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VIA EMAIL AND HAND DELIVERY

Los Angeles City Council
Planning and Land Use
Management Committee
c/o Los Angeles City Council Clerk
200 N. Spring Street, Room 395
Los Angeles, California 90012

Re: Appeals of City Planning Commission's Approval of the Millennium Hollywood Project

Dear Honorable City Councilmembers:

This firm represents Millennium Hollywood, LLC (the "Applicant") regarding the proposed Millennium Hollywood Project (the "Project"). The Project involves the construction and operation of a new mixed-use and transit-oriented development anchored by the historic Capitol Records Building. The Project would transform a series of under-utilized parcels into a pedestrian-friendly development located on an approximately 4.47 acre site (the "Project Site") located in the Hollywood area of the City of Los Angeles (the "City").

For background, on February 19, 2013 the City's Advisory Agency held a joint hearing and considered the Vesting Tentative Tract Map (the "VTTM") and entitlements package associated with the Project in Case Nos. VTT-71837-CN-1A and ENV-2011-675-EIR. On March 28, 2013, the City Planning Commission considered the entitlements package for the Project in Case No. CPC-2008-3440-VZC-CUB-CU-ZV-HD; and it considered appeals filed on the VTTM that was approved at the Advisory Agency hearing. On April 27, 2013, the City Planning Commission published its letter of determination on both cases and approved the requested entitlements and denied the appeals lodged on the VTTM approval. On May 7, 2013, The Silverstein Law Firm, APC, on behalf of Communities United for Reasonable Development ("CURD") appealed the City Planning Commission's action on the VTTM. On May 13, 2013, CURD and Jeffer Mangels Butler & Mitchell LLP, on behalf of HEI/GC Hollywood & Vine Condominiums, LLC ("HEI/GC") and Hollywood & Vine Residences Association ("HVRA") appealed the City Planning Commission's approval of the entitlements package in Case No. CPC-2008-3440-VZC-CUB-CU-ZV-HD.

Below, we address the issues raised in the appeals. We respectfully request that this letter be included in the administrative record and be considered by the Planning and Land Use Management Committee ("PLUM Committee") before the public hearing scheduled for June 4, 2013.

13-0593

I. The CURD Appeals

As noted above, CURD filed two separate appeals. The first appealing the City Planning Commission's approval of the entitlements for the Project, and the second appealing the City Planning Commission's denial of the VTTM appeals. CURD submitted identical appeals for these two cases. The discussion below addresses the substantive issues raised in CURD's appeal.

A. The Project Description Complies with California Environmental Quality Act Standards.

CURD raises a series of unsupported arguments about the stability of the project description. Generally, an adequate EIR project description must be "prepared with a sufficient degree of analysis to provide decisionmakers with information which enables them to make a decision which intelligently takes account of environmental consequences." *Dry Creek Citizens Coalition v County of Tulare* (1999) 70 CA4th 20, 26. The court noted, however, that using a conceptual description of project elements was not analogous to a project description that failed to identify the required components of the project. *Id.*, at 70 CA4th, 35.

This means that an adequate project description must describe the main features of a project, but not all of the details or particulars. In addition, case law holds that a stable project description does not mean that the project description must be rigid or inflexible. "The CEQA reporting process is not designed to freeze the ultimate proposal in the precise mold of the initial project; indeed, new and unforeseen insights may emerge during the investigation evoking revision of the original proposal." *County of Inyo v. City of Los Angeles*, 71 Cal.App.3d 185, 199 (1977).

Here, the Project is presented as a concept plan and several land use scenarios. The concept plan in the Draft EIR identifies the project components including residential units, hotel, office, commercial, food and beverage, fitness center, and parking uses. The Draft EIR presents these principal project components within a maximum development and intensity footprint. The project description is designed to create an impact "envelope" within which a range of development scenarios can occur. The Draft EIR formulates its impact analysis around that envelope and thereby presents the most conservative impact analysis possible. This "worst-case impact envelope" approach complies with CEQA, which allows a lead agency to approve a project that varies from the project described in the EIR, so long as all of the impacts are disclosed. *Dusek v. Redevelopment Agency*, 173 Cal.App.3d 1029, 1041 (1985). In short, we recognize that the project description in the Draft EIR is flexible, but it is also accurate, stable, and legally adequate.

From a technical perspective, the project description must of course also include the contents mandated by CEQA. The project description in the Draft EIR satisfies the requirements of Section 15124 of the CEQA Guidelines. Specifically, Section 15124(a) requires, "[t]he precise location and boundaries of the proposed project shall be shown on a detailed map, preferably topographic." Consistent with this requirement, Figure II-1 in the Draft EIR depicts the regional vicinity of the Project Site, Figure II-5 and Figure II-6 provide Photo Location Maps of the Project Site, Figure II-7 provides a site plan of the Project Site, and Figure II-2 provides an aerial view of the Project Site and its environs. Section 15124(b)

requires, "[a] statement of objectives sought by the proposed project." Pages II-44 through II-48 in the Draft EIR discuss the project objectives. Section 15124(c) requires, "[a] general description of the project's technical, economic, and environmental characteristics, considering the principal engineering proposals if any and supporting public service facilities." Pages II-15 through II-44 in the Draft EIR discuss the Project's relevant characteristics. Section 15124(d) requires, "[a] statement briefly describing the intended uses of the EIR". Pages II-49 through II-50 in Draft EIR discuss of the intended uses of the EIR. Based on the above, the project description satisfies the mandatory technical requirements of CEQA.

In summary, the project description is legally adequate from both a conceptual and technical perspective. As a result, the impact analysis, mitigation measures, and project alternatives presented in the Draft EIR remain valid.

B. The City Did Not Violate the Due Process Rights of the Appellant.

Without basis, the appellant claims that the City violated its due process rights by not attaching the Project's Development Regulations and Land Use Equivalency Program to the City Planning Commission's letters of determination. The appellant also claims that it did not have ample time to review the Development Regulations and Land Use Equivalency Program before appealing. These assertions are incorrect for several reasons.

To start with, the Land Use Equivalency Program was included in the Draft EIR. See Section II in the Draft EIR, which describes how the Land Use Equivalency Program was designed and can be used. Similarly, the Development Regulations were also included in the Draft EIR. See Appendix II to the Draft EIR for the Development Regulations. In addition, the Land Use Equivalency Program and the Development Regulations were attached to the Staff Report prepared for the City Planning Commission hearing on the Project. The appellant had physical and electronic access to these documents. So, there is no merit in the appellant's argument that it was deprived by not having this information.

Next, from a timing standpoint, the Draft EIR was properly noticed and publically available on October 25, 2012. The Staff Report for the City Planning Commission was available for the March 28, 2013 hearing. Hard copies were available to the appellant and electronic copies were, and remain, easily accessible on the City Planning Department's website. The Final EIR available before the expiration of the appeal period did not change either the Development Regulations or the Land Use Equivalency Program. These documents were available to the appellant for over six months before the appeal period expired. The appellant cannot now complain that it did not have ample time to prepare.

Also, the Los Angeles Municipal Code ("LAMC") is silent on the required contents for letters of determination. The City can use its discretion regarding what information is attached to the letters of determination to properly inform the public, especially as to documents that were previously available. The City applied that discretion and mailed identical determination letters to the Applicant and the members of the public.

Lastly, the City's standard practice is to not attach previously-circulated and otherwise publicly-available documents to letters of determination. The appellant is experienced in litigating CEQA cases against the City. Thus, the appellant is surely aware of

how to obtain public information and cannot now feign ignorance to support its baseless due process claim.

C. The Entitlements Do Not Rely Solely on the Hollywood Community Plan Update.

The appellant wrongly claims that the entitlements can be nullified because the Hollywood Community Plan Update is being litigated. The appellant misses a key fact, which is that the Draft EIR analyzed impacts based on the 1988 Hollywood Community Plan and the Hollywood Community Plan Update (the "Update"). In other words, the Project entitlements are not based on the Update alone. While a possible outcome of the litigation could include a stay on issuing permits under the newly proposed 4.5:1 FAR pursuant to the Update, the Draft EIR analyzes and discusses potential Project impacts under a 6:1 FAR, whether existing FAR is 3:1 per the "D" Limitation, or the modified FAR of 4.5:1 per the Update. The Draft EIR also evaluates the Project's consistency with both the 1988 Hollywood Community Plan and the Update. So, if the litigation negates the Update, then the Project has already been evaluated per the 1988 Hollywood Community Plan and no subsequent CEQA review would be required. See pages IV.G.35-48 of the Draft EIR for the analysis of the Project's consistency with both the 1988 Hollywood Community Plan and the Update.

Further, as discussed in Section II, Project Description and Section IV.G, Land Use Planning, of the Draft EIR, the Applicant is requesting the removal of the "D" Limitation from the Project Site's zoning designation, thereby resulting in a FAR of 6:1. As such, the Applicant is not relying in any way on the Update for additional FAR. Also, the Regional Center Commercial land use designation allows for the construction of commercial, parking, and high-density multi-family residential uses. Development of the Project would include a combination of multi-family residential, retail, restaurant and commercial land uses, in addition to the Capitol Records Complex, which would be retained as part of the Project. This type of development would be consistent with the Regional Center Commercial land use designation of the 1988 Hollywood Community Plan and the Update.

D. The Land Use Equivalency Program Does Not Circumvent the CEQA Process.

The appellant complains that use of the Land Use Equivalency Program allows the Project to evade CEQA compliance. That is not true. It should also be noted that equivalency programs are not uncommon planning tools and have been used successfully in the City and surrounding jurisdictions.

The Draft EIR explains the Land Use Equivalency Program as follows:

"The Equivalency Program would provide development flexibility so that the Project could respond to the growth of Hollywood and market conditions over the build-out duration of the development. Land uses to be developed would be allowed to be exchanged among the permitted land uses so long as the limitations of the Equivalency Program are satisfied and do not exceed the analyzed upper levels of environmental impacts that are identified in this Draft EIR or exceed the maximum FAR. All permitted land use increases can be exchanged for corresponding decreases of other permitted land uses under the proposed Equivalency Program once the maximum FAR is reached. While it is

the intent of the Equivalency Program to allow flexibility with respect to the buildout of the Project, there are a number of controlling factors, such as the vehicle trip cap and the guidelines and regulations within the Development Regulations, that ensure this Draft EIR has properly analyzed and disclosed the full range of environmental impacts that could occur as a result of the Project.

Through the analysis of the Concept Plan and two additional scenarios, the Commercial Scenario and the Residential Scenario, further described below, this Draft EIR analyzes the greatest potential impact on each environmental issue area. The most intense impacts from each scenario represent the greatest environmental impacts permitted for any development scenario for the Project. The Project may not exceed any of the maximum impacts identified for each issue area from either the Concept Plan, the Residential Scenario, or the Commercial Scenario.

With respect to CEQA compliance, this Draft EIR studies the maximum level of environmental impacts and mitigation measures that could occur under the Equivalency Program. These maximum levels of impacts were derived through the study of the Concept Plan, Commercial Scenario and Residential Scenario. The Development Regulations, including the use, bulk, and massing controls, also were used to study the maximum levels of impacts. Ultimately, the final development scenario or phase of the Project must comply with the mitigation measures in this Draft EIR and the development limitations established in the proposed Equivalency Program.”

Draft EIR, pages II-21 through II-23. Emphasis added.

This narrative alone, let alone its application throughout the Draft EIR, demonstrates that the Land Use Equivalency Program does not evade CEQA review as the appellant falsely claims.

E. The Development Regulations are Consistent with the Purpose of the Q Conditions.

The appellant obscures the purpose of Q conditions, and concurrently claims that the City violates law by imposing the Development Regulations as Q condition constraints. That reasoning is nonsensical. Section 12.32.G.2(a) (the entirety of which we incorporate by reference herein) of the LAMC establishes the purpose of Q conditions. It states in part that “...provision may be made in a zoning ordinance that the development of the site shall conform to certain specified standards if the limitations are deemed necessary to ... secure an appropriate development in harmony with the objectives of the General Plan.” In its April 27, 2013 letter of determination, the City made a series of findings that substantially demonstrate the Project is in harmony with the objectives of the General Plan among other City objectives set forth in Section 12.32.G.2(a). For example, pages F-1 through F-5 in the letter of determination contain General Plan findings related to 1988 Hollywood Community Plan, the Update, and the transportation, housing, and framework elements of the General Plan. These findings recognize that securing the Project will revitalize an otherwise underutilized area and is therefore appropriate for the Project Site. In addition, the findings (and analysis in the EIR)

indicate that implementation of the Development Regulations are a necessary component to control development on the Project Site and thereby ensure harmony with the General Plan.

Moreover, the Draft EIR provides a comprehensive analysis of the Project's land use consistency with the General Plan. The Draft EIR concludes that the Project is consistent with the applicable sections and objectives of the General Plan.

In addition, the Development Regulations are the type of specified standards contemplated by the LAMC Q condition classification. The Development Regulations contain precise standards regarding density, height zones, building and street experience, towers, open space, land scape, parking, signage, and sustainability. The purpose of the Development Regulations (as stated in Section 1.1 of the Development Regulations) is to govern new development on the Project Site. Similarly, the purpose of Q conditions (as stated in 12.32.G.2(a) of the LAMC) is to ensure development of the site conforms to certain specified standards. Consequently, the purpose of the Development Regulations mirrors the purpose of Q conditions.

Together, these factors among others, evidence a sufficient nexus between the purpose of the LAMC Q conditions and the elements of the Project. Therefore, the City has not violated law or its charter by adopting the Development Regulations as Q conditions for the Project Site.

F. The Conditional Use Permit and Variance Findings are Supported by Evidence.

There is substantial evidence to support the findings for the various Project entitlements. As discussed above, the project description is designed to allow the EIR to create an impact "envelope" that includes the most significant impacts that could be generated by the Project as finally configured. As such, the EIR presents an analysis that provides substantial evidence to support the findings for the Project.

Contrary to the appellant's contentions, the precise location of the hotel on the Project Site, for example, is not required to make the necessary findings for a conditional use permit for a hotel. The conditional use permit findings are as follows: (1) that the project will enhance the built environment in the surrounding neighborhood or will perform a function or provide a service that is essential or beneficial to the community, city, or region; (2) that the project's location, size, height, operations and other significant features will be compatible with and will not adversely affect or further degrade adjacent properties, the surrounding neighborhood, or the public health, welfare, and safety; and (3) that the project substantially conforms with the purpose, intent and provisions of the General Plan, the applicable community plan, and any applicable specific plan. The information provided for the hotel is adequate to make all of these findings even if more than one location within a defined site area is possible.

Further, the appellant wrongly argues that the hardship and other variance findings cannot be made based on the project description. The variance findings include findings such as: 1) special circumstances applicable to the subject property, 2) hardship, and 3) the granting of the variance will not be materially detrimental to the public welfare. Many of the findings are related to the Project Site itself for which ample information and evidence is

provided. Also, the project description and other sections of the EIR, including Section IV.K.2, Transportation-Parking, provide ample information on which to base the findings.

G. The Q Conditions Do Not Result in Unfettered Discretion.

The appellant wrongly assumes that language in proposed Q condition No. 2 provides the City with some otherwise unavailable discretion. Specifically, the appellant points to the phrase “[m]inor deviations may be allowed in order to comply with the provisions of the Municipal Code, the subject conditions, and the intent of the subject permit authorization.” The appellant translates “minor deviations” into an unfettered discretion argument. The import of the language is much less grandiose. As is typical in complex land development, unforeseen building design and construction-level issues may arise that require minor modifications. This is commonplace during plan check for building permits when multiple agencies balance competing requirements to ensure solid and safe development. The language in Q condition 2 allows the type of minor deviations necessary to complete building plans. It does not create unfettered discretion.

II.

The HEI/GC and HVRA Appeal

On May 13, 2013, HEI/GC and HVRA appealed of the City Planning Commission's action to approve the Project. The appeal recites mostly the same arguments that the appellant raised in its comment letter on the Draft EIR. Accordingly, the Final EIR contains detailed responses that address most of the appellant's arguments on appeal. The discussion below summarizes the responses in the Final EIR and addresses the new issues raised in the appeal.

A. The Draft EIR and Final EIR are Adequate.

From the start, the appellant confuses the purpose of the Final EIR by claiming that it fails to fully evaluate several significant impacts caused by the Project. Pursuant to CEQA Guidelines Section 15132, the Final EIR is not the place to evaluate significant impacts. Instead, the Final EIR must contain revisions to the Draft EIR, responses to comments, and any information added to the Draft EIR by the Lead Agency. The Final EIR complies exactly with these legal requirements.

To be clear, the Draft EIR is the appropriate document for impact analysis. As discussed below, the Draft EIR comprehensively analyzes Project impacts and complies with all applicable legal requirements. In its grounds for appeal, the appellant raises numerous environmental issues that were already analyzed in the Draft EIR and responded to in the Final EIR.

First, the appellant restates its argument that the project description is inadequate. The Final EIR specifically addressed that argument in Response to Comment No. 81-2, which was in the appellant's comment letter. To summarize, an EIR does of course require an accurate and stable project description. This does not mean, however, that the project description must be inflexible. As noted above, “[t]he CEQA reporting process is not designed to freeze the ultimate proposal in the precise mold of the initial project” and “an

elastic project description is not per se violation of CEQA, provided the analysis comprehends all potential impacts.” *County of Inyo v. City of Los Angeles*, 71 Cal.App.3d 185, 199 (1977). Here, the project description creates an impact “envelope” that presents a range of development scenarios. The Draft EIR analyzes the scenarios using a worst-case analysis methodology. This “envelope” approach clearly complies with CEQA because the law allows a lead agency to approve projects that vary from the project described in the EIR, so long as all of the impacts are disclosed. Therefore, the appellant’s claim that the project description is faulty does not have merit.

Second, the appellant restates its argument that the Draft EIR fails to analyze the impacts of the CUP for alcohol service. The Final EIR also specifically addressed that argument in Response to Comment No. 81-7. To restate, the Applicant requested a master CUP (compared to a user-specific permit) to allow alcohol services. Specificity in this instance is not required because the end user (*i.e.* the name or type of retail establishment or restaurant) would not implicate new or different environmental effects other than those already addressed in the Draft EIR. See *Maintain Our Desert Environment v. Town of Apple Valley*, 120 Cal. App. 4th 396 (2004). Here, the specific operators of the alcohol-serving establishments will not be known until after they sign leases, which may occur before or after the Project is built. Thus, a master CUP is particularly appropriate here because, pursuant to Condition 3 on page C-1 of Case No. CPC-2008-3440-ZC-CUB-ZV-HD, each operator will obtain plan approval before the City authorizes alcohol services. The Draft EIR studies all impacts of the potential uses of the Project including alcohol-related uses. Therefore, the appellant’s argument is baseless.

Third, the appellant restates the argument that the Draft EIR fails to analyze impacts associated with removing zoning restrictions and amending the Hollywood Community Plan. The Final EIR responded to that argument in Response to Comment No. 81-9. It is critical to recognize that the Draft EIR analyzes impacts considering both the existing FAR of 3:1 per the “D” Limitation and the modified FAR of 4.5:1 per the Hollywood Community Plan Update. Similarly, the Draft EIR fully evaluates land use consistency with the 1988 Hollywood Community Plan and the Update. This dual-pronged approach ensures adequate impact analysis even if the Update fails due to pending litigation. The Draft EIR has covered zoning considerations under applicable land use plans. Therefore, the appellant’s claim is misplaced.

Fourth, the appellant is simply mistaken that the Draft EIR does not analyze growth inducing impacts. The Draft EIR dedicates an entire section (Section V.D) to the assessment of potential growth inducing impacts associated with the Project.

Fifth, the appellant bunches together in a single paragraph claims that the Draft fails to properly analyze traffic and parking, air quality, schools and libraries, historic resources, and noise impacts. None of these claims are new. The Draft EIR provides extensive analysis of all these issues and contains detailed technical reports and other substantial evidence to support the impact conclusions on these environmental issues. The Final EIR Responses to Comment Nos. 81-11 through 81-17 and 81-24 through 81-28 provide a detailed discussion on all of these issues.

Finally, the appellant claims that the Final EIR failed to address all of the issues raised above. That claim is obviously not true. The Final EIR sections and responses we cite

above provide clear evidence that the Final EIR did in fact respond to every substantive issue raised by the appellant.

B. The Findings of Fact are Adequate.

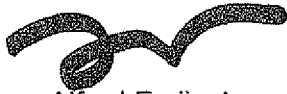
The appellant wrongly asserts that the CEQA and entitlement findings prepared by the City are flawed. The appellant notes certain code and case law, but does not demonstrate how the Project findings are inadequate. We point out that CEQA is silent on a mandatory standard or form for findings. We understand that the CEQA Guidelines require findings be supported by substantial evidence (14 Cal Code Regs §15091(b)) and be accompanied by a brief explanation of the rationale for the finding (14 Cal Code Regs §15091(a)). Accordingly, the City prepared the findings for the Project to satisfy these requirements.

For example, pages F-25 through F-85 in the City's April 27, 2013 determination letter contain 60 pages of well-supported CEQA findings. Also note that the findings for potentially significant and significant and unavoidable impacts are accompanied by a discussion of the rationale for each finding required by CEQA. In addition, see pages F-85 through F-93 for the project alternatives findings, which are also supported by evidence and a discussion of the rationale for each finding. Therefore, the appellant's attack on the findings is not warranted.

III. Conclusion

We respectfully request that the PLUM Committee recommend denial of the appeals and approval of the Project. As discussed above, the appellants' arguments are unfounded. The administrative record contains substantial evidence to support approval of the Project and denial of the appeals. The Draft EIR contains exhaustive analysis and the Final EIR provides good-faith reasoned responses. Therefore, we urge the PLUM Committee, and ultimately the City Council, to move the Project to final approval.

Very truly yours,



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