

# LUNA & GLUSHON

A Professional Corporation

DENNIS R. LUNA  
(1946-2016)

16255 VENTURA BOULEVARD, SUITE 950  
ENCINO, CALIFORNIA 91436  
TEL: (818) 907-8755  
FAX: (818) 907-8760

January 19, 2021

## VIA EMAIL

Honorable Councilmembers  
Planning, Land Use and Management Committee  
Los Angeles City Council  
200 N. Spring Street  
Los Angeles, CA 90012

Re: PLUM Agenda Item 12 - January 21, 2021  
2500 James Wood Boulevard  
CF 18-1242

Honorable Councilmembers:

This letter is submitted on behalf of Tauan Chen, Infinitely Group, the Applicant ("the Chen Family") in the above-reference case which proposes the demolition of an existing commercial retail building for the construction of a new six-story hotel above two levels of subterranean parking. The Project proposes 100 guest rooms with kitchenettes and approximately 10,948 square feet of office, restaurant, meeting room and support space.

### **1. Unanimous Approval 8-0 by City Planning Commission**

The Project was approved twice by the City Planning Commission ("CPC") in 2018 and 2020. On September 13, 2018, the CPC approved the GPA with the "add areas" as recommended by City Planning Staff. On February 26, 2019, the PLUM Committee heard the case but continued it and asked Planning Staff to update the CEQA findings relative to the GPA and Add Areas. Thereafter on November 5, 2019, the PLUM Committee sent the GPA back to the CPC requesting that the "add areas" be removed from the GPA.

On January 23, 2020, The CPC did exactly what the PLUM Committee had asked – the CPC approved removed the "add areas" from the GPA and further approved the Project by a unanimous vote of 8-0 including a Vesting Zone Change and Height District Change from R4-1 and C2-1 to (T)(Q)C2-2D to allow a maximum FAR of 2.99:1 (approximately 60,637 square feet); a Vesting Conditional Use to allow the construction, use, and maintenance of a hotel in the C2 Zone within 500 feet of an A or R Zone; and Site Plan Review with a plethora of Conditions of Approval.

**2. Appellant's Claim that the Hotel Use is subject to Measure JJJ has no legal merit.**

We concur with City Planning Staff's letter to you dated October 28, 2020 that the Project is not subject to the affordable housing requirements of Measure JJJ which applies to projects of over 10 dwelling units. As approved by the CPC, the Project is for a Hotel use including 100 guest rooms. [See Q Condition 2 of the Zone Change]. As set forth by City Planning staff, Hotel guests will check in through a reservations format and they will not be able to rent their rooms for stays longer than 30 days. The Project will be subject to a *Transient Occupancy Tax (TOT)* to the City – a tax that does not apply to dwelling units. The Hotel will be constructed under different Building Code standards than dwelling units. The definition of Guest Room states that it is a habitable room not in a Dwelling Unit. The definition of Dwelling Unit is a group of two or more rooms, one of which must be a kitchen. Since the Project includes individual guest rooms, the use has been properly determined by City Planning to be a Hotel use – not dwelling units.

**3. City Planning Staff and the City Planning Commission properly adopted the Mitigated Negative Declaration ("MND").**

Preliminarily, it must be noted that the professional staff of the City Planning Department determined that with mitigation conditions, the Project would not result in any significant environmental impacts. Thereafter the CPC adopted the MND, by a unanimous 8-0 vote, rejecting the Appellant's contentions.

As a matter of law, contrary to what Appellant argues, comment letters with speculation, argument and/or conclusions do not meet the threshold of "fair argument". As Councilmembers who frequently hear CEQA appeals well know, anyone can make an argument that a project may harm the environment. There is a legal threshold to meet the fair argument standard which requires

supporting **substantial evidence**. *Parker Shattuck Neighbors v. Berkeley City Council* (2013) 222 Cal.App.4th 768, 778 (unless substantial evidence is introduced, no “fair argument” that an Environmental Impact Report (“EIR”) is necessary can be made).

Substantial evidence is defined as “facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts.” Pub. Resources Code, §§ 21082.2(c), 21080 (e)(1); CEQA Guidelines, §15384(b); *American Canyon Community United for Responsible Growth v. City of American Canyon* (2006) 145 Cal.App.4th 1062, 1070.

Substantial evidence does not include “**argument, speculation, unsubstantiated opinion or narrative**, evidence which is inaccurate or erroneous, or evidence of social or economic impacts which do not contribute to, or are not caused by, physical impacts on the environment.” Pub. Resources Code, § 21082.2(c). To meet their burden, “**project opponents must produce some evidence, other than their unsubstantiated opinions**, that a project will produce a particular adverse effect.” *Assn. for Protection of Environmental Values in Ukiah v. City of Ukiah* (1991) 2 Cal.App.4th 720, 735-736.

Substantial evidence also cannot be imputed by a lack of evidence. *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1382 (“lack of study, standing alone, does not give rise to a fair argument that the Project will in fact have significant environmental impacts”); *Rominger v. County of Colusa* (2014) 229 Cal.App.4th 690, 713 (“an absence in the record on a particular issue does not automatically invalidate a negative declaration; the lack of a study is hardly evidence that there will be a significant impact”).

Here, Appellant fails to provide *any* substantial evidence, *based in fact*, that that Project, as proposed and conditioned, could have a significant impact on the environment. Instead, it repeats general aspects of the Project and concludes, without any nexus, that such aspects will have a significant effect on the environment. This conclusory attack fails to take into consideration both the analysis conducted of such impacts in the MND, as well as the mitigation measures imposed. It fails to show why any of the mitigation measures are not adequate to mitigate the potential impacts of the Project to a less than significant impact.

Where the record as a whole shows the evidence presented by project opponents allegedly supporting a “fair argument” that significant impacts may occur lacks a nexus to the specific project at issue, and is not really “substantial,”

but merely general in nature, an EIR is not required. Pub. Resources Code, §§ 21080(c)-(d), 21082.2(a)-(c); CEQA Guidelines §15064 (f)(2)-(3).

In *Clews Land and Livestock, LLC v. City of San Diego* (2017) 19 Cal.App.5th 161, the Court of Appeal upheld the trial court's decision rejecting a challenge to an MND on the grounds that there was no substantial evidence to support a fair argument that the project may have a significant effect on the environment. In making its determination, the court emphasized that the project was "relatively modest" and located on already-developed land. In addition, quoting *Joshua Tree Downtown Business Alliance v. County of San Bernardino* (2016) 1 Cal.App.5th 684, the Court noted that "dire predictions by nonexperts regarding the consequences of a project do not constitute substantial evidence."

In a recent case, *Munyan, et al. v. City of Los Angeles, et al.*, LASC Case No. BS157876, the Los Angeles Superior Court similarly rejected a challenge to an MND brought by the opponents of a film studio project in the Sun Valley area of the City of Los Angeles. The Court found no substantial evidence supporting the opponents' "fair argument" claim attacking the MND.

Based on the record here, including the mitigation measures adopted in the MND with the unanimous approval of the CPC, there is no substantial evidence to find the MND inadequate and require an Environmental Impact Report.

**4. The Chen Family has followed the rules and process of approval for the Project Entitlements**

It is important for Councilmembers to know that the Chen Family, who are longtime business stakeholders in the community, has followed all of the rules and process for approval of the Project Entitlements. They have invested substantial monies in the filing and processing of their application 4 years ago. They further paid substantial monies for the preparation of an Initial Study, Environmental Analysis and MND by the environmental firm of Meridian Consultants LLC in December, 2017 as well as a traffic analysis. Additional monies were expended for an updated MND in August, 2019. As set forth above, the Project Entitlements were first approved by the CPC in September, 2018 – then reviewed by the PLUM Committee in November, 2019 which sent the Project back to the CPC to remove the "add-area" for the GPA – then approved again by the CPC in January, 2020.

Los Angeles City Council  
Planning and Land Use Management Committee  
January 19, 2021  
Page 5

At every level of review, the Project Entitlements have been recommended by City Planning Staff – approved by the CPC – and all required findings have been made supported by substantial evidence.

Based thereon, and for the reasons set forth above, the Chen Family asks that the PLUM Committee and City Council grant final approval of the Project Entitlements.

Thank you for your consideration.

Very truly yours,

LUNA & GLUSHON  
A Professional Corporation

A handwritten signature in black ink, appearing to read "Rob Glushon", written in a cursive style.

ROBERT L. GLUSHON

cc: Councilmember Gil Cedillo