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August 13, 2018

Via Hand Delivery

City Planning Department
City of Los Angeles
C/o Appeals Clerk
Marvin Braude Constituent Service Center
6262 Van Nuys Boulevard, Suite 251
Van Nuys, CA 91401

Re: Justification for Appeal to the City of Los Angeles Planning Commission of the August 3, 2018 Advisory Agency's Determination in Case No. VTT-74521; ENV-2016-3751-MND; Related Case: CPC-2016-3750-VZC-HDMCUP-ZAA-SPR

Dear Honorable Planning Commissioners:

On behalf of **Coalition for Responsible Equitable Economic Development ("CREED LA")**,¹ we are writing to appeal the Advisory Agency ("Agency") approval of a Vesting Tentative Tract Map for the Schrader Hotel Project, VTT-74521, ("Project") and the adoption of the Initial Study/Mitigated Negative Declaration ("MND") for the Project ENV-2016-3751-MND.

The Project is located at 1600-1616 ½ N. Schrader Boulevard and 6533 W. Selma Avenue ("Project Site") in the City of L.A. ("City") and 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. The project is proposed by 1600 Hudson, LLC ("Applicant"). We submitted comments on the Project on June 7, 2018 and responses to the City's comments on July 18, 2018, urging the City to deny all discretionary approvals requested by the Applicant for the Project.

¹ 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.

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Pursuant to the City appeal procedures, we have attached the Appeal Application (form CP-7769) and the original Letter of Determination (“LOD”), and have provided seven (7) duplicate copies of the complete packet. We have also enclosed a check for the appeal fee.

The reason for this appeal is that the Advisory Agency abused its discretion and violated the California Environmental Quality Act (“CEQA”) when it approved the Vesting Tentative Tract Map and adopted the MND. CEQA requires that the potential impacts of this Project be evaluated in an environmental impact report (“EIR”), not in an MND, because substantial evidence exists that the Project may have significant, unmitigated environmental impacts on public health and from noise.

Our June 7, 2018 comment letter on the Project² and our July 18, 2018 response to comments³ are attached hereto, and the specific reasons for this appeal are set forth in detail in these letters and summarized below. In short, substantial evidence supports a fair argument that the Project may cause: (1) a significant, unmitigated impact on public health from toxic air contaminants (“TACs”), and (2) a significant, unmitigated impact from noise.

- (A) There is substantial evidence that the MND fails to properly evaluate and mitigate potentially significant impacts on public health from TAC emissions and substantial evidence supports a fair argument that the Project may result in potentially significant impacts on public health.**

The MND concludes that the Project would result in a less than significant impact from construction and operational TAC emissions without conducting an assessment of health risk impacts, commonly called a health risk assessment (“HRA”), for the Project. We reviewed the environmental analysis with the

² See Exhibit 1: Letter from Christina M. Caro to Darlene Navarrete re: Comments on the Mitigated Negative Declaration for the Schrader Hotel Project (Environmental Case Numbers NG-18-028-PL, ENV-2016-3751, ENV-2016-3751-A, ENV-2016-3751-B, ENV-2016-3751-C, ENV-2016-3751-D, ENV-2016-3751-E, ENV-2016-3751-E1, ENV-2016-3751-E2, ENV-2016-3751-F, ENV-2016-3751-G, ENV-2016-3751-H), June 7, 2018.

³ See Exhibit 2: Letter from Tanya A. Gulesserian and Nirit Lotan to Mindy Nguyen and Jason Hernández re: Re: Schrader Hotel Project Mitigated Negative Declaration, July 18, 2018.
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assistance of technical experts, Soil Water Air Protection Enterprise (“SWAPE”), which found the City’s conclusion unsupported. As SWAPE explains in their comment letter, the mere assertion that the Project’s construction will be limited in time, and that the Project’s operation does not involve significant toxic airborne emissions, is not sufficient to support a conclusion the Project will not result in significant impacts on public health.⁴ In order to support such a conclusion, the City must rely on an analysis, such as an HRA.

In its August 2, 2018 response to comments,⁵ the City attempts to distinguish a long line of court rulings that establish an agency’s duty to perform an HRA to properly analyze potentially significant impacts on public health. This duty, however, remains applicable in this case.⁶ In addition, the City’s response violates CEQA because it ignores substantial evidence supporting a fair argument that the Project may have significant impacts on public health. SWAPE provided an expert opinion, supported by substantial evidence, that the Project may result in a significant impact on public health; after reviewing the City’s response, SWAPE maintains that the Project may have significant impacts on public health.⁷ The City must therefore prepare an EIR to analyze and mitigate the potentially significant impact, as required by law.

(B) There is substantial evidence that the MND fails to properly evaluate and mitigate potentially significant impacts on noise and substantial evidence supports a fair argument that the Project may result in potentially significant impacts from noise.

The MND concludes that impacts from noise will be less than significant after the application of four “Project Design Features” (PDFs), which include physical and operational noise-attenuating features as well as limitations on hours of operations, and mitigation measure N-7, which establishes a “complaint system.”⁸

⁴ Letter from Hadley Nolan to Christina Caro re: Comments on the Schrader Hotel Project, June 7, 2018.

⁵ Parker Environmental Consultants. Responses to comments received on the Schrader Hotel Project [ENV-2016-3751-MND] August 2, 2018. (“Response to Comments, August 2, 2018”).

⁶ See Exhibit 2, p. 4-7.

⁷ Letter from Hadley Nolan to Nirit Lotan re: Comments on the Schrader Hotel Project, July 17, 2018, p.2.

⁸ MND, p. II-40/41, III-103/104
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The MND's reliance on these PDFs and measure N-7 does not constitute substantial evidence that the Project will not result in significant impacts for at least two reasons. First, the City analysis violates CEQA by improperly compressing the analysis of impacts and mitigation measures and improperly relying on design features for mitigation without ever disclosing the actual impact. Second, we reviewed the environmental analysis with the assistance of Neil Shaw, an expert acoustical engineer, who found that the mitigation measures and design features will not mitigate the noise impacts from the Project's operation and, therefore, a potentially significant impact remains for this Project.

1. The city violated CEQA by improperly compressing the analysis of impacts and mitigation measures and relying on design features for mitigation without disclosing the Project's impacts

In its August 2, 2018 response, the City tries to distinguish the Court decision in *Lotus*⁹ by arguing that the Project's design features are "by definition, part of the Proposed Project"¹⁰ and not mitigation measures. While this argument may be valid for the plexiglass barrier which the City argues "is a required component of the Project's design for safety purposes,"¹¹ the City completely fails to explain how PDF-2, the digital audio processor, qualifies as part of the Project. In contrast to the glass barrier, which the City argues is "clearly shown on the Proposed Site Plan,"¹² the audio processor, as Mr. Shaw explains, "is an add-on added specifically to mitigate the sound from the installed sound system."¹³ Mr. Shaw further explains:

Such a system is not commonly a part of sound systems, and definitely not an inherent part of the design and operation of a hotel. This is a mitigation measure, aimed at reducing levels of sound and mitigating its impacts, since the reason a digital signal processor is added to a sound system is to control, that is, mitigate, the noise impact from the sound system.¹⁴

⁹ *Lotus v. Dep't of Transp.* (2014) 223 Cal. App. 4th 645.

¹⁰ Response to Comments, August 2, 2018, p. 44.

¹¹ Response to Comments, August 2, 2018, p. 44.

¹² Response to Comments, August 2, 2018, p. 44.

¹³ See Exhibit 3: Neil Shaw comments, Schrader Hotel Project –City of Los Angeles Response (August 2, 2018), August 10, 2018, p. 1.

¹⁴ Exhibit 3: Neil Shaw comments, p. 1.

Not only is the system not “part of the project,” but the City’s reliance on it clearly “obfuscates required disclosure of the project’s environmental impacts and analysis of potential mitigation measures.”¹⁵ The City’s analysis fails to disclose what would be the impact from each of the Project’s activities in each of its open spaces and, instead, provides only a post-mitigation assessment that is based on the *unsupported* assumption that the digital processor is a hundred percent successful in mitigating *all* noise impacts. The public is therefore deprived of the opportunity to know what the Project’s actual noise impacts will be, and of meaningfully assessing the effectiveness of the digital processor as a mitigation measure, which, in any event, lacks performance measures and is unenforceable.

The City must provide the public an analysis of the Project’s impacts *before and after* application of the digital processor project design feature, and explain if and how this alleged feature is applicable to all the *different types* of noise impacts the Project will create, including noise from crowds, music and live entertainment. By failing to do so, the City violated CEQA.

2. The design features and mitigation measures will not mitigate the impact below the threshold of significance; substantial evidence supports a fair argument that the Project may result in significant, unmitigated and undisclosed impacts from noise.

Even assuming the City may rely on the design features as “part of the project,” which it may not, the design features and complaint measure proposed for the Project clearly fails to ensure that noise impacts would be mitigated to below the threshold of significance.

The audio processor fails to mitigate potentially significant noise impacts from live entertainment. In its August 2, 2018 response to comments the City argues the system described in PDF-2 “would apply to all amplified sound within the proposed hotel and outdoor area” and that “[e]ntertainers would be prohibited from bringing in outside equipment that bypasses the hotel’s audio system control.”¹⁶ There are three main problems with this argument.

¹⁵ *Mission Bay All. v. Office of Cmty. Inv. & Infrastructure*, 6 Cal. App. 5th 160, 185, 211.

¹⁶ Response to Comments, August 2, 2018, p. 45.

First, PDF-2 includes no language to support this assertion – it includes no prohibition on outside equipment. At the very least, the city must add language to PDF-2 that clearly prohibits bringing in outside equipment.

Second, the City lacks any evidence that a prohibition from bringing in outside equipment that bypasses the hotel's audio system control is feasible and would reduce significant impacts. As Mr. Shaw explains, live bands are allowed and, by definition, bring in their own instrument amplifiers and their own sound systems. "This portable instrument equipment is not designed to be controlled by, nor has any means of connecting to, a digital audio processor such as that in PDF-2."¹⁷ As Mr. Shaw explains, some instruments, such as drum kits and other impulsive instruments, "*cannot* be controlled by the audio system in such a way to limit the impulsive sounds."¹⁸ Therefore, noise from these instruments may cause a specific, significant immitigable impact on noise.

Third, the measure lacks any reporting, inspection or other procedures for the City and the public to be able to enforce the measure. Therefore, it is vague and unenforceable.

The glass barrier will not mitigate potentially significant noise impacts. As explained in our July 18, 2018 response and in Mr. Shaw's comments,¹⁹ the proposed barrier is not high and massive enough to properly mitigate low frequency impulsive sounds, which have long wavelengths, and that will be produced from amplified music. The City failed to respond to this comment regarding the Project's potentially significant noise impact.

The complaint system will not mitigate potentially significant noise impacts. In its August 2, 2018 response, the City argues that the complaint system established in PDF-4 requires the immediate closing of doors and window to the enclosed area upon the receipt of any complaint between 7:00 a.m. and 12:00 a.m. "even if such noise does not exceed the thresholds of significance," thus allegedly mitigating any potential significant impact. There are three main problems with the design feature.

¹⁷ Exhibit 3: Neil Shaw comments, p. 2.

¹⁸ Exhibit 3: Neil Shaw comments, p. 2.

¹⁹ Neil Shaw, Schrader Hotel Project - Mitigated Negative Declaration ENV-2016-3751-MND - Noise Impact Review, July 16, 2018, p. 3.

First, it is completely unenforceable. The City fails to explain how neighbors in buildings across the street on different floors will be able to know, sometimes in the middle of the night, if the windows of a structure on the 11th floor are closed. The City's mitigation monitoring program sets the monitoring frequency of this measure as "annually," rendering it useless in violation of CEQA.

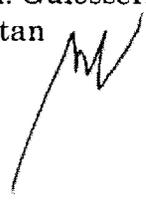
Second, the City seems to assume that, because neighbors will be able to complain, and the operator will have to close the windows regardless of the noise level, somehow this will prevent significant noise impacts. However, as Mr. Shaw explains, "noise from such establishments does not necessarily become gradually louder."²⁰ In other words, the sensitive receptors around the Project may be exposed to noise impacts beyond the threshold of significance; even assuming that closing the windows will occur, this will be done *after the fact* and after a significant impact has already occurred.

Third, the measure lacks any reporting, inspection or other procedures for the City and the public to be able to enforce the measure. Therefore, it is vague and unenforceable.

Because there is substantial evidence supporting a fair argument that the Project will have significant impacts on public health and from noise, the City's project design features and complaint measure lack performance standards, are unenforceable and would not reduce significant impacts, the Agency's approval of the Vesting Tentative Tract Map and adoption of the MND violate CEQA and must be overturned. We urge the City of Los Angeles Planning Commission to grant our appeal and order the preparation of an EIR for the Project. Thank you for your attention to this important matter.

Sincerely,

Tanya A. Gulesserian
Nirit Lotan



NL:acp
Attachments

²⁰ Exhibit 3: Neil Shaw comments, p. 2.
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