

From: Jason Chan <jason.chan@lacity.org>
Sent time: 09/23/2020 11:43:48 AM
To: Mindy Nguyen <Mindy.Nguyen@lacity.org>
Subject: Fwd: VTT-82152-1A Additional Document
Attachments: AMDA Appeal of VTTM 82152 - Supplemental.pdf

Mindy- here is an additional exhibit for the appeal from Manatt team

----- Forwarded message -----

From: **Adler, Noah** <NAdler@manatt.com>
Date: Tue, Sep 22, 2020 at 8:09 PM
Subject: VTT-82152-1A Additional Document
To: jason.chan@lacity.org <jason.chan@lacity.org>
Cc: De la Cruz, Victor <VDelaCruz@manatt.com>, Lynch, Jennifer <JLynch@manatt.com>

Jason,

Attached please find a supplemental letter to include in AMDA's appeal of VTT-82152. There is not a function to upload additional documents online.

Thank you,

Noah

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AMDA Appeal of VTTM 82152 - Supplemental.pdf

APPEAL OF HOLLYWOOD CENTER PROJECT ENVIRONMENTAL IMPACT REPORT CERTIFICATION AND CEQA DETERMINATIONS

AMDA College of the Performing Arts (“AMDA”) appeals the City of Los Angeles (“the City”) Advisory Agency’s environmental determinations made under the California Environmental Quality Act (Pub. Resources Code, §§ 21000 et seq.) (“CEQA”) in relation to the Hollywood Center Project (“Project”). These appealed determinations include the Advisory Agency’s: (1) certification that the Hollywood Center Project EIR has been completed in compliance with CEQA; (2) adoption of the Hollywood Center Project EIR Environmental Findings; (3) adoption of the Statement of Overriding Considerations; and (4) adoption of the Mitigation Monitoring Program. This appeal is brought on grounds that the environmental findings relating to and prepared for the Project are not supported by substantial evidence and therefore certification of the EIR and adoption of the related CEQA documents is legally defective. AMDA is also concurrently submitting an appeal of the Advisory Agency’s approval of Vesting Tentative Tract Map No. 82152 (Alternative 8).

I. BACKGROUND ON AMDA COLLEGE OF THE PERFORMING ARTS.

AMDA is one of the country’s preeminent non-profit colleges for the performing arts, with its two campuses in New York City and Hollywood 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 Hollywood campus enrolls approximately 900 students from throughout the world and offers four Bachelor of Fine Arts programs, one Bachelor of Arts program, and three Associates of Occupational Studies programs. In addition, AMDA offers a High School Summer Conservatory Program, which includes five residential performing arts programs for students in grades 8 through 12. 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.

AMDA’s campus is comprised of several buildings in the immediate vicinity of the Project. The AMDA Tower Building, AMDA’s main building, is located across Yucca Street from the Project and houses administrative offices, classrooms, studio spaces, a costume shop, a stage combat armory, a computer lab, the AMDA Café, and a black box theatre. AMDA’s Vine Street Building, located at 1777 Vine Street shares a property line with the Project site, and 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. It is

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.

AMDA's primary classroom building. An outdoor performance space, a campus piazza, a performing arts library, and film, television and editing facilities are also located on campus. Given that Yucca Street bisects the AMDA campus, AMDA students and faculty constitute a significant portion of the pedestrians crossing Yucca Street at Vine Street, and also use the surrounding sidewalks to travel the neighborhood, including to the nearest Metro station. AMDA operates 12 months out of the year, not only during the traditional academic school year. During the summer there are approximately 700 students on campus.

II. THE CITY CONTINUES TO DISREGARD THE PROJECT'S IMPACTS ON AMDA.

The Project would be constructed directly adjacent to AMDA's approximately 2-acre campus in the heart of Hollywood. Incredulously, the Project's Final EIR ("FEIR") asserts that the Project "would not adversely impact AMDA's Tower Building Campus" and alleges that AMDA has not explained "how the Project's intermittent construction activities would disrupt AMDA's ability to continue providing theater, dance, film and art classes."² (FEIR, p. 2-815.) These statements are false: AMDA has reiterated, time and time again, in both relation to the Hollywood Center Project and its predecessor, the Millennium Hollywood Project, that month after month and year after year of construction noise and vibration will significantly disrupt AMDA in a myriad of ways:

- It will make it impossible for AMDA to hold music, voice and acting lessons in its campus rehearsal rooms, dance studios, private voice rooms, musical studio spaces, classrooms, and film production rooms;
- It will limit the ability of AMDA students to carry out performances at the campus' indoor theaters and outdoor performance space;
- It will grossly affect AMDA students living within the campus residential buildings; and
- It will likely cause irreparable structural damage to AMDA buildings.

In certifying the Project's EIR, adopting the Project's Environmental Findings, Statement of Overriding Considerations, and Mitigation Monitoring Program, and approving Vesting Tentative Tract Map No. 82152, the City continues to ignore these impacts on AMDA. By wholly disregarding these impacts, the City has taken legally indefensible actions relating to the Project that must be overturned.

² The Final EIR seems to rely on the fact that the Project will not physically encroach onto AMDA's campus in support of its baseless conclusion that no impacts will occur. But AMDA has never alleged that the Project will physically encroach and that any impacts will occur due to encroachment. Further, it is not AMDA's burden to "explain" how the Project will affect its operations. It is the City's burden to prove there will be no noise or other environmental impacts on the surrounding environment. As detailed in AMDA's comment letter on the DEIR, there are fundamental flaws in the EIR's noise analysis—including, but not limited to, the mis-categorization of AMDA buildings as commercial when they are in fact residential, and the mis-categorization of buildings for purposes of analyzing vibration impacts.

III. **AMDA PROVIDED THE CITY WITH A DETAILED CEQA COMMENT LETTER IDENTIFYING THE MYRIAD DEFICIENCIES IN THE DRAFT EIR; YET THE CITY HAS MADE NO MEANINGFUL REVISIONS TO THE FLAWED ANALYSIS.**

On June 1, 2020, AMDA submitted a lengthy and detailed comment letter during the public review and comment period for the Project Draft EIR. AMDA's comment letter was included in the Project's Final EIR, along with the City's responses to AMDA's comments. However, in several key respects, the responses included in the Final EIR disregarded, downplayed, ignored, or just refused to acknowledge, the issues and substantial evidence raised by AMDA.

AMDA's June 1, 2020 letter speaks for itself, remains a valid accounting of the Draft EIR's shortcomings, and is incorporated herein by reference. However, the following are just some of the ways in which the Draft and Final EIRs fail to comply with CEQA's mandates:

- As detailed in AMDA's June 1, 2020 letter, the Draft EIR's noise analysis was irredeemably flawed, resulting in an undercounting and underreporting of the Project's noise impacts on AMDA. For example,
 - The DEIR fails to identify the AMDA dormitories located at the corner of Yucca Street and Ivar Avenue as a residential noise-sensitive receptor. The FEIR attempts to remedy the fact that these on-campus residences were overlooked by stating that the DEIR already identified significant and unavoidable noise impacts in this general area and therefore, no change to that determination has occurred. *This is not the same as disclosing that AMDA's student housing units will experience significant and unavoidable impacts and it certainly does not alleviate the City's duty to identify mitigation measures to reduce this impact on AMDA student housing.* Such measures could include, but certainly are not limited to, relocating the residences to another location for the duration of construction on the West Site, construction of additional temporary or permanent sound barriers, and additional noise monitoring and/or notification. These measures were provided to the City for consideration, and no response was provided in the FEIR.
 - The DEIR fails to correctly categorize both the AMDA Vine Building and the AMDA Tower Building as unreinforced, non-ductile, concrete buildings. By doing so, the DEIR failed to apply the correct threshold of significance for building damage, and greatly minimized the level of significance of construction vibration impacts and the likelihood that AMDA's buildings will be severely damaged by the Project. The FEIR attempts to remedy this factual and analytical error by stating that "this change does not affect the calculations provided in the vibration analysis for the DEIR and would result in the same vibration level disclosed in the DEIR and the same impact determination as provided in the DEIR." *But this is not so. The fact is that the DEIR discloses only that AMDA Vine Building vibration will occur at*

less than seven times the acceptable level, when in actuality, the AMDA Vine Building will experience vibration levels more than eleven times the acceptable level—this is a substantially more severe impact. Where new information is added that shows a substantially more severe impact than was disclosed in a circulated DEIR, recirculation is required. The City failed to do so, and instead continues to downplay the substantial environmental damage that will be caused by this Project.

- The DEIR fails to identify or describe the location of onsite construction staging, vehicle waiting, and equipment warm up areas. The location of these areas will substantially change the amount of impact felt on the AMDA campus. The past iteration of this Project, the Millennium Hollywood Project, proposed construction staging and waiting directly adjacent to both AMDA buildings. Given that the Hollywood Center Project is completely silent on its plans for construction staging, there is no reason to think that the same will not occur. The FEIR attempts to address this issue with the extraordinarily vague statement that “all construction staging activities would be located within the West and/or East sites.” Yet, no actual location is provided, and no analysis of the potential for construction staging to result in substantial environmental damage has been done.
- The DEIR just wholly fails to disclose the actual, maximum noise levels that will be experienced at the AMDA campus. It does this applying a methodology that only considers average construction noise levels. Notably, the DEIR finds that *even just the average noise levels* to be experienced at AMDA are 100 L_{eq}, which is louder than a gas lawn mower operating three feet away, louder than the inside of a New York subway train, and nearly as loud as a low jet flyover. If this is the *average*, we can only imagine what the *maximum* noise levels will be—and again, we must imagine, because the City has failed to disclose this to the public.
- The Draft EIR contains a flawed, incomplete, and legally indefensible Project Description that describes eight different potential projects with varying construction schedules, land use mixtures, building footprints, and open space configurations. Doing so impairs the public’s right and ability to participate in the public review process, hides the project’s true impacts and omits key details necessary for a full assessment of potentially significant impacts. (See *Stopthemillenniumhollywood.com v. City of Los Angeles* (2019) 39 Cal.App.5th 1, 16; *Washoe Meadows Community v. Department of Parks and Recreation* (2017) 17 Cal.App.5th 277, 288.) The Final EIR responds that CEQA case law “allows a Draft EIR to consider multiple design options so long as the project description is definitive and the environmental analysis includes a discussion of all the impacts of both options to allow the public to be on notice of all potential environmental impacts.” (Final EIR, p. 2-729.) This is a misstatement of the law, and even if it were correct, as pointed out in AMDA’s June

1, 2020 comment letter, the Draft EIR *does not* identify all the potential impacts of each of the several possible permutations of the Project.

- The Draft EIR fails to accurately disclose air quality and health risks to sensitive receptors, including AMDA. As noted above, the Draft EIR fails to account for all AMDA on-campus housing and the Final EIR does not explain how this new information affects the air quality analysis significance determinations.
- The Draft EIR fails to explain how Mitigation Measures CUL-MM-2 and NOI-MM-4 will actually reduce vibration impacts to the historic Capitol Records Building, Pantages Theatre, Avalon Hollywood and the Art Deco Building (6316-6324 Yucca Street) or how Mitigation Measure CUL-MM-1 will actually reduce construction impacts to the historic Hollywood Walk of Fame. The Final EIR’s assertions that because it “conservatively” determined that impacts to off-site historic resources will be significant and unavoidable it need not provide further detail on the effectiveness of Mitigation Measures CUL-MM-2 and NOI-MM-4 are inconsistent with CEQA case law, which requires that reductions from mitigation be meaningfully described, even when impacts cannot be reduced to a less than significant level. Similarly, the Final EIR’s assertions that Mitigation Measure CUL-MM-1’s inclusion in the Mitigation Monitoring Program somehow makes a legally deficient measure sufficient are also unsupported.
- The Draft EIR relies on offsets to reduce its greenhouse gas emissions impacts, but provides no enforceable, meaningful commitment to purchase offsets. The Final EIR’s vague citation to the Project’s Environmental Leadership Development Program (“ELDP”) Application for “a discussion of potentially utilizing GHG offsets or credits to further reduce GHG emissions” does not remedy this deficiency. The Final EIR does not explain how statements made in the ELDP Application “are binding and enforceable.” Relatedly, the Final EIR states, without any enforcement mechanism cited, that *if* the Project purchases offset credits “only CARB Registry Offset Credits would be purchased.” Finally, the Final EIR’s statement that “[because] carbon offsets would be purchased through a CARB-approved registry, the Project would follow CARB-approved protocols” wholly ignores the recent California Supreme Court opinion in *Golden Door Properties, LLC v. County of San Diego* (2020) 50 Cal.App. 5th 467, which acknowledges that not all CARB-approved registries are equal in quality of offsets.

IV. THE CITY HAS FAILED TO CONSIDER AMDA’S PROPOSED MITIGATION MEASURES, DESPITE THE FACT THE MEASURES WOULD REDUCE SIGNIFICANT IMPACTS TO AMDA OPERATIONS.

The Draft EIR failed to consider and disclose the true magnitude of actual significant impacts that will be felt at AMDA. Worse yet, the City wholly disregarded the mitigation measures that AMDA proposed in its June 1, 2020 letter to reduce these impacts. Where a new

mitigation measures is proposed that is feasible, is different from those already evaluated in the Draft EIR, and would lessen the project's significant environmental impacts, ***the lead agency must either adopt those mitigation measures or recirculate the Draft EIR.*** (State CEQA Guidelines, § 15088.5(a)(3); *South County Citizens for Smart Growth v. County of Nevada* (2013) 221 Cal.App.4th 316, 330; see also *Laurel Heights Improvement Association v. Regents of Univ. of Cal.* (1993) 6 Cal.4th 1112.)

As discussed above, the Project would result in significant noise-related impacts on AMDA, including on AMDA on-campus housing which was wholly omitted from the Draft EIR's analysis and impact determination. AMDA's June 1, 2020 comment letter suggested several mitigation measures that would reduce impacts to AMDA's on-campus housing, including relocating the residences to another location for the duration of construction on the West Site, construction of additional temporary or permanent sound barriers, and additional monitoring and/or notification. The Final EIR both failed to adopt these measures, and failed to recirculate the Draft EIR on the same basis, in violation of CEQA.

AMDA also proposed the following measures addressing construction noise and vibration impacts to offsite buildings, which the Final EIR similarly ignored and failed to adopt:

- Temporarily relocate all AMDA classrooms and dormitories to another location for the duration of Project construction.
- Prohibit the use of stationary construction equipment, equipment warm-up areas, construction truck staging, and other noise-generating equipment and activities within a given buffer area adjacent to the site boundary, and identifying specific and limited locations where tower cranes, personnel lifts, construction staging, materials stockpiling, etc. may occur.
- Pause and/or limit construction during peak class hours.
- Identify specific construction equipment that may not operate simultaneously.
- Prohibit any construction and vehicle staging for the Project on Yucca Street, between Ivar Avenue and Vine Street.
- Provide acoustical retrofits of AMDA buildings, such as window replacements and improved installation, to reduce construction noise impacts on residence halls and classrooms.
- Provide seismic retrofits of AMDA buildings, to protect against construction vibration, which has the potential to result in the loss of both property and life.

Each of the above proposed mitigation measures would dramatically reduce significant noise and vibration impacts that are disclosed (and yet, underestimated) in the Draft EIR. By failing to adopt these measures, or, in the alternative, failing to circulate the Draft EIR explaining why these measures will not be adopted, the EIR fails to comply with CEQA. (State CEQA Guidelines, § 15088.5(a)(3).)

V. THE CITY HAS FAILED TO CONSIDER AMDA'S PROPOSED PROJECT ALTERNATIVE, DESPITE THE FACT THAT THE ALTERNATIVE WOULD REDUCE SIGNIFICANT IMPACTS TO AMDA OPERATIONS.

The Draft EIR must consider all reasonable alternatives that effectively reduce the Project's significant impacts, while still meeting most of the Project objectives. As described above and in AMDA's June 1, 2020 comment letter, the Project results in significant and unavoidable construction noise and vibration impacts to AMDA. However, beginning construction on the East Site, and then moving AMDA classrooms into empty retail shell space on the East Site while construction on the West Site commences would reduce these impacts. Neither the Draft nor Final EIR provides any evidence indicating that beginning construction on the East Site is infeasible. Where a feasible project alternative, considerably different from others previously analyzed, would clearly lessen the significant environmental impacts of a project, but the project's proponents decline to adopt it, a Draft EIR must be recirculated. (State CEQA Guidelines, § 15088.5(a)(3).) The City's failure to do so results, again, in a legally deficient EIR.

VI. THE FINDINGS OF FACT AND STATEMENT OF OVERRIDING CONSIDERATIONS ARE NOT SUPPORTED BY SUBSTANTIAL EVIDENCE.

Given the above deficiencies in the Draft and Final EIRs, as well as each deficiency noted in AMDA's June 1, 2020 comment letter, the CEQA findings of fact adopted by the Advisory Agency in relation to the Project cannot be found to be supported by substantial evidence.

VII. CONCLUSION.

Upon appeal, the Advisory Agency's certification of the Project EIR and adoption of the related CEQA determinations must be overturned. The Project EIR is deficient in countless ways, and ignores, underreports, and fails to avoid and mitigate substantial environmental impacts on the adjacent AMDA campus.