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July 18, 2018

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Public Hearing

Deputy Advisory Agency
Hearing Officer for the PC

Via Email and Overnight Mail

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Re: Schrader Hotel Project Mitigated Negative Declaration

Dear Ms. Nguyen and Mr. Hernández :

On behalf of **Coalition for Responsible Equitable Economic Development ("CREED LA")**, we submit these comments on the Mitigated Negative Declaration ("MND"), the City's responses to our June 7, 2018 comments on the MND for the Schrader Hotel Project (Case Numbers VTT-74521 CPC-2016-3750-VZC-HD-MCUP-ZAA-SPR, ENV-2016-3751-MND) ("Project") and all entitlements for the Project, proposed by 1600 Hudson, LLC ("Applicant"). The Project includes the demolition of a surface parking lot for the construction, use, and maintenance of a mixed-use hotel that would contain 198 guestrooms and 5,557 square feet of restaurant, coffee bar and rooftop/lounge space to be located at 1600-1616 ½ N. Schrader Boulevard and 6533 W. Selma Avenue ("Project Site") in the City.

Based on our review of the MND and its appendices, the City's responses to comments¹ and other relevant records, we conclude that the MND fails to meet the

¹ City of Los Angeles, Schrader Hotel Project, Responses to Comments, July 2018.

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requirements of CEQA. First, the City failed to perform an analysis of the Project's impacts on public health from air emissions, as required by CEQA. Second, the City ignored substantial evidence supporting a fair argument that the Project may have a significant impact on public health. Third, the City lacks substantial evidence to support its conclusion that Project's impacts from noise will be mitigated below the level of significance. Fourth, substantial evidence supports a fair argument that the Project may have a significant impact from noise. Finally, the City violated CEQA by compressing its analysis of impacts and mitigation measures regarding the Project's impacts from noise into a single issue.

We reviewed the MND and its technical appendices as well as the City's response to comments, with the assistance of air quality and hazards experts Matt Hagemann and Hadley Nolan of Soil/Water/Air Protection Enterprise ("SWAPE") and of noise expert Neil Shaw, FASA, FAES of Menlo Scientific Acoustic, Inc. SWAPE's and Mr. Shaw's comments and curriculum vitae are attached hereto as Exhibit A and Exhibit B, respectively, and are fully incorporated herein and submitted to the City herewith.

The notice of public hearing for this Project sets a time and page limit on the submission of comment. However, CEQA allows for filing of comments up until the close of the public hearing on the project and before the issuance of a Notice of Determination.² In any case, the notice and staff report for the hearing were only posted for public review on Friday, July 13, less than 3 working days prior to the hearing, which makes the time limit set for filing responses to the staff report unreasonable. CREED LA reserves the right to submit comments on the City's review of the Project up until the close of any public hearing on the Project and before the issuance of a Notice of Determination.

I. STATEMENT OF INTEREST

CREED LA is an unincorporated association of individuals and labor organizations that may be adversely affected by the potential public and worker health and safety hazards, and the environmental and public service impacts of the Project. The coalition includes the **Sheet Metal Workers Local 105,**

² See Gov. Code, § 65009(b); Pub. Resources Code, § 21177(a); *Bakersfield Citizens for Local Control v. Bakersfield* (2004) 124 Cal.App.4th 1184, 1199-1203; *Galante Vineyards v. Monterey Water Dist.* (1997) 60 Cal.App.4th 1109, 1121.

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International Brotherhood of Electrical Workers Local 11, Southern California Pipe Trades District Council 16, and District Council of Iron Workers of the State of California, along with their members, their families, and other individuals who live and work in the City of Los Angeles.

Individual members of CREED LA and its member organizations include John Ferruccio, Jorge L. Aceves, John P. Bustos, Gerry Kennon, and Chris S. Macias. These individuals live, work, recreate, and raise their families in the City of Los Angeles and surrounding communities. Accordingly, they would be directly affected by the Project's environmental and health and safety impacts. Individual members may also work on the Project itself. They will be first in line to be exposed to any health and safety hazards that exist onsite.

In addition, CREED LA has an interest in enforcing environmental laws that encourage sustainable development and ensure a safe working environment for its members. Environmentally detrimental projects can jeopardize future jobs by making it more difficult and more expensive for business and industry to expand in the region, and by making the area less desirable for new businesses and new residents. Indeed, continued environmental degradation can, and has, caused construction moratoriums and other restrictions on growth that, in turn, reduce future employment opportunities.

II. THERE IS A FAIR ARGUMENT THAT THE PROJECT MAY RESULT IN SIGNIFICANT IMPACTS THAT REQUIRE THE CITY TO PREPARE AN ENVIRONMENTAL IMPACT REPORT

A negative declaration is improper, and an EIR must be prepared, whenever it can be fairly argued on the basis of substantial evidence that the project may have a significant environmental impact.³

1. There is Substantial Evidence Supporting a Fair Argument That the Project Will Have Potentially Significant, Unmitigated Impacts From Diesel Particulate Matter Emissions and the City Must Prepare an Assessment of the Health Risk.

³ PRC § 21151; 14 CCR § 15064(f); *Citizens for Responsible Equitable Env't Dev. v. City of Chula Vista* ("CREED") (2011) 197 Cal.App.4th 327, 330-31; *Communities for a Better Env't v. South Coast Air Quality Mgmt Dist* (2010) 48 Cal.4th 310, 319 ("CBE v. SCAQMD").

The City's analysis of the Project's health risks from diesel particulate matter ("DPM") emissions is inadequate. The MND acknowledges that the Project's construction activities "would generate toxic air contaminants in the form of diesel particulate emissions associated with the use of heavy trucks and construction equipment."⁴ However, without conducting an analysis of the public health impacts, the MND concludes that the Project would result in a less than significant impact from construction and operational toxic air contaminant ("TAC") emissions. The MND incorrectly argues that a health risk assessment ("HRA") is unnecessary for construction TACs because construction emissions are short-term.⁵ For operational emissions, the MND incorrectly argues that an HRA is unnecessary because the Project does not involve significant toxic airborne emissions.⁶

In their letter submitted during the comment period, SWAPE explained why the MND's conclusion is unsupported and an assessment of the health risks created by the project is required.⁷ SWAPE cited SCAQMD guidance documents, as well as the Office of Environmental Health Hazard Assessment ("OEHHA") guidance, as instructing the City to prepare an HRA.⁸ SWAPE also conducted a screening-level HRA to demonstrate the potential risk to nearby sensitive receptors from Project construction and operation. SWAPE's HRA concluded that the infant, child, adult, and lifetime cancer risks from the Project's construction and operations significantly exceed the SCAQMD's threshold of 10 in one million, thus resulting in a potentially significant impact not addressed or identified by the IS/MND.⁹

In its response to comments, the City argues that since the "Proposed Project is not considered to be a substantial source of diesel particulate matter"¹⁰ the SCAQMD guidelines do not warrant a refined HRA. In addition, the City argues the OEHHA Guidance Manual was developed for implementing the Air Toxic Hot Spots Program, and since the proposed Project is not subject to the Air Toxic Hot Spots Information and Assessment Act, the Manual does not apply to it. Moreover, the City argues, "[t]he SCAQMD has not developed any recommendations on the

⁴ MND, p. III-15.

⁵ MND, p. III-13.

⁶ MND, p. III-13.

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

⁸ SWAPE, Comments on the Schrader Hotel Project, June 7, 2018, p. 10-12.

⁹ SWAPE, Comments on the Schrader Hotel Project, June 7, 2018, p. 12-15.

¹⁰ City of Los Angeles, Schrader Hotel Project. Responses to Comments, July 2018, p. 44.

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Guidance Manual's use for CEQA analyses for potential construction impacts, nor has the City adopted the Guidance Manual or incorporated it into the City's adopted CEQA thresholds or methodologies."¹¹ Therefore, the City concludes that an HRA is not required.

The City's response violates CEQA for two main reasons:

First, the City is required to conduct an assessment of the Project's potentially significant public health impacts under CEQA, regardless of the question whether specific guidance exists from various agencies. CEQA requires lead agencies to prepare risk assessments to evaluate the nature and extent of the health hazards posed by exposure to toxic materials released by a project. CEQA Guidelines section 15126.2(a) expressly requires a CEQA document to discuss the "health and safety problems caused by the physical changes" that a project will precipitate.¹² Numerous cases have held that CEQA must analyze human health impacts. For example, in *Communities for a Better Environment v. South Coast Air Quality Management Dist.*,¹³ the Supreme Court held that an MND for a refinery was inadequate for failure to analyze nitrogen oxide emissions, pollutants known to have significant effects on human health.¹⁴

The Courts of Appeal have repeatedly held that a CEQA document must analyze impacts of projects on human health. In *CBE v. Richmond*, the court held that a CEQA document is inadequate where it "does not address the public health or other environmental consequences of processing heavier crude [thereby emitting TACs], let alone analyze, quantify, or propose measures to mitigate those impacts."¹⁵ In *Bakersfield*,¹⁶ the court held that an EIR for a commercial shopping center was inadequate because it failed to correlate adverse air quality impacts to

¹¹ City of Los Angeles, Schrader Hotel Project, Responses to Comments, July 2018, p. 45.

¹² 14 CCR § 15126.2(a).

¹³ (2010) 48 Cal. 4th 310, 317.

¹⁴ 48 Cal.4th at 317.

¹⁵ *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 82 ("CBE v. Richmond"). See also *Californians for Alternatives to Toxics v. Cal. Dep't of Food & Agric.* (2006) 136 Cal.App.4th 1, 16, (EIR on statewide application of pesticide was inadequate when it failed to independently evaluate risks of toxic exposure

¹⁶ 124 Cal.App.4th at 1219-20 ("on remand, the health impacts resulting from the adverse air quality impacts must be identified and analyzed in the new EIR's.").

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resulting adverse health impacts on surrounding communities. The court explained:

[The] City's failure to...correlate the adverse air quality impacts to resulting adverse health consequences, cannot be dismissed as harmless or insignificant defects. As a result of these omissions, meaningful assessment of the true scope of numerous potentially serious adverse environmental effects was thwarted. No discrete or severable aspects of the projects are unaffected by the omitted analyses; the defects relate to the shopping centers in their entirety, not just to one specific retailer. These deficiencies precluded informed public participation and decision making.¹⁷

In *Berkeley Keep Jets Over the Bay Com. v. Bd. of Port Comrs.*,¹⁸ the court held that an EIR must include a "human health risk assessment."¹⁹ In *Berkeley Jets*, the Port of Oakland approved a development plan for the Oakland International Airport. The EIR admitted that the Project would result in an increase in the release of TACs, which were known to cause both carcinogenic and adverse noncarcinogenic health effects.²⁰ The EIR adopted mitigation measures to reduce TAC emissions, but failed to perform a health risk assessment to quantify the Project's impacts on human health. The court held that the mitigations alone were insufficient, and that the Port had a duty to analyze the health risks associated with exposure to TACs:

The Port has not cited us to any reasonably conscientious effort it took either to collect additional data or to make further inquiries of environmental or regulatory agencies having expertise in the matter. These failures flout the requirement that the lead agency consult "with all responsible agencies and with any other public agency which has jurisdiction by law over natural resources affected by the project . . ." (§ 21080.3, subd. (a).) At the very least, the documents submitted by the public raised substantial questions about the project's effects on the environment and the unknown health risks to the area's residents...the Port has not offered any justification why more definitive information could not have been provided....The EIR's approach of

¹⁷ *Id.* at 1220-21.

¹⁸ *Berkeley Keep Jets Over the Bay Com. v. Bd. of Port Comrs.* ("Berkeley Jets") (2001) 91 Cal.App.4th 1344.

¹⁹ *Id.* at 1369.

²⁰ *Id.* at 1364.

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simply labeling the effect “significant” without accompanying analysis of the project’s impact on the health of the Airport’s employees and nearby residents is inadequate to meet the environmental assessment requirements of CEQA.²¹

Here, as in *Berkeley Jets*, there is no dispute that the Project will generate TAC emissions during construction, and that the City failed to prepare an HRA to analyze the health risks associated with that exposure. The MND explains that Project construction would occur over a period of approximately 18.5 months, of which 5 months would involve demolition, excavation and grading requiring the use of heavy diesel equipment.²² The City further admits that the Project is surrounded by sensitive receptors, many of them directly adjacent or across the street from the Project’s site.²³ Yet the City argues it has no duty to prepare an HRA. This violates CEQA’s requirement that the lead agency correlate the adverse air quality impacts generated by a project to their resulting adverse health consequences.²⁴

Second, the City’s response violates CEQA because it ignores substantial evidence supporting a fair argument that the Project may have significant impact on public health. The standard for reviewing an MND is different than the standard for an EIR. Where substantial evidence supporting a fair argument of significant impacts is presented, the lead agency must prepare an EIR “even though it may also be presented with other substantial evidence that the project will not have a significant effect.”²⁵ Where experts have presented conflicting evidence on the extent of the environmental effects of a project, the agency must consider the effects to be significant and prepare an EIR.²⁶ Here, SWAPE provided an expert opinion, supported by substantial evidence, of a significant impact on public health, and after reviewing the City’s response, SWAPE maintains that the Project may have

²¹ *Id.* at 1370-71.

²² MND, p. III-15.

²³ MND, Figure III-1.

²⁴ *Berkeley Jets*, 91 Cal.App.4th at 1370-71.

²⁵ PRC § 21151(a); 14 CCR § 15064(f)(1); *Pocket Protectors*, 124 Cal.App.4th at 927; *County Sanitation Dist No 2*, 127 Cal.App.4th at 1579 (“where the question is the sufficiency of the evidence to support a fair argument, deference to the agency’s determination is not appropriate.”) (quoting *Sierra Club*).

²⁶ *Pocket Protectors*, 124 Cal.App.4th at 935; *Sierra Club v. County of Sonoma*, 6 Cal.App.4th at 1317-18; CEQA Guidelines § 15064(f)(5).

significant impacts on public health.²⁷ The City must therefore prepare an EIR to analyze and mitigate the potentially significant impact.

2. The MND's Noise Impact Analysis Improperly Relies on Design Features to Conclude that Operational Noise Impacts Are Less Than Significant.

The Project includes a restaurant/bar on the ground floor, an outdoor terrace on the third level, and a rooftop bar and pool bar on the roof terrace on the 11th level. The rooftop bar would be open to the public. The outdoor dining/bar/lounge and landscaped pool deck areas on the 11th level (rooftop) would also include the use of amplified speakers for music and live entertainment.²⁸

In the City's response to public comments regarding significant noise impacts, the City merely quotes its proposed measures and states it has the authority and obligation to enforce them.²⁹ However, the City's response fails to disclose what the Project's noise impact would be without the design features in the mitigation, preventing the public from evaluating whether the design feature would be effective in reducing the Project's potentially significant noise impacts.

To mitigate the noise impacts from the outdoor uses, the MND includes mitigation measure N-7, which merely requires the applicant to provide residents adjacent to the project with contact numbers to report disturbances, and four "Project Design Features" (PDFs) which are proposed as conditions for the project, and include physical and operational noise-attenuating features as well as limitations on hours of operations for the various uses in the Project.³⁰ One of the main PDFs is PDF-2, an audio system that automatically adjusts output volume in response to changing ambient noise levels, which will be set to limit noise levels from music played in the different gathering spaces.³¹ The MND states, after describing PDF-2:

²⁷ Exhibit A: SWAPE comments, p.2.

²⁸ MND, p. III-105/106.

²⁹ City of Los Angeles, Schrader Hotel Project, Responses to Comments, July 2018, P. 21,91-92.

³⁰ MND, p. II-40/41, III-103/104

³¹ MND, p. II-41.

Based on this design feature, and accounting for the 6-foot glass barrier at the perimeter of the decks, and various height/distance attenuation between the noise sources and noise receptors, noise levels were calculated at the four closest sensitive receptors for the daytime, evening and nighttime operating hours. As shown in Table III-16, noise levels from outdoor areas would not exceed 5 dBA above ambient noise levels and thus impacts would be considered less than significant.³²

The MND thus relies on Project Design Features (“PDFs”) that are intended to reduce operational noise impacts to conclude that the impacts are less than significant. This approach incorrectly dismisses the significance of the Project’s actual, unmitigated noise impacts and violates the courts’ directives on impact analyses under CEQA:

In *Lotus v. Department of Transportation*,³³ the Court of Appeal found that an EIR had “disregard[ed] the requirements of CEQA” by “compressing the analysis of impacts and mitigation measures into a single issue.” The Court continued, stating “[a]bsent a determination regarding the significance of the impacts ... it is impossible to determine whether mitigation measures are required or to evaluate whether other more effective measures than those proposed should be considered.”³⁴ Similar to the inadequate analysis contained in the *Lotus* EIR, the MND asserts that incorporation of the PDFs would reduce the Project’s noise impacts to less than significant levels prior to mitigation. The public has no way of telling what the noise impact of the Project would be without the design feature and cannot properly evaluate whether the design feature would be effective in reducing the potentially significant impact.

Moreover, not only is the analysis of the noise impacts improper under CEQA, but the MND’s conclusion is not supported by substantial evidence

3. There is Substantial Evidence Supporting a Fair Argument That the Project May Cause Significant, Unmitigated Impacts from Operational Noise.

³² MND, p. III-106.

³³ *Lotus v. Dep’t of Transp.* (2014) 223 Cal. App. 4th 645, 651-52.

³⁴ *Id.*

Under CEQA, a project has significant impacts if it results in “[e]xposure of persons to or generation of noise levels in excess of standards established in the local general plan or noise ordinance”.³⁵

Neil Shaw, an expert acoustical engineer, reviewed the proposed mitigation measures and PDFs and concludes that they fail to mitigate the Project significant impacts from noise for two main reasons.

First, the MND relies on design feature PDF-2, an audio system that automatically adjusts output volume in response to changing ambient noise levels, which will be set to limit noise levels from music played in the different gathering spaces.³⁶ However, Mr. Shaw explains that this feature will not mitigate impacts from live entertainment, including live music, which is allowed on the rooftop. Mr. Shaw explains that “[t]he sound level from live music can be hard to control, especially when instrument amplifiers, under the control of musicians, are used, and when there are drums, such as the drum kit used for some popular music genres.” As Mr. Shaw points out, the audio system required by PDF-2 may reduce the impacts from “fixed installed systems in the project.” However, any *portable system*, which is expected to be used widely under the “live entertained” category, will not be controlled by it.³⁷

Second, the mitigation relies on a six foot glass barrier that will surround the rooftop on the 11th floor to reduce the noise impacts produced by patrons and music being played there. As Mr. Shaw explains, low frequency sounds have long wavelengths and require a high and massive barrier in order to be blocked effectively. The effect of these sounds is exacerbated when the noise is impulsive, as is the bass line and kick drum used in many musical genres. As a result, explains Mr. Shaw, “for events where amplified music (live or recorded) is employed, the low frequency impulsive noise from the amplified music will not be mitigated by limited height barriers (or by open windows and roofs).”³⁸

Mr. Shaw therefore concludes that the MND’s conclusion that the Project would result in a less than significant impact from operational noise is not

³⁵ CEQA Appendix G.

³⁶ MND, p. II-41.

³⁷ Exhibit B, Menlo Scientific Acoustic, Inc. comments, p. 2.

³⁸ Exhibit B, Menlo Scientific Acoustic, Inc. comments, p. 3.

supported by substantial evidence. Mr. Shaw also explains that PDF-4(g), which calls for immediate closure of windows and doors in the dining area as soon as there is a complaint regarding noise, is in essence “reactive and not proactive,” will only be employed “after an impact had *already occurred*.”³⁹ Mr. Shaw provides substantial evidence regarding a number of mitigation measures that would mitigate the operational noise impact below level of significance, including:

- (1) a noise monitor placed at a sensitive residential receptor in a location closest to the noise source that allows for 24-hour real-time noise measurement that can be accessed via the Internet that could record the noise when it exceeds a certain level for a specified time and alert the proposed Project’s management so that corrective action can be taken, and so have a record of each instance of an incident. Such measures have been successfully implemented in various projects;
- (2) A binding requirement that all doors, windows, and roofs be fully and continuously closed when any amplified music is part of an event or operation of a space; and
- (3) Prohibiting amplified music in spaces that, despite any and all mitigation measures, will cause a significant impact.⁴⁰

Mr. Shaw’s expert opinion clearly demonstrates the City lacks substantial evidence to support its conclusion of a less than significant impact from operational noise. Moreover, Mr. Shaw provides substantial evidence supporting a fair argument that the Project may result in significant impacts from noise, and therefore an EIR must be prepared to properly analyze and mitigate those impacts.

III. CONCLUSION

The MND fails to comply with CEQA by compressing its impact analysis and mitigation under a single issue. The City fails to support its conclusion regarding impacts from noise and air emissions with substantial evidence. Moreover, substantial evidence supports a fair argument that the project may result in

³⁹ Exhibit B, Menlo Scientific Acoustic, Inc. comments, p. 3.

⁴⁰ Exhibit B, Menlo Scientific Acoustic, Inc. comments, p. 3-4.

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significant impacts on the public from noise and TAC emissions. Therefore, the City must prepare an EIR to analyze and mitigate the Project's potentially significant impacts.

Sincerely,

/s/

Tanya A. Gulesserian
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Attachments