 "D" Development Limitation on the Tao Hotel site, and many parcels in Hollywood, was intended to avoid environmental impacts from over-dense development, unless and until the CRA completed a Transportation Plan to avoid those significant impacts. That the former redevelopment agency would be responsible for balancing the infrastructure issues through the Transportation Plan was summarized in a "Next Steps Hollywood Community Plan Revision" memo made public in the midst of the planning process. This memo explains that it was necessary to limit development by right to reduced densities which the CRA called "practical buildout", or 36 million square feet of development, instead of the "theoretical buildout" of the zoning from the City's 1946 zoning code, which would have allowed 88 million square feet. (**Exhibit 2.**)

The City has been on notice that it could not remove the permanent "D" Development Limitation until such time as the CRA/LA (successor agency to the former redevelopment agency) prepared the Transportation Plan it committed to complete in the 1986 Hollywood Redevelopment Plan, and supported it with new environmental analysis showing that the adopted Transportation Plan solved the risks of environmental harm that had justified imposition of the permanent "D" Development Limitation in the first place.

Accordingly, the "D" Development Limitation cannot be removed by the City Council as it proposes to do in this case, and substituted with a new CONDITIONAL "Q" condition and "D" Development Limitation. The permanent "D" Development Limitation, given that it was imposed to avoid significant environmental harm from over-dense development, and that it was required to be imposed in order to bring the City into compliance with Government Code Section 65680(d) under a legal settlement, means that it cannot be removed until the CRA/LA completes and adopts a Transportation Plan that eliminates the potential environmental harm from development at a FAR greater than the 2:1 imposed on this parcel.

None of this critical land use history was included in either the Project Description or the Land Use analysis of the MND materials. In fact, due to its complexity, and because the Project as proposed grossly violates the 2:1 FAR limit imposed by the "D" Development Limitation under the General Plan/Zoning Consistency program, the City, and now CRA/LA, must prepare an EIR to explain these complexities and provide the public an opportunity for participation in the CEQA process.

Accordingly, the MND fails to properly disclose and analyze the proper Project description or disclose, analyze and mitigate the land use impacts of the proposed Project, which nearly doubles the authorized FAR, and more than doubles the authorized number of hotel rooms.

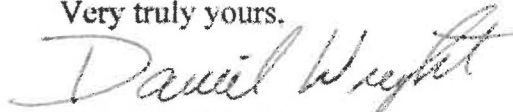
C. CONCLUSION REGARDING ENVIRONMENTAL REVIEW.

In sum, the MND fails on multiple grounds, and as to multiple types of environmental effects, to meet the test for a mitigated negative declaration. It has failed to show no possibility of a significant impact on the environment as to air quality, noise and vibration, greenhouse gas emissions, and traffic. An EIR is clearly required.

IX. SUMMATION.

The Tao Hotel is an ill-conceived, noise generating nuisance "party hotel" that should have never come out of a Planning Department conference room. Multiple deliberate misconstructions of the LAMC are used to unlawfully increase the residential unit density, FAR, and height of the building. There is no legitimate basis to approve this Project as proposed. Given the numerous hotels of the same developer in the immediate vicinity, it is time for the City to acknowledge that this multi-hotel project must be analyzed comprehensively in a full EIR.

Very truly yours,



DANIEL WRIGHT

FOR

THE SILVERSTEIN LAW FIRM, APC

DEW:vl

cc: Client

UNITEHERE! Local 11

464 Lucas Ave., Suite 201 • Los Angeles, California 90017 • (213) 481-8530 • FAX (213) 481-0352

To: Members of the Los Angeles City Planning Commission,
& Los Angeles Department of City Planning

cc. May Sirinopwongsagon
LA City Planning Department

RE: Dream Phase 2 Hotel project; Initial Study/Mitigated Negative Declaration.

case No. ENV-2016-2602-MND;

6421-6429 W Selma Ave & 1600-1604 N Wilcox Ave; Hollywood..

This letter is written on behalf of the 28,000 members of UNITE HERE! Local 11, the hospitality and restaurant employees' union. Our members live and work across LA and Orange County, including in the City of West Hollywood, and, Phoenix, Arizona. The Mitigated Negative Declaration fails to adequately analyze multiple significant environmental impacts from the proposed project. Various points of analysis in the MND are in error, are incomplete, or are absent from it entirely. The MND is inadequate for the purposes of CEQA and local law, and should not be adopted. **A full Project-Specific Environmental Impact Report must be prepared.**

The Applicant Improperly Piecemeals Several DREAM Projects

All DREAM projects should proceed together in order to fulfill the basic Legislative goals for CEQA, and comply with the statute. CEQA is constructed around an inclusive definition of "project" for the purpose of preventing public agencies from segmenting projects in a way that diminishes apparent environmental impacts. CEQA mandates "that environmental considerations do not become submerged by chopping a large project into many little ones -- each with a minimal potential impact on the environment - which cumulatively may have disastrous consequences." *Bozung v. LAFCO* (1975) 13 Cal.3d 263, 283-84 (1975); *City of Santee v. County of San Diego* (1989) 214 Cal.App.3d 1438, 1452. Before undertaking a project, the lead agency must assess the environmental impacts of all reasonably foreseeable phases of a project and a public agency may not segment a large project into two or more smaller projects in order to mask serious environmental consequences.

The MND identifies several nearby projects specifically, but fails to note that a critical fact; that these are projects proposed, built, and controlled by applicant. In addition to the proposed project, there are three other major hotel projects built, under construction, or recently approved by the city. They are:

- [open]The Dream Phase I (as it is called by Applicant) with 178 rooms, and at least 4581 sq.ft bar/restaurant use.

UNITEHERE! Local 11

464 Lucas Ave., Suite 201 • Los Angeles, California 90017 • (213) 481-8530 • FAX (213) 481-0352

- [under construction] A hotel at 12-story hotel at 1541 Wilcox currently under construction by applicant, with 200 hotel rooms. 1862 sq.ft bar, 4595 Restaurant and Bar
- [post-approval] The Tommie Hotel project at 6516 Selma Avenue, approximately 100 feet from the Project Site, would have 212 hotel, rooms, a 2,308 square feet cafe, & 11,148 square feet restaurant/bar use.

From those facts it appears, and with approval of this MND would functionally be, a single major project comprising upwards of 630 hotel rooms, six or more bars/restaurant spaces in addition to the approved and existing 20,624 sq. ft restaurant on this project site and project's proposed 5,041 rooftop bar, approximating nearly 50,000 square feet of active bar/nightclub/bar & restaurant space within 0 to 350 feet of the project site. These large hotels and bar projects taken together would cover major portions of that block of the land along Selma and Wilcox, with significant contiguous portions to their property (such as Dream Phase I and Phase II, and the Tao Restaurant properties). And applicants have stated further goals for up to potentially 2000 hotel rooms in the area.

Applicant Richard Heyman has spoken publicly about his company's intention of creating an "integrated urban resort," as quoted in a July, 2017 LA Times interview by Roger Vincent (see below). However, neither Heyman nor his company have ever properly presented this full plan for an "integrated urban resort" to the City Planning Department, Planning Commission, City Council, or the public, thus abrogating the rights of public input and review under CEQA and engaging in improper project piecemealing.

Traffic Impacts & Cumulative Analysis

MND improperly dismisses future-with-project impacts, and cumulative traffic impacts. The traffic assessment indicates at least 4 significant traffic impacts, at the Hollywood and Wilcox intersection, and the 4A Selma and Wilcox intersection, and for 4B Selma and Wilcox intersection. The stated mitigations are speculative, or based in voluntary action of others neither the city nor the applicant can control or guarantee. Their ephemeral nature of proposed "mitigations" in the Transportation Demand Management and Monitoring Program (TDMMP) for the identified traffic impacts are not brought below a threshold of significance within the scope of the project.

Mitigations of significant impacts cannot be differed in this way. Even if implemented there is no guarantee the TDMMP will function to the levels desired or expected; thus, the project would create significant impacts that would then be incredibly difficult to correct or mitigate effectively. The trip reduction credits applied to analysis within the MND (70% to the 1,809 sq.ft restaurant, 60% to the rooftop bar) represent a 24% total reduction in estimated car trips and are not properly justified, masking other potentially significant impacts from traffic generated by the operation of the hotel.

UNITEHERE! Local 11

464 Lucas Ave., Suite 201 • Los Angeles, California 90017 • (213) 481-8530 • FAX (213) 481-0352

Additionally, the MND Future Without Project using Current Baseline identifies that six of the ten studied intersections would be at Level of Service E or F during AM and PM peaks by 2020. This MND fails to address the cumulative impacts on traffic from this project plus the dozens of other proposed projects. While a project-specific Environmental Impact Report may be unable to answer every problem arising from the vast array of new development occurring in Hollywood, it is imperative upon DCP and the City to undertake a full and comprehensive cumulative traffic impact study immediately, and with this project.

The State Department of Transportation has repeatedly encouraged the city to do this in letters filed on several other nearby projects (such as Crossroads Hollywood, see attached). By failing to properly study potentially significant cumulative impacts of this and related projects (including adjacent projects *by the same applicant*), this MND serves to mask those potential impacts for the whole of the Hollywood plan area and vital commercial corridors on Sunset and Hollywood Boulevards.

GHG/Climate Analysis Is Flawed and Outdated

MND does not adequately assess potentially significant impacts on air quality and greenhouse gas emissions from mobile sources, fixed sources, and construction activities. As the project as proposed is not in compliance with current zoning as implemented by both the Hollywood Community Plan and site-specific D limitation imposed via ordinance, the conclusion that there is no inconsistency with SCAQMD Air Quality Management Plan, or the rules in use as drafted by the SCAQMD is also in error and may reach potentially significant impacts if the project is built without mitigation measures.

The Project's GHG emissions are likely significant, and the refusal to include any climate change mitigation measures is dubious. Also, although the MND identifies GHG reduction strategies set forth in the Climate Change Scoping Plan, 2016-2040 SCAG RTP/SCS Actions and Strategies, the Green LA Plan (DEIR, 4.4-53), and the LA Sustainable City pLAn, the MND fails to include the vast majority of the measures in the documents as design features or as mitigation measures. Moreover, the Green LA Plan and LA Sustainable City pLAn were not designed to comply with recent GHG laws like SB32, and were never formally reviewed or evaluated in any CEQA document.

Also, the GHG analysis and conclusions in MND is outdated and needs to be recirculated in light of *Newhall Ranch* and the new SB32 targets. In 2016, the Legislature passed SB 32, which codifies a 2030 GHG emissions reduction target of 40 percent below 1990 levels. The MND must also consider the 2050 long-term reduction goal set forth by Executive Order S-3-05, which requires California to reduce its statewide emissions to 80 percent below 1990 levels by 2050. By failing to demonstrate compliance

UNITEHERE! Local 11

464 Lucas Ave., Suite 201 • Los Angeles, California 90017 • (213) 481-8530 • FAX (213) 481-0352

with these additional reduction goals, the Project's GHG impact analysis is incomplete and inadequate, and the Project's GHG emissions are insufficiently addressed and mitigated.¹

Project-specific information disclosed in the IS/MND appears to be omitted from the air model used in Appendix C. As a result, the project's construction and operational emissions are underestimated. A Project-specific EIR should be prepared to include an updated GHG analysis that adequately evaluates the impacts that the construction and operation of the Project will have on global climate change and the State's 2035 emissions targets. This apparent discrepancy in land uses between the IS/MND and the air model provided in Appendix C presents a significant issue.

The MND Ignores The Need For Housing At The Site

The Project is zoned for apartment or residential. MND p. 3-117. Yet no housing is provided. According to the UCLA Ziman Center, Los Angeles housing prices have grown about four times faster than incomes since 2000 and "affordable housing production and preservation needs to accelerate." <http://www.anderson.ucla.edu/Documents/areas/ctr/ziman/2014-08WPrev.pdf>

Los Angeles is the least affordable rental market in the country, according to Harvard University's Joint Center for Housing Studies, and its been ranked the second-least affordable region for middle-class people seeking to buy a home. <http://www.latimes.com/opinion/editorials/la-ed-affordable-housing-part-1-20150111-story.html>

The City of Los Angeles' Housing Needs Assessment indicates that through September 30, 2021, 20,426 additional housing units are needed in the City for very low-income, 12,435 for low-income, and 13,728 are for moderate income. <http://planning.lacity.org/HousingInitiatives/HousingElement/Text/Ch1.pdf>

The City's General Plan reflects this urgent need for affordable housing. *See City of Los Angeles General Plan Housing Element Goal 1 "A City where housing production and preservation result in an*

¹ We also question the MND's reliance on statewide mobile source reduction programs and, most seriously, treating measures having nothing to do with the Project as mitigation for the Project impacts. *See California Air Pollution Control Officers Association, Quantifying Greenhouse Gas Mitigation Measures* pp. 32 and A3 at <http://www.capcoa.org/wp-content/uploads/2010/11/CAPCOA-Quantification-Report-9-14-Final.pdf> ("in order for a project or measure that reduces emissions to count as mitigation of impacts, the reductions have to be 'additional.' Greenhouse gas emission reductions that are otherwise required by law or regulation would appropriately be considered part of the existing baseline. Thus, any resulting emission reduction cannot be construed as appropriate (or additional) for purposes of mitigation under CEQA.") This concept is known as additionality – greenhouse gas emission reductions that are 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. *See* http://resources.ca.gov/ceqa/docs/Final_Statement_of_Reasons.pdf. Emissions reductions that would occur without the Project should not normally qualify as Project mitigation. Thus, this Project needs to do its own fair share, with enforceable, detailed Project-specific mitigations – aside from existing statewide and local measures -- governed by performance standards to guarantee efficacy.

UNITEHERE! Local 11

464 Lucas Ave., Suite 201 • Los Angeles, California 90017 • (213) 481-8530 • FAX (213) 481-0352

adequate supply of ownership and rental housing that is safe, healthy and affordable to people of all income levels, races, ages, and suitable for their various needs"; Policy 1.1.1 "Expand affordable home ownership opportunities and support current homeowners in retaining their homeowner status"; Policy 1.1.2 Expand affordable rental housing; Objective 2.5 "Promote a more equitable distribution of affordable housing opportunities throughout the City"; Policy 2.5.1 "Target housing resources, policies and incentives to include affordable housing in residential development, particularly in mixed use development, Transit Oriented Districts and designated Centers"; and Policy 2.5.2 "Foster the development of new affordable housing units citywide and within each Community Plan area".
<http://planning.lacity.org/HousingInitiatives/HousingElement/Text/Ch6.pdf>.

The same affordability concerns must be addressed under the governing Hollywood Community Plan and Redevelopment Plan. *See City of Los Angeles Hollywood Community Plan* Objective 3 "To make provision for the housing required to satisfy the varying needs and desires of all economic segments of the Community . . . [a]dditional low and moderate-income housing is needed in all parts of this Community"; *Hollywood Redevelopment Plan* Goal 300.9 "Provide housing choices and increase the supply and improve the quality of housing for all income and age groups, especially for persons with low and moderate incomes; and to provide home ownership opportunities and other housing choices which meet the needs of the resident population"; Goal 410.4 "At least fifteen percent (15%) of all new or rehabilitated units developed within the Project Area by public or private entities or persons other than the Agency shall be for persons and families of low or moderate income; and of such fifteen percent, not less than forty percent (40%) thereof shall be for very low income households"; and Goal 412 "The social needs of the community include but are not limited to the need for day care facilities, housing for very low and low income persons including the elderly, the homeless, and runaways, educational and job training facilities, counseling programs and facilities."
<http://planning.lacity.org/complan/pdf/HwdCpTxt.pdf>; <http://www.craa.org/internet/site/Projects/Hollywood/upload/HollywoodRedevelopmentPlan.pdf>.

With no housing component, this Project likely is General, Community and Redevelopment Plan inconsistent, not in the "general welfare," and the City may be paying mere lip service to the mandates of its governing Plans. This matters to the 28,000 members of Local 11, who wants to ensure that our members and all fellow Angelenos can afford to live in Los Angeles. This Project does nothing to address these affordable housing goals and policies, and the MND is silent on the affordable housing issue and inconsistency related thereto. *The MND should be recirculated to meaningfully address the affordable housing issue, including a housing nexus study.*

Land Use Findings Cannot Be Made

The CEQA, land use, and other concerns addressed in this letter must be adequately addressed to make the required City Code findings. The entitlements are discretionary, not by right. If the numerous errors and deficiencies discussed herein are not cured, City decisionmakers should reject

UNITEHERE! Local 11

464 Lucas Ave., Suite 201 • Los Angeles, California 90017 • (213) 481-8530 • FAX (213) 481-0352

Relevant Group's requested discretionary entitlements because the findings cannot be made. Among the specific findings required include:

- The Project conforms with the public necessity, convenience, general welfare and good zoning practice (*see e.g.*, GPA under LAMC § 12.32.C; VTT under 17.15.C.2; ZC under § 12.32.C.3; CUPs under § 12.24.E.2);
- will enhance the built environment in the surrounding neighborhood or perform a function/service that is essential or beneficial to the community, city, or region (*see e.g.*, CUPs under 12.24.E.1);
- compatible with and will not adversely affect or further degrade adjacent properties (*see e.g.*, CUPs under 12.24.E.2; SPR under § 16.05.F.2);
- substantially conforms to the purpose, intent, and provisions of the General Plan and applicable community or specific plans (*see e.g.*, CUP under LAMC § 12.24.E.3; SPR under § 16.05.F.1).

Conclusion

The MND for this project leaves many potentially significant impacts unaddressed on traffic impacts from the project (cumulative and project specific); Air Quality, Greenhouse Gas Emissions, and cumulative project impacts, and the dangers of project piecemealing for what is in actuality a single 2-300 Million Dollar development. The project requires a full Environmental Impact Report be done to properly and completely assess and analyze the myriad significant and cumulative impacts it would have on the environment and residents. The MND is woefully incomplete and should not be adopted. *A full Project-Specific EIR must be prepared.*

Respectfully,
Elle Farmer
Research Analyst
UNITE HERE! Local 11

UNITEHERE! Local 11

464 Lucas Ave., Suite 201 • Los Angeles, California 90017 • (213) 481-8530 • FAX (213) 481-0352

[[[The following are excerpts from a July 2017 interview about the "Integrated Urban Resort" Projects, and marketing materials used by Applicants, Richard Heyman's *Relevant Group* (Previously Five Chairs Development), and the EB-5 Regional Investment Center they control, *Hollywood International Regional Center* circa 2014/15.]]]

The Dream Hotel is the centerpiece of a \$110-million development in Hollywood.



By Roger Vincent

JULY 8, 2017, 9:00 AM

From top to bottom, the futuristic-looking Dream Hotel tries hard to live up to its name.

The centerpiece of a \$110-million hospitality complex, it features a front lobby and bar that will open entirely onto the street — providing a new way to enjoy an indoor-outdoor experience in Southern California.

On the rooftop, it has a pool for daytime lounging that in the evening can be converted into a dance floor at the flick of a switch.

"It's an integrated urban resort," said Dream developer Richard Heyman, who helped build the House of Blues nightclub that invigorated the Sunset Strip in the 1990s.

And there are four restaurants where patrons can choose to dine, including the first West Coast outpost of Asian-themed Tao, one of highest-grossing restaurant groups in the country.

Now, after a decade-long odyssey to market, the slim nine-story tower is expected to open next week.

But it's hoped that the boutique lodging with 178 rooms will be more than just the latest entrant in a hot Hollywood market, where two other high-end hotels are expected to open this year.

The idea is that it will be a cornerstone of a new zone of hotels, restaurants, bars and shops similar to Manhattan's trendy Meatpacking District, where an old urban industrial district has become an upscale neighborhood flush with restaurants, shops and hotels.

- A .pdf copy of the full news article is also included.

UNITEHERE! Local 11

464 Lucas Ave., Suite 201 • Los Angeles, California 90017 • (213) 481-8530 • FAX (213) 481-0352

LOS ANGELES LUXURY HOTEL INVESTMENTS



SEEKING EQUITY PARTNERS

Space Global is looking for equity investors to invest with us!

In collaboration with the Hollywood International Regional Center, Space Global is looking to develop a slate of 2,000 hotel rooms valued over \$1 billion dollars.

We are inviting outside investors to receive ownership in each property and receive generous equity returns.

All in one of the most dynamic cities in the world!



space
亦空房产
Exclusive China Sales and
Marketing Partner of HIRC

UNITEHERE! Local 11

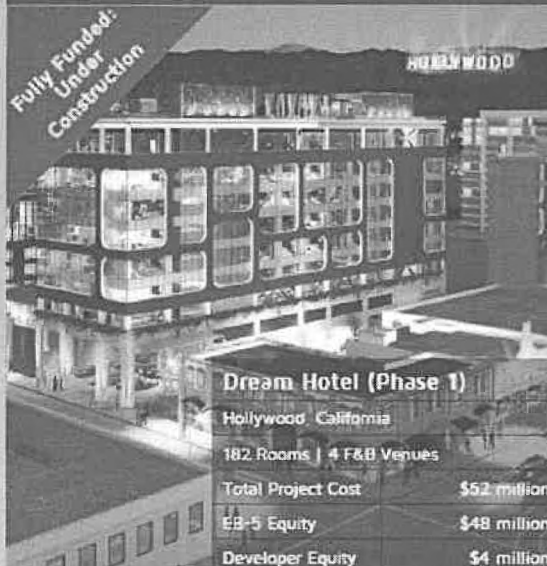
464 Lucas Ave., Suite 201 • Los Angeles, California 90017 • (213) 481-8530 • FAX (213) 481-0352

LOS ANGELES LUXURY HOTEL INVESTMENTS

space
小空房产

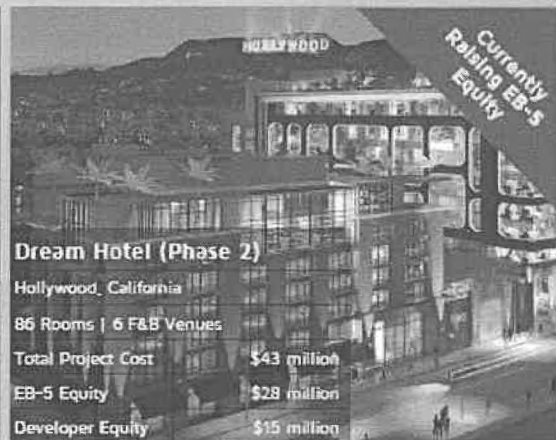
Below are the hotel projects that HIRC has already successfully secured. The 5 projects have an estimated total project cost of \$290 million and expect to be fully funded with equity and EB-5 capital by 2015.

Fully Funded:
Under
Construction



Dream Hotel (Phase 1)

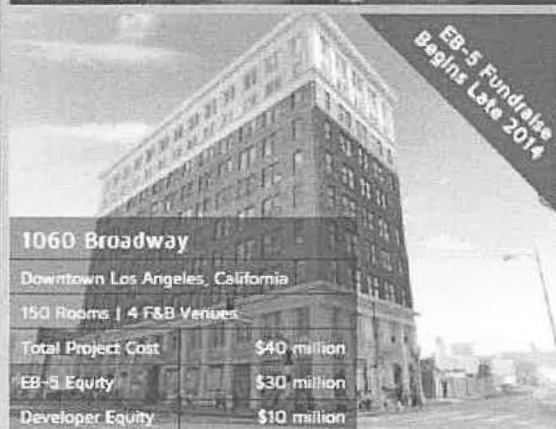
Hollywood, California
182 Rooms | 4 F&B Venues
Total Project Cost \$52 million
EB-5 Equity \$48 million
Developer Equity \$4 million



Dream Hotel (Phase 2)

Hollywood, California
86 Rooms | 6 F&B Venues
Total Project Cost \$43 million
EB-5 Equity \$28 million
Developer Equity \$15 million

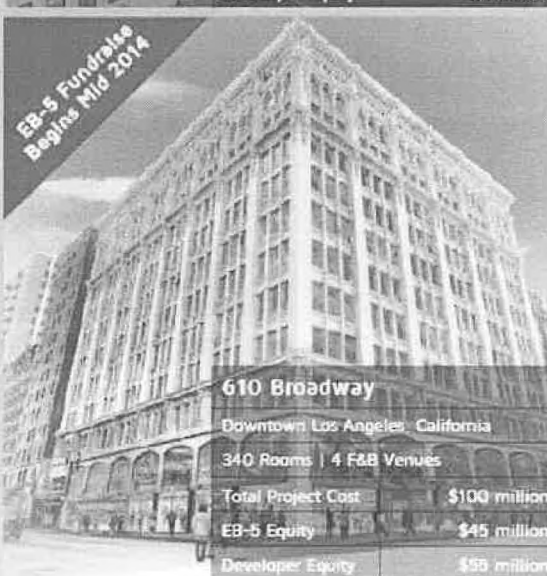
Currently
Raising EB-5
Equity



1060 Broadway

Downtown Los Angeles, California
150 Rooms | 4 F&B Venues
Total Project Cost \$40 million
EB-5 Equity \$30 million
Developer Equity \$10 million

EB-5 Fundraise
Begins Late 2014



610 Broadway

Downtown Los Angeles, California
340 Rooms | 4 F&B Venues
Total Project Cost \$100 million
EB-5 Equity \$45 million
Developer Equity \$55 million

EB-5 Fundraise
Begins Mid 2014



1541 Wilcox

Hollywood, California
220 Rooms | 5 F&B Venues
Total Project Cost \$55 million
EB-5 Equity \$38 million
Developer Equity \$17 million

EB-5 Fundraise
Begins Late 2014

All China Sales and Marketing transactions conducted through Space Global

English Inquiries

Room 14, Building
China Investment Director
Email: room14@spaceglobal.com
Mobile: +86 186 1812 7872

Space Global

484 21 8288 0000
173 Jiefang Road, Unit B8, China 101 (Shanghai, China 200040)
中国上海南京路173号B8单元 邮编 200040

中文联系

Room 14, Building
Email: room14@spaceglobal.com
Mobile: +86 186 1812 7872