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September 2, 2020

VIA EMAIL

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Vincent Bertoni, Planning Director
Mindy Nguyen, City Planner
Los Angeles Department of City Planning
221 North Figueroa Street, Suite 1350
Los Angeles, CA 90012

Re: Further Objections to Hollywood Center Project;
Case No. ENV-2018-2116-EIR; SCH 2018051002

Dear Mr. Bertoni and Ms. Nguyen:

I. INTRODUCTION.

This firm and the undersigned represent StopTheMillenniumHollywood.com. Please include this objection letter in the administrative record for the Millennium Hollywood, aka Hollywood Center, project (“Project”).

II. THE CITY MUST RESPOND TO COMMENTS IN THE PRIOR MILLENNIUM ADMINISTRATIVE RECORD.

This office has previously requested in writing that all objection letters included in the administrative record – which administrative record included a subset of documents bates-stamped as “Reference Library” and bearing an “RL” numbering convention – for the original, 2013 Millennium Hollywood project be responded to as part of any FEIR for the current Project.

The parallels between the prior Millennium development and its current iteration, the Hollywood Center development, are unmistakable. Both involve over-dense high-rises with comparable building footprints requiring excavation of the entire site and requiring identical equipment; they are in identical environmental settings, surrounded by

the Pantages Theater, AMDA, Capitol Records and numerous other sensitive land uses. A review of the comments and responses in the original Millennium FEIR reveals that many of the comments apply virtually verbatim to the issues and analysis in the Hollywood Center DEIR.

To aid the City in reviewing prior responsive comments, we twice submitted the entire bates-stamped original Millennium administrative record (which includes the RL) to the City for inclusion in the current record. Our second submittal was of a cleaner, more user-friendly and searchable version of that original record. Despite our written request that the City replace the original submittal with the improved one, or if not, then to simply add the new one we provided, the City refused to replace or supplement our first submittal. The City's actions in this regard were arbitrary and capricious.

In an abundance of caution, and without exclusion of our broader request for the current process to include and respond to all objections from the original record, we restate and incorporate certain specific comments from the original record as identified below.

We again request, as part of any FEIR in this current process, the full disclosure, analysis and mitigation of Project impacts, including by fully responding to the following comments. We have summarized them, but also incorporate by reference as though fully set forth herein those comments as shown at their corresponding RL numbers, as further provided to the City as a courtesy in the attached exhibits. To be 100% clear, the references to "DEIR" in the numbered points below shall apply to the current Hollywood Center DEIR.

From the December 10, 2012 letter on behalf of HEI/GC Hollywood & Vine Condominium, LLC and the Hollywood & Vine Residences Association and the owner of the W Hotel (attached hereto as **Exhibit 1**):

1. The DEIR fails to properly analyze impacts of the Conditional Use Permit for alcohol service. Hollywood is oversaturated with liquor licenses for both on- and off-site consumption. Approval of any conditional use permit requires consultation with the Los Angeles Police Department to evaluate appropriate conditions and mitigation. (RL 12790-12791.) The City has failed to conduct typical outreach to LAPD and has no reason to postpone formulation of mitigation measures until individual CUB applications are filed under the Master CUB.

2. The DEIR fails to evaluate the Project's indirect impact on school overcrowding and library services. The DEIR omits analysis of impacts on school operations due to Project construction and environmental impacts of school additions funded through Project fees. (RL 12793-12794.) In addition, the DEIR analyzes only the need to construct *new* branch libraries. Finally, the DEIR concedes that the Will and Ariel Durant Branch Library is already over capacity and that the City's LAPL Branch Facilities Plan requires additional facilities, which are not planned. However, the DEIR fails to apply the LA CEQA Thresholds Guide factors to determine the significance of the Project's library impacts, which require analysis of the proportional contribution to library excess demand, and whether the Project has on-site features that reduce library demand. (DEIR IV.K.5-11 and 12).
3. The DEIR fails to analyze cultural resources impacts on the Capitol Records echo chambers which relies on ground density for its unique sound. (RL 12795.)
4. The DEIR Project Description misrepresents open space. The Project Description and plans describe areas as "open space" that are not usable to the public, such as outdoor dining for restaurants and required corridors for egress. (RL 12797.)
5. The DEIR improperly defers formulation of construction-related noise mitigation measures. The DEIR fails to state why the formulation of mitigations measures with objective quantifiable performance standards is not possible. (RL 12797.) In particular, NOI-MM-1 fails to identify which construction equipment has "flexible" locations, and is vague regarding whether it requires full obstruction of line-of-sight between a sensitive land use and the construction equipment, or whether it is sufficient to claim an "intervening construction trailer" generally between the two is sufficient. As phrased, NOI-MM-1 fails to provide any protection to the Pantages Theater or the Capitol Records recording studios or echo chambers.

6. The DEIR failed to consider the impacts of construction noise on future Project residents. (RL 12798.)
7. The DEIR failed to analyze construction noise impacts on the W Hotel Residences. The upper levels of the Residences are not buffered by the Pantages Theater and would have line-of-sight with Project construction, exacerbating duration and severity of noise impacts. (RL 12798.)
8. The DEIR fails to adequately evaluate operational noise caused by outdoor decks and balconies and fails to provide typical mitigation measures such as limiting hours of operation and alcohol service on the Amenity Deck. (RL 12799.)
9. The DEIR fails to analyze impacts to the Capitol Records recording studio and echo chambers. (RL 12799.) The Capitol Records Complex is part of the environment, not part of the Project. It is located on a legally separate lot, was developed independent of the Project decades ago, and is only tied to the Project insofar as its lot area allows the Project to attempt to achieve greater residential density. CEQA does not permit the environmental impacts of development to be exempt from public disclosure simply because the Project applicant owns adjacent properties and sucks development rights from them.

From the December 10, 2012 letter on behalf of AMDA College and Conservatory of the Performing Arts (attached hereto as **Exhibit 2**):

1. The DEIR fails to fully analyze noise impacts to AMDA. Specifically, construction truck queuing will occur much closer to AMDA than otherwise assumed in the DEIR. (RL 13139.) The DEIR asserts that no staging will occur off-site, yet the Construction Traffic Management Plan (TRAF-PDF-2) authorizes street closures that could occur immediately outside AMDA's premises to queue haul trucks while waiting to access the Property.

2. The DEIR improperly discloses Leq without the full range and magnitude of change in dBA, understating the severity of impacts. (RL 13139-13140.)
3. The DEIR claims trip reductions for uses that might never be built. (RL 13147.) As applied to Alternative 8, the Project cannot claim internal capture trip reduction for the residences and the offices because one half of the Project might not be built for decades, or ever.
4. The DEIR fails to disclose the extent of shade-shadow impacts on AMDA. The Project would shade outdoor areas of AMDA's campus, including the piazza and outdoor stage, between 9 a.m. and 3 p.m. during the winter solstice. (RL 13155.)
5. The DEIR fails to analyze air quality impacts at AMDA's piazza and outdoor courtyard potentially next to truck queuing areas during construction lane closures. AMDA is a sensitive receptor and must be thoroughly analyzed for impacts regarding CO hotspots, toxic air contaminants, and other localized emissions impacts. (RL 13157.)
6. The DEIR fails to consider and adopt all feasible mitigation measures including best practices to reduce construction worker trips and truck idling times, alternative fuels, minimizing traffic conflicts during construction and electric compressors in lieu of fuel combustion sources. (RL 13158.)
7. The DEIR improperly categorized the Project as general Industrial/Commercial, rather than High Density Commercial/Center per LAMC § 57.507.3.3. (RL 13163.) The DEIR's analysis of fire flow requirements is incorrect and the DEIR's conclusions regarding adequate fire mitigation and service lack substantial evidence.

From the December 10, 2012 letter on behalf of the owner of 6320 Yucca Avenue (attached hereto as **Exhibit 3**):

1. The DEIR fails to analyze the impacts of construction dewatering on the Pantages Theater and Capitol Records echo chambers. (RL 13201.)

2. The DEIR fails to consider feasible mitigation measures such as noise curtains to reduce significant construction noise impacts when line-of-sight is not obstructed by ground level noise walls or other structures. (RL 13202.)
3. The DEIR should have identified significant library impacts because fees are not guaranteed to be spent locally. Additionally the DEIR includes no quantitative analysis to conclude impacts would be less-than-significant. (RL 13203.) In fact, the DEIR concedes the Project would exacerbate substandard conditions at Will and Ariel Durant Branch Library which will require additional facilities according to the City's LAPL Branch Library Plan, especially in conjunction with related projects. (DEIR p. IV.K.5-17.)

Very truly yours,

/s/ Robert P. Silverstein

ROBERT P. SILVERSTEIN

FOR

THE SILVERSTEIN LAW FIRM, APC

RPS:vl

Encls.

cc: Mayor Eric Garcetti (via email mayor.garcetti@lacity.org)
Nicholas Maricich, Mayor's Office (via email nicholas.maricich@lacity.org)
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EXHIBIT 1



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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,

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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.

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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.

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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.

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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

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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

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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

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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

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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

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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.

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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,

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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

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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

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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.

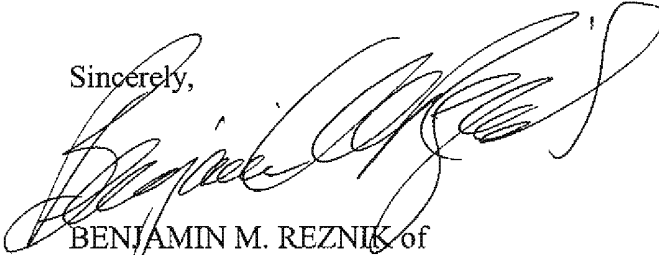
XIV. The DEIR Underestimates the Impact of the Project on Landfill Capacity and Mischaracterizes the Impact as Less Than Significant.

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)

EXHIBIT 2

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December 10, 2012

Client-Matter: 46782-060

VIA E-MAIL AND U.S. MAIL

Ms. Srimal P. Hewawitharana
Environmental Specialist II
Department of City Planning
Environmental Analysis Section
200 N. Spring Street, Room 750
Los Angeles, CA 90012

Re: Comments on the Draft Environmental Impact Report for the Millennium Hollywood Project (Case Number: ENV-2011-675-EIR)

Dear Ms. Hewawitharana:

This firm represents AMDA College and Conservatory of the Performing Arts ("AMDA"). On behalf of AMDA, thank you for providing us with the opportunity to comment on the Draft Environmental Impact Report ("DEIR") for the Millennium Hollywood Project (the "Project"). The proposed Project would be constructed directly adjacent to AMDA's approximately 2-acre campus in Hollywood. In particular, AMDA's building at 1777 Vine Street ("AMDA's 1777 Vine Street Building"), a five-story facility housing the majority of AMDA's classrooms, acting rehearsal rooms, dance studios, and private voice rooms, shares a property line with the Project where one of the two proposed 585-foot high towers could be built without even the most minor of setbacks. Thus, the impacts of the proposed Project's construction alone could be catastrophic to AMDA if not properly mitigated in accordance with the California Environmental Quality Act ("CEQA").

As one of the key players in Hollywood's revitalization, first purchasing and painstakingly restoring 6305 Yucca Street, an eight-story Art Deco building (the "Vine Tower") that serves as the administrative and student hub of AMDA's campus, and then building a formidable presence on the block bounded by Yucca Street, Vine Street, Ivar Avenue, and U.S. 101 (the "Hollywood Freeway"), much of which is now used for student residences, AMDA is not opposed to the continued development and revitalization of the neighborhood it is so proud to call home. AMDA welcomes responsible development and looks forward to working with community stakeholders on the continued improvement of Hollywood.

However, a massive one million-plus square foot project needs to be appropriately analyzed and mitigated under CEQA, something which this DEIR fails to do. As a threshold



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2 matter, although the DEIR acknowledges that schools are sensitive receptors, it does not identify AMDA as a sensitive receptor. This is unacceptable; all of the Project's potentially significant impacts to AMDA must be disclosed, analyzed, and mitigated to the maximum extent feasible.

3 Likewise, CEQA requires an accurate, stable, and finite project description, yet the DEIR's equivalency program would allow virtually any type of development to be built, irrespective of what the DEIR renderings and vague development regulations (the "Development Regulations") might indicate. Greater specificity about the project is necessary for the public to meaningfully participate in the approval process for the Project.

In short, the DEIR fails to comply with CEQA's minimum legal requirements in several respects and must be revised and re-circulated.

I. AMDA AND ITS HOLLYWOOD CAMPUS.

AMDA is one of the country's preeminent non-profit colleges for the performing arts, with its two campuses in New York City and Los Angeles recognized internationally for launching some of the most successful careers in theater, film, and television. Fully accredited by the National Association of Schools of Theater ("NAST")¹, AMDA's Los Angeles campus enrolls approximately 700 students from throughout the world and offers both a 4-year bachelor of fine arts and various 2-year certificate programs. Since 2003, AMDA's Hollywood campus has been a thriving community of young artists engaged daily in everything from general education courses typical of more traditional 4-year colleges, to musical theater, dance studios, and voice recitals.

4 AMDA's campus is comprised of several buildings in the immediate vicinity of the Project. The Vine Tower, AMDA's main building, is kitty-corner from the Project and houses administrative offices, classrooms, studio spaces, a costume shop, a stage combat armory, a computer lab, the AMDA Café, the campus store and a black box theatre. AMDA's 1777 Vine Street Building across the street from the Vine Tower, and sharing a property line with the Project site, is a five-story facility with 23 classrooms, 11 private voice studios, acting rehearsal rooms, a student lounge, the film production office, the scene shop, and other ancillary AMDA uses. An outdoor performance space, a campus piazza, a performing arts library, and film, television and editing facilities are also located on campus.

¹ NAST has been designated by the United States Department of Education as the agency responsible for the accreditation throughout the United States of freestanding institutions and units offering theatre and theatre-related programs (both degree-and non-degree-granting). NAST cooperates with the six regional associations in the process of accreditation and, in the field of teacher education, with the National Council for Accreditation of Teacher Education. NAST consults with the American Alliance for Theatre and Education, the Association for Theatre in Higher Education, and similar organizations in the development of NAST standards and guidelines for accreditation.

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4 { Finally, six residential buildings, primarily on the same block as the Vine Tower, have been purchased, or are otherwise controlled by AMDA, for student housing (The Franklin Building, the Yucca Street Apartments, the Allview Apartments, Ivar Residence Hall, the Vine Street Apartments, and the "Bungalows").

Simply stated, AMDA's investment in, and commitment to the Hollywood community is sustained and substantial.

5 { **II. THE HOLLYWOOD MILLENNIUM PROJECT DRAFT ENVIRONMENTAL IMPACT REPORT.**

The DEIR has several flaws and must be revised and re-circulated to comply with CEQA. Set forth below are our specific comments on the DEIR.

A. The DEIR's Equivalency Program is Much Too Broad To Apprise the Public of the Project's Impacts.

6 { As a threshold matter, the DEIR is more a program-level EIR than a project-level EIR. The ultimate project that could be built under this DEIR could be almost all apartments, all condominiums, all hotel, all health/fitness club, all office, all restaurant, or all retail – so long as the total vehicle trip count falls within a cap set forth in the DEIR. As explained in greater detail throughout this comment letter, protection of the environment is about more than vehicle trip counts. Although CEQA does not foreclose equivalency program analysis, there comes a point when an equivalency program is so over-ambitious that the public has no idea what type of uses will ultimately be built, where on the site they will be, what their general design will be, and what the *ultimate environmental impacts* will be.

7 { That is the case here. The DEIR's attempt to analyze every possible development scenario results in an environmental analysis that fails to disclose and analyze the most basic of things – like project driveways and ingress and egress from the Project's approximately 4.5 acre site. Will left-turns be allowed out of the Project's Vine driveways (assuming there will be Vine driveways)? The answer to that simple question can have a dramatic impact on traffic circulation in one of Hollywood's most congested areas, but the DEIR is silent on these basics. Likewise, the DEIR is completely inconsistent with the project that has been applied for, and which could be built under the proposed Development Agreement. For example, the Project applications call for approximately seven stories of above-ground parking. (See Exhibit A.) The DEIR, however, says there will likely be three. (See Exhibit B.) In other instances, key Project components, including a night-club and an outdoor viewing deck with a café and alcohol sales, are completely missing from the DEIR's environmental analysis. (See Exhibit C.) The DEIR's renderings and *discussion* about the "Development Regulations" might imply good design, but

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7 the plans submitted with the application would indicate that huge podium parking structures with large, massive, undifferentiated walls are back in vogue. (See Exhibit D.) Ultimately, because the Project Development Agreement and Development Regulations are so vague, nothing in the DEIR would prevent the absurd, say twenty stories above-ground parking.

8 The case law on equivalency programs is limited, but the general principles behind CEQA are clear. First, an accurate, stable, and consistent project description is required for a legally sufficient EIR. Inconsistencies in the project description, including "using variable figures" can be fatal. *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 653 (holding that the failure to provide a stable and consistent project description invalidated the EIR); also see *City of Santee v. County of San Diego* (1989) 214 Cal. App. 3d 1438, 1454-55 (concluding that an EIR that did not contain an accurate, stable, and finite project description could not "adequately apprise all interested parties of the true scope of the project for intelligent weighing of the environmental consequences.").

9 In short, we have no idea what will be built, except that it will likely be massive. And even if the DEIR analyzed ingress and egress for the Concept Plan, for example, that analysis would be meaningless because the Applicant has no obligation to build the Concept Plan or a project that looks anything like it. An EIR cannot stultify CEQA's public disclosure requirements. *County of Inyo v. City of Los Angeles* (1977) 71 Cal. App. 3d 185, 198 ("A curtailed, enigmatic or unstable project description draws a red herring across the path of public input."); also see *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal. 3d 376, 405 ("An EIR must include detail sufficient to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project.").

10 The DEIR fails to provide a meaningful understanding of the Project. By analyzing the Concept Plan, the DEIR gives the public the impression that something approaching that plan will be built even though the Development Agreement allows different parts of the Project site to be sold to different developers who may choose to build something that bears no real resemblance to the Concept Plan. (See Development Agreement, Section 6.8.1.) (Exhibit E.) This is all the more shocking given that the Development Agreement also provides that no subsequent approvals/environmental review would be required for any subsequent build-out of the Project. (See Development Agreement, Section 3.1.5.) (Exhibit F.) Without discussing things as simple as ingress and egress (required analysis for much smaller projects), or what will ultimately be built, the DEIR's enigmatic project description has the effect of cutting the public out of some of the more important questions about the Project. And it certainly cannot provide the City Council with enough information to support a Statement of Overriding Considerations. CEQA requires more.

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B. The DEIR Excludes Analysis and Mitigation of Clearly Significant and Adverse Noise and Vibration Impacts to AMDA and Avoids Meaningful Analysis and Mitigation of Noise and Vibration Impacts, Generally.

1. The DEIR Fails to Disclose and Analyze AMDA as a Sensitive Receptor.

11 The *L.A. CEQA Thresholds Guide* defines noise sensitive land uses to include residences, transient lodging, *schools*, libraries, churches, hospitals, nursing homes, *auditoriums*, *concert halls*, amphitheaters, playgrounds, and parks. (*L.A. CEQA Thresholds Guide*, p. I.1-2.) Although the DEIR acknowledges that schools, auditoriums, and concert halls are sensitive receptors at page IV.H-15, inexplicably AMDA – which shares a property line with the Project – is excluded from the list of sensitive land uses adjacent to the Project site.² The DEIR's omission of AMDA as a sensitive receptor is a material error in the DEIR that has prevented significant impacts from being disclosed and mitigated.

To be perfectly clear, AMDA is a school and the quintessential sensitive receptor. Within AMDA's 1777 Vine Street Building, for example, when students are not taking classes such as "Harmony Review Lab," "Sight Singing Review Lab," and "Piano Lab," they may be practicing their singing in a private voice room, dancing ballet in one of the dance studios, or doing breathing exercises with a voice tutor. Every day, the AMDA campus is a thriving hub of productions, recitals, rehearsals, and classes from early morning until about 11:30 p.m., and in summer months AMDA's outdoor stage hosts multiple productions. How all this could continue to happen with the immediately adjacent construction of over one million square feet of towers is something the DEIR cannot ignore.

2. The DEIR Must Disclose, Analyze, and Mitigate Significant Construction Noise Impacts to AMDA.

12 The DEIR must be re-circulated with information about the magnitude of construction and operational noise impacts to AMDA, as well as all feasible mitigation measures that would reduce those impacts. It is impossible to state the precise construction-related noise impacts to AMDA because the DEIR ignored analysis of AMDA altogether, but there can be no question that the impacts will be extremely significant and adverse. Table IV.H-9 of the DEIR, for example, reveals that noise levels at the Pantages and Avalon Theaters, both of which are anywhere from two to ten feet from the Project, will skyrocket from 69.8 dBA L_{eq} to 113.9 dBA

² AMDA has been a prominent member of the Hollywood community since 2003 and various principals of Millennium Hollywood LLC (the "Applicant") have been familiar with AMDA for several years, all of which makes the omission very confusing to AMDA. Moreover, since 2010, well before issuance of the DEIR's Notice of Preparation, all of AMDA's 1777 Vine Street Building was being used by the college.

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12 L_{eq} . As DEIR Table IV.H-1 indicates, a dBA of 113.9 L_{eq} would be louder than a jet flying overhead at a height of 100 feet (throughout the entire day) and louder than a rock band in an indoor concert. This is troubling because the DEIR would allow construction next to AMDA at a similar distance from the Pantages Theater. There is no way that AMDA could continue operating in such an environment without specific mitigation that deals with AMDA as a sensitive receptor. Putting aside the fact that no school could teach music in the middle of a rock concert, the Project would be putting AMDA students and faculty in an environment that the DEIR states can cause temporary or permanent hearing loss. ("Frequent exposure to noise levels greater than 85 dBA over time can cause temporary or permanent hearing loss.") (DEIR, p. IV.H-3.) Mitigation of these impacts on AMDA are of the utmost necessity.

13 Furthermore, mitigation must address multiple different construction impacts – not just construction machinery. For example, the DEIR notes that "[t]he Yucca street parking curb lane will be retained for construction vehicle waiting and staging for the duration of Project construction during all hours . . ." (DEIR, p. IV.K.2-22.) A revised DEIR should disclose that this truck staging area would literally divide AMDA's main campus area (i.e., the Vine Tower and AMDA's 1777 Vine Street Building) and consider whether the noise impacts from this staging area can be relocated away from a sensitive receptor.

3. The DEIR's Use of the Equivalent Noise Level (L_{eq}) for Construction-Related Noise Hides the Project's True Noise Impacts.

14 The DEIR fails to fully disclose Project impacts by only reporting L_{eq} and not the full range of dBA increases that would result from the project. L_{eq} , or the equivalent energy noise level, "is the *average* acoustic energy content of noise for a stated period of time." (DEIR, p. IV.H-2.) The DEIR is required to not only disclose the average dBA over a period of time, but the full range of dBA (i.e., what will be the loudest noises that will be occurring throughout construction). Disclosure of the full range of dBA is important for many reasons. First, the *L.A. CEQA Thresholds Guide* provides that a Project will have a significant impact if construction activities lasting more than a day would exceed existing ambient exterior noise levels by 10 dBA or more at a noise-sensitive use, or 5 dBA or more at a noise-sensitive use for construction activities lasting more than ten days in a three-month period. (DEIR, p. IV.H-20.) The thresholds are not based on L_{eq} – they are based on dBA alone. By only disclosing L_{eq} , the DEIR underreports the true range and magnitude of significant impacts.

15 Second, the aforementioned distinction between L_{eq} and dBA is about more than technical legal compliance with the CEQA threshold; the loudest noises that may occur at any given time matter. Particularly loud construction episodes, for example, would undoubtedly interrupt

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15 courses, recitals, and other AMDA activities to a greater extent than the already high average noise levels. All feasible mitigation must be imposed for these high noise incidents.

16 Finally, the L_{eq} reported in the DEIR could be masking the true noise impacts of the Project because the DEIR fails to disclose the period of time over which construction noise is being averaged (e.g., the L_{eq} period may be including nighttime noise when no construction is taking place, break times, or other similar non-representative time periods).

4. The DEIR's Noise Section Is Rendered Meaningless by Failure to Report Post-Mitigation Noise Impacts and Failure to Define Mitigation Measures with any Precision or Certainty.

17 Despite reporting Project noise impacts that are clearly unacceptable, the DEIR fails to indicate what the Project's noise impacts will be *after* mitigation. This approach is not only contrary to the approach taken in the DEIR's Air Quality and Traffic sections, it is contrary to the City's practice for other environmental impact reports. (See Exhibit G.) Disclosure of impact levels after mitigation is required, and the Applicant must be required to abide by the post-mitigation noise levels that are set forth in the DEIR. Indeed, without post-mitigation noise projections, community members and stakeholders affected by the Project have no way of knowing with any certainty if the mitigation measures in the DEIR are, in fact, effective in reducing noise levels, and if they are, by how much noise levels will be reduced. The DEIR must disclose the resulting (i.e., post-mitigation) noise levels at the relevant property lines so that AMDA and the public can determine if the mitigation measures truly reduce noise to the maximum extent feasible.

18 Part of the reason for the DEIR's failure to provide any information about post-mitigation noise levels may be that many of the noise mitigation measures in the DEIR are illusory. For example, many of the mitigation measures are tempered with phrases like "as far as feasibly possible" or other language that actually has the effect of creating an inordinate amount of flexibility for the Applicant and/or depriving the measure of any certainty. Examples of deficient noise mitigation measures in the DEIR are set forth below, followed by a discussion of how each mitigation measure is legally deficient:

- *Noise and groundborne vibration construction activities whose specific location on the Project may be flexible (e.g., operation of compressors and generators, cement mixing, general truck idling) shall be conducted as far as feasibly possible from the nearest noise- and vibration- sensitive land uses. (Mitigation Measure H-3) (Emphasis added.)*



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- *Construction activities shall be scheduled so as to avoid **as feasible** operating several pieces of equipment simultaneously, which causes high noise levels.* (Mitigation Measure H-4) (Emphasis added.)
- *The Project contractor shall use power construction equipment with state-of-the-art noise shielding and muffling devices **as available**.* (Mitigation Measure H-6) (Emphasis added.)
- *Barriers such as plywood structures or flexible sound control curtains extending eight-feet high shall be erected around the Project Site boundary to minimize the amount of noise on the surrounding noise-sensitive receptors **to the maximum extent feasible** during construction.* (Mitigation Measure H-7) (Emphasis added.)
- *All construction truck traffic shall be restricted to truck routes approved by the City of Los Angeles Department of Building and Safety, which shall avoid residential areas and other sensitive receptors **to the extent feasible**.* (Mitigation Measure H-8) (Emphasis added.)

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All the bolded language above serves to remove any assurances or standards from the mitigation. For example, relative to Mitigation Measure H-3, there is no reason that the DEIR should not disclose exactly where flexible noise-generating equipment will be located to reduce impacts to AMDA and other sensitive uses (and the resulting post-mitigation noise levels at the property line). A mere representation that the activities will be conducted "as far as feasibly possible" deprives the public of the ability to comment on whether the Applicant truly is mitigating "as far as feasibly possible."

In fact, when the Applicant's current tenant, EMI, was previously concerned about impacts to Capitol Records from a nearby construction project at 6941 Yucca (the "Yucca Condominium Project"), it secured mitigation measures such as the following:

- No stationary equipment will be operated **within 40 feet** of the west project site property line with EMI/Capital [sic] Records. Tower cranes and personnel lifts shall be positioned **near Argyle on the eastern edge of the project site**. (Mitigation Measure Supp 18) (Emphasis added.)

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- Construction materials shall be stock-piled at distant portions of the site, *at least 40 feet* from the western project site property line with EMI/Capitol Records. The equipment warm-up areas, water tanks and equipment storage areas described in Mitigation Measure I-5 above shall also be located *at least 40 feet* from the western project site property line with EMI/Capitol Records. (Mitigation Measure Supp 19) (Emphasis added.)
 - *Within 40 feet* of the western project site property line with EMI/Capitol [sic] Records, demolition, excavation and construction activities at or below the street level of the project site (including loading of demolition refuse), grading equipment and activities, augured pile driving, vibratory rollers, jumping jack compactors, and other excavation and construction equipment and activities *shall be prohibited after 10:00 a.m. Mondays through Saturdays*, unless one of the following exceptions apply . . . (Mitigation Measure Supp 12) (Emphasis added.)

A complete list of mitigation measures for the Yucca Condominium Project is attached as Exhibit H for reference.

The precision that EMI/Capitol Records previously received to protect itself from noise and vibration impacts needs to be reflected in the other mitigation measures for this Project too – not just Measure H-3. For example, Mitigation Measure H-4 must disclose which construction equipment will not be operated simultaneously.³ The same goes for Mitigation Measure H-6. If state-of-the-art noise shielding and muffling devices are too expensive, or being used at another construction site, does this mean that the noise levels need not be mitigated? With respect to Mitigation Measure H-7, how will an eight-foot noise barrier be enough to mitigate noise impacts to the maximum extent feasible, and why not disclose the full gamut of noise attenuation barriers available given that one can do better than plywood structures? Most importantly, why did the Yucca Condominium Project (112,917 square feet of construction) next door to the Capitol Records Tower require noise barriers of 16 feet in height, whereas this 1,052,667 net square foot project only requires eight-foot barriers? (See Exhibit I.) (The DEIR also needs to consider special mitigation for the Project's high-rise towers, such as sound wall barriers as construction proceeds to the upper floors.) Finally, with respect to Mitigation Measure H-8, aside from it being impermissible deferred mitigation, how can the DEIR state that construction

³ The scheduling of different construction activities and their resulting noise levels needs to be disclosed as part of the public review process. Otherwise, how would a decision to stop operating multiple pieces of equipment be made on the construction site after the Project has already been approved, especially if the DEIR has no standards (just vague "as feasible" language)?

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18 truck traffic will avoid sensitive receptors to the maximum extent feasible, and then in another section state that construction truck staging will be right outside AMDA?

18 Ultimately, the DEIR needs to establish specific mitigation measures and post-mitigation noise standards that can be measured and adhered to. As drafted, the DEIR says nothing about how loud Project noise will be after the imposition of mitigation measures, renders the little mitigation there is meaningless with vague, imprecise language, and does not commit the Applicant to any specific noise standard.

19 5. The DEIR's CNEL Baseline Is Not Supported by Substantial Evidence.

19 The DEIR states that noise measurements were recorded by Parker Environmental Consultants staff on April 19, 2011, at six locations in the vicinity of the Project Site *for a period of 15 minutes per location*, between the hours of 2:50 PM and 4:30 PM. (DEIR, p. IV.H-5.) Somehow, despite only taking measurements for 15 minutes, the DEIR established dBA CNEL baselines for the five studied roadways. CNEL, the Community Noise Equivalent Level, "is a 24-hour average L_{eq} ." (DEIR, p. IV.H-3.) The DEIR needs to disclose how a 24-hour average was derived for the baseline from a mere 15 minute measurement. Given the role that the CNEL baseline plays in establishing the Project's operational impacts, coupled with the large scope of this Project, anything less than a true understanding of the Project area's CNEL renders the DEIR's noise analysis meaningless.

20 6. The DEIR Fails to Study those Roadways That May Be Most Impacted By Traffic-Related Noise and Masks True Roadway Noise Impacts.

20 The DEIR's analysis of roadway traffic impacts is highly deficient. As a threshold matter, the DEIR fails to consider whether there are residential streets that may be most impacted by traffic noise, even if those streets will not receive the most Project traffic. The DEIR states that "[t]he roadway segments selected for analysis are considered to be those that are expected to be most directly impacted by project-related traffic, which for the purpose of this analysis, includes the roadways that are nearest to the Project site." (DEIR, p. IV.H-14.) This selection of streets for roadway noise impacts, while appealing at first blush, has the effect of potentially masking significant impacts along nearby residential roadways that may receive lower project-related traffic, but have a lower significance threshold (3 dBA CNEL rather than the 5 dBA CNEL streets studied in the DEIR's noise analysis). As such, further analysis of streets more sensitive to noise is required.

21 Moreover, the traffic noise analysis suffers from other methodological problems. In addition to the previously discussed concerns about the CNEL baseline, which appears to be

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21 based on a 15-minute measurement, the DEIR's traffic analysis grossly underreports the Project's true traffic impacts. Accordingly, it is very likely that the higher traffic impacts will lead to higher, and significant, roadway noise impacts. The DEIR therefore needs to be re-circulated with disclosure of actual noise impacts from Project traffic.

7. The DEIR Must Analyze and Mitigate Vibration Impacts on AMDA's Building.

22 The DEIR must be re-circulated with information about the magnitude of the Project's construction and operational vibration impacts to AMDA, as well as all feasible mitigation measures that would reduce those impacts to a level less than significant. The DEIR completely ignores vibration impacts on AMDA's classroom building despite making clear elsewhere that vibration impacts from construction on buildings further away would be significant. Based on Table IV.H-11 and Table IV.H-12, impacts to the Pantages Theater, the Avalon Theater, and the Capitol Records Tower (all of which have similar distances to the Project as AMDA), it appears that construction-related vibration impacts at AMDA's 1777 Vine Street Building would range from approximately 119.9 VdB to 162 VdB and 3.9 PPV to 491.66 PPV – impacts that wildly exceed the significance thresholds of 65 VdB and 0.12 PPV. There is little question that AMDA's 1777 Vine Street Building would suffer significant damage from such high vibration levels. (The DEIR states that 100 VdB is the general threshold where minor damage can occur in a fragile building yet Project-related VdB on AMDA's building is expected to be approximately 120 VdB to 162 VdB.) (DEIR, p. IV.H-4). Likewise, given the types of activities that occur in AMDA's building (e.g., breathing exercises, music classes, ballet), AMDA would be considered a Category 1 Building (65 VdB threshold) more akin with university research operations than a typical school building (75 VdB threshold) with respect to operational vibration annoyance impacts. Irrespective of what threshold is applied, however, the vibration impacts on AMDA's building are significant and must be mitigated.

8. The DEIR Avoids Required Analysis of the Project's Impacts on the Capitol Records Echo Chambers and Recording Studios.

23 CEQA does not allow an impact on the environment to be ignored if only the Applicant's property would be directly affected. This is obvious, yet that appears to be the position taken by the DEIR with respect to the Project's noise and vibration impacts on the Capitol Records recording studios and historic echo chambers – a City-designated Historic Cultural Monument ("HCM"). The DEIR states that the Capitol Records underground echo chambers are located approximately 20 feet north of the proposed limits of excavation for the Project and that Capitol Records Recording Studios A, B, and C are approximately 0.08 feet away from the Project. (DEIR, pp. IV.H-16 and IV.H-29.) Despite the proximity of these uses, and the fact that the DEIR identifies vibration impacts as significant, the DEIR brushes off any meaningful impact

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analysis or mitigation on the ground that these sensitive receptors are owned by the Applicant. (DEIR, p. IV.H-29.) The DEIR goes on to state that “[v]ibration-related impacts upon these uses will be addressed through agreements between the owner and the tenant, with the intent of minimizing noise-related impacts on the uses.” (*Id.*)

23 The DEIR’s analysis is akin to a statement that no historic resource analysis for the demolition of an HCM is necessary if it is the owner that wishes to demolish the building. Interestingly, the Applicant’s tenant has previously stated in connection with other adjacent construction (the aforementioned Yucca Condominium Project) that significant impacts to the echo chambers would “basically render unusable the Echo Chambers at the Capitol Records property.” (Exhibit J.) Simply put, the same level of analysis and mitigation that the City has previously required for other projects needs to be imposed here – especially because the Applicant may now have an economic interest in not protecting these historic monuments.

9. The DEIR’s Mitigation for Groundborne Vibration Damage to Adjacent Buildings is Not Supported by Substantial Evidence.

24 Even though estimated vibration levels from construction of the Project are expected to range from 3.9 PPV to 491.66 PPV and the threshold of significance is 0.12 PPV, the DEIR provides that groundborne vibration damage to adjacent buildings will be reduced to insignificance because Mitigation Measure H-11 “requires the Project Applicant to perform all construction work without damaging or causing the loss of support for on-site and adjacent structures.” (DEIR, p. IV.H-31). But is that even possible? Can an impact of 491.66 PPV be reduced to a level below 0.12 PPV? Exactly how will adjacent buildings not be damaged? One would not know from the DEIR because the one proffered mitigation measure to address this impact is completely conclusory.

10. The DEIR Mentions a Rooftop Observation Deck But Provides No Analysis of its Potential Noise Impacts.

25 The Project’s application and the DEIR mention a rooftop observation deck, but the DEIR does not analyze its noise impacts on the surrounding neighborhood. Oddly enough, even though the application states the rooftop deck will be outdoors, will have alcohol service, and that special events with live entertainment could conceivably occur, the DEIR is completely silent on the noise impacts of that deck. The DEIR does not even disclose that the deck will be outdoors. Likewise, the Project’s application makes clear that other outdoor decks may be incorporated into the Project. These decks must be analyzed and their impacts mitigated to the maximum extent feasible in a re-circulated DEIR.

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11. The DEIR Must Fully Analyze Potential Impacts From Above-Ground Parking Structures.

26 Nothing in the DEIR prevents the construction of an above-ground parking structure adjacent to AMDA's 1777 Vine Street Building or other sensitive receptors. Should this occur, the Project would be raising vehicles from a street-level parking lot to be directly adjacent to AMDA's 1777 Vine Street Building's windows on multiple levels. (The DEIR "envisions" three levels of above-grade parking, but the equivalency program would not prevent above-grade parking structures from being significantly taller.) The DEIR must analyze noise from car alarms, tire squealing, honking, and other loud parking structure noises that might impact AMDA.

12. The Project Would Expose AMDA to Interior Noise Levels Beyond Regulatory Standards.

27 The DEIR states that "the Project would result in generally unacceptable exterior noise levels for any proposed residential or open space uses fronting Vine Street Therefore, future interior noise levels associated with roadway traffic along Vine Street could still exceed the City standard 45.0 dBA for interior residential uses." (DEIR, p. IV.H-37.) To mitigate this impact to a level less than significant, the DEIR requires Project buildings to include sound-proof windows and noise insulation. Therefore, because AMDA's 1777 Vine Street Building is a sensitive receptor fronting Vine Street, the DEIR must provide similar upgrades to AMDA's 1777 Vine Street Building. In addition, because this impact was not disclosed as significant in the DEIR, this is yet another reason the DEIR must be re-circulated.

C. The DEIR's Traffic Analysis Has Multiple Material Flaws and is Not Supported By Substantial Evidence.

1. The DEIR's Equivalency Program Makes It Impossible to Understand the Full Range of Possible Uses and Configurations, All of Which Would Affect Traffic in Different Ways.

28 The DEIR provides the impression that CEQA traffic analysis begins and ends at total trips, and that no further analysis is required so long as total trips are maintained below a certain number. This is not the case; the imprecise nature of the DEIR's equivalency program means that the DEIR fails to provide a true understanding of the Project's impacts. Because the DEIR does not disclose precise driveway points and what specific uses those driveways would be serving, the public is not afforded an understanding of the peak hour usage of those driveways, how pedestrian activity at specific project access points may create hazards or create internal

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28 parking structure queuing, or how driveways at specific access points may back up traffic behind vehicles making a left-hand turn into the Project.⁴ (Granted, the DEIR does not even discuss if left-hand turns into the Project will be allowed because of the multiple scenarios that could conceivably result from the equivalency program.) At one point, the DEIR's traffic study provides a glimmer of hope on specificity when it states that "[a] preliminary analysis concludes that the driveways as shown on the conceptual plans (Figure 3) will not introduce any unusual adverse hazards." (Traffic Study, p. 9.) But only a glimmer; a review of the aforementioned Figure 3 does not show a single driveway or Project access lane. (See Exhibit K.) Without an understanding of traffic circulation immediately around the Project, it is impossible to know if turns, queuing, and other vehicular conflicts will create trickle-down impacts to multiple intersections.

29 In a similar vein, the traffic analysis takes credits via "internal capture" for Project uses that may never be built. For example, the DEIR claims a separate 15% internal capture reduction in trips for the fitness/sports center, for the retail, and for the restaurants (presumably because of the onsite office and residential uses). But what if the office and residential space that is actually built is significantly less than that analyzed in the DEIR or disappears altogether? What if the Applicant uses the DEIR to pursue a 100% retail project? In this case, the Applicant would obtain a 15% trip reduction for nothing.

30 Simply put, the DEIR's traffic analysis is not supported by substantial evidence. As stated earlier, the DEIR's traffic analysis is more consistent with that of a program-level EIR. It cannot legally comport with CEQA's disclosure requirements until greater Project specificity is provided.

2. The Traffic Study's Trip Distribution Needs to Account for the Separate Project Uses.

31 As stated previously, the DEIR's equivalency program has the effect of making much of the Project's impact analysis irrelevant. While CEQA does not prohibit equivalency program environmental analysis, the analysis can become highly problematic in connection with complex projects that have several potential uses, all of which can be located in various different locations throughout a large project site. In this case, the equivalency program's broad-strokes description of potential project uses and their location on the Project site makes it impossible to capture and understand the Project's ultimate trip distribution.

⁴ Although the Traffic Study does provide a general discussion of driveway locations, these driveway locations are hypothetical in nature only. (See Traffic Study, p. 38.) As the Project's Development Regulations provide, "parking, open space, and related development requirements for any component of the Project may be developed in any location within the Project Site." (See Development Regulations, p. 10.)

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32 The DEIR's traffic analysis assigns a trip distribution based on one specific project iteration (the Concept Plan) and this trip distribution remains constant irrespective of what uses may ultimately be incorporated into the Project and where on the site they are located. This leads to a highly simplistic and flawed trip distribution. Hotels, for example, have a very different trip distribution than a fitness center or condominiums, yet the DEIR makes no attempt to account for the fact that the project that may ultimately be built will have no resemblance whatsoever to the Concept Plan (e.g., the Project could be almost entirely residential). Likewise, we know that vehicles will choose one route over another based on their points of ingress and egress. The DEIR's trip distributions, which are guided by a completely random allocation for one project iteration that does not have to be built, are therefore highly flawed.

Indeed, the Applicant's traffic consultant has previously taken the position in connection with other EIRs that a traffic study would be deficient if the trip distribution for individual uses was not specifically assigned. They said:

33 . . . recent traffic studies for large mixed-use projects approved by LADOT . . . have used discrete trip distribution patterns and percentages for individual uses in order to more accurately assign trips to study intersections and routes. For example, office, residential, hotel and retail uses generally have different trip distributions, as their origins and destinations are different. Utilizing one generic trip distribution for dissimilar proposed and existing uses can result in project trips and impacts being underestimated at study locations, as well as some locations not being considered for analysis because they have been assigned a low number of trips. (See Exhibit L.)

Given the fact that the DEIR's own traffic consultant has cautioned against generic trip distribution, it is difficult to understand why this DEIR does not account for all the multiple uses and configurations that could ultimately be built under the equivalency program. Without an appropriate trip distribution, the DEIR cannot be supported by substantial evidence.

3. The DEIR Must Analyze Neighborhood Intrusion Impacts and Construction and Operational Traffic Impacts Arising From AMDA's Location.

34 The DEIR fails to analyze the Project's neighborhood intrusion impacts. Of particular importance, the DEIR did not analyze the Project's traffic impacts on AMDA and its students and faculty. AMDA's presence adjacent to the Project site creates various specific conditions that have not been analyzed, and which may require a Neighborhood Traffic Management Program. For example, large groups of students cross Yucca Street between the Vine Tower and

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34 AMDA's 1777 Vine Street Building when classes let out throughout the day, yet the DEIR did not take pedestrian counts to understand how large groups of students might impact left- and right-hand turns on Yucca, or how traffic may create hazards for AMDA students and faculty.⁵

35 Likewise, the DEIR neglected to analyze the Project's traffic impacts on various residential street segments. Ivar Avenue between Yucca Street and Franklin Avenue (a great portion of which is lined with AMDA student housing), for example, will no doubt experience significant traffic impacts because northbound travel on Yucca will be one of the most efficient ways of accessing the northbound Hollywood Freeway from the Project's Ivar Avenue access point (Ivar to Franklin and then Franklin to Argyle/the Hollywood Freeway). Several other likely cut-through routes have not been identified and necessitate further study.

In short, the DEIR needs to critically address cut-through traffic and its impact on residential street segments, analyze AMDA-specific traffic issues, and provide appropriate mitigation for both construction and operational traffic.

4. The DEIR Must Analyze Traffic Impacts During the Hollywood Bowl Summer Season and Performances at the Pantages Theater, As Well As Ascertain Whether the P.M. Peak Hours Are Truly 3:00 P.M.-6:00 P.M.

36 The DEIR has dramatically underreported traffic impacts by not including manual counts taken on high traffic-volume days. Specifically, the DEIR states that "[t]raffic volumes for existing conditions at the 37 study intersections were obtained from manual traffic counts conducted in March, April, May, September, and October 2011." (DEIR, p. IV.K-1-12.) The three-month break over the months of June, July, and August is highly suspect because it coincides precisely with the Hollywood Bowl summer concert season, which elevates traffic throughout Hollywood quite significantly.⁶ (Why else would counts have stopped for three months?) With an occupancy of approximately 18,000, the Hollywood Bowl is the largest

⁵ The DEIR cannot ignore multiple site-specific variables just because the City's thresholds do not address them. See *Mejia v. City of Los Angeles*, (2005) 130 Cal. App. 4th 322, 342. ("We conclude that the city improperly relied on a threshold of significance despite substantial evidence supporting a fair argument that the project may have a significant impact on traffic on Wheatland Avenue. In light of the public comments and absent more careful consideration by city engineers and planners, the evidence supports a fair argument that the increased traffic on Wheatland Avenue as a result of the project would be substantial considering the uses of the road.").

⁶ Further elevating our suspicions about the date selection for manual traffic counts is that when manual counts were reinstated in September, a month when there were still a few Hollywood Bowl concerts remaining on calendar, the DEIR's traffic consultant only took manual traffic counts in the morning, not afternoon. (See DEIR, Appendix IV.K.1, Appendix B.)

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36 natural amphitheater in the United States, and summer concert nights (at the tail-end of June and almost every night in July and August) often create traffic havoc throughout the area of Hollywood near the Project site. In fact, the Highland exit from the southbound Hollywood Freeway is often so congested during Hollywood Bowl summer events that traffic is directed to the Cahuenga off-ramp, with ensuing trickle-down impacts in the immediate vicinity of the Project site. The DEIR cannot pick and choose convenient days for manual traffic counts. It is crucial that the Project's traffic baseline include Hollywood Bowl traffic so that Project traffic impacts are understood and mitigated to the maximum extent feasible.

37 Likewise, the Project directly abuts the Pantages Theater, which has a seating capacity of almost 3,000. The DEIR needs to analyze the Project's traffic in conjunction with Pantages theater vehicular traffic, the latter of which would be circling the vicinity looking for parking at approximately the same time (i.e., the one hour period before the performance start time).

38 Finally, given the scale of the proposed Project, the DEIR should analyze traffic impacts up to 7 p.m., and include this hour as part of the peak hour if conditions warrant. Security guards stationed at the entrance to AMDA's parking lot on Yucca Street have related to us that traffic in this particular area is at its worst from 5 p.m. to 7 p.m. (not necessarily 3 p.m. to 6 p.m.). If this is the case, then the DEIR has failed to analyze the correct peak hour that applies to this particular neighborhood. Los Angeles Department of Transportation ("LADOT") peak hour reporting requirements alone are not substantial evidence unless they are supported by facts specific to the Project's location.

5. The DEIR Must Analyze Operational Traffic Impacts In Conjunction with Partial Construction Traffic.

39 The DEIR significantly underreports the Project's construction traffic impacts by ignoring the development phasing allowed by the proposed Development Agreement. The DEIR's construction traffic section assumes that the entire Project will all be built at once purportedly in order to provide a conservative analysis of construction impacts. However, ignoring the much more likely scenario that the Project will be built in phases⁷ has the result of severely undercounting total traffic impacts and problems that would be posed by construction traffic *in conjunction* with operational traffic from a half-complete Project. The traffic impacts of a partially built Project, together with construction elsewhere on the site, would create a significant impact that has not been analyzed. CEQA requires that the Project's combined traffic impacts be analyzed.

⁷ "The Project includes a Development Agreement that would allow the long-term phased buildout of the Project." (DEIR, p. II-34.)

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6. The DEIR's Trip Cap Erroneously Combines A.M. Trips and P.M. Trips.

40 As the DEIR's Traffic section demonstrates, the City differentiates between a.m. and p.m. peak hour impacts (e.g., an intersection can be significantly impacted in the a.m. peak hour, but not the p.m. peak hour). Despite the City's requirement of a separate impact analysis for the a.m. and p.m. peak hours, the equivalency program's trip cap of 1,498 *combines* a.m. and p.m. peak hour trips. CEQA requires that one trip cap be created for the a.m. peak hour and that another trip cap be created for the p.m. peak hour to keep impacts consistent with the DEIR's impact envelope. If this is not done, the Applicant will be afforded the ability to create a greater impact than that which the DEIR has disclosed for one of the peak hours. For example, ITE rate 931 (Quality Restaurant) generates virtually no trips in the a.m. peak hour, but has particularly high traffic generation rates in the p.m. peak hour. If the Applicant were to provide a significant amount of restaurant space in the Project, but only measured the resulting restaurant trips against a combined peak hour trip cap, the restaurants' inordinate p.m. peak hour impacts would be masked, and p.m. peak hour impacts on nearby intersections could not be analyzed. As a result, the DEIR may fail to disclose the specific a.m. or p.m. peak hour trip impacts that could result from the Project.

7. The DEIR Provides No Substantial Evidence in Support of Its Approximately 30% Vehicle Trip Reduction for Public Transit Use.

41 The DEIR's traffic study assumes an approximately 30% reduction in vehicle trips due to public transit use. First it adjusts the trip generation rates by 15% (Table IV.K.1-4) and then, in what is arguably double-dipping, takes another 15% reduction on the back-end for public transit usage in connection with the Transportation Demand Management ("TDM") program.⁸ (DEIR, p. IV.K.1-55.) While TDM programs may be effective in reducing total vehicle trips, the DEIR does not support the high 30% total trip reduction related to public transit with substantial evidence. For a Project that does not include any affordable units (in fact, the views from the proposed 55-story towers will command multi-million dollar prices) and whose office and hotel uses will likely be tied in great part to the entertainment industry, it is not clear how 30% of Project trips will be bus and Metro Red Line trips (the Metro Red Line, while very convenient to the Project, still only covers a very small portion of the sprawling Greater Los Angeles area). The DEIR needs to provide evidence in the form of similar transit-adjacent Los Angeles projects to support the assumptions regarding trip reductions. Likewise, much of the TDM program currently lacks any enforcement mechanisms or objective performance standards by which the

⁸ Some of the 15% reduction from the TDM program would presumably come from bicycle usage and other vehicle trip reduction measures. However, the DEIR has not shown that this particular project could deliver a total 30% reduction either way.

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41 ↑ success of the TDM program can be measured. As drafted, the TDM program is impermissible deferred mitigation.

8. The DEIR's Significance Determination for Construction Traffic Impacts is Not Supported By Substantial Evidence.

42 { The DEIR's significance determination for construction traffic impacts is not supported by substantial evidence. For example, none of the Project's construction trips were assigned to the street system to determine whether construction traffic would exceed LADOT impact thresholds. With respect to the DEIR's trip cap, it cannot be relied upon because construction traffic patterns will bear no resemblance to the Project's operational uses. (And if the trip cap could be used, the DEIR fails to show how construction traffic trips fall under the total trip cap.⁹)

43 { In addition, the construction traffic mitigation measures do not demonstrate how impacts will be reduced to a level less than significant. If anything, Mitigation Measures K.1-1 and K.1-3 impermissibly defer mitigation by leaving determinations on sidewalk closures, haul routes, traffic detours, etc. to a future point in time and by providing that the haul route "shall avoid residential areas and other sensitive receptors *to the extent feasible.*" (Emphasis added.) As the Project's haul route requires discretionary approval from the City, the DEIR must analyze now – not later – whether a haul route can be created that will not impact sensitive receptors. If the Project proposes to use a haul route that passes AMDA, then the DEIR must first demonstrate that other routes are infeasible rather than leave that determination to a future point in time. Of course, should the haul route pass AMDA, this would be yet another new significant impact requiring recirculation of the DEIR.

9. The DEIR Fails to Analyze Cumulative Construction Traffic Impacts.

44 { The DEIR fails to consider that several projects are being built, or will be built, in the immediate vicinity of the Project (e.g., the BLVD 6200 Project, the Yucca Condominium Project). In addition to the combined traffic trips, many of these other development projects require, or will require, the same construction staging areas and haul routes. The DEIR needs to consider contingency plans in the likelihood of concurrent development and analyze total construction impacts accordingly.

⁹ The DEIR points to Table IV.K.1-12 for the proposition that "the level of trip-making activity from the Project Site during the combined peak hours will be 1,068 trips, which is more than one-quarter below the Trip Cap of 1,498 trips." (DEIR, p. IV.K.1-43.) While the DEIR may be correct that total peak hour construction trips would be 1,068, Table IV.K.1-12 does not demonstrate this.

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10. The Traffic Study's Use of ITE Code 492 Is Not Supported by Substantial Evidence.

45 If there ever was an ITE traffic generation rate that should be used with great caution, it is Land Use Code 492 (Health/Fitness Club). This ITE rate, unlike most ITE rates which are based on multiple observations throughout the country and rigorous peer review, was developed based on *one* observation. It is also unclear where this *one* observation was conducted, when it was conducted, and why it would bear any meaningful relationship to the traffic generation rate for a gym in an urban area of the country that has consistently generated higher trip rates for gyms. For Code 492, ITE's *Trip Generation* itself states that "[u]sers are cautioned to use data with care because of the small sample size." (See Exhibit M). Furthermore, each data plot and equation in the traffic manual notes, in bold: "**Caution – Use Carefully – Small Sample Size.**" (Exhibit N). Given this language, it is incumbent on the DEIR's traffic consultant to provide evidence substantiating how the ITE data has been used appropriately and cautiously. If such evidence is unavailing, in order to have a legally defensible document the DEIR must provide a generation rate that is based on traffic counts from existing fitness clubs within the City, or that is otherwise appropriate.

11. The DEIR Fails to Evaluate the Traffic Impacts of the Rooftop Viewing Platform.

46 One would not know anything about this from the DEIR, but the Applicant intends to create a major tourist destination at the Project site that has been completely omitted from environmental study. (See Exhibit O.) ("The 8,300 square foot rooftop observation deck [accessed by a dedicated public-accessible elevator] on the East Site will create an open, publicly-accessible attraction that will serve as a new landmark Hollywood experience for area residents and visitors. The observation deck will feature a full service café, outdoor seating, attractive hardscapes and landscaping that will set the feature apart from other observation decks across the country.") If, as the Project's entitlement application notes, this observation deck will be a major draw for tourists and residents alike, how have its impacts been evaluated? The DEIR fails to discuss traffic impacts from this deck, which will include tour bus traffic and parking impacts that must be analyzed.

12. The DEIR Fails to Evaluate the Project's Traffic Impacts on Weekend Nights.

47 It is unclear why only weekday a.m. and p.m. peak hours were studied for this Project. Many projects of the scale proposed by the Applicant include weekend impact analysis. In this case, given the high amount of night club, restaurant, retail, hotel, and observation deck uses that may be active in the Project during weekend nights, the DEIR must analyze Friday and Saturday night traffic impacts. This area of Hollywood is literally the center of Los Angeles nightlife on

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47 weekends, with vehicles creating gridlock from approximately 9 p.m. to 3:00 a.m. (often at levels that by far exceed weekday a.m. and p.m. peak hours). The traffic study cannot be complete until weekend impacts are studied and all feasible mitigation reduces those impacts to a level less than significant.

13. The DEIR Fails to Evaluate Queuing Impacts on the Hollywood Freeway.

48 Despite a request from the California Department of Transportation, in response to the DEIR's Notice of Preparation, that the DEIR study the queuing of vehicles using off-ramps that will back into the mainline through lanes of the Hollywood Freeway, the DEIR is completely silent on the Project's potential significant impacts due to queuing. Especially on weekend nights, the exits off the Hollywood Freeway into Hollywood become extremely backed up, creating impacts on mainline segments as well. The DEIR cannot ignore this significant impact.

14. The DEIR Fails to Impose All Feasible Mitigation for the Project's Significant Traffic Impacts.

49 Given the major deficiencies identified in practically every component of the DEIR's traffic study, the traffic analysis needs to be redone. The DEIR identified *restriping at one* intersection as the only roadway improvement mitigation measure for this massive Project. This cannot possibly be the only feasible road improvement; thus, AMDA may suggest additional feasible mitigation measures once the Project's plans for ingress and egress are disclosed and the traffic study is redone so as to reasonably identify the Project's traffic impacts. One thing is clear at this point, however. Given the Project's significant impacts at multiple intersections, the DEIR needs to identify the mitigation measures that were supposedly discarded and deemed infeasible for the DEIR's conclusions about infeasibility to be supported by substantial evidence.

D. The DEIR Fails to Completely Analyze the Project's Parking Impacts on the Surrounding Community.

50 The DEIR concludes that the Project will not have significant operational impacts on parking because the Project will presumably have enough parking for its own internal uses. Assuming this is true, the DEIR still fails to account for the Project's displacement of public parking lots used by Pantages Theater patrons and other area visitors. Furthermore, from a cumulative impacts standpoint, the other parking lots in the area used for Pantages Theater parking have been entitled for other projects, one of which is already under construction. The DEIR needs to analyze the displacement of public parking spaces used for the Pantages (and other nearby uses) and mitigate parking impacts accordingly. The trickle-down impacts from the Pantages lacking parking for approximately 3,000 patrons for any given performance is also likely to create significant traffic congestion on area streets. Other projects in the vicinity, like

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50 the Hollywood Tower Terrace project at Franklin and Gower, have provided significant public parking components to mitigate such impacts. The proposed Project needs to do the same.

51 Likewise, street parking in the area is used by AMDA students and visitors. AMDA is concerned about the street parking displacement that will occur as a result of the Project during construction and operations. The DEIR also needs to disclose whether or not the Project's commercial parking will be free of charge. If parking will not be free of charge, the DEIR needs to analyze parking validation options and off-site parking spillage that will occur as a result of Project visitors who are unable or unwilling to pay for parking.

E. The DEIR's Analysis of Aesthetics Conceals and Inappropriately Minimizes the Impacts of the Proposed Project.

1. The DEIR Fails to Identify AMDA as a Sensitive Receptor and Fails to Identify Significant Shade-Shadow Impacts to AMDA.

52 Once again, the DEIR fails to identify AMDA as a sensitive receptor, in the process concealing the Project's significant shade-shadow impacts on AMDA. (See DEIR, Table IV.A.2-1.) Not only would the Project's shade-shadow impacts surpass the threshold for AMDA's buildings, they would create significant shadows in the key outdoor areas of the AMDA campus, such as the AMDA piazza and outdoor stage. (See Figures IV.A.2-1 through IV.A.2-7, demonstrating that AMDA's campus would be shaded by both Project's towers from 9:00 a.m. to 3:00 p.m. during the winter solstice). This is a significant impact not disclosed in the DEIR. Should the Project be constructed as proposed, AMDA students will essentially no longer have any sunlight on their campus. The DEIR needs to identify these impacts and mitigate them to a level less than significant in a re-circulated DEIR.

2. The DEIR Does Nothing to Mitigate Significant Impacts to Focal Views.

53 The DEIR states that the impacts to focal view obstruction of the Capitol Records Tower would be significant and unavoidable, but fails to provide any mitigation for this impact. CEQA requires all feasible mitigation to be imposed. A simple solution would be to reduce the floor plate of a 220-foot building adjacent to the Capitol Records Tower and create an absolute minimum setback requirement (there is no reason a 220-foot building must have a floor plate that blocks views of the Capitol Records Tower).¹⁰ A determination that mitigation of impacts to the Capitol Records Tower is infeasible cannot be supported by substantial evidence.

¹⁰ It should be noted that this mitigation is not to be viewed as an expression of support for a taller tower. The taller towers create their own type of significant impact that must be mitigated.

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3. New Visual Simulation Renderings of the Proposed Project and View Impacts on the Capitol Records Tower are Required.

54 The DEIR's visual simulations improperly obscure views of the Capitol Records Tower and minimize the iconic role that it currently plays in the Hollywood skyline. (See Exhibit P.) For some reason, the DEIR's view simulations are by and large extremely small and the photographs are taken from very great distances that would make it appear that the Capitol Records Tower is not seen from various vantage points. In particular, the view simulations of the Project from the Hollywood Freeway, which currently has one of the most iconic views of the Capitol Records Tower and signal the entrance to Hollywood, appear designed to hide and minimize the building. (The photographs are also taken from the opposite side of the freeway from which views would be experienced.)

55 One only need to look at the view simulations in the April, 2007 Draft EIR for the Yucca Street Condominium Project (the last Draft EIR where views of the Capitol Records Tower were at issue) to see that the Capitol Records Tower views are very substantial. (See Exhibit Q.) This Draft EIR for a much smaller project included multiple photographs that actually showed meaningful views of the Capitol Records Tower in full-size photographs, juxtaposed with visual simulations of the proposed project, and subsequent analysis of each photograph. Given how previous environmental impact reports have treated the Capitol Records Tower, this DEIR's exclusion of meaningful and prominent Capital Records Tower views raises serious questions about potential DEIR bias and renders the analysis insufficient to support the DEIR's finding of insignificance.

4. The DEIR's Equivalency Program Renders Meaningful Aesthetics Analysis Impossible.

56 For a Project being built directly adjacent to one of the City's most important monuments, near one of the most famous intersections in the world, the vagueness and uncertainty created by the DEIR's equivalency program is completely inappropriate for environmental analysis of aesthetics. The Project's Development Regulations state that "parking, open space and related development requirements for *any* component of the Project may be developed in *any* location within the Project site." (Development Regulations, p. 10.) (Emphasis added.) Thus, the public really has no idea what the ultimate project will look like.

57 Likewise, many Project elements do not bear any resemblance to what is described in the DEIR and in many cases the Project could be much more impactful on aesthetics than what was analyzed in the DEIR. For example, the DEIR states that "the Project would include up to three levels of above-grade parking within the podium structures." (DEIR, p. II-31.) But the Project's

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57 Development Agreement would not commit the Applicant to this. In fact, the Project applications filed with the City state that the Project will have "around seven stories of above-grade parking." (See Exhibit A.) And more importantly, if the Applicant wanted to do all above-ground parking in 15-stories, the Development Regulations would do nothing to prevent this either.

58 5. The DEIR's Analysis of Temporary Construction Impacts is Inadequate.

The DEIR's analysis of temporary construction impacts is very cursory. For example, no reference is made whatsoever to truck staging areas, which the DEIR notes elsewhere would be on Yucca Street, in what is essentially the middle of AMDA's campus. The DEIR must analyze the aesthetic impact of construction on student life at AMDA over the course of three years if the Project is built in one phase (longer if it is multi-phased) and mitigate those impacts to a level less than significant. The one mitigation measure that has been provided (a fence) is far from sufficient.

F. **The DEIR's Air Quality Analysis Is Inadequate.**

59 1. Since the Traffic Study Artificially Minimizes Project Trips, the Air Quality Analysis is Similarly Flawed.

Given all the flaws in the traffic study discussed above, when the traffic study is redone, the air quality impacts must be recalculated with the correct traffic inputs. As presently drafted, by severely underestimating the Project's traffic impacts, the DEIR fails to measure the Project's true air quality impacts.

60 2. The DEIR Must Analyze the Project's Specific Air Quality Impacts on AMDA, Including Localized CO and Toxic Air Contaminant Impacts.

As stated previously, AMDA is a sensitive receptor adjacent to the Project that has not been identified as such. Furthermore, AMDA's "piazza," an outdoor courtyard that is the central gathering place for AMDA students and a component of AMDA's cafeteria, is at the corner of Yucca Street and Vine Avenue (and closer than 25 feet from the road), yet the DEIR fails to analyze CO hotspot impacts on students at this location. As a sensitive receptor, AMDA must be studied for CO hotspots, toxic air contaminants, and other localized emissions impacts. This analysis must include construction impacts, as well as the potential operational impacts of an above-ground parking structure at the property line with AMDA.

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3. The DEIR Fails to Impose All Feasible Mitigation Measures for ROG, NO_x, and PM_{2.5}.

61 Despite regional significant and unavoidable reactive organic gas (“ROG”) and nitrogen oxide (“NO_x”) impacts, the DEIR fails to impose all feasible mitigation for these particulates. For example, the DEIR does not consider best practices to reduce construction worker trips, further reductions in construction vehicle idling times, Tier 4 off-road emissions standards, electric powered compressor engines in lieu of fuel combustion sources, alternative fuels, minimization of traffic conflicts during construction, electricity usage from power poles in lieu of diesel or gasoline generators, low-VOC coatings, etc. Simply put, the DEIR has not established that other mitigation measures that would further reduce the significant impacts are infeasible. Finally, with respect to localized on-site daily construction emissions, the DEIR fails to impose all feasible mitigation to further reduce PM_{2.5} levels to a level less than significant.

G. The DEIR’s Climate Change Threshold Is Completely Counter to the Instructions of the California Natural Resources Agency and Violates CEQA.

The DEIR’s impact determination is based on a comparison of the Project to “business as usual.” (DEIR, p. IV.B.2-16). Such an approach is legally incorrect and goes directly counter to the instructions of the Natural Resources Agency, the State agency that was responsible for amending the CEQA Guidelines to address climate change. As stated in the Natural Resources Agency’s Final Statement of Reasons accompanying the amended CEQA Guidelines:

62 This section’s reference to the “existing environmental setting” reflects existing law requiring that impacts be compared to the environment as it currently exists. (State CEQA Guidelines, § 15125.) This clarification is necessary to avoid a comparison of the project against a “business as usual” scenario as defined by ARB in the Scoping Plan. Such an approach would confuse “business as usual” projections used in ARB’s Scoping Plan with CEQA’s separate requirement of analyzing project effects in comparison to the environmental baseline. (*Compare* Scoping Plan, at p. 9 (“The foundation of the Proposed Scoping Plan’s strategy is a set of measures that will cut greenhouse gas emissions by nearly 30 percent by the year 2020 as compared to business as usual”) *with Fat v. County of Sacramento* (2002) 97 Cal.App.4th 1270, 1278 (existing environmental conditions normally constitute the baseline for environmental analysis); see also *Center for Bio. Diversity v. City of Desert Hot Springs*, Riverside Sup. Ct. Case No. RIC464585 (August 6, 2008) (rejecting argument that a large subdivision project would have a “beneficial impact on CO₂ emissions” because the homes would be more energy efficient and located near relatively uncongested

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freeways.) Business as usual may be relevant, however, in the discussion of the “no project alternative” in an EIR. (State CEQA Guidelines, § 15126.6(e)(2) (no project alternative should describe what would reasonably be expected to occur in the future in the absence of the project).) (Exhibit R.)

62 By comparing the Project’s greenhouse gas (“GHG”) emissions to “business as usual,” the DEIR completely undercounts GHGs and utilizes the wrong baseline, which is the issuance of the Notice of Preparation.¹¹ Admittedly, no single development project will create significant climate change impacts on its own. However, the DEIR must analyze Project emissions in accordance with legal requirements, since individual development projects may have a cumulatively significant impact that needs to be seriously analyzed.

H. The DEIR’s Analysis of Impacts to Cultural Resources Is Not Supported By Substantial Evidence.

1. The DEIR First Needs to Analyze and Disclose the Significance of the Capitol Records Tower Before Any Meaningful Analysis of Project Impacts Can Be Made.

63 One would not know from the DEIR that the Capitol Records Tower was the first round office tower in the world, the first skyscraper built in Hollywood after World War II, that many view the building as “the symbol of recorded music on the West Coast,” and perhaps most importantly, that the City of Los Angeles Historic-Cultural Monument (“HCM”) application for the building identified the Capitol Records Tower as “literally the beacon of Hollywood.” (See Exhibit S.) Whereas the City’s HCM file makes clear that the Capitol Records Tower is an iconic and integral facet of the Hollywood (and Los Angeles) skyline – not just any historic building – the DEIR fails to discuss and analyze the cultural resource impacts on the Hollywood and City skyline should over one million square feet of development envelop the Capitol Records Tower and forever change its historic role as the beacon of Hollywood.

One of the key inquiries relative to Cultural Resources is whether a project will reduce the integrity or significance of important resources on the site or in the vicinity. (See CEQA Guidelines Section 15064.5(b)(1)) (“A substantial adverse change in the significance of a historic resource means . . . alteration of the resource *or its immediate surroundings* such that the

¹¹ The DEIR also does not disclose where the erroneous threshold originated from. Under CEQA, “[t]hresholds of significance to be adopted for general use as part of the lead agency’s environmental review *must* be adopted by ordinance, resolution, rule, or regulation, and developed through a public review process and be supported by substantial evidence” (CEQA Guidelines Section 15064.7)(Emphasis added). To our knowledge, the City has not adopted this erroneous threshold through any public review process, nor is the threshold supported by substantial evidence. The DEIR therefore must be revised to include a discussion of how GHG emission thresholds comply with CEQA Guidelines Section 15064.7.

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63 significance of an historical resource would be materially impaired.”) (Emphasis added.) The DEIR must provide an analysis of how the Project can affect the historic nature of a City monument that is literally a “beacon” and symbolizes an entire region and/or idea. Specifically, the DEIR must include a good-faith discussion of when an adjacent development can be so massive in scale relative to a monument of worldwide importance that such a monument is materially impaired. The DEIR appears to take the position that mere visibility is the only thing that matters, such that a ten-foot setback renders impacts less than significant. The CEQA Guidelines indicate otherwise.

2. The Lack of a Defined Project Renders Analysis of Impacts to the Capitol Records Tower Impossible.

64 The lack of a specific design (including basic configuration or massing details) for the Project makes it impossible to analyze the Project’s consistency with the Secretary of the Interior’s Standards and Cultural Resources under CEQA, generally. The DEIR must be revised to include designs that would be used in connection with the proposed equivalency program, which is much too vague to allow for any meaningful environmental review. For example, one of the Secretary of the Interior’s Standards requires that for related new construction “new work shall be differentiated from the old” However, it is impossible to understand the Project’s consistency with the Standard given the lack of a Project design and the very broad language in the Development Regulations, which allow innumerable Project permutations that conflict with the Secretary of the Interior’s Standards (See Development Regulation 7.1.5.) (“Generally, buildings over 150 feet tall . . . shall not be historicized. They are contemporary forms in the skyline and shall appear as such.”). The vagueness (use of the word “generally”) and exemption for development lower than 150 feet in height in this instance shows how the Development Regulations fail to provide meaningful historic resource protections.

65 The Development Regulations also fail to provide sufficient protections for the Capitol Records Tower from a massing standpoint. For example, the DEIR finds impacts to historic resources less than significant because the Development Regulations “help reduce potential adverse effects of mass and scale by reducing the bulk of buildings as height increases and pushing tower elements toward the center of the block, and away from historic resources. . . . In this way, important views from Vine Street and the Hollywood Freeway are protected.” (DEIR, p. IV.C-39.) However, this language from the DEIR assumes a configuration for the Project that does not necessarily have to be built. For example, the DEIR does not disclose that if a building less than 150-foot high is built along the east side of Vine street, then no open space need be provided along Vine. (See Development Regulation 6.1.1). Likewise, the Development Regulations allow parking to be built anywhere on the Project site, without consideration for historic resource impacts. (Development Regulation 4.1.) Several other potential configurations

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65 for the Project would be completely insensitive to the Capitol Records Tower, the DEIR representations notwithstanding.

I. The DEIR's Land Use Section Does Not Accurately or Fully Analyze the Project's Impacts.

1. The DEIR Fails to Accurately Identify the Project Site's Applicable Planning and Land Use Regulations.

66 Starting with the DEIR's Project Description, and carrying through its Land Use Planning environmental impact analysis, there are numerous errors and inconsistencies pertaining to the current planning and land use regulations that apply to the Project site. For example, the DEIR states that all square footage numbers for the Project are calculated using the definition of "net square feet" as defined in LAMC Section 14.5.3. (DEIR, p. II-23, fn. 4.) No such definition appears in the LAMC, and the referenced section of the LAMC pertains to transfers of floor area in Downtown Los Angeles. The DEIR also refers to "net developed floor area," which is also allegedly defined by the LAMC (DEIR, p. II-24, Table II-4, note b), but again, no such defined term exists. The DEIR's erroneous references to purportedly defined terms renders it impossible for the public to assess the true scale and impacts of the proposed Project.

2. The DEIR Does Not Demonstrate the Project's Conformance with Critical Community Plan Goals and Policies.

(a) *The Project Does Not Provide a Range of Housing Opportunities.*

67 The Community Plan includes several policies regarding the importance of providing housing opportunities within Hollywood, including the importance of providing housing opportunities for households of all income levels and needs. (Community Plan Policy LU.2.17.) The DEIR asserts that the Project will comply with this policy by including one-, two-, and three bedroom residential units, which "range of units" will provide housing opportunities for a "variety of family sizes and income levels." (DEIR, p. IV.G-39.) This claim is not based in reality – while a one-bedroom unit in a new high-rise development will almost certainly command a lower price than a three-bedroom unit in that same project, there is no rational reason to assume that a lower-income individual or family could afford the rent or purchase price for that one-bedroom unit. Therefore, the Applicant must provide an accurate representation of the Project's consistency in a re-circulated DEIR.

68 (b) *The Project Does Not Specify How Pedestrian And Vehicular Traffic Will Be Separated.*

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68 Community Plan Policies LU.3.4, LU.3.5, and LU.3.6 are intended to ensure that conflicts between pedestrians and vehicles are minimized, in recognition of one of the Community Plan's overall goals of promoting a safe and navigable urban streetscape for pedestrians. These policies require that sidewalks be designed to make pedestrians feel safe, discourage curb cuts near high pedestrian traffic areas, and discourage the siting of parking areas next to busy sidewalks. However, the DEIR only addresses the first of these three policies, and states that by providing straight (or, alternately, "relatively straight") sidewalks, pedestrian safety would be ensured. (DEIR, p. IV.G-40.) The DEIR does not cite or discuss Policies LU.3.5 and LU.3.6 regarding curb cuts and the parking areas, and, as discussed elsewhere in this letter, the DEIR does not disclose *any* precise driveway points for the Project. This lack of information not only precludes an understanding of how pedestrian activity at specific project access points may create hazards, but it also prevents the City from finding that the Project complies with these Community Plan Policies regarding pedestrian safety. An accurate representation of this Community Plan inconsistency must be provided in a re-circulated DEIR.

(c) *The DEIR Misrepresents the Project's Proposed Open Space and Passageway Development Regulations.*

69 Community Plan Policy LU.3.23 encourages large commercial projects to be designed with pedestrian connections, plazas, greenspace, and other related design features so as to avoid "superblocks." Community Plan Policy LU.4.19 similarly encourages the construction of public plazas, in addition to greenspace. The DEIR, in affirming the Project's compliance with Community Plan Policy LU.3.23, cites the Project's proposed Development Regulations, and states that "open space will enable important pedestrian linkages and through-block connections for the Project." (DEIR, p. IV.G-42.) The DEIR further states that: "Grade level open space will be designed to showcase the Capitol Records Building and Jazz Mural and will include design features and outdoor furniture to activate the ground floor amenities." (*Id.*) This response appears to demonstrate the Project's compliance with these two Community Plan Policies. However, an examination of the proposed Development Regulations indicates that if the Project is developed so as not to exceed 150 feet in height (i.e., without any "towers" as defined by the Development Regulations), there is no required amount of grade-level open space (Development Regulation 6.1.1) and there is no minimum amount of "publicly accessible passageway area" (Development Regulation 8.3.4 a(i)). This serves to emphasize the difficulty of assessing the environmental impacts of a project with no fixed design – if the Project is built at a height above 150 feet, the DEIR's claims about open space and passageways may be correct, but if a shorter project is built, these claims are no longer accurate. Given the Community Plan's clear recommendation to design projects that provide open space, pedestrian access, and greenspace, the DEIR must provide a more detailed analysis of how the Project will comply with these policies, regardless of the ultimate height that is proposed for the Project.

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J. The DEIR's Public Services Analysis Is Legally Inadequate.

1. The DEIR Improperly Categorizes the Project's Fire Code Land Use for Maximum Response Distance and Fire Flow Requirements.

The City's Fire Code specifies maximum response distances that are allowed between project locations and fire stations, based upon land use and fire-flow requirements. (LAMC Section 57.09.06, Table 9-C.) When response distances exceed these requirements, all structures must be equipped with automatic fire sprinkler systems and any other fire protection devices and systems deemed necessary by the City. For the Project's proposed high-rise construction, these additional required fire protection devices and systems could include standpipe systems, fire alarm systems with emergency communication system, standby power systems, and an emergency command center.¹²

70 The DEIR correctly notes that Table 9-C of the Fire Code identifies four types of land uses with corresponding maximum response distances from the nearest fire station—Low Density Residential, High Density Residential/Neighborhood Commercial, Industrial/Commercial, and High Density Industrial/Commercial (Principal Business Districts or Centers). However, despite the Project's proposed location in the center of the Hollywood business center within a Regional Center land use designation, and despite the fact that the Project would contain more than one million square feet of high-rise residential and commercial floor area, the DEIR asserts that the proper land use category for purposes of Table 9-C is High Density Residential/*Neighborhood Commercial*. As a result of this categorization, the DEIR claims that the applicable maximum response distance from the nearest fire station is 1.5 miles, and that two City fire stations are located within this maximum distance (Station No. 27 at 0.7 miles from the Project, and Station No. 82 at 0.8 miles from the Project).

While the Project, in several of its many configurations, would contain high density residential land uses, there is no configuration that could appropriately be classified as "neighborhood" commercial. The equivalency program would also allow a completely commercial scenario. Given the location and immense size of the Project, the appropriate Table 9-C land use category should unquestionably be High Density Industrial/Commercial (Principal Business Districts or Centers), which has a corresponding maximum response distance of 0.75 miles from the nearest engine company, and 1 mile from the nearest truck company. Only Station No. 27 is within 0.75 miles, and by only 0.05 miles. Moreover, Station No. 27 is a "light

¹² National Fire Protection Association, "High Rise Building Fires," December 2011, p. 17.

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70 ↑ force” truck and engine company, with a single aerial ladder truck and a single engine.¹³ These details pertaining to response distances must be clarified in the DEIR to properly classify the Project’s proposed land uses, and to describe the impacts resulting from the relatively limited availability of fire protection services in the immediate vicinity of the Project.

74 In addition to maximum response distances, Table 9-C also sets forth minimum required fire flows for the same four land use categories discussed above. Confusingly, while the DEIR claims that the Project is appropriately categorized as High Density Residential/Neighborhood Commercial for purposes of determining maximum response distances, elsewhere the DEIR claims that the Project only requires a fire flow of 6,000 to 9,000 gallons per minute from four to six hydrants flowing simultaneously, which corresponds to the Industrial/Commercial land use designation. (DEIR p. IV.J.1-11.) Again, given the location and proposed size of the Project, the appropriate Table 9-C land use category should be High Density Industrial/Commercial (Principal Business Districts or Centers). This land use category requires a minimum fire flow of 12,000 gallons per minute, available to any block. This fire flow requirement could be even higher, for Table 9-C requires that, where local conditions indicate that consideration must be given to simultaneous fires, an additional 2,000 to 8,000 g.p.m. will be required. Given the densely developed nature of the properties surrounding the Project site, the possibility of simultaneous fires seems reasonable. The DEIR must provide more analysis of how the Project is being analyzed for potential impacts to fire protection services, and must not arbitrarily assign the Project to two inappropriate Table 9-C land use categories.

2. The DEIR Completely Fails to Properly Analyze Fire Department Response Times.

72 The DEIR contains a cursory, and inaccurate, analysis of average Fire Department response times. The DEIR states that the Fire Department “prefers” to arrive on the scene of *all* types of emergencies (fire and/or medical) within 5 minutes in 90 percent of cases, and to have an advanced life support unit arrive to all high risk medical incidents within 8 minutes in 90 percent of cases. (DEIR, p. IV.J.1-4.) The DEIR then reports that average response times for Station Nos. 27 and 82 are 4:43 and 4:18, respectively, while the average response time for the slightly more distant Station No. 41 is 5:09. (DEIR, Table IV.J.1-3, p. IV.J.1-7.) Given the fact that two of the three discussed fire stations appear to meet the Fire Department’s response time goal of 5 minutes, the DEIR concludes that the impact of the Project upon emergency response times would be less than significant.

However, the DEIR’s stated response times, which were reported by the Fire Department to the Applicant’s CEQA consultant, cover responses to *structure fires only*, and do not include

¹³ DEIR p. IV.J.1-3, City of Los Angeles Fire Department website (<http://lafd.org/apparatus/111-fire-a-rescue-resources/294-lafd-truck-company>), accessed December 5, 2012.

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response times to medical emergencies. This presents an inaccurate picture of what the true Fire Department response times are today, and what they might be in the future if the Project is constructed. In addition, the DEIR itself contains a reference to a broader problem with its analysis of Fire Department response times – in May 2012, the City Controller issued an audit of the Fire Department’s claimed response times, and found that the Department had produced inaccurate response time data for a number of years, making it impossible to determine proper emergency response times, as measured against national standards. (City Controller, *Analysis of the Los Angeles Fire Department’s Response Times*, May 18, 2012, p. 3.) Furthermore, this audit stated that, to the extent that the Department’s data could be properly analyzed, it showed that medical response times had been increasing. (*Id.*)

72 The DEIR itself refers to the Controller’s audit of Fire Department response times – in a footnote, the audit’s finding that medical response times had increased is acknowledged. But the footnote goes on to state: “Nevertheless, this audit is presented for informational purposes only, and the written response from the LAFD (dated December 14, 2011) regarding response times is used in the analysis presented in this DEIR.” (DEIR, p. IV.J.1-4, fn. 7.) This is completely inadequate analysis – the Controller’s audit noted that the Fire Department had been keeping inaccurate response time data for years, which means that any “written response” issued by the Department *prior* to the audit is extremely suspect. Furthermore, even if the response time data provided by the Fire Department could be treated as accurate, it would only be accurate for responses to *structure fires only*, and not for medical responses. And, as the audit demonstrates, recent medical response times have been increasing. The DEIR completely fails to provide any context or analysis of this issue, and this cannot be allowed to occur – any proposal to add over one million square feet of residential and commercial uses in the heart of Hollywood will have a dramatic impact on the demand for fire and medical services. If the DEIR cannot provide an accurate analysis of the Fire Department’s ability to meet current demand, there is no substantial evidence for its assertion that the Project will not result in any new significant impacts. This analysis must be completely redone to reflect the current state of affairs regarding the City’s Fire Department.

3. The DEIR’s Analysis of Police Services Impacts Fails to Acknowledge the Project’s Alcohol-Serving and Entertainment Uses.

73 The DEIR briefly discusses the Project’s potential impacts on existing police protection services, proposes minimal mitigation measures to be implemented during the construction and operation of the Project, and concludes that the Project would not create any significant environmental impacts. However, this analysis fails to accurately portray the uses proposed for the Project, some of which will produce additional impacts which must be analyzed in the DEIR. Specifically, the DEIR’s Project Description notes that the Applicant will be seeking conditional

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73 use approvals for on-site consumption of alcohol *and* live entertainment at the Project, including a night-club. However, despite being included in the Project Description, these proposed uses are not discussed anywhere else in the DEIR. Moreover, given the Project's proposed equivalency program, there is no way of knowing if one bar/restaurant will be developed, or if ten will be proposed. The proposed live entertainment use could include a small jazz club, or a sprawling nightclub with events seven nights a week. Regardless of the specific mix of uses that the Applicant eventually decides upon, alcohol and entertainment uses will have a direct impact on police services in the community, and without providing more information and analysis regarding these uses, the DEIR's conclusion that no significant impacts will exist is conclusory and not supported by substantial evidence.

K. The DEIR's Utilities and Service Systems Analysis Does Not Correctly Account for the Equivalency Program and Cumulative Impacts.

74 The DEIR's Utilities and Service Systems section analyzes the DEIR's Concept Plan, Commercial Scenario, and/or Residential Scenario to determine the Project's total potential impacts on utilities and service systems. In doing so, the DEIR neglects to analyze the true intensity of uses that could conceivably be developed at the Project site. For example, although the DEIR's Residential Scenario has more residential units than either the Concept Plan and Commercial Scenario, nothing prevents the Applicant from building even more residential units than the amount set forth in the Residential Scenario because of the Project's equivalency program. If the Applicant were to build more residential units than that in the Residential Scenario, then total Project impacts to those areas where residential uses are more impactful (like solid waste generation) have not been disclosed. This applies to every use, across every impact area (restaurants have greater water usage, for example, yet nothing in the DEIR or proposed Development Agreement creates a cap on restaurant space). Accordingly, all of the numbers in the DEIR's Utilities and Service Systems section are misleadingly low.

75 The DEIR also states that "the potential need for the related projects to upgrade water lines to accommodate their water needs is site-specific and there is little, if any, relationship between the development of the Project and the related projects in relation to this issue as none of the related projects within the LADWP service area are located in proximity to the Project Site." (DEIR, p. IV.L.-1-20.) This is false. Immediately *adjacent* to the Project are the BLVD 6200 Project and the Yucca Condominium Project, for example. The DEIR must analyze the immediate impacts of these projects and other related projects in close proximity.

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L. The DEIR's Alternatives Analysis Fails to Comply with CEQA.

1. The DEIR Does Not Provide a Reasonable and Legally Sufficient Range of Alternatives.

76 The DEIR's Alternatives section provides several alternative projects, but all of them (with the obvious exception of the required "No Project" alternative) appear to have been provided as part of a pro forma attempt to *appear* compliant with CEQA rather than to *actually* comply with CEQA. In practice, the DEIR does not provide a reasonable range of alternatives to comply with CEQA's minimum requirements for alternatives analysis. *Four out of the five* development alternatives provide for 875,228 net square feet of development (reduced from the proposed Project's 1,166,970 net square feet). In other words, four out of the five development alternatives provide *exactly* the same development square footage, with almost *exactly* the same, if not worse, impacts to aesthetics, air quality (construction), cultural resources (had it been correctly identified as significant), and noise (construction) – key significant impacts of the Project.¹⁴ With respects to AMDA's concerns about noise and vibration, for example, the DEIR has provided four alternatives that would not alleviate impacts on AMDA in the slightest. This is not a reasonable range of alternatives in legal compliance with CEQA.

77 Likewise, all five of the development alternatives fail to either significantly reduce or eliminate the Project's significant impacts to areas such as aesthetics, transportation, and air quality. In fact, none of the alternatives completely eliminate a single significant impact. (As Table VI-70 of the DEIR demonstrates, despite the DEIR's identification of multiple significant and unavoidable impacts, not one impact was reduced to insignificance by a single alternative.) The DEIR's failure to eliminate a single significant impact makes little sense. For example, in connection with the reduced FAR alternative of 3:1, the DEIR provides that "impacts related to focal view obstruction under Alternative 3 would be significant and unavoidable, similar to the impact identified under the Project." (DEIR, p. VI-44.) However, this alternative, which has 583,485 less square feet than the Project, and is on the same approximately 4.5 acres, should have no difficulty reducing the focal view impact to a level less than significant. The DEIR could not conceivably provide substantial evidence in support of the proposition that there is no other place on the site to build, but on Vine Street, so as to block the view of the Capitol Records Tower from the intersection of Hollywood and Vine. Obviously, it is feasible to push a building

¹⁴ Although the DEIR does not identify the impacts as worse, the impacts are in actuality worse in some cases because the DEIR purposefully removed public benefits from the Alternatives to make them appear unattractive. The removal of public benefits from the alternatives in and of itself makes them completely unrealistic. The Applicant would be hard-put to find another 583,485 square foot-plus project with a 20-plus year development agreement that has previously been approved by the City and has not been required to provide public benefits similar to those that magically disappear from the various alternatives.

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77 back a bit after the total development envelope has shrunk by 583,485 square feet. AMDA can (and will, if necessary) provide several 583,485 square foot concept plans that would satisfy all the Project objectives and avoid significant impacts to focal views.

2. The DEIR Has Not, And Cannot, Show that A Further Reduced FAR Alternative is Infeasible.

78 The DEIR states that development of the Project site at a density lower than a 3:1 FAR was rejected for further review as an alternative to the Project because it would be economically infeasible and would not satisfy the project objectives. Given that the lowest FAR alternative evaluated in the DEIR is a large 583,485 square foot project, yet City discretionary review would be triggered by Los Angeles Municipal Code Section 16.05 at a mere 50,000 square feet of nonresidential floor area (or 50 residential units), the DEIR's range of alternatives is far from reasonable. The DEIR has to evaluate a significantly reduced Project. This is especially so because, as stated above, the DEIR's alternatives fail to eliminate or significantly reduce the Project's significant impacts. With respect to a 3:1 FAR project being infeasible in this area of Hollywood, this finding cannot be supported by substantial evidence. Several other projects in the area have been built at less than 3:1 FAR (e.g., the Jefferson at Hollywood Project on Highland and Yucca, the Hollywood Tower Terrace Project at Franklin and Gower).

Given the presence of multiple buildings in the area built at less than a 3:1 FAR, some of them quite recent, the DEIR must provide financial data to support its finding of infeasibility. Financial data is critical to evaluate whether an alternative is truly infeasible or merely less profitable, since CEQA does not permit an alternative to be rejected on profitability grounds. See *Citizens of Goleta Valley v. Board of Supervisors* (1988) 197 Cal.App.3d 1167, 1181 ("The fact that an alternative may be . . . less profitable is not sufficient to show that the alternative is financially infeasible."). The DEIR must provide specific evidence to support its finding of infeasibility. For example, in vacating an inadequate EIR and requiring the University of California to re-start the CEQA process, the Court stated that the University must "explain in meaningful detail in a new EIR a range of alternatives to the project and, if [found] to be infeasible, the reasons and facts that...support its conclusion." *Laurel Heights Improvement Association v. Regents of the University of California* (1988) 47 Cal.3d 376, 406. In short, the DEIR's statement that anything less than 3:1 would be infeasible is completely conclusory, and must be supported with specific evidence and financial information.

3. The DEIR Must Include Footprint-Based Alternatives.

79 Given the significant noise, air quality, and shade-shadow impacts on AMDA due in great part to the Project's footprint, which places the Project's most intensive construction directly adjacent to AMDA, the DEIR must consider footprint alternatives that would have the

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79 ↑ ability to significantly reduce, if not eliminate, many of the Project's significant impacts. None of the alternatives consider a setback from AMDA or less intense development around AMDA. There is little question that the Project site is large enough to permit flexibility for buffer areas and/or the relocation of the most intense development to other sections of the Project site. As none of the DEIR's alternatives mitigate noise, air quality, and shade-shadow impacts to AMDA, revised Project footprints that would significantly mitigate those impacts must be incorporated into the DEIR.

80 { 4. The Analysis of Each of the Alternatives is Highly Flawed.

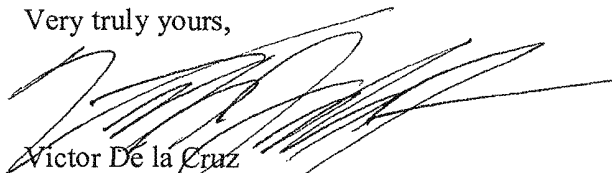
The critique of the DEIR's Project analysis is hereby applied by reference to all of the alternatives, which suffer from the same analytical problems. Since the alternative *scenarios* need to be redone in their entirety, there is no need to individually discuss the analysis for each of them.

81 { **III. CONCLUSION.**

We hope you agree that a project of this magnitude requires a thorough vetting of the issues with accurate information, thoughtful responses, and compliance with basic CEQA requirements. For the reasons set forth above, the numerous inadequacies in the DEIR require significant revisions and re-circulation of the DEIR.

Once again, we appreciate the opportunity to comment on the DEIR.

Very truly yours,



Victor De la Cruz
Manatt, Phelps & Phillips, LLP

EXHIBIT 3

December 10, 2012
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Department of City Planning
200 N. Spring Street, Room 750
Los Angeles, CA 90012
E-Mail: srimal.hewawitharana@lacity.org

RE: Millennium Hollywood Draft Environmental Impact Report (ENV-2011-675-EIR)

1 We are the owner of the property located at 6320 Yucca Avenue which is immediately adjacent to the proposed Millennium Hollywood project and would be one the properties most impacted by this massive project. Based on our preliminary evaluation, we are concerned that the DEIR does not adequately analyze the potential environmental impacts of the project and contains a number of inaccuracies and false assumptions that does not fully disclose all impacts. Moreover, we are concerned that the proposed project sets a dangerous precedent by proposing significantly more development than allowed for the project site under the updated Hollywood Community Plan which created maximum floor area parameters for the project site that are consistent with adjacent properties.

Our concerns include, but are not limited to, the following:

1. General Comments

- 2
- The project description is unclear and seems intentionally nebulous. The DEIR is more akin to a programmatic EIR than a project EIR, in that it allows for an almost infinite number of use and square footage permutations, as well as different use distribution and site access schemes. It is impossible to understand the maximum build out scenario and how it impacts the community. An accurate project description is fundamental to fulfilling the purpose of CEQA to inform the public. This project description fails in that regard. It should be redone and recirculated for public comment.
 - It is unclear whether the equivalence formula really considers all impact parameters. This lack of clarity disguises potentially significant impacts and obscures full and accurate public information about the project.
 - 3
 - The Development Agreement is key information that is excluded from the DEIR. The applicant proposes that the development standards and regulations for the project are established in the Development Agreement which would serve as the regulatory document for future development. A Development Agreement is not a tool to create special development standards that in certain instances propose more lenient standards than the City's zoning code. What the applicant really wants is a Specific Plan approved via a Development Agreement which is not typically used for such purposes. If the applicant wants special regulations, the appropriate vehicle should be a Specific Plan which must be analyzed in the DEIR and available to the public for full review and comment. Failing to include the draft Development Agreement deprives the public of a meaningful opportunity to comment on the DEIR.

- 4 } 2. Aesthetics
- The DEIR concludes that the proposed project would not create a significant shade and shadow impact. However, the shade and shadow study clearly shows that according to the City's significance criteria the project would result in a significant shade and shadow impact on our entitled residential project at 6230 Yucca. This is an undisclosed significant impact that requires recirculating the DEIR.
- 5 } 3. Air Quality
- The project will result in significant long term operational ROG and NO impacts, yet the AQMP consistency analysis on p. IV.B.1-31 focuses only on CO. This obscures a significant impact from meaningful public input.
- 6 } [
- The construction assumptions are not spelled out clearly. Given the amount of excavation, the PM10 and PM2.5 emissions in Table IV. B-10 and IV.B-11 seem very low.
- 7 } [
- The LST analysis on page IV.B.1-44 is based on the SCAQMD look up tables. These tables do not reflect the most current federal NO₂ thresholds. Thus, impacts may be understated. The impacts should be re-run according to the federal standards and publicly disclosed in a recirculated EIR.
- 8 } [
- There is no LST analysis for operations. This failure obscures potentially significant impacts. LST analysis for operations is standard and is included in most City of Los Angeles EIRs. An LST analysis should be prepared and re-circulated for public review.
- 9 } [
- The DEIR at page IV.B.1-52 claims that the project is substantially consistent with the CARB siting guidelines because most of the residential receptors would be located beyond 500 feet from the freeway. The project is either consistent or it is not. "Mostly consistent" implies that there are potentially significant impacts for some residential receptors. These impacts should be identified and the analysis recirculated.
- 10 } [
- The DEIR's conclusion of no significant impacts due to project related TAC emissions at page IV.B.1-52 is unsupported by any facts. As construction could occur until 2035 and thus expose sensitive receptors to TACs over a long period, the DEIR should have included an HRA for construction emissions.
- 11 } [
- The mitigation measures, commencing on page IV.B.1-60, are very limited and should be expanded to include, at a minimum:
 - All construction Tier 4 construction equipment should be used from 2015 on;
 - Non-VOC paints and finishes shall be used;
 - The project should install filters rated MERV 17 or higher;
 - The project should install cool roofs;
 - All outdoor lighting should be LED;

- 11
- The project should maximize solar panel use;
 - The project should install DPM filters on all emergency generators;
 - The project should include EV charging stations and an alternative fuel station; and
 - The project should use only alternative fuel maintenance equipment.

12

4. Geology

- The amount of export appears to be severely underestimated based on the proposed number of subterranean parking levels. Therefore, construction air quality, noise and traffic impacts may also be understated. An updated soil export analysis should be required for the Final EIR, and a mitigation measure should require a final export analysis prior to issuance of building permits because the analysis will be more accurate when based on construction-level detail drawings. If the soil export increases, subsequent environmental analysis should be required.

13

5. Hydrology

- The project will require dewatering, which can induce settlement. However, the impacts on nearby fragile structures (Pantages, Avalon, Capital Records echo chambers) are not addressed. There is no substantial evidence in the Draft EIR or its appendices to address the known potential impact of settlement from de-watering.

14

6. Land Use

- The updated Hollywood Community Plan, adopted only a few months, placed a Q condition on the project site that limits the maximum FAR to 4.5:1 which is consistent with surrounding properties. The proposed zone change and FAR of 6:1 is not compatible with the Community Plan and surrounding properties. This reduced FAR was adopted in part to reduce aesthetic and land use impacts resulting from incompatibly large developments. No substantial evidence supports the conclusion that the project is consistent with the updated Hollywood Community Plan.

- 15
- The project proposes supergraphic signage and states they are permitted in the Hollywood Signage Supplemental Use District. The Hollywood Signage SUD was amended which prohibits supergraphic signs. This error results in a significant land use impact because the purpose of the amended sign ordinance was to avoid the aesthetic environmental impact of supergraphic signage.

16

7. Noise

- The vibration and noise analyses do not account for pile drivers, yet there is no prohibition against the use of such equipment (see, e.g., Table IV.H-7). Pile driving generates significant groundborne vibration. Impacts to sensitive receptors such as the Capital Records recording studios, therefore, are not adequately analyzed.

17 [• The DEIR states at page IV.H.1-23 that the construction noise analysis uses the Commercial Scenario to assess noise impacts as this scenario will generate the most construction and operational noise. However, the DEIR does not explain why or include a quantitative analysis to demonstrate this. Therefore, no substantial evidence is included in the DEIR to support this conclusion. Noise is quantitative analysis and must be supported by quantitative evidence—not mere unsupported statements.

18 [• The DEIR should require the use of noise curtains and reduced hours (especially in the p.m.) as feasible mitigation to reduce noise impacts on the Pantages and Avalon Theater. Limited hours would also be effective in reducing vibration impacts on these sensitive receptors. Noise curtains are a standard and feasible measure to reduce the severity of construction noise impacts. Thus the DEIR fails to include feasible mitigation to avoid or reduce the severity of impacts.

19 [• The impact conclusion regarding the Capitol Record's echo chambers at page IV.H.1-30 is not consistent with the analysis and conclusions of the 6230 Yucca Project EIR. The analysis in the Yucca Project EIR is substantial evidence that the conclusion in this DEIR is incorrect and understates potential impacts.

20 [• Page IV.H.1-30 discloses vibration levels at the Pantages, Avalon Theater and the Art Deco storefronts of that exceed the building damage significance threshold by 3250%. The vibration levels at the echo chambers will be almost 4000 times beyond the significance threshold. The DEIR nonetheless concludes a less than significant impact with mitigation. However, Measure H-11 merely requires the applicant to perform all work in a manner that does not damage these structures, without explaining how this can be done. This vague mitigation measure is inadequate because it neither prescribes a specific measure nor sets a performance standard relative to damage. Furthermore, damage is not the only consideration. These uses are sensitive receptors because vibration can also cause disruption to their operation. The DEIR is devoid of adequate disruption analysis. The DEIR should include analysis demonstrating how such damage can be avoided, amended to adequately analyze potential disruption impacts, and then recirculated for public review.

21 [• Table IV.H-13 shows a cumulative noise increase along Argyle between Yucca and Hollywood of over 3 dBA CNEL under the various development and access scenarios, but concludes that the impact will not be significant. However, the Pantages is located adjacent to this roadway segment, and at over 65 dBA the noise levels would be considered to be "clearly unacceptable" for this use. Therefore, the DEIR should have applied the more restrictive 3 dBA threshold and conclude the impact to be significant. This failure disguises a significant impact under the correct significance threshold. Applying the correct threshold would result in a significant impact. Therefore the DEIR should be corrected and this significant impact disclosed and recirculated for public review.

22 [8. Public Services

22 • As there is no guarantee that the library fee imposed as mitigation will be used on local libraries, and no quantitative analysis showing that the amount will be sufficient to mitigate impacts even if spent locally, the DEIR should have found a significant impact. Any mitigation imposing a fee must show that the amount of the fee will reduce the impact to less-than-significant levels and further show that a mechanism is in place to use the funds for the prescribed mitigation. The mitigation in the DEIR fails to include either of these requirements.

23 • The DEIR does not acknowledge the significant cumulative impact regarding solid waste due to limited landfill capacity. A quantitative cumulative analysis of solid waste capacity is necessary and required. The draft EIR should be amended and recirculated with this analysis.

9. Recreation

24 • The DEIR does not acknowledge the significant cumulative impact on parks due to the shortfall in existing parkland per the City's standard. A quantitative cumulative analysis of parks and recreation impacts is necessary and required. The DEIR should be amended and recirculated with this analysis.

10. Traffic

25 • The project may include a significant amount of retail (the concept plan refers to 100 KSF) but there is no midday Saturday traffic analysis (retail uses tend to experience peak generation at that time). This failure not only disguises a potentially significant impact, but also deviates from the standard established in other City EIRs. A quantitative analysis of weekend traffic impacts is necessary and required. The DEIR should be amended and recirculated with this analysis.

26 • The existing traffic conditions in Table IV.K.1-3 show only one intersection operating at LOS E and none at LOS F. Recent EIRs for other projects (e.g., NBCU and Hollywood & Gower) show the same intersections to be much more congested, in some case three levels of service worse. These other EIRs are substantial evidence of more severe impacts than are disclosed in this EIR.

27 • The internal capture rates in Table IV.K.1-4 lack support. LADOT relies on ITE studies from Florida from the early 90's. These studies are out dated and were limited to 3 land uses. The DEIR must justify the internal capture rates used to avoid undercounting trips.

28 • The table in the traffic study used to calculate the net project trips appears to use lower trip generation rates for residential and sports club uses than the ITE rates on which they were purportedly based (see also Table IV.K-5). This failure not only disguises a potentially significant impact, but also deviates from the standard established in other City EIRs. A quantitative analysis of traffic impacts using the ITE rates is necessary and required. The draft EIR should be amended and recirculated with this analysis.

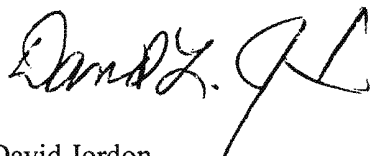
- 29
- Page IV.K.1-26 uses a single set of trip distribution assumptions, despite the fact that the mix of uses can vary dramatically under the equivalency program. It is likely that the individual land uses would have different distribution patterns, so that varying the overall mix would cause the distribution to change. Because the project description is vague and ambiguous as to the mix of uses, the DEIR is flawed by its failure to analyze traffic impacts under a similarly wide array of potential uses.
- 30
- Table IV.K.1-6 establishes a trip cap based on adding up a.m. and p.m. trip numbers for various uses. It is not appropriate to combine a.m. and p.m. peak hour trips, since the traffic impacts must be assessed separately for each peak hour under longstanding City methodology. This failure not only disguises a potentially significant impact, but also deviates from the standard established in other City EIRs. A quantitative analysis of traffic impacts by separating am and pm peaks is necessary and required. The DEIR should be amended and recirculated with this analysis.
- 31
- Table IV.1.-7 uses light industrial trip rates as a proxy for construction traffic. This appears to be a novel first-time approach that no other City EIR has taken. This failure not only disguises a potentially significant impact, but also deviates from the standard established in other City EIRs. A quantitative analysis of construction traffic impacts by using passenger car equivalencies for each construction truck trip is necessary and required. The draft EIR should be amended and recirculated with this analysis.
- 32
- It is not clear how the trip computation factors in Table IV.K.1-8 were derived. Moreover, it is unclear whether the analysis considers ballroom or meeting room space in the hotel. The vagueness of this analysis denies the public a meaningful opportunity to comment and disguises potentially significant impacts.
- 33
- Pages IV.K.1-44 discloses long term lane closures during construction on Argyle, Vine, Ivar and Yucca, but finds a less than significant impact since the closures would not completely block *all* traffic lanes in any direction. The DEIR should have found the impact to be significant due to the amount and duration of the lane closures. At a minimum, the DEIR should have considered whether the rerouting of traffic due to these closures would have significant impacts at local intersections. This failure not only disguises a potentially significant impact, but also deviates from the standard established in other City EIRs. A quantitative analysis of traffic impacts resulting from reducing traffic flow to one lane is necessary and required. The DEIR should be amended and recirculated with this analysis.
- 34
- Table IV.K.1-14 discloses significant impacts at the northern edge of the study area. The analysis should be expanded to confirm that there are no significant impacts intersections beyond this edge. Whenever a significant impact occurs at the edge of the study area, that impact provides substantial evidence of potentially significant impacts outside the study area. The traffic study should be revised to a larger geographic area and recirculated.

- 35 [• The analysis relies on the TDM program in Mitigation Measure K.1.4 to reduce or avoid significant intersection impacts. This reliance is misplaced, since the Mitigation Measure does not establish any objective criteria to measure the success of the program or provide for corrective action if the trip reduction goals are not met. CEQA mitigation measures must be specific, setting forth specific measures and performance standards to justify the conclusion that the mitigation will reduce impacts to less-than-significant levels.
- 36 [• Mitigation Measure K.1-12 allows for the granting of TCO's under certain circumstances where the mitigation measures are delayed. Since the TCO will allow the project to become operational before mitigation is in place, this could result in significant impacts that should have been disclosed. The DEIR should be revised and recirculated to include an analysis of impacts resulting from TCO's granted before relevant mitigation is in place.
- 37 [• The transit impact analysis in Table IV.K.1-17 fails to consider increased transit usage from related projects and ambient growth. Moreover, the analysis lumps all bus and rail lines together, rather than considering impacts on individual lines, which would allow a true analysis of peak directional demand.
- 38 [• In some case the project's incremental contribution at intersections varies between Table IV.K.1-14 (2011) and IV.K.1-18 (2020) (see, e.g., intersections 16 and 19). This error disguises potentially significant impacts and denies the public a meaningful opportunity to comment on potentially significant impacts.
- 39 [• The analysis uses a 1 percent annual ambient growth factor between 2011 and 2020, but a lower factor (4.4% total) from 2020 to 2035. No justification is given for this deviation from the standard ambient growth rate of 1 percent through to the stated horizon date.
- 40 [• Table IV.K.1.21 contains a number of inaccuracies in the With Project Plus Mitigation (i.e, minuses that should be pluses- see Intersections 2, 4, 14, 15, and 18). This error deprives the public a meaningful opportunity to comment on potential impacts. They should be corrected and recirculated for public review.
- 41 [• The access analysis at page IV.K.1-114 concludes that there is no feasible mitigation to avoid the additional significant impact under the No Vine Street Access Scenario. In fact, there is an obvious mitigation - requiring access on Vine Street. It is insufficient to merely state that access on Vine Street is infeasible; substantial evidence must be included to show that it is truly infeasible rather than merely undesirable.
- 42 [• Page IV.K.1-128 provides that contributions to Signal System Upgrades should be made proportional to each phase's trip generation value. This could result in undisclosed significant impacts, since the DEIR relies upon the improvements to mitigate otherwise significant impacts, and the signal upgrades only provide the full benefit on a system-wide basis. Thus, the funding should be paid up front to avoid the impacts as assumed in the DEIR. Fair-share contributions only provide adequate mitigation when there is substantial evidence that that the mitigation measure will ultimately be fully funded and

42 ↑ implemented. Furthermore, until the mitigation measure is fully operational, project impacts will remain significant. This impact may be temporary, but the duration of the significant impact is irrelevant. The DEIR, therefore, fails to disclose the significant impact that will occur until the Signal System Upgrades are in place.

43 [Based on the above, the DEIR analysis does not adequately analyze the potential impacts of the project and must be revised and recirculated for further public review and comment.

Sincerely,



David Jordon
6230 Yucca LLC