



DLA Piper LLP (US)
633 West 5th Street, 32nd Floor
US Bank Tower
Los Angeles, California 90071-2005
www.dlapiper.com

Jerold B. Neuman
Jerry.Neuman@dlapiper.com
T 213.694.3131
F 310.595.3445

May 11, 2018
VIA HAND DELIVERY

Los Angeles City Council
Planning and Land Use
Management Committee
c/o City Clerk
200 N. Spring Street, Room 395
Los Angeles, California 90012

Re: Response to Appeal and Requested Condition Modifications Regarding City Planning Commission's Approval of The Godfrey Hollywood - 1400 N. Cahuenga Blvd. (Case: CPC-2016-3841-CU-CUB-ZV-SPR; Environmental: ENV-2015-3167-MND-REC1)

Dear Honorable City Councilmembers:

This firm represents 1400 Cahuenga JV, LLC (the "Applicant") regarding the proposed The Godfrey Hollywood hotel project (the "Project") located at 1400 N. Cahuenga Blvd. The Project would transform the project site from its underutilized existing use to a modern mixed-use eight-story, 220 room boutique hotel. The Project includes a 2,723 square-foot ground floor restaurant and 1,440 square feet of rooftop bar/lounge, along with other amenities including a rooftop pool, third floor courtyard, and fitness center located in the Hollywood area of the City of Los Angeles (the "City").

For background, on February 8, 2018, the City Planning Commission held a properly-noticed public hearing regarding Case No. CPC-2016-3841-CU-CUB-ZV-SPR and the addendum to the mitigated negative declaration prepared for the Project (ENV-2015-3167-MND-REC1) (the "Addendum"). On March 13, 2018, the City Planning Commission issued its letter of determination on the case, approving the requested entitlements and conditions of approval and adopting the findings and the Addendum ("Determination") for the Project. On March 27, 2018, UNITE HERE Local 11 and Elle Farmer ("Appellant") appealed the City Planning Commission's approval of the Project ("appeal").

Below, we address the issues raised in the appeal and, request reconsideration of certain conditions of the Determination which are either contrary to information presented by the Applicant at the public hearing, or render operations of the Project infeasible.

We respectfully request that this letter be included in the administrative record and be considered by the Planning and Land Use Management Committee ("PLUM Committee") before the public hearing scheduled for May 15, 2018.



PLUM Committee
May 11, 2018
Page Two

I.

Response to the Appeal

According to the appeal, the Appellant is appealing the part of the Determination made by the City Planning Commission specifically concerning the Addendum and findings related to approval of the Project. In this appeal, the Appellant raises no new issues that were not already addressed by the February 2, 2018 Response from CAJA Environmental Services, LLC ("CAJA Response Letter"). This letter incorporates the previously submitted CAJA Response Letter, which responds in greater detail to each argument presented by the Appellant, and further responds to the substantive issues raised in the appeal.

1. The Addendum.

Appellant raises nearly identical issues regarding the Addendum for the Project as had already been raised in Appellant's letters dated December 4, 2017 and February 7, 2018 and fully considered by the City Planning Commission prior to issuing the Determination. Appellant's central position is that the Addendum is inadequate under the California Environmental Quality Act ("CEQA") in its analysis of the modifications proposed to the already approved project ("Approved Project") that had been analyzed in the underlying Mitigated Negative Declaration for ENV-2015-3167-MND ("MND") for the Project as well as in its purported "unrealistic" estimates of land uses and potential environmental impacts.

Although Appellant notes that the Project analyzed in the Addendum has been modified from the Approved Project, which was analyzed in the MND, the Appellant has not provided any evidence, as required by Section 15162 of the State CEQA Guidelines, demonstrating that the changes to the Approved Project or circumstances surrounding the Project would cause new or substantially more severe significant environmental impacts would require the preparation of a subsequent EIR, rather than the Addendum that was prepared under Section 15164 of the State CEQA Guidelines. As the California Supreme Court explained in *Friends of the College of San Mateo Gardens v. San Mateo County Community College Dist.* (2016) 1 Cal.5th 937, 952, it is a question of fact for the City to determine "under CEQA's subsequent review provisions whether project changes will require major revisions to the original document because of the involvement of new, previously unconsidered significant environmental effects.

The City determined that the MND is relevant for analyzing the Project. The environmental analysis presented in the Addendum evaluates the environmental impacts associated with the changes to the Approved Project proposed by the Project, and provides substantial evidence demonstrating that these changes would not cause new unstudied environmental impacts that might be potentially significant or an increase in the severity of impacts that were identified in the adopted



PLUM Committee
May 11, 2018
Page Three

MND. As such, the Addendum was the appropriate environmental document to address the changes to the Approved Project proposed by the Project.

As stated more fully in the CAJA Response Letter:

a. The Addendum properly analyzed all potential impacts and properly estimated land uses.

Appellant attempts to argue that the Addendum analyzed unrealistic estimates of land uses, focusing on the courtyard and rooftop areas of the Project. The argument is unsubstantiated and seems to rely on the erroneous assumption that these areas will be the source of significant noise impacts typical of “party-hotel” uses. The Appellant speculates that the courtyard and rooftop areas would not be controlled by the hotel operator, but provides no substantial evidence supporting such unfounded claims.

Under CEQA Section 21082.2(c), “[a]rgument, speculation, unsubstantiated opinion or narrative, evidence which is clearly 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, is not substantial evidence. Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts.”

The rooftop pool will serve as an amenity for the guests of the hotel, only, and will not be open to the public. Similarly, the courtyard bar area will be open only to hotel guests and will not be open to the public. No member of the public will be allowed into or served in these two areas. The two rooftop bar areas will be open to both hotel guests and the public. Even so, the rooftop bars are not expected to be major destination locations, but rather will be utilized primarily by guests of the hotel or by patrons of the high-quality restaurant, and will be fully under the control of the hotel operator so as to comply with all City noise ordinances.

b. The Addendum properly analyzed air quality impacts and greenhouse gas (“GHG”) emissions.

Appellant’s argument the Addendum fails to properly estimate these impacts is based on unsubstantiated opinion. Using the same argument that the Project would attract more members of the public than shown in the Addendum, the Appellant speculates that the Project would in turn generate more mobile source emissions than analyzed, but provides no substantial evidence supporting these incorrect claims. The square footage of the uses and calculations described in the Addendum are accurate and fully analyze such impacts. The analysis does not underestimate emissions.



PLUM Committee
May 11, 2018
Page Four

c. The Addendum properly analyzed traffic impacts.

In arguing that the traffic impacts for the Project were not properly analyzed, the Appellant continues to rely on the mischaracterization of the Project as a party hotel, which as described above is not the case. The traffic analysis prepared for the Addendum calculates the trip generation for the Modified Project, including all of its uses. The traffic analysis was reviewed and approved by LADOT on October 16, 2017. The comment does not provide substantial evidence that the trip generation is not accurate. The traffic analysis is the basis for the air quality and GHG impacts analyses.

d. The Addendum properly considered scenic and shadow impacts.

Appellant incorrectly argues that the Addendum fails to identify and address impacts on the Los Angeles Fire Department Museum. The City has issued Zoning Information (ZI) No. 2452, confirming that SB 743 applies to a project's aesthetic impacts, including its shade and shadow impacts. The aesthetics discussion is provided for information purposes only, not for a significance determination under CEQA. Moreover, the LAFD Museum is not a shadow-sensitive use, which are typically routinely useable outdoor uses and other uses that are dependent on solar access to function (such as a nursery). Finally, shadows project in an arc northeast to northwest, whereas the LAFD Museum is located southwest of the Project Site.

e. The Addendum properly analyzed noise impacts.

Appellant argues that the noise impacts were not properly analyzed under the Addendum. However, noise measurements were taken directly from the adopted MND and the addendum fully considered impacts from modifications to the Project. Notably, further reductions in noise are achieved due to the attenuation caused by the solid safety barriers on the periphery of the rooftop. CEQA does not require additional analysis or mitigation of less than significant impacts

f. The Addendum properly analyzed public utility impacts.

Appellant argues that the public utility impacts analyzed are unrealistic. However, the Addendum fully analyzed such impacts as utility generation and demand was analyzed based on an accurate list of the Project's uses and sizes, fully considering modifications to the prior project. As set forth in the Addendum, none of the utility thresholds would have a significant impact.



PLUM Committee
May 11, 2018
Page Five

2. The Approval Findings.

In the appeal, the Appellant further reiterates prior arguments concerning the land use findings underpinning the entitlement approvals for the Project which have already been fully addressed in the CAJA Response Letter and considered by the City prior to approving the Project. Substantive arguments are addressed below with reference again made to the CAJA Responses for further detail.

a. The Variance is not necessary to permit outdoor dining in the C4 zone, and, further, the Variance Findings are adequate.

Without providing any basis, the Appellant argues the City has not made the requisite hardship finding for the Variance for outdoor dining for the Project.

First, a variance is not required to permit outdoor dining above the ground floor in the C4 zone. ZAI 1808 interprets LAMC Section 12.03 definition of "OUTDOOR DINING" to allow outdoor dining by-right above the ground floor in any C2 or "less restrictive" zone. First, the LAMC zoning designations are listed numerically such that higher numbers correspond to less restrictive zones, and C4 is ordered in the LAMC as a less restrictive use than a C2 zone. By the construction of the LAMC, C4 is less restrictive than C2, and thus does not require a variance for a restaurant use and alcohol service above the ground floor under ZAI 1808. Second, under LAMC Section 12.16, the C4 zone expressly allows all C2 zone uses not expressly excluded. The C4 zone does not exclude C2 outdoor dining and restaurant uses. Thus, the C4 zone is exactly as restrictive as C2 with respect to outdoor dining and restaurant uses, and is therefore covered under ZAI 1808's elimination of the variance requirement for all C2 and less restrictive uses. Thus, it is clear that both the plain meaning and the intent of ZAI 1808 allow outdoor dining above the ground floor by right in both the C2 and C4 zones. Appellant's claims are rendered moot by the absence of legal requirement for the Project to obtain a variance to allow restaurant and alcohol service above the ground floor.

Second, even if the Variance were to be required, Appellant's argument is completely unsupported and the City Planning Commission properly found that strict application of the Los Angeles Municipal Code ("LAMC") in this instance would create practical difficulties or unnecessary hardships inconsistent with the general purpose and intent of the City's zoning regulations.

b. The approval of additional floor area under the Development "D" Limitation was proper.

Appellant disagrees with the floor area calculation for the Project given the Development "D" Limitation under Ordinance No. 165,661, which limits floor area to a floor area ratio ("FAR") of 3:1.



PLUM Committee
May 11, 2018
Page Six

However, as explained in the CAJA Response Letter and in the Determination, the D Limitation provided for a procedure for allowing certain projects to exceed a 3:1 FAR under LAMC Section 12.24-B.3. However, this section is no longer present in the LAMC and has since been changed to LAMC Sections 12.24-B through I, which enumerate processes and procedures for seeking conditional use permits and other similar quasi-judicial approvals. The City Planning Commission properly utilized this conditional use permit process to approve the requested FAR of 3.69:1 for the Project.

II.

Requested Condition Modifications

We respectfully request that the PLUM Committee reconsider certain conditions of the Determination as either contrary to information presented by the Applicant at public hearing, or as conditions rendering operations of the Project infeasible. The following describes the limited objections of the Applicant:

1. Condition 6b. Electric Vehicle Parking.

The Determination requires that the Project provide 20 percent (20%) of the total parking spaces capable of supporting future electric vehicle supply equipment (EVSE). At the City Planning Commission public hearing on February 8, 2018, the Applicant stated that the project is providing 11 electrical vehicle charging spaces, operational upon occupancy. This constitutes 10% of the total parking spaces, and is in excess of CalGreen's requirements of 5% accommodating EVSE. Therefore, the imposition of an additional 11 long-term parking spaces capable of accommodating EVSE is excessive, and is especially unnecessary given that the vast majority of visitors to the property will be arriving via rideshare or other transportation services as hotel guests and visitors.

Furthermore, the Project has received approval of its power supply plans from LADWP, which plans do not account for the additional power supply necessary to accommodate these spaces; nor have provisions been made by LADWP to accommodate the extra power requirements. This condition is a burden on the Projects' future power supply needs, and thus the Applicant requests that this requirement be reduced to reflect only 10% of the spaces equipped with EVSE, and operational upon occupancy.



PLUM Committee
May 11, 2018
Page Seven

As such, the Applicant requests that Condition 6b be modified as follows:

- b. Electric Vehicle Parking. The project shall include at least ~~20~~ 10 percent (~~20%~~ 10%) of the total provided parking spaces capable of supporting future electric vehicle supply equipment (EVSE). Plans shall indicate the proposed type and location(s) of EVSE and also include raceway method(s), wiring schematics and electrical calculations to verify that the electrical system has sufficient capacity to simultaneously charge all electric vehicles at all designated EV charging locations at their full rated amperage. Plan design shall be based upon Level 2 or greater EVSE at its maximum operating ampacity. In addition, 10 percent (10%) of the total provided parking spaces shall be ~~further~~ provided with EV chargers to immediately accommodate electric vehicles within the parking areas. When the application of either the required ~~20~~ 10 percent ~~or five percent~~ results in a fractional space, round up to the next whole number. A label stating "EVCAPABLE" shall be posted in a conspicuous place at the service panel or subpanel and next to the raceway termination point. None of the required EV Ready parking shall apply to parking spaces used for dealership vehicle storage.*

2. Condition 8a. Landscaping.

Condition 8a indicates that the planter along DeLongpre Avenue be installed in front of the project's porte cochere, and that the planter "shall not be located within the public right-of-way". It has come to the Applicant's attention that the architectural and landscape plans are inconsistent. Per the architectural plans, the planter is shown within the public right of way to provide a pedestrian buffer between the vehicular circulation area on-site and the sidewalk. It is located within a highway dedication area, and thus is outside of the current sidewalk, but partially within the boundaries of the new sidewalk. As such, the Applicant requests that Condition 8a be revised as follows:

- a. The project shall provide a fixed planter along the De Longpre Avenue street frontage directly in front of the projects' porte cochere, as shown on the Architectural plans dated February 8, 2018. ~~The planter shall not be located in the public right-of-way.~~*

3. Condition 13c – Rooftop Use.

Condition 13c restricts the open area of the rooftop to hotel guests only. This condition was openly disputed by the Applicant at the Hearing Examiner hearing on December 5, 2017, and heavily debated by the Applicant and the CPC at the public hearing on February 8, 2018. The staff report for the Project recommended restricted public use of the rooftop, with only the 1440 square



PLUM Committee
May 11, 2018
Page Eight

feet of covered areas at the bar and the indoor lounge permitted for public access. This condition is contrary to the extensive CEQA and traffic analysis performed for the Project that specifically analyzed the rooftop for both guests and the general public. The hotel does not have a traditional lobby bar that the public can use for meetings, etc. and thus the rooftop serves as the public area and amenity for both guests and visitors.

As described in the traffic analysis for the Project, and as defined in both the staff and Applicant's presentations at the CPC hearing, the Institute of Traffic Engineers identifies hotels as places for lodging and supporting facilities such as restaurants, cocktail lounges, meeting and banquet facilities, recreation, and service retail. As such, the ITE rates for a hotel *assume* public utilization of spaces beyond the actual guest rooms. Wes Pringle of LADOT confirmed the accuracy of the traffic methodology in the original Project traffic study approval on October 16, 2017, as well as the supplemental analysis provided on February 2, 2018, and confirmed by LADOT on Feb 6, 2018, reconfirming that the analysis for the Project is accurate, and does account for full public utilization of the rooftop -both enclosed and unenclosed. As such, the restriction imposed by the CPC to limit the rooftop access is arbitrary and not based on any identified impact of the Project, and thus no legal basis to restrict public access exists.

This restriction unnecessarily handicaps the Project given that other hotel projects in Hollywood such as the Thompson, Tommie, Dream, Ace, Kimpton, Crossroads, and W Hotels have all been permitted to operate by the CPC with full public accessibility of their rooftops. Furthermore, the Applicant worked closely with the Hollywood Vice division of LAPD to craft an extensive set of operational conditions related to limiting hours, entertainment, controlling noise, on-site security provisions, etc. specifically to ensure that Project hotel operations and rooftop operations would not cause impacts to the surrounding neighborhoods.

Thus, the Applicant respectfully asks the City Council to reconsider this condition to permit public access as follows:

- c. *The third floor courtyard and unenclosed rooftop areas are open to hotel guests and the general public only, subject to the Conditions of Approval herein. The ground floor restaurant and the enclosed rooftop venue may be open to the general public.*

4. Condition 16g – Disc-Jockey Use.

The Applicant has worked diligently with LAPD to craft operational conditions to regulate noise and entertainment within the Property. Conditions 16g and 16h are internally inconsistent, in that one condition restricts a Disc-Jockey in outdoor/open areas of the hotel, but does not restrict a



PLUM Committee
May 11, 2018
Page Nine

hotel member from cueing music similarly. Whereas Condition 16h permits hotel staff to circulate music on an mp3 Ipad or computer outside, Condition 16g as written appears to restrict this activity in certain parts of the Project. The Conditions of approval are specific to limit amplified music, restrict noise intrusion beyond the property boundaries, and ensure compatibility of the hotel operations for both hotel guests and surrounding uses. Other hotels in the greater Hollywood Area are permitted this use and this provision unnecessarily restricts the Project's operations in a manner to be competitive in the marketplace.

As such, the Applicant requests that Condition 16g be modified as follows:

- g. Employment of a disc-jockey or other live entertainment features within the ground floor hotel bar, restaurant and lounge areas, the third floor courtyard, and open and enclosed rooftop areas is permitted provided that any noise produced or otherwise generated by any live entertainment features or disc-jockey performances remains inaudible outside of the subject premises and does not violate any provisions of the city-wide noise ordinance. Employment of a disc-jockey or other live-entertainment features playing amplified music in any outdoor areas other than the ground floor hotel restaurant is strictly prohibited outside of pre-approved special event occasions. Employment of a disc-jockey playing non-amplified music is permitted in the enclosed rooftop penthouse and in open areas of the rooftop, subject to the Conditions of Approval herein.*

5. Condition 16j – Age Restriction.

Condition 16j requires that all areas of the hotel be unrestricted for registered guests. This provision is inconsistent with laws imposed by the Department of Alcoholic Beverage Control, which inherently do not permit minors in bars and bar areas that do not serve food. As such, this condition should be deleted:

- ~~*j. There shall be no restricted age to any areas within the hotel for registered guest.*~~

6. CONDITIONS IDENTIFIED FOR CONSIDERATION BY THE STATE DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL RELATIVE TO THE SALE AND DISTRIBUTION OF ALCOHOLIC BEVERAGES– Bottle Service.

The Determination includes a provision restricting the sale and/or service of distilled spirits by the bottle, or with table service. This condition unnecessarily handicaps the Project, given that other venues in Hollywood and around Los Angeles such as the Standard, Dream, W Hotel, and other locations have all been permitted to operate including table service with bottles. This has become a standard operating procedure in many locations a convenience to guests and their guests. The Applicant has worked closely with the Hollywood Vice division of LAPD to craft an extensive set



PLUM Committee
May 11, 2018
Page Ten

of operational conditions related to limiting hours, entertainment, controlling noise, on-site security provisions, etc. specifically to ensure that Project hotel operations will not cause impacts to the surrounding neighborhoods. Regardless of the condition herein, the ABC has ultimate discretion in conjunction with the liquor license for the Project to permit or disallow bottle service on-site.

Thus, the Applicant respectfully asks the City Council to modify the following condition:

- *Bottle and/or Table service involving the distribution of distilled spirits shall be prohibited permitted during regular restaurant/hotel operations and is only permitted during special events that have been authorized by the Los Angeles Police Department. "Buckets" of beer and Portable bars are prohibited. There shall be no "Minimum drink" required of patrons. In addition, there shall be NO sales of table(s) and/or seating where alcoholic beverages are in any way included in the sale cost of the seating. The sale of poolside cabanas and lounge chairs may be permitted in conjunction with the restrictions set forth above related to alcohol sales.*

III.

Conclusion

We respectfully request that the PLUM Committee recommend denial of the appeal and uphold the approval of the Project, and that the conditions of the Determination be modified as requested and outlined above. As explained above, the Appellant's arguments are unfounded and not supported by any evidence. The administrative record, including the Addendum, contains substantial evidence to support approval of the Project and denial of the appeal. Therefore, we urge the PLUM Committee, and ultimately the City Council, to move the Project to final approval.

Very truly yours,

DLA Piper LLP (US)


Jerry Neuman
Partner