

***Stopthemillenniumhollywood.com v. City of Los Angeles***  
**(Aug. 22, 2019) \_\_\_ Cal.App.5<sup>th</sup> \_\_\_**

The City approved a master land use permit and development agreement in 2013 for the “Millennium Hollywood Project” to be located on a four and one-half acre parcel straddling Vine Avenue and including the iconic Capitol Records building. The project’s EIR did not describe a specific development. Instead, it described a concept plan that identified a mixed use project including residential units, hotel, office, commercial, food and beverage, fitness center, and parking uses. The project description was intended to create an impact envelope where a range of development scenarios could occur within a maximum floor area of 1,166,970 square feet (total of existing buildings plus new construction), a maximum floor area ratio of 6:1, and an established massing envelope setting out height and open space requirements. The EIR also examined a “commercial scenario” and a “residential scenario.” The EIR explained that because “flexibility is contemplated in the Development Agreement with regard to particular land uses, siting, and massing characteristics, a conceptual plan has been prepared as an illustrative scenario to demonstrate a potential development program that implements the Development Agreement land use and development standards (the Concept Plan).”

Stop sued the City alleging that the project description failed to comply with CEQA’s requirement for a stable and finite project description. In particular, they claimed that the description was too general to enable the public to understand what future development might entail. The trial court agreed and this appeal followed.

The Court of Appeal affirmed the lower court’s decision. It took a dim view of the generality of the project description:

In this case, the project description is not simply inconsistent, it fails to describe the siting, size, mass, or appearance of any building proposed to be built at the project site. The draft EIR does not describe a building development project at all. Rather, it presents different conceptual scenarios that Millennium or future developers may follow for the development of this site. These concepts and development scenarios—none of which may ultimately be constructed—do not meet the requirement of a stable or finite proposed project.

The development regulations that were incorporated into the project description provide the public and decision makers little by way of actual information regarding the “design features” or the “final development scenario.” Rather, these regulations simply limit the range of construction choices for future developers. And, even the limits imposed are vague and ambiguous. While future developers are to create a mixed-use development, eliminate the visual impact of current on-site parking, establish, where feasible, pedestrian linkages to existing public transit, and “provide designs that address, respect and complement the existing context, including standards for ground-level open space, podium heights and massing setbacks,” no particular structure or structures are required to be built.

The Court was obviously troubled by the lack of project detail. It distinguished this case from others where only some development details were missing or where future development would be subject to supplemental review. The Court concluded that the EIR's "failure to present any concrete project proposal" obstructed informed public participation and therefore was a prejudicial error.