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Of Counsel

November 6, 2018

Via Email Only

Agenda Item no. 6

City Planning Commissioners
City of Los Angeles
cpc@lacity.org

Re: Response to Department of City Planning Appeal Report regarding the Schrader Hotel Project (VTT-74521-1A, ENV-2016-3751-MND)

Dear Honorable Planning Commissioners:

We write on behalf of the Coalition for Responsible Equitable Economic Development ("CREED LA"), John Ferruccio, Jorge L. Aceves, John P. Bustos, Gerry Kennon, and Chris S. Macias, to respond to the City of Los Angeles ("City") Department of City Planning Appeal Report ("Second Appeal Report") prepared for the November 8, 2018 City Planning Commission hearing regarding the Hotel project located at 1600-1616 ½ North Schrader Boulevard and 6533 West Selma Avenue ("Project") (VTT-74521-1A, ENV-2016-3751-MND).

On June 7, 2018, we submitted comments on the Project's MND. On July 18, 2018, we submitted our response to the City's response to comments. On August 3, 2018, the Advisory Agency filed a letter of determination approving the VTT and the MND and, on August 13, 2018, we submitted our appeal on the Advisory Agency's decision. On September 11, we submitted our responses to the Appeal Report that was prepared for the September 13 hearing (First Appeal Report). The hearing was continued to November 8. The Second Appeal Report contains responses to some of our appeal arguments. However, it still fails to resolve the issues we raised, as detailed below, and our comments still stand.¹

In short, the MND still fails to comply with the requirements of the California Environmental Quality Act² ("CEQA") because substantial evidence

¹ We incorporate our June 7, 2018, July 18, 2018, August 13, 2018 and September 11, 2018 comments, along with their attachments and exhibit, herein by reference.

² Pub. Resources Code §§ 21000 et seq.; 14 Cal. Code Regs. §§ 15000 et seq. ("CEQA Guidelines"). 4267-016nl

supports a fair argument that the Project may cause: (1) a significant, unmitigated impact on public health from toxic air contaminants (“TACs”), particularly for school-aged children and (2) a significant, unmitigated impact from noise.³

(1) Substantial evidence supports a fair argument that the Project may result in potentially significant impacts on public health, especially for school age children attending the nearby schools.

In our previous comments, we explained that the City has a duty to assess the impacts the project may have on public health and pointed to a long line of court rulings establishing that duty.⁴ Moreover, SWAPE provided an expert opinion, supported by substantial evidence, that the Project may result in a significant impact on public health.⁵ SWAPE later provided an additional analysis showing that school children attending the Selma Avenue Elementary School and the Blessed Sacrament School located near the Project site will be exposed to a heightened cancer risk beyond the threshold set by SCAQMD.⁶ None of these risks for the general public or the school children have been addressed or evaluated in any report or analysis prepared for the Project.

In its response, the City argues against SWAPE’s assumptions used in its analysis. First, the City argues SWAPE incorrectly assumed that a receptor would be continuously exposed to DPM emissions over a 70-year lifespan, and therefore, the cancer risk was overestimated. As SWAPE explains, an adjustment factor (AF) was included in the analysis to properly account for that fact, and therefore, contrary to the City’s argument, SWAPE’s analysis does not assume that a school child would be exposed to DPM continuously for 70 years.⁷

Second, the City argues that school children will be on site seven hours and not ten hours a day, as was SWAPE’s assumption. SWAPE therefore updated the analysis to reflect the City’s assumption.⁸

³ We reviewed the City’s analysis and responses with the assistance of air quality and hazards experts Matt Hagemann and Hadley Nolan of Soil/Water/Air Protection Enterprise (“SWAPE”) and of acoustic expert Neil Shaw, FASA, FAES of Menlo Scientific Acoustic, Inc. SWAPE’s and Mr. Shaw’s comments are attached hereto as Exhibit A and Exhibit B, respectively, and are fully incorporated herein and submitted to the City herewith.

⁴ CREED L.A., Schrader Hotel Project Mitigated Negative Declaration, July 18, 2018.

⁵ SWAPE, Comments on the Schrader Hotel Project, June 7, 2018.

⁶ SWAPE’s comments, September 10, 2018, p. 4.

⁷ Exhibit A: SWAPE’s comments, November 5, 2018, p. 2-3.

⁸ Exhibit A: SWAPE’s comments, November 5, 2018, p. 3.

SWAPE's updated analysis found that even when accounting for the City's assumptions, the excess cancer risk to a school child from ages five to fourteen years old is approximately 1,200 in one million.⁹ This risk greatly exceeds the SCAQMD's threshold of ten in one million.

SWAPE provides substantial evidence that under the applicable SCAQMD rules and OEHHA Guidelines the Project will cause a significant health impact that the City must disclose and analyze by preparing a health risk assessment to account for potential health impacts caused by the Project's construction.¹⁰ As shown by SWAPE's analysis, substantial evidence supports a fair argument that the Project will have significant impact on public health from construction emissions.

(2) Substantial evidence supports a fair argument that the Project may result in potentially significant impacts from noise.

As explained in our previous comments, a major deficiency in the City's noise analysis is the fact that it relies heavily on the application of "Project Design Feature" number 2 (PDF-2), a digital audio processor (DAP) which is supposed to limit the noise level from the 11th floor rooftop deck to no more than 84 dBA.¹¹ As shown in our previous comments, the City's reliance on a design feature is in fact an improper compression of analysis and mitigation, which is prohibited by CEQA.¹² Moreover, it is wholly unsupported:

First, the City's analysis fails to account for outside equipment that will not or cannot be controlled by the DAP. Second, it fails to account for acoustic equipment, such as drums, that by definition cannot be controlled by the DAP. As was shown in our September 11, 2018 letter, the City's First Appeal Report included an explicit statement admitting that outside equipment will be allowed in the hotel.¹³

The Second Appeal Response does not resolve these issues. Although the City argues now that "outside equipment and acoustic instruments are prohibited,"¹⁴ the City fails to point to any condition in the MND or the MMP for the project that

⁹ Exhibit A: SWAPE's comments, November 5, 2018, p. 4.

¹⁰ Exhibit A: SWAPE's comments, November 5, 2018, p. 2.

¹¹ MND, p. II-41

¹² CREED L.A., Justification for Appeal, August 13, p. 4-5.

¹³ City of Los Angeles, Schrader Hotel Project Responses to Comments, August 2, 2018, p. 45.

¹⁴ City of Los Angeles, Schrader Hotel Project Responses to Comments, October 2018, p. 9.

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actually prohibits outside equipment and acoustic instruments. The fact is that no such prohibition exists. PDF-2 merely requires that the hotel's audio system will be controlled with a DAP that adjusts the output volume. Nothing in that design feature, or any other measure in the Project's conditions, prohibits outside and acoustic equipment or mandates that all equipment will be controlled by it.

The City further argues that "it is not required to analyze a "hypothetical scenario that will not occur." However, the City's *own* MND analysis admits that noise from amplified music can reach the level of 104 dBA.¹⁵ Nothing is hypothetical about this level, but the city fails to properly analyze it, despite substantial evidence supporting a fair argument that any live entertainment not controlled by the DAP may reach these levels.

With regard to the plexiglass barrier, the City again fails to respond to substantial evidence supporting a fair argument that the barrier will not achieve the level of noise attenuation the City claims it will.¹⁶ Regarding the complaint system in PDF-4, the City repeats its argument that it will be used "in conjunction" with other design features.¹⁷ The City keeps ignoring the fact that complaints, by definition, will only be filed after an impact has occurred. Therefore, this system of waiting for a complaint cannot be relied on to support a conclusion of no substantial noise impact, whether independently or "in conjunction" with other measures.

In sum, substantial evidence supports a fair argument that the Project will have a significant impact from operational noise.

Sincerely,
/s/
Nirit Lotan

CC: jason.hernandez@lacity.org; Mindy.Nguyen@lacity.org

¹⁵ MND, p. III-106.

¹⁶ Exhibit B: Neil Shaw comments, 2 November 2018, p. 1.

¹⁷ City of Los Angeles, Schrader Hotel Project Responses to Comments, October 2018, P. 7.
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EXHIBIT A



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November 5, 2018

Nirit Lotan

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Subject: Response to Comments on the Schrader Hotel Project

Dear Ms. Lotan,

We have reviewed the November 2018 Department of City Planning Appeal Report ("Appeal"), which addressed comments we made in a September 10, 2018 comment letter on the September 2018 Department of City Planning Appeal Report ("September Appeal") prepared for the Schrader Hotel Project ("Project") located in the City of Los Angeles ("City"). The September Appeal contained a Response to Comments document ("September Responses") that addressed comments we previously made in a July 17, 2018 comment letter on the July 2018 Staff Report ("Staff Report"). The July 2018 Staff Report contained a Response to Comments document ("July Responses") that addressed comments we previously made in a June 7, 2018 comment letter addressing the inadequacies in the Air Quality and Greenhouse Gas analyses conducted in the April 2018 Initial Study and Mitigated Negative Declaration (IS/MND) for the proposed Project.

Both the June 7, 2018 comment letter and the July 17, 2018 comment letter specifically discussed the April 2018 IS/MND's and the July 2018 Staff Report's failure to properly evaluate the health risk impact posed to residential sensitive receptors located near the Project site. In our June 7 comment letter, we found that the Project Applicant failed to prepare a health risk assessment (HRA) for the proposed Project. Thus, we prepared a screening-level HRA to evaluate the Project's health risk impact and concluded that the health risk posed to adults, children, and infants at a residential receptor located approximately 1 meter from the Project site would be approximately 28, 190, and 310 in one million¹ and that the excess cancer risk over the course of a residential lifetime (assumed to be 30 years) would be approximately 530 in one million.² These risks all greatly exceed the South Coast Air Quality Management District's (SCAQMD) significance threshold of ten in one million. When the City responded to our June 7 comments in the July 2018 Staff Report by claiming that "there was no evidence to suggest that the Proposed Project would generate diesel emissions that are excessive or above acceptable levels that already occur within the environment", we reiterated how critical conducting a proper HRA for the Project was, as demonstrated by the findings of our analysis.³ In response to our July 17, 2018 comment letter discussing the City's lack of a proper HRA, the City responded by stating, "There is no evidence to suggest that

¹ See SWAPE's June 7, 2017 comment letter on the Schrader Hotel Project.

² See SWAPE's June 7, 2017 comment letter on the Schrader Hotel Project.

³ See p. 76 of the Response to Comments included as Attachment A in the July 2018 Planning Department Staff Report for the Schrader Hotel Project.

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the project would generate diesel fuel emissions that are excessive or above acceptable levels that already occur within the environment. As such, the project is not considered to be a substantial source of diesel particulate matter warranting an HRA..." (September Appeal, pp. 11).

Finally, in our September 10, 2018 comment letter, we provided a supplemental analysis in order to further demonstrate that the Project will create a significant health risk to nearby sensitive receptors by evaluating the Project's health risk impact to school children attending nearby schools. We prepared an additional screening-level HRA to evaluate the Project's health risk impact to the Selma Avenue Elementary School and Blessed Sacrament School near the Project site. We concluded that a school-child receptor attending the Selma Avenue School for 7 years and then attending the Blessed Sacrament School for 2 years would have an excess cancer risk of 850 in one million.⁴ These risks also significantly exceed the SCAQMD's significance threshold of ten in one million.

In response to our September 10, 2018 comment letter discussing the City's lack of a proper HRA, the City responded by stating that because the Project's maximum daily construction particulate matter (PM) emissions and localized on-site peak daily construction emissions were below SCAQMD thresholds, an HRA does not need to be prepared (pp. 3152-3153). Furthermore, the City noted that "localized thresholds are based on a receptor within a distance of 82 feet from the Project Site. Selma Avenue Elementary School is approximately 350 feet from the Project Site, as such, the localized emissions would be substantially lower at that distance" (pp. 3152-3153). Additionally, the City goes on to argue that SWAPE's analysis was incorrect because it "assumes children attending Selma Avenue Elementary are on the school property for 10 hours each day, but are on the school property approximately 7 hours after assuming students remain on site for an additional 30 minutes before and after school for pick up and drop off activities" and "thus the daily exposure rate used by SWAPE is significantly overstated and not based on actual exposure times" (pp. 10). Finally, the City argues that the SWAPE analysis used an incorrect cancer potency factor and assumed a constant exposure to Diesel Particulate Matter (DPM) over a 70-year lifetime (pp. 10).

We find this response to be completely inadequate for several reasons, and maintain that the Project Developer should conduct a proper health risk analysis prior to Project approval.

First, despite the Project generating less than significant air quality emissions, we maintain that the Project would pose a significant health risk impact to the maximally exposed school child receptor (MEISC) that should have been evaluated per SCAQMD guidance. Specifically, Rule 1401.1 was established by the SCAQMD to be more health protective for school children located near facilities that emit toxic air contaminants (TACs).⁵ According to the SCAQMD's *Risk Assessment Procedures for Rules 1401, 1401.1, & 212*, which describes the procedures for preparing risk assessments, "Rule 1401.1 is designed to be more health protective for school children than Rule 1401 by establishing more stringent risk requirements related to facility-wide cancer risk and non-cancer acute and chronic HI for new and relocated facilities emitting toxic air contaminants near schools, thereby reducing the exposure of toxic emissions to school children."⁶ Therefore, due to the close proximity of the two schools to the Project site and the potential for the Project to emit substantial amounts of toxic air contaminants (TACs) from use of construction equipment and the approximately 122 diesel truck trips during operation (MND, Appendix A, pp. 28-29), the health risk posed to school children from the Project's construction and operational emissions should have been evaluated. By failing to do so, the Project's air quality impacts are not adequately addressed or evaluated.

⁴ See SWAPE's September 10, 2018 comment letter on the Schrader Hotel Project.

⁵ "Risk Assessment Procedures for Rules 1401, 1401.1, & 212," SCAQMD, available at: <http://www.aqmd.gov/docs/default-source/planning/risk-assessment/riskassprocjune15.pdf?sfvrsn=2>, p. 1

⁶ "Risk Assessment Procedures for Rules 1401, 1401.1, & 212," SCAQMD, available at: <http://www.aqmd.gov/docs/default-source/planning/risk-assessment/riskassprocjune15.pdf?sfvrsn=2>, p. 3

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Second, the Project Developer claims that SWAPE incorrectly assumed that a receptor would be continuously exposed to DPM emissions over a 70-year lifespan, and therefore, the cancer risk was overestimated. AERSCREEN, the screening level air quality dispersion model used to conduct our HRA, calculates an annual average air concentration, assuming that emissions would be uniformly emitted over 24 hours per day, 7 days per week.^{7,8} Therefore, as the Appeal Report points out, we used a cancer potency factor of $1.1 \text{ (mg/kg-day)}^{-1}$ and an averaging time of 25,550 days to determine the health risk posed to the MEISC. However, in order to account for the fact that the MEISC would *not* be constantly exposed over a 70-year lifespan, an adjustment factor (“AF”) was applied to the annual average concentration calculated in AERSCREEN in order to accurately estimate the cancer risk posed to these students during school hours, as is recommended by the Office of Environmental Health and Hazard Association (OEHHA).⁹ OEHHA clearly states that an AF should be used when conducting an HRA for a nearby school children.^{10,11} Therefore, SWAPE’s analysis does not assume that a school child would be exposed to DPM continuously for 70 years. We maintain that we used the correct cancer potency and averaging time as the AF accounts for the actual duration that a student would be exposed.

As stated above, the Project Developer determines that a school child is more likely to be on the school campus for 7 hours a day. In order to demonstrate that the risk to the school child would still be significant if the school child only remained on campus for 7 hours a day, we prepared an updated analysis using the AERSCREEN modeling from our September 10 comment letter. In order to account for a school child being present on the school’s campus for 7 hours a day, we calculated a new adjustment factor using the same equation provided in the OEHHA Guidance.¹² Using this equation, we estimated an AF of 4.8, assuming that a school child would be exposed to construction and operational emissions generated from the Project for 7 hours a day, 5 days per week.

From our September 10 AERSCREEN modeling, we determined that the annualized average concentration for Project construction at the Selma Avenue Elementary School, located approximately 213 meters away from the Project site, is approximately $5.429 \mu\text{g}/\text{m}^3$. Moreover, we calculated that the annualized average concentration for Project operation at the Selma Avenue Elementary School and the Blessed Sacrament School, located approximately 290 meters away from the Project site, is approximately $1.299 \mu\text{g}/\text{m}^3$ and $0.8742 \mu\text{g}/\text{m}^3$, respectively.

We calculated the excess cancer risk to school children attending both schools using applicable HRA methodologies prescribed by OEHHA. OEHHA recommends the use of Age Sensitivity Factors (“ASFs”) to account for the heightened susceptibility of young children to the carcinogenic toxicity of air pollution.¹³ According to the revised guidance, quantified cancer risk should be multiplied by a factor of three for a receptor aged two until sixteen. We used a cancer potency factor of $1.1 \text{ (mg/kg-day)}^{-1}$ and an averaging time of 25,550 days. Furthermore, as discussed above, we assumed students would only be in school for an average of 7 hours per day, 5 days a week. Therefore, we used an AF of 4.8 to account for exposure during school hours only. An

⁷ “AERSCREEN Released as the EPA Recommended Screening Model,” USEPA, April 11, 2011, *available at*: http://www.epa.gov/ttn/scram/guidance/clarification/20110411_AERSCREEN_Release_Memo.pdf

⁸ “Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments.” OEHHA, February 2015, *available at*: <https://oehha.ca.gov/media/downloads/crn/2015guidancemanual.pdf>, p. 5-26

⁹ “Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments.” OEHHA, February 2015, *available at*: <https://oehha.ca.gov/media/downloads/crn/2015guidancemanual.pdf>, p. 4-42

¹⁰ In order to calculate this an AF, OEHHA suggests the following equation: $\text{AF} = [(24 \text{ hours per day}) / (7 \text{ hours per day})] \times [(7 \text{ days per week}) / (5 \text{ days per week})] = 4.8$

¹¹ “Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments.” OEHHA, February 2015, *available at*: <https://oehha.ca.gov/media/downloads/crn/2015guidancemanual.pdf>, p. 5-31

¹² *Ibid.*

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

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exposure frequency of 180 days per year was used to reflect the number of days in a typical school year, and an exposure duration of approximately 9 years (a student from Pre-K to 8th grade) was used to represent the duration of Project exposure to the school child.¹⁴ OEHHA also recommends that the 95th percentile, moderate intensity breathing rates be used to determine risk to children at schools.¹⁵ The results of our calculations are summarized in the table below.

The Maximum Exposed Individual Student Receptor (MEISC)							
Activity	Location	Duration (years)	Concentration ($\mu\text{g}/\text{m}^3$)	Breathing Rate (L/kg-day)	ASF	AF	Cancer Risk
Construction	Selma Avenue Elementary School	1.5	5.429	640	3	4.8	5.8E-04
Construction Duration		1.5					
Operation	Selma Avenue Elementary School	5.5	1.299	640	3	4.8	5.1E-04
	Blessed Sacrament School	2.0	0.8742	640	3	4.8	1.2E-04
Operation Duration		7.5					
Total Exposure Duration		9.0				Student Exposure	<u>1.2E-03</u>

The excess cancer risk to a school child from ages five to fourteen years old is approximately 1,200 in one million when we assume that a school child will be exposed for 7 hours per day, 5 days per week, which greatly exceeds the SCAQMD's threshold of ten in one million. As a result, the Project's construction and operational emissions present a potentially significant impact to nearby sensitive receptors at the Selma Avenue Elementary School and the Blessed Sacrament School.

It should be noted that our analysis represents a screening-level health risk assessment, which is known to be more conservative, and tends to err on the side of health protection.¹⁶ The purpose of a screening-level HRA is to determine if a more refined HRA needs to be conducted. If the results of a screening-level health risk are above applicable thresholds, then the Project should conduct a more refined HRA that is more representative of site specific concentrations. Our screening-level HRA demonstrates that construction and operation of the Project could result in a potentially significant health risk impact. As a result, a refined HRA must be prepared to examine the air quality impacts generated by Project construction and operation using site-specific meteorology.

Sincerely,



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



Hadley Nolan

¹⁴ Our calculations are based on the assumption that a child attends the Selma Avenue Elementary School for Pre-Kindergarten (1 year) through 5th grade, then subsequently attends the Blessed Sacrament School from 6th-8th grade, for a total exposure duration of 9-years.

¹⁵ "Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments." OEHHA, February 2015, available at: <https://oehha.ca.gov/media/downloads/cnr/2015guidancemanual.pdf>, p. 5-30, 5-32

¹⁶ <https://oehha.ca.gov/media/downloads/cnr/2015guidancemanual.pdf> p. 1-5

EXHIBIT B

MENLO SCIENTIFIC ACOUSTICS, INC. Consultants in Acoustics and Communication Technologies

2 November 2018

Ms. Nirit Lotan
Adams Broadwell Joseph & Cardozo
601 Gateway Blvd., Suite 1000
South San Francisco, California 94080

Subject: **Schrader Hotel Project –City of Los Angeles**
Department of City Planning Appeal Report (Case No. VTT-74521-1A)
for City Planning Commission 8 November 2018 meeting

Dear Ms. Lotan,

Menlo Scientific Acoustics, Inc., has reviewed the subject Appeal Report which includes responses to the comments in the Adams Broadwell Joseph & Cardozo letter dated 11 September 2018 and our letter dated 7 September 2018 regarding the subject project.

The current Appeal Report responses, as previous version of this report, do not resolve the issues raised in our comments. The general response is that our comments are unsubstantiated or narrative in content. However, the City does not provide any quantitative data for review. Their mitigation measures are themselves based on qualitative, or narrative, statements, and assumptions. Here are my specific responses to comments in the subject Appeal Report:

1. Response to Comment 1.3, to comment letter No. 1, on page 3146 of 3185:

The City again does not provide support to the claim the music level will not exceed 84 dBA. Nothing in the City's response provides support to the claim that all amplified music will be controlled by the Digital Audio Processor (DAP). Further, the assertion that the barriers will provide 20 dBA of attenuation is not accurate – the attenuation will be less (see Federal Highway Administration Noise Barrier Design Handbook, Chapter 3, Acoustical Considerations, section 3.5.1, Barrier Design Goals and Insertion Loss, https://www.fhwa.dot.gov/Environment/noise/noise_barriers/design_construction/design/design03.cfm, as noted in our 19 June 2018 letter.

Moreover, the response does not address non-electronic instruments, such as drums, and so the DAP will be ineffective for these noise sources. The mitigation measures also do not prohibit equipment that cannot be connected to the DAP. Connection of portable equipment to the DAP will be impossible as many instrument amplifiers do not allow for connection of the amplifier audio signal to outside equipment that could control the level of same.

The response therefore is inaccurate and does not refute the assertions in the comment. The City did not provide substantial evidence to support its conclusion regarding noise impacts.

2. Response to Comment 1.4, to comment letter No. 1, on page 3146 of 3185):

The responses by the City do not provide any quantitative data so the assertion "The analysis in the MND appropriately analyzes the project as it is being proposed with the project design features identified therein" cannot be supported and just repeat statements made in MND.

The City further argues "It would not be reasonable [sic] or appropriate to analyze the project's operational noise impacts without a plexiglass barrier around the perimeter of the rooftop deck and outdoor terrace, or outside the operating hours defined in the Project Description, perimeter of the rooftop deck and outdoor

MENLO SCIENTIFIC ACOUSTICS, INC.

terrace, or outside the operating hours defined in the Project Description”. The City is ignoring the facts that the analysis for the mitigation was based on incorrect source levels and improbable mitigation.

The response therefore is inaccurate and does not refute the assertions in the comment and does not provide substantial evidence to support the City’s conclusions.

3. Response to Comment 1B.1, to comment letter B.1, on page 3156 of 3185:

The response does not provide any rebuttal to the commenter’s assertions except to say it “is not substantiated” without any discussion or reference to support this nor does the response let us know what “facts” they refer. In addition, the response again does not show how the DAP can control portable instrument amplifiers or instruments such as drums. The response therefore is inaccurate and does not refute the assertions in the comment.

4. Response to Comment 1B.2, to comment letter B.1, on page 3157 of 3185:

As the response refers to their previous response, and does not address the assertions in the comment, the response therefore is inaccurate and does not refute the assertions in the comment.

5. Response to Comment 1B.3, to comment letter B.1, on page 3157 of 3185:

The response states the barrier attenuation is conservative for the exterior noise sources. Once again, per item 1, the attenuation is overstated while the exterior noise source levels are understated. The response therefore is inaccurate and does not refute the assertions in the comment.

6. Response to Comment 1B.4, to comment letter B.1, on page 3157 of 3185:

The response that the proposed glass is not porous does not provide any information about the fritted glass manufacturer or material and contradicts the description of fritted glass by a manufacturer of same in http://www.adamschittenden.com/Frit_info.html. Further, the City fails to provide any information about the type and thickness of the proposed glass, therefore, the mitigation claimed for the glass is unsupported.

The response therefore is inaccurate and does not refute the assertions in the comment.

7. Response to Comment 1B.5, to comment letter B.1, on page 3158 of 3185:

The response does not address the comment that there is variation in transmission loss in glass and other partitions and so the comment “the argument that low frequency noise would not be attenuated by exterior barriers is flawed” is unsupported by any analysis. The response therefore is inaccurate and does not refute the assertions in the comment.

Sincerely,
MENLO SCIENTIFIC ACOUSTICS, INC.



Neil A. Shaw, FASA, FAES

NAS:sk



Planning CPC <cpc@lacity.org>

CPC-2016-3750-VZC-HD-MCUP-ZAA-SPR; Schrader Hotel

2 messages

Veronica Lebron <veronica@robertsilversteinlaw.com>

Fri, Oct 19, 2018 at 2:48 PM

To: cpc@lacity.org, mindy.nguyen@lacity.org

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Please see attached. Please confirm receipt.

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10-19-18 [SCAN] Appeal Withdrawal re Schrader Hotel.PDF

640K

Planning CPC <cpc@lacity.org>

Fri, Oct 19, 2018 at 4:16 PM

To: veronica@robertsilversteinlaw.com

Cc: Mindy Nguyen <mindy.nguyen@lacity.org>, Dan@robertsilversteinlaw.com, Esther@robertsilversteinlaw.com, Robert@robertsilversteinlaw.com

We have received your letter and will forward to the Commission.

[Quoted text hidden]

THE SILVERSTEIN LAW FIRM

A Professional Corporation

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

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October 19, 2018

VIA EMAIL cpc@lacity.org
mindy.nguyen@lacity.org
AND U.S. MAIL

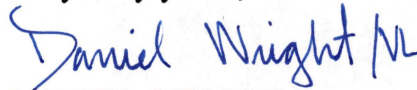
City Planning Commission
Department of City Planning
City of Los Angeles
200 N. Spring Street, Room 532
Los Angeles, CA 90012

Re: Appeal Withdrawal for Schrader Hotel Project located at 1600-1616 1/2 N.
Schrader Boulevard and 6533 Selma Avenue; VTT-74521; CPC-2016-
3750-VZC-HD-MCUP-ZAA-SPR; ENV-2016-3751-MND

Dear Commissioners and Planning Staff:

This firm represents The Sunset Landmark Investments, LLC ("Sunset Landmark"). By this letter, Sunset Landmark withdraws its August 10, 2018 appeal filed in this matter. Thank you.

Very truly yours,



DANIEL WRIGHT

FOR

THE SILVERSTEIN LAW FIRM, APC

DEW:vl

DAY OF HEARING SUBMISSIONS

The following submissions by the public are in compliance with the Commission Rules and Operating Procedures (ROPs), Rule 4.3c. Please note that “compliance” means that the submission complies with deadline, delivery method (hard copy and/or electronic) AND the number of copies. The Commission’s ROPs can be accessed at <http://planning.lacity.org>, by selecting “Commissions & Hearings” and selecting the specific Commission.

All submissions distributed to the Commission during the Commission Meeting are included in this file.

Material which does not comply with the submission rules is not distributed to the Commission.

ENABLE BOOKMARKS ONLINE:

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If you are using Chrome, the bookmarks are on the upper right-side of the screen. If you do not want to use the bookmarks, simply scroll through the file.

If you have any questions, please contact the Commission Office at (213) 978-1300.

November 7, 2018

213.617.5567 direct
afraijo@sheppardmullin.com

File Number: 52FJ-244154

VIA ELECTRONIC MAIL

Los Angeles City Planning Commission
City of Los Angeles
Los Angeles City Hall
200 N. Spring Street, Room 272
Los Angeles, California 90012
Email: cpc@lacity.org

**RECEIVED
CITY OF LOS ANGELES**

NOV 08 2018

**CITY PLANNING DEPT.
AREA PLANNING COMMISSION**

Re: Request to Remove Condition of Approval 73(d)- Agenda Item 7
1600-1616 1/2 N. Schrader Boulevard and 6533 Selma Avenue (CPC-2016-3750-VZC-
HD-MCUP-ZAA-SPR; VTT-74521-1A)

Dear Honorable Commissioners:

This firm represents 1600 Hudson, LLC ("**Applicant**") regarding the proposed 191-unit hotel and mixed-use development, 5,557 square feet of commercial space, and the existing 12-unit apartment building ("**Project**") located at 1600-1616 1/2 North Schrader Boulevard and 6533 Selma Avenue ("**Site**") in the Hollywood area of the City of Los Angeles ("**City**"). The Applicant is in receipt of the City's Department of City Planning's Recommendation Report for the Project, prepared for the upcoming City Planning Commission hearing on November 8, 2018 ("**Recommendation Report**"). In reviewing the Recommendation Report, on behalf of the Applicant we respectfully request the removal of Condition of Approval 73(d) for the reasons listed below.

I. THE CITY'S CONDITION OF APPROVAL 73(d) LACKS A NEXUS TO THE PROJECT.

The City's attempt to prohibit the issuance of permits for the Project prior to the relocation of the Tao Restaurant's off-site parking lacks a nexus to the Project that is approximately proportional to the Project impacts.¹ Condition of Approval 73(d) states:

Prior to the issuance of any grading, demolition, or construction permit for the subject property, the required parking for the Tao Restaurant shall be relocated

¹ *Koontz v St Johns River Water*, 133 S.Ct. 2586 (2013) [The U.S. Supreme Court held that local governments may only condition approval of land-use permits based on conditions that have a nexus to the land use and are approximately proportional to the effects of the proposed land use].

subject to compliance with the LAMC and any relevant conditions of approval related to parking as set forth by Case No. CPC-2016-2601-VZC-CUB-ZAA-SPR.

The lease agreement with the Tao Restaurant does not establish a sufficient nexus to the Project. Currently, the Tao Restaurant has a lease agreement with the Applicant, dated January 18, 2017 ("**Tao Lease**"). The Tao Lease can be unilaterally terminated by the Applicant on 60 days' notice without any penalty or further obligations. A contractual relationship is not a sufficient nexus to the Project, especially when this relationship can be terminated at the Applicant's discretion. To hold otherwise would chill business relationships in the City.

The City's Condition of Approval 73(d) is also disproportional to the impacts from the Project. Unlike a recorded covenant that runs with the land, the Tao Lease does not legally obligate the Project to satisfy off-site parking for the Tao Restaurant. The parking requirement is related to the Tao Restaurant approval, not the pending Project before the Commission. The Tao Restaurant project is separate and unrelated to the Project. Further, the Project cannot be held legally responsible for the displacement of the off-site parking for the Tao Restaurant. Not only is this the obligation of the Tao Restaurant, but the Applicant has the legal right to terminate the Tao Lease. The Project should not be subject to Condition of Approval 73(d) simply because the Applicant has not exercised its legal right to terminate the Tao Lease.

We respectfully request the removal of Condition of Approval 73(d) as it lacks a sufficient nexus to the Project.

Sincerely,



Alfred Fraijo Jr.
for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP