

Communication from Public

Name: Charles Du
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Comments for Public Posting: See attachment.

UNITEHERE! Local 11

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October 14, 2019

Kevin Golden
Los Angeles City Planning Department
200 N. Spring Street, Room 621
Los Angeles, CA 90012
kevin.golden@lacity.org

**RE: Comments on Recirculated Mitigated Negative Declaration;
Infinitely Hotel Project (CPC-2017-712; ENV-2017-713; CF-18-1242)**

Dear Mr. Golden:

UNITE HERE Local 11 and its members (collectively "Local 11") respectfully provides the City of Los Angeles ("City") the following comments¹ regarding the recirculated Mitigated Negative Declaration ("RMND")² for the proposed 6-story, 100-room hotel ("Hotel Development") on the north-west corner of Westlake Avenue ("Hotel Site") and the General Plan Amendment ("GPA") approval for the 22,500 square-foot ("SF") Hotel Site and another approximately 253,100 SF of properties along both sides of Alvarado Street between James Wood Boulevard and just north of 8th Street ("Add Area") (collectively "Project").

These comments supplement our previous comments made in our appeal (the "Appeal") (see attached Exhibit A) of the Project and the Project's previously circulated Mitigated Negative Declaration ("MND"),³ which Local 11 appealed on grounds of noncompliance with the Los Angeles Municipal Code ("LAMC" or "Code") and the California Environmental Quality Act, Pub. Res. Code § 21000 *et seq.*, ("CEQA"). In short, the Appeal raised concerns with the Project's lack of any affordable housing commitment in apparent conflict with the City's Measure JJJ and Transit Oriented Communities Affordable Housing Incentives Program Guidelines ("TOC Guidelines"). Additionally, as pointed out by the previously submitted expert comments attached to the Appeal comment, the MND failed to consider the traffic and greenhouse ("GHG") impacts associated with the Add Area GPA, constituting improper project piecemealing under CEQA. So too, Local 11 was concerned over various issues specific to the Hotel Development, such as noise impacts to nearby residents.

Here, while the RMND includes new mitigation measures to reduce the Hotel Development's construction and operational noise impacts—*which would not have occurred absent Local 11's Appeal*—the RMND fails to address the issue of the Project's noncompliance with Measure JJJ or analyze the GPA's traffic and GHG impacts inextricably linked to the requested GPA for the Add Area. The RMND

¹ Please note that pages cited herein are either to the page's stated pagination (referenced herein as "p. ##") or the page's location in the referenced PDF document (referenced herein as "PDF p. ##").

² Inclusive of the all appendices ("APP-##"). Unless otherwise specified, all documents are retrieved from City website (https://planning.lacity.org/odocument/3617788c-c9f8-4018-8d29-aa8c5987b766/Pub_091219.htm#713).

³ 2005 James M. Wood Blvd. Hotel Project (Dec. 2017) IS/MND, http://clkrep.lacity.org/online/docs/2018/18-1242_misc_1_12-20-2018.0002.pdf.

fails to disclose, analyze, or mitigate the potential impact of the GPA's increased development capacity—as much as four-times existing levels. The failure to analyze the GPA Add Area is not only inconsistent with the City's past practices, but also comes at the expense of affordable housing goals adopted by the voters in 2016 with passage of Measure JJJ—which forbids changes to community plans that “[r]educe the capacity for creation and preservation of affordable housing and access to local jobs” or that undermine the State’s Density Bonus laws or any other affordable housing incentive program (LAMC § 11.5.8.A).

Furthermore, despite the applicant and the City Planning Commission treating the Project as a ‘residential’ project, the City fails to subject the Project to compliance with Measure JJJ’s requirements for affordable housing or in-lieu fees. By refusing to do so, the City continues a pattern-and-practice of undermining the voter’s will and the Code by granting hotel projects all the privileges of a residential project but forgoing any of the residential obligations. Quite simply, the applicant cannot have its cake and eat it too.

Local 11 works to stem this rising tide of inequality, and to make our City a place of opportunity for all—a place where its members can work and afford to live. So too, Local 11’s members have a direct interest in seeing that the State’s environmental laws and the City’s land-use laws are being followed, and that new development does not contribute to the climate-change crisis that threatens a livable future. For this reasons, Local 11 is deeply concerned with the City’s dereliction of duty to apply Measure JJJ and affordable housing requirements, and its improper project piecemealing of traffic and GHG impacts associated with the Add Area GPA.

Local 11 is also concerned that the City intends to hold a Planning Land Use Management (“PLUM”) Committee hearing to consider the merits of Local 11’s Appeal and the adequacy of the RMND on November 5, 2019—a mere three weeks after the close of the public comment period of October 15, 2019.⁴ The clear impression is that the City has made its determination on the Project and Local 11’s Appeal regardless of the comments received or addressing the issues discussed herein and elsewhere in the administrative record for the Project.

Local 11 therefore respectfully requests that the PLUM Committee to:

- Deny the GPA for the Add Area until an adequate CEQA review is prepared to analyze the potential traffic, climate change, and other CEQA impacts that are inextricably linked to the entire GPA, and subject any GPA approval to strict compliance with Measure JJJ’s affordable housing requirements;
- Deny the GPA for the Hotel Site until the applicant commits to either on-site affordable housing or in-lieu fees in accordance with the requirements of Measure JJJ;
- Deny the requested land use entitlements until imposing a condition of approval requiring the applicant to record a restrictive covenant preventing the sale or serving of liquor at the hotel or restaurant for not less than five years (see e.g., LAMC § 91.106.4.1(12)).

The remainder of this document highlights the RMND’s failure to address the issues previously raised in our Appeal comments, which is attached hereto for your convenience as Exhibit A.

⁴ DCP (10/11/19) Revised Notice, http://clkrep.lacity.org/online/docs/2018/18-1242_misc_10-11-19.pdf.

I. THE RMND FAILS TO ANALYZE THE ADD-AREA GPA'S INCONSISTENCY WITH MEASURE JJJ

As fully discussed in our Appeal, properties within the 253,100-SF Add Area are designated under the General Plan as "Highway Oriented Commercial" subject to 1.5:1 floor-area-ratio ("FAR"). The GPA would re-designate the properties to the "Community Commercial" designation allowing up 6:1 FAR— a 400 percent increase in FAR density, which dwarfs the benefits provided under any of the TOC incentives,⁵ and jeopardizes the continued success of the TOC program that has resulted in the proposal of 3,863 affordable units since 2017.⁶ This conflicts with Measure JJJ' bar on any GPAs resulting in a "material change ... until the completion of a comprehensive assessment" is completed to ensure such changes do not "[r]educe the capacity for creation and preservation of affordable housing and access to local jobs;" or "[u]ndermine California Government Code Section 65915 [i.e., State Density Bonus law] or any other affordable housing incentive program [i.e., TOC Guidelines]...." LAMC § 11.5.8, emphasis added.

Here, the RMND fails to even mention Measure JJJ, much less discuss the Add-Area GPA's consistency with Measure JJJ and TOC Guidelines. Nor is there any "comprehensive assessment" provided as explicitly required under LAMC § 11.5.8. Because the RMND fails to address this issue, Local 11 renews its Appeal comments in their entirety.

II. THE RMND FAILS TO ANALYZE THE HOTEL DEVELOPMENT'S INCONSISTENCY WITH MEASURE JJJ

As fully discussed in our Appeal, the Hotel Development (which includes extended-stay rooms with kitchens) is considered a 'residential' project based upon (1) the statements made by staff, the applicant, and City Planning Commission ("CPC"); (2) the plain meaning of and the City's interpretation of the Code; and (3) the plain language of Measure JJJ.

Here, although it is clear to any reasonable person that the Hotel Development is subject to Measure JJJ, the RMND fails to mentioned, much less discuss, the Hotel Development's consistency with the mandates under Measure JJJ, including requirements for local hiring and prevailing wages for the Project's construction, or providing either on/off-site affordable housing units or in lieu fees paid into the the City's Affordable Housing Trust Fund (see LAMC § 11.5.11(a)). The RMND's silence and the City's failure to impose these mandatory requirements appears to be a pattern-and-practice of the City's dereliction of duty to apply Measure JJJ's requirements on all residential project, including hotel developments clearly considered residential under the Code and City interpretations.

It is arbitrary and capricious for the City to ignore its clear duty under Measure JJJ. The City must enforce Measure JJJ, not only for this Project but also for the hotel developments currently pending City action. Because the RMND fails to address this issue, Local 11 renews its Appeal comments in their entirety.

⁵ See City (rev. 2/26/18) TOC Guidelines, p. 10 (under Tier 4 base incentive, 55 percentage max-increase for residential is allowed, or a FAR increase resulting in 4.25:1 FAR in commercial zones, whichever is greater), <https://planning.lacity.org/ordinances/docs/toc/TOCGuidelines.pdf>.

⁶ See City (Jun. 2019) Housing Progress Report, PDF p. 3 (noting 2,945 and 918 affordable units via discretionary cases and by-right permits, respectively, since the inception of the TOC program in October 2017), <https://planning.lacity.org/odocument/c795255d-9367-4fdf-9568-0a34077720ef>.

III. THE RMND FAILS TO ANALYZE IMPACTS FROM REASONABLY FORESEEABLE DEVELOPMENT SERVED BY THE ADD AREA GPA

As previously mentioned, the GPA will re-designate properties in the 253,100-SF Add Area from “Highway Oriented Commercial” (allowed 1.5:1 FAR) to “Community Commercial” (allowing up to 6:1 FAR)—a 400 percent increase in FAR density. As fully discussed in our Appeal, the GPA is admittedly an attempt by the City to encourage, facilitate, and focus efforts to increase mixed-use and high density development in the area. This is echoed in the RMND, which states the Add-Area GPA “would allow for additional uses and could increase the development potential of the parcels within the Project site ... would allow denser development than the existing zoning.” RMND, pp. 4.0-53 – 4.0-54.⁷ As reflected in Figure 1 on the following page, the proposed GPA (outlined in black) would significantly expand the City’s Commercial Area generally restricted to areas between Sixth and Seventh streets (highlighted in light and dark pink). The City’s proposed Add Area GPA also coincides with recent project applications seeking FAR in excess of existing 1.5:1 FAR permitted under the existing Highway Oriented Commercial.⁸ Hence, the Add Area GPA constitutes a “major policy shift” that will guide future growth and development in excess of the otherwise permitted 1.5:1 FAR, which could have a potential physical change in the environment, particularly traffic and GHG impacts as pointed out in the expert comments attached to our Appeal comments.⁹

⁷ See also RMND, p. 4.0-75 (“This could facilitate rezoning of other parcels and would allow for additional density since the Community Commercial Land Use Designation allows Height District 2.”).

⁸ See e.g., DIR-2019-1663-TOC (6/13/19) Categorical Exemption Justification, PDF p. 10 (proposed 7-story, 44,566-SF structure seeking 3.63:1 FAR per Tier 3 incentives under the TOC Guidelines at 2101 W. Eighth Street within the Add Area), <https://planning.lacity.org/pdiscaseinfo/Home/GetDocument/NTYxYzY1M2YtMmI3OC00YjVklTlxZTYtMzRINGFINWNhMjE50>; DIR-2019-2893-TOC (proposed 5-story, apartment on R4-1 zoned lot [allowed 3:1 base FAR] at 831 S. Westlake Avenue north of the Hotel Site and immediately adjacent to Add Area. Per Tier 3 incentives under the TOC Guidelines, project may seek up to 4.5 FAR [i.e., 50 percent increase over base FAR].), <http://planning.lacity.org/pdiscaseinfo/search/encoded/MjI5NTAy0> and <https://planning.lacity.org/ordinances/docs/toc/TOCGuidelines.pdf>.

⁹ *City of Livermore v. Local Agency Formation Com* (1986) 184 Cal.App.3d 531, 540; see also *DeVita v. County of Napa* (1995) 9 Cal.4th 763, 793-794 (“General plan amendments are indeed generally subject to environmental review under [CEQA] ... ‘embody fundamental land use decisions that guide the future growth and development of cities and counties,’ and amendments of these plans ‘have a potential for resulting in ultimate physical changes in the environment.’”) (quoting *City of Santa Ana v. City of Garden Grove* (1979) 100 Cal.App.3d 521, 532); *City of Redlands v. County of San Bernardino* (2002) 96 Cal.App.4th 398, 409 (“Even if a general plan amendment is treated merely as a ‘first phase’ with later developments having separate approvals and environmental assessments, it is apparent that an evaluation of a ‘first phase-general plan amendment’ must necessarily include a consideration of the larger project, i.e., the future development permitted by the amendment.”) (quoting *Christward Ministry v. Superior Court* (1986) 184 Cal. App. 3d 180, 194).

FIGURE 1: WESTLAKE COMMUNITY PLAN



Here, however, the RMND fails to consider the impacts from this increased density, such as traffic and GHG impacts (*as raised in expert comments attached to our Appeal comments*). Instead, the RMND claims that properties would require additional rezoning efforts to access this higher FAR, which would be subject to future piecemeal project-specific environmental review on a case by case basis (RDMD, p. 2.0-8). This response was repeated in serial fashion to avoid analysis of the Add Area GPA impacts.¹⁰ This argument, however, has been repeatedly rejected by the courts,¹¹ which recognize that “in cases involving general plan amendments, the local agency has either prepared an EIR or was required to do

¹⁰ See e.g., RMND, pp. 4.0-9 – 4.0-14 (air quality impacts not analyzed), pp. 4.0-24 – 4.0-25 (energy impacts not analyzed), pp. 4.0-34 & -37 (GHG impacts not analyzed), pp. 4.0-84 – 4.0-86 (traffic impacts not analyzed).

¹¹ See e.g., *City of Redlands*, 96 Cal.App.4th at 409 (rejecting county’s argument that future projects will be evaluated on their own merits when each individual project occurs where the county, on the one hand acknowledge that “amendments may result in greater development” under the County’s jurisdiction ... yet, on the other hand, the County insists that the amendments would have little or no significant effect on the environment ... [and the record] clearly indicates the existence of not only potential future development, but at least one existing project undergoing separate environmental review.” Emphasis added); *City of Antioch v. City Council* (1986) 187 Cal.App.3d 1325, 1334, 1338 (CEQA review required where planning department recognized proposed action would “opening the way for future development” and the “sole reason” of the proposed action was “to provide a catalyst for further development in the immediate area.” Emphasis added); *Christward Ministry*, 184 Cal.App.3d at 195 (CEQA review required where general plan amendment was “a necessary first step to approval of these ‘unknown,’ uncertain-to-occur future projects.” Emphasis added); *Stanislaus Audubon Society, Inc. v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 158 (“The fact that the exact extent and location of such growth cannot now be determined does not excuse the County from preparation of an EIR.”).

so.”¹² Additionally, no explanation is given why the RMND departs from past City practices, which as pointed out in Local 11’s Appeal comments, routinely analyze ‘add area’ impacts despite (a) no actual developments being proposed within the ‘add area,’ (b) the applicants not owning or controlling any of the properties within the ‘add area,’ or (c) that a further entitlement would be necessary before properties within the ‘add area’ could fully access the additional FAR allowed under the GPA.^{13, 14, 15, 16} Also, notwithstanding the need for further rezoning efforts to access this higher FAR density (e.g., zone change), the GPA is a necessary first step to achieve that end, which again is the sole reason for the City to initiated the Add Area GPA—to serve as a catalyst for higher more dense development than otherwise allowed in the area. Furthermore, according to ZIMAS, the vast majority of the structures currently within the Add Area are more than 50 years old and ripe for redevelopment, as well as within

¹² *Christward Ministry*, 184 Cal.App.3d at 193 (citing numerous cases).

¹³ See e.g., 915 N. La Brea Avenue project (CPC-2005-6163, ENV-2005-6164) involving GPA to amend the Hollywood Community Plan for a 2.27-acre mixed-use project site and a 5.69-acre add area. There, while no actual development was proposed in the add area and the applicant did not own or control the parcels within the add area, the City recognized that the approval of the project “*could encourage similar discretionary development* requests for one or more of the other parcels [within the add area],” and, therefore, evaluated the potential environmental impacts associated with the theoretical development of the remaining parcels in the add area—assuming “maximum density permitted” for the zone. Draft EIR (May 2008) Add Area Analysis, pp. VII:1-2 (emphasis added), <https://planning.lacity.org/eir/LaBreaGateway/DEIR/DEIR%20Sections/VII.%20Add%20Area%20Analysis.pdf>; see also LOD (2/27/07) p. 1, <http://planning.lacity.org/PdisCaseInfo/Home/GetDocument/ZmY3NjhmNTYtMjk4NS00MGVhLWEzZjYtNWVmZjFINDI4Y2U20>; Draft EIR (May 2008) Project Description, pp. III:15-16, <https://planning.lacity.org/eir/LaBreaGateway/DEIR/DEIR%20Sections/III.%20Project%20Description.pdf>; Draft EIR (May 2008) Environmental Setting, p. II:1, <https://planning.lacity.org/eir/LaBreaGateway/DEIR/DEIR%20Sections/II.%20Environmental%20Setting.pdf>.

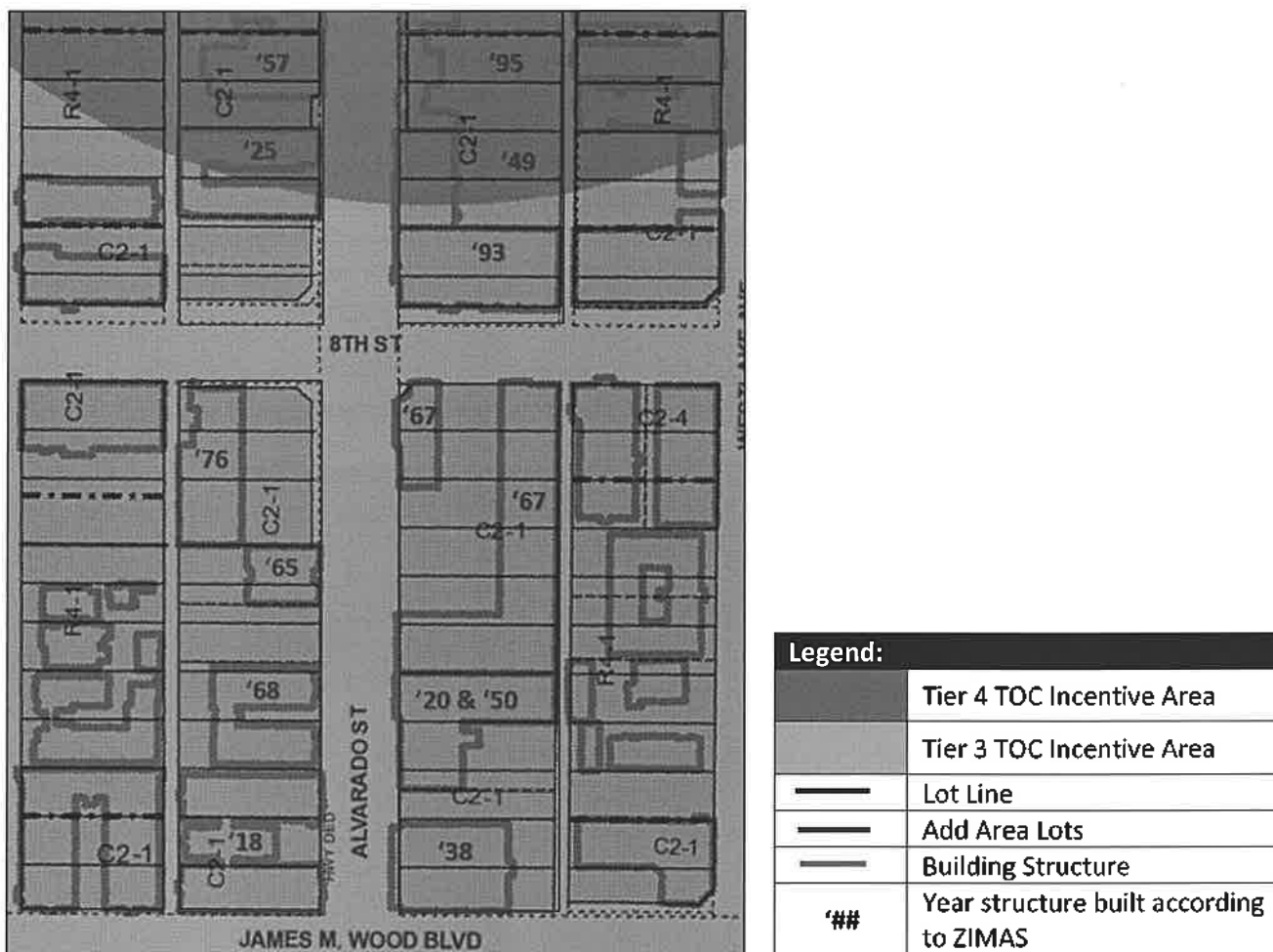
¹⁴ See e.g., LA Lofts Chinatown project (CPC-2005-1843, ENV-2005-0881) involving GPA to amend the Central City North Community Plan for a 3.4-acre condo project site and a 5.4 add area. There, despite the ZC applying only to the project site, the City still analyzed several theoretical development scenarios for the add area. See Final EIR (Apr. 2007) Introduction, pp. I:1-5, <https://planning.lacity.org/eir/LoftsChinaTown/FEIR/LA%20Lofts%20Chinatown%20FEIR%20April%202007.pdf>; see also LOD (10/23/07), pp. 1, F:3, <http://planning.lacity.org/PdisCaseInfo/Home/GetDocument/MjI2NDIzZGQ0ZGEyNy00NzZmLThlZmU0OWI2NWJiZTBkYzNmQ0>.

¹⁵ See e.g., Plaza at the Glen Mixed Use project (CPC-2008-2932, ENV-2007-4063) involving GPA to amend the North Hollywood-Valley Village Community Plan for a 12.53-acre mixed-use project site and a 9.23-acre add area. There, while no actual development was proposed in the add area and the add area was not subject to the ZC, the City nevertheless analyzed the redevelopment of the add area “consistent with the proposed Community Commercial designation at a development intensity similar to that proposed for the project site.” Draft EIR (Mar. 2009) Project Description, p. II:26, <https://planning.lacity.org/eir/GlenMixedUseProj/DEIR/Chapters/II. Project Description.pdf>; see also DEIR (Mar. 2009) Project Description, Fig. II:18, <https://planning.lacity.org/eir/GlenMixedUseProj/DEIR/LargeGraphics/II18 Add Area.pdf>; DEIR (Mar. 2009) Environmental Setting, p. III:2, <https://planning.lacity.org/eir/GlenMixedUseProj/DEIR/Chapters/III. Environmental Setting.pdf>; LOD (8/6/09) p. 1, <http://planning.lacity.org/PdisCaseInfo/Home/GetDocument/NjEyNjd0OWYtNDE0MS00MDdmLTk2ZDUtNjQ4Y2QxY2ZiNDh0>.

¹⁶ See e.g., Corbin & Nordhoff Redevelopment project (CPC-2002-7295, ENV-2002-1230) involving GPA to amend the Chatsworth-Porter Ranch Community Plan for a 35.5-acre project site and a 15-acre add area. There, while no actual development was proposed in the add area and the applicant not owning/controlling the parcels within the add area, the City nevertheless analyzed several development scenarios for the add area. See Draft Master EIR (Sep. 2003) Summary Project Description, pp. 1-5, https://planning.lacity.org/eir/Corbin_Nordhoff/MEIR/PDF/1a&b Project%20Location&Description.pdf; see also LOD (4/29/04) p. 1, <http://planning.lacity.org/PdisCaseInfo/Home/GetDocument/Yjg2ZmU4ZTEtYWZiMi00ODFmLWJiNmYtN2YzMmEzZWZhOWVhO0>.

the highest TOC priority areas targeted for increase development (as shown in Figure 2 below), as further evidenced by at least two recent TOC project applications.¹⁷

FIGURE 2: ADD AREA STRUCTURES RIPE FOR REDEVELOPMENT



In short, no reasonable person could conclude that future development of the Add Area is not, at least, a reasonably foreseeable indirect impact by the City's action here and, thus, must be analyzed under CEQA (e.g., increase density resulting in greater impacts in traffic, air quality, GHG, noise, growth inducing effects, etc.). This GPA with no CEQA review constitutes improper piecemealing.

IV. THE RMND FAILS TO ADEQUATELY CONSIDER HOTEL DEVELOPMENT IMPACTS

As fully discussed in our Appeal, Local 11 is concerned with the Hotel Development's potential piecemealing of future alcohol uses and potential public safety impacts stemming from natural gas leaks. The RMND, however, fails to include any project design features or proposed conditions of approval restricting the sale/service of liquor at the Hotel Site. Nor was the RMND revised to consider the risk of natural gas leak explosions like the two gas explosions occurring on January 5, 2019 at the

¹⁷ *Supra* fn. 8.

700 block of Westlake Avenue. Because the RMND fails to address these issues, Local 11 renews its Appeal comments on these points in their entirety.

Also discussed in our Appeal, Local 11 was concerned about construction and operational noise impacts suffered by residents and religious congregates at nearby apartments and places of worship adjacent to the Hotel Site. Local 11 also requested that the City deny the Project's requested land use approvals until adequate mitigations measures were included based on a good-faith noise analysis. Here, the RMND has been meaningfully revised to seemingly address the Hotel Development's noise impacts as reflected in the significantly revised mitigation measure NOI-1 and inclusion of mitigation measures NOI-2 and NOI-3. While the RMND still fails to adequately consider cumulative construction noise impacts to adjacent neighbors due to overlapping construction of the Hotel Development and the proposed 5-story, apartment TOC project (see figure below), and notwithstanding the fatal housing, JJJ and Projects piecemealing defects discussed above, Local 11 commends the applicant and City for its inclusion of additional performance-based mitigation measures—which would not have been adopted absent our efforts here.

FIGURE 3: SENSITIVE NOISE RECEPTORS SUBJECT TO CUMULATIVE CONSTRUCTION IMPACTS



Legend:

- Hotel Site
- Proposed 5-story, apartment TOC project site [a]
- Sensitive Residential Receptors
- Sensitive Place of Worship Receptor

Notes

- a: DCP Case No. DIR-2019-2893-TOC, <http://planning.lacity.org/pdiscaseinfo/search/encoded/MjI5NTAy0>

V. CONCLUSION

In summary, while Local 11 appreciates the RMND's inclusion of additional noise mitigation measures, the RMND still refuses to address the Project's land use inconsistency with Measure JJJ, the Code, and CEQA. For the reasons discussed herein and elsewhere in the record, Local 11 respectfully requests PLUM grant the Appeal and reject all requested land use entitlements until an adequate EIR is prepared to address Local 11's concerns, requiring the Hotel Development to comply with Measure JJJ, and in no circumstance granting the GPA for the Add Area until CEQA is performed for the whole thing. This project is not a by-right, we urge you to use your discretion to reject the Project and demand more for the residents of Council District 1.

Sincerely,



Charles Du
Staff Attorney
UNITE HERE Local 11

Enclosure:

Exhibit A: Local 11 (2/22/19) Appeal Supplemental Comments inclusive of expert comments

Exhibit A

Local 11 Appeal Supplemental
Comments inclusive of expert comments
(2/22/19)

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February 22, 2019

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**RE: Appeal of Infinitely Hotel Project (CPC-2017-712; ENV-2017-713; CF-18-1242);
Appellant's Supplemental Comments**

Dear Honorable Councilman Cedillo and PLUM Committee Members:

On behalf of appellants UNITE HERE Local 11 and Elle Farmer, and nearby residents Chris Maza, Agustin Herrera, Jose and Julian Cardenas (collectively "Commentors"), this Office submits the following supplemental comments to the referenced "Appeal" challenging the City of Los Angeles ("City") Central Planning Commission ("CPC") approval of the 6-story, 100-room hotel ("Hotel Development") on the north-west corner of Westlake Avenue ("Hotel Site"), and the General Plan Amendment ("GPA") approval for the 22,500 square-foot ("SF") Hotel Site and approximately 253,100 SF of properties along both sides of Alvarado Street between James Wood Boulevard and just north of 8th Street ("Add Area") (collectively "Project").

This Appeal challenges the Project's GPA and various other land use approvals ("Entitlements") and mitigated negative declaration ("MND") (collectively "Project Approvals") on grounds that the Project fails to comply with the Los Angeles Municipal Code ("LAMC" or "Code") or the California Environmental Quality Act, Pub. Res. Code § 21000 *et seq.*, ("CEQA"). This Appeal also incorporates by this reference all written/oral comments submitted on the Project by any commenting party, including expert greenhouse gas ("GHG"), traffic, and noise comment letters attached hereto as Exhibits A, B, and C (respectively).

In short, expert comment letters demonstrate that the Hotel Development will cause significant operational and construction noise impacts on nearby sensitive-receptors. Additionally, the MND fails to disclose, analyze, or mitigate the potential impact of the GPA's increased development capacity—as much as four-times existing levels. The failure to analyze the GPA Add Area is not only inconsistent with the City's past practices, but it also comes at the expense of affordable housing goals adopted by the voters in 2016 with passage of Measure III—which forbids changes to community plans that "[r]educe the capacity for creation and preservation of affordable housing and access to local jobs" or that undermine the State's Density Bonus laws or any other affordable housing incentive program (LAMC § 11.5.8.A).



Furthermore, despite the applicant and CPC treating the Project as a 'residential' project, the City fails to subject the Project to compliance with Measure JJJ's requirements for affordable housing or in-lieu fees. By refusing to do so, the City continues a pattern-and-practice of undermining the voter's will and the Code by granting hotel projects all the privileges of a residential project but forgoing any of its obligations. Quite simply, the applicant cannot have its cake and eat it too.

UNITE HERE Local 11 appreciate both the February 8, 2019 meeting with Council District 1 to discuss their environmental concerns with the Project, and postponing the Planning Land Use Management ("PLUM") Committee hearing to February 26, 2019 in order to fully consider the merits of the Appeal. As mentioned during that February 8 meeting, inequality threatens Los Angeles' prosperity. Local 11 works to stem this rising tide of inequality, and to make our City a place of opportunity for all—a place where its members can work and afford to live.

For these reasons and the reasons discussed further herein, Commentors respectfully request the following from the PLUM Committee:

- Deny the GPA for the Add Area until an adequate CEQA review is prepared to analyze the potential traffic, climate change, and other CEQA impacts that will result from the GPA, and subject any GPA approval to strict compliance with Measure JJJ's affordable housing requirements;
- Deny the GPA for the Hotel Site until the applicant commits to either on-site affordable housing or in-lieu fees in accordance with the requirements of Measure JJJ;
- Deny the Project Approvals until adequate construction and operational noise mitigation measures, based on good-faith noise analysis supported by substantial evidence, is incorporated into the Project in order to ensure the welfare of the nearby community; and
- Deny the Project Approvals until the applicant records a restrictive covenant preventing the sale or serving of liquor at the hotel or restaurant for not less than five years (*see e.g.*, LAMC § 91.106.4.1(12)).

This Project is discretionary, not by-right, and the City has the discretion to reject the Project as proposed and demand more for the residents of Council District 1, such as additional noise mitigation measures and affordable housing commitments. You have the discretion, so please use it. The remainder of this document highlights the Project's inherent conflict with Measure JJJ and CEQA issues presented in this Appeal.

I. STANDING OF COMMENTORS

Local 11 represents more than 30,000 workers in Southern California, including hundreds who live or work in the nearby area, join together to fight for improved land use and environmental standards, more affordable housing and to maximize community benefits. As such, Local 11 is a stakeholder in this Project and have standing to litigate land use and environmental claims. *See Bakersfield Citizens v. Bakersfield* (2004) 124 Cal.App.4th 1184, 1198.

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Additionally, nearby residents Chris Maza, Agustin Herrera, and Jose and Julian Cardenas live approximately 100, 990, and 1,320 feet away from the Hotel Site (respectively). Such, geographic proximity, alone, is sufficient to establish standing under CEQA. See *Bozung v. LAFCO* (1975) 13 Cal.3d 263, 272 (plaintiff living 1,800 feet from annexed property has standing to challenge the annexation); see also *Citizens Ass'n for Sensible Dev. v. County of Inyo* (1985) 172 Cal.App.3d 151, 158 ("a property owner, taxpayer, or elector who establishes a geographical nexus with the site of the challenged project has standing."). Furthermore, absent adequate analysis and full mitigation of Project-related impacts, Commentor will be adversely affected by the Project including but not limited to air quality, greenhouse gas ("GHG"), traffic, noise, and other construction-related impacts. Hence, resident Commentors have a beneficial interest in the Project's compliance with CEQA. See Code Civ. Proc. § 1086; see also *Braude v. City of Los Angeles* (1990) 226 Cal.App.3d 83, 87; *Respect Life South San Francisco v. City of South San Francisco* (2017) 15 Cal.App.5th 449, 454

Furthermore, Commentors also have public interest standing given the Appeal relates to the City's public duty to comply with applicable zoning and CEQA laws, and where Commentors seek to have that duty enforced. See *Rialto Citizens for Responsible Growth v. City of Rialto* (2012) 208 Cal.App.4th 899, 914-916, n6 (noting that "the public interest exception applies where the question is one of public right and the object of the action is to enforce a public duty – in which case it is sufficient that the plaintiff be interested as a citizen in having the laws executed and the public duty enforced" and "promotes the policy of guaranteeing citizens the opportunity to ensure that no governmental body impairs or defeats the purpose of legislation establishing a public right."); see also *La Mirada Avenue Neighborhood Assn. of Hollywood v. City of Los Angeles* (2018) 22 Cal.App.5th 1149, 1158-1159 ("[o]ur Supreme Court has consistently recognized the importance of preserving the integrity of a locality's governing general plan for zoning" and that "the vindication of this significant policy benefits not only the persons living near the Project and the persons living within the geographical boundaries of the [area] at issue in this case, but also all residents of the City who benefit from the trial court's ruling that holds the City Council's zoning decisions to the letter and spirit of the municipal code."). Indeed, California "courts have repeatedly applied the 'public right/public duty' exception to the general rule that ordinarily a writ of mandate will issue only to persons who are beneficially interested." *Weiss v. City of Los Angeles* (2016) 2 Cal.App.5th 194, 205-206; see also *Save the Plastic Bag Coalition v. City of Manhattan Beach* (2011) 52 Cal.4th 155, 166, 169-170 (it is sufficient that he is interested as a citizen in having the laws executed and the duty in question enforced).

II. THE PROJECT VIOLATES MEASURE JJJ

This Appeal challenges CPC's approval, via the November 20, 2018 Letter of Determination ("LOD"),¹ because the Project up-zones the Hotel Site and the Add Area with greater floor-area-ratio ("FAR") without providing any affordable housing commitments now or in the future. This directly conflicts with Measure JJJ and undermines the Transit Oriented Communities Affordable Housing Incentives Program Guidelines ("TOC Guidelines").

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¹ LOD (11/20/18) CPC-2017-712, http://clkrep.lacity.org/online/docs/2018/18-1242_rpt_MAYOR_12-20-2018.pdf.

A. BACKGROUND ON MEASURE JJJ AND TOC GUIDELINES

In November 2016, City voters approved Measure JJJ by a nearly 30-point margin, which led to the adoption of the TOC Guidelines in 2017 (codified at LAMC § 12.22.A.31 *et seq.*). In short, Measure JJJ required, *inter alia*, development projects with “ten or more residential dwelling units” and requiring a general plan amendment (“GPA”), zone change (“ZC”), or height district change (“HD”) to provide either on/off-site affordable housing units or in lieu fees paid into the the City’s Affordable Housing Trust Fund prior to the issuance of the project’s first building permits (LAMC § 11.5.11(a)). Furthermore, Measure JJJ bars any GPAs resulting in a “material change ... until the completion of a comprehensive assessment” of such proposed changes by the Planning Department to ensure that such changes do not:

1. Reduce the capacity for creation and preservation of affordable housing and access to local jobs; or
2. Undermine California Government Code Section 65915 [i.e., State Density Bonus law] or any other affordable housing incentive program [i.e., TOC Guidelines]...”

(LAMC § 11.5.8, emphasis added)

Under the TOC Guidelines, residential projects within a one-half mile of a major transit stop could seek additional incentives, such as increased FAR from its base zoning if it met various affordable housing requirements.² According to the City’s most recent housing report, Measure JJJ and the TOC Guidelines have created over 1,500 restricted-affordable units since 2017.³

B. THE GPA FOR THE ADD AREA UNDERMINES MEASURE JJJ AND TOC GUIDELINES

Here, the 253,100-SF Add Area is currently zoned C2-1 and designate for “Highway Oriented Commercial” under the Westlake Community Plan, which is further subject to an accompanying footnote limiting the properties to a 1.5:1 FAR. Under the Project’s GPA, these properties would be designated as “Community Commercial” subject to footnote allowing up 6:1 FAR—a 400 percent increase in FAR density. This increase dwarfs the benefits provided under any of the TOC incentives.⁴ Hence, future applicants within the Add Area could access this greater FAR density without any commitments to affordable housing, which undermines Measure JJJ and the TOC Guidelines. Furthermore, nowhere in the staff report or the MND does the City provide a “comprehensive assessment” of whether the GPA will reduce the capacity for creating/preserving affordable housing, access to local jobs, or undermine the State density bonus laws or the TOC Guidelines (LAMC § 11.5.8.A).

Hence, it is clear that CPC’s GPA approval jeopardizes the continued success of Measure JJJ and TOC Guidelines, which has been pivotal in creating at least 1,500+ units in the last two years.

² See TOC Guidelines FAQ (5/5/18) <https://planning.lacity.org/ordinances/docs/toc/adopted/FAQ.pdf>.

³ See Housing Progress Report (Sep. 2018)

https://planning.lacity.org/documents/ExternalAffairs/HousingProgressRpt/Q3_2018/Q3.pdf.

⁴ See TOC Guidelines (rev. 2/26/18) p. 10 (under Tier 4 base incentive, 55 percentage max-increase for residential is allowed, or a FAR increase resulting in 4.25:1 FAR in commercial zones, whichever is greater), <https://planning.lacity.org/ordinances/docs/toc/TOCGuidelines.pdf>.

C. GPA/ZC/HD ON THE HOTEL SITE CIRCUMVENTS MEASURE JJJ AND TOC GUIDELINES

Here, notwithstanding being a hotel, the Hotel Development is considered a 'residential' project based upon (1) the statements made by staff, the applicant, and CPC; (2) the plain meaning of and the City's interpretation of the Code; and (3) the plain language of Measure JJJ.

1. Statements Make Clear This is a Residential Project

First, the staff report identifies the development as "essentially a 'hybrid' between residential and commercial uses" (LOD, pp. F:2, F:9 [emphasis added]), with the "hotel use [] defined as a residential use due to the habitable rooms ..." (LOD, p. F:14 [emphasis added]). Second, as confirmed by the applicant's own statements during the CPC hearing, the guestrooms will have "kitchenettes" and are "an extended-stay product" targeting customers "around the community looking for an extended place to stay but not in the market for anything long term."⁵ Third, despite the 'Q' condition stating that "no residential dwelling units are permitted" (LOD, p. Q:1), nothing prevents the Hotel from becoming a de facto apartment—with guest stays lasting 30+ days, six months, or even a year—as pointed out by Commissioner Pearlman when asking staff about potential conditions to prevent as much (emphasis added):

"... a 'hotel' under the Municipal Code does not have a fixed cap on the amount of time, however ... State law does provide that over thirty days you develop a tenancy ... I ask staff is there a condition we've used before because we don't want something to become ... these have kitchenettes and bathrooms essential be like apartment structure without going through the proper housing."⁶

While City staff was unaware of any conditions previously used by the City to prevent extended stay hotels from becoming a de facto apartment, the City has required applicants to record restrictive covenants limiting stays to a maximum of 30 days.⁷ This is critical because, as Commissioner Pearlman indicated, State law recognizes that a dwelling unit is considered non-transient at 30 days. For example, under Health & Saf. Code, a 'Residence' is defined as follows (emphasis added):

⁵ CPC Hearing Audio (9/13/18) Minute 3:36-4:00, 5:40-5:50 (emphasis added), <http://planning.lacity.org/StaffRpt/Audios/CPC/2018/09-13-2018/12%20CPC-2017-712.MP3>.

⁶ *Ibid.*, Minute 24:10-25:00 (emphasis added).

⁷ See e.g., LOD (12/11/98) ZA-1998-0610, pp. 13-14, 20-21 (when approving a 142-room extended stay business hotel for "stays of up to 30 days," the City required applicant to "record a Covenant and Agreement to maintain and operate the hotel as a commercial hotel ... shall not be converted nor operated as an apartment house or apartment hotel at any time ... the agreement must be submitted to the Office of Zoning Administration for approval before being recorded"), [http://planning.lacity.org/PdisCaseInfo/Home/GetDocument/YTdjNmY0ZjktZDVjOC00NmJlLWFKNjctM2RkZjQzNjgzMTAz0; LOD \(11/7/97\) ZA-1997-768, pp. 3 \(when approving a 188-room extended stay hotel\), http://planning.lacity.org/PdisCaseInfo/Home/GetDocument/YTc1NDhiNzYtZTlkMy00N2M2LTliYmUtZig2YzU3ODMyMzY40; LOD \(8/22/06\) ZA-2005-8134, pp. 4, 6 \(when approving 15-room extended stay hotel\), http://planning.lacity.org/PdisCaseInfo/Home/GetDocument/NTNiY2UxOGQtNzllZC00NmI4LWJlMGMtZWZ2ZDM5YWYxNjdj0](http://planning.lacity.org/PdisCaseInfo/Home/GetDocument/Yzg1NmE1OTQtNmMxZS00OTA3LTk0NzctMmQxMGMyNGUxMjY20; accord LOD (2/27/98) ZA-1997-945, p. 12, 18 (when approving a 133-room extended stay hotel), http://planning.lacity.org/PdisCaseInfo/Home/GetDocument/YTdjNmY0ZjktZDVjOC00NmJlLWFKNjctM2RkZjQzNjgzMTAz0; LOD (11/7/97) ZA-1997-768, pp. 3 (when approving a 188-room extended stay hotel), http://planning.lacity.org/PdisCaseInfo/Home/GetDocument/YTc1NDhiNzYtZTlkMy00N2M2LTliYmUtZig2YzU3ODMyMzY40; LOD (8/22/06) ZA-2005-8134, pp. 4, 6 (when approving 15-room extended stay hotel), http://planning.lacity.org/PdisCaseInfo/Home/GetDocument/NTNiY2UxOGQtNzllZC00NmI4LWJlMGMtZWZ2ZDM5YWYxNjdj0).

"'Residence' also means residential hotels in which not less than one-half of the occupied dwelling units are occupied on a nontransient basis. A dwelling unit shall be deemed to be used on a nontransient basis if the term of the tenancy is one month or longer or if the tenant has resided in the unit for more than 30 days. In a residential hotel, individual dwelling units shall lack either cooking facilities or individual sanitary facilities, or both"⁸

Hence, it is clear to any reasonable person that this Hotel Development will include extended-stay rooms capable of being occupied for more than 30 days and, therefore, a 'residence' for all intents and purposes.

2. LAMC Definitions and City Interpretations Make Clear This is a Residential Project

First, LAMC § 12.03 unambiguously classify structures containing hotel or hotel-like uses as a "residential building" (see definition for 'Hotel,' 'Transient Occupancy Residential Structure,' 'Apartment Hotel,' and 'Dwelling'). Second, LAMC § 12.03 unambiguously classifies a 'Dwelling Unit' as containing a "kitchen" and designed "for living and sleeping purposes" (see definition of 'Apartment,' 'Family,' 'Efficiency Dwelling Unit'). Third, LAMC § 12.03 unambiguously classifies a 'Housing Development' to include an "apartment hotel" and "multiple dwelling or group dwelling." Fourth, under LAMC § 12.22.A.25(b) unambiguously classifies a 'Residential Unit' to include "dwelling unit" and "guest room or efficiency dwelling unit in a Residential Hotel." Fifth, the City has long recognized that extended stay units with kitchenettes are not hotel guest rooms, but rather efficiency units that makeup apartment buildings.⁹ Sixth, the City has also repeatedly taken the position that hotels are residential uses.¹⁰

⁸ See e.g., Health & Saf. Code §§ 33753(j)(2), 37912(k).

⁹ See LOD (11/7/97) ZA-1997-768, p. 2 (in approving 188-room extended stay hotel, city staff noted "The Department of Building and Safety has indicated that a hotel room with a kitchen is not a guest room but is considered an efficiency unit under the strict application of the Zoning Code ... efficiency units make up an apartment building not a hotel." [emphasis added]), <http://planning.lacity.org/PdisCaseInfo/Home/GetDocument/YTc1NDhiNzYtZTlkMy00N2M2LTliYmUtZig2YzU3ODMyMzY40; accord> LOD (12/11/98) ZA-1998-0610, pp. 1, 13-14 (in approving a 142-room extended stay business hotel), <http://planning.lacity.org/PdisCaseInfo/Home/GetDocument/Yzg1NmE1OTQ0NjMxZS00OTA3LTk0NzctMmQxMGMyNGUxMjY20; LOD> (2/27/98) ZA-1997-945, pp. 1, 3, 17 (in approving a 133-room extended stay hotel), <http://planning.lacity.org/PdisCaseInfo/Home/GetDocument/YTdjNmY0ZjktZDVjOC00NmJlWFkNjctM2RkZjQzNjgzMTAz0; LOD> (8/22/06) ZA-2005-8134, pp. 15 (in approving 15-room extended stay hotel), <http://planning.lacity.org/PdisCaseInfo/Home/GetDocument/NTNlY2UxOGQ0NzllZC00NmI4LWJlMGMtZW E2ZDM5YWYxNjdj0>.

¹⁰ See e.g., LOD (7/26/17) CPC-2016-2263, p. F:1 ("the redevelopment of a large parcel of land within the Hollywood Center with the proposed residential (a hotel) ..." [emphasis added]), <http://planning.lacity.org/PdisCaseInfo/Home/GetDocument/MmRhYTl0MzUtZGRlNC00MDZkLTg2NmUtMmZlOThiMzc4OTE00; LOD> (2/1/17) CPC-2016-270, p. F:9 ("The hotel use is defined as a residential use due to the habitable rooms" [emphasis added]), http://clkrep.lacity.org/online/docs/2008/08-0887-S1_rpt_CPC_02-22-2017.pdf; LOD (12/5/16) CPC-2015-2893, p. F:1, F:11, F:22, F:29 ("redevelopment of a large parcel of land within Hollywood Center with residential (a hotel)" [emphasis added]), http://clkrep.lacity.org/online/docs/2017/17-0029_rpt_CPC_01-06-2017.pdf; LOD (4/25/17) CPC-2016-3064, p. F:14 ("Hotel is defined as a residential building per the L.A.M.C. Section 12.03, "), <http://planning.lacity.org/PdisCaseInfo/Home/GetDocument/MDM3MDUyM2EtNGJlZC00NGQ5LTlmMTYtZDBmNGE0ZjdiNGIz0; LOD> (8/17/18) CPC-2016-2601, p. F:6, F:12 ("The proposed hotel will serve to provide temporary residency ... The hotel use is defined as a residential use due to the habitable rooms ..." [emphasis added]), <http://clkrep.lacity.org/online/docs/2018/>

Hence, it is clear to any reasonable person that (a) extended-stay rooms with kitchens are functionally residential dwelling units; and (b) hotels and hotel-like structures are considered a residential use, residential buildings, and a housing development under the Code.

3. Plain Language of Measure JJJ Make Clear This is a Residential Project

Under the plain language of Measure JJJ, "projects with ten or more residential dwelling units" shall provide on- or off-site affordable housing commitments, and have "all building and construction work on the project" meet certain training, local hiring, and prevailing wage requirements (LAMC § 11.5.11 subds. (a) & (i) [emphasis added]). A 'project' under Measure JJJ means "the construction, erection, alteration of, or addition to a structure." (*id.*, subd. (j) [definitions]). Nowhere does it state that Measure JJJ applies to only projects that include the construction and use of ten or more residential dwelling units.

Hence, it is clear to any reasonable person that Measure JJJ applies to any project that includes the mere construction, not construction and use, of ten or more residential dwelling units.

Clear Conclusion

As discussed above, it is clear to any reasonable person that the Hotel Development includes the construction of residential dwelling units, capable of serving as a residence, which is considered a residential use, residential building, and housing development under the Code—as evidenced by numerous past City interpretations. Because Measure JJJ applies to the mere construction of residential dwelling units, no reasonable person could conclude that Measure JJJ does not apply to the Hotel Development. However, the City has failed to enforce Measure JJJ's requirements, which appears to be a concerning pattern-and-practice (as discussed below).

D. THE CITY'S PATTERN-AND-PRACTICE OF IGNORING ITS MANDATORY DUTY TO APPLY MEASURE JJJ REQUIREMENTS ON HOTEL PROJECTS

Local governments hamstrung with State constitutional limits on raising property-related taxes and fees (e.g., Proposition 13, 62, 218, 26) have resorted to alternative means of raising revenues, such as the imposition of transient occupancy taxes ("TOT") on hotels,¹¹ which is

18-0873 rpt CPC 09-12-2018.pdf; LOD (10/13/17) CPC-2016-3655, p. F:6, F:14, F:23 ("hotels ... considered a residential use ... the building is being converted to include hotel which is defined as a residential use per the [Code] ... amenities will serve to enhance the residential experience for guests ..." [emphasis added]), <http://planning.lacity.org/PdisCaseInfo/Home/GetDocument/YjYwMzhIMmYtNTIwNS00OTJjLWIZYmYtMzFjNDU4OTI2YzgW0>.

¹¹ See e.g., State Legislative Analyst's Office ("LAO") (Dec. 1996) Understanding Proposition 218 (noting cities facing reduced local revenues will likely pursue alternative revenue sources such as "hotel occupancy tax"), https://lao.ca.gov/1996/120196_prop_218/understanding_prop218_1296.html; LAO (5/18/16) The 2016-17 Budget: Considering Changes to Streamline Local Housing Approvals, p. 7 ("In California, many cities and counties find that housing developments lead to more local costs than offsetting tax revenues. This is because these properties do not produce sales or hotel tax revenues directly and the state's cities and counties typically receive only a small portion of the revenue collected from the property tax. In contrast, cities and counties typically find that commercial developments that generate sales or hotel taxes yield the highest net fiscal benefits. Not surprisingly given these incentives, many cities and counties have oriented their land use planning and approval process disproportionately towards the development of commercial

routinely cites by the City when considering/approving hotel projects.¹² Furthermore, in addition to the City's preference for hotel developments over housing generally, the City has provided even more hotel incentives under the Code, such as not needing to provide on-site parking in the Central City Area (i.e., downtown),¹³ or open space requirements pursuant to LAMC § 12.21.G,¹⁴ or subject to lot area density restrictions in certain Regional Center areas.¹⁵ While the City may welcome and even incentivize hotel development under the Code, it may not ignore its duty to enforce other applicable provisions of the Code, such as Measure JJJ's requirements for affordable housing and fair construction practices.

Applications requesting a GPA, ZC, or HD submitted to the City on or after December 13, 2016 are subject to Measure JJJ's requirements.¹⁶ Based on the City's bi-monthly application reports, 17 hotel projects have since applied for at least one of these entitlements,¹⁷ two of which were approved by the City on August 18, 2017. One project included the granting of a vested ZC and HD for a 124-room hotel with the City citing additional hotel TOT revenues as a basis for

establishments and away from housing." [emphasis added]), <https://lao.ca.gov/reports/2016/3470/Streamline-Local-Housing-Approvals.pdf>; Los Angeles Times (7/28/17) A Bay Area developer wants to build 4,400 sorely needed homes. Here's why it won't happen ("Because of tax limits established in 1978 by Proposition 13, *local governments generally receive more revenue from sales and hotel room taxes than property taxes.*" [emphasis added]), <https://www.latimes.com/politics/la-pol-ca-small-city-controls-big-housing-project-20170728-story.html>.

¹² See e.g., LOD (9/10/15) CPC-2015-376, p. F:5, <http://planning.lacity.org/StaffRpt/InitialRpts/CPC-2015-376.pdf>; LOD (8/11/16) CPC-2014-1771, pp. F:95, F:98, F:100, <http://planning.lacity.org/StaffRpt/InitialRpts/CPC-2014-1771.pdf>.

¹³ See e.g., LOD (10/19/17) ZA-2017-1873, p. 2 ("It should be noted that LAMC Section 12.21-A,4(a) requires that parking spaces for dwelling units be provided on the same lot, while LAMC Section 12.21-A,4(b) does not explicitly require parking spaces for guest rooms be provided on the same lot."), <http://planning.lacity.org/PdisCaseInfo/Home/GetDocument/MzM3YzBjNDgtM2UyNS00OTQ1LTliOTQtNzM0MTk3ODE5ZDkw0>.

¹⁴ See e.g., LOD (4/13/18) DIR-2017-3934, p. 19, <http://planning.lacity.org/PdisCaseInfo/Home/GetDocument/MmJlYmYzNjUtNjA5Ny00NmVhLTg5NjUtNzk4NzE5YzgxMzY40>.

¹⁵ See e.g., LOD (9/27/17) ZA-2015-3926, p. 40 (while "residential density of one unit per 200 square feet of lot area in R5 zone pursuant to [LAMC § 12.12.C.4] ... density requirement for guestrooms in R5 zone is silent"), <http://planning.lacity.org/PdisCaseInfo/Home/GetDocument/MDA0NTZlNzUtNzU4Ny00MTFjLTgzNTktNjg0ZDZhY2IyNDI20>;

¹⁶ See City (8/9/18) City Planning Releases Measure JJJ and Transit Oriented Communities Housing Progress Report, <https://www.lacity.org/blog/city-planning-releases-measure-jjj-and-transit-oriented-communities-housing-progress-report>.

¹⁷ See e.g., CPC-2016-4785 (201-room hotel applied for vested ZC and HD on December 14, 2016); CPC-2016-4814 (122-room hotel applied for vested ZC on December 15, 2016); CPC-2017-247 (236-room hotel applied for GPA, vested ZC, and HD on January 23, 2017); CPC-2017-400 (250-room hotel applied for GPA, vested ZC, and HD on February 1, 2017); CPC-2017-564 (93-room hotel applied for vested ZC and HD on February 13, 2017); CPC-2017-574 (100-120 room hotel applied for vested ZC on February 13, 2017); CPC-2017-2393 (122-unit hotel applied for ZC on June 15, 2017); CPC-2017-4734 (Addition of 53,353 square feet in hotel applied for GPA, ZC, and HD on November 15, 2017); CPC-2017-4853 (150-room hotel applied for GPA, vested ZC, and HD on November 20, 2017); CPC-2017-5423 (Addition of 15-story expansion to an existing 24-story hotel applied for vested ZC and HD on December 20, 2017); CPC-2018-1511 (80-room hotel applied for ZC on March 16, 2018); CPC-2018-3389 (551 guest room hotel applied for vested ZC on June 13, 2018); CPC-2018-3454 (696-room hotel applied for GPA, vested ZC, and HD on June 14, 2018); CPC-2018-3544 (125-room hotel applied for GPA, vested ZC, and HD on June 18, 2018); CPC-2018-5275 (168-unit hotel applied for ZC and HD on September 10, 2018).

approving the hotel.¹⁸ The other project included the granting of a GPA and vested ZC for a 10-room boutique hotel.¹⁹ Despite both projects including 10 or more residential units and consider housing developments subject to Measure JJJ (as discussed above), the City failed to impose Measure JJJ's requirement for either affordable housing commitments or ensuring construction would satisfy the training, local hiring, and prevailing wage requirements.

Hence, just like the Hotel Development at the case at bar, the City has failed to enforce Measure JJJ on similar hotel projects, which is a dereliction of the City's duty to apply Measure JJJ's requirements on all residential project, including hotel developments clearly considered residential under the Code and City interpretations. It is arbitrary and capricious for the City to ignore its clear duty under Measure JJJ. The City must enforce Measure JJJ, not only for this Project but also for the hotel developments currently pending City action.

III. CEQA ARGUMENTS

This Project includes various CEQA issues relating to (1) the GPA's up-zoning of the Add Area, and (2) the various Entitlements for the Hotel Development.

A. BACKGROUND ON CEQA AND MNDs

CEQA requires lead agencies to analyze the potential environmental impacts of its actions in an environmental impact report ("EIR"). See, e.g., Pub. Res. Code § 21100; *Cmtys. for a Better Env't v. S. Coast Air Quality Mgmt. Dist.* (2010) 48 Cal.4th 310. The EIR is the very heart of CEQA. *Dunn-Edwards v. BAAQMD* (1992) 9 Cal.App.4th 644, 652. "The 'foremost principle' in interpreting CEQA is that the Legislature intended the act to be read so as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language." *Cmtys. for a Better Env't v. Cal. Res. Agency* (2002) 103 Cal.App.4th 98, 109; see also *Lincoln Place Tenants Ass'n. v. City of Los Angeles* (2007) 155 Cal.App.4th 425, 443-44 ("[t]he fundamental goals of environmental review under CEQA are information, participation, mitigation, and accountability.") (citing Cal. Code Regs. ("CEQA Guidelines") § 15002).

CEQA'S PURPOSE: CEQA has two primary purposes. First, CEQA is designed to inform decision makers and the public about the potential, significant environmental effects of a project. See CEQA Guidelines § 15002(a)(1). To this end, public agencies must ensure that its analysis "stay in step with evolving scientific knowledge and state regulatory schemes." *Cleveland National Forest Foundation v. San Diego Assn. of Governments* (2017) 3 Cal.5th 497, 504. Hence, an analysis which "understates the severity of a project's impacts impedes meaningful public discussion and skews the decisionmaker's perspective concerning the environmental consequences of the project, the necessity for mitigation measures, and the appropriateness of project approval." *Id.*, on remand ("*Cleveland III*") 17 Cal.App.5th 413, 444; see also *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564 (quoting *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 392).

¹⁸ LOD (8/18/17) CPC-2016-5001, pp. 1, C:2, F:9, <http://planning.lacity.org/PdisCaseInfo/Home/GetDocument/Nzk2M2RjYzltMmVhMS00ODYyLWJkYWYtZTQ2Zig3ZmQyMGM10>.

¹⁹ LOD (8/18/17) CPC-2017-536, pp. 1, <http://planning.lacity.org/PdisCaseInfo/Home/GetDocument/Y2ExZDVjNTYtMTNiMC00ZDI2LTk0MDMtM2FiYTkyYmYxNzM10>.

Second, CEQA requires public agencies to avoid or reduce environmental damage by requiring implementation of "environmentally superior" alternatives and all feasible mitigation measures. CEQA Guidelines § 15002(a)(2) & (3); *see also Citizens of Goleta Valley*, 52 Cal.3d at 564. If a project has a significant effect on the environment, the agency may approve the project only if it finds that it has "eliminated or substantially lessened all significant effects on the environment where feasible" and that any significant unavoidable effects on the environment are "acceptable due to overriding concerns." Pub. Res. Code § 21081; *see also* Guidelines § 15092(b)(2)(A) & (B).

STANDARD OF REVIEW FOR MNDs: Because a more comprehensive EIR was not prepared, the Project is subject to the less deferential 'fair argument' standard, which requires a lead agency to prepare an EIR whenever substantial evidence in the record supports a fair argument that a project may have a significant effect on the environment. *See e.g., 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; 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.*, 13 Cal.3d at 83 n. 16. This is a "low threshold" requiring the preparation of an EIR and preference for resolving doubts in favor of environmental review, even if the overall effect of the project is beneficial. *Meiia v. City of Los Angeles* (2005) 130 Cal.App.4th 322, 332; *see also* CEQA Guidelines § 15063(b)(1). "[T]he existence of contrary evidence does not excuse a lead agency from its duty to prepare an EIR." *Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 931; *see also Friends of "B" Street v. City of Hayward* (1980) 106 Cal.App.3d 988, 1002; *Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th 1307, 1318 ("decision not to require an EIR can be upheld only when there is no credible evidence to the contrary." [emphasis added]).

Hence, an MND may be used only where there is "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." Pub. Res. Code § 21064.5 (emphasis added); *see also* CEQA Guidelines § 15070(b), 15369.5.

SUBSTANTIAL EVIDENCE: Under CEQA, substantial evidence includes facts, a reasonable assumption predicated upon fact, or expert opinion supported by fact; not argument, speculation, unsubstantiated opinion or narrative, clearly inaccurate or erroneous evidence, or evidence of social or economic impacts that do not contribute to, or are not caused by, physical impacts on the environment. *See e.g.,* Pub. Res. Code §§ 21080(e), 21082.2(c); CEQA Guidelines §§ 15064(f)(5), 15384. As defined under CEQA Guidelines § 15384(a) (emphasis added), substantial evidence is "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 . . ." As such, courts will not blindly trust bare conclusions, bald assertions, and conclusory comments without the "disclosure of the 'analytic route the . . . agency traveled from evidence to action.'" *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 404 405 (quoting *Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 515); *see also Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 568-569; *Cleveland III*, 17 Cal.App.5th at 441 (agency "obliged to disclose what it reasonably can ... [or] substantial evidence showing it could not do so.").

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B. CEQA IMPACTS FROM GPA'S UP-ZONING OF ADD AREA

1. Improper Piecemealing of Traffic and GHG Impacts

A project's CEQA review must assess "the whole of an action" to ensure that all of the project's environmental impacts are considered. CEQA Guidelines § 15378; *see also Santee v. County of San Diego*, 214 Cal.App.3d at 1454; *San Joaquin Raptor/Wildlife Rescue Center v. Cnty. of Stanislaus* (1994) 27 Cal.App.4th 713, 730 (held use of "truncated project concept" violated CEQA where EIR was otherwise adequate). 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, 283-284; *see also City of Santee*, 214 Cal.App.3d at 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 to mask serious environmental consequences or evade CEQA review. *See e.g.*, CEQA Guidelines § 15378(a); *McQueen v. Bd. of Supervisors* (1988) 202 Cal.App.3d 1136, 1146-47. Nor, may an agency limiting its ability to consider feasible project alternatives or mitigation measures by approving project-related agreements before completion of a CEQA-compliant review. *See e.g.*, *Kings County Farm Bureau*, 221 Cal.App.3d at 736; *Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116.

Here, the GPA covers both the 22,500-SF Hotel Site and the 253,100-SF Add Area. Under the GPA, these areas will be re-designated from "Highway Oriented Commercial" (limited to 1.5:1 FAR) to "Community Commercial" (allowing up 6:1 FAR). The GPA's up-zoning is admittedly an attempt to [LOD, p. F:5-6 [emphasis added]]:

"... encourages the development of professional offices, hotels, cultural and entertainment facilities, in addition to the neighborhood-oriented uses ... The Community Commercial Land Use Designation is a useful tool for facilitating walkable neighborhoods as the City and region have embraced a more robust public transportation system, with focused efforts on mixed-use and high density development near rail stations ... The GPA will unify land use and zoning with adjacent and future planned land use patterns in the 'Add Area.'"

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Despite the City's clear intent to encourage, facilitate, and focus additional development in the Add Area, the MND lacks any discussion on the potential impacts of up-zoning the Add Area. In past cases where the City considered the approval of projects that included GPAs covering both a 'project site' and 'add area,' the City required the applicant to analyze the whole project—including the potential CEQA impacts stemming from increasing development capacity within the 'add area.'^{20, 21, 22, 23} This 'add area' analysis occurred despite (a) no actual developments being proposed within the 'add area;' (b) the applicants not owning or controlling any of the properties within the 'add area;' or (c) that a ZC, HD, or other entitlement would be necessary before properties within the 'add area' could fully access the additional FAR allowed under the GPA.

²⁰ See e.g., 915 N. La Brea Avenue project (CPC-2005-6163, ENV-2005-6164) involving GPA to amend the Hollywood Community Plan for a 2.27-acre mixed-use project site and a 5.69-acre add area. There, while no actual development was proposed in the add area and the applicant did not own or control the parcels within the add area, the City recognized that the approval of the project "could encourage similar discretionary development requests for one or more of the other parcels [within the add area]," and, therefore, evaluated the potential environmental impacts associated with the theoretical development of the remaining parcels in the add area—assuming "maximum density permitted" for the zone. Draft EIR (May 2008) Add Area Analysis, pp. VII:1-2 (emphasis added), <https://planning.lacity.org/eir/LaBreaGateway/DEIR/DEIR%20Sections/VII.%20Add%20Area%20Analysis.pdf>; see also LOD (2/27/07) p. 1, <http://planning.lacity.org/PdisCaseInfo/Home/GetDocument/ZmY3NjhmNTYtMjk4NS00MGVhLWEzZjYtNWVmZjFINDI4Y2U20>; Draft EIR (May 2008) Project Description, pp. III:15-16, <https://planning.lacity.org/eir/LaBreaGateway/DEIR/DEIR%20Sections/III.%20Project%20Description.pdf>; Draft EIR (May 2008) Environmental Setting, p. II:1, <https://planning.lacity.org/eir/LaBreaGateway/DEIR/DEIR%20Sections/II.%20Environmental%20Setting.pdf>.

²¹ See e.g., LA Lofts Chinatown project (CPC-2005-1843, ENV-2005-0881) involving GPA to amend the Central City North Community Plan for a 3.4-acre condo project site and a 5.4 add area. There, despite the ZC applying only to the project site, the City still analyzed several theoretical development scenarios for the add area. See Final EIR (Apr. 2007) Introduction, pp. I:1-5, <https://planning.lacity.org/eir/LoftsChinaTown/FEIR/LA%20Lofts%20Chinatown%20FEIR%20April%202007.pdf>; see also LOD (10/23/07), pp. 1, F:3, <http://planning.lacity.org/PdisCaseInfo/Home/GetDocument/MjI2NDIzZGQtZGEyNy00NzZmLTBlZmUtOWI2NWJiZTBkYzNm0>.

²² See e.g., Plaza at the Glen Mixed Use project (CPC-2008-2932, ENV-2007-4063) involving GPA to amend the North Hollywood-Valley Village Community Plan for a 12.53-acre mixed-use project site and a 9.23-acre add area. There, while no actual development was proposed in the add area and the add area was not subject to the ZC, the City nevertheless analyzed the redevelopment of the add area "consistent with the proposed Community Commercial designation at a development intensity similar to that proposed for the project site." Draft EIR (Mar. 2009) Project Description, p. II:26, <https://planning.lacity.org/eir/GlenMixedUseProj/DEIR/Chapters/II.%20Project%20Description.pdf>; see also DEIR (Mar. 2009) Project Description, Fig. II:18, [https://planning.lacity.org/eir/GlenMixedUseProj/DEIR/LargeGraphics/II18 Add Area.pdf](https://planning.lacity.org/eir/GlenMixedUseProj/DEIR/LargeGraphics/II18%20Add%20Area.pdf); DEIR (Mar. 2009) Environmental Setting, p. III:2, <https://planning.lacity.org/eir/GlenMixedUseProj/DEIR/Chapters/III.%20Environmental%20Setting.pdf>; LOD (8/6/09) p. 1, <http://planning.lacity.org/PdisCaseInfo/Home/GetDocument/NjE5NjdhOWYtNDE0MS00MDdmLTk2ZDUtNjQ4Y2QxY2ZiNDZh0>.

²³ See e.g., Corbin & Nordhoff Redevelopment project (CPC-2002-7295, ENV-2002-1230) involving GPA to amend the Chatsworth-Porter Ranch Community Plan for a 35.5-acre project site and a 15-acre add area. There, while no actual development was proposed in the add area and the applicant not owning/controlling the parcels within the add area, the City nevertheless analyzed several development scenarios for the add area. See Draft Master EIR (Sep. 2003) Summary Project Description, pp. 1-5, [https://planning.lacity.org/eir/Corbin Nordhoff/MEIR/PDF/1a&b Project%20Location&Description.pdf](https://planning.lacity.org/eir/Corbin%20Nordhoff/MEIR/PDF/1a%20Project%20Location%20Description.pdf); see also LOD (4/29/04) p. 1, <http://planning.lacity.org/PdisCaseInfo/Home/GetDocument/Yjg2ZmU4ZTEtYWZjMi00ODFmLTBlZmUtOWI2NWJiZTBkYzNm0>.

Here, expert letters demonstrate that the GPA's up-zoning of the Add Area will have significant impacts. As pointed out by the expert GHG letter (attached hereto Exhibit A), the Westlake Community Plan never anticipated development at the 6:1 FAR level, which will increase GHG emissions in the area upon project applicants seeking approval of developments over the existing 1.5:1 FAR. As pointed out in the expert traffic letter (attached hereto Exhibit B), if the Add Area were developed at a similar density and use as the Hotel Development, the Project would increase volume-to-capacity traffic by 12.25 times, and result in a significant impact on six of the seven intersections studied under the MND.

Furthermore, it is "*well established*" that amendments to general plans are subject to CEQA review given they "have a potential for resulting in ultimate physical changes in the environment." *Muzzy Ranch Co. v. Solano County Airport Land Use Com.* (2007) 41 Cal.4th 372, 385 (citing *DeVita v. County of Napa* (1995) 9 Cal.4th 763, 793-794) (emphasis added); *see also Save Tara*, 45 Cal.4th at 134 (noting CEQA review is required at the "agency's '*earliest*' commitment' to the project [CEQA Guidelines § 15352(b)] ... we have held an agency approved a project even though further discretionary governmental decisions would be needed before any environmental change could occur.") (emphasis original). Here, as discussed above, the record is clear that this GPA is the first step in the City's attempt to encourage, facilitate, and focus mixed-use/high-density development in the Add Area. Because the GPA furthers the goal of and makes more likely the development of the Add Area up to a 6:1 FAR, the City must analyze the potential environmental effects of this up-zoning. *See e.g., Rominger v. County of Colusa* (2014) 229 Cal.App.4th 690, 704 (finding subdivision was subject to CEQA review where approval of tentative subdivision map was to further "future expansion" and "create lots for lease or sale ... mak[ing] the property more *amenable to development* by creating smaller parcels on which it would be easier to obtain financing ... On the record before us, it remains an *eminently reasonable possibility that the creation of smaller parcels that are easier to finance will lead to development that might not otherwise occur*, and to attendant significant effects on the environment.") (emphasis added).

Hence, it is clear that the GPA and the foreseeable future development of the Add Area will cumulative have a disastrous consequence on the environment. However, the applicant masks this impact by examining only the effect of the GPA on the Hotel Development, which amounts to improper project piecemealing under CEQA.

C. CEQA IMPACTS FROM THE HOTEL DEVELOPMENT

1. Improper Piecemealing Related to Potential Alcohol-Related Activities

Here, the Hotel Development includes 100 rooms and a 2,693-SF restaurant (LOD, pp. 1, F:2). However, there is no mention whether the rooms will include mini-bars or whether alcohol will be served in the restaurant. While the applicant is not seeking a conditional use permit for alcohol sales ("CUB"), the sale of alcohol to hotel/restaurant patrons is a logical activity that may be pursued in the future by the applicant. Without preventing as much through a restrictive covenant recorded on the Hotel Site, nothing prevents this foreseeable activity, which must be analyzed under an appropriate CEQA review or constitute as improper project piecemealing. As such, the Hotel Development as proposed cannot be approved without recordation of a restrictive covenant preventing the sale or serving of liquor on the Hotel Site for not less than five years (*see e.g., LAMC § 91.106.4.1(12)*).

2. Potentially Hazardous Condition from Natural Gas Leaks

The potential existence of hazardous substance on a project site is a significant impact requiring CEQA review. *McQueen v. Board of Directors* (1988) 202 Cal.App.3d 1136. Here, the Hotel Site is just south of the 700 block of Westlake Avenue where natural gas leaks led to two gas explosions on January 5, 2019.²⁴ This presents a public safety hazard during the excavation of the Hotel's subterranean parking-levels. This hazard has not been disclosed or considered by the City or within the MND. A site investigation study and sampling should be conducted to do so. A lead agency is precluded from making the required CEQA findings unless the record shows that all uncertainties regarding the mitigation of impacts have been resolved; an agency may not rely on mitigation measures of uncertain efficacy or feasibility. *Kings County Farm Bureau v. Hanford* (1990) 221 Cal.App.3d 692, 727 (finding groundwater purchase agreement inadequate mitigation because there was no evidence that replacement water was available). This approach helps "ensure the integrity of the process of decisionmaking by precluding stubborn problems or serious criticism from being swept under the rug." *Concerned Citizens of Costa Mesa, Inc. v. 32nd Dist. Agricultural Assn.* (1986) 42 Cal.3d 929, 935.

3. Significant Construction and Operational Noise Impacts on Nearby Residents

CEQA requires disclosure and mitigation of noise impacts. *See Los Angeles Unified School District v. City of Los Angeles* (1997) 58 Cal.App.4th 1019. These impacts must be explained with "plain language" and draw an explicit connection between increased exposures to their likely human-health effects (e.g., headaches, nuisance, etc.). CEQA Guidelines § 15140; *see also San Franciscans for Reasonable Growth v. City and County of San Francisco* (1987) 193 Cal.App.3d 1544, 1548; *Bakersfield Citizens*, 124 Cal.App.4th at 1219. Furthermore, a lead agency may not ignore cumulative noise impacts by claiming an area is already heavily impacted by noise and, therefore, project-related additions would be insignificant. *See Los Angeles Unified*, 58 Cal.App.4th at 1025.

Here, the Hotel Development will have significant construction and operational noise impacts on noise-sensitive residents near the Hotel Site. As pointed out by the expert noise letter (attached hereto as Exhibit C):

- Neighbors in the nearby apartments would be exposed to construction noise levels of over 105 dBA L_{max} during site clearing and excavation, well above applicable CEQA thresholds;
- Notwithstanding being ineffective at reducing noise impacts, the MND's proposed 15-foot temporary noise barrier is inexplicably excluded from the Project's conditions of approval;
- Potential construction vibration impacts could damage nearby apartment structure;
- Operational noise impacts from the Hotel's second-floor—including amplified music (84.6 dBA L_{eq}), large crowds (61.4 dBA L_{eq}), and just two people speaking (53.6 dBA L_{eq})—would all individually exceed the City's presumed ambient night levels by more than 5 dBA and, therefore, significant under the City's CEQA Threshold Guide; and

²⁴ *See e.g.*, NBC (1/4/29) Gas Explosion Evacuation Orders Lifted, <https://www.nbclosangeles.com/news/local/Apartment-Gas-Leak-Explosion-Prompts-Evacuation-in-Westlake-503932521.html>; ABC (1/4/29) Westlake District gas leak, underground explosion prompts evacuations, <https://abc7.com/westlake-district-gas-leak-explosion-prompts-evacuations/5017604/>; Los Angeles Times (1/4/29) Gas leak prompts apartment evacuations in Westlake District, <https://www.latimes.com/local/lanow/la-me-ln-gas-leak-20190104-story.html>.

- Additional mitigation measures are necessary to mitigate noise and vibration impacts to the fullest extent feasible.

IV. CONCLUSION

In summary, the Project violates both Measure JJJ, the Code, and CEQA. For the reasons discussed herein and elsewhere in the record, Appellants respectfully request PLUM grant the Appeal and reject all Project Approvals until an adequate EIR is prepared for the Hotel Development, require the Hotel Development to satisfy the affordable housing requirements under Measure JJJ, and in no circumstance grant the GPA for the Add Area. Again, this is not a by-right project; you have the discretion to reject the Project Approvals and demand more for the residents of Council District 1, such as additional noise mitigation measures and affordable housing commitments. *You have the discretion, so please use it.*

Sincerely,



Gideon Kracov
Attorney for Appellants

Enclosure:

- Exhibit A: Expert Environmental Letter dated February 11, 2019
- Exhibit B: Expert Traffic Letter dated February 11, 2019
- Exhibit C: Expert Noise Letter dated February 11, 2019

EXHIBIT A



Technical Consultation, Data Analysis and
Litigation Support for the Environment

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February 11, 2019

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

Subject: Comments on the 2005 James M Wood Boulevard Hotel Project

Dear Mr. Kracov,

We have reviewed the December 2017 Initial Study and Mitigated Negative Declaration ("IS/MND") and the November 2018 Letter of Determination ("LOD") for the James M Wood Boulevard Hotel Project ("Project") located in the City of Los Angeles ("City"). The Project proposes to demolish an existing commercial retail building and related surface parking lot in order to construct a 6-story, 100-room hotel above two levels of subterranean parking with 100 parking spaces. Furthermore, the Project requested a General Plan Amendment ("GPA") to the Westlake Community Plan in order update the Project site and "Add Area" from Highway Oriented Commercial to a Community Commercial land use designation as well as allow for an unlimited building height and increase the floor area ratio ("FAR") to 6:1.

Our review concludes that the IS/MND fails to adequately evaluate the Greenhouse Gas ("GHG") impacts. Specifically, the Project applicant fails to evaluate the cumulative GHG impact that may result from the GPA that would significantly increase the allowable FAR. A Draft Environmental Impact Report ("DEIR") should be prepared that adequately assesses and mitigates the potential, cumulative GHG impacts that development of the Project site and future development allowed within the "Add Area" under the GPA may have on the surrounding environment.

Greenhouse Gas

Inadequately Evaluate Potential Cumulative Risk

The Project site is made up of three parcels that were designated as highway oriented commercial (C2-1) and high-medium density (R4-1) land uses under the Westlake Community Plan (Figure 2.0-3, IS/MND, pp. 15). The IS/MND proposed a GPA to change these three parcels to Community Commercial land uses as well as a Vesting Tract Change to allow Height District 2 (IS/MND, p. 1.0-1). Review of the LOD demonstrates that the proposed GPA would also include an Add Area that lies adjacent to the Project site (LOD, p. F-1). Regarding the proposed GPA, the LOD states (emphasis added):

"The Project Site is located within the Westlake Community Plan. The existing Community Plan designates the property as Highway Oriented Commercial with corresponding zones of C2, C1, CR, RAS3, RAS4, and P. The Project Site's current zones are C2-1 and R4-1. The proposed General Plan Amendment will change the land use designation to Community Commercial with corresponding zones of C4, C2, C1, CR, RAS3, RAS4, P, and PB for both the subject Project Site and the 'Add Area' (which extends to properties along both sides of Alvarado Street, between 8th Street and James M Wood Boulevard,). Height District 2 in the C Zones allows unlimited height with a maximum FAR of 6:1" (LOD, p. F-1).

The Project site and "Add Area" have previously been restricted to a 1.5:1 FAR with a height restriction of 45-feet under the Westlake Community Plan.¹ According to the LOD, the GPA would increase the FAR to 6:1 with an unlimited building height in the Project site and the "Add Area." Thus, the GPA would allow new development to construct up to 6 times the floor area of the lot size, an increase of fourfold from the Westlake Community Plan. It should be noted that the Project site is proposing that the hotel have a FAR of 2.99:1 (IS/MND, pp. 1) and the "Add Area" does not have any planned development at this time (LOD, pp. 4). However, the change in FAR and the potential for denser new development in this area has not been evaluated by the General Plan, IS/MND, or the LOD. Therefore, the GPA change may encourage development in the "Add Area," that, when combined with the proposed Project, may create a potential cumulative impact.

As previously mentioned, the Project site and "Add Area" were evaluated in the Westlake Community Plan with a FAR of 1.5:1. Furthermore, the IS/MND only evaluates the potential impact of the proposed Project and fails to evaluate or even mention the "Add Area." Therefore, the GPA's land use designation and density changes for the "Add Area" has not been evaluated. The "Add Area" is currently designated as Highway Oriented Commercial. According to the Westlake Community Plan,

"The Highway-Oriented commercial uses such as drive-thru establishments, auto-repair, and other similar uses be located away from pedestrian oriented areas."²

According to the LOD, changing the land use designation would allow the "Add Area" to become a "commercial corridor" with pedestrian access from the Metro Red and Purple Line Westlake/MacArthur Park Station (LOD, p. F-1). Thus, while there is no development currently proposed for the "Add Area," the LOD is clearly implying that future development of the "Add Area" would occur in order to shift the area from highway-oriented commercial land uses to a pedestrian-friendly commercial corridor. The

¹ "Ras Interpretation to Community Plan Footnotes Director's Interpretation," April 2005, PDF p. 33, *available at:* <https://planning.lacity.org/complan/pdf/wlkcptxt.pdf>; The Westlake Community Plan Land Use map demonstrates that the Project site and "Add Area" are designated as highway oriented and high medium density land uses, both of these have a citation for footnote 1 (see also: <https://planning.lacity.org/complan/central/PDF/wlkplanmap.pdf>). Footnote 1 states "Height District No. 1," according to the Director's Interpretation, this means that the parcels have a FAR of 1.5:1 with a maximum height of 45- feet.

² <https://planning.lacity.org/complan/pdf/wlkcptxt.pdf>

development of a 100-room hotel would further encourage development of the “Add Area” as hotel guests would be potential patrons of this proposed commercial corridor.

Therefore, prior to approval of the GPA, the Project Applicant should evaluate the potential cumulative GHG emissions the Project may have in conjunction with the potential development of the “Add Area” to a commercial corridor with a FAR of 6:1. This would be consistent with past City practice for other proposed projects involving GPAs covering ‘add areas’ beyond the project site.^{3,4,5,6} As those examples make clear, the GPA here may encourage similar development and the potential environmental impacts must be analyzed even though the Project applicant may not control any properties within the Add

³ See e.g., 915 N. La Brea Ave. (DCP Case Nos. CPC-2005-6163, ENV-2005-6164) involving GPA to amend the Hollywood Community Plan for a 2.27-acre mixed-use project site and a 5.69-acre add area. There, while no actual development was proposed in the add area and the applicant did not own or control the parcels within the add area, the City recognized that the approval of the project “could encourage similar discretionary development requests for one or more of the other parcels [within the add area],” and, therefore, evaluated the potential environmental impacts associated with the theoretical development of the remaining parcels in the add area—assuming “maximum density permitted” for the zone. Draft EIR (May 2008) Add Area Analysis, pp. VII:1-2, <https://planning.lacity.org/eir/LaBreaGateway/DEIR/DEIR%20Sections/VII.%20Add%20Area%20Analysis.pdf>; see also Letter of Determination (2/27/07) p. 1, <http://planning.lacity.org/PdisCaseInfo/Home/GetDocument/ZmY3NjhmNTYtMjk4NS00MGVhLWEzZjYtNWZjFINDI4Y2U20>; Draft EIR (May 2008) Project Description, pp. III:15-16, <https://planning.lacity.org/eir/LaBreaGateway/DEIR/DEIR%20Sections/III.%20Project%20Description.pdf>; Draft EIR (May 2008) Environmental Setting, p. II:1, <https://planning.lacity.org/eir/LaBreaGateway/DEIR/DEIR%20Sections/II.%20Environmental%20Setting.pdf>.

⁴ See e.g., LA Lofts Chinatown Project (DCP Case Nos. CPC-2005-1843, ENV-2005-0881) involving GPA to amend the Central City North Community Plan for a 3.4-acre condo project site and a 5.4 add area. There, despite the zone change applying only to the project site, the City still analyzed several theoretical development scenarios for the add area. See Final EIR (Apr. 2007) Introduction, pp. I:1-5, <https://planning.lacity.org/eir/LoftsChinaTown/FEIR/LA%20Lofts%20Chinatown%20FEIR%20April%202007.pdf>; see also Letter of Determination (10/23/07), pp. 1, F:3, <http://planning.lacity.org/PdisCaseInfo/Home/GetDocument/MjI2NDIzZGQtZGEyNy00NzZmLThlZmUtOWI2NWJiZTBkYzNmQ>.

⁵ See e.g., Plaza at the Glen Mixed Use Project (DCP Case Nos. CPC-2008-2932, ENV-2007-4063) involving GPA to amend the North Hollywood-Valley Village Community Plan for a 12.53-acre mixed-use project site and a 9.23-acre add area. There, while no actual development was proposed in the add area and the add area was not subject to the zone change, the City nevertheless analyzed the redevelopment of the add area “consistent with the proposed Community Commercial designation at a development intensity similar to that proposed for the project site.” Draft EIR (Mar. 2009) Project Description, p. II:26, <https://planning.lacity.org/eir/GlenMixedUseProj/DEIR/Chapters/II.%20Project%20Description.pdf>; see also DEIR (Mar. 2009) Project Description, Fig. II:18, [https://planning.lacity.org/eir/GlenMixedUseProj/DEIR/LargeGraphics/II18 Add Area.pdf](https://planning.lacity.org/eir/GlenMixedUseProj/DEIR/LargeGraphics/II18%20Add%20Area.pdf); DEIR (Mar. 2009) Environmental Setting, p. III:2, [https://planning.lacity.org/eir/GlenMixedUseProj/DEIR/Chapters/III. Environmental Setting.pdf](https://planning.lacity.org/eir/GlenMixedUseProj/DEIR/Chapters/III.%20Environmental%20Setting.pdf); Letter of Determination (8/6/09) p. 1, <http://planning.lacity.org/PdisCaseInfo/Home/GetDocument/NjEyNjdhOWYtNDExMDU0MDdlTkZkZDUtNjQ4Y2QxY2ZiNDh0>.

⁶ See e.g., Corbin & Nordhoff Redevelopment Project (DCP Case Nos. CPC-2002-7295, ENV-2002-1230) involving GPA to amend the Chatsworth-Porter Ranch Community Plan for a 35.5-acre project site and a 15-acre add area. There, while no actual development was proposed in the add area and the applicant not owning/controlling the parcels within the add area, the City nevertheless analyzed several development scenarios for the add area. See Draft Master EIR (Sep. 2003) Summary Project Description, pp. 1-5, [https://planning.lacity.org/eir/CorbinNordhoff/MEIR/PDF/1a&b Project%20Location&Description.pdf](https://planning.lacity.org/eir/CorbinNordhoff/MEIR/PDF/1a&b%20Project%20Location&Description.pdf); see also Letter of Determination (4/29/04) p. 1, <http://planning.lacity.org/PdisCaseInfo/Home/GetDocument/YjI2ZmU4ZTEtYWZjMi00ODFmLWJiNmYtN2YzMmEzZWZhOWVhQ>.

Area, or that no proposed actual development is currently proposed within the Add Area, or that some further action would be necessary before the Add Area could be developed up to 6:1 FAR.

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

Sincerely,

A handwritten signature in dark ink, appearing to read "Matt Hagemann".

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

A handwritten signature in dark ink, appearing to read "Kaitlyn Heck".

Kaitlyn Heck

EXHIBIT B



SMITH ENGINEERING & MANAGEMENT

February 11, 2019

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

Subject: 2005 James M. Wood Boulevard Hotel Project (Case ENV-2017-713-MND) P 19007

Dear Mr. Kracov:

At your request, I have reviewed the Initial Study/Mitigated Negative Declaration (the "IS/MND") for the 2005 James M. Wood Hotel development project (the "Project") in the City of Los Angeles (the "City"). My comments are specific to traffic and transportation matters.

My qualifications to perform this review include registration as a Civil and Traffic Engineer in California and 50 years professional practice in those fields. I have both prepared and reviewed the traffic/transportation sections of environmental documents intended to fulfill the terms of the California Environmental Quality Act ("CEQA"). My professional resume is attached hereto.

Findings of my review are summarized below.

The IS/MND Fails to Analyze the Whole of the Project

The IS/MND and its Appendix D Traffic Impact Study (the "TIS") solely address impacts of the hotel development project on the 22,500 square foot parcel on the northwest corner of the intersection of James M. Wood Boulevard and Westlake Avenue (the "Hotel Site"). Here, one could argue the TIS may reasonably and adequately analyze the traffic impacts of the hotel development on the above referenced 22,500 square foot site in accordance with Los Angeles Department of Transportation ("LADOT") procedures. However, the TIS does not analyze the whole of the Project, which involves a General Plan Amendment ("GPA") not just for the 22,500 square foot Hotel Site, but also includes approximately 253,100 square feet of additional properties having frontage on both sides of a whole block-and-a-half of Alvarado Street extending north from James M. Wood Boulevard to roughly 275 to 280 feet north of 8th Street (referred by the City as "Add Area"). Except for one City lot, the Hotel Site and Add Area is currently zoned C2-1 and designate for "Highway Oriented Commercial" land uses under the applicable general plan, which is further subject to an accompanying footnote limiting the properties floor-area-ratio ("FAR") to 1.5:1. Under, the GPA, these properties would be designated as "Community Commercial" subject to footnote allowing up 6:1 FAR, with a Zone Change ("ZC") that applies only to the Hotel Site allowing development up to 3:1 FAR.

For the City to take the action to make the proposed GPA, it must evaluate the environmental impacts of potential development of the whole of the area where the GPA applies. This has been the practice of the City in other projects where GPAs were considered for other 'add areas' in addition to a project site.^{1,2,3,4} Here, however, the Project's IS/MND does not do so.

¹ See e.g., 915 N. La Brea Ave. (DCP Case Nos. CPC-2005-6163, ENV-2005-6164) involving GPA to amend the Hollywood Community Plan for a 2.27-acre mixed-use project site and a 5.69-acre add area. There, while no actual development was proposed in the add area and the applicant did not own or control the parcels within the add area, the City recognized that the approval of the project "could encourage similar discretionary development requests for one or more of the other parcels [within the add area]," and, therefore, evaluated the potential environmental impacts associated with the theoretical development of the remaining parcels in the add area—assuming "maximum density permitted" for the zone. Draft EIR (May 2008) Add Area Analysis, pp. VII:1-2, <https://planning.lacity.org/eir/LaBreaGateway/DEIR/DEIR%20Sections/VII.%20Add%20Area%20Analysis.pdf>; see also Letter of Determination (2/27/07) p. 1, [http://planning.lacity.org/PdisCaseInfo/Home/GetDocument/ZmY3NjhmNTYtMjk4NS00MGVhLWZlZjYtNWVmZjFINDI4Y2U20](http://planning.lacity.org/PdisCaseInfo/Home/GetDocument/ZmY3NjhmNTYtMjk4NS00MGVhLWZlZjYtNWVmZjFINDI4Y2U20;); Draft EIR (May 2008) Project Description, pp. III:15-16, <https://planning.lacity.org/eir/LaBreaGateway/DEIR/DEIR%20Sections/III.%20Project%20Description.pdf>; Draft EIR (May 2008) Environmental Setting, p. II:1, <https://planning.lacity.org/eir/LaBreaGateway/DEIR/DEIR%20Sections/II.%20Environmental%20Setting.pdf>.

² See e.g., LA Lofts Chinatown Project (DCP Case Nos. CPC-2005-1843, ENV-2005-0881) involving GPA to amend the Central City North Community Plan for a 3.4-acre condo project site and a 5.4 add area. There, despite the ZC applying only to the project site, the City still analyzed several theoretical development scenarios for the add area. See Final EIR (Apr. 2007) Introduction, pp. I:1-5, <https://planning.lacity.org/eir/LoftsChinaTown/FEIR/LA%20Lofts%20Chinatown%20FEIR%20April%202007.pdf>; see also Letter of Determination (10/23/07), pp. 1,

As the examples make clear,⁵ the City cannot forgo its duty to analyze the potential development of the Add Area—made possible via the proposed GPA—merely because no development is currently proposed within the Add Area, or that the applicant does not own properties within the Add Area, or that a subsequent ZC would be necessary before such development could occur within the Add Area. Moreover, deferring analysis until such a future development is proposed would be piecemealing of the impacts of the GPA being undertaken in the current action. Such piecemealing is improper under CEQA.

The Current TIS Can Be Used as a Rough Predictor of the Traffic Consequences of the Entire Plan and Zoning Change Involved in This Action

The IS/MND's Appendix D TIS results can be used to make a rough approximation of what the traffic impacts of the whole GPA contemplated would be. The TIS that was performed solely for the hotel development proposed for the 22,500 square foot Hotel Site evaluated traffic impacts on seven intersections in the immediate area of the site. Four of these intersections are indicated to be at deficient level-of-service ("LOS") conditions (LOS "E" or "F") in one or both peak periods in the 2019 Cumulative-No-Project scenario. When traffic from the hotel development is added, conditions worsen, but volume-to-capacity ("V/C") ratio does not change enough to exceed LADOT's significance thresholds.

F:3, <http://planning.lacity.org/PdisCaseInfo/Home/GetDocument/MjI2NDIzZGQzZGEyNy00NzZmLThtZmU0OWI2NWJiZTBkYzNm0>.

³ See e.g., Plaza at the Glen Mixed Use Project (DCP Case Nos. CPC-2008-2932, ENV-2007-4063) involving GPA to amend the North Hollywood-Valley Village Community Plan for a 12.53-acre mixed-use project site and a 9.23-acre add area. There, while no actual development was proposed in the add area and the add area was not subject to the ZC, the City nevertheless analyzed the redevelopment of the add area "consistent with the proposed Community Commercial designation at a development intensity similar to that proposed for the project site." Draft EIR (Mar. 2009) Project Description, p. II:26, <https://planning.lacity.org/eir/GlenMixedUseProj/DEIR/Chapters/II. Project Description.pdf>; see also DEIR (Mar. 2009) Project Description, Fig. II:18, <https://planning.lacity.org/eir/GlenMixedUseProj/DEIR/LargeGraphics/II18 Add Area.pdf>; DEIR (Mar. 2009) Environmental Setting, p. III:2, <https://planning.lacity.org/eir/GlenMixedUseProj/DEIR/Chapters/III. Environmental Setting.pdf>; Letter of Determination (8/6/09) p. 1, <http://planning.lacity.org/PdisCaseInfo/Home/GetDocument/NjEyNjdhOWYtNDE0MS00MDdmLTk2ZDUtNjQ4Y2QxY2ZiNDZh0>.

⁴ See e.g., Corbin & Nordhoff Redevelopment Project (DCP Case Nos. CPC-2002-7295, ENV-2002-1230) involving GPA to amend the Chatsworth-Porter Ranch Community Plan for a 35.5-acre project site and a 15-acre add area. There, while no actual development was proposed in the add area and the applicant not owning/controlling the parcels within the add area, the City nevertheless analyzed several development scenarios for the add area. See Draft Master EIR (Sep. 2003) Summary Project Description, pp. 1-5, https://planning.lacity.org/eir/Corbin_Nordhoff/MEIR/PDF/1a&b_Project%20Location&Description.pdf; see also Letter of Determination (4/29/04) p. 1, <http://planning.lacity.org/PdisCaseInfo/Home/GetDocument/Yjg2ZmU4ZTEtYWZjMi00ODFmLWVJiNmYtN2YzMmEzZWZhOWVh0>.

⁵ See *supra* fn 1-4.

However, if the whole of the area affected by the proposed GPA (i.e., the Hotel Site and Add Area) is assumed developed at the same physical and net traffic intensity⁶ as the Hotel Site, then a reasonable preliminary estimate of traffic effects at these same intersections is 12.25⁷ times the V/C ratio change the TIS discloses for just the hotel development. The Table below shows the estimates of V/C and impact significance if the results of Appendix D TIS are extrapolated to the entire area to which the GPA apply.

No.	Intersection	Peak	2019 No Project		Hotel Increment V/C	GPA Increment		
			V/C	LOS		V/C	Net	Sig.
1	Hoover Street / James M Wood Blvd.	AM	0.845	D	0.002	0.025	0.875	Y
		PM	0.893	D	0.002	0.025	0.918	Y
2	Hoover Street / Olympic Blvd.	AM	1.003	F	0.002	0.025	1.028	Y
		PM	1.104	F	0.000	N/A		
3	Alvarado Street / 7 th Street	AM	0.697	B	0.001	0.012	0.709	N
		PM	0.796	C	0.001	0.012	0.808	N
4	Alvarado Street / 8 th Street	AM	0.785	C	0.002	0.025	0.810	Y
		PM	0.843	D	0.003	0.037	0.880	Y
5	Alvarado Street / James M. Wood Blvd.	AM	0.853	D	0.008	0.098	0.951	Y
		PM	0.923	E	0.007	0.086	1.009	Y
6	Alvarado Street / Olympic Blvd.	AM	0.885	D	0.003	0.037	0.922	Y
		PM	1.045	F	0.005	0.061	1.106	Y
7	Union Avenue / James M. Wood Blvd.	AM	0.985	E	0.002	0.025	1.010	Y
		PM	1.068	F	0.001	0.012	1.080	Y

Values for 2019-No-Project Scenario and the Hotel Project Increment are reproduced from IS/MND Appendix D, Table 9-1. Values for the GPA Increment are 12.25 times the Hotel Project Increment.

As indicated in the table, if the whole area of the GPA is considered, the Project (meaning the entire Project including the GPA change to the Add Area) would have significant traffic impact at six of the seven intersections considered in the IS/MND TIS. While the above exercise is just a rough preliminary approximation of the traffic impacts of the GPA changes, it conservatively assumes only 3:1 FAR (as compared to the 6:1 allowed furthered by the GPA),⁸ and is a clear indication of the potential for significant traffic impacts. The City must do a formal traffic analysis under LADOT procedures of the traffic impacts of the whole of the GPA change before it can approve the Project as currently contemplated.

⁶ By "same physical and net traffic intensity" we mean that the parcels affected by the GPA would be assumed developed in a variety of permissible land uses in physical forms up to the maximum allowable FAR for the Hotel Site (in this case 2.99 to 1) and have about the same net new trip generation per square foot of site as the hotel development.

⁷ 12.25 is the ratio of the total square footage to which the Plan/Zoning changes apply to the square footage of the proposed hotel site.

⁸ Approximating traffic impacts at a 3:1 FAR (like the development at the Hotel Site) is in keeping with City's past practice. See *supra* fn. 3. However, in order to afford the most conservative analysis, the City should analyze the traffic impacts associated with development at 6:1 FAR.

Conclusion

This completes my current comments on the Initial Study/Mitigated Negative Declaration for the 2005 James M. Wood Hotel Project. In order to approve the Project, which involves approving GPA changes for a much larger area than the hotel project site, it must undertake an environmental study of the impacts of the whole of the GPA change to the Add Area.

Sincerely,

Smith Engineering & Management
A California Corporation



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



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 Leuw, Cather & 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 systems study, Tasman 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 nations 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 gsf 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 structures and rail facilities; and concept plans for 20,000 structured parking spaces. Principal-in-charge for circulation plan to accommodate 9 million gsf of office/commercial growth in downtown Bellevue (Wash.). Principal-in-charge for 64 acre, 2 million gsf multi-use complex for FMC 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

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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 Clarita 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.

EXHIBIT C

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February 11, 2019

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Report of Potential Noise Impacts of 2005 James M Wood Boulevard Hotel Project
Case No. ENV-2017-713-MND

Dear Mr. Kracov:

At your request, I have prepared this report in response to the Mitigated Negative Declaration (“MND”)¹ for the 2005 James M Wood Boulevard Hotel development (“Project”), including its *February 2017 Noise Study* pertaining to the Project’s potentially significant noise impacts. My qualifications are attached hereto as “Attachment 1”.

This report shows that the Project’s noise impacts will be significantly adverse under the California Environmental Quality Act, Pub. Res. Code § 21000 *et seq.*, (“CEQA”) and will exceed permissible CEQA standards set by the City of Los Angeles (“City”). During this Project’s two-year construction period, its construction noise levels will undoubtedly exceed the City’s noise standards. During its subsequent operation as a hotel, the Project will also subject neighboring residences to excessive noise levels. Because construction and operational noise impacts will likely exceed applicable significant thresholds under the City’s CEQA guidelines (“L.A. CEQA Threshold Guide” or “City CEQA Guide”) and the Los Angeles Municipal Code (“LAMC” or “Code”), the approval of the Mitigated Negative Declaration is inappropriate per 14 Cal. Code. Regs. § 15000 *et seq.* (the “CEQA Guidelines”). Hence, the City’s Department of City Planning (“DCP”) should require the Project applicant to prepare an environmental impact report (“EIR”) to consider project alternatives and other feasible noise mitigation measures.

The Project’s *Noise Study* by ESA substantially underestimates construction noise and vibration impacts on the adjacent building with eight apartment units at 835 Westlake Boulevard. The public is not informed that this hotel would be constructed with noisy excavation equipment at times only about two feet at the closest from these occupied residences. The *Noise Study* instead erroneously claims construction will occur more than 25 feet away. The *Noise Study* also never evaluates the hotel’s noise impacts on this two-story apartment building just 28 feet away from use of the hotel’s second-floor outdoor pool deck by crowds of people with possible amplified music during daytime or nighttime. Both during construction and later during hotel operations, this Project’s noise levels will exceed City noise standards and will remain serious and significant even with the proposed noise mitigation.

¹ Available at http://clkrep.lacity.org/online/docs/2018/18-1242_misc_1_12-20-2018.0002.pdf. Page citations herein are to the page’s location in the PDF document (referenced herein as “PDF-##”).

1. AMBIENT NOISE LEVEL DATA IS MISSING FROM PROJECT'S NOISE STUDY

There is insufficient ambient noise data in the MND to back up its reported ambient noise levels and its noise impact conclusions. Some data was to have been provided, but the MND's February 2017 Noise and Vibration Technical Report (hereafter "*Noise Study*") actually contains no "Appendix A - "Ambient Noise Monitoring Data and Traffic Noise Model Validation" that was supposed to be found on MND page A-1.² Without that data, the public has little confidence the summarized short-term 15-minute measurements are accurate. The *Noise Study* also fails to disclose the locations where these 15-minute ambient measurements were obtained. Those locations are not provided because Figure 4, "Noise Measurement Locations," on MND page PDF-15 is entirely blank. Without that measurement location information, the MND does not comply with City noise standards and the public is deprived of its ability and right under CEQA to visit those locations to independently verify such noise measurements.

Even the three, short-term measurements the *Noise Study* vaguely describes are woefully inadequate. A 15-minute measurement at various spots is too short to determine ambient noise levels at all relevant times of the work day. LAMC section 111.01(a) specifies an ambient noise measurement is to be taken at a time of day comparable to that during which the measurement is intended to be used. The *Noise Study*'s several 15-minute measurements taken around 11:00 a.m. will not be comparable to ambient conditions during quieter times in the day. Those measurements certainly cannot represent quieter nighttime ambient noise conditions when loud second-floor outdoor pool deck activities in this hotel may disturb neighbors' sleep. As indicated in LAMC § 111.03, where the actual measured ambient conditions are not known, such as the many other hours of the day at this Project site, the City's presumed daytime (7:00 a.m. to 10:00 p.m.) ambient noise level of 50 dBA L_{eq} and nighttime (10:00 p.m. to 7:00 a.m.) ambient noise level of 40 dBA L_{eq} should be used.³ These presumed ambient noise levels are those that the Project's noise levels must be compared to.

2. CONSTRUCTION NOISE WILL SIGNIFICANTLY IMPACT ADJACENT APARTMENTS

The Project's *Noise Study* fails to disclose the severity of the construction noise impacts to residents of the adjacent apartments to the north of this Project. This Project may generate noise levels upwards of 105 dBA L_{max} at the nearest apartments located just five feet from the proposed Project basement excavation. That level of construction noise would be considered a significant noise impact because it would greatly exceed the City's existing noise standards by 30 dBA at the nearest apartments.

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² See MND, PDF-647 (Mentions: "Ambient Noise Monitoring Data and Traffic Noise Model Validation").

³ See L.A. CEQA Threshold Guide, Exh. I.1-3; see also LAMC § 111.03 (codifying the presumed ambient noise levels).

A. CONSTRUCTION NOISE LEVELS WERE UNDERESTIMATED BECAUSE THE DISTANCE BETWEEN PROJECT AND ADJACENT MULTI-FAMILY APARTMENTS WAS GREATLY OVERESTIMATED

While the architect's plans for this hotel Project show that the northern wall of the two-level subterranean parking garage's ramps will be constructed within about two feet of the site's northern property line and about five feet from the adjacent apartments, these facts and the greater noise impacts during construction so close to occupied dwellings did not get evaluated in the Project's Noise Study.⁴ The MND's *Noise Study* instead erroneously claims that the "distance from closest edge of construction activity to noise receptor" is 25 feet.⁵ The MND in a footnote to Table 6 then further inaccurately describes that distance (of 25 feet to the multi-family residences adjacent to the north of the Project site) to represent the nearest construction area on the Project site to the property line of the offsite receptor. The preparers of the *Noise Study* neglected disclosing that these two underground parking garage levels that must be excavated for retaining wall construction will extend northward to nearly the Project site's northern property line. Making this serious omission even less obvious to City officials, the *Noise Study* entirely omits including the Project's *Site Plan* that might have revealed that close proximity between construction and this northern property line.⁶ The Project's architectural drawings in the MND also omit showing a typical north-south building "section" that should have clearly illustrated how the subterranean parking garage will extend much closer to the northern property line and apartments five feet away than the above-grade floors of the hotel.⁷ (See Figure 1 on following page).

The *Noise Study* only evaluated noise and vibration impacts associated with the Project's above-ground construction, ignoring all the subterranean excavation construction noise. There is a great difference in noise levels during construction when heavy equipment would be only two feet from the adjacent residential property line compared to being 25 feet away. The *Noise Study's* unexplained dimensional error and those missing documents undoubtedly led to the MND's false conclusion that the Project's noise and vibration impacts with proposed mitigation during construction would be less-than-significant.

/ / /

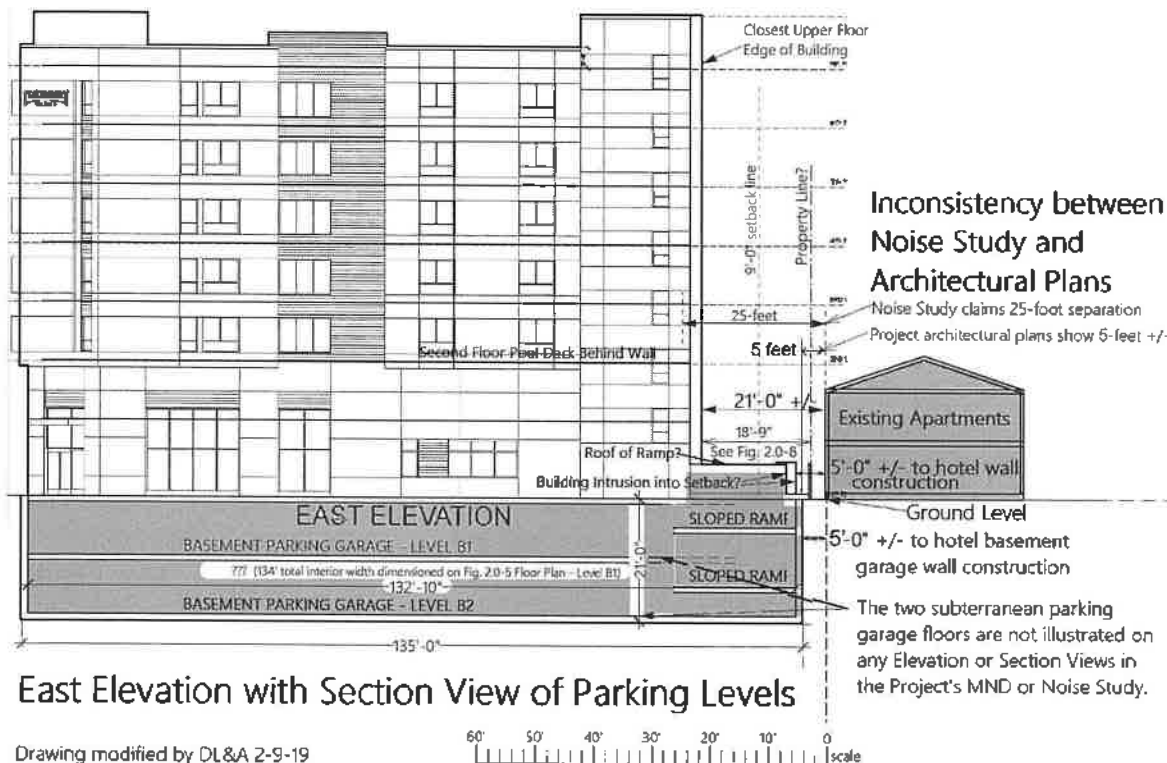
⁴ See MND, PDF-20, Figure 2.0-6 ("First-Floor Plan", where the Project site's northern property line [shown with a dashed line] is dimensioned at 2'-8" to the edge of a parking garage access ramp). See also MND, PDF-19, Figure 2.0-5 ("Floor Plan – Level B1", where a thicker retaining wall that forms the north side of the same parking garage's access ramp is drawn closer to the site's northern property line, implying that this retaining wall will be only about two feet from this northern property line).

⁵ See MND, PDF-340, Table 6 ("Estimated Construction Noise Levels (L_{eq}) at Off-Site Sensitive Receiver Locations").

⁶ See MND, PDF-319 (contains a page labeled "Figure 2 Project Site Plan" but it is empty of any such site plan).

⁷ See instead MND, PDF-24, Figure 2.0-10 ("Section View", a drawing showing a "section" or cut through the building in the east-west direction. No related north-south Section View is provided though in the MND).

Figure 1: Illustration of the Undisclosed, Extremely Short Distance between this Hotel Project and the Existing Apartment Building Less than Five Feet to the North



B. CONSTRUCTION EQUIPMENT NOISE DURING SITE GRADING AND SUBTERRANEAN PARKING GARAGE EXCAVATION COULD SEVERELY IMPACT ADJACENT APARTMENTS

Neighbors in the nearby apartments would be exposed to construction noise levels of over 105 dBA L_{max} during site clearing and excavation even with the mitigation measure for a temporary 15-foot tall noise barrier used during excavation work. That noise level would exceed the City's permissible maximum noise level increase threshold where the construction noise cannot increase noise exposure at neighboring residences by more than 5 dBA above the City's presumed 50 dBA L_{eq} daytime ambient level. The City's threshold of significance limits construction noise to a maximum of 75 dBA at a distance of 50 feet.⁸ Yet noise levels from large trucks used to haul away approximately 16,500 cubic yards (445,500 cubic feet) of earth⁹ during the Project's basement excavation may be as high as 94 to 95 dBA at a distance of 50 feet.¹⁰ Trucks are among the loudest heavy equipment such projects use during construction.¹¹ The MND acknowledges that haul trucks to export this soil will be

⁸ See LAMC § 112.05.

⁹ See MND, PDF-339.

¹⁰ See City's CEQA guidelines, p. 1.1-8 ("Noise Level Ranges of Typical Construction Equipment"); see also U.S. EPA (12/31/71) Noise from Construction Equipment and Operations Building Equipment, and Home Appliance, p. 11, <https://nepis.epa.gov/Exe/ZyPDF.cgi/9101NN31.PDF?Dockey=9101NN31.PDF>; see also MD Acoustics (10/30/17) Noise Impact Study for Commonwealth Development, p. 31 (utilizing U.S. EPA Noise Levels for mixed-commercial development in the City of San Jacinto, CA), https://www.sanjacintoca.gov/UserFiles/Servers/Server_10384345/File/City%20Government/Community%20Development/Planning/CEQA/Commonwealth%20Crossings/07-NoiseStudy.pdf.

required.¹² Yet the *Noise Study*'s Table 5 "Construction Equipment Noise Levels" does not even list how loud the on-site truck use during loading and travel those haul trucks are.¹³ None of that other equipment the *Noise Study* lists is capable of efficiently removing those 16,500 cubic yards of earth from the Project site. If as is shown in other studies a loud haul truck generates a noise level of up to 94 dBA L_{max} at 50 feet, then such trucks operating close to these apartments could emit noise levels of 114 dBA L_{max} at five feet.¹⁴ That is the closest horizontal distance between the adjacent apartments and the hotel's basement wall excavation work (see Figure 1 above). Even a more typical quieter truck with an adequate muffler that emits 82 dBA L_{max} at 50 feet (or even louder)¹⁵ could emit a noise level of 102 dBA L_{max} at five feet without use of a noise barrier.¹⁶ Those unmitigated noise levels would cause significant impacts to neighboring apartment dwellers. Yet the *Noise Study* estimates this Project's construction would create a maximum construction noise level at the multi-family apartments of 85 dBA L_{max} (without use of a noise barrier).¹⁷ Thus the *Noise Study* greatly underestimates the unmitigated maximum construction noise from trucks at the nearest apartment residences by 17 to 29 dBA or more.¹⁸ This exceedance would be greater yet for louder equipment, for use of backup warning beepers on heavy equipment, or for noise resulting from operation of more than one piece of heavy equipment at one time because other equipment will be in use.

Other construction equipment used for this Project's deep parking garage excavation include dozers, tractors, loaders, backhoes, an excavator and a drill rig.¹⁹ All this equipment is rated by the FTA as producing noise levels of about 85 dBA L_{max} at 50 feet.²⁰ When operated closer though at only five feet from neighboring apartments, such equipment noise levels would be about 105 dBA L_{max} . If a vibratory pile driver is used in supporting the 20-foot deep hotel's basement wall, its noise level is estimated to be 96 dBA L_{max} at 50 feet²¹, which calculates to be 116 dBA L_{max} at five feet before the noise barrier mitigation is considered. Back hoes and tractors emit up to 95 dBA L_{max} at 50 feet according to the City's CEQA Guide, p. I.1-8, which could result in 115 dBA L_{max} at five feet.

With such construction equipment generating noise levels up to 102 to 116 dBA L_{max} five feet away at the adjacent apartments, the proposed Mitigation Measure "Noise-1" requiring a noise barrier to attenuate excavation noise by 20 dB will not be sufficient for City or CEQA standards.²² That is because, even if such noise barriers could achieve the specified 20 dBA noise reduction, these apartments would then be exposed to noise levels of 82 to 96 dBA L_{max} at five feet distance which is

¹¹ See City's CEQA Guide, p. I.1-8 ("Noise Level Ranges of Typical Construction Equipment", where trucks are described emitting up to 95 dBA at 50 feet. Only jackhammers, pile drivers, and tractors are shown to be louder.).

¹² See MND PDF-350 ("Construction of the Project would require haul ... trips to and from the site to export soil").

¹³ See MND PDF-339, Table 5 ("Construction Equipment Noise Levels").

¹⁴ Noise level attenuation due to distance is calculated as reduced by about 6 dB for each doubling of distance from a point source. In this case, at a location 5 feet (d_2) from construction, where $dB_1 = 94$ dBA at 50 feet (d_1), then $dB_2 = dB_1 - 10 \times A \times \text{LOG}(d_2/d_1) = 94 - 10 \times 2.0 \times \text{LOG}(5/50) = \underline{114.0 \text{ dBA}}$

¹⁵ Note: Trucks are rated by the FTA to produce a maximum noise level of 88 dBA L_{max} at 50 feet. See FHWA (2017) Construction Noise Handbook (Table 9.9, "FTA Construction Equipment Noise Emission Levels"), https://www.fhwa.dot.gov/Environment/noise/construction_noise/handbook/handbook09.cfm.

¹⁶ Noise level attenuation due to distance is calculated at a location 5 feet (d_2) from construction, where $dB_1 = 82$ dBA at 50 feet (d_1), then $dB_2 = dB_1 - 10 \times A \times \text{LOG}(d_2/d_1) = 82 - 10 \times 2.0 \times \text{LOG}(5/50) = \underline{102.0 \text{ dBA}}$

¹⁷ See MND, PDF-340 (Table 6, "Estimated Construction Noise Levels (L_{eq}) at Off-Site Sensitive Receiver Locations").

¹⁸ Calculation: $102 - 85 = 17$ dBA; or $114 - 85 = 29$ dBA.

¹⁹ See MND, PDF-672.

²⁰ See FHWA Construction Noise Handbook, Table 9.9, *supra* fn. 15.

²¹ *Ibid*.

²² Note: The City's standards limit construction noise at an adjacent residential property line which is even closer in this situation to construction equipment operations by several feet, and therefore slightly more limiting than discussed above.

still too loud.²³ Noise levels that loud would greatly exceed existing daytime ambient noise levels by much more than 5 dBA, which is the City's standard for temporary construction noise increases above daytime ambient noise levels on this site. The ambient noise level is presumed to be 50 dBA L_{eq} during this Project's daytime construction hours, so the threshold of significance would be 5 dBA more at 55 dBA L_{eq} . This construction could generate maximum noise levels of up to 27 to 41 dBA greater than this threshold of significance even with the proposed noise barrier.²⁴ As described below, this construction noise will be even louder because the proposed Mitigation Measure NOISE-1 specifies a noise barrier that is too short and could never achieve 20 dBA noise reduction at the second-floor windows of the neighboring apartments.

The City's threshold of significance is exceeded if construction activities lasting more than one day would exceed existing ambient exterior noise levels by 10 dBA or more at a noise sensitive use (L.A. CEQA Thresholds Guide, p. I.1:3). But most relevant here, construction noise lasting more than 10 days in a three-month period cannot increase existing ambient noise level at any home's property line by 5 dBA or more (*see* L.A. CEQA Thresholds Guide, p. I.1:3; *see also* LAMC § 111.02). Because site excavation to remove over 20 feet of soil depth over nearly the entire Project site will last more than 10 days, then construction noise level increases of more than 5 dBA are considered to create a significant environmental impact.

The loudest phases of construction (excavation/grading and finishing), assuming a quieter drill rig would be used instead of a noisier sonic pile driver, will potentially generate noise levels upwards of 105 dBA at the nearest apartments located just five feet from the proposed Project basement excavation,²⁵ which would greatly exceed the City's existing noise regulation by 30 dBA at the nearest apartment homes.²⁶

3. PROPOSED 15-FOOT HIGH NOISE BARRIER WILL NOT SUFFICIENTLY BLOCK CONSTRUCTION NOISE TO PREVENT SIGNIFICANT NOISE IMPACTS TO NEARBY APARTMENTS

The MND proposes Mitigation Measure NOISE-1, a 15-foot tall temporary noise barrier to supposedly reduce construction noise by 20 dBA along the north property line.²⁷ Yet the MND presents no analysis or calculations to support that this mitigation measure would in fact reduce construction noise levels to a less-than-significant level. To the contrary, this measure is inadequate and will not protect the adjacent apartments from excessive Project noise levels. That is because the adjacent apartment building to the north is two-stories high, has windows up to 17 feet above the ground, and a 15-foot high noise barrier is not tall enough to provide a 20 dBA reduction for this apartment building's upper floor. Noise from the haul trucks used to remove dirt from the excavated area is primarily generated at truck exhaust stacks typically located about 11 feet above the ground.

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²³ Calculation: $102 - 20 = 82$ dBA; or $114 - 20 = 94$ dBA.

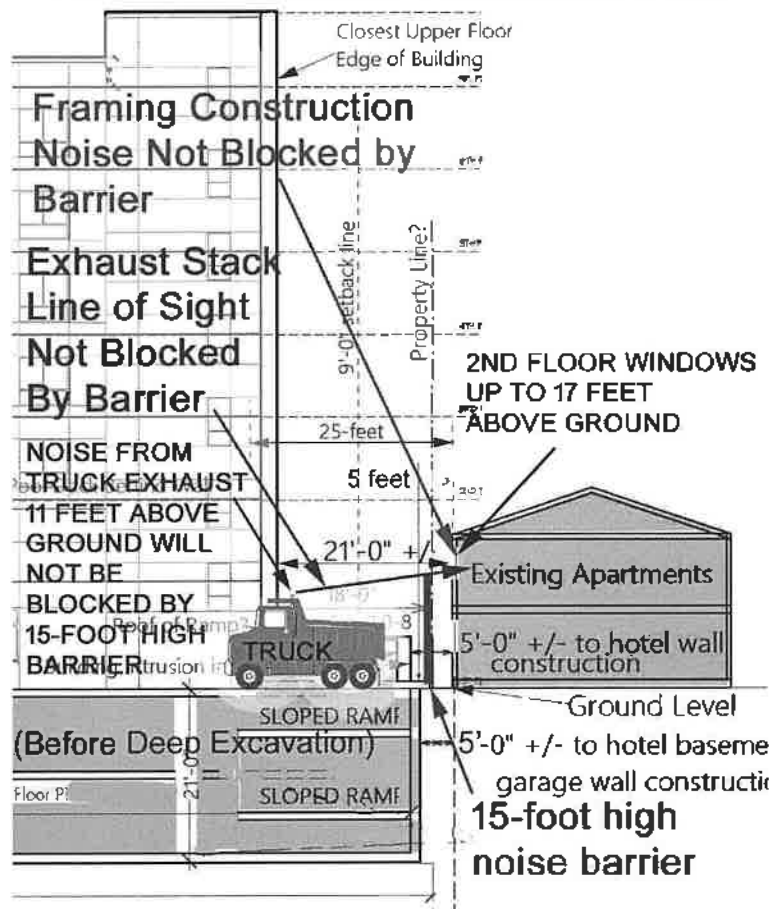
²⁴ Calculation: $82 - 55 = 27$ dBA; or $96 - 55 = 41$ dBA.

²⁵ Calculation based upon construction noise level of 85 dBA at 50 feet, but increased to 105 dBA as distance shrinks to five feet from apartments for those closest excavation and grading activities.

²⁶ Calculation: $(105 \text{ dBA at five feet from excavation}) - (75 \text{ dBA max limit}) = (30 \text{ dBA exceedance over standards})$.

²⁷ *See* MND, PDF-677 (Mitigation Measure NOISE-1 requires a 15-foot tall construction noise barrier).

Figure 2: Ineffective Noise Barrier Mitigation Will Not Block Construction Noise at Existing Apartments



To be effective, an acoustical barrier must be taller than the tallest noise source. If the receiver is above and at an upward angle from the construction equipment like a neighboring two-story building, the barrier will be ineffective.²⁸ Noise barriers are only effective if they can interrupt the line-of-sight between the source of the noise and sensitive receptors.²⁹ With a truck's exhaust stack at 11 feet above the ground, and a 15-foot high temporary noise barrier more than four feet away, the line of sight from the truck's noisy exhaust pipe to the top of the second-floor windows that are 17 feet above the ground will not be intercepted by the top of the barrier (see Figure 2 above). Therefore, it would not be possible to achieve meaningful reductions in noise for receptors on the second-story of the nearby apartments using the proposed Mitigation Measure NOISE-1 15-foot high sound curtain. This mitigation will be ineffective and construction noise will remain significant to these neighbors. Sound curtains of 20 feet in height at minimum have been required of other local construction projects.³⁰

²⁸ See Noise Solution (6/4/14) Applications and Limitations of Acoustical Walls, <https://www.noisesolutions.com/applications-and-limitations-of-acoustical-walls/>.

²⁹ See Wilson Ihrig & Associates (11/12/14) Preliminary Noise Assessment Study for 2700 El Camino Real Condominium Project in San Mateo, CA, p. 12, <https://www.cityofsanmateo.org/DocumentCenter/View/49793/Wilson-Ihrig-and-Associates-Acoustical-and-Vibration-Consultants?bidId>.

³⁰ See e.g., 668 S. Alameda Street (DCP Case No. ENV-2016-3576-EIR) DEIR Noise Section, p. 4.9:36 (mitigation measure NOISE-1 providing "[t]he Project shall provide a temporary 20-foot tall construction noise barrier ..."), <https://planning.lacity.org/eir/668SoAlamedaStreet/deir/4.9%20Noise.pdf>; 4020 W. Washington Blvd (DCP Case No. ENV-2007-5046-EIR) DEIR Noise Section, p. IV.E:39 (mitigation measure E-1 providing "[e]ffective temporary noise barriers shall be used to block the line-of-sight between the construction equipment and the noise-sensitive receptors during

4. CONSTRUCTION NOISE FROM PNEUMATIC NAIL GUNS WILL EXCEED CITY'S MAXIMUM NOISE LIMITS OF 75 dBA AND CAUSE SIGNIFICANT IMPACTS TO NEARBY HOMES

Mitigation Measure NOISE-1 requires this temporary 15-foot high noise barrier between the adjacent apartment building to the north and the Project construction up until the hotel Project is framed. The *Noise Study* though never analyzes if such mitigation will be effective to block framing noise. Construction noise will be generated from typical wood-frame construction techniques on the Project's upper floors including the builders' use of pneumatic nail guns. That noise will adversely impact residents in the adjacent apartments. Maximum noise levels from nail gun use have been measured at about 100 dBA at a distance of 3 feet.³¹ For the adjacent apartments at a distance of 21 feet away from this hotel's third floor wood-frame construction for example, with no barrier tall enough to block that line-of-sight, that noise level would diminish to about 83 dBA L_{max} .³² Even louder, the L.A. CEQA Threshold Guide identifies the noise level from pneumatic impact equipment being potentially at 83 – 88 dBA at 50 feet.³³ Maximum noise levels from nail gun use of 83 dBA L_{max} at neighboring apartments would exceed the significance thresholds under the City's CEQA Guide and the 75-dBA limit under LAMC § 112.05. Such noise would exceed the City's limits by 8 dBA at that 21-foot distance ($83 - 75 = 8$ dBA). Thus, the Project's construction noise levels just from months of nail gun use would be significant. Furthermore, it is technically feasible to reduce such nail gun noise levels by requiring contractors to utilize better-designed nail guns, retrofitting equipment with mufflers, or incorporating effective sound curtains somewhere during the construction of the Project's upper floors.³⁴

5. MND FAILS TO EVEN ANALYZE VIBRATION IMPACTS OF PROJECT'S BASEMENT EXCAVATION, BUT VIBRATION IMPACTS TO NEIGHBORS DURING HOTEL BASEMENT EXCAVATION WILL BE SIGNIFICANT

The MND's Noise Study never analyzes any vibration impacts from proposed excavation during construction of the two underground parking levels requiring removing at least 20 feet of soil depth.³⁵

Nearby residents would be exposed to construction-related vibration levels greater than acceptable thresholds of significance because some apartment dwellings are literally only about five feet

project construction ... [including] a temporary 20-foot tall noise barrier along the southern and western boundaries of the site to reduce construction noise at single-family residential uses ... ”),

<https://planning.lacity.org/eir/WashingtonSq/Deir/issues/IV.E.Noise.pdf>.

³¹ See National Institute for Occupational Safety and Health (Jan. 2003) Study and Reduction of Noise from a Pneumatic Nail Gun, PDF p. 2, <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.561.7860&rep=rep1&type=pdf>.

³² L_{max} is defined as the highest value measured by the sound level meter over a given period of time. Noise level attenuation due to distance is calculated as a 6 dB reduction for each doubling of distance from a point source. See also Figure 1 above for illustration of noise paths from hotel's framing to second-floor windows in these apartments.

³³ See L.A. CEQA Threshold Guide, p. I.1:8, Exhibit I.1-1.

³⁴ See *supra* fn 31, PDF p. 3 (utilizing nail guns with energy absorbent piston bumper and/or equipped with muffler device “significantly reduced the overall sound pressure levels for all frequencies ...”); see also Noise Control Engr. Journal (2015) Identification of Noise Sources and Design of Noise Reduction Measures for a Pneumatic Nail Gun, (recommending noise reduction measures such as small volume mufflers, applying noise absorbing foam on the outside of the nail gun body), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4562896/>.

³⁵ See MND, PDF pp. 344 – 346 (the February 2017 *Noise and Vibration Technical Report* by ESA); see also MND, PDF-24 (Figure 2.0-10, “Section View” where two basement levels B1 and B2 are dimensioned up to 20 feet below the ground level first floor, plus the additional depth for foundation footings of an estimated distance of one foot or more [10 feet + 10 feet + 1 foot = 21 feet]).

horizontally from where deep soil excavation is proposed for the Project's subterranean parking levels. The Project's two levels of underground parking are proposed to be excavated about 21 feet below ground for its footings and retaining walls. This excavation would be only about two feet horizontally from the Project site's northern property line adjacent to existing apartments.³⁶ The vibration impacts from this construction work at this close distance would be severe. The vibration impacts from this construction work at this close distance would be severe. It could even physically damage this older, stucco-covered apartment building structurally and would likely cause significant external and internal damage to wall and ceiling surfaces.

This neighboring apartment structure would be exposed to much greater vibration impacts than the *Noise Study* assumes because it is closer to proposed excavation activities than 50 feet.³⁷ This apartment structure would be only about five feet horizontally from where the Project's basement is to be excavated. This apartment building at 835 Westlake Boulevard adjacent to the Project site was constructed in 1941 before more stringent building requirements were in place safeguarding against seismic conditions. Therefore, this apartment structure is even more susceptible to vibration impacts caused during the construction of this Project.

Ground-borne vibration would be generated during construction of the Project by various construction activities and equipment, such as the demolition of existing structures and pavement, site preparation work, excavation of below-grade parking garage levels, foundation work, and new building erection. CEQA requires the City to consider whether the Project would result in the exposure of persons or their structures to excessive ground-borne vibration or ground-borne noise levels. As such, the Project's MND relies upon FTA policies and guidelines to assess impacts due to ground-borne vibration similar to other projects reviewed by the City.³⁸ To evaluate this hotel Project's vibration impacts, the Project's MND references a threshold of significance for vibration impacts to avoid potential building damage during construction of 0.12 inch-per-second PPV.³⁹ To calculate the vibration impacts to adjacent residences, the MND next uses Equation 3 to estimate vibration levels at different distances than the reference distance for particular construction equipment.⁴⁰ Equation 3 is:

$$PPV_{equip} = PPV_{ref} (25/D)^N \quad [\text{Where } PPV_{ref} = \text{reference source vibration; } D = \text{distance; } N = \text{factor for soil attenuation (default value is 1.5)}]$$

³⁶ See MND, PDF pp. 19-20, Figure 2.0-5 "Floor Plan – Level B1" & Figure 2.0-6 "First Floor Plan" (where these apartment dwellings are shown as an "Adjacent Building" at a scaled distance of approximately five feet from the hotel Project's two-level deep basement parking structure's northern wall).

³⁷ See MND, PDF-345. The *Noise Study* erroneously assumes vibration impacts at 50 feet from these apartments only from demolition of an existing commercial building, and not from subterranean excavation for the hotel's parking garage.

³⁸ See FTA (May 2006) Transit Noise and Vibration Impact Assessment, pp. 8:3, 12:10-14, https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/FTA_Noise_and_Vibration_Manual.pdf; see e.g., 631 S. Spring St. (DCP Case No. ENV-2015-2356-EIR) DEIR Noise Section, PDF pp. 8-9, 13, 23, 28, <https://planning.lacity.org/eir/SpringStHotel/Deir/DEIR%20Sections/Spring%20St%20Hotel%20IV.H%20Noise.pdf>; 622 S. Lucas Ave. (DCP Case No. ENV-2015-3927-MND) MND, PDF pp. 195-197, http://cityplanning.lacity.org/staffrpt/mnd/Pub_102716/ENV-2015-3927.pdf; 1720 N. Vine St. (DCP Case No. ENV-2011-675-EIR) DEIR Vol. I, PDF pp. 79, 646-647, 658, 665-667, https://planning.lacity.org/eir/Millennium%20Hollywood%20Project/DEIR/DEIR%20Sections/Millennium%20Hollywood%20DEIR_Volume%201_COMPILED.pdf.

³⁹ The MND, PDF-85, references this threshold of significance of 0.12 inch-per-second PPV for a building that is extremely susceptible to vibration damage (such as one with stucco exterior walls) from the CalTrans *Transportation and Construction Vibration Guidance Manual*. (CalTrans 2013b), Table 4.12-2.

⁴⁰ See MND, PDF-324.

For a large bulldozer or truck which would be used to excavate the Project's basement levels, its vibration would be 0.089 inch/second PPV at 25 feet.⁴¹ For caisson drilling for basement retaining walls, a similar vibration level of 0.089 inch/second PPV at 25 feet could occur. But at the much closer distance of only 5 feet between Project basement excavation and adjacent apartments, the vibration level of that equipment would be:

$$PPV_{\text{equip}} = PPV_{\text{ref}} (25/D)^n = 0.089 (25/5)^{1.5} = 0.089 \times 11.2 = \mathbf{1.00 \text{ inch/sec. PPV}}$$

This vibration level would create a significant impact because it exceeds the City's chosen threshold of significance of 0.12 inch/sec. PPV. It would be 32 times stronger than the *Noise Study* predicts too.⁴²

Other construction equipment types such as a pile driver produce much greater and potentially harmful vibration levels. This hotel Project's basement walls to be installed about 20 feet underground would need reinforcing to resist the earth pressure against them. Although the MND does not disclose how these walls will be constructed, such foundation walls may be constructed with some form of pile driver equipment. The MND states that *impact* pile driving would not be required,⁴³ but it does not prohibit *sonic pile driving*.

**Table 1: Vibration Source Levels for Construction Equipment
(FTA, 2006, Report FTA-VA-90-1003-06)⁴⁴**

Equipment		PPV at 25 ft. (in/sec)	Approximate L _v at 25 ft. (VdB)
Pile Driver (Impact)	upper range	1.158	112
	typical	0.644	104
Pile Driver (Sonic)	upper range	0.734	105
	typical	0.170	93
Clam shovel drop		0.202	94
Hydromill (slurry wall)	in soil	0.008	66
	in rock	0.017	75
Vibratory Roller		0.210	94
Hoe Ram		0.089	87
Large bulldozer		0.089	87
Caisson drilling		0.089	87
Loaded trucks		0.076	86
Jackhammer		0.035	79
Small bulldozer		0.003	58

Sonic pile drivers produce vibration levels of 0.170 in./sec. PPV at 25 feet and up to 0.734 in./sec. PPV at 25 feet.⁴⁵ But in this Project's situation with an existing apartment structure about five feet from where such pile driving for the basement's north retaining wall may occur, very severe vibration levels that would greatly exceed the City's threshold of significance could occur:

Sonic pile driver (typical):

$$PPV_{\text{equip}} = PPV_{\text{ref}} (25/D)^n = 0.170 (25/5)^{1.5} = 0.170 \times 11.2 = \mathbf{1.90 \text{ inch/sec PPV}}$$

Sonic pile driver (upper range of vibration levels):

$$PPV_{\text{equip}} = PPV_{\text{ref}} (25/D)^n = 0.734 (25/5)^{1.5} = 0.734 \times 11.2 = \mathbf{8.21 \text{ inch/sec PPV}}$$

⁴¹ See MND, PDF-345 (Table 8 "Typical Vibration Velocities for Potential Project Construction Equipment", Large bulldozer: 0.089 inch/sec PPV at 25 feet).

⁴² See MND, PDF-678 (where its *Noise Study* estimates loaded trucks to generate vibration levels of 0.031 in./sec PPV at this nearest off-site apartment building. Calculation: $1.00 / 0.031 = 32$ times greater vibration level than MND estimates).

⁴³ See MND, PDF-672.

⁴⁴ FTA (May 2006) Transit Noise and Vibration Impact Assessment, p. 12:12 (Table 12-2), https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/FTA_Noise_and_Vibration_Manual.pdf.

⁴⁵ *Ibid.*

All of these vibration levels, even from caisson drilling, would be much greater than the City's 0.12 inch/second PPV threshold of significance.⁴⁶ Those vibration levels could even damage the nearby apartment structure. Thus, potential pile driving, caisson drilling or other heavy equipment during Project construction activities could result in the exposure of existing offsite sensitive receptors to excessive ground vibration and vibration noise levels. This impact would be potentially significant.

6. SIGNIFICANT NOISE IMPACTS TO NEIGHBORING APARTMENTS FROM OUTDOOR MUSIC ON 2ND FLOOR EXTERIOR POOL DECK

This Project includes a second-floor exterior pool deck for possible ambient music or even musical performances (amplified music). The nearest apartment windows are as close as only about 28 feet from this deck. Significant noise impacts from music are even more likely than from voices; music in such hotel settings is sometimes played louder than people's voices so it can be heard above the noise level of conversations.

To assess the maximum noise level of a hotel's amplified sound system, a nearby city has previously used a noise level of 90 dBA L_{eq} at a distance of 15 feet from the speaker locations as a reasonable assumption.⁴⁷ This possible noise level is reasonable because it has been used elsewhere, such as in one court case involving a typical wedding reception where an acoustical consultant estimated that "[b]ands and DJ's at a wedding will typically play at 85-88 dBA L_{eq} (average) at a distance of 20 ft. from the front of the stage and speakers."⁴⁸ If a similar noise level of music was generated at the second-floor pool deck of this hotel Project with the speakers located near the northern edge of the deck, the noise level of such music might be as loud as 84.6 dBA L_{eq} at the nearest adjacent apartment windows about 28 feet away.⁴⁹

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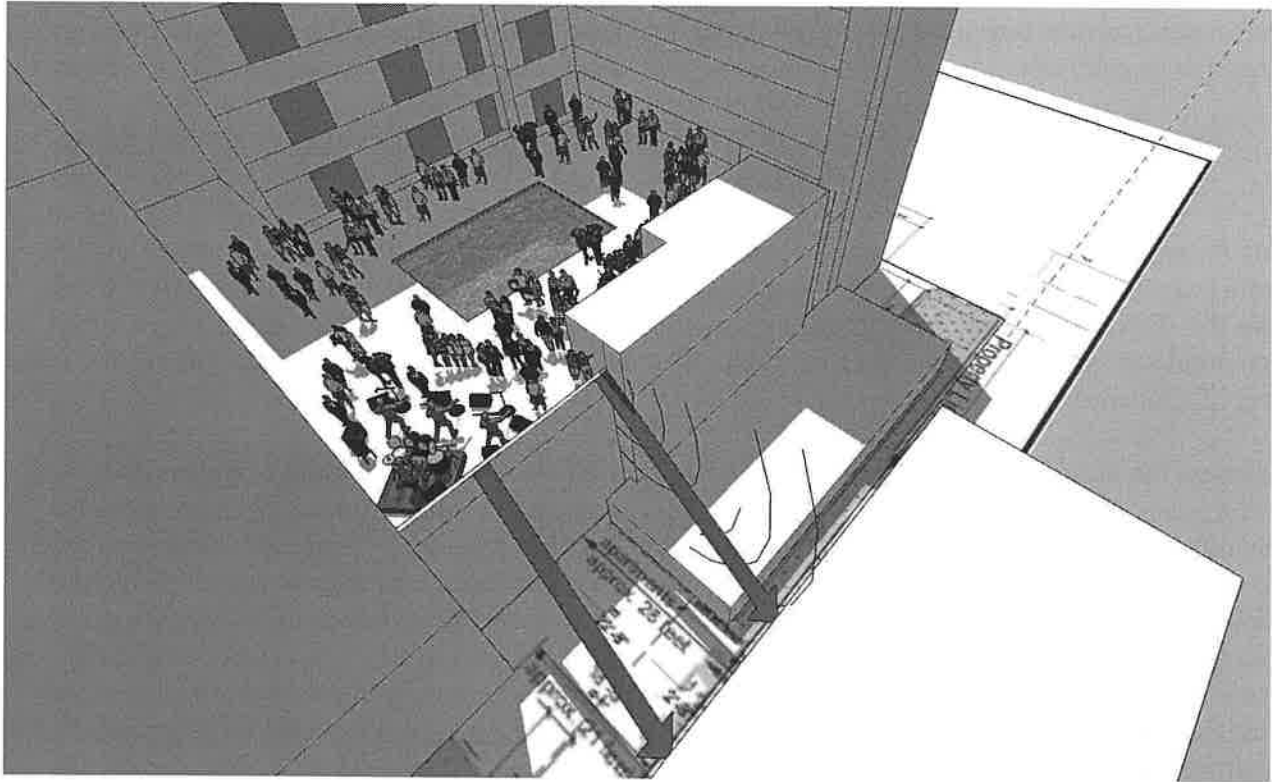
⁴⁶ See MND, PDF-335 ("Potential Building Damage-Project construction activities cause ground-borne vibration levels to exceed 0.5-inch-per second PPV at the nearest off-site residential buildings (evaluated under Impact Threshold NOISE-2)." [emphasis added]).

⁴⁷ See 100 East Ocean Boulevard Hotel Project (Oct. 2018) IS/MND, p. 130, <https://web.archive.org/web/20190202022910/http://www.lbds.info/civica/filebank/blobdload.asp?BlobID=7268>.

⁴⁸ *Keep Our Mountains Quiet v. County of Santa Clara* (2015) 236 Cal.App.4th 714, 722.

⁴⁹ Calculation: At a location 28 feet (d_2) from a musical speaker, where $dB_1 = 90$ dBA at 15 feet (d_1), then $dB_2 =$
 $= dB_1 - 10 \times A \times \text{LOG}(d_2/d_1) = 90 - 10 \times 2.0 \times \text{LOG}(28/15) = \underline{84.6 \text{ dBA}}$.

Figure 3: Simulated View of 2nd-Floor Pool Deck Proximity with Possible Music Disturbing Neighboring Apartments as Close as 28 Feet Away



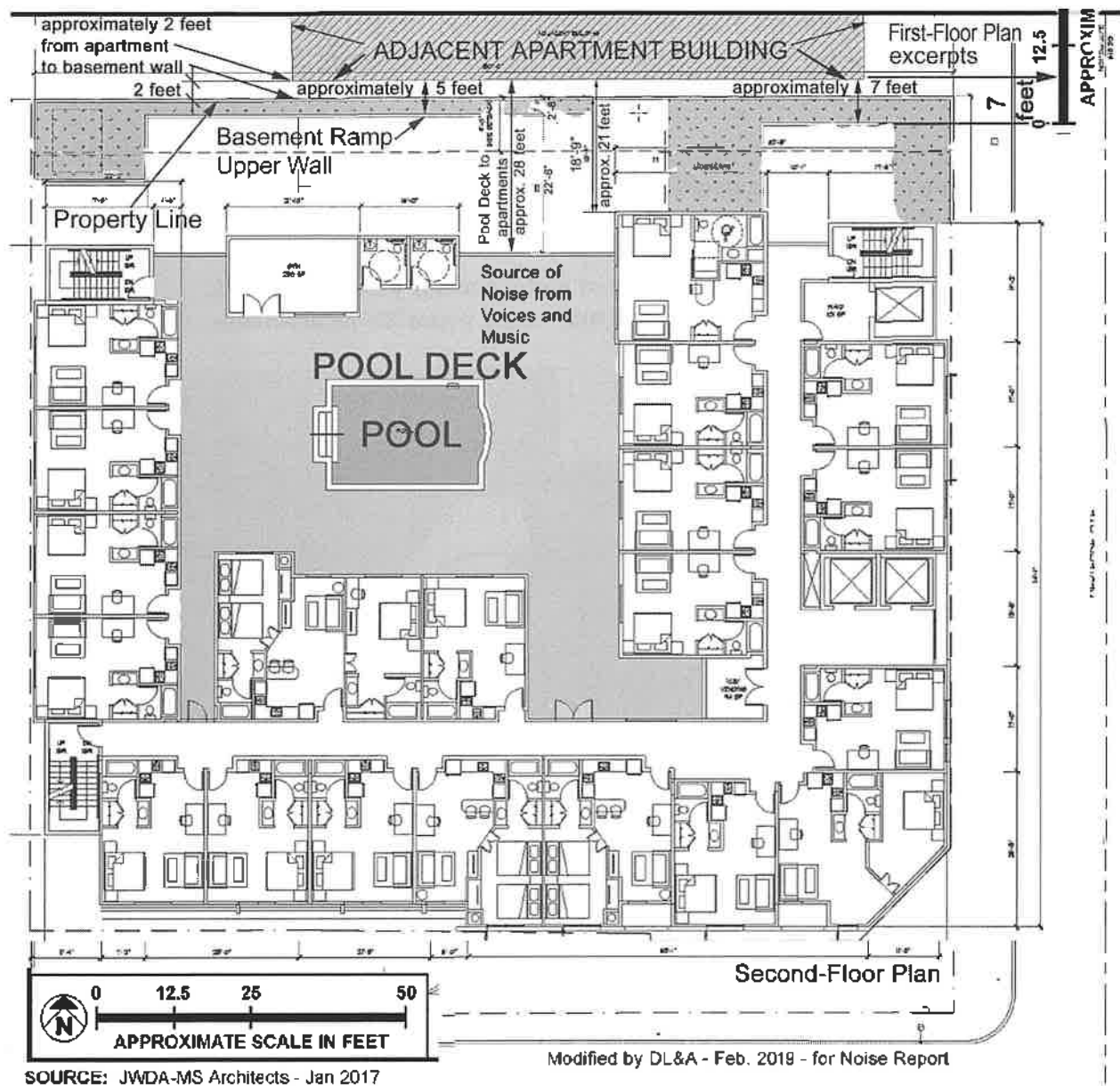
This calculated 84.6 dBA L_{eq} noise level not only places on the lower range of typical bands/DJ music noise, but also does not account for alcohol-charged patrons or people speaking loudly on the second-floor pool deck in close proximity to these adjacent apartments' windows. At this conservatively estimated 84.6 dBA L_{eq} noise level, amplified music would be 34.6 dBA L_{eq} louder than the City's presumed daytime ambient noise level of 50 dBA L_{eq} , and well above the maximum 5 dBA increase threshold of 55 dBA L_{eq} , and, therefore would cause a significant noise impact. If the music had a "repeated impulsive" character such as from drum beats, the City's LAMC § 111.02(b) further adjusts the threshold of significance by adding 5 dB to the sound level measurement of the offending noise. Thus, amplified music on the hotel's pool deck during the daytime could be extremely significant when up to 34.6 dBA louder at neighboring apartments than this threshold (84.6 – 50 = 34.6 dBA louder).

If the amplified speakers alternatively are placed considerably farther away, near the southern end of this pool deck and 75 feet from the apartment windows, their noise level at the apartments could still be excessive. At a 75-foot distance, the calculated noise level from those speakers at the nearby apartment windows would attenuate due to distance to about 76.0 dBA L_{eq} .⁵⁰

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⁵⁰ Noise level attenuation due to distance is calculated as reduced by about 6 dB for each doubling of distance from a point source. In this case, at a location 75 feet (d_2) from a musical speaker, where $dB_1 = 90$ dBA at 15 feet (d_1), then $dB_2 = dB_1 - 10 \times A \times \text{LOG}(d_2/d_1) = 90 - 10 \times 2.0 \times \text{LOG}(75/15) = 76.0 \text{ dBA}$.

Figure 4: Floor Plan Composite Showing Second-Floor Pool Deck's Proximity to Neighboring Apartments (1st Floor and 2nd Floor Overlaid)



The proposed solid 42-inch high parapet wall at the northern edge of this pool deck would reduce that 76.0 dBA L_{eq} noise level by about 5 dBA because it could interrupt the line-of-sight between the speakers and the window. Even if so, the reduced noise level of 71.0 dBA L_{eq} would still substantially exceed City's maximum allowable threshold of significance of 5 dBA more than the presumed daytime ambient noise level of 50 dBA L_{eq} and presumed nighttime ambient noise level of 40 dBA L_{eq} .

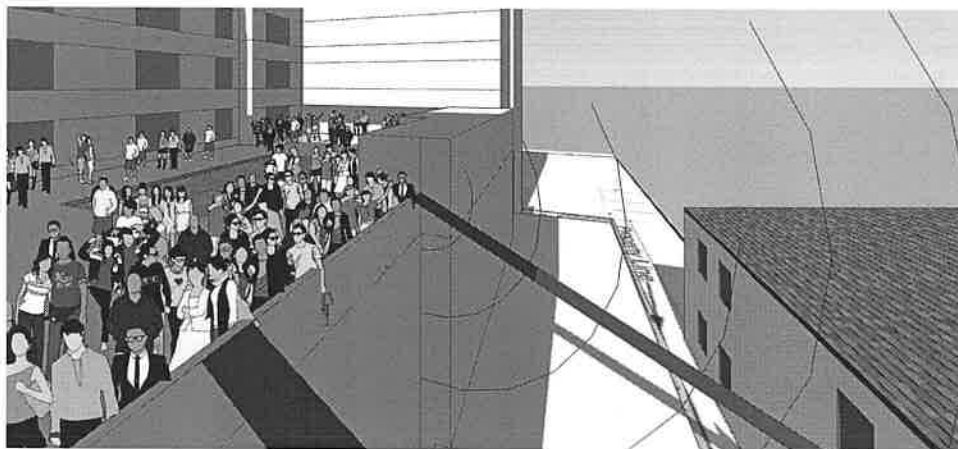
The LAMC § 112.01 theoretically would regulate the loudness of music on this pool deck as measured at the adjacent apartments so that it does not exceed the ambient noise level by more than five decibels. But that law would be difficult to enforce because hotel guests are constantly changing, and because ambient noise levels are not readily known or measurable by many people. Moreover, CEQA requires this music impact to be evaluated even if the City could effectively prevent violations.

7. **NOISE IMPACTS FROM EXTERIOR SECOND-FLOOR POOL DECK USE BY LARGE CROWDS MAY BE SIGNIFICANT TO OCCUPANTS OF NEIGHBORING APARTMENTS**

For crowded conditions, the Project's second-floor exterior pool deck is large enough that it allows vocal levels of just a part of the potential crowd to be over 21 dBA louder than the ambient noise level at night. Any increase greater than 5 dBA would constitute a significant noise impact.

The hotel Project includes 100 guest rooms that could accommodate 150 people,⁵¹ and generate up to 55 employees,⁵² for a total project population of 205 guests and employees, many of which could occupy this second-floor deck, for example, for a holiday party or wedding reception (*see* Figure 5).

Figure 5: Simulated View of Hotel Second Floor Pool Deck With Crowd Generating Loud Vocal Noise To Apartments



So of the crowd on this outdoor deck, perhaps half of them might be conversing at any one time. If for example, just 48 of these potentially alcohol-charged people are conversing at one time on the second-floor pool deck near its northern edge (assuming voices are not abnormally raised), with half of these 48 people talking at one time if speaking in pairs, then their combined vocal levels could create a significant noise impact to neighboring apartment residents at nighttime.⁵³ Just a large crowd talking like that with loud voices could generate noise levels that both exceed the City's maximum noise ordinance standards and also exceed the allowable threshold of significance for increases in ambient noise levels in CEQA studies.

⁵¹ Calculation: 100 rooms x 1.5 people/room = 150 people, utilizing a rate of 1.5 patrons per room, a rate utilized by the City of Los Angeles for similar hotel project. *See* 631 S. Spring St. (DCP Case No. ENV-2015-2356-EIR) DEIR GHG Section, PDF p. 24 (Table IV.E-7, table note "b"), <https://planning.lacity.org/eir/SpringStHotel/Deir/DEIR%20Sections/Spring%20St%20Hotel%20IV.E%20Greenhouse%20Gas%20Emissions.pdf>.

⁵² Utilizing a job-to-room ratio of roughly 0.55 jobs/room average based on similar projects. *See e.g., id.*, (120 employees for a 170-room hotel); 622 S. Lucas Ave. (DCP Case No. ENV-2015-3927-MND) MND, PDF pp. 1, 205 (69 new employees for the 126-room extended stay hotel component), http://cityplanning.lacity.org/staffrpt/mnd/Pub_102716/ENV-2015-3927.pdf; 6421 W. Selma Ave. (DCP Case No. ENV-2016-2602-MND) MND, PDF pp. 1, 144 (94 hotel jobs for the 200-room hotel), https://planning.lacity.org/staffrpt/mnd/Pub_010418/ENV-2016-2602.pdf.

⁵³ The assumption that up to half the crowd in a gathering on an exterior deck could be talking at one time is reasonable and accepted by the City of Los Angeles for some projects. *See e.g.*, 333 S. La Cienega Blvd. (DCP Case No. ENV-2015-897-EIR) DEIR Appendix B-Noise Technical Report, p. 35 ("It was assumed that at any given moment, 50 percent of the people in those two areas would be talking at a "loud" voice level simultaneously."), http://planning.lacity.org/eir/333LaCienega/files/Appendix%20B%20-%20Noise%20Technical%20Report_102015.pdf.

Speech levels of such crowds have been discussed in other noise studies. The City's General Plan Noise Element documents that the loudness of normal speech of one person is greater than 60 dBA at a distance of 3 feet and up to 80 dBA at 3 feet when shouting.⁵⁴ A noise study approved by the City with a similar exterior deck used for an outdoor gathering area was based on a person's noise level in between these two values, using 73 dBA at 3 feet to represent outdoor deck use that primarily consisted of conversational speech amongst residents and guests (emphasis added):

“To assess noise levels associated with conversation speech at these areas, speech levels for humans ranging from ‘casual’ to ‘shout’ obtained from USEPA was used. Based on information provided by the USEPA, and in an effort to provide a conservative analysis, a reference noise level of 73 dBA L_{eq} at approximately three feet, which represents an average ‘loud’ voice level, was used to evaluate potential noise impacts from the Project's ground-level plaza and amenity level area. It was assumed that at any given moment, 50 percent of the people in those two areas would be talking at a ‘loud’ voice level simultaneously.”⁵⁵

These speech volumes were also documented in another study where loud speaking was estimated at 72 dBA at 1 meter and very loud speaking at 78 dBA at 1 meter.⁵⁶ This voice level assumption is also appropriate at this hotel Project's deck as well, because a similar number of people using the deck are being considered.⁵⁷ In larger crowds, people tend to raise their typical speech levels so that they can be heard over the voices of others nearby. This phenomenon is known as the “Lombard Effect” involving the involuntary tendency of speakers to increase their vocal effort when speaking in noisier environments to enhance the audibility of their voice. Studies confirm that broadband noise containing speech-similar frequencies “significantly increased” the intensity, duration, and frequency of adult speakers and not just caused a general response in an increase in ambient noise.⁵⁸ Because people tend to raise their voices to be heard in crowds, the noise level of voices as heard at neighboring apartments from the Project's second-floor pool deck usage may be louder than if only a few people were speaking.

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⁵⁴ See City of Los Angeles (2/3/99) General Plan Noise Element, p. H:1 (Exhibit H: Common Noise Levels).

⁵⁵ See 333 S. La Cienega Blvd. (DCP Case No. ENV-2015-897-EIR) DEIR Appendix B-Noise Technical Report, p. 35, http://planning.lacity.org/eir/333LaCienega/files/Appendix%20B%20-%20Noise%20Technical%20Report_102015.pdf.

⁵⁶ See Proceedings of ACOUSTICS 2006 (Nov. 2006) Prediction of Crowd Noise, p. 237 (Table 2), https://www.acoustics.asn.au/conference_proceedings/AASNZ2006/papers/p46.pdf

⁵⁷ The 333 S. La Cienega Blvd. project EIR assumed 50 to 100 people using the deck at one time with half (25 to 50) speaking at once. For this noise report on the 2005 James M Wood Hotel Project, similar assumptions are made resulting in 24 of this group of 48 people speaking simultaneously.

⁵⁸ The Journal of the Acoustical Society of America (May 2013) Evidence That The Lombard Effect Is Frequency-Specific In Humans, PDF pp. 1, 7, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3985863/pdf/JASMAN-000134-000640_1.pdf; see also Ninth Iberian Acoustics Congress (June 2016) Analysis of The Acoustic Behavior of People in A Restaurant, p. 7 (confirming “substantial influence” of effect in 80-seat restaurant where one-third to one-half of the patrons would simultaneously talk with the Lombard effect adding up to 12 dB increase in sound levels), <http://www.sea-acustica.es/fileadmin/Oporto16/76.pdf>; Acoustical Society of America (2017) Analyses of Crowd-Sourced Sound Levels of Restaurants and Bars in New York City, PDF pp. 12-13 (noting average dBA for a New York City bars and restaurants is 78 and 81 dBA, respectively, and that a random person walking into these areas is “more likely than not to encounter a Loud or Very Loud auditory environment,” which “approach levels that are known to be dangerous to hearing health.” As such, local agencies should encourage public and venue employees to employ digital sound level meters to collect and report to the public recorded noise levels), <https://asa.scitation.org/doi/pdf/10.1121/2.0000674>.

If only 24 people are speaking at one time near the northern edge of this Project's pool deck, then that noise level as heard at the adjacent apartment windows as close as 28 feet away would exceed City's standards. To calculate how loud that possible crowd could be when measured at the nearest apartments, one would calculate and then logarithmically add the volumes of the voices of these 24 people. If a single person speaks in a crowd at an average loud voice level 73 dBA at 3 feet, then at a distance of 40 feet from nearby apartment windows where the larger group of 48 people might be centered, that person's vocal noise level would be reduced by distance to about 50.5 dBA.⁵⁹ However, if 24 of these 48 people speak simultaneously there at the same volume, their combined voice levels would be about 64.3 dBA at a distance of 40 feet.⁶⁰ 40 feet is the distance from the approximate middle of this group of 48 people near the northern edge of the second floor pool deck to the nearest apartment window to the north as illustrated.

That calculation of the crowds' voice levels should additionally be modified with a reduced volume level to account for the fact that not everyone would always simultaneously face the apartment windows to the north when speaking. Studies have measured that when people speak in a group with their heads randomly oriented in different directions, the volume level of the group is approximately 2.9 dB +/- 0.2 dB lower than if they were all oriented directly toward the microphone measuring their speech level.⁶¹ With this adjustment, the crowd noise from half the 48 people on the second-floor pool deck calculates to about 61.4 dBA at the nearest apartment windows (64.3 dBA - 2.9 dBA = 61.4 dBA). But that noise level would still be significant.

That noise level of just half of that smaller group of 48 people conversing in loud voices of 61.4 dBA L_{eq} would be significantly greater than the ambient noise level at those apartment units at nighttime presumed by the City to be 40 dBA L_{eq} . The nighttime ambient noise level is essential in determining noise impact significance. That vocal noise level from people using the second-floor pool deck could be about over 21 dBA louder than the ambient noise level at night at these apartment windows (61.4 dBA - 40 dBA = 21.4 dBA). Even a 5 dB increase in ambient noise levels would be considered a significant environmental impact under CEQA. Even in the daytime, such vocal noise levels would be more than 11 dBA above the presumed 50 dBA L_{eq} ambient noise level which would be a significant increase. When voice levels from all the other people on this second-floor pool deck are added, their combined noise impact is even more significant.

There is no evidence from the applicant that a 42-inch high, solid deck edge or parapet wall will adequately reduce the Project's noise impacts on neighbors from its exterior deck usage at night to less-than-significant. It would not even break the line-of-sight between many hotel guests and these neighboring windows. As illustrated in Figure 6 below, standing persons typically speak with their mouths located more than five feet above such a deck surface. A solid wall on the deck edge that does not even break the line-of-sight between a source of noise and the receiver will not reduce noise levels by even 5 decibels. Furthermore, those voices and other noisy activities occurring on the second-floor deck (e.g., rowdy alcohol-charged patrons pre-partying before painting the town red), will bounce off the Project's 63-foot tall exterior walls (i.e., floors two through six plus rooftop parapet wall) and reflect back onto nearby apartments to the north of the Project site which will not be blocked by the

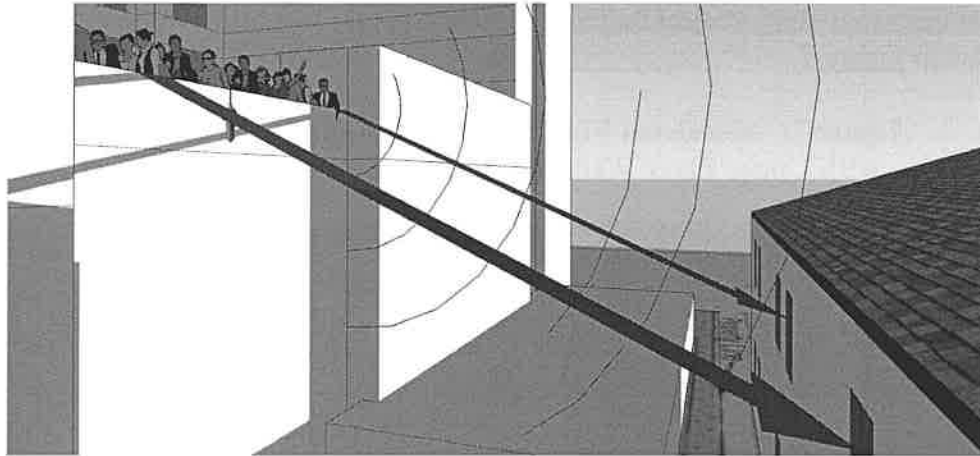
⁵⁹ Noise level attenuation due to distance is calculated as reduced by about 6 dB for each doubling of distance from a point source. In this case, at a location 40 feet (d_2) from one person's voice, where $dB_1 = 73$ dB(A) at 3 feet (d_1) from the same person, $dB_2 = dB_1 - 10 \times A \times \text{LOG}(d_2/d_1) = 73 - 10 \times 2.0 \times \text{LOG}(40/3) = 50.5$ dB(A).

⁶⁰ Calculation based upon the logarithmic addition of the cumulative voice levels of 24 people under these crowded conditions with raised voice levels.

⁶¹ See *supra* fn. 56, p. 239 (Figure 7).

proportionately small, 42-inch high second-floor pool deck's northern parapet wall. Therefore, vocal noise from crowds of hotel guests create significant noise impacts to adjacent apartment residents.

Figure 6: Simulated View of Hotel Second Floor Pool Deck with Crowd Unblocked by Barrier and Generating Loud Vocal Noise to Apartments



8. NOISE LEVEL OF JUST TWO PEOPLE SPEAKING AT NORTHERN EDGE OF HOTEL'S SECOND FLOOR POOL DECK NEAR ADJACENT APARTMENTS COULD EXCEED CITY'S THRESHOLD OF SIGNIFICANCE AND THUS CREATE A SIGNIFICANT NOISE IMPACT

The Project's outdoor deck could create significant noise impacts at nearby apartments even with just two people speaking in loud voices at the northern deck parapet wall or handrail at nighttime. One person's voice level could be 13.6 dBA above the City's nighttime presumed ambient noise level, and an increase of merely 5 dBA is considered to be significant.

The noise level from two people speaking outdoors at average loud voice levels can exceed 73 dBA at a distance of 3 feet.⁶² As compared to typical residential uses where residents have a vested interest to monitor their outdoor noise volumes (e.g., talking on front porches heard by adjacent homes), hotel guests have little reason to keep their voices down and respect neighbors at night because their stays will be short-term and they will not know these neighbors. At the deck's northern handrail as close as about 28 feet to the neighboring apartment units, such noise levels from a single person's voice would be about 53.6 dBA L_{eq} .⁶³ At nighttime with the City's presumed nighttime ambient noise level of 40 dBA, the vocal noise impact from exterior second-floor deck usage by just two people with one talking at a time, even without music or a larger crowd, could be 13.6 dBA above ambient nighttime presumed noise levels⁶⁴—and thus greater than the 5-dB threshold for increases under the City's standards.

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⁶² See 333 S. La Cienega Blvd. (DCP Case No. ENV-2015-897-EIR) DEIR Appendix B-Noise Technical Report, p. 35, http://planning.lacity.org/eir/333LaCienega/files/Appendix%20B%20-%20Noise%20Technical%20Report_102015.pdf.

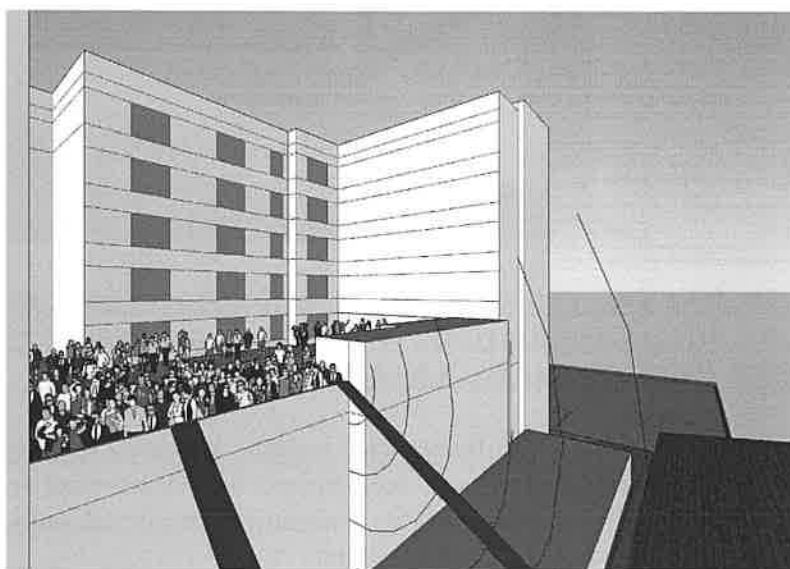
⁶³ Noise level attenuation due to distance is calculated as reduced by about 6 dB for each doubling of distance from a point source.

⁶⁴ Calculated: 53.6 dBA L_{eq} – 40 dBA presumed nighttime ambient level = 13.6 dB.

9. ECHO FACTOR WILL INCREASE NOISE IMPACTS TO ADJACENT APARTMENTS TO THE NORTH

Residential apartment neighbors to the north of this hotel Project will be exposed to higher noise levels than would be predicted by distance attenuation alone. The extra noise would be added to those sound waves that directly radiate from the second-floor pool deck activities such as voices from a crowd of people at nighttime. Those apartments will also be exposed to reflected noise that bounces off the hard wall surfaces of this multi-story Project building located adjacent to the second-floor deck, as illustrated below in Figure 7.

Figure 7: Simulated View of Hotel Second Floor Pool Deck with Upper Floor Walls Reflecting Noise To Apartments



It is well known to urban planners that:

“In some cases, external building facades can influence reflected noise levels affecting adjacent buildings. This is primarily a problem where high-rise buildings are proposed, and the effect is most evident in urban areas, where an urban canyon may be created.”⁶⁵

“A smooth, hard barrier surface, such as masonry or concrete, is considered almost perfectly reflective (i.e., almost all sound striking the barrier is reflected back toward the source and beyond). A barrier surface material that is porous, with many voids, is said to be absorptive (i.e., little or no sound is reflected back). The amount of energy absorbed by a barrier surface material is expressed as an absorption coefficient value ranging from 0 (100% reflective) to 1 (100% absorptive). A perfect reflective barrier, ($\alpha = 0$) will reflect back virtually all noise energy (assuming a transmission loss of 30 dBA or more) toward the opposite side of a highway. If the difference in path length between the

⁶⁵ Michael Brandman Associates (9/29/11) DEIR Noise Section for Proposed City of Elk Grove Sphere of Influence Amendment, p. 3.12:4, http://www.saclafco.org/SphereofInfluenceInformation/Documents/elkgrovesoi/proposedsoi_amenddeir/sac_029402.pdf; see also 1020 S. Figueroa St. (DCP Case No. ENV-2015-1159-EIR) DEIR, p. 4.2:2 (noting “A receptor located on the same side of the wall as a noise source may actually experience an increase in the perceived noise level as the wall reflects noise back to the receptor, thereby compounding the noise.”), http://planning.lacity.org/eir/1020SoFigueroa/DEIR/4_G_Noise.pdf; 1211 W. Pico Blvd. (DCP Case No. ENV-2011-0585-EIR) DEIR, p. IV.E:2, <https://planning.lacity.org/eir/ConventionCntr/DEIR/files/IV.E%20Noise.pdf>.

direct and reflected noise paths to the opposite (unprotected) side of a highway is ignored, the maximum expected increase in noise will be 3 dBA.”⁶⁶

To be conservative, at least 1 dB if not 2 dB of noise would be added to the small/large crowd noise and maybe amplified music noise that bounces off the hotel’s northern facade and reflects back onto those nearby apartment units.⁶⁷ Hence, two people speaking at night could cause a 54.6 dBA noise impact, a group of 24 people speaking simultaneously could create a 62.4 dBA noise impact, and an amplified sound system would create a 85.6 dBA noise impact.⁶⁸ Again, these noise levels would exceed various exterior noise standards under the LAMC and exceed the City’s 5 dBA increase threshold, without even considering the cumulative effect of activities occurring at the same time, nor consideration of other noise sources (e.g., second-floor outdoor activity, the building’s HVAC equipment, etc.).

The shape of the hotel’s second-floor pool terrace and its surrounding massive upper floor exterior walls would generate echoes that reflect and thus amplify already potentially significant pool terrace activity noise toward the adjacent apartment dwellings to the north. This problem is particularly difficult to mitigate. Blocking some of this noise by adding a northern deck parapet wall taller than the current 42-inch wall will not block reflected noise that bounces from the hotel’s upper floors 2 thru 6 back toward the adjacent apartments.

10. FURTHER NOISE MITIGATION MEASURES ARE NECESSARY

First, the MND recommended a 15-foot tall temporary construction noise barrier capable of achieving 20 dBA noise reduction (see e.g., MND, PDF-315, 344, 347, 350, 648). However, this mitigation measure is missing from the Project’s Conditions of Approval. Notwithstanding being individually inadequate to reduce construction noise impacts to less than significant (as discussed above), it must be included in addition to other measures (such as those listed below) if the City is serious about incorporating meaningful mitigation measures that will reduce the Project’s construction noise impacts to the fullest extent feasible.

Second, critical to the MND/EIR review process is the consideration of mitigation measures (“MMs”) and project design features (“PDFs”) to reduce a project’s impact to less than significant, which can subsequently be made enforceable as mandatory conditions of approval (“COA”). Among these MMs/

⁶⁶ CalTrans (Sep. 2013) Technical Noise Supplement Part 1, p. 1:1 (prepared to provide technical background information on transportation-related noise in general and highway traffic noise in particular), [https://www.sandiegocounty.gov/content/dam/sdc/pds/ceqa/Soitec-Documents/Final-EIR-Files/references/rtrcref/ch2.6/2014-12-](https://www.sandiegocounty.gov/content/dam/sdc/pds/ceqa/Soitec-Documents/Final-EIR-Files/references/rtrcref/ch2.6/2014-12-19_Caltrans_TrafficNoiseAnalysisProtocol_Part1.pdf)

[19_Caltrans_TrafficNoiseAnalysisProtocol_Part1.pdf](https://www.sandiegocounty.gov/content/dam/sdc/pds/ceqa/Soitec-Documents/Final-EIR-Files/references/rtrcref/ch2.6/2014-12-19_Caltrans_TrafficNoiseAnalysisProtocol_Part2.pdf); *see also id.*, Part 2, p. 2:37, [https://www.sandiegocounty.gov/content/dam/sdc/pds/ceqa/Soitec-Documents/Final-EIR-Files/references/rtrcref/ch2.6/2014-12-](https://www.sandiegocounty.gov/content/dam/sdc/pds/ceqa/Soitec-Documents/Final-EIR-Files/references/rtrcref/ch2.6/2014-12-19_Caltrans_TrafficNoiseAnalysisProtocol_Part2.pdf)

[19_Caltrans_TrafficNoiseAnalysisProtocol_Part2.pdf](https://www.sandiegocounty.gov/content/dam/sdc/pds/ceqa/Soitec-Documents/Final-EIR-Files/references/rtrcref/ch2.6/2014-12-19_Caltrans_TrafficNoiseAnalysisProtocol_Part2.pdf).
⁶⁷ See Noise Control Engineering Journal (Jan. 2014) “Traffic Noise and Vehicle Movement at a Controlled Intersection,” p. 13 (stating that: “It was found that the facade reflection correction was equal to 2 dB ... The value of 2 dB for the facade reflection correction is a reasonable value. It is 1 dB lower than the value of 3 dB corresponding to incoherent summation of equal-amplitude direct and reflected sound waves. The value of 2 dB for the correction implies that the reflected sound is about 2 dB weaker than the direct sound, since the incoherent sum of 0 dB and –2 dB is 2 dB. The 2 dB attenuation of the reflected sound is caused by two effects: i) absorption of sound energy by the facade, and ii) partial screening of the sound field by the parapet.”). Copy of article is available upon request.

⁶⁸ Here is the calculation adding 1 dB to conservatively adjust for reflected noise: 53.6 dBA + 1 dBA = 54.6 dBA, 61.4 dBA + 1 dBA = 62.4 dBA, and 84.6 dBA + 1 dBA = 85.6 dBA.

PDFs/COAs considered for other nearby projects and/or hotel projects within the City—but missing from the Project's COAs—include:

Construction-Related:

- Require pre-construction survey of adjacent historic buildings and prepare an adequate structure monitoring program that will limit vibrations to specific levels with enforceable work stoppage provisions. The monitoring program shall measure and continuously store peak particle velocity with vibration data stored at one-second intervals and provide a real-time alert when vibration levels exceed specified levels.
- Require construction activities to be placed as far as possible from the nearest off-site residential land uses.
- Require construction and demolition activities to be scheduled to avoid operating several loud pieces of equipment simultaneously; alternatively to reduce the overall length of the construction period, combine noisy operations to occur in the same time period if it will not be significantly greater than if operations were performed separately.
- Require the replacement of noisy equipment with quieter equipment, such as utilizing vibratory pile driver instead of conventional pile driver (or even prohibit the use of driven (impact) pile systems altogether), using rubber-tired equipment rather than track equipment, or using quieted and enclosed air compressors with properly working mufflers on all engines.
- Require construction contractor to avoid using vibratory rollers and packers near sensitive areas.
- Require construction staging areas to be as far from sensitive receptors as reasonably possible.
- Require all construction truck traffic to be restricted in hours and to truck routes approved by the Department of Building and Safety, which shall avoid residential areas and other noise-sensitive receptors.
- Require the construction of sufficiently tall noise barriers, such as temporary walls or piles of excavated material, between noisy activities and noise-sensitive receivers.
- Require flexible sound control curtains to be placed around all drilling apparatuses, drill rigs, and jackhammers when in use and more extensive noise control barriers protecting adjacent residential structures.
- Require power construction equipment operated at the project site to be equipped with effective state-of-the-art noise control devices (e.g., equipment mufflers, enclosures, and barriers) with contractors maintaining all sound-reducing devices and restrictions throughout the construction period and keeping documentation showing compliance.
- Require contractors to use either plug-in electric or solar powered on-site generators to the extent feasible.
- Require the use of smart back-up alarms, which automatically adjust the alarm level based on the background noise level, or switch off back-up alarms and replace with spotters.
- Require grading and construction contractors to use equipment that generates lower vibration levels such as rubber-tired equipment rather than metal-tracked equipment, such as a combination loader/excavator for light-duty construction operations.
- Two weeks before the commencement of construction at the Project Site, require notification to be provided to the immediate surrounding off-site properties that disclose the construction schedule, including the various types of activities and equipment that would be occurring throughout the construction period. A noise disturbance coordinator and hotline telephone number shall be provided to enable the public to call and address construction-related issues.

- Require all mitigation measures restricting construction activity to be posted at the Project Site and all construction personnel shall be instructed as to the nature of the noise and vibration mitigation measures.
- Require a noise monitoring/control plan that includes absolute noise limits for classes of equipment, noise limits at lot lines of specific noise sensitive properties, specific noise control treatments to be utilized (such as the above-mentioned measures), and a designated compliance officer to respond to promptly respond to complaints and take immediate correction action if limits/restrictions are not complied with.

Construction-Vibration Related:

- Require the heavily-loaded trucks to be routed away from residential streets, if possible. Select streets with fewest homes if no alternatives are available.
- Require the operation of earth-moving equipment on the construction site as far away from vibration-sensitive sites as possible.
- Require phase demolition, earth-moving, and ground-impacting operations so as not to occur in the same time period. Unlike noise, the total vibration level produced could be significantly less when each vibration source operates separately.
- Prohibit impact pile-driving. Drilled piles or the use of a sonic or vibratory pile driver causes lower vibration levels where the geological conditions permit their use (however, see cautionary note below).
- Require demolition methods not involving impact, such as sawing bridge decks into sections that can be loaded onto trucks results in lower vibration levels than impact demolition by pavement breakers, and milling generates lower vibration levels than excavation using clam shell or chisel drops.
- Limit vibratory rollers and packers near sensitive areas.

Operation-Related:

- Prohibition of amplified sounds in outdoor spaces and/or meet specified dBA levels.
- Require the rooftop deck would include a glass or heavy plastic safety wall (minimum 6 feet in height) around its perimeter.
- Before the issuance of a Certificate of Occupancy, require the sound levels to be measured consistent with documentation of the measurements being submitted to the Department of City Planning for the file to demonstrate specified noise levels are not exceeded at the property line.
- Use insulation or construct solid barriers between noise sources and noise receivers.
- Separate noise sources from noise receivers by distances sufficient to attenuate the noise to acceptable levels.
- Limit the hours of use for the equipment.
- Installation of double-pane exterior windows meeting specified Sound Transmission Coefficient rating for the Project (and possibly the adjacent residential uses).
- The proposed facility shall be designed with noise-attenuating features (physical as well as operational) by a licensed acoustical sound engineer to assure that operational sounds shall be inaudible beyond the property line.
- No window openings shall be permitted along the residential-facing sides of the building.
- Redesign the source to radiate less noise (e.g., substitute a quieter equipment type process or enclose the source with sound absorbent material).

- All outdoor-mounted mechanical equipment be enclosed and impermeably-shielded with it breaking the line-of-sight from off-site noise-sensitive receptors.

Mobile-Vehicular Related:


- Attenuate the sound by using barriers, or redirect sound transmission paths.
- Reduce vehicle trip generation, or reduce speed limits on roadways.
- Locate any delivery, truck loading, or trash pickup areas as far from noise sensitive land uses as possible and limiting designated hours for deliveries.
- The Project shall not allow delivery truck idling of main engines in the loading area pursuant to applicable City and State standards. Signs shall be posted prohibiting idling.⁶⁹

Unfortunately, none of these MMs/PDFs were adequately considered by the City because of the Project's inadequate noise analysis. The abovementioned mitigations measures, as well as all other technically feasible measures, must be considered in a draft EIR to ensure the Project would be less than significant under the L.A. CEQA Thresholds Guide.

11. CONCLUSION

As discussed above, the Project's *Noise Study* fails to provide sufficient and basic information required for the City to adequately assess the actual much more severe noise impacts of this Project. As a result, likely construction, vibration, and operational noise impacts were masked that demonstrate this MND is inappropriate for the Project's CEQA review. This conclusion is further supported by the unusual circumstances of the only five-foot proximity of the nearby residential apartment structure. Moreover, the hotel's tall physical shape that will increase outdoor pool deck noise by reflection to the adjacent apartment building was not minimally disclosed in this hotel Project's architectural drawings or any photographs. Without that information, it is understandable that some of the Project's obvious outdoor pool deck noise impacts might be missed. But the adjacency of the exterior pool deck, its possible music and noisy activities, and large crowd potential make obvious to anyone that locating a noisy, second-floor pool deck just 28 feet from neighboring apartment windows is bound to cause severe noise disturbances. The Project's noise impacts to these nearby residential apartments and other nearby dwellings must compel the City to require proper CEQA review of these noise impacts. Moreover, feasible mitigation measures are available and need to be considered pursuant to a CEQA-compliant EIR—just like similar projects reviewed by the City.

Sincerely,



Dale La Forest

Professional Planner, Designer, INCE Associate (Institute of Noise Control Engineering)
Dale La Forest & Associates

Attachment A: Statement of Qualifications

⁶⁹ The above-listed measures include sample mitigation measures from the L.A. CEQA Threshold Guide (pp. I.1:5, I.2:7-8), control measures from the FTA's Transit Noise And Vibration Impact Assessment (pp. 12:8-10 [https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/FTA_Noise_and_Vibration_Manual.pdf]), and MMs/PDFs/COAs compiled from a host of nearby and/or hotel projects within the City.

ATTACHMENT A
Statement of Qualifications

EDUCATION AND EXPERIENCE

I received a Bachelor of Architecture Degree with Master of Architecture studies in architecture and planning from the University of Michigan (1966 – 1973). My university education included architectural acoustics and the math and physics related to analysis of sound transmission. In 44 years, I have designed hundreds of homes in California. During the last 20 years, I have also prepared expert acoustical studies for various development projects and reviewed and commented upon dozens of noise studies prepared by others. My expertise in environmental noise analysis comes from this formal educational training in architecture and planning, and from many years of evaluation of acoustics as relates to environmental analysis and challenging flawed project applications prepared by less-than-professional, industry-biased acousticians. I regularly measure and calculate noise propagation and the effects of noise barriers and building acoustics as they apply to homes near projects and their vehicular travel routes. I have also prepared initial environmental studies for noise-sensitive development projects including hotel and campground projects along major highways. I have reviewed dozens of quarry project and batch plant project environmental documents. I have designed highway noise walls, recommended noise mitigations, and have designed residential and commercial structures to limit their occupants' exposure to excessive exterior noise levels throughout California.

Dale La Forest

