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June 4, 2013

VIA E-MAIL

Hon. Ed P. Reyes, Chair
Hon. Jose Huizar, Council Member
Hon. Mitchell Englander, Council Member
Attn: Sharon Gin, Legislative Assistant
Los Angeles City Hall
200 North Spring Street
City Hall, Room 395
Los Angeles, CA 90012

Re: Hollywood Millennium Project
CPC-2008-3440-AC-CUB-CU-AV-HD; CPC-2013-103-DA
VTT-71837; ENV-2011-0675-EIR
Hearing Date: June 4, 2013; Agenda Item 3

Dear President Reyes and Members of the PLUM Committee:

We represent HEI/GC Hollywood & Vine Condominiums, LLC ("HEI/GC") and the Hollywood & Vine Residences Association ("HVRA"), the owner and homeowners association, respectively, of the W Hollywood Hotel & Residences at 6250 Hollywood Boulevard, Los Angeles, California 90028 (the "W Residences"), and we submit this letter on their behalf. We previously submitted public comment letters regarding the scoping of the EIR for the Hollywood Millennium Project (the "Project") and identifying issues in the Draft EIR for the Project, which is attached for reference. We also submitted a letter to the City Planning Commission. The Final EIR fails to respond to the concerns outlined in our letters, and additional issues identified and discussed below.

HEI/GC and HVRA do not oppose all development on the proposed site, but have legitimate concerns regarding the amorphous and confusing proposed Project, which does not have a specific scope or description, and wholly engulfs and obscures the historic Capitol Records Building. The Applicant requests carte blanche to construct numerous buildings on the site without any future evaluation of the actual architectural design, massing, pedestrian and traffic flow, and uses, including multiple venues that serve alcohol, based solely on evaluation of impacts at the level of a Program EIR. There is no other project in Hollywood, or the City, that has been approved with this minimum level of specificity without also providing for subsequent

entitlements at the time of actual project design. As set forth in our previous letters, the EIR for the Project fails to adequately describe the project or properly analyze several issues including, but not limited to, land use, historic resources, aesthetics, traffic, parking, air quality, noise, school and library services, parkland, open space, landfill capacity and growth-inducing impacts.

HEI/GC and HVRA appeal the City Planning Commission approval and recommendations of approval of the Project entitlements, because the Final EIR fails to fully evaluate these significant environmental impacts. The City Planning Commission failed to support its findings with substantial evidence, and failed to proceed in a manner as required by law. An agency abuses its discretion when it fails to proceed in a manner required by law, issues a decision unsupported by findings, and/or makes findings that are not supported by evidence. Cal. Code Civ. Pro. § 1094.5(b). The City Planning Commission failed to support its decision with adequate findings, and failed to support the findings it did make with substantial evidence. Any decision must be supported by evidence in the record. *Western States Petroleum Assn. v. Superior Court*, 9 Cal. 4th 559 (1995). Findings must "bridge the analytical gap between raw evidence and ultimate order." *Id.* at 514-515, citing *Topanga Assn. for a Scenic Environment v. Cnty of Los Angeles*, 11 Cal. 3d 506, 151-16 (1974) (defining findings as legally relevant subconclusions that "bridge the analytical gap.") An agency "must render findings sufficient both to enable the parties to determine whether and on what basis they should seek review and, in the event of review, to apprise a reviewing court of the basis for the board's action." *Western States Petroleum*, 9 Cal. 4th at 515. Even assuming the existence of substantial evidence (as described in our appeal, it does not exist), the mere presence in the record of evidence to support a determination does not compel the conclusion that a determination—let alone a legally sufficient determination—was in fact made. *Sierra Club v. City of Hayward*, 28 Cal. 3d 840, 859 (1981).

Here, as summarized in this letter and exhibits, comments letters on the Draft EIR for the Project raised a host of analytical deficiencies and inconsistencies including, among other issues, failure of the Draft EIR to adequately evaluate the consistency of the Project with the General Plan, Community Plan, and the surrounding community, including historical structures. In making its purported findings, the City Planning Commission completely failed to address any of the points raised in these letters. The failure to respond to and correct these deficiencies does not allow the City Planning Commission to make or substantiate any findings related to compatibility of the development with the surrounding community and development; consistency with public necessity, convenience, general welfare, and good zoning practice; a lack of detriment to the health and safety of the community; enhancement of the built environment; substantial conformance with the purpose, intent, and provisions of the various applicable policy and planning documents; or any necessary findings regarding hardship or necessity required for a variance. Moreover, because the Final EIR failed to provide the requisite analysis for alcohol sales and consumption, the City Planning Commission could not make or support any of the findings related to conditional uses. Lastly, the numerous defects in the Final EIR render the CEQA findings unsupported by substantial evidence, or in some cases, by any evidence at all.

HEI/GC and HVRA are aggrieved by this decision, because the significant and potentially significant impacts identified in the Final EIR and our letters, including exhibits, will negatively affect the daily lives of the residents at the W Residences.

I. The EIR Fails to Fully Evaluate a Stable, Accurate and Finite Project Description.

Our comment letter noted that the Draft EIR contains amorphous, confusing and unstable Project description that amounts in essence to a zone change with no definite proposal to accompany it. The Responses to Comments 09-3, 81-2, and 81-3, among others, simultaneously claim that the Project description is finite and stable, and also that "the proposed Project represents several design scenarios . . . [but] may be any combination of the designs analyzed in the Draft EIR." See Final EIR, p. III.B-300 (emphasis added). Rather than clarifying the proposal, the Responses to Comments mischaracterize the requests of various commenters and rely on inapposite case law to avoid clarity. In so doing, the Final EIR fails substantively to respond to comments and is therefore legally inadequate. See, e.g., *City of Long Beach v. LAUSD*, 176 Cal. App. 4th 889, 904 (2009).

The Responses to Comments 81-2 wrongly attempts to rely on cases such as *Dusek v. Redevelopment Agency*, 173 Cal. App. 3d 1029, 1041 (1985) and *County of Inyo v. City of Los Angeles*, 71 Al. App. 3d 185 (1977) for the proposition that an "elastic" project description is not per se invalid. That reliance is misplaced. In *Dusek*, the primary issue was whether an EIR for the adoption of a 200-acre redevelopment project area allowed approval of a project that included only the demolition of an historic structure on a 7.55-acre parcel within the proposed redevelopment area. *Dusek*, 173 Cal. App. 4th at 1033. The EIR in that case specifically evaluated demolition of the historic structure, the impacts of which were clearly "the most significant impact of the project" and "the focal point of the EIR." *Id.* at 1034, 1041. In fact, the Court opined that the only reason for evaluation of the larger project was to avoid the possibility of segmentation if only the smaller site were evaluated, and the clear object of the EIR was evaluation of the impacts on the historic structure. *Id.* at 1042. Also, the general project description provided in the *Dusek* EIR assumed further CEQA review. *Id.*

None of the considerations in *Dusek* apply in this case. First, no single impact is at issue, and the Final EIR cannot claim to have addressed a singular overriding concern of the public that would occur irrespective of the final form of the proposed Project. Although effects to the Capitol Records building and other historic structures within the Project site represent one such concern, others such as traffic, air quality, noise, and aesthetics, and pedestrian safety also apply. The Draft EIR identified—and the commenters have expressed concern regarding—a constellation of environmental effects, and each of the impacts differs according to the uses and form of the final Project, neither of which the Draft or Final EIR allows a reader to discern.¹

¹ Here, we emphasize that the evaluation of different permutations of development allowed under the proposed Design Regulations, according to different environmental issue areas, forces the public and decisionmakers to "ferret out" the impacts of any single permutation from the EIR. This misleads the public as to the true nature of the

Although the Final EIR attempts to deflect this criticism with the mantra that the Draft EIR evaluates the "worst case" scenario for each issue area, the fact remains that no one—including the Applicant—appears to have any understanding of what the proposed Project will ultimately comprise. Indeed, the Final EIR directly acknowledges the completely indeterminate nature of the proposed Project, stating in the Response to Comment No. 81-5 that it would allow the Applicant (or someone else) to build "structures that are consistent with the growth of Hollywood and the local economy at the time of construction," which could be 22 years from the time of approval. Final EIR, p. III.b-305. This statement absolutely confirms what we stated in Comment 81-5 and what several other commenters have observed: that the proposed Project and its equivalency program are overbroad, and amount to little more than a zone change with no specific development proposal. However, rather than substantively respond to this valid criticism and provide some clarity regarding the scope of the development, the Final EIR absurdly brushes aside requests for the required and appropriate clarity and stability as requests for "detailed engineering design." *See, e.g.*, response to Comment No. 81-2. Thus, the Final EIR fails in its obligation to provide substantive responses to comments, continues to disallow an intelligent evaluation of the benefits of the project in light of its significant effects, and fails to substantiate the findings required to approve the Proposed Project. The Final EIR is, therefore, inadequate under CEQA. *See* Pub. Res. Code § 21081(b) (requiring an agency to make findings that the benefits of a project outweigh its significant environmental effects); *See King County Farm Bureau v. City of Hanford*, 221 Cal. App. 3d 692, 712 (1990) (decisionmakers must be able to evaluate the benefits of a project in comparison to its environmental effects); *City of Long Beach v. LAUSD, supra* (an EIR must substantively respond to comments).

II. The Project Description Fails to Meet the Filing Requirements for a Vesting Zone Change

Even assuming, *arguendo*, the Final EIR passes legal muster as a project EIR in the first instance (and, it does not), the Final EIR does not provide sufficient detail to consider approval of the entitlements sought. The Draft EIR specifies and the Recommendation Report confirms that the Applicant seeks a vesting zone change and vesting conditional use permit, among other approvals. Draft EIR, p. II-49. However, the Los Angeles Municipal Code ("LAMC") requires specificity in an application for these entitlements, which neither the Draft EIR nor Final EIR provides.

Section 12.32 Q of the LAMC sets forth the required elements of an application for a vesting zone change. These requirements are specific, and contemplate a specific development proposal, rather than a program. Among these, the application "shall show the proposed project's": Height, Design, Size, Square footage, Number of residential units, Use and location of buildings, Site plan, Rendering and architectural plan, The location of landscaped areas, Walls, and "Other information deemed necessary." LAMC § 12.32 Q.3(a). Instead of these required elements, the Draft EIR provides a "concept plan" that it acknowledges may not resemble the

impacts and violates CEQA. *Environmental Planning and Information Council v. County of El Dorado*, 131 Cal. App. 3d 350, 357–58 (1982).

ultimate development in any particular respect. See Draft EIR, pp. II-21-23 and Figure II-7. The purported Equivalency Program and Development Regulations allow development of a nearly infinite number of variations, ranging anywhere from nearly over 900 residential units (rental or owned) to none, anywhere from over 200 hotel rooms to none, 215,000 s.f. or more of office uses, and an indeterminate square footage in which alcohol sales and/or service would occur. Other uses, such as restaurants and health/fitness clubs are listed, but may or may not appear in the final development. Open space and landscaped areas on the Project site, according to the Draft EIR, could comprise anywhere from four to twelve percent of the site. General building envelopes allow development on several areas of the Project site, in infinite configurations. Thus, while the Final EIR correctly but irrelevantly notes that "detailed engineering design" is not required and that some flexibility is permitted, it cannot justify the amorphous nature of the proposal it includes, and the document fails to provide sufficient detail to support the request for the entitlements sought.

III. The EIR Fails to Substantially Address the Actual Impacts of the Service of Alcoholic Beverages and Live Entertainment

The Applicant applied for a master conditional use permit to allow the sale of alcohol in several venues, including five restaurants, one café or restaurant on a rooftop observation desk, on nightclub lounge, one retail establishment and two mobile bars. However, as set forth in our comment letter, the Project Description fails to identify specific information for each venue that is required in the City's CUB application form (CP-7773, LAMC 12.24W.1), including but not limited to: floor plans, total occupancy numbers for each venue, hours of operation, and mitigation measures related to security, noise, traffic, parking and public services. The information is necessary to determine any significant impacts caused by the sale of alcohol based on project-specific design and use, and any mitigation necessary to reduce these impacts to less than significant. The impacts of the consumption of alcohol cannot be evaluated without this information, because the impacts change based on several factors, such as whether food is served, how late alcohol is consumed, and whether alcohol is consumed outside on patio.

The Response to Comment No. 81-10 states that the master CUP establishes the maximum number of establishments, the type of alcohol serving establishments, and permitted activities at those establishments. Each operator must seek and obtain Plan Approval from the Zoning Administrator, per Municipal Code Section 12.24M. This provision allows subsequent notice and review by the Zoning Administrator based on submission of additional findings and information (see Form CP-2035). The Zoning Administrator may deny the plans if the Zoning Administrator finds that the use does not conform to the purpose and intent of the findings required for a conditional use under this section, and may specify the conditions under which the plans may be approved (LAMC 12.24M). However, the provision does not exempt the service of alcohol from subsequent environmental review.

The Response states that subsequent review, and likely conditions of approval, will occur at the Zoning Administrator level, but that review will not require preparation of a new MND or EIR because the Draft EIR analyzes the potential impacts associated with the master CUP.

However, the Zoning Administrator's subsequent review of the Plan Approval is a discretionary action under CEQA (as defined in the *Friends of Juana Briones House* case), and additional environmental review is required in order for the Zoning Administrator to impose additional conditions based on the subsequent detailed information provided on Form CP-2035. "A project qualifies as ministerial "when a private party can *legally compel* approval without any changes in the design of its project which might alleviate adverse environmental consequences." *Friends of Juana Briones House v. City of Palo Alto*, 190 Cal.App.4th 286, 302 (2010). "Conversely, where the agency possesses enough authority (that is, discretion) to deny or modify the proposed project on the basis of environment consequences the EIR might conceivably uncover, the permit process is 'discretionary' within the meaning of CEQA." *Id.*, citing, *Friends of Westwood, Inc. v. City of Los Angeles*, 191 Cal. App. 3d 259, 267, 272 (1987).

Therefore, the City must direct the Applicant to prepare additional environmental review as part of the Plan Review process for each application for service of alcohol by an operator. In addition, we request that the City Planning Commission direct that notice for any Plan Approval be distributed to owners and occupants within 500 feet, and not just abutting property owners.

IV. The Draft and Final EIR Describe a Program, and Not a Development Proposal, That Requires Further CEQA Review

At a minimum, the Final EIR must acknowledge the fact, repeatedly raised by commenters, that this document is a Program EIR and, as such, requires further CEQA review for subsequent development proposals. This feature of the EIR is, in fact, the only one shared with the *Dusek* EIR. The primary difference in this case is that while the redevelopment agency in *Dusek* contemplated such review, this EIR contemplates only administrative review, with no public comment for any development proposal ultimately submitted within the 22-year window proposed in the Development Agreement.

Section 15168(c)(3) of the CEQA Guidelines describes the use of a Program EIR as suitable for "the issuance of rules, regulations, plans, or other general criteria to govern the conduct of a continuing program." This precisely describes the nature of the proposed Project, which does not provide any specific proposal, but instead a purported Equivalency Program and Development Regulations, within which any number of projects may actually be constructed, in any number of sequences. Where an agency seeks to rely on a Program EIR to dispense with further EIRs or negative declarations, it must be both comprehensive *and* specific. "A program EIR will be most helpful dealing with subsequent activities if it deals with the effects of the program as *specifically and comprehensively* as possible." CEQA Guidelines § 15168(c)(5) (emphasis added). Here, the dizzying array of possible development and use options does not allow—and consequently the EIR cannot and does not provide—the requisite specificity to avoid further CEQA review, as section 3.1.5 of the proposed Development Agreement contemplates. *See Rio Vista Farm Bureau v. County of Solano*, 5 Cal. App. 4th 351, 371 (1992) (a "first-tier" EIR [which anticipates further CEQA review] need not provide detailed, site-specific analysis).

V. The EIR Fails to Adequately Identify and Analyze the Environmental Impacts of the Proposed Zone Change and Amendment to the Community Plan Considering Pending Litigation

Our comment letter noted that the Property is currently within the C4-2D-SN zone, with a "D" limitation that restricts the total floor area on the site to 3:1. The City Council approved a Community Plan Update that increased the FAR on the site to 4.5:1, but this is currently the subject of litigation based on three cases consolidated and pending in Superior Court (*Save Hollywood.org. v. City of Los Angeles* (BS 138370), *Fix the City, Inc. v. City of Los Angeles* (BS 138580), and *La Mirada Neighborhood Association of Hollywood* (BS138369)). The Response to Comment 81-9 confirms that the existing FAR is 3:1 per the "D" limitation, with a modified FAR of 4.5:1 under the Updated Community Plan. The Response agrees that the Superior Court may order a stay on issuing permits under the Updated Community Plan (at the 4.5:1 FAR), but claims that the EIR evaluates the Project with a variety of total floor areas, including 3:1, 4.5:1 and 6:1, and so does not need to rely on the outcome of the litigation. Final EIR Page III.B-311. First, the Applicant must request a zone change and general plan amendment to both a 4.5:1 FAR and 6:1 FAR, to account for any result in the litigation. Second, this Project's EIR does not keep it from having to comply with any stays issued by the Court under the Updated Community Plan. Finally, any analysis of the Court for the development on the site at an FAR of 4.5:1 will apply to the proposed Project. The Applicant can agree to proceed at their own risk hoping that the litigation will conclude in their favor, but cannot state that the litigation result will not apply to this Project.

VI. The Advisory Agency Failed to Properly Find Consistency with the Zoning and General Plan for the Project and Violated Due Process

The Vesting Tentative Tract Map No. 7187-CN was heard and approved by the Advisory Agency on February 22, 2013, without the necessary finding of consistency with the Project's proposed amended zoning and general plan designation. The VTTM includes a 41-lot subdivision with residential, hotel, office, restaurant, sports club and retail uses at an FAR of 6:1. The Applicant requests a zone change from C4-2D-SN to C2-2-SN, as part of the entitlements to be heard initially by the City Planning Commission on March 28, 2013, and subsequently by the City Council. The existing zoning on the site includes a D condition that limits buildings on the lot to three times the buildable area of the lot, with an allowance to exceed a 3:1 FAR if the project conforms to the Hollywood Redevelopment Plan, the Transportation Program and the Hollywood Boulevard District urban design program, and any CRA Design for Development. The CRA has dissolved, but the Redevelopment Plans remain in place and are administered currently by the Designated Local Authority.

In addition, the Hollywood Community Plan Update, which is currently subject to litigation, allows a 6:1 FAR for properties located in the Regional Center Commercial land use designation that have been approved by the City Planning Commission. The City Planning Commission and City Council have not yet approved the zone change to allow the various uses permitted in the C2 zone and not in the C4 zone, and have not approved the increase in FAR

from 3:1 under the current D limitation to 6:1. In addition, the Designated Local Authority has not approved the increase in FAR to 6:1. Therefore, the City's Advisory Agency violated due process by approving the VTTM prior to approval of the zone change and general plan amendment by the City Planning Commission and City Council and prior to approval of the increase in FAR by the Designated Local Authority. See Response to Comment No. 81-9.

The Advisory Agency approved the VTTM immediately as a tactical matter, so that it could be heard on appeal by the City Planning Commission at the same time that the Commission heard the other entitlements. However, the Advisory Agency blatantly and knowingly violated due process. The VTTM can only be approved after the City Planning Commission and City Council take action on the other entitlements, and the Advisory Agency may find consistency. Then, the City's Municipal Code and State Subdivision Map Act provide for a further appeal of the VTTM to the City Planning Commission. The City cannot circumvent this process, which has been consistently applied to other projects in the City, just for the purpose of the Applicant's convenience.

VII. The Project EIR Fails to Fully Evaluate the Traffic Impacts and Parking Impacts of the Project

The Draft EIR fails to fully evaluate the traffic and parking impacts, because the Draft EIR must make certain assumptions due to a lack of finite Project Description. Response to Comment No 81-11 justifies the Draft EIR's modified trip generation rates by stating that the ITE Trip Generation Manual for peak hour rates for High-Rise Apartments are 30 to 35% lower than the standard Apartment rates. In addition, the Draft EIR uses adjusted generation values, because "different uses are more or less able to take advantage of transit, walk-in, mixed-use and other opportunities at the Project Site." However, the Project Description is so amorphous that there is no requirement of a certain mix of uses that would support using the reduced rate for mixed-uses. In fact, the Project could include all office uses that would not justify any reduction. In addition, the Project could include tall office buildings but lower apartment buildings, which would not justify taking the lower High-Rise Apartments generation rate.

The same analysis applies to the parking calculations. Response to Comment No. 81-12 states that "as a mixed-use Project, different users will share a portion of the parking spaces during a 24-hour period." Although the Draft EIR did not take any reduction for transit use, it did take reductions for sharing between the office/restaurant/retail/commercial uses. Again, the Project Description allows for a variety of uses, or a single use. Therefore, the shared parking analysis is not warranted based on the amorphous Project Description. Finally, Comment No. 81-12 states that it uses the base rate of 2 parking spaces per 1,000 square feet, as allowed in Hollywood by LAMC 12.21.A.4(x)(3). However, this is already a reduction of the 4 spaces per 1,000 square feet of retail use, which is typically required for retail use and is generally accepted in the leasing industry as necessary to meet a retail store needs.

VIII. The EIR Fails to Adequately Respond to Comments Regarding the Air Quality Impacts of the Proposed Project

The Response to Comment No. 07-02 and to other comments related to the air quality impacts of the Proposed Project are wholly inadequate and improperly attempt to discount or disregard the Draft EIR's determinations regarding those impacts. The South Coast Air Quality Management District ("SCAQMD"), as the regulatory agency charged with regulating and improving air emissions in an area that includes the City, brings particular expertise to air quality impact analysis. Indeed, the City's CEQA Thresholds Guide (the "Guide") expressly relies on the SCAQMD analytical methods. *See* Guide, pp. B-1 and B.1-3. Moreover, the Guide reflects the City's determination that where a project could "create or be subjected to" such conditions as potential CO hotspots or odors, a significant impact would result. Guide, p. B.2-4 (emphasis added). Recommended mitigation measures in the Guide include *locating sensitive receptors* away from hotspots. Guide, p. B.2-9 (emphasis added). Consistent with this determination, and as described on page IV.B.1-49, the City *requires* preparation of a health risk assessment ("HRA") for any residential development within 500 feet of a freeway.

Thus, the Draft EIR properly recognized that, according to *the City's own adopted thresholds for CEQA analysis*, as well as standard practices, the placement of a project within an area that could be subject to adverse air quality conditions could constitute a significant impact and included mitigation measures to reduce the potential impact. However, the Final EIR, responding to comments from SCAQMD and JMBM, impermissibly attempts to discount the air quality impacts the Draft EIR identified. In particular, the response to Comment No. 07-02 wrongly attempts to rely on *South Orange County Wastewater Authority v. Dana Point (SOCWA)*, 196 Cal. App. 4th 1604 (2011), which is inapplicable to this circumstance. First, *SOCWA* concerned whether the lead agency was required to prepare an EIR, rather than an MND, to account for odor impacts to an area for which a zone change was proposed. In that project, unlike here, residential development was not proposed, but was theoretically permissible under the proposed zoning—"a gleam in the developer's eye." *Id.* at 1610. Moreover, in that case, the Court acknowledged that the project in *SOCWA* would have no effect on the existing odor emissions at issue. *Id.* at 1617.

Here, however, the proposed Project includes residential units and would itself contribute to and exacerbate the purported effects of "the environment." First, as stated in the Project Description, the proposed Project could include as many as 492 residential units and 200 luxury hotel rooms. Far from merely "a gleam in the developer's eye" (as it was in *SOCWA*), some residences are proposed as part of the proposed Project, and the threat of impacts to them are hardly theoretical. Secondly, where proposed zone change in *SOCWA* would have no effect on the odors at issue in that case, the proposed Project here would contribute to air quality impacts of the 101 Freeway. As stated on pages IV.B.1-37 and IV.B.1-41-42 of the Draft EIR, the proposed Project would cause significant and unavoidable impacts regarding construction and operational emissions, respectively. According to SCAQMD analytic methods, projects with project-specific air quality impacts are also considered to have cumulative impacts. *See* Draft

EIR, pp. IV.B-53–55. Consequently, the proposed Project would, in combination with past and present projects, exacerbate air quality impacts associated with the 101 Freeway and have a significant cumulative impact on air quality in the vicinity, including to the residents of the proposed Project itself. Because the proposed Project would contribute to and exacerbate identified air quality impacts, it cannot claim that such impacts are merely those of "the environment on a project," as it attempts to do in responses to comments. *See, e.g.*, Final EIR, p. III.B-21. That attempt dilutes the conclusions of the Draft EIR and therefore misleads the public and decisionmakers as to the true nature of the impacts of the Proposed Project, rendering the EIR legally inadequate.

IX. The Draft EIR Fails to Disclose Significant Impacts to an Adjacent Off-Site Sensitive Receptor

Comment No. 09-11 alerts the City to the presence of a sensitive receptor, the AMDA American College and Conservatory of the Performing Arts ("AMDA"), located immediately adjacent to the Project site. The noise analysis in the Draft EIR does not disclose this receptor, as the Response to Comment No. 09-11 acknowledges. However, the candor and relevance of the response ends there.

The Response first attempts to paint the AMDA as somehow illegitimate, implying that it has no permits to operate as a school. However, the law is clear that such considerations are irrelevant, as even unpermitted facilities are considered part of the environmental baseline for CEQA purposes. *See, e.g., Fat v. County of Sacramento*, 97 Cal. App. 4th 1270 (2002) (holding that even prior unpermitted expansion of an airport properly constituted the baseline for the purposes of analysis under CEQA). Also, CEQA § 21091(d)(2)(B) requires a Final EIR to address "significant" environmental issues, which include new or more severe significant impacts. *See also City of Long Beach v. LAUSD*, 176 Cal. App. 4th 889 (2009). A failure to respond to significant issues raised (including mitigation proposals) renders an EIR legally inadequate. 176 Cal. App. 4th at 904. Simply put, even if the AMDA is unpermitted (and we provide no opinion on this question), it still represents a sensitive use immediately adjacent to the Project site, the impacts to which CEQA requires disclosure and evaluation.

Next, the same Response wrongly attempts to characterize the undisclosed sensitive receptor as not requiring analysis under CEQA. *See* Final EIR, p. III.B-45. Although the Final EIR attempts to rely on *Mira Mar* for the proposition that analysis of a sensitive receptor somehow represents an evaluation of effects on specific persons and therefore is not required, that reliance is misplaced and the argument proves too much. Both the CEQA Guidelines and the City's CEQA Thresholds Guide specifically address the issue of sensitive receptors and require analysis of the same. The sensitivity of a use, not its public or private ownership or character, is the dispositive criterion for analysis. Analysis of a sensitive receptor inherently recognizes that certain impacts would particularly affect "specific persons" deemed worthy of heightened protection. The line of argument presented in the Final EIR would effectively allow any EIR to ignore any sensitive receptor on the basis of private ownership or the specificity of

the persons who occupy the use. The Final EIR cannot shirk its obligation to disclose this new or, at least, substantially more severe, significant effect on that basis. See id.

X. The Draft EIR Also Fails to Disclose Impacts to On-Site Sensitive Receptors

Our comment letter alerts the City that the Project Description fails to clarify the sequence and timing of development, and therefore, the Draft EIR fails to analyze the effect of construction noise on residential units, which are sensitive receptors, constructed early in the Project's 22 year term. The Response to Comment No. 81-25 acknowledges that the noise analysis in the Draft EIR does not disclose this receptor. The Response then attempts two gambits to avoid the obligation to address this impact, neither of which passes legal muster.

First, the Response wrongly attempts to exclude future residents of the Project from the environment, making the novel claim that a perfectly foreseeable future use—indeed a use specifically proposed by the Project—does not require analysis. The City makes this claim in the Final EIR with the full knowledge of a 22-year development horizon and in the context of an EIR that provides a 2035 traffic analysis that anticipates and accounts for future development. The Final EIR provides no authority for this position, which contradicts the approach taken in other EIRs the City has issued and which opposes any common-sense assessment of foreseeability. Moreover, this claim contradicts the operational noise analysis of the Draft EIR, which accounted for future residents, as it was required to do.

Second, the Response attempts to conflate construction noise impacts with operational noise impacts, and to ignore the conclusions of the Draft EIR on the former. On page III.B-332 of the Final EIR, the Response claims that the Draft EIR includes mitigation to reduce operational interior noise impacts to future residents to a less-than-significant level. It ignores that the Draft EIR concluded that construction-related noise impacts on off-site receptors are significant and unavoidable. Draft EIR, p. IV.B.1-37. Given that on-site receptors would generally lie closer to on-site construction activities than off-site receptors, noise levels experienced on-site are likely higher and are therefore significant. Consequently, unless the Final EIR includes mitigation that would reduce construction-related noise to acceptable levels in the proposed residences, a new or substantially more severe significant impact would result.

Finally, and incredibly, the Final EIR claims that residents of the Project “will be fully aware of the Project’s scale and will chose to reside on the Project’s site.” First, an awareness of a Project’s scale does not result in the awareness of a specific impact by a potential resident, and even if the resident was aware of the impact, it does not relieve the Applicant of its obligation under CEQA to disclose and avoid or mitigate any impacts to a less-than-significant level.

In the Response to Comments No. 09-11 and 81-25, the Final EIR dismisses these comments with irrelevant considerations and fails to provide any substantive analysis or to correct this deficiency. Either failure, by itself, renders the EIR legally insufficient and requires recirculation.

XI. The EIR Fails to Properly Evaluate the Project's Impact on the Historic Capital Records Building and the Hollywood Boulevard Commercial Entertainment District

Our comment letter identifies significant impacts to historic resources on and surrounding the site, including the Capital Records Building and Gogerty Building (City historic cultural monuments) and the contributing buildings to the Hollywood Boulevard Commercial and Entertainment District (on the National Register of Historic Places). See Comment No. 81-17. The Millennium Hollywood Project Historic Resources Technical Report, dated July 2012, notes that a project is a substantial adverse change that requires mitigation if the integrity or significance of the historic resource would be materially impaired by the proposed alteration (Historic Report, page 37). The Report concludes that the proposed Project's allowable height and density *does* have the "potential to block important views and obscure public sight lines, particularly from the south of Capital Records along Vine Street and from the Hollywood Freeway." (Historic Report, p. 37). The Report concludes that that the Development Regulations, which require certain setbacks, mitigate the impact to the historic resources to the extent feasible.

First, as stated in our comment letter, the Development Regulations, which provide certain setbacks, massing and distance fail to mitigate the impact to the extent feasible, because they do not consider the effect of the future Project's design, material, articulation, connectivity of visual lines, architectural style, space flow and other elements of a project's design. The Response to Comment No. 81-17 disregards this analysis, and merely claims that the Historic Report "evaluated all of the potential development scenarios presented in the Development Regulations, including the specific setbacks, massing and height scenarios before reaching the conclusion that the Project would have less than significant impacts on historic resources." This Response is wholly inadequate, because it does not address the character of the surrounding buildings in the Project that is essential for a full historic analysis. The City consistently considers all of these elements, and not just setbacks and massing, when determining an effect on a historic structure. A detailed articulated wood building with outdoor patios will have a very different impact on an adjacent historic structure than a solid enclosed concrete building. Therefore, the Development Regulations must include significantly more detail, which is subject to further environmental review, or the City must conduct subsequent environmental review at the time each specific building on the site is designed.

Second, the EIR fails to fully consider the impact of the Capital Records building on the immediate Hollywood neighborhood. The public view from street level looking north on Vine from Hollywood Boulevard is an unobstructed view of the cylindrical shape of the Capital Record building. The Response to Comment No. 81-17 claims that the mitigation measures included in the Draft EIR will mitigate potential impacts to historic resources to a less than significant level under *all development scenarios*. However, the Historic Report actually states that the development has the potential to block important views and obscure public sight lines from south of Capital Records. Allowing a triangular ground level setback does not mitigate all potential significant impacts – the Project design must retain the existing unobstructed view of

the cylindrical Capital Records form from the street, hills and key viewpoints within Hollywood. The Project design must also maintain views of the top of the iconic tower over the lower buildings from surrounding streets. This may feasibly be accomplished by developing shorter buildings on the Eastern side of Vine Street and concentrating the massing on the Western side of Vine Street.

XII. The EIR Fails to Quantify the Project's Impacts on Public Services, Parks, Open Space, Landfill Capacity and Growth Inducing Impacts

We reiterate all of the issues addressed in our comment letter that are not specifically restated here (see attached Comment Letter), including significant impacts to public services, parks, open space, landfill capacity and growth inducing impacts. The Response to Comments in the Final EIR claims to have fully evaluated and mitigated these impacts, but we stand by our original analysis that these areas require additional detail and environmental analysis.

XIII. The City Must Therefore Recirculate the Draft EIR to Adequately Disclose New or More Severe Significant Impacts

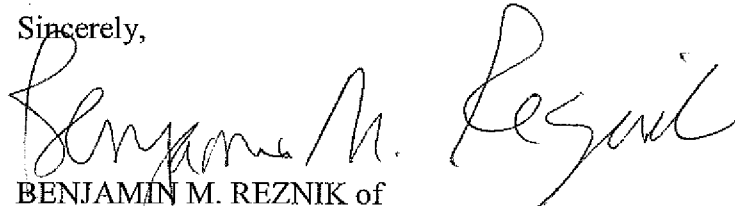
The Final EIR attempts to extricate itself from the obligation to recirculate in light of the undisclosed significant impacts. These attempts are unavailing. Section 15088.5 of the CEQA Guidelines provides the criteria for recirculation. Specifically, sections 15088.5(a)(1-2) provide that information showing a new significant environmental effect of a project, or a substantial increase in its severity, triggers recirculation. As stated above, the Draft EIR fails to disclose sensitive receptors, the noise impacts to which cannot be feasibly mitigated to a less-than-significant level. FEIR, pp. IIIB-45-46. Thus, the Draft EIR fails to disclose a new significant impact (the impact to the AMDA and to future on-site residents) or, at the very least, a substantial increase in the severity of an impact it identified (impacts to sensitive receptors generally). The City must therefore recirculate the Draft EIR to provide the public an opportunity to review and comment on this impact.

As previously stated in our Draft EIR comment letter and our letter to the City Planning Commission, HEI/GC and HVRA support the broad vision and diverse mix of uses for the Project, however, they strongly object to the scale of the Project, in terms of height and density, and the lack of specificity of the requested entitlements that will allow a variety of configurations not evaluated in the Draft EIR. The history of Hollywood's iconic architecture should be preserved and be visible and accessible to the public. The proposed Project is out of scale with the immediate historic neighborhood, by dwarfing the 150 foot high historic structures on Hollywood Boulevard and completely obscuring the Capital Records Building.

President Reyes and Members of PLUM Committee
June 4, 2013
Page 14

We request the City Council to consider a Project that sets back from and limits building heights adjacent to the Capital Records Building, as well as preserves lasting views of the Hollywood hills and the Hollywood Sign from the streets of Hollywood.

Sincerely,



BENJAMIN M. REZNIK of
Jeffer Mangels Butler & Mitchell LLP

Attachment 1 – Comment Letter

BMR:ki

cc: Via e-mail:

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ATTACHMENT

ATTACHMENT 1



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December 10, 2012

VIA E-MAIL (Srimal.Hewawitharana@lacity.org) AND MAIL

Srimal Hewawitharana, Environmental Specialist II
Department of City Planning
Environmental Analysis Section
200 North Spring Street, Room 570
Los Angeles, California 90012

Re: Millennium Hollywood Project
ENV-2011-275-EIR
Public Comment Letter

Dear Ms. Hewawitharana:

On behalf of HEI/GC Hollywood & Vine Condominiums, LLC ("HEI/GC") and the Hollywood & Vine Residences Association ("HVRA"), the owner and homeowners association, respectively, of the W Hollywood Hotel & Residences at 6250 Hollywood Boulevard, Los Angeles, California 90028 (the "W Residences"), we provide the following public comment regarding the Draft Environmental Impact Report ("DEIR") for the Millennium Hollywood Project (the "Project"), prepared by the City of Los Angeles (the "City").

On May 31, 2011, HEI/GC submitted a public comment letter regarding the scoping of the EIR for the Project. After review of the DEIR, we have several concerns about the Project and the accompanying environmental analysis, because the DEIR fails to fully evaluate the issues identified in this letter, and fails to properly analyze several additional issues relating to: project description, land use, aesthetics, parking, air quality, school and library services, parkland, historic resources, noise, landfill capacity and growth inducing impacts.

I. The DEIR Does Not Contain A Stable, Accurate, and Finite Project Description, Precluding an Understanding of What the Project Actually Contains.

The DEIR contains an amorphous, confusing, and wholly unstable Project Description, which amounts in essence to a zone change with no definite proposal to accompany it. An "accurate, stable, and finite project description is the *sine qua non* of an informative and legally sufficient EIR." *San Joaquin Raptor Rescue Center v. County of Merced*, 149 Cal. App. 4th 645,

655 (2007) ("*San Joaquin Raptor II*"), quoting *County of Inyo v. City of Los Angeles*, 71 Cal. App. 3d 185, 193 (1977). Furthermore, "[a]n accurate Project Description is necessary for an intelligent evaluation of the potential environmental effects of a proposed activity." *Silveira v. Las Gallinas Valley Sanitary Dist.*, 54 Cal. App. 4th 980, 990 (1997). Therefore, an inaccurate or incomplete project description renders the analysis of environmental effects inherently unreliable, in turn rendering impossible any evaluation of the benefits of the Project in light of its significant effects. Although extensive detail is not necessarily required, a DEIR must describe a project not only with sufficient detail, but also with sufficient accuracy, to permit informed decision-making. See CEQA Guidelines § 15124.

The DEIR fails to meet this foundational requirement and, ultimately, provides only the most basic understanding of what the Project entails. In fact, the only clear aspects of the Project are the doubling of the currently permitted floor area ratio to allow development of about 1.2 million square feet ("s.f.") of some combination of uses, of which about 1.1 million s.f.—an amount approximately equivalent to the Staples Center—comprises new development. Also, development of the Project would presumably occur sometime before the 2035 horizon year of the requested development agreement ("D.A."). The purported equivalency program and development regulations represent little more than a jumbled amalgam of different Project characteristics, different aspects of which are evaluated depending on the environmental issue area. A project description that allows anything is a project description that clarifies nothing.

For instance, the EIR includes a basic "Concept Plan," as well as two additional scenarios—the so-called Commercial and Residential Scenarios. (DEIR, pp. 23, 27-28) However, further reading soon clarifies that these scenarios are merely three among many, as uses, floor area, and parking may be transferred between the two halves of the Project site. Moreover, as illustrated in the purported "Development Regulations," the only guarantees provided with respect to massing are a 150-foot-tall podium on each half of the Project site, above which any number of development configurations could occur. Development above the podium could result in towers or large, blocky structures ranging in height from 220 to 585 feet,¹ dwarfing the 151-foot-tall (including the spire) Capitol Records Building and potentially displacing the Century Plaza Towers as the tallest buildings outside of downtown Los Angeles. Or, as the building envelopes illustrated in the Development Regulations indicate, two massive walls of development more akin to the Las Vegas Strip's Planet Hollywood than to Hollywood Boulevard. Despite representations throughout the DEIR that the Development Regulations would guide and limit development, avoiding environmental impacts, the Development Regulations provide large building envelopes and a number of broad generalities masquerading as standards. For example, Section 6.2 (Street Walls) only encourages architectural elements to reduce the apparent massing of the inevitable monolith: it requires nothing. Similarly, section 6.6.1.f provides that windows be recessed, except where "inappropriate." Section 7.1.1 provides that the towers shall not appear "overwrought" and shall have "big, simple moves": how can 600-

¹ By way of comparison, the Ritz Carlton at L.A. Live is 653 feet tall; the Century Plaza Towers are 571 feet tall.

foot-tall structures not appear "overwrought" in comparison to adjacent development less than one third its height?²

Further, the purported Equivalency Program and Development Regulations allow development of a nearly infinite number of development mixes, ranging anywhere from nearly over 900 residential units (rental or owned) to none, anywhere from over 200 hotel rooms to none, and 215,000 s.f. or more of office uses. Other uses, such as restaurants and health/fitness clubs are listed, but may or may not appear in the final development.

Thus, the project description fails not only to provide any meaningful description of the actually proposed development, but also, by using only generalities in terms of square footages, fails to provide any information about the actual uses planned for the Project site. As stated above, residential units could comprise rental units or for-sale units. The requested entitlements also include a conditional use permit for alcoholic beverage sales though, consistent with the rest of the project description, the DEIR fails to provide any specific information on this point (will the contemplated roof-top café (if the tower exceeds 550 feet in height), or other spaces, include alcohol service?). To the extent the Applicant has any specific plans for specialized uses that might occur on-site, the DEIR must describe those plans. *See Bakersfield Citizens for Local Control v. City of Bakersfield*, 124 Cal. App. 4th 1184, 1213 (2004) ("[T]o simply state as did the . . . EIR that 'no stores have been identified' without disclosing the type of retailers envisioned . . . is not only misleading and inaccurate, but hints at mendacity."). The actual uses of the site could alter the impact analysis and, as described in more detail below, the significant omissions in the DEIR either prevent or obscure key impact analyses. As the project description stands, the community and decision-makers are simply left to wonder as to what the Applicant would ultimately construct and precisely what would occupy that square footage. Furthermore, changes to the Project would occur with the Applicant "filing a request," but no further detail is provided regarding the level of review and how the Project would achieve compliance with CEQA.

As a result of the exclusions described above and in more detail below, the DEIR lacks the information necessary for reasoned and informed consideration of the Project's environmental impacts. *See* CEQA Guidelines § 15121(a). Moreover, given the many significant and unavoidable impacts the DEIR predicts that the Project will cause, the lack of specificity regarding the development proposal—specifically, the request for a building envelope and virtually unlimited physical and temporal flexibility—renders impossible any informed judgment by the decision-makers regarding the benefits of the Project against its significant effects, contrary to CEQA. *See King County Farm Bureau v. City of Hanford*, 221 Cal. App. 3d 692, 712 (1990). These omissions in the DEIR also deprive the decision-makers of substantial evidence upon which to make findings or adopt a statement of overriding considerations. The City must demand that the Applicant put forth an actual, finite development proposal, and must

² Particularly instructive in this regard is the acknowledgement in the Development Regulations that the "historic datum" for the community is 150 feet. *See* Development Regulations, § 7.1.5. Thus, this development would, even under the most charitable reading, dwarf the surrounding neighborhood.

base both the environmental analysis and the consideration of the Project on that basis. The City must also revise and recirculate the DEIR to provide the public and decisionmakers the opportunity for informed comment and deliberation.

II. The DEIR Fails to Adequately identify and Analyze the Significant Environmental Impacts of Removing the Zoning Restrictions and Amending the Community Plan.

The DEIR notes that the Property is within a C4-2D-SN zone, with a "D" development limitation that restrict the total floor area on the Property to a floor area ratio ("FAR") of 3:1 (Ord. No. 165659). (DEIR, III-25) The Property has a Regional Center Commercial land use designation. On June 19, 2012, the City Council approved a Community Plan Update that increased the FAR on the site to 4.5:1. Subsequently, several neighborhood groups sued the City over the Community Plan Update in response to the proposed increase in density. These include *Save Hollywood.org v. City of Los Angeles* (BS138370), *Fix the City, Inc. v. City of Los Angeles* (BS138580), and *La Mirada Neighborhood Association of Hollywood* (BS138369). These complaints allege violations of CEQA for failure to properly evaluate the increase in density, among other issues. These cases have been consolidated and are being heard by Judge Goodman in Los Angeles Superior Court, with yet unknown outcome. The Hollywood Chamber of Commerce intervened in the case, and is represented by Sheppard Mullin Richter & Hampton, the same attorneys that represent the developer of the Hollywood Millennium Project. A Motion to Compel documents is calendared for December 14, 2012. Possible outcomes of the litigation include a stay on issuing permits under the new 4.5:1 FAR density, or an order for additional environmental review under CEQA. As such, the DEIR must evaluate the Project under the existing FAR of 3:1, or provide a caveat that if the court issues a petition for writ of mandate requiring additional CEQA review for the Community Plan Update, the Project will also require subsequent CEQA review.

The Project includes an increase in FAR from 3:1 to 6:1, which is double the currently permitted density on the site. The DEIR states that the Redevelopment Plan allows an increase in FAR from 4.5:1 to 6:1, if the proposed development furthers the goals and intent of the Redevelopment Plan and the Community Plan. (DEIR, III-26) However, the DEIR does not evaluate the increase in FAR from the existing permitted FAR of 3:1 to 4.5:1, in the event that the Community Plan Update is not upheld in the court. Therefore, the DEIR must fully evaluate the land use impacts of doubling the density on the Property.

III. The DEIR Does Not Evaluate Any Impacts Related to a Conditional Use Permit for the Sale of Alcoholic Beverages or Live Entertainment.

The DEIR lists one of the proposed uses of the DEIR as a "Conditional Use Permit for limited sale and on-site consumption of alcoholic beverages, live entertainment, and floor area ratio averaging in a unified development". (DEIR, II-49) However, the DEIR fails to identify and fully evaluate the impacts for the proposed conditional uses for the sale of alcoholic beverages or live entertainment.

For a Conditional Use Permit for the sale of alcohol and/or live entertainment (CUB), the City requires specific information, such as (i) floor plans identifying areas where alcohol will be served and consumed, (ii) the total occupancy numbers of each area where alcohol will be served, (iii) the sensitive uses in the area that may be affected by the service of alcohol in this specific location, (iv) the hours of operation of the establishment, and the times when alcohol will be served within the hours of operation, (v) food service during alcohol service, (vi) the times at which live entertainment is permitted, (vii) mitigation measures, including design features and insulation, to limit the noise of live entertainment, (viii) particular mitigation measures for service of alcohol on outdoor patios and roof decks, and several other mitigation measures related to noise, traffic, security, parking, and impact on public services that are directly effected by the sale of alcohol and live entertainment. Hollywood is an area that is oversaturated with liquor licenses for both on and off-site consumption. Therefore, any proposed conditional use permit for the sale of alcohol or live entertainment must be thoroughly evaluated with input from the Police Department and community stakeholders, and each establishment within the Project must be evaluated separately. Therefore, a supplemental or subsequent MND or EIR is required for the service of alcohol and live entertainment use within the Property, at the time that the Applicant has completed at least schematic design level drawings for each establishment. This is the standard of review for CUB permits that has been consistently applied to the entitlements for the numerous hotels, restaurants and night clubs in the Hollywood area, and is required to properly evaluate the Project's environmental impacts under CEQA.

IV. The Traffic Analysis Uses Inappropriate Trip Generation Rates.

As shown in page IV.K.1-34, the traffic analysis for the Project used a trip generation rate for residential units of 0.685 trips per unit. This rate is about two thirds of the trip generation rate employed in studies for other similarly sized projects. For example, the Casden Sepulveda Project EIR used a rate of 1 trip per unit. Both projects use discounts for transit proximity. However, the DEIR for the Project provides no substantial evidence to support this lower rate, and given the number of potential residential units (about 500 in one scenario), this trip generation difference is substantial and would have a material effect on the analysis. The City must revise the DEIR and traffic study either to substantiate the failure to employ an appropriate trip generation rate, or to revise the traffic study to reflect that rate.

V. The DEIR Fails to Properly Analyze the Parking Required for the Project.

The DEIR fails to properly analyze the parking for the entire Project, in an area with a significant shortage of public parking for restaurant, entertainment and retail uses in the evenings, especially on the weekends. The Project is located in the Hollywood area near mass transit and several bus lines. These methods of transit are easily accessible for commuting to and from Hollywood for work during the day, and for tourists to access the Hollywood venues. However, the MTA lines are not frequently used for attending theater, restaurants, bars and nightclub venues in the evening, due to factors of convenience and safety. Although the Red Line has direct access to downtown for work commuting, it does not directly access most

residential areas in the City, and therefore does not provide a viable alternative for commuting for evening entertainment.

The Property currently contains approximately 264 parking spaces available to the public. (DEIR, IV.K2-4). The Project removes and does not replace these parking spaces. In addition, the Project provides parking for office, retail, restaurant, and bar uses at a rate of two parking spaces per 1,000 square feet of floor area (per LAMC 12.21.A.4(x)(3)). This is a special rate for projects within the Hollywood Redevelopment Project Area, based on proximity to transit. This rate is half of the rate of four spaces/1,000 sf that is typically required for retail spaces in the City of Los Angeles, and one tenth the standard rate of one space/100 square feet for restaurant uses (LAMC 12.21.A.4(c)(3), (4), (5)). The City adopted this rate to promote the use of mass transit in a Redevelopment Area; however, it has not proven effective, and restaurants and retail spaces are vastly underparked in Hollywood. There are not enough private lots to accommodate all of the restaurant valet services along Hollywood Boulevard and for individuals seeking to visit the restaurants, theaters and nightclubs. Therefore, the Project should include spaces available to the public to replace the 264 parking spaces that currently serve various existing restaurants and nightclubs through leases and other agreements. In addition, the Project should provide parking fully accessible to the public for all of the non-residential uses at the rates set forth in LAMC 12.21.A.4(x)(3) without additional discount.

Although the DEIR states that the final parking layout will be determined by the final use configuration of the Project, the DEIR should require that the Project be fully parked to code standards within each phase of development, so that parking cannot be deferred to a later phase. In addition, any transit reduction analysis or shared parking analysis must consider that the office/restaurant/retail/commercial calculation of two parking spaces/1,000 square feet already includes a 50 percent reduction for proximity to transit.

VI. The DEIR Wrongly Downplays The Significance Conclusions Of The Air Quality Analysis.

A. The DEIR Provides A Misleading Discussion of Significant Unavoidable Air Quality Impacts.

The tables in the Air Quality analysis for the DEIR demonstrate that the Project would result in significant and unavoidable impacts to both local and regional air quality, as well as to any residents of the Project (should the Project include residential units). However, the discussion then impermissibly seeks to downplay and dilute the effect of those impacts. For example, the analysis states on page IV.B.1-48 that even though impacts regarding toxic air contaminants ("TACs") are significant, they are typical of "other, similar residential developments in the City." However, there are no comparable developments within the community. Moreover, the analysis implies that such impacts would be mitigated by stating on the same page that local, regional, and federal regulations would "protect" sensitive receptors, but provides no discussion as to how this protection would occur or what form it would take. If impacts associated with ultrafine diesel particulate matter cannot be mitigated, and the cancer

burden on the Project site remains in excess of established thresholds, what protection can regulations provide? The DrEIR misleads the public and decisionmakers regarding the true extent of Project impacts.

B. The DEIR Fails to Disclose That The Project Would Obstruct Implementation Of The 2007 Air Quality Management Plan

The DEIR states on page IV.B.1-54 that the Project, despite multiple significant project-related and cumulative air quality impacts, including air quality impacts directly relating to cancer, would not obstruct implementation of the 2007 Air Quality Management Plan (the "AQMP"). However, the DEIR states on page IV.B.1-21 that the purpose of the AQMP is to reduce pollutants and meet state and federal air quality standards. In fact, the emissions thresholds published by the South Coast Air Quality Management District (the "SCAQMD") were developed for the purpose of attaining state and federal air quality standards. Thus, even if a project is consistent with broad growth projections, exceeding thresholds—particularly operational thresholds—would thwart the ability of the air basin to reach attainment. Indeed, this is the very meaning embodied in the concept of cumulative impacts. As stated on page IV.B.1-55 of the DEIR, the SCAQMD considers exceedences of emissions thresholds at the project level also to constitute cumulatively considerable contributions to cumulative impacts on regional air quality. Such a conclusion requires a determination that a cumulative impact—here, regional air quality and cancer risk—would occur in the first instance. *See Communities for a Better Environment v. California Resources Agency ("CBE")*, 103 Cal. App. 4th 98, 120 (2002). By contributing to—and by definition, worsening—the significantly impacted regional air quality, the Project impedes implementation of the AQMP. By failing to disclose this significant impact, the DEIR wrongly seeks to downplay it and robs the public and decisionmakers to understand the importance and effect of their decision to approve or reject the project. The City must revise the DEIR to accurately disclose this impact as significant and unavoidable. Also, where, as here, revisions to the EIR would disclose a significant impact not previously disclosed, the City must recirculate the DEIR to properly inform the public regarding the impacts of the Project. CEQA Guidelines § 15088.5(a)(1).

VII. The DEIR Fails To Evaluate The Project's Indirect Impact On School Overcrowding and Library Services.

The DEIR states on page IV.J.3-16 that payment of school fees authorized under Senate Bill 50 ("SB50") would mitigate the impact of the Project on area schools, but failed to analyze the secondary effects of school-related traffic and construction activities on the surrounding community. Recent changes to SB50 now provide that school impact fees established according to the provisions of that statute comprise full and complete mitigation of impacts "on school facilities." Cal. Govt. Code § 65996(a) (emphasis added). Impacts "on school facilities" are narrow defined, and do not absolve a lead agency of the requirement to discuss impacts that could occur to parties other than the school itself. *Chawanakee Unified Sch. Dist. v. County of Madera*, 196 Cal. App. 4th 1016, 1028–29 (2011). Examples of impacts an EIR is obligated to address, where overcrowding and a need exists to construct new facilities to accommodate

project or cumulative student generation, include traffic impacts associated with student travel to a new school facility, as well as indirect construction-related impacts on the environment surrounding a proposed school construction site. *Id.* at 1029.

Here, the DEIR has provided evidence (enrollment figures, and the facilities lack of ability to accommodate all of the Project-related student generation) that overcrowding could or would result from the addition of Project-generated and cumulatively generated students at Cheremoya Elementary and Le Conte Middle School. (DEIR, Table IV.J.3-5) Having identified a future overcrowding condition at these schools, the DEIR failed to discuss measures necessary to accommodate Project-related and cumulative students, whether at the campuses identified, or at another location, and such measures could include construction of new buildings or expansion of existing buildings at those campuses. Although the impacts of any construction activities on the school would be mitigated by SB50 fees, the impacts of such construction on the communities surrounding the affected schools or school sites do not fall within the types of impacts that fees can mitigate and are therefore subject to analysis and mitigation in the DEIR. *Id.* Thus, the DEIR must evaluate the potential construction-related impacts of school expansion, such as air quality and noise issues associated with construction, new architectural coatings, and hardscaping improvements, as well as potential indirect traffic impacts associated with the use of the expanded school. The DEIR's failure to provide this analysis, particularly in the absence of evidence to contradict the claimed necessity to reopen a school, represents prejudicial failure. The City must revise the DEIR to disclose and evaluate impacts related to project-specific and cumulative contributions to overcrowding. The City must also recirculate the DEIR to inform the public of the true consequences of approving the Project.

Similarly, the DEIR concludes that the library system would be above capacity, because the Project would create a service population of 94,494 people by 2020, but the local library system is only designed to accommodate 90,000 people (DEIR, IV.J.5-12) The only mitigation is the payment of a \$200 per capita mitigation fee. Although the Project complies with code through payment of mitigation fees, the Project is being developed in an area that does not have sufficient educational and information systems to support the residential development. Education and information are essential for creating and supporting an educated public and growing economy. Therefore, the Project should include educational and informational facilities for its residents, including resident library and business centers, free internet access for educational and job purposes, and technical support.

VIII. The DEIR Fails to Fully Evaluate the Project's Impact on Historic Resources On and Adjacent to the Property.

The DEIR concludes that the Project causes a significant impact to historic resources that cannot be fully mitigated; however, the DEIR fails to provide additional measures necessary to mitigate the significant impact to the extent feasible.

First, the Millennium Hollywood Project Historic Resources Technical Report, dated July 2012, by the Historic Resources Group (DEIR, Appendix IV.C), identifies several historic

resources on the Property (including the Capital Records Building and the Gogerty Building), and immediately adjacent to the Property (including the contributing buildings to the Hollywood Boulevard Commercial and Entertainment District (the "Entertainment District"), such as the Pantages Theater, Equitable Building, and the Guaranty Building). The public view from street level on Hollywood Boulevard includes a streetscape of historic buildings from the first half of the 20th century, that have a maximum height of 150 feet, and are visible without obstruction in front or behind. The public view from street level looking north on Vine Street from Hollywood Boulevard is an unobstructed view of the cylindrical shape of the Capital Records Building.

The proposed Project will drastically alter these views of historic structures, by providing 580+ foot towers that dominate the skyline above the Entertainment District, and by partially obscuring the Capital Records Building, even with the 4% triangular open space to the south. The Report states that in order for the Project to be considered a substantial adverse change, "it must be shown that the integrity and/or significance of the historic resources would be materially impaired by the proposed alteration." (Historic Report, p. 37) However, the Report then concludes that the Project's allowable height and density does have the "potential to block important views and obscure public sight lines, particularly from the south of Capital Records along Vine Street and from the Hollywood Freeway." (Historic Report, p. 37) The DEIR concludes that the Development Regulations (Section 6.1), which require certain setbacks, mitigate the impact to historic resources to the extent feasible. However, this is not sufficient under the Los Angeles Municipal Code or the Secretary of the Interior's Standards for Rehabilitation. The City's Office of Historic Resources does not just consider setback, massing and distance when evaluating a project's impact on an historic resource; it also considers the design, material, articulation, connectivity of visual lines, architectural style, space flow and other elements of a project's design. In order to properly evaluate the impact of the Project on the several historic resources on or near the Property, the Applicant must provide schematic level design drawings with sufficient information regarding materials, façade articulation, and character to properly evaluate the necessary design modifications to fully mitigate any impact to the extent feasible. Therefore, a supplemental or subsequent EIR will be required at the time that schematic design has been completed for each phase of the Project to evaluate and mitigate impacts to the historic structures.

Second, the Historic Report identifies the sound chambers of the Capital Records Building as character defining elements of the historic structure. The Report proposes that the Project include a shoring plan to ensure protection of the resource during construction, and general construction procedures to mitigate the possibility of settlement. (Historic Report, p. 51) However, this mitigation is not sufficient to preserve the special acoustic properties of the sound chambers. The sound chambers are significant not just for their architectural shape, but also for the quality of sound created in the space. This sound requires preservation of the chamber as well as the density of ground surrounding the chamber that is necessary to maintain the specific acoustic quality. The Applicant must evaluate this quality quantitatively, and then require that the quality be maintained during and after construction, as part of the proposed Adjacent Structure Monitoring Plan. (DEIR, MM C-2) The DEIR states that the preservation of the

Capital Records and Gogerty Building is a landlord/tenant issue, because the Project and these historic properties are under common ownership. This is not true – Once a property is designated as an Historic-Cultural Monument, its preservation comes under the public trust. The quality of work necessary to maintain the Capital Records Building and its sound chambers will be identified by the City's Office of Historic Resources, and not negotiated between the owner and tenant.

Third, other recent projects in the area, such as the W Residences, were required to limit their height to 150 feet in order to be consistent with neighboring historic properties. The Applicant must provide an explanation regarding why it was architecturally and financially feasible for the W Residences to comply with a 150 foot height limit, but it is not feasible for the Applicant to provide the same height limit for identical uses on the adjacent block.

Finally, the DEIR requires that the Applicant document the Project site in conformance with HABS standards. This documentation should require "at least" 25 images, and not "up to" 25 images (DEIR, MM C-5). Full documentation is the only method to ensure that the historic resource is properly maintained.

IX. The DEIR Does Not Protect Views and the Insufficient Project Description Does Not Provide a Full Evaluation of Aesthetic Impact.

The DEIR concludes that the Project will have significant unavoidable impacts due to focal view obstruction, cumulative height and massing. (DEIR, I-11) The Project does not include an actual architectural design, but proposes massing envelope standards, which include Development Standards, Density Standards, Tower Massing Standards, Building Height Standards, and Building and Streetscape Standards (DEIR, MM A.I-1) The DEIR then provides additional mitigation measures that attempt to mitigate any aesthetic, light/glare, or shade/shadow impacts that may be created within the design limitations. These mitigation measures include requiring treated or low-reflective materials (DEIR, MM A.I-4), and requiring certain spacing in the Tower Massing Standards to minimize shade (DEIR, MM A.2-1, 2-2). However, the aesthetic impact cannot be evaluated merely by creating massing standards, and certain limits on light and glare. The Applicant must provide the actual material and design of the various buildings in order to properly evaluate the environmental impact. The design includes the architectural style, the flow of space, the contrast to adjacent buildings, and the actual landscaping on streetscape and higher levels. This cannot be properly evaluated by trying to imagine the infinite scenarios that may be created within these proposed standards. In addition, a finding that the Project will have "significant unavoidable impacts" should not provide a free pass for the architect to design a Project with any aesthetic impact as long as it complies with basic standards. Therefore, a supplement or subsequent EIR will be required for the construction of future buildings on the site.

X. The DEIR Underestimates the Impact of the Project on Parks.

The DEIR identifies certain park in-lieu fees required for the Project, including the Dwelling Unit Construction Tax (LAMC Section 21.10.3(a)(1) and the Quimby Fees for Condominium Units (LAMC 17.12). The fees should also include all applicable recreation and park fees for residential units subject to a zone change, as set forth in LAMC 12.33 (the fees are identical to Quimby Fees for condominium units). In addition, all park in-lieu funds should be specifically allocated to parks within the immediate vicinity of the Project as a condition of the Development Agreement. This may include renovation to existing parks, or funding of future parks, such as the Hollywood Cap Park. The DEIR identifies the required open space per unit required by the Project (DEIR, MM J.4-1); however, this open space does not count towards the required parkland, unless it exceeds the typical open space requirements. The DEIR must also evaluate the proposed 2-year closure of Runyon Canyon on the Project.

XI. The DEIR Improperly Considers Certain Area as Open Space.

The Development Regulations provide that a number of building forms and structures may encroach into Project-provided open space. These include building entries, architectural façade details (undefined and unlimited), and retail storefronts. "Open space" with such encroachments provides no benefit as such, and the DEIR wrongly allows the Project to take credit for providing such space.

XII. The DEIR Failed To Adequately Evaluate and Mitigate Construction-Related Noise And Vibration Impacts.

A. The DEIR Construction Vibration Analysis Relies On Deferred Mitigation, The Effectiveness Of Which Is Unsubstantiated.

Mitigation for vibration-related building damage comprises measure H-11, which improperly defers development of mitigation and contains no quantifiable performance standards. For deferral of mitigation and analysis to properly occur, the DEIR must describe the nature of the actions anticipated for incorporation into the mitigation plan and provide performance standards. *See, e.g., Communities for a Better Environment v. City of Richmond*, 184 Cal. App. 4th 70, 95 (2010). Here, the DEIR fails. No specific criteria are provided, except for a vague commitment not to adversely affect certain structures, and to develop and implement mitigation if damage is observed during construction. Further, measure H-11 provides no information regarding the actual nature of the options available to address potential impacts. Absent an articulation of such options, the mitigation is simply insufficient and does not provide enough information to allow informed consideration of the potential effects of the project. *See Endangered Habitats League, Inc. v. County of Orange*, 131 Cal. App. 4th 777, 794 (2005).

However, even if deferral of mitigation was appropriate in this instance (it is not), the DEIR has failed to explain why deferral is appropriate. This failure alone constitutes an abuse of discretion. *San Joaquin Raptor Rescue Center v. County of Merced*, 1749 Cal. App. 4th 645,

670 (2005). Therefore, the City must revise the analysis to provide information adequate to inform decisionmakers and the public regarding the potential effects of the Project. The City must also recirculate the EIR to allow public comment on the new information that concerns this key impact analysis.

B. The DEIR Construction Noise Analysis Failed To Evaluate The Effects of Construction Noise On Residents of the Project.

The Project Description never clarifies whether the East and West Sites would be developed only together, or in some sequence, during the 22-year building horizon requested by the Applicant (2013-2035). The Project Description states that the Project will take three to three and a half years to construct, if completed in a single phase, which is unlikely. Consequently, it is reasonable to assume that construction of the Project could occur in phases, and that an early phase of the Project may include residential units, which construction activities during a later phase could adversely affect. Given that the proximity of nearby sensitive receptors renders full construction noise mitigation technically infeasible according to the City's Noise Ordinance (see DEIR, p. IV.H-27), the probability exists that any residents present on either site during construction of a subsequent phase would experience construction noise levels well in excess of the City significance thresholds. Consequently, the DEIR has failed to disclose a significant, unavoidable impact of the Project, and must be amended to provide this analysis. Moreover, the presence of an additional significant impact requires recirculation of the EIR for public comment. CEQA Guidelines § 15088.5(a)(1).

The fact that the DEIR determines that the noise will be "significant and unavoidable" does not provide a pass to allow any level of noise on the site during construction hours. Therefore, the Applicant must provide phase-specific standards at each phase of construction, that limits the noise during construction to all extents feasible.

C. The DEIR Construction Noise Analysis Failed to Evaluate The Effects of Construction Noise on the W Hotel and Residences

The DEIR identifies the Lofts at Hollywood & Vine, a residential project on the north side of Hollywood Boulevard, as a sensitive use within proximity of the Project site that has the potential to be impacted by the Project. (DEIR, Page IV H-15) However, the DEIR does not identify the W Residences, which includes a hotel and residential units, as a sensitive use. The W Residences are located directly across the street from the Pantages Theater, which has a height of 44 feet at the street façade, and 68 feet at the rear of the parcel. The DEIR notes that there will be a peak noise level increase of 33.8-47.9 dB at the Pantages Theater and 10.1 dB at the Lofts. (DEIR, Page IV.H-25)

Any construction work above the 44 foot height will not be buffered by the Pantages Theater structure, and will be clearly audible at the W Residences, which has a height of 150 feet. Therefore, the DEIR must evaluate the impact of construction noise on the W Residences over the 22 year period. The DEIR must include conditions, such as appropriate noise buffers

during construction, including at the upper stories. The DEIR must also provide proper notice to surrounding neighbors, which will affect the ability to utilize the hotel rooms and residential units facing the Project during the various construction periods.

D. The DEIR Fails to Adequately Evaluate Operational Noise Caused by Outdoor Patios and Rooftop Decks

The DEIR also fails to properly identify noise impacts during the operation of the Project. The DEIR states that the residential units, hotels, and restaurants, will have outdoor areas and rooftop patios. The DEIR fails to identify the location of these outdoor areas, and fails to provide typical mitigation measures required of other hotel rooftops in the areas, such as (i) time limits for rooftop patio use, (ii) prohibition of live entertainment and limits to background music on rooftops, and (iii) proper design and landscaping to locate noisier areas, such as pools, away from residential uses. A subsequent or supplemental environmental review is necessary prior to approval of specific outdoor areas for residential, hotel and restaurant use.

E. The DEIR Failed To Adequately Evaluate Construction-Related Vibration Impacts To The Capitol Records Echo Chambers

Page IV.H-30 of the DEIR includes a discussion of potential vibration-related building damage that could occur as a result of the Project. However, although it includes structures such as the Capitol Records Complex (receptor 15), it omits the Capitol Records echo chambers (receptor 16). Though the remainder of the Capitol Records Complex is characterized as fragile for the purposes of the analysis, the analysis fails to discuss why the echo chambers, which are also part of the complex, are not.

XIII. The DEIR Failed To Disclose Growth-Inducing Impacts Of The Project.

The Project includes, among other requests, a zone change that would allow a substantially more intensive commercial or mixed use of the Project site. Yet the DEIR includes no analysis of the impacts of the substantially increased development allowed under the new designation, or even of the (intended) growth-inducement potential of the change in designation.

The Project would vastly increase the allowable density of development in the Project site and vicinity. As described on page II-7 of the DEIR, the Project would rezone the Project site from C4 to C2, and would also remove the existing density limitation. Collectively, these changes are intended to double the permitted floor area ratio and remove all limitations on height, allowing construction of towers as tall as (in the case of the Project) 585 feet. Simply put, the Project would bring downtown and Century City building heights and density to Hollywood, establishing a precedent for other projects to follow, and an expectation among developers regarding the square footage they can obtain. Development consistent with the new designation therefore becomes foreseeable, and the failure of the DEIR to evaluate, even in a general sense, the reasonably foreseeable cumulative development facilitated by the Project renders the impact analysis incomplete and inadequate. Consequently, the City must revise the

DEIR to include this analysis, and must recirculate the DEIR to allow informed comment by the public and informed decision-making by the City regarding this undeniably precedent-setting project.

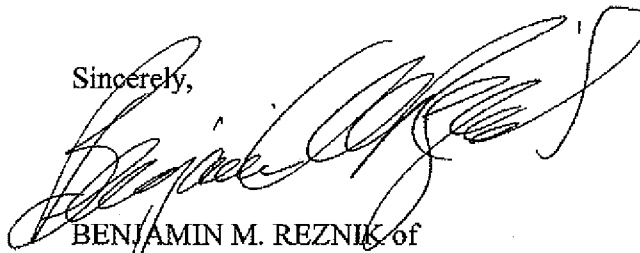
XIV. The DEIR Underestimates the Impact of the Project on Landfill Capacity and Mischaracterizes the Impact as Less Than Significant.

According to page IV.L.3-10, the landfills currently serving the City have remaining capacity of 9,947 tons per day ("tpd") of solid waste. However, as also acknowledged in the DEIR, one of those landfills, Chiquita Canyon, has only three years of capacity remaining. Consequently, even under the most aggressive development scenario, only a single landfill will serve the City by the time the Project becomes operational. If the Applicant obtains a 22-year term on the proposed D.A., fewer than ten years of landfill capacity will remain by the time the Project is constructed.

Although some plans exist for future expansion, such plans have not yet been approved, and the DEIR carefully avoids a description of the likelihood or timing of such an expansion occurring. Consequently, landfill space within and near the City remains at a premium and is properly considered a diminishing asset. Therefore, until such time as additional or alternative means of solid waste disposal become available, a cumulative impact regarding such capacity exists, and the Project's contribution to that impact is cumulatively considerable. The City must revise the DEIR to reflect the proper impact category, and must recirculate the DEIR for public comment, consistent with CEQA Guidelines § 15088.5(a)(1).

In summary, HEI/GC and HVRA support the broad vision and diverse mix of uses for the Project, however they strongly object to the scale of the Project, in terms of height and density, and the lack of specificity of the requested entitlements that will allow a variety of configurations not evaluated in this DEIR. Thank you for your consideration and response to these comments. If you have any additional questions, please contact me directly at (310) 201-3572 or bmr@jmbm.com.

Sincerely,



BENJAMIN M. REZNIK of
Jeffer Mangels Butler & Mitchell LLP

BMR:slb

cc: Michael LoGrande, Planning Director (via e-mail Michael.Logrande@lacity.org)