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February 5, 2019

**VIA HAND SUBMISSION:**

City Council  
City of Long Beach  
333 W. Ocean Boulevard, Council Chamber  
Long Beach, California 90802

**RE: Item H-2, City Council Hearing February 5, 2018;  
Appeal of Breakers Hotel Project (SPR18-033, CUP18-015, LCDP18-022, CE18-152);  
Appellant's Response to Staff Report & Other Submissions**

Dear Honorable Councilmembers:

On behalf of Danielle Wilson, Jeremy Arnold, and José Nuñez Díaz (collectively "Appellants"), this Office provides the following response to the 247-page staff report dated February 5, 2019 ("Staff Report") and the 662-page supplemental materials from applicant representatives inclusive of various environmental documentation ("Supplemental Materials"), all related to the "Appeal" of the City of Long Beach ("City") Planning Commission's approval of the change of use of the Breakers Hotel located at 210 East Ocean Boulevard ("Site") from a 233-unit congregate care facility into a 185-room hotel development ("Project").

We apologize for the late submission, but the Staff Report and Supplemental Materials were not provided to Appellants, and only made available online on or near January 31, 2019. Furthermore, Appellants and the project developer have been working cooperatively to resolve the environmental issues raised in their Appeal. Unfortunately, however, the parties were not able to resolve all outstanding issues before tonight's hearing.

Therefore, we respectfully submit the attached expert noise and traffic comments (attached hereto as "Exhibit A" and "Exhibit B", respectively), which raise substantial issues regarding the Project's compliance with the California Environmental Quality Act (Pub. Res. Code § 21000 *et seq.*) ("CEQA"), the "CEQA Guidelines" (14 Cal. Code Regs. § 15000 *et seq.*), and the Long Beach Municipal Code ("Code" or "LBMC"). In short, those expert comments demonstrate with substantial evidence that the Project will cause significant noise and traffic impacts, the proximity to adjacent apartment residents and Convention Center is an unusual circumstance, and that a categorical exemption (Class 1, 3, 31, or 32) (collectively "CE") is inappropriate here.

This Appeal, incorporating in its entirety by this reference the abovementioned expert letters and all comments previously raised. Appellants respectfully request that this honorable body accept the Appeal and deny all project approvals. In making your decisions, Appellants urge the Council to give due consideration to the following:



- Since the 1970s, the Breakers Hotel has been used as a senior citizens' residence or a 230-unit congregate care facility.<sup>1</sup> This is the current baseline, not the buildings prior hotel use, which never went through CEQA review. The CE fails to analyze the Project off this current baseline. Nor does the change of use fall within the four-corners of the claimed CEs or the examples listed under the CEQA Guidelines.<sup>2</sup>
- Expert comments demonstrate that the noise impacts from the proposed outdoor activities on the 2<sup>nd</sup>- and 3<sup>rd</sup>-level rooftop areas will be significant on the community—particularly adjacent apartments units currently being constructed as close as 20 feet from these outdoor areas. Noise impacts from several people speaking, large alcohol-charged crowds and outdoor amplified music could each range from 56 – 85 dBA. This does not even account for the cumulative impact of all these activities occurring at the same time—particularly at night when future residents are trying to sleep. This is a significant noise impact under applicable CEQA thresholds used by the City for other similarly-situated projects.
- Compliance with the City's Noise Ordinance (Condition of Approval 29) is ineffective because the Project applicant has not submitted any noise measurements of existing ambient noise levels or evidence that compliance with the City's Noise Standard is even possible. Nor does the City require the applicant to have an acoustical design plan prepared to include specific design features to ensure compliance with the City's Noise Ordinance—as done for other projects.
- Even if the Project meets the noise standards under the City's Noise Ordinance, noise could be as loud as 64 dBA, which is 9 to 14 dBA greater than ambient noise levels. This too clearly exceeds applicable CEQA thresholds.
- Traffic expert confirms that the traffic study is improperly limited the study of only ten intersections, as compared to 30-plus intersections as required by other projects, which ignores other nearby intersections already heavily congested.
- The Project's traffic study ignored variable traffic conditions caused by the nearby Convention Center, lacked meaningful Traffic Demand Management provisions, and inaccurately applied trip credits contrary to current industry practice and inconsistent with CEQA reviews for similar hotel projects near convention centers. Collectively, these fundamental flaws make the traffic studies inadequate to show traffic impacts will be less than significant.
- Expert comments provide substantial evidence that the Project's proximity to adjacent apartment units and Convention Center is an unusual circumstance that will directly result in significant impacts.

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<sup>1</sup> Historic Designation Ordinance (Ord. C-6609), pp. 2:13-23, 3:22-4:3, 4:20-27, <http://longbeach.legistar.com/View.ashx?M=F&ID=6728867&GUID=0176EEEEB-660A-452D-B64E-8098E5DD2EC1>.

<sup>2</sup> See e.g., *California Farm Bureau Fed'n v. California Wildlife Conserv. Bd.* (2006) 143 Cal.App.4th 173, 189-193 (rejecting Class 4, 13, and 25 categorical exemptions on basis of dissimilarity to listed examples); *Azusa Land Reclamation Co.*, 52 Cal.App.4th at 1193-1195 (rejecting Class 1 or Class 4 categorical exemptions).

- The Project's noise and traffic impacts cannot be remedied by ad hoc incorporation of mitigation measures into the project approvals. CEQA does not allow mitigation measures for CEs.<sup>3</sup> Even if the Project utilized an MND, which it did not, CEQA requires a lead agency to recirculate the MND if additional mitigation measures are subsequently added after the MND's initial circulation in order to publicly-vet the adequacy of the new mitigation measures.<sup>4</sup>

For these reasons, Appellants respectfully urge that the City grants the Appeal and withhold the CE and all project approvals until a more thorough CEQA analysis is prepared, such as a MND or EIR. The MND or EIR must disclose, analyze, and mitigate to the extent feasible all noise and traffic impacts suffered most acutely by the adjacent apartment residents and surrounding community.

Finally, on behalf of Commentors, this Office requests, to the extent not already on the notice list, all notices of CEQA actions and any approvals, Project CEQA determinations, or public hearings to be held on the Project under state or local law requiring local agencies to mail such notices to any person who has filed a written request for them. See Pub. Res. Code §§ 21080.4, 21083.9, 21092, 21092.2, 21108, 21167(f) and Gov. Code § 65092. Please send notice by electronic and regular mail to: Gideon Kracov, Esq., 801 S. Grand Avenue, 11th Fl., Los Angeles, CA 90017, [gk@gideonlaw.net](mailto:gk@gideonlaw.net) (cc: [jordan@gideonlaw.net](mailto:jordan@gideonlaw.net)).

Thank you for consideration of these comments. We ask that this letter and any attachments are placed in the administrative record for the Project.

Sincerely,



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Gideon Kracov  
Attorney for Appellant

Attachments:

- Exhibit A: Expert Noise Comments dated February 4, 2019  
Exhibit B: Expert Traffic Comments dated February 4, 2019

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<sup>3</sup> See e.g., *Salmon Protection & Watershed Network v. County of Marin* (2004) 125 Cal.App.4th 1098, 1102, 1108; *Azusa Land Reclamation Co. v. Main San Gabriel Basin Watermaster* (1997) 52 Cal.App.4th 1165, 1200.

<sup>4</sup> See *Gentry v. Murrieta* (1995) 36 Cal.App.4th 1359, 1380.

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Report of Potential Noise Impacts of Breakers Hotel Project  
210 East Ocean Boulevard, Long Beach, CA; Application No. 1806-19

Dear Mr. Kracov:

At your request, I have prepared this report in response to the City's proposed categorical exemption for the Breakers Hotel development ("Project"). 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 Long Beach ("City").

During its operation as a hotel, the Project would subject adjacent apartment dwellings to excessive noise levels from use of its proposed outdoor patio and terrace areas for large events, parties, gatherings, people talking with raised voices, pool and deck and pool bar use with alcohol service, and possible musical performances (amplified music). The nearest apartment windows are as close as about 20 feet from this Hotel's outdoor common areas.

Because operational noise impacts will likely exceed applicable significant thresholds under the CEQA Guidelines, the Long Beach Municipal Code ("Code" or "LBMC"), and the City's General Plan, the use of a categorical exemption is inappropriate per 14 Cal. Code. Regs. § 15000 *et seq.* (the "CEQA Guidelines").

Hence, the City should require the Project applicant to prepare a more demanding CEQA review, such as an environmental impact report ("EIR") or mitigated negative declaration ("MND") to consider feasible mitigation measures.

## I. EXECUTIVE SUMMARY

As explained in this letter, I have made the following conclusions about the Breakers Hotel Project:

- The City and Applicant agreed to Project-specific noise mitigation in Conditions of Approval (COA-29 and COA-30) that directly conflict with CEQA's absolute bar against mitigation measures for categorical exemptions. Thus, by its own practice, the City appears to admit that there is a fair argument that the Project will cause potentially significant noise impacts.
- The Project's Staff Report contains no noise discussion. The Staff Report utterly fails to meet the evaluation standards set by other public agencies and is not consistent with other noise studies conducted within the City.
- Operational noise levels from the Hotel's exterior terrace and pool deck will exceed the City's maximum daytime limits under the Code and will exceed the City's standard for an increase in existing ambient noise levels by more than 5 dBA at adjacent residential property lines for the adjacent apartment building.
- Just the speech impacts from small and large crowds of hotel guests will create significant noise impacts. The potential noise impacts from outdoor music on these exterior activity areas could be even more significant.
- The shape of the Hotel's 2<sup>nd</sup>-level roof terrace and its surrounding massive upper level exterior walls would generate echoes that reflect and, thus, amplify already potentially significant roof terrace activity noise toward the adjacent apartment dwellings to the south.
- The close proximity of this adjacent apartment building constitutes an unusual circumstance related operational impacts, which supports the conclusion that a categorical exemption is inappropriate for the Project.
- Even the City's proposed Conditions of Approval will not adequately reduce the Hotel's exterior terrace and pool deck noise impacts to a less-than-significant level.

## II. CEQA DOES NOT ALLOW PROJECT-SPECIFIC MITIGATION MEASURES WHEN CONSIDERING THE ADEQUACY OF A CATEGORICAL EXEMPTION

As an initial observation, it must be noted that the Breakers Hotel is proposing two Conditions of Approval (“COAs”) to directly or indirectly mitigate noise impacts. That is an admission that there is a fair argument that the Project may cause significant noise impacts and, therefore, a categorical exemption is inappropriate for this Project.

The proposed COA-29 and COA-30 relate to noise impacts and compliance with the City’s Noise Ordinance. While the City should be applauded for trying to ameliorate the Project’s noise impacts, these COAs have not been vetted by the public nor tethered to a noise analysis as required by CEQA. Furthermore, CEQA does not allow a lead agency to use mitigation measures, like these two noise-related COAs restricting noise levels from outdoor common areas, to reduce project impacts as a means to qualify for a categorical exemption and avoid a more demanding CEQA review.<sup>1</sup> Even if the Project utilized an MND, which it did not, CEQA requires a lead agency to recirculate the MND if additional mitigation measures are subsequently added after the MND’s initial circulation in order to publicly-vet the adequacy of the new mitigation measures.<sup>2</sup>

As recognized by one court, lead agencies are not required to evaluate mitigation measures during its preliminary review of projects and, therefore, not appropriate in the context of categorical exemptions; instead consideration of mitigation measures are reserved (as relevant here) for MNDs subject to CEQA’s fair argument standard whereby “[i]f there is a disagreement between experts over the significance of an effect . . . the lead agency shall treat the effect as significant . . .” *Azusa Land Reclamation Co. v. Main San Gabriel Basin Watermaster* (1997) 52 Cal.App.4th 1165, 1200-1201 (citing CEQA Guidelines § 15064(h)(2)).

As discussed herein, *substantial evidence shows operational impacts will be significant and, therefore, mitigation measures should be considered pursuant to a CEQA-compliant MND or EIR being prepared*; which is consistent with the Long Beach General Plan’s Noise Element (“Noise Element”) that clearly states that “... the City has adopted a policy of requiring Environmental Impact Studies to be conducted for all City projects ... include[ing] private projects for which a building permit or other entitlement for use is required.”<sup>3</sup>

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<sup>1</sup> See e.g., *Salmon Protection & Watershed Network v. County of Marin* (2004) 125 Cal.App.4th 1098, 1102, 1108 (stating while “mitigation measures may support a negative declaration but not a categorical exemption ... Reliance upon mitigation measures (whether included in the application or later adopted) involves an evaluative process of assessing those mitigation measures and weighing them against potential environmental impacts, and that process must be conducted under established CEQA standards and procedures for EIR’s or negative declarations.”); *Azusa Land Reclamation Co. v. Main San Gabriel Basin Watermaster* (1997) 52 Cal.App.4th 1165, 1200 (“In determining whether the significant effect exception to a categorical exemption exists, ‘[i]t is the possibility of a significant effect . . . which is at issue, not a determination of the actual effect, which would be the subject of a negative declaration or an EIR. Appellants cannot escape the law by taking a minor step in mitigation and then find themselves exempt from the exception to the exemption.’ [Citation].”).

<sup>2</sup> See *Gentry v. Murrieta* (1995) 36 Cal.App.4th 1359, 1380 (“if there was substantial evidence to support a fair argument that the Project would have a significant effect... then the City could not adopt new mitigation conditions aimed at this effect without recirculating its proposed negative declaration. Nevertheless, the City added mitigation condition... without recirculating. In so doing, it abused its discretion.”).

<sup>3</sup> Noise Element, p. 130, <http://www.lbds.info/civica/filebank/blobdload.asp?BlobID=3051>.

### III. OPERATIONAL NOISE IMPACTS WILL BE SIGNIFICANT

#### A. APPLICABLE OPERATIONAL NOISE STANDARDS

To demonstrate the various ways the Breakers Hotel’s operational noise impacts will be significant, one must consider the various thresholds applicable to this Project.

##### 1. *CEQA GUIDELINES APPENDIX G*

First, under Appendix G to the State CEQA Guidelines,<sup>4</sup> a project’s noise impact is normally significant if:

- Exposure of persons to or generation of noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies;
- A substantial permanent increase in ambient<sup>5</sup> noise levels in the project vicinity above levels existing without the project; or
- A substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project.

##### 2. *LONG BEACH GENERAL PLAN NOISE ELEMENT*

Second, under the City’s General Plan Noise Element, Recommendation 4 and 4.4 provides (emphasis added) that “[n]o future development shall be allowed which is *incompatible* with the existing or future noise environment [,]” where any development is considered “*incompatible* with its noise environment if *any of the standards or criteria listed* in [the Noise Element] are exceeded.”<sup>6</sup> Among the standards/criteria listed in the Noise Element “to protect public health and well-being,” include the maximum limits summarized in Table 1 on the following page, which the Noise Element states (emphasis original) “*MUST* be utilized along with other relevant data.”<sup>7</sup>

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<sup>4</sup> California Natural Resources, Appendix G-Environmental Checklist Form, [http://resources.ca.gov/ceqa/guidelines/Appendix\\_G.html](http://resources.ca.gov/ceqa/guidelines/Appendix_G.html).

<sup>5</sup> Ambient Noise is defined in the City’s General Plan. See Noise Element, *supra* fn. 3, p. 195 (“the all-encompassing noise associated with a given environment, being usually a composite of sounds from many sources near and far. For the purposes of this [proposed model noise] ordinance, ambient noise level is the level obtained when the noise level is averaged over a period of at least 15 minutes without inclusion of noise from occasional or occasional and transient sources, at the location and time of day near that at which a comparison is to be made.”); see also p. 223 (providing similar definition).

<sup>6</sup> Noise Element, *supra* fn. 3, p. 145.

<sup>7</sup> *Ibid.*, p. 136-139.

**Table 1: Long Beach General Plan Noise Element Recommended Criteria for Maximum Acceptable Noise Levels in A-Weighted Decibels (dBA)**

Land Use Type <sup>(a)</sup>	Outdoor			Indoor
	Maximum Single Hourly Peak	L <sub>10</sub> <sup>(b)</sup>	L <sub>50</sub> <sup>(c)</sup>	L <sub>dn</sub> <sup>(d)</sup>
Residential 7 am - 10 pm (Daytime)	70	55	45	45
Residential 10 pm -7 am (Nighttime)	60	45	35	35
<b>Notes:</b> a) Hotels and apartments fall under the residential category of the Noise Element. b) Noise Levels exceeded ten percent of the time. c) Noise levels exceeded fifty percent of the time. d) Day-night average sound level. The 24-hour A-weighted equivalent sound level with a 10-decibel penalty applied to nighttime levels.				
<b>Source:</b> General Plan Noise Element, pp. 136-139				

Therefore, under the Noise Element, the Project’s noise impact is significant if:

- Outdoor noise during a 1-hour period exceeds 70 dBA (daytime) or 60 dBA (nighttime).

**3. LONG BEACH MUNICIPAL CODE**

Third, under Chapter 8.80 of the LBMC (governing environmental noise), the Project site is located within Receiving Land Use District Two and subject to the exterior and interior noise limits as summarized in Table 2 below:

**Table 2: Long Beach Noise Standards for Commercial Land Uses - District Two (Before 5 dB reduction for speech/music per LBMC § 8.80)**

Land Use District	Exterior		Interior	
	Exterior Noise Level (Leq) 7 am to 10 pm	Exterior Noise Level (Leq) 10 pm to 7 am	Interior Noise Level (Leq) 7 am to 10 pm	Interior Noise Level (Leq) 10 pm to 7 am
District Two	60	55	45	35
<b>Note:</b> No person shall operate or cause to be operated any source of sound at any location within the incorporated limits of the City or allow the creation of any noise on property owned, leased, occupied, or otherwise controlled by such person, which causes the noise level when measures from any other property to exceed: <ol style="list-style-type: none"> <li>1. The noise standard for that land use district as specified in the above Table for a cumulative period of more than thirty (30) minutes in any hour; or</li> <li>2. The noise standard plus five (5) decibels for a cumulative period of more than fifteen (15) minutes in any hour; or</li> <li>3. The noise standard plus ten (10) decibels for a cumulative period of more than five (5) minutes in any hour; or</li> <li>4. The noise standard plus fifteen (15) decibels for a cumulative period of more than one (1) minute in any hour; or</li> <li>5. The noise standard plus twenty (20) decibels or the maximum measured ambient, for any period of time.</li> </ol>				
<b>Source:</b> City of Long Beach Municipal Code, Section 8.80.160 and Section 8.80.170. 1977.				



**5 dBA Reduction for Repetitive Speech or Music:** However, to protect against the increased human disturbance potential of some sound characteristics, the Code requires a reduction in the City's exterior and interior noise limits of 5 dB for repeated impulsive noise, music, or speech.<sup>8</sup> As proposed, the Project could include both music and speech in outdoor areas located on the 2<sup>nd</sup>, 3<sup>rd</sup>, and 14<sup>th</sup>-level rooftop levels that could continue for more than 5 minutes in any hour, and directly affect the adjacent apartment south of the Project Site. Therefore, under the Code and consistent with City's past practice,<sup>9</sup> the Project's noise impact is significant if the apartment to the south of the Breaker Hotel experiences noise levels that exceed:

- General exterior noise limit of 60 dBA  $L_{eq}$  (daytime) or 55 dBA  $L_{eq}$  (nighttime), or
- Exterior noise limit for music and speech of 55 dBA  $L_{eq}$  (daytime) or 50 dBA  $L_{eq}$  (nighttime).

#### **4. PAST PRACTICE BY THE CITY OF LONG BEACH**

Fourth, based on past environmental reviews where the City served as the lead agency,<sup>10</sup> the Project's noise impact would be significant if:

- Operational noise increases existing ambient noise levels at adjacent sensitive receptors by 5 dBA or more.

#### **B. PROJECT'S EXTERIOR DECK ACTIVITY**

This Breakers Hotel will include various operational noise sources typical for the use and maintenance of a building (e.g., fixed mechanical and HVAC equipment, parking facilities, loading docks, parking and off-site roadway traffic, etc.). However, this Project also proposes substantial additions to and creation of exterior decks to serve various hotel guest uses, including:

- 2<sup>nd</sup>-level rear roof with an open terrace area and stairwell to access the 3<sup>rd</sup>-level pool deck;
- 3<sup>rd</sup>-level roof with a new rooftop pool with a deck and pool bar; and
- 14<sup>th</sup>-level rooftop terrace area would be expanded by approximately 1,815 feet.

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<sup>8</sup> See LBMC § 8.80.160 (for exterior noise limits: "In the event that alleged offensive noise contains a steady audible tone such as a whine, screech, or hum, or is a *repetitive noise* such as hammering or riveting or *contains music or speech conveying informational content*, the standard limits ... *shall be reduced by five (5) decibels.*") (emphasis added); see also LBMC § 8.80.180 (containing same language for interior noise limits).

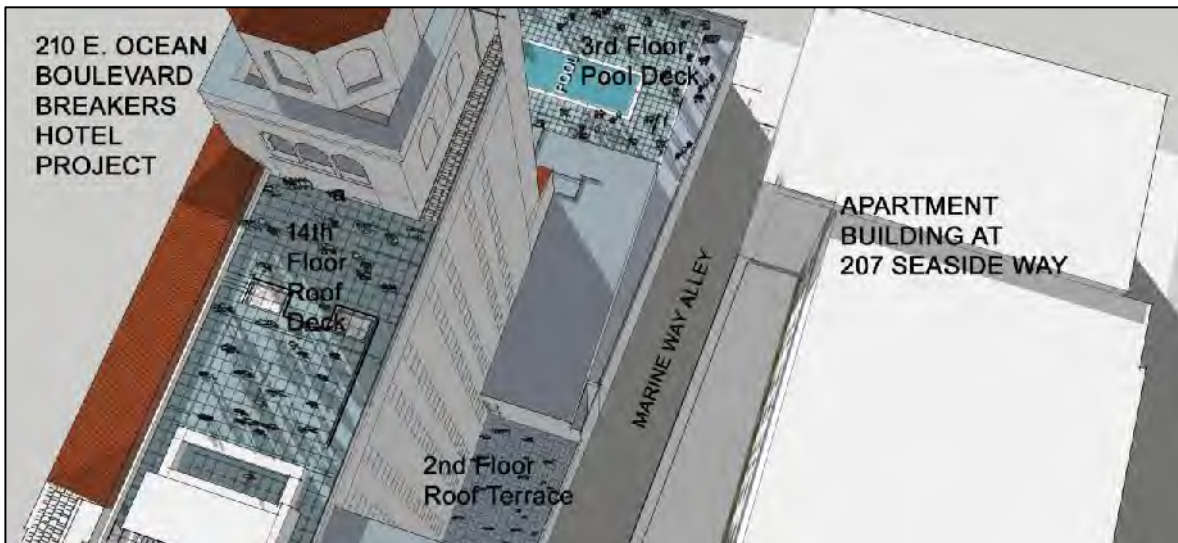
<sup>9</sup> See 100 E. Ocean Blvd. Project (Oct. 2018) MND, p. 121 [fn. 68], <https://web.archive.org/web/20190202022910/http://www.lbds.info/civica/filebank/blobdload.asp?BlobID=7268>;

<sup>10</sup> See e.g., 207 Seaside Way Project (Mar. 2015) MND, p. 85, <http://www.lbds.info/civica/filebank/blobdload.asp?BlobID=4949>; 442 W. Ocean Blvd. Project (Mar. 2015) MND, p. 83, <http://www.lbds.info/civica/filebank/blobdload.asp?BlobID=4956>; Oceanaire Apartment Project (Mar. 2015) MND, p. 85, <http://www.lbds.info/civica/filebank/blobdload.asp?BlobID=4978>; 100 E. Ocean Blvd. Project (Oct. 2018) MND, p. 122, <https://web.archive.org/web/20190202022910/http://www.lbds.info/civica/filebank/blobdload.asp?BlobID=7268>; Second + PCH Development Project (Mar. 2011) EIR, pp. IV.I:17-18, <http://www.lbds.info/civica/filebank/blobdload.asp?BlobID=3375>; Staybridge Suites Hotel (Nov. 2016) MND, p. 53, <http://www.lbds.info/civica/filebank/blobdload.asp?BlobID=6245>; Shoreline Gateway East Tower Project (Aug. 2016) Final EIR Addendum-Noise Study, pp. 12-13, <http://www.lbds.info/civica/filebank/blobdload.asp?BlobID=6152>.

These outdoor areas could include major sources of noise, such as small and large crowds including large events, parties, gatherings, people talking with raised voices, pool use, deck and pool bar use with alcohol service, and possible musical performances (amplified music). No restrictions prohibit these activities beyond compliance with the City’s noise standards (i.e., COA-29). However, as discussed herein, noise from these outdoor activities will significantly impact neighboring apartments currently being constructed at 207 Seaside Way with their bedroom windows located across the alley only about 20 feet away from the Project’s 3<sup>rd</sup>-level decks, and 28 feet away from the 2<sup>nd</sup>-level decks (as depicted in the Figures 1-5 below and on the following page).<sup>11</sup>

Unlike other projects reviewed by the City,<sup>12</sup> the *Project applicant has not submitted any noise measurements of existing ambient noise levels or evidence that compliance with the City’s noise standard (COA-29) is even possible*. Such measurements and analysis are critical if the City is to protect nearby residential neighbors from adverse sleep-disturbing impacts from new hotel noise sources. Absent meaningful and credible noise measurements, the LBMC’s general and music/speech-specific ambient noise levels must be presumed.

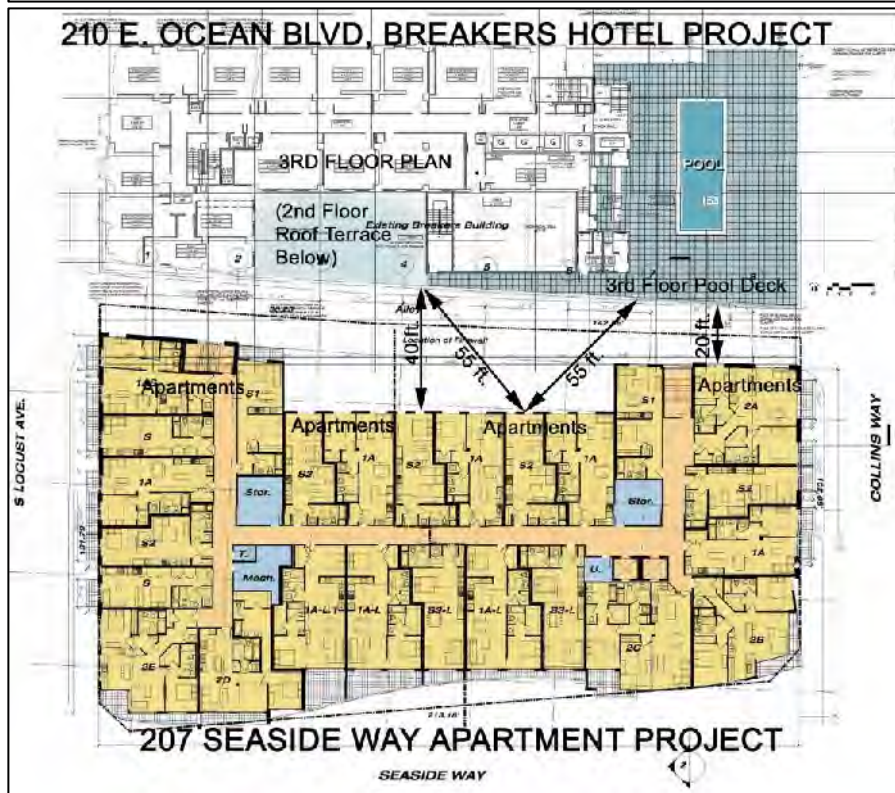
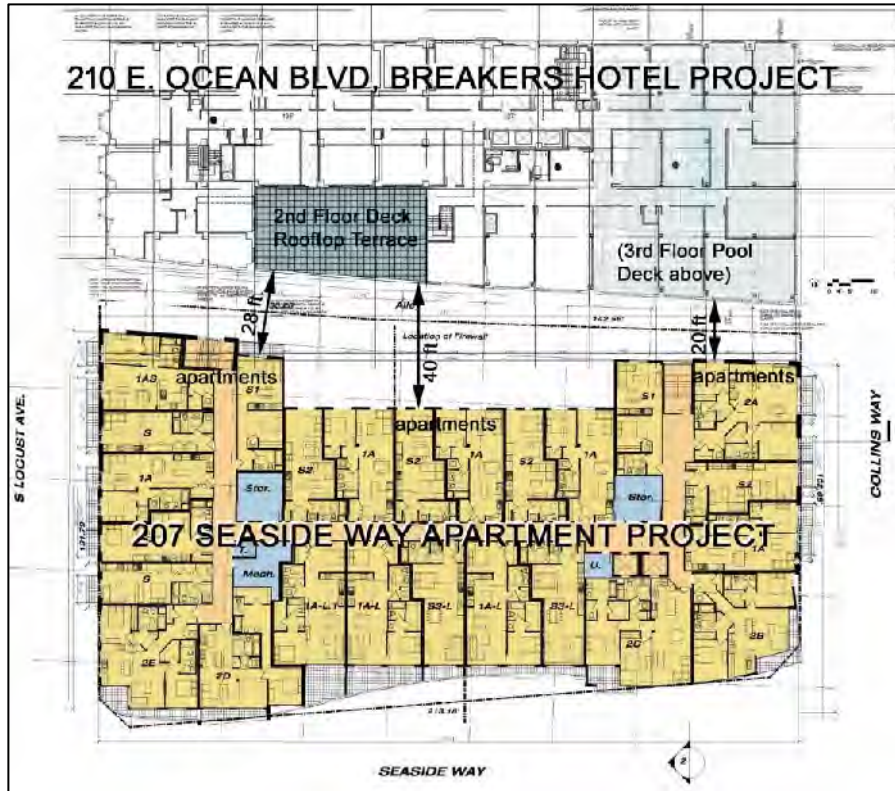
**Figure 1: 2<sup>nd</sup>, 3<sup>rd</sup>, & 14<sup>th</sup>-Level Roof Decks (Simulated View Showing Proximity to Neighboring Apartments)**



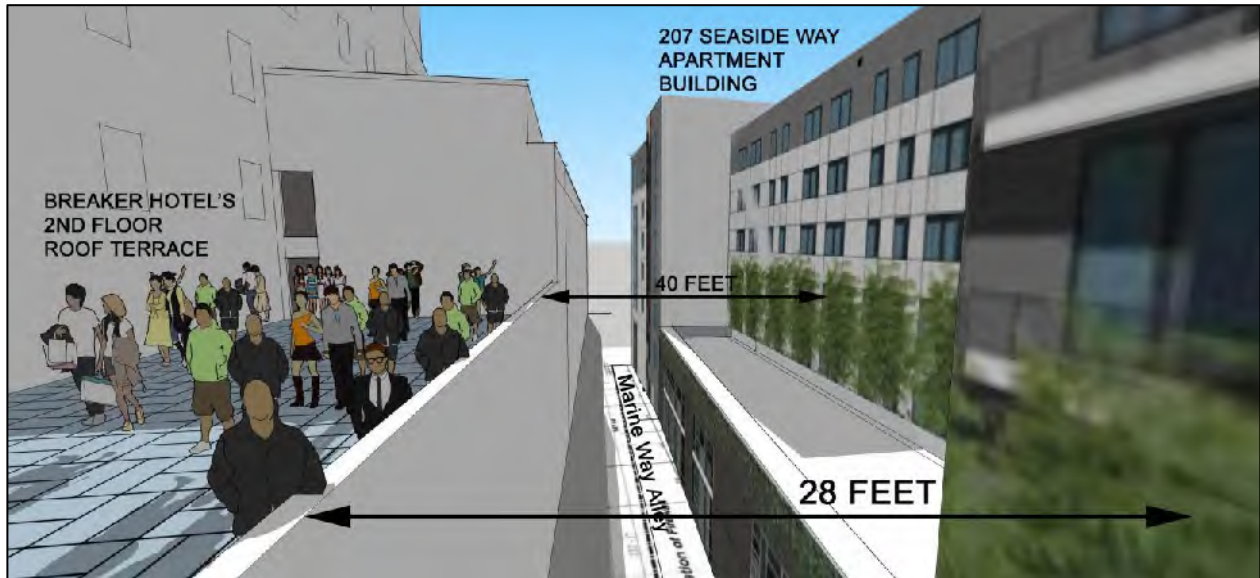
<sup>11</sup> See 207 Seaside Way Project (Mar. 2015) MND, p. 89 (noting Project’s residential uses is approximately 20 feet to of the apartment project), <http://www.lbds.info/civica/filebank/blobload.asp?BlobID=4949>; see also Exhs. 2-2, 2-3, 2-4d (showing proximity to Breakers Hotel).

<sup>12</sup> See *supra* fn 9 and 10; see also *infra* fn 38 and 46.

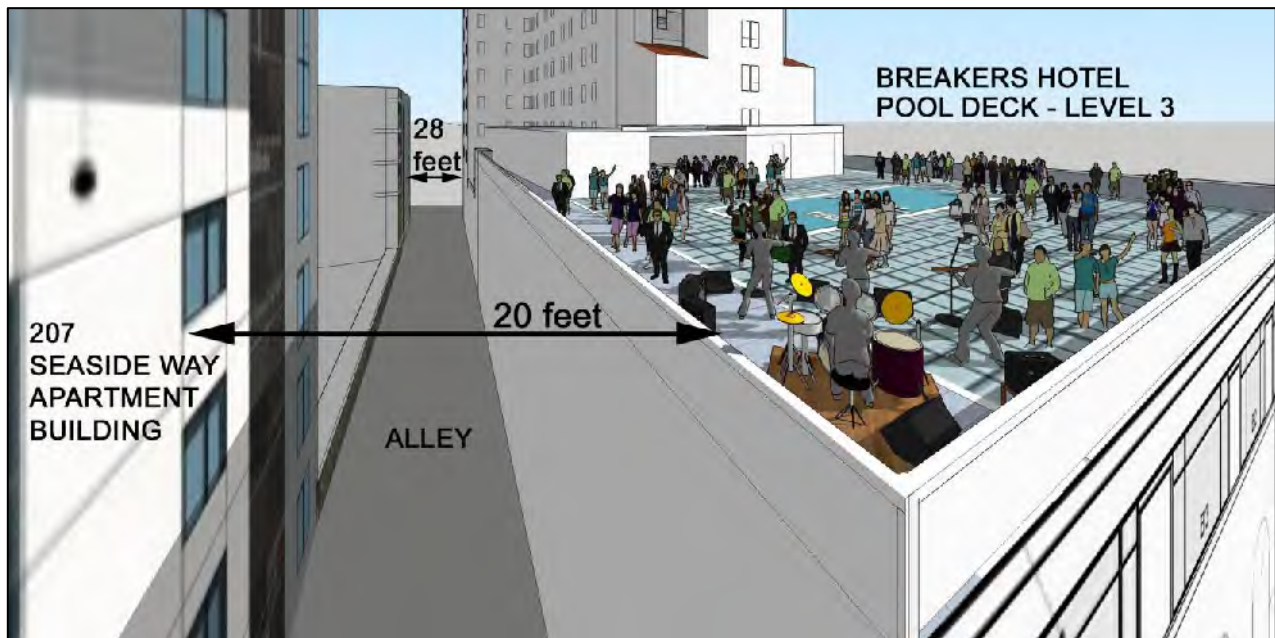
**Figures 2-3: 2<sup>nd</sup> & 3<sup>rd</sup>-Level Rooftop Plan (Showing Proximity to Neighboring Apartments)**



**Figure 4: 2<sup>nd</sup>-Level Roof Terrace (Simulated View Showing Proximity to Neighboring Apartments)**



**Figure 5: 3<sup>rd</sup>-Level Pool Deck (Simulated View Showing Proximity to Neighboring Apartments)**



## C. NOISE IMPACTS FROM EXTERIOR DECK ACTIVITY WILL BE SIGNIFICANT

As discussed below, the Project's noise impact from various exterior deck activities on the 3<sup>rd</sup> and 2<sup>nd</sup>-level decks will be individually and cumulative significant on adjacent apartment residents.

### 1. *3<sup>RD</sup>-LEVEL POOL DECK: NOISE IMPACT FROM JUST SEVERAL PEOPLE SPEAKING*

The noise level from several people speaking outdoors at average voice levels can exceed 73 dBA at a distance of 3 feet.<sup>13</sup> 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 as close as about 20 feet to the neighboring apartment units, such vocal noise levels would reduce to about 56.5 dBA  $L_{eq}$ ,<sup>14</sup> which will exceed both the City's assumed 55 dBA daytime and 50 dBA nighttime ambient noise limits for music/speech.<sup>15</sup> Hence, the vocal noise impacts from the 3<sup>rd</sup>-level deck usage by just several people, even without music or a larger crowds, could be 6.5 dB above ambient levels in the nighttime<sup>16</sup>—and thus greater than the 5-dB threshold under the City's standards when adjusted with the 5 dB penalty for speech.

There are no proposed COAs or applicable City regulations to prohibit nighttime use at any hour of the exterior rooftop decks at this Breakers Hotel Project. Only COA-29 would possibly limit the loudness of “noise levels emanating from the Project's common outdoor areas (rooftop terrace, outdoor pool deck, etc.) [to] not exceed applicable noise standards specified in Long Beach Municipal Code Section 8.80.15 – Exterior Noise Limits.” But those standards are not sufficient to mitigate Project noise impacts at neighboring apartment units to less-than-significant. For example, Section 8.80.15 allows noise levels after 10:00 p.m. of up to 55 dBA  $L_{eq}$  for noise that exceeds 30 minutes during an hour. It is likely that people will talk for more than 30 minutes in an hour on these exterior decks. Neither the Project applicant nor the City suggest how hotel guests will be prevented from conversing outdoors on a rooftop terrace or pool deck if noise level exceed this noise standards. Nor does the City propose limiting the total people to occupy this area. Therefore, several people speaking at the southern edge of the rooftop pool deck near these apartments with a vocal noise level of 56.5 dBA  $L_{eq}$  would exceed City standards and cause an increase in ambient noise levels there of more than 5 dBA – and, thus, a significance impact.

Accordingly, even with just several people talking outdoors, the Project's outdoor 3<sup>rd</sup>-level pool deck use could generate noise levels at neighboring apartment units that would exceed typical CEQA numeric limits and be significant, despite COA-29's noise levels restriction. That adverse noise impact increases significantly with larger crowds or with music played on these rooftop decks (as discussed in the below sections).

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<sup>13</sup> See 333 S. La Cienega Blvd. (DCP Case No. ENV-2015-897) Draft EIR Appendix B-Noise Technical Report, p. 35, [http://planning.lacity.org/eir/333LaCienega/files/Appendix%20B%20-%20Noise%20Technical%20Report\\_102015.pdf](http://planning.lacity.org/eir/333LaCienega/files/Appendix%20B%20-%20Noise%20Technical%20Report_102015.pdf).

<sup>14</sup> Noise level attenuation due to distance is calculated as reduced by about 6 dB for each doubling of distance from a point source.

<sup>15</sup> After applying 5dB penalty for speech per LBMC § 8.80 subds. 160 and 180 (previously discussed).

<sup>16</sup> Calculated: (56.5 dBA  $L_{eq}$ ) – [(55 dBA presumed ambient level) – (5db penalty for speech)] = (6.5 dB).

## 2. 3<sup>RD</sup> LEVEL POOL DECK: NOISE IMPACTS FROM LARGE CROWDS SPEAKING

For crowded conditions, the Project's 3<sup>rd</sup>-level exterior pool deck could accommodate 240 people, including those people in the pool, without exceeding this deck's permitted capacity.<sup>17</sup> Thus, there could be 240 people conversing outdoors on this 3<sup>rd</sup>-level pool deck of the Breakers Hotel, not including another 113 people on the additional 2<sup>nd</sup>-level rooftop terrace deck that is also in view of adjacent windows at the 207 Seaside Way apartment project.<sup>18</sup> Figures below illustrate where these people could be accommodated on the Project's 3<sup>rd</sup>-level exterior pool deck, though many more guests could occupy this deck than are illustrated.

**Figure 6: 3<sup>rd</sup>-Level Pool Deck (Simulated Views Showing Proximity to Neighboring Apartments as Close as 20 Feet to the South)**



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<sup>17</sup> See the Project's Architectural Plans, Sheet A0.05, "Exiting Analysis," for 3<sup>rd</sup>-level pool deck, which indicates an occupancy load of 222 people on the 3,320 square foot area pool deck and 18 people in the 900 square foot area pool. (222 + 18 = 240 people). This analysis calculates the occupancy load based upon 15 square feet per person on the pool deck and upon 50 square feet per person in the swimming pool.

<sup>18</sup> *Ibid*, with this 2<sup>nd</sup>-level exterior rooftop terrace deck's 1,690 square feet of floor area calculated at an assembly occupancy load of 15 square feet per person (1,690 / 15 = 113 people).

**Figures 7-8: 3<sup>rd</sup>-Level Pool Deck (Simulated Views Showing Proximity to Neighboring Apartments as Close as 20 Feet to the South)**



This 240-person occupancy on this pool deck is possible because the Breakers Hotel itself could be filled with more than this number. The Project includes 185 rooms that could accommodate 277 people,<sup>19</sup> and generate up to 102 employees,<sup>20</sup> for a total project population of 379 guests and employees, many of which could occupy this 3<sup>rd</sup>-level deck, not including additional people on the other two exterior decks.

The sale of alcohol is being proposed for this Hotel and its 3<sup>rd</sup>-level deck includes a pool bar.<sup>21</sup> So of the potential 240 people outdoors on or near this deck, perhaps half of them (120 people) might be conversing at any one time (as illustrated in Figure 9 on page 15 below). If just 120 of these potentially alcohol-charged people are conversing at one time on the 3<sup>rd</sup>-level pool deck (assuming voices are not abnormally raised), with half of the crowd 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.<sup>22</sup> 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.

Speech levels of such crowds have been discussed in other noise studies. The City of Los Angeles' 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.<sup>23</sup> A noise study approved by City of Los Angeles 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

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<sup>19</sup> Calculation: (185 rooms) x (1.5 people/room) = (277 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) Draft EIR 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>.

<sup>20</sup> 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, 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](http://cityplanning.lacity.org/staffrpt/mnd/Pub_102716/ENV-2015-3927.pdf); 6421 W. Selma Ave. (DCP Case No. ENV-2016-2602) 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](https://planning.lacity.org/staffrpt/mnd/Pub_010418/ENV-2016-2602.pdf).

<sup>21</sup> Also, from the Project's Staff Report, PDF p. 6 (“Alcohol uses may include room minibars, room service, bars, restaurants, lounges, and pool service.”).

<sup>22</sup> 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 similar 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](http://planning.lacity.org/eir/333LaCienega/files/Appendix%20B%20-%20Noise%20Technical%20Report_102015.pdf).

<sup>23</sup> See City of Los Angeles (Feb. 1999) General Plan Noise Element, p. H:1 (Exhibit H: Common Noise Levels), <https://planning.lacity.org/cwd/gn/pln/noiseElt.pdf>.



*Leq 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.*<sup>24</sup>

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.<sup>25</sup> This voice level assumption is also appropriate at the Project's deck because a similar number of people using the deck are being considered.<sup>26</sup> 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.<sup>27</sup> 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 2<sup>nd</sup>-level roof terrace and 3<sup>rd</sup>-level pool deck usage may be louder than if only a few people were speaking.

To approximate the loudness of 120 people speaking at one time as heard at the nearest apartments, this report divides that number into five groups of people at different distances from the apartments. The voice levels of people nearer the apartments as heard at the apartments will be louder than from those who are farther away. This combined calculation at five different distances representing the usable floor area of the Hotel's 3<sup>rd</sup>-level pool deck will be more accurate than evaluating the worst-case (loudest) scenario where all the people are densely packed on the southern side of the deck nearest the apartment units. Dividing 240 people, where 120 people are speaking at once, into five groups, results in 24 people speaking at once in each group. The locations of these five groups measured on the 3<sup>rd</sup>-level deck from the nearest apartment windows would be about roughly 28 feet, 43 feet, 58 feet, 73 feet and 88 feet away (see Figure 9 below).

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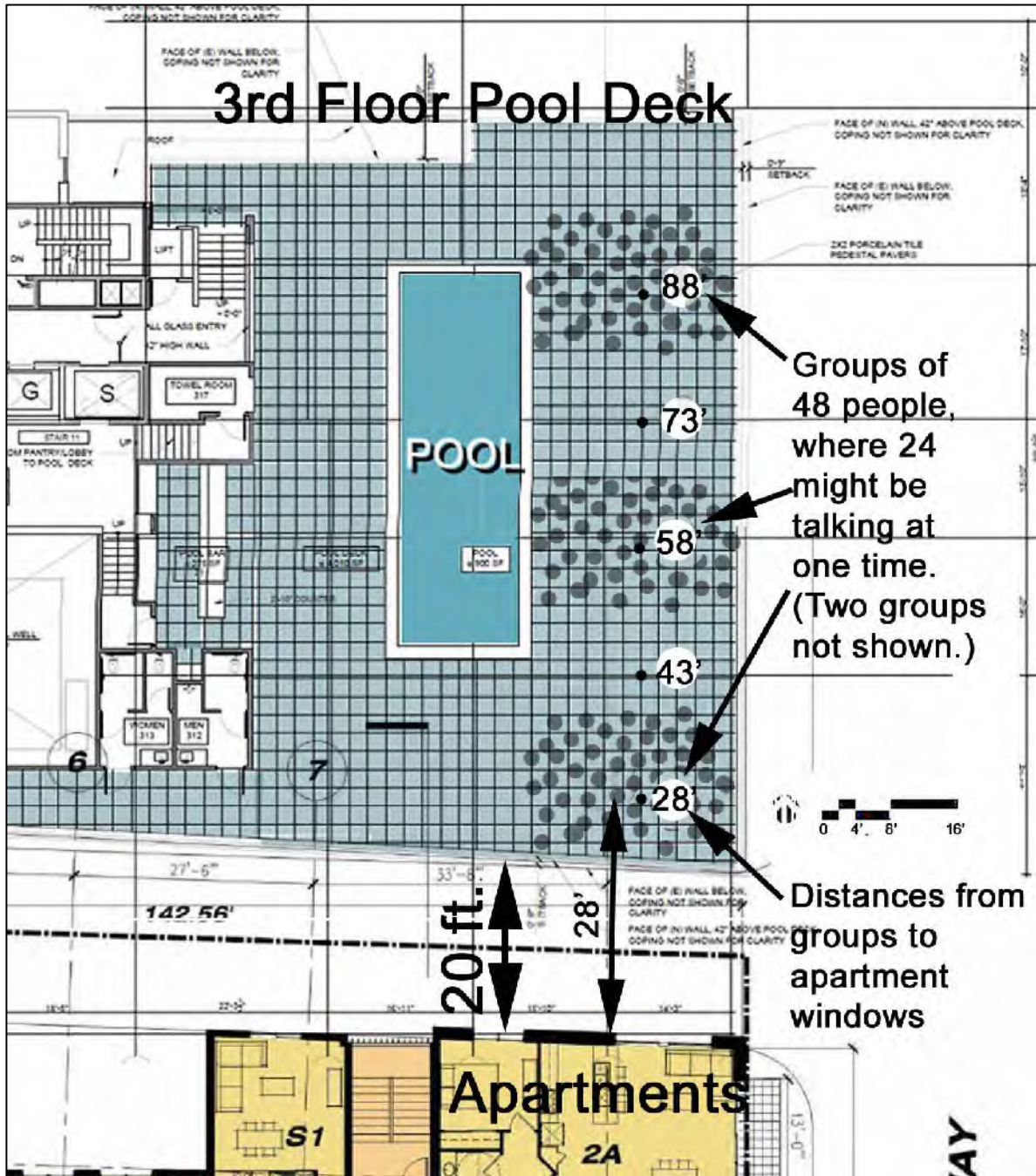
<sup>24</sup> See 333 S. La Cienega Blvd. (DCP Case No. ENV-2015-897) Draft EIR Appendix B-Noise Technical Report, p. 35, [http://planning.lacity.org/eir/333LaCienega/files/Appendix%20B%20-%20Noise%20Technical%20Report\\_102015.pdf](http://planning.lacity.org/eir/333LaCienega/files/Appendix%20B%20-%20Noise%20Technical%20Report_102015.pdf).

<sup>25</sup> See Proceedings of ACOUSTICS (Nov. 2006) Prediction of Crowd Noise, p. 237 (Table 2), [https://www.acoustics.asn.au/conference\\_proceedings/AASNZ2006/papers/p46.pdf](https://www.acoustics.asn.au/conference_proceedings/AASNZ2006/papers/p46.pdf).

<sup>26</sup> See 333 S. La Cienega Blvd., *supra* fn 24, (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 report on the Breakers Hotel Project, similar assumptions are made resulting in 120 people speaking simultaneously).

<sup>27</sup> 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](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>.

**Figure 9: 3<sup>rd</sup>-Level Pool Deck Plan (Five Groups of People Under Possible Crowded Conditions as Measured to Nearest Apartments)**



If the maximum size crowd is spread out more in an east-west direction than illustrated above (i.e. left and right) but at similar distances to the apartments, their combined vocal noise levels as measured at the apartments would be similar to the calculation below.

To calculate how loud a possible crowd could be when measured at the nearest apartments, one would calculate and then logarithmically add the volumes of these groups of 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 28 feet (the distance to the nearest apartment window to the south), the person's vocal noise level would be about 53.6 dBA.<sup>28</sup> However, if 24 people are speaking simultaneously there at the same volume, their combined voice levels would be about 67.4 dBA at a distance of 28 feet.<sup>29</sup> Similarly calculated, the noise levels from the second group of 24 simultaneously-speaking people would be about 63.7 dBA at a distance of 43 feet;<sup>30</sup> for the third group, about 61.1 dBA at a distance of 58 feet;<sup>31</sup> for the fourth group, about 59.1 dBA at a distance of 73 feet;<sup>32</sup> and for the fifth group, about 57.4 dBA at a distance of 88 feet.<sup>33</sup> When logarithmically combined, noise levels of all five groups would be about 70.2 dBA at the nearest apartment windows.<sup>34</sup>

Even when considering not everyone would be simultaneously facing the apartment windows when speaking, which could result in an approximately 2.9 dB (+/- 0.2 dB) reduction in noise levels,<sup>35</sup> noise levels would still be about 67.3 dBA at the nearest apartment windows. This predicted noise impact is conservative given it does not account for alcohol-charged patrons that tend to be louder than non-intoxicated patrons in crowds,<sup>36</sup> nor account for people speaking on the nearby 2<sup>nd</sup>-level roof terrace also in close proximity to these apartment windows (discussed below on page 19).

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<sup>28</sup> 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 28' (d<sub>2</sub>) from one person's voice, where dB<sub>1</sub> = 73 dB(A) at 3' (d<sub>1</sub>) from the same person, dB<sub>2</sub> = dB<sub>1</sub> - 10 x A x LOG(d<sub>2</sub>/d<sub>1</sub>) = 73 - 10 x 2.0 x LOG(28'/3') = 53.6 dB(A).

<sup>29</sup> Calculation based upon the logarithmic addition of the cumulative voice levels of 24 people under these crowded conditions with raised voice levels.

<sup>30</sup> 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 43' (d<sub>2</sub>) from 24 peoples' voices, where dB<sub>1</sub> = 67.4 dB(A) at 28' (d<sub>1</sub>) from the same 24 people, dB<sub>2</sub> = dB<sub>1</sub> - 10 x A x LOG(d<sub>2</sub>/d<sub>1</sub>) = 67.4 - 10 x 2.0 x LOG(43'/28') = 63.4 dB(A).

<sup>31</sup> *ibid.* In this case, at a location 58' (d<sub>2</sub>) from the third group of 24 peoples' voices, where dB<sub>1</sub> = 63.4 dB(A) at 43' (d<sub>1</sub>) from the same 24 people, dB<sub>2</sub> = dB<sub>1</sub> - 10 x A x LOG(d<sub>2</sub>/d<sub>1</sub>) = 63.4 - 10 x 2.0 x LOG(58'/43') = 61.1 dB(A).

<sup>32</sup> *ibid.* In this case, at a location 73' (d<sub>2</sub>) from the fourth group of 24 peoples' voices, where dB<sub>1</sub> = 67.4 dB(A) at 28' (d<sub>1</sub>) from the same 24 people, dB<sub>2</sub> = dB<sub>1</sub> - 10 x A x LOG(d<sub>2</sub>/d<sub>1</sub>) = 67.4 - 10 x 2.0 x LOG(73'/28') = 59.1 dB(A).

<sup>33</sup> *ibid.* In this case, at a location 88' (d<sub>2</sub>) from the fifth group of 24 peoples' voices, where dB<sub>1</sub> = 67.4 dB(A) at 28' (d<sub>1</sub>) from the same 24 people, dB<sub>2</sub> = dB<sub>1</sub> - 10 x A x LOG(d<sub>2</sub>/d<sub>1</sub>) = 67.4 - 10 x 2.0 x LOG(88'/28') = 57.4 dB(A).

<sup>34</sup> Sound levels in decibels are logarithmic values that cannot be combined by normal algebraic addition. Instead, the sound levels in decibels are first converted to energy equivalents, the energy equivalents are added algebraically, and the total energy equivalent is converted back to its decibel values.

For example, 55 dB + 55 dB = 10\*log<sub>10</sub>(10<sup>55/10</sup> + (10<sup>55/10</sup>)) = 58.0 dB.

<sup>35</sup> See Proceedings of ACOUSTICS, *supra* fn 25, p. 238 (Figure 7).

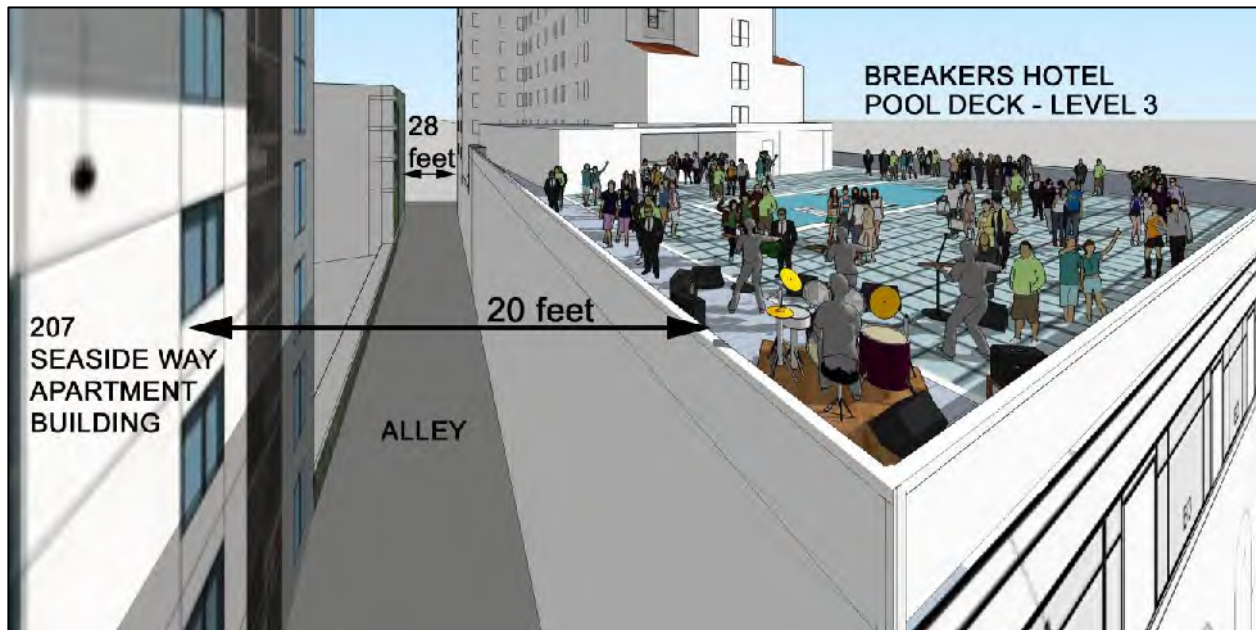
<sup>36</sup> Proceedings of ACOUSTICS (Nov. 2011) Prediction of Noise from Small to Medium Sized Crowds, pp. 1-3 (noting alcohol and age have an influence on the level of crowd noise, such as drunk individuals becoming more boisterous and talk over other persons, and groups of intoxicated women tend to be noisier than same-sized groups of males who have not consumed alcohol), [https://www.acoustics.asn.au/conference\\_proceedings/AAS2011/papers/p133.pdf](https://www.acoustics.asn.au/conference_proceedings/AAS2011/papers/p133.pdf).

That 67.3 dBA  $L_{eq}$  noise level would exceed ambient noise level by more than 5 dBA under any exterior noise standard under the Code. For example, given the general presumed exterior noise standard is 60 and 55 dBA  $L_{eq}$  (daytime and nighttime, respectively), large crowds would elevate general ambient noise levels by 7.3 dB during the daytime and 12.3 dB during the nighttime. Alternatively, given the presumed exterior noise standard applicable to music and speech is 55 and 50 dBA  $L_{eq}$  (daytime and nighttime, respectively), large crowds would elevate ambient noise levels by 12.3 dB during the daytime and 17.3 dB during the nighttime.

### 3. 3<sup>RD</sup>-LEVEL POOL DECK: NOISE IMPACTS FROM OUTDOOR MUSIC

This Project includes possible ambient music or even musical performances (amplified music) on its three exterior rooftop patios or decks.<sup>37</sup> The nearest apartment windows are as close as only 20 feet, so 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 din of conversations.

**Figures 10: 3<sup>rd</sup>-Level Pool Deck (Simulated View of Possible Live Music and Apartments as Close as 20 Feet Away)**



<sup>37</sup> The City’s Findings for this Project state (emphasis added): “Operational noise associated with the hotel and ancillary uses would be generated by vehicles, doors, car alarms, music, and peoples talking as is typical of hotel, restaurant, and banquet uses.”

**Figure 11: 3<sup>rd</sup>-Level Pool Deck (Simulated View of Possible Live Music and Apartments as Close as 20 Feet Away)**



To assess the maximum noise level of a hotel’s amplified sound system, the City has previously used 90 dBA  $L_{eq}$  at a distance of 15 feet from the speaker locations as a reasonable assumption.<sup>38</sup> If a similar noise level of music was played at the 3<sup>rd</sup>-level pool deck with the speakers located near the southern edge of the deck, the noise level of such music might be as loud as *84.6 dBA  $L_{eq}$  at adjacent apartment windows perhaps 28 feet away*. This possible noise level is likely because it has been estimated elsewhere, such as 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.”<sup>39</sup>

This predicted 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 on the 2<sup>nd</sup> or 3<sup>rd</sup>-level roof terrace also in close proximity to these apartment windows. At this conservatively estimated 84.6 dBA  $L_{eq}$  noise level, *amplified music would be 24.6 dBA  $L_{eq}$  over the City’s most lenient general presumed exterior noise standard of 60 dBA  $L_{eq}$  (daytime)*—well above the 5 dBA increase threshold and, therefore, a significant noise impact.

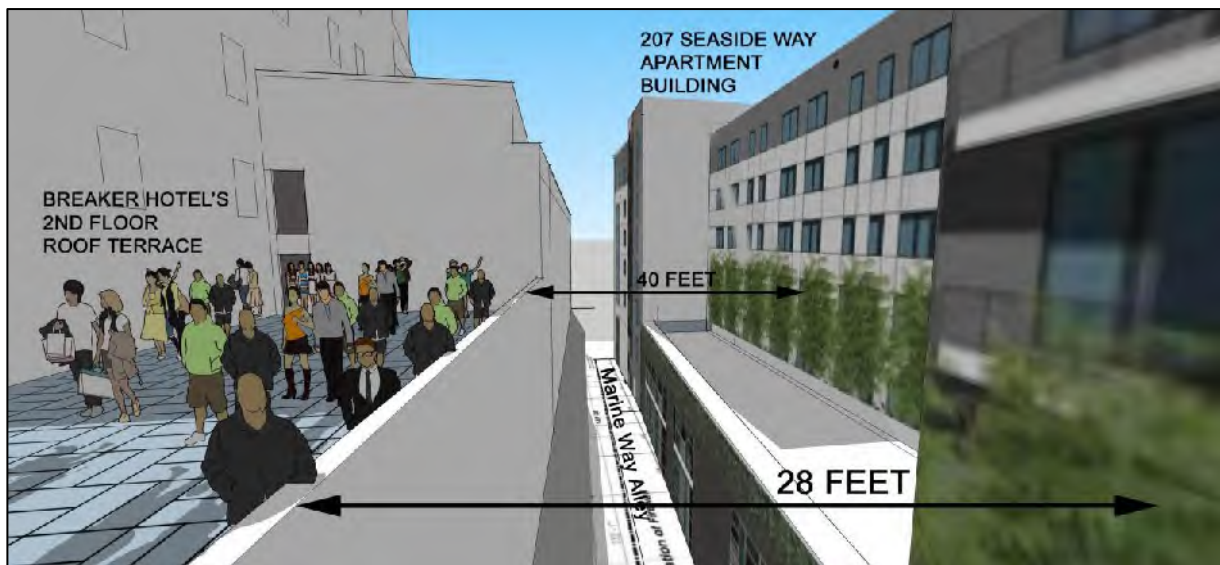
<sup>38</sup> See 100 East Ocean Boulevard Hotel Project (Oct. 2018) IS/MND, p. 130, <https://web.archive.org/web/20190202022910/http://www.lbds.info/civica/filebank/blobload.asp?BlobID=7268>.

<sup>39</sup> See *Keep Our Mountains Quiet v. County of Santa Clara* (2015) 236 Cal.App.4th 714, 722.

#### 4. 2<sup>ND</sup>-LEVEL OUTDOOR TERRACE: ECHO FACTOR & NOISE IMPACT FROM OUTDOOR ACTIVITY

As previously discussed, the 2<sup>nd</sup>-level outdoor terrace is 28 feet from the nearest apartment unit at the 207 Seaside Way project with an occupancy load of 113 people (see Figure 12 below). Utilizing the same referenced noise levels discussed above for this 2<sup>nd</sup>-level area, several people speaking would cause a 53.6 dBA noise impact,<sup>40</sup> a single group of 24 people speaking simultaneously would create a 64.5 dBA noise impact,<sup>41</sup> and amplified music would create an 84.5 dBA noise impact.<sup>42</sup>

**Figure 12: 2<sup>nd</sup>-Level Terrace Deck (Simulated View Showing Proximity to Apartments)**



However, these apartments will be exposed to higher noise levels than would be predicted by distance attenuation alone. That extra noise would be added to those sound waves that directly radiate from the 2<sup>nd</sup>-level rooftop terrace deck activities, such as voices, crowd, and amplified music that will reflect off the hard surface of the Hotel's tower façade and will bounce back to the apartment units to the south (see Figure 12 above). It is well known to urban planners that:

<sup>40</sup> 73 dBA at a distance of 3 feet, attenuates to 53.6 dBA at 28 feet.

<sup>41</sup> 67.4 dBA at a distance of 28 feet, attenuates to 67.4 dBA at 28 feet and further reduced by 2.9 dB to account for not everyone simultaneously facing the apartment windows when speaking.

<sup>42</sup> 90 dBA L<sub>eq</sub> at a distance of 15 feet, attenuates to 84.5 dBA at 28 feet.

“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.”<sup>43</sup>

"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 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.”<sup>44</sup>

To be conservative, at least 1 dB would be added to the small/large crowd noise and amplified music noise that bounce off the southern Hotel facade and reflect back onto those nearby apartment units.<sup>45</sup> Hence, several people speaking will cause a 54.6 dBA noise impact, a single group of 24 people speaking simultaneously would create a 65.5 dBA noise impact, and an amplified sound system would create an 85.5 dBA noise impact. Again, these noise levels would exceed various exterior noise standards under the LBMC and exceed the 5 dBA increase threshold, without even considering the cumulative effect of these activities occurring at the same time, nor consideration of other noise sources (e.g., 3<sup>rd</sup>-level outdoor activity, the building’s HVAC equipment, etc.).

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<sup>43</sup> 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\\_02940\\_2.pdf](http://www.saclafco.org/SphereofInfluenceInformation/Documents/elkgrovesoi/proposedsoi_amenddeir/sac_02940_2.pdf); see also 1020 S. Figueroa St. (DCP Case No. ENV-2015-1159) Draft EIR, 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](http://planning.lacity.org/eir/1020SoFigueroa/DEIR/4_G_Noise.pdf); 1211 W. Pico Blvd. (DCP Case No. ENV-2011-0585) Draft EIR, p. IV.E:2, <https://planning.lacity.org/eir/ConventionCntr/DEIR/files/IV.E%20Noise.pdf>.

<sup>44</sup> 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/rcref/ch2.6/2014-12-19\\_Caltrans\\_TrafficNoiseAnalysisProtocol\\_Part1.pdf](https://www.sandiegocounty.gov/content/dam/sdc/pds/ceqa/Soitec-Documents/Final-EIR-Files/references/rcref/ch2.6/2014-12-19_Caltrans_TrafficNoiseAnalysisProtocol_Part1.pdf); see also *id.*, Part 2, p. 2:37, [https://www.sandiegocounty.gov/content/dam/sdc/pds/ceqa/Soitec-Documents/Final-EIR-Files/references/rcref/ch2.6/2014-12-19\\_Caltrans\\_TrafficNoiseAnalysisProtocol\\_Part2.pdf](https://www.sandiegocounty.gov/content/dam/sdc/pds/ceqa/Soitec-Documents/Final-EIR-Files/references/rcref/ch2.6/2014-12-19_Caltrans_TrafficNoiseAnalysisProtocol_Part2.pdf).

<sup>45</sup> 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 available upon request.

**5. 3<sup>rd</sup> & 2<sup>nd</sup>-LEVEL OUTDOOR ACTIVITIES, INDIVIDUALLY AND COLLECTIVELY, WILL BE SIGNIFICANT**

In summary, notwithstanding COA-29, the various outdoor activities will have the following impacts:

- 3<sup>rd</sup>-Level Pool Deck:
  - Noise impact from several people speaking would cause a 56.5 dBA Leq noise impact (6.5 dB louder than presumed ambient noise levels applicable to music/speech);
  - Noise impact from large crowds speaking would cause a conservatively estimated 67.3 dBA noise impact (ranging 7.3-17.3 dB louder than various presumed ambient noise levels); and
  - Noise impact from amplified music would cause an 84.6 dBA noise impact (ranging 24.6-34.6 dB louder than various presumed ambient noise levels).
- 2<sup>nd</sup>-Level Terrace Deck:
  - Noise impact from several people speaking would cause a 54.6 dBA noise impact;
  - Noise impact from a single group of 24 people speaking simultaneously would cause a 65.5 dBA noise impact (ranging 5.5-15.5 dB louder than various presumed ambient noise levels); and
  - Noise impact from amplified music would cause an 85.5 dBA noise impact (ranging 25.5-35.5 dB louder than various presumed ambient noise levels).

These noise impacts are significant because they exceed the following applicable significance thresholds:

- LBMC's general exterior noise standard of 60 dBA (daytime) and 55 dBA (nighttime), and exterior noise standard for music and speech of 55 dBA (daytime) and 50 dBA (nighttime);
- General Plan Noise Element's maximum acceptable outdoor noise level of 70 dBA (daytime) and 60 dBA (nighttime) for a 1-hour period;
- General Plan Noise Element's Recommendation 4 and 4.4 bar against future development being incompatible with any of the standards or criteria listed in the Noise Element;
- 5 dBA increase above various presumed ambient noise levels (as specified above) at the adjacent apartment (a sensitive receptors);
- CEQA Guidelines Appendix G's exposure of persons to noise levels in excess of standards established in the City's Noise Element and Noise Ordinance; and
- CEQA Guidelines Appendix G's substantial permanent and/or temporary/periodic increase in ambient noise levels in the Project vicinity above levels existing without the Project.



**IV. COMPLIANCE WITH THE CITY’S NOISE ORDINANCE WILL NOT ENSURE THE PROJECT WILL NOT HAVE SIGNIFICANT NOISE IMPACTS**

The City has not yet remedied the Project’s outdoor noise impacts that will be significant. Proposed COA-29, if enforced somehow, only limits the loudness of “noise levels emanating from the project’s common outdoor areas (rooftop terrace, outdoor pool deck, etc.) [to] not exceed applicable noise standards specified in Long Beach Municipal Code Section 8.80.15 – Exterior Noise Limits.” However, the Code permits noise levels up to 64 dBA  $L_{eq}$  because noise levels are permitted to vary within each hour without exceeding the specified limits of LBMC § 8.80 subs.160 and 170 (see Table 3 below [notes 1 through 5]).

**Table 3: Long Beach Noise Standards for Commercial Land Uses - District Two (Before 5 dB reduction for speech/music per LBMC § 8.80)**

Land Use District	Exterior		Interior	
	Exterior Noise Level (Leq) 7 am to 10 pm	Exterior Noise Level (Leq) 10 pm to 7 am	Interior Noise Level (Leq) 7 am to 10 pm	Interior Noise Level (Leq) 10 pm to 7 am
District Two	60	55	45	35
<p><b>Note:</b> No person shall operate or cause to be operated any source of sound at any location within the incorporated limits of the City or allow the creation of any noise on property owned, leased, occupied, or otherwise controlled by such person, which causes the noise level when measures from any other property to exceed:</p> <ol style="list-style-type: none"> <li>1. The noise standard for that land use district as specified in the above Table for a cumulative period of more than thirty (30) minutes in any hour; or</li> <li>2. The noise standard plus five (5) decibels for a cumulative period of more than fifteen (15) minutes in any hour; or</li> <li>3. The noise standard plus ten (10) decibels for a cumulative period of more than five (5) minutes in any hour; or</li> <li>4. The noise standard plus fifteen (15) decibels for a cumulative period of more than one (1) minute in any hour; or</li> <li>5. The noise standard plus twenty (20) decibels or the maximum measured ambient, for any period of time.</li> </ol> <p><b>Source:</b> City of Long Beach Municipal Code, Section 8.80.160 and Section 8.80.170. 1977.</p>				

If the Hotel’s outdoor noise levels varied and were just beneath these standards for the notes in 1, 2, 3, and 4, the *hourly average could exceed 64 dBA  $L_{eq}$* . Specifically, for an hour with varying noise levels for 30 minutes at 60 dBA  $L_{eq}$ , 15 minutes at 65 dBA  $L_{eq}$ , 5 minutes at 70 dBA  $L_{eq}$ , and 1 minute at 75 dBA  $L_{eq}$ , that would result in a calculated noise level average of 64.3 dBA  $L_{eq-1 hr}$ . If the presumed ambient noise level outside the northern windows of the adjacent apartment dwelling would otherwise be only 55 dBA during the daytime (per 5 dB penalty for music/speech), then this Hotel’s exterior rooftop decks could cause *an increase above ambient noise levels of over 9.3 dBA*.

However, given the *northern apartment windows are currently sheltered from traffic noise by the Hotel’s massive tower*, ambient noise levels at the apartments might be as low as 50 dBA and the potential 64 dBA  $L_{eq}$  noise impact allowed under the Code would represent an *increase in ambient levels of 14 dBA of more*. In either scenario, the increase in ambient daytime noise conditions would exceed the City’s 5 dBA increase threshold and, therefore, a significant noise impact even without exceeding the City’s Noise Ordinance (COA-29). This would be even worst under nighttime conditions given presumed ambient noise levels for music/speech is 50 dBA.

Moreover, to comply with CEQA, this Hotel’s outdoor activity area noise must be added to other Hotel-generated operational noise sources, such as mechanical and ventilation equipment noise, loading area noise, increased vehicle noise, and noise from other sources within the Hotel. The City’s Noise Ordinance is not in itself sufficient to comply with CEQA because it establishes limits on the loudness of “any source of sound,” *but it does not place those same limits on the sum of all sources of a project’s noise*. CEQA requires that the Project’s entire cumulative noise impact, inclusive of all noise sources, must be evaluated within the context of each other so that the true noise impact on adjacent residential apartments is properly disclosed, evaluated, and mitigated to the fullest extent possible.

Unfortunately, the Project applicant has failed to provide any meaningful data on ambient noise levels, the cumulative impact of all noise sources including those emanating from the proposed outdoor areas, or whether compliance with the Code’s noise standard (COA-29) is even feasible. In short, all of this must be studied in a CEQA-compliant MND or EIR before the City can conclude that no significant noise impact would occur even with COA-29.

## **V. ADDITIONAL MITIGATION MEASURES ARE NECESSARY PURSUANT TO AN ADEQUATE MND OR EIR**

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 COAs. Here, because the Project was reviewed per a categorical exemption, MMs were not analyzed or vetted by the public and, therefore, any ad hoc noise-related COAs imposed by the City at this stage would be untethered to reasoned analysis. This is a sharp deviation of the City’s practice for similar projects, where it considers various standard MMs and PDFs that serve to directly or indirectly reduce a project’s noise impacts below the City’s thresholds of significance, which are entirely missing from the Project’s current COAs. Among these operational noise-related MMs/PDFs/COAs considered for other nearby projects and/or hotel developments within the City<sup>46</sup>—but missing from the Project’s COAs—include:

- Require the developer to retain the service of a qualified acoustical engineer with expertise in design of building sound isolation, who shall submit a signed report to the City during plan check for review and approval, which demonstrates that the proposed building design for the residential uses and the hotel building achieves an interior sound environment of 45 dBA (CNEL), as required by City’s building code.

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<sup>46</sup> See e.g., Second + PCH Development Project (Mar. 2011) EIR, pp. IV.I:312, <http://www.lbds.info/civica/filebank/blobdload.asp?BlobID=3375>; Belmont Pool Revitalization Project (Apr. 2016) Draft EIR, pp. 4.10:16, 19-21, 25, <http://www.lbds.info/civica/filebank/blobdload.asp?BlobID=5781>; Midtown Specific Plan (Mar. 2016) Final EIR, p. 4:22 (MM N-5), <http://www.lbds.info/civica/filebank/blobdload.asp?BlobID=5765>; Civic Center Project (Oct. 2015) Final Supplemental EIR, pp. 9:38-39 (MMs DT Noise-5-7, and SEIR Noise 2(b)), <http://www.lbds.info/civica/filebank/blobdload.asp?BlobID=5574>; Golden Shore Master Plan Project (Jan. 2010) Final EIR, pp. V:14- (MMs G-5, G-6), <http://www.lbds.info/civica/filebank/blobdload.asp?BlobID=3330>;

- Require the project developer retain the service of a qualified acoustical engineer with experience in mechanical noise analysis to provide an acoustical report to City building officials during plan check, which demonstrates that the project's mechanical design meets the requirements of the City's Noise Ordinance. All noise attenuating features necessary to demonstrate compliance with the City's Noise Ordinance shall be identified in the acoustical report.
- Prior to issuance of the occupancy permit, the City's Development Services Director, or designee, shall verify that a sound engineer has designed the permanent and temporary sound systems such that the City's numeric exterior noise standards are not exceeded at the surrounding sensitive land uses. Measures capable of reducing the noise levels include, but are not limited to:
  - Reducing the source levels, such as partial shielding of noise-sensitive receptors (estimated to reduce noise levels by 5-8 dBA);
  - Reducing the speaker elevations (i.e., thus avoiding direct-line-of-sight with noise-sensitive receptors); and
  - Using highly directional speakers and directing the speakers away from adjacent noise-sensitive land uses (estimated to reduce noise levels by 5 dBA).
- In areas where new residential development would be located adjacent to commercial uses, the City will require site-specific noise studies prior to issuance of building permits to determine the area of impact and to present appropriate mitigation measures, which may include but are not limited to the following:
  - Require the placement of loading and unloading areas so that commercial buildings shield nearby residential land uses from noise generated by loading dock and delivery activities. If necessary, additional sound barriers shall be constructed on the commercial sites to protect nearby noise sensitive uses.
  - Require the placement of all commercial HVAC machinery to be placed within mechanical equipment rooms wherever possible.
- Require the provision of localized noise barriers or rooftop parapets around HVAC, cooling towers, and mechanical equipment so that line-of-sight to the noise source from the property line of the noise-sensitive receptors is blocked.
- Sound-Rated Windows and Glass Doors Near Commercial Uses. The applicant shall install sound-rated windows and sliding glass doors on all residential units that are within 50 feet of commercial uses. Windows shall be at least STC 35 to ensure that commercial activities do not result in interior noise levels exceeding 35 dBA when the windows are closed.

As discussed herein, this Project will have significant operational noise impacts, which must be mitigated to the extent feasible pursuant to adequate CEQA review. To this end, the following MMs/PDFs should be considered in a circulated MND or EIR, in addition to those listed above:

- The Project applicant or Hotel operator 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. Trash collection and other truck deliveries accessing the Project via the alley along the southern boundary of the Project site (Marin Way) shall not occur between the hours of 10:00 p.m. to 7:00 a.m. the following day.
- The Project applicant or Hotel operator shall ensure air conditioning units, ventilation fans, backup generators and other equipment mounted on the roof and exterior of the building shall be enclosed and acoustically-shielded with it breaking the line-of-sight from off-site noise-sensitive receptors with material achieving a Sound Transmission Class (“STC”) rating of at least 35.
- The proposed 2<sup>nd</sup>-level terrace, 3<sup>rd</sup>-level pool deck, and the 14<sup>th</sup>-level rooftop terrace shall incorporate noise-attenuating features (physical as well as operational) designed by a licensed acoustical sound engineer to assure that operational sounds shall be inaudible beyond the property line. The design of these outdoor areas shall incorporate strategic use of materials with high sound absorption properties within the pool deck area and shall avoid using highly sound-reflective surfaces, to the extent possible, at the amenities lounge. At minimum, the Project applicant or Hotel operator shall use glass or heavy transparent plastic acoustical walls (with the top minimum 10 feet in height above all three exterior deck levels with a STC rating of at least 38) around its perimeter on the southern (Marin Way) side facing the adjacent apartments and for the 3<sup>rd</sup> floor pool deck, also on the eastern (Collins Way side) of the deck. Such glass or plastic acoustical barrier walls should be capable of attenuating rooftop noises and re-directing the transmission of these noises back inward and away from adjacent residential uses. These glass or plastic noise barriers shall have no gaps between each panel or between the panel and floor, unless required by building code, wind load resistance standards, or other applicable standards. In such cases, gaps shall be kept to the minimum necessary to meet applicable code and standards.
- Except for after-hour routine clean-up and maintenance, limit the hours of use of outdoor decks, such as 7:00 a.m. to 10:00 p.m. (2<sup>nd</sup>-level terrace and 3<sup>rd</sup>-level pool deck), and 7:00 a.m. to 12:00 a.m. (14<sup>th</sup>-level rooftop terrace).
- Consider prohibiting live music (including DJ events), amplified music, and/or ambient music on any outdoor areas not fully-enclosed (e.g., 2<sup>nd</sup>, 3<sup>rd</sup>, and 14<sup>th</sup>-level rooftop areas).

- If music is allowed on outdoor areas, require Project applicant or Hotel operator to install an on-site sound system designed by a qualified acoustical engineer such that noise levels will not exceed the City's numeric exterior noise standards at surrounding sensitive land uses. The design should include the incorporation of speakers or an array of smaller speakers to maximize the audibility of on-site sound levels while minimizing the spread of sound beyond the outdoor area perimeter. This shall include, but not limited to speakers angled towards the interior of the property. For example, within the 14<sup>th</sup>-level terrace area, speakers shall be directed below the top of the railing (if necessary, downward tilted at an appropriate angle) and ceiling/wall-mounted speakers shall be oriented directly downward towards the floor. Alternatively, within the 3<sup>rd</sup>-level pool area, speakers shall be directed downward towards the floor and away from the adjacent apartment units. Additionally, the acoustical design plan shall include the calibration and settings for any on-site sound system deployed at the Project to ensure that live or amplified music does not cumulative exceed 55 dBA (daytime) or 50 dBA (nighttime) at the adjacent apartment property line. Furthermore, the on-site sound system shall be equipped with a master noise control system capable of monitoring and self-adjusting to ensure maximum dBA noise levels are not exceeded. Prior to operation, the Project applicant or Hotel Developer shall test the sound level to confirm that the sound levels are consistent with said decibel requirements as directed by a qualified acoustical engineer. Hotel management shall ensure event staff calibrates the sound systems and speaker arrangements prior to their use.
- If live music is permitted, allow performances only on the 14<sup>th</sup>-level terrace subject to utilizing only the on-site sound system described above, set at or below pre-approved volume settings to comply with LBMC noise standard and not to exceed 70 dBA at approximately 25 feet from the center of the source.
- If amplified music is permitted, allow amplified music only on the 3<sup>rd</sup> and 14<sup>th</sup>-levels subject to utilizing only the on-site sound system described above, set at or below pre-approved volume settings to comply with LBMC noise standard and not to exceed 60 dBA at approximately 25 feet from the center of the source (3<sup>rd</sup>-level), or 70 dBA at approximately 25 feet from the center of the source (14<sup>th</sup>-level).
- Before the issuance of a Certificate of Occupancy, the Project applicant or Hotel operator shall have an acoustical design plan submitted to the City for the Project file to demonstrate specified noise levels are not exceeded at the property line, including but not limited to exterior/interior noise limits and noise restrictions set forth in LBMC §§ 8.80.150-200. Plans submitted should demonstrate, *inter alia*, cumulative noise levels from all sources (e.g., patron voices, live/ambient noise, HVAC, etc.) at adjacent residential property lines do not exceed 55 dBA (daytime) or 50 dBA (nighttime). The acoustical design plan shall include the calibration and settings for any on-site sound system deployed at the Project to ensure that live, amplified, and/or ambient music does not cumulative exceed said noise levels. The plan shall also include additional efforts and actions that can be taken by the establishment to control unnecessary noise in the event noise levels are exceeded.

## VI. CONCLUSION

As discussed above, the Project applicant has failed to provide basic information required for the City to adequately assess the true impacts of this Project. As a result, operational noise impacts were never analyzed and they clearly demonstrate a categorical exemption is inappropriate for the Breakers Hotel CEQA review. This inapplicability is further supported by the fact that the City incorporated Project-specific noise mitigation measures without public scrutiny that CEQA affords.

Moreover, the three-dimensional relationship of the newly-constructed apartment building at 207 Seaside Way was not disclosed in this Hotel Project's photographs and its architectural drawings. Without that information, it is understandable that some of the Project's obvious outdoor deck noise impacts might be missed. But the visual adjacency of the Hotel's proposed exterior rooftop terrace, pool deck and outdoor bar, its proposed music and noisy activities, and large crowd potential make obvious to anyone that locating a noisy 3<sup>rd</sup>-level pool deck and 2<sup>nd</sup>-level terrace just 20 and 28 feet (respectively) from neighboring apartments is bound to cause severe noise disturbances. This very unusual circumstance of the proximity of these nearby residential apartments 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 MND or EIR— just like similar projects reviewed by the City.

Sincerely,



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

*Enclosure:*

Attachment 1: Statement of Qualifications

## Attachment A

### **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 the last 43 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 single-family 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



SMITH ENGINEERING & MANAGEMENT

February 4, 2019

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

**Subject: Breakers Hotel Project IS/MND (CE-18-152, CUP18-033)**  
P 19001

Dear Mr. Kracov:

At your request, I have reviewed the Traffic Impact Study (the "TIS"), the Transportation Demand Management Plan (the "TDMP"), the Supplemental Traffic Analysis (the "Supp. TIS"), and the City of Long Beach (the "City") staff response<sup>1</sup> to traffic claims made by appellants to the Breakers Hotel Project (the "Project"). 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.

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<sup>1</sup> See City of Long Beach (undated) Breakers Appeal Response, PDF pp. 307-326, 359-385 (City Response to Project appellants' 71 delineated comments), <http://longbeach.legistar.com/View.ashx?M=F&ID=7007803&GUID=C4C71985-5B36-44A0-BBFC-5B801D7ABB97>.



## Limited Area of Traffic Analysis

The TIS analyzes traffic at 10 intersections all relatively close to the Project site. There is no clear indication of why analysis was limited to these 10 intersections. This commenter is aware that other recent project environmental documents have disclosed deficient traffic conditions or potentially deficient conditions at intersections only a few blocks to the north and northeast of those analyzed in the subject TIS. It is unknown whether those forecast conditions were or are being offset by direct project mitigations, by other independent transportation system improvements or simply didn't materialize. However, the City must provide a cogent explanation why the analysis was limited to the 10 intersections it did study when there is some evidence that intersections just a little farther away might be significantly impacted by this Project's traffic. Neither the TIS nor the Supp. TIS analyze nearby intersections operating at or near unacceptable levels (as previously raised by appellants challenging the Project) or any intersections along Atlantic Avenue between Ocean and 4<sup>th</sup> Street, which are between 0.4-0.8 miles from the Project site. Even the slight increase in vehicle congestion generated by the Project could trigger the applicable threshold.

Under the City policy, only project traffic resulting in an intersection operating at a Level of Service (LOS) of E or worse can be considered significant. Therefore, by examining only nearby intersections generally operating at a LOS A or B, the TIS and Supp. TIS ignores the Project's cumulative impacts on other nearby intersections operating at or near LOS E. Nowhere does the applicant or City provides substantial evidence supporting its refusal to consider cumulative traffic impacts at these nearby intersections. This is reasonably likely when considering the Project's cumulative impact on nearby studied intersection 10 (Ocean and Alamitos), which will drop from a 2018 existing condition of a 0.735 LOS-C (AM peak hour) to a 0.838 LOS-D in the 2021 future condition—constituting a 0.103 cumulative impact, of which, this Project is 6.8 percent responsible.<sup>2</sup> This is “cumulatively considerable,” which means the “incremental effects of an individual project are significant when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.”<sup>3</sup>

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<sup>2</sup> Calculated:  $[(0.838 \text{ future w/ Project}) - (0.735 \text{ existing w/o Project})] / (0.007 \text{ project contribution}) = (6.79 \text{ percent})$ .

<sup>3</sup> See CEQA Guidelines § 15065(a)(3); see also *Kings Cty. Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 718, 720-21 (rejecting determination that less than 1 percent to area emissions was less than significant because analysis improperly focused on the project-specific impacts and did not properly consider the collective effect of the relevant projects on air quality).

## **The Traffic Analysis Is Dependent on the Representativeness of Traffic Counts Taken on a Single Day**

The traffic impact study is based on peak period traffic counts at selected intersections taken on a single day, June 7, 2018. The TIS states at page 21 that “this was a typical weekday when there was no holiday, no rain and schools were in session”. While it is normal practice to base a TIS on intersection counts taken on a single day, given the immediate proximity of the Long Beach Convention Center and the substantial fluctuation in its attendance based on the nature and scale of events taking place on any given day, it is critical to know what events were taking place there on that date, what the attendance on that date was and how that attendance to the average daily attendance at the Convention Center and to the 85<sup>th</sup> percentile daily attendance there. However, the TIS contains no such information. Consequently, the representativeness of the fundamental baseline traffic counts is open to question. At a minimum, the City should compare the attendance data for all Convention Center facilities on June 7, 2018 to data on average and large-attendance (85<sup>th</sup> percentile) daily events at the Center and, based on that data comparison, make a judgment on how representative or not the June 7, 2018 traffic counts are.

In short, *the Project’s proximity to the Convention Center is an unusual circumstance because the Project’s cumulative impact on nearby intersections will be highly dependent on the level of traffic generated by the Convention Center* (e.g., the Project’s incremental contribution will be more significant during large, traffic-inducing Convention events). Unfortunately, neither the TIS nor the Supp. TIS address this issue with substantial evidence.

## **Excessive Discounting of Trip Generation**

The TIS assumes that, considering the availability of transit and the walkability and bikeability of the environment in the Project vicinity, 10 percent of the Project’s trips will arrive or depart the site via these modes. We have no doubt that the assumed percentage of trips using these modes is achievable and likely. However, it is improper to deduct that percentage from the motor vehicle trips for the Project estimated from data contained in the Institute of Transportation Engineers (“ITE”) publication *Trip Generation, 10<sup>th</sup> Edition*. The longstanding rationalization for making such deduction was that the underlying data for the publication was gathered at suburban sites with singular land uses where it was easy to count motor vehicle traffic associated with the particular land use involved and where transit was sparse or non-existent and where bicycle and pedestrian travel was rare. However, in more recent editions of *Trip Generation*, especially the 10<sup>th</sup> Edition (the current edition that was relied on in the TIS), data has been increasingly collected in denser urban and suburban environments and in mixed-use settings where there is a much stronger infrastructure of transit, walking and biking facilities and more prevalence of use of those modes.

The key understanding is that the motor vehicle trip data in the current edition of *Trip Generation* does not reflect a zero base of transit, pedestrian and bicycle travel activity – but unfortunately the underlying percentage using those modes is not quantified. So it is excessive to deduct the full 10 percent of anticipated transit, walk and bicyclist travel from the motor vehicle trip estimates. That is not consistent with the good faith effort to disclose impact, nor in keeping with trip credits associated with hotels near other large convention centers, like those in LA. While City staff claims that this Project site is “different from the examples provide for near the LA Convention Center,” no facts—much less substantial evidence—is provided to support this conclusory claim.

### **Failure to Consider Impact of Ride Hailing Services**

The TIS has completely failed to address the effects of the rise in the activity of transportation network companies (“TNCs” sometimes called ride-sharing services) like Uber and Lyft and their contributions to traffic impacts. TNCs have had a significantly transformative impact on the modes by which people travel, the places to which they travel to fulfill their trip purpose, and in creating induced trips (trips that wouldn’t be made if the services were not available). This is particularly true in dense urban areas like the subject Project’s area. TNCs also considerably add to traffic impacts, because for every passenger trip served, there is an extra trip circulating to access the next service call which creates extra VMT in the area. A recent San Francisco study<sup>4</sup> found that travel by TNCs caused double the vehicle miles traveled (VMT) in key areas than would normally be accounted for by growth in population and employment if the TNCs did not exist. They are also known to create operational and safety problems because of the penchant for stopping in travel lanes to pick-up or drop-off passengers rather than pulling to the curb. Unfortunately, neither the TIS nor the Supp. TIS account for these additional TNC trips.

### **Failure to Consider Trip Generation of Local Serving Events**

The DEIR treated the ballroom and meeting rooms as ancillary facilities of the hotel; that is, facilities that do not have independent trip generation that is accounted for. But if the hotel facilities are used for, say, local club or business organization meetings or for local conference events and celebratory events where the vast majority of attendees are not visitors staying at the hotel, the separate trip generation should be established for the ballroom and conference facilities. This is why we suggest in our comments on the TDMP limitations on the nature of bookings for such events.

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<sup>4</sup> *Transportation Network Companies and Congestion Report*, San Francisco Metropolitan Transportation Authority, 2018.

## Issue of Parking Provision

The Project relies on 250 off-site parking spaces provided at the Convention Center and 150 spaces at 211 E. Ocean Blvd. However, the Convention Center is providing parking for other existing and planned development projects.<sup>5</sup> Nowhere is it demonstrated that the parking obtained is currently surplus and that the arrangement is not just a contractual displacement of existing parkers on at the Convention Center. This must be properly analyzed.

## Failure to Adequately Respond to Appellants Traffic Comments

In response to fact-laden traffic comments raised by appellants challenging this Project, City staff repeats serially that “[t]he traffic study was prepared consistent with the City of Long Beach traffic impact analysis guidelines.” However, under CEQA, lead agencies may not ignore impacts by claiming discretion in adopting its own thresholds. As noted by the court in *East Sacramento Partnership for a Livable City v. City of Sacramento*, (2016) 5 Cal.App.5th 281, while CEQA grants agencies discretion to develop their own thresholds of significance, “[t]hat discretion, however, is not unbounded, as the determination that the Project has no significant environmental impact must be supported by substantial evidence.” *Id.* at 300.<sup>6</sup>

## The Transportation Demand Management Plan Must Be More Explicit

The Projects October 2018 Transportation Demand Management Plan (TDMP) must be made more explicit with respect to identifying measurable goals, monitoring of progress and in regard to the extent to which specific actions are taken. Suggestions follow.

- The TDMP plan identifies a ‘guaranteed ride home’ program to encourage employees to use alternative forms of transportation by being assured they could get home quickly in case of emergency or if they are required to work later than normal and it is too dark to walk or bike safely, their transit routes have significantly decreased frequency or terminated service, or they have missed their carpool/vanpool ride. The plan should specify that the Project’s Operator would pay for up to at least some

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<sup>5</sup> See e.g., 100 E. Ocean Blvd. (Dec. 2018) IS, p. 15 (280-spaces at Terrace Theater Parking Garage), <http://www.lbds.info/civica/filebank/blobdownload.asp?BlobID=7371>; 207 Seaside Way Project (Mar. 2015) MND, p. 10, 21 (32-spaces requiring to be secured potentially by the nearby three-level parking structure for the Convention Center), <http://www.lbds.info/civica/filebank/blobdownload.asp?BlobID=4949>;

<sup>6</sup> See also p. 303-304 (“[T]he fact that a particular environmental effect meets a particular threshold cannot be used as an automatic determinant that the effect is or is not significant ... a threshold of significance cannot be applied in a way that would foreclose the consideration of other substantial evidence tending to show the environmental effect to which the threshold relates might be significant. [Citation.]”) (emphasis added).

- specific reasonable number of guaranteed rides home per year and the maximum dollar value per ride that would be paid for taxi or ride-hailing service rides, or commit to providing such rides via a vehicle controlled by the Operator, or commit to participating in Metro's GRH program (<https://www.metro.net/riding/rideshare/grh/>).
- The TDMP mentions subsidizing transit passes for workers. The TDMP should be augmented to include a commitment that the Project Operator would contribute to a specific level of subsidy towards local transit passes through the LA Metro Business Transit Access Pass ("B-TAP") program (<https://www.metro.net/riding/eapp/>) to hospitality employees at the hotel, perhaps stating a maximum dollar ceiling on the value of subsidy provided.
  - To minimize employees excessively circulating the streets in the neighborhood of the Project in search of free or favorably-priced parking, the Project should provide a specified number of free or minimum specified cost parking spaces, including a specified number of free spaces for employee carpools or vanpools at lots it controls or leases within a specified walking distance of the Project site.
  - The TDMP should include a commitment that the Operator will coordinate with the Long Beach Convention Center ("LBCC") to encourage attendees of LBCC events to stay at the Project site and thereby generate less motor vehicle traffic. This includes the Operator making reasonable commercial efforts to ensure the Project is listed as an official convention or event hotel for all LBCC events, including being included in any promotional materials sent by LBCC to attendees, and listed on LBCC's website with direct links for bookings.
  - Consistent with the traffic study assumption that ballroom and meeting rooms would be ancillary to the hotel use and not generate independent vehicle-trips, ballroom and meeting rooms shall be restricted to events that are only coupled with group hotel-stay bookings of at least 20 rooms for at least a single-night stay.

## Conclusion

The City proposes to approve the Project under a categorical exemption from CEQA review under the terms of CEQA Guidelines § 15332. The criteria for exemption under CEQA Guidelines § 15332 include a finding that the Project would not result in any significant effects relating to traffic. Given all of the foregoing, it is my professional opinion that there remain sufficient questions about the Project's traffic consequences so that it would be inappropriate for the City to make the necessary finding about traffic to approve the Project under CEQA Guidelines § 15332 categorical exemption.

Mr. Gideon Kracov, Esq.  
February 4, 2019  
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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 21<sup>st</sup> 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.

**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.