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Subject: Hollywood Center (Case Nos. VTT-82152-1A, CPC-2018-2114-DB-CU-MCUP-SPR, etc.)
Attachments: Letter to CPC (Ned Pan).pdf

Attached please find our letter of today's date, which concerns the Hollywood Center project which will be heard by the City Planning Commission on October 15, 2020.

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October 12, 2020

VIA ELECTRONIC MAIL ONLY

Samantha Millman, President
and Members of the Los Angeles
City Planning Commission
City of Los Angeles
200 N. Spring St.
Los Angeles, CA 90012
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Re: Hollywood Center
Case Nos. VTT-82152-1A, ENV-2018-2116-EIR,
CPC-2018-2114-DB-CU-MCUP-SPR, and CPC-2018-2115-DA
Hearing Date: October 15, 2020
Agenda Item Nos. 7, 8 and 9

Dear President Millman and Members of the City Planning Commission:

This letter is submitted on behalf of our client, Ned Pan, Inc. (“Ned Pan”), the owner of the Pantages Theater at 6233 Hollywood Boulevard and one of the six appellants in Case No. VTT-82152-1A. The purpose of this letter is to respond to the Staff Recommendation Report (the “Staff Report”) and provide additional comments on the proposed Hollywood Center project (the “Project”).

The Pantages Theater, which was constructed in 1929, is a designated City Historic-Cultural Monument and a contributor to the Hollywood Boulevard Commercial and Entertainment District. The Pantages Theater, which underwent a \$10 million restoration and upgrade in 2000, is one of Los Angeles’ leading venues for live theater.

The Pantages Theater occupies a lot that adjoins the portion of the Project site located east of Vine Street (the “East Site”). The Project, both as proposed and as recommended for approval by staff (“Alternative 8”), will have significant adverse impacts on the historic Pantages Theater that have not been adequately evaluated or mitigated.

I. Vibrations and Earth Movement During Project Construction Have the Potential to Damage the Historic Pantages Theater. This Potential Impact of the Project Has Not Been Adequately Mitigated.

As discussed in the Draft and Final Environmental Impact Report for the Project (together, the “EIR”), vibrations and earth movement during Project construction have the potential to cause severe structural and other damage to the Pantages Theater.¹

According to the Staff Report, Mitigation Measure NOI-MM-4 lists six measures that would “reduce potential vibration impacts and prevent potential structural damages.”² On the contrary, NOI-MM-4, which outlines the general contours of a vibration monitoring program to be developed in the future, is wholly inadequate as presently proposed. For example, in the event that the specified “regulatory level” of vibrations is reached (*i.e.*, the level at which building damage is likely to occur), the contractor would be required to take only “feasible” steps within an unspecified timeframe to “reduce” the vibrations to unspecified levels in order to “minimize” (not prevent) damage from construction activities. Under this language, if the contractor determines that it would be *infeasible* to take the steps that would be necessary to reduce the vibration levels, the work may continue even if the work causes damage to the Pantages Theater or other historic buildings. Incredibly, under NOI-MM-4, the contractor would not even be required to halt construction activities while the source of the vibration is being investigated and the damage is being assessed.

The Staff Report also refers to Mitigation Measure CUL-MM-2 which, like Mitigation Measure NOI-MM-4, requires the future development of a “Construction Monitoring Plan” to monitor for damage to adjacent historic resources and provides that unspecified “corrective steps” must be taken if earth movement exceeds “thresholds” that have yet to be determined. Monitoring, standing alone, does not constitute adequate mitigation. Furthermore, it is not enough to simply require that any damage be “repaired.” Among other things, if vibrations during Project construction result in severe structural damage to the Pantages Theater, the necessary repairs may not be feasible. An adequate mitigation measure must insure that damage to historic resources such as the Pantages Theater does not occur in the first place. Mitigation Measures NOI-MM-4 and CUL-MM-2 fail to meet this standard.

¹ See Draft EIR, pp. IV.I-18, IV.I-78 through IV.I-79, IV.C-65 through IV.C-66, IV.C-83, and IV.C-90, Final EIR, pp. 2-89 through 2-94 and 2-505 through 2-519.

² Staff Recommendation Report, p. A-37 and A-43.

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Furthermore, Mitigation Measures NOI-MM-4 and CUL-MM-2 impermissibly defer the formulation of specific details of the measures to the future. The specific details of a mitigation measure may be developed after project approval only “when it is impractical or infeasible to include those details during the project’s environmental review,” and only if the lead agency “(1) commits itself to the mitigation, (2) adopts specific performance standards the mitigation will achieve, and (3) identifies the type(s) of potential action(s) that can feasibly achieve that performance standard and that will be considered, analyzed, and potentially incorporated in the mitigation measure.”³ None of these prerequisites for permissible deferred mitigation are present here.

The EIR concludes that even with the implementation of mitigation measure NOI-MM-4 and CUL-MM-2, vibrations and earth movement during Project construction would result in “significant and unavoidable” impacts on the Pantages Theater and other nearby historic resources.⁴ According to the Staff Report, the reason for this conclusion is that these mitigation measures require “the consent of the owner of the Pantages Theatre property,” and not because it “does not have adequate measures.” But this assertion makes no sense. If these mitigation measures were in fact “adequate,” there would be no reason for the EIR to conclude that the impacts on the Pantages Theater and other nearby historic resources would still be “significant and unavoidable” after implementation of these measures.

The reason that the EIR concluded that the impacts due to vibrations and earth movement during Project construction would be significant and unavoidable is that the efficacy of Mitigation Measures NOI-MM-4 and CUL-MM-2 depend upon the consent and cooperation of Ned Pan and other owners of historic buildings in proximity to the Project site. However, even if it were true that these measures would be adequate if Ned Pan and other owners of such properties simply consent to, and cooperate in, their implementation (which Ned Pan disputes), the fact remains that Ned Pan and other owners of nearby historic properties have no duty to consent or cooperate in the woefully deficient monitoring and mitigation program outlined in Mitigation Measures NOI-MM-4 and CUL-MM-2. On the other hand, the City does have an obligation under CEQA to identify and implement feasible ways to mitigate the environmental impacts of the Project to a level of insignificance that are not dependent on the voluntary actions of neighboring property owners. Ned Pan identified many such measures in its comment letter on the Draft EIR that were either improperly rejected or ignored.⁵

³ See CEQA Guidelines, § 15126.4(a)(1)(B).

⁴ See Draft EIR, p. IV.C-83.

⁵ See Final EIR, pp. 2-506 through 2-512, 2-538 through 2-540-, and 2-547 through 2-552.

II. Vibrations and Noise During Project Construction Will Disrupt Performances at the Pantages Theater. This Acknowledged “Annoyance” Impact Has Not Been Adequately Mitigated.

The EIR acknowledges that the “annoyance” impacts on the Pantages Theater and other sensitive receptors as a result of noise and vibrations during Project construction will be significant. For example, vibrations that will be generated during the estimated 4.5 years of Project construction will reach a level of 119 VdB at the Pantages Theatre, which is nearly double the significance threshold of 65 VdB for an FTA Category 1 building (concert halls and other critical listening spaces).

The Staff Report refers to Mitigation Measure NOI-MM-3, which was revised in the Final EIR to include the following provision:

“The construction liaison shall coordinate with the owner/operator of the Pantages Theatre to minimize disruptions to performances during the performance times starting at 8:00 p.m., Tuesday through Saturday, and 2:00 p.m. on Saturday afternoon from Project construction noise and vibration near the Pantages Theatre.”

The Staff Report claims that this measure would “reduce” the human annoyance impacts on the Pantages Theatre, but acknowledges that the impacts “would still be potentially significant and unavoidable.”⁶

It is highly doubtful that the vague requirement to “coordinate” with the owner/operator of the Pantages Theater in an effort to “minimize disruptions” to performances would actually “reduce” the human annoyance impacts on the Pantages Theater in any way. More importantly, the Staff Report and the EIR fail to consider a feasible measure that would completely eliminate this potentially impact. Specifically, according to the EIR, construction of the Project would occur between the hours of 7:00 a.m. and 3:00 p.m.⁷ If this is true, then Project construction would not interfere with any of the evening performances at the Pantages Theater. The problem, however, is that the proposed construction hours (7:00 a.m. to 3:00 p.m.) have not been memorialized in any mitigation measure or proposed condition of approval. Thus, under the City’s noise ordinance, construction would be allowed to occur as late as 9:00 p.m., which would disrupt evening performance at the Pantages Theater.⁸ Therefore, if the City Planning Commission (“Planning

⁶ See Staff Report, p. A-39.

⁷ See Draft EIR, pp. II-70.

⁸ See LAMC § 41.40.

Commission”) decides to approve the Project, the Planning Commission can and should close this loophole by imposing a condition of approval requiring that all construction on the Project site cease no later than 7:00 p.m. (one hour prior to the start of evening performance at the Pantages Theater).

Furthermore, for the reasons noted above, Mitigation Measure NOI-MM-3 would not avoid (and may not even reduce) the potential for disruption of the regular Saturday matinee performances at the Pantages Theater, which begin at 2:00 p.m. Therefore, the Planning Commission should also require, as a condition of approval or mitigation measure, that all construction activity (or at least those activities that have any potential to generate noise or vibration impacts beyond the boundaries of the Project site) cease by no later than 1:00 p.m. on Saturdays. Because there is no evidence in the record to support a finding that this proposed measure would be infeasible, CEQA requires that it be implemented.⁹

III. The Project Will Interfere With the Pantages Theater’s Longstanding Use of the Public Alley for Loading Purposes and Will Adversely Affect Traffic Conditions on Argyle Avenue, Which is Already Experiencing Gridlock Conditions in the Afternoon Peak Hours. Potentially Feasible Measures Proposed by the Pantages Theater to Avoid or Reduce These Impacts Have Been Improperly Rejected or Ignored.

As recommended for approval in the Staff Report, the Project would have various impacts on the Pantages Theater and the general public related to traffic, circulation, and pedestrian safety that have not been adequately addressed. These traffic-related issues, all of which are interconnected, are briefly summarized below.

- The Project proposes to “merge” (vacate) a portion of the public alley that runs along the north side of the Pantages Theater, and to construct loading facilities for the Project directly opposite the loading doors for the Pantages Theater building and also at the westerly terminus of the public alley.¹⁰ The Pantages Theater depends on the ability to use this public alley, particularly during load-ins and load-outs of shows. As currently designed, the loading areas for the Project would directly conflict with the Pantages Theater’s operations and are completely unworkable.

⁹ See State CEQA Guidelines, §§ 15021(a), 15092(b)(2), 15002(a)(3) and 15002(h).

¹⁰ See the East Site Ground Floor Site Plan (Drawing L-103), which can be found on pdf page 216 of the Staff Recommendation Report in Case No. CPC-2018-2114-DB-CU-MCUP-SPR.

- As recommend for approval in the Staff Report, the portion of the Project that would be developed on the East Site (the “East Site Project”) would be developed with 385,943 sq. ft. of office use, 14,806 sq. ft. of retail and restaurant uses, and a seven-level subterranean parking structure containing 1,103 parking spaces. The East Site Project will add 2,728 vehicular trips each day (903 of which would occur during the p.m. peak hour) to the short segment of Argyle Avenue from Hollywood Boulevard to the 101 Freeway, which is already heavily congested during much of the day and is often gridlocked in the late afternoon and early evening. The Project, together with related projects such as the proposed mixed-use development project proposed for the southeast corner of Yucca Street and Argyle Avenue (CPC-2014-4705-ZC-HD-DB-MCUP-CU-SPR), will result in significant direct and cumulative effects on traffic circulation in the area (and on the operations of the Pantages Theater) that have not been addressed.
- The proposed loading areas for the Project will accommodate only smaller trucks that do not exceed 30 feet in length. However, the office, retail, and restaurant uses proposed for the East Site will undoubtedly require deliveries by larger trucks (up to 53 feet in length) on a regular (if not daily) basis. Each of these trucks will be required to back out of the public alley, which will further impede the flow of traffic on Argyle Avenue.
- As presently designed, all of the 1,103 subterranean parking spaces proposed for the East Site Project would be accessed by a single driveway on Argyle Avenue that would be located less than 30 feet north of the existing public alley. In addition, in order to accommodate the 2,728 vehicular trips that will use this driveway each day, the Project proposes to install a full mid-block traffic signal and a pedestrian cross-walk across Argyle Avenue adjacent to the Project driveway. Due to the proximity of the proposed driveway to the public alley, larger trucks (including trucks associated with the East Site Project and those used for the load-in and load-out of shows at the Pantages Theater) would have to cross this proposed signalized intersection and the crosswalk while entering and backing out of the public alley. Furthermore, the Project will undoubtedly be required to reconfigure the existing lane markings on Argyle Avenue, including the installation of dedicated turn lanes into the Project. Although the plans for such lane reconfiguration have yet to be released to the public, it is entirely possible that the trucks entering or backing out of the public alley will need to cross into the future dedicated turn lanes against the flow of traffic. The obvious operational and safety issues associated with the

proposed location and configuration of the proposed driveway and the pedestrian crossing have not been evaluated or addressed.

- The proposed pedestrian crosswalk across Argyle Avenue does not align with the proposed pedestrian paseo through the East Site. Rather, in an apparent attempt to justify the Applicant’s plan to construct a full traffic signal at a mid-block location for the Project’s poorly-located driveway, the pedestrian crossing is proposed to be installed immediately adjacent to the Project’s driveway on Argyle Avenue. The resulting “offset” between the proposed paseo and the pedestrian crossing is awkward and is counterproductive to the goal of fostering pedestrian mobility and safety.
- The East Site Project would provide 1,103 parking spaces, whereas the code-required minimum parking for the East Site Project is approximately 802 spaces (400,749 sq. ft. of floor area divided by 500). The proposal to provide approximately 300 more parking spaces than required by code conflicts with numerous City policies intended to discourage the use of automobiles within transit oriented districts, and is inconsistent with the Project’s stated objective of “maximizing infill development within an existing Regional Center near jobs, retail, and entertainment in proximity to transit and transportation infrastructure that encourages pedestrian activity.”¹¹

In light of these interconnected traffic, circulation, and public safety issues, Ned Pan has proposed several potentially feasible modifications to the design of the Project that would mitigate or avoid the potential traffic-related impacts of the Project. These modifications include the following:

- Add a second driveway entrance to the East Site’s proposed subterranean parking structure on Yucca Street in order to better disperse the 2,728 trips that the East Site Project will generate each day, thereby reducing impacts on Argyle Avenue and minimizing the operational and safety issues presented by the proposed single driveway on Argyle Avenue and the associated crosswalk across Argyle Avenue. This segment of Yucca Street is a local street (like Argyle Avenue), and a driveway on Yucca Street would not impact the Hollywood Walk of Fame. Neither City staff

¹¹ Draft EIR, p. II-13.

nor the Applicant have yet to demonstrate that the installation of a second driveway on Yucca Street would be infeasible.

- Shift the proposed driveway on Argyle Avenue approximately 40 feet to the north, which would avoid or minimize conflicts with trucks backing out of the public alley and would better align the pedestrian crosswalk with the proposed paseo through the East Site.
- Reconfigure the proposed loading areas for the East Site Project to better accommodate larger trucks and allow for smaller trucks to turn around without the need to back out onto Argyle Avenue when large trucks are using the alley for the load-in or load-out of shows at the Pantages Theater. Consideration should also be given to either moving the proposed loading areas to a location where they could be accessed from Yucca Street or providing additional loading facilities that would be accessed from Yucca Street.

IV. Project Alternative 8.

All of the issues discussed in Sections I, II, and III above apply to both the Project as proposed by the Applicant (the “Original Project”) and the Project as recommended for approval in the Staff Report (“Alternative 8”). That said, it should be noted that Alternative 8 would have even greater impacts on area traffic conditions and on the operations of the Pantages Theater than the Original Project. Among other things:

- On an average daily basis, Alternative 8 would generate substantially more vehicular trips than the Original Project, which would exacerbate the issues discussed in Section III above, including operational uses involving the use of the public alley and Argyle Avenue.
- Alternative 8 would provide 419 more parking spaces on the East Site than the Original Project (1,103 vs. 684), all of which would be accessed by the proposed single driveway on Argyle Avenue.
- Under Alternative 8, the proposed driveway on Argyle Avenue would be located approximately 5 to 10 feet closer to the public alley as compared to the driveway shown in the plans for the Original Project (which itself was too close to the public alley). In addition, upon entering the parking entrance from the street (and upon approaching driveway exit from within the parking structure), drivers would need

to navigate a sharp, sloping curve, which impairs visibility and is inherently less safe.

- Alternative 8 would provide an additional loading area at the western terminus of the public alley, which would effectively preclude the use of the public alley by the Pantages Theater for the load-in or load-out of shows.

Furthermore, we submit that Alternative 8 cannot be lawfully approved by the Planning Commission during its meeting on October 15, 2020, for several reasons. First, Alternative 8 requires at least one discretionary approval that was not required for the Original Project, namely, a Conditional Use Permit for a Major Development Project (for the construction of 100,000 square feet or more of nonresidential floor area) pursuant to LAMC Section 12.24 U.14. Although the Staff Report recommends approval of such a conditional use permit, to our knowledge, the Applicant has not applied for such an approval. Because no application has been filed for a “Major Development Project” conditional use permit, the Planning Commission has no authority to grant such a conditional use permit.¹²

Second, the Staff Report recommends that the Planning Commission grant a waiver of development standards pursuant to Government Code section 65915(e) to allow for a 7.1 floor area ratio (“FAR”) across the entire Project site. However, this provision of State Density Bonus Law allows for such waivers only in cases where the development standard in question would have the effect of physically precluding the construction of a *housing* development project that includes the requisite number of affordable housing units. Such a waiver cannot be lawfully granted for Alternative 8 because the East Site would be developed entirely with *nonresidential* uses at an FAR in excess of that permitted by the applicable zoning regulations. Consequently, Alternative 8 would require a height district change (rather than a waiver of development standards) to allow for the approximately 4.3 FAR of *nonresidential* floor area proposed for the *East Site*.

Third, approval of Alternative 8 on October 15, 2020 would arguably deprive the public of its right to procedural due process. Specifically, the staff’s abrupt shift away from the Original Project to Alternative 8 occurred after the noticed public hearing in this matter on August 26, 2020. Moreover, in its appeal, the Applicant is asking the Planning Commission to reject the staff’s recommendation to approve Alternative 8 and to approve the Original Project instead. As a result, Ned Pan and other members of the public have been placed in the difficult position of having to review and comment on two very different “projects” within an unreasonably short amount of time. Moreover, staff’s eleventh-hour decision to “elevate” Alternative 8 to the same status as the

¹² See LAMC §§ 12.24.B and 12.24.D.

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Original Project draws into question the legal adequacy of the description of the Project in the EIR.¹³

V. Conclusion.

For all of the reasons set forth in this letter, we urge the Planning Commission to disapprove the Project (both the Original Project and Alternative 8) and refrain from certifying the EIR unless and until it is revised to conform with the requirements of CEQA and recirculated for public comment.

Thank you for your consideration.

Very truly yours,



JOHN M. BOWMAN
Elkins Kalt Weintraub Reuben Gartside LLP

JMB:jmb

Attachments

cc: Council Member Mitch O'Farrell
Craig Bullock, C.D. 13 (via email)
Mindy Nguyen, City Planner (via email)

¹³ See *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185,197-98 (“incessant shifts” among different project descriptions “vitiat[e] the City's EIR process as a vehicle for intelligent public participation,” because “[a] curtailed, enigmatic or unstable project description draws a red herring across the path of public input.”). See also *Stopthemillenniumhollywood.com v. City of Los Angeles*, 39 Cal.App.5th 1 (2019).