

# LUNA & GLUSHON

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September 17, 2018

## VIA E-MAIL

Councilmember Jose Huizar, Chair  
Los Angeles City Council  
Planning and Land Use Management Committee  
200 North Spring Street  
Los Angeles, CA 90012

Re: **CPC-2016-3853-GPA-VZC-ZAD-SPR/VTT-74529/ENV-2016-1795-EIR**  
**520, 524, 528, 532 Mateo Street & 1310 E. 4th Place, Los Angeles**

Honorable Councilmembers:

Our law firm represents Stephen and Carol Ann Warren, the owners of property located on the East facing side of 527 Molino Street (part of the historic 1906 Barker Block brick warehouse) who strongly oppose the proposed mixed use development of 475 live/work dwelling units, and approximately 125,000 square feet of commercial retail (including approximately 10,000 square feet of restaurant space and 10,000 square feet of retail space) and office floor area (105,000 square feet) in a 35-story structure centered on the site with office space in an adjacent six-story building. As neighbors, our clients will be the most impacted, both directly and negatively, if the Project, as proposed, is approved.

For all of the reasons set forth below, we ask that the City Council grant our clients' appeal, deny the Project application and require the Applicant to revise the Project in a manner that is compatible with the prevailing scale and character of the adjacent properties and surrounding neighborhood, and prepare an adequate Environmental Impact Report ("EIR"), as required by the California Environmental Quality Act ("CEQA").

**I. The Requested General Plan Amendment and Vesting Zone/Height District Change are illegal under the Los Angeles Municipal Code and City Charter**

Under Los Angeles Municipal Code (“LAMC”) Section 11.5.6, “the City's comprehensive General Plan may be adopted, and amended from time to time, either as a whole, by complete subject elements, by geographic areas or by portions of elements or areas, provided that any area or portion of an area has significant social, economic or physical identity.”

Here, the proposed General Plan Amendment area does not have any “significant social, economic or physical identity.” It is proposed at the subject location simply because the Applicant wants to build there. However, there is no language in either Charter Section 555 (or any other section of the City Charter) or LAMC Section 11.5.6 which provides the authority for the City to process, consider, or adopt a General Plan Amendment for individual properties, as here. General Plan Amendments can only be processed for areas of “significant social, economic or physical identity.” Accordingly, the proposed General Plan Amendment violates the LAMC.

LAMC Section 12.32 further provides that a proposed land use ordinance, such as a Vesting Zone/Height District, must be in conformity with public necessity, convenience, general welfare and good zoning practice. The within Project is not in line with public necessity, convenience, general welfare or good zoning practice. Indeed, good zoning practice would require that a proposed project be *consistent* with both the zoning and general plan classifications *existing* at a project location. It would require that a proposed project be *complimentary* to and compatible with the neighborhood surrounding it.

Here, the proposed Project location is comprised of older historic distressed brick buildings, one to five stories, and mostly constructed of brick and concrete. Yet the Project is proposed at **35 stories**. At this height, it will have as many floors as the tallest existing residential complex in the City of Los Angeles (1100 Wilshire). It will overwhelm and overshadow the low-height buildings surrounding it, causing adverse effects on aesthetics, noise, traffic, geology, historic resources and parking (which is not being provided to Code). Accordingly, it is not in conformity with public necessity, convenience, general welfare and good zoning practice.

Finally, Section 555 of the City Charter provides that only the City Council, the City Planning Commission or the Director of Planning may propose a General Plan Amendment. Here, the Project-specific General Plan Amendment is clearly proposed by the Applicant, and therefore violative of City Charter Section 555.

For all of these reasons, the requested General Plan Amendment and Vesting Zone/Height District Change are prohibited under both the LAMC and City Charter.

LAMC Sections 12.32.Q.3(a)(2)(ii)-(ii) specifically provide the authority for this decisionmaking body to deny a proposed Vesting Zone/Height District Change where, as here, it is necessary to protect the best interest and assure a development *more compatible* with the surrounding property or neighborhood; to secure an *appropriate development* in harmony with the objectives of the General Plan; to prevent or mitigate potential adverse environmental effects of the zone change; or that public necessity, convenience or general welfare require that provisions be made for the *orderly arrangement* of the property. Such are precisely the circumstances here. Therefore, we urge this Council to deny the Vesting Zone/Height District Change, as proposed.

**II. The Findings for a Zoning Administrator's Determination cannot be made with substantial supporting evidence.**

- a. The Project will not enhance the built environment in the surrounding neighborhood or perform a function or provide a service that is essential or beneficial to the community, city, or region;

Again, the Project, as proposed, is egregiously out of scale with the neighborhood surrounding it. At 35 floors, it will match the tallest existing residential complex in the City of Los Angeles. Yet, the Applicant has sought a Zoning Administrator's Determination for reduced parking. Such request is untenable. It not only ignores the neighborhood context, failing to provide any

sense of compatibility in scale or massing to the adjacent buildings surrounding it, it actually proposes to aggravate the parking problems existing in the area<sup>1</sup>.

- b. The Project's location, size, height, operations and other significant features will not be compatible with and will not adversely affect or further degrade adjacent properties, the surrounding neighborhood, or the public health, welfare, and safety; and

As set forth above, the Project at 35 stories cannot be considered compatible with the adjacent properties of 2-4 stories. The Project will degrade and adversely impact our clients' dwelling unit and other similarly situated dwelling units.

- c. The Project does not substantially conform with the purpose, intent and provisions of the General Plan or the Central City North Community Plan.

The Project does not conform to the General Plan or the Central City North Community Plan. Indeed, it is seeking to *change* it, an action which, as set forth hereinabove, cannot be legally achieved under the LAMC and City Charter.

The only way the Applicant and the City can make the requisite finding of "substantial conformance" here is to evaluate the Project based upon the *proposed* General Plan/Zoning designation. However, it is inherently against law to simply state that once a General Plan Amendment/Zone Change is approved, the Project will be consistent with the zoning and general plan classifications on-site. If such were the standard, any and all zone changes, general plan amendments, and variances would be inherently "consistent" with applicable land use plans. And, if such argument were accepted, the entirety of the "conformance with applicable land use plans" findings would be eviscerated.

In reality the Project is inconsistent with the Central City North Community Plan which specifically offers the following issues as problems that the area is facing:

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<sup>1</sup> See below, the Central City North Community Plan specifically provides an existing lack of overall parking – a fact well known throughout the City of Los Angeles.

- New multi-family residential projects that are out of scale and incompatible with the character of existing residential neighborhoods.
- Lack of continuity of complementary uses and cohesiveness along commercial frontages.
- Lack of overall parking and access within commercial strips.
- Unsightliness of new construction due to lack of landscaping, architectural character and scale.
- Scale, density, and character of buildings that complement surrounding uses.
- Effects of residential development on commercial corridors.

In order to address these pressing concerns, the Community Plan prescribes the following Commercial and Residential Policies:

- Protect the quality of the residential environment through attention to the appearance of communities, including attention to building and site design.
- Seek a high degree of architectural compatibility and landscaping for new infill development to protect the character and scale of existing residential neighborhoods.
- Consider factors such as neighborhood character and identity, compatibility of land uses, impact on livability, impacts on services and public facilities, and impacts on traffic levels when changes in residential densities are proposed.
- New commercial uses shall be located in existing established commercial areas or existing shopping centers.
- Require that projects be designed and developed to achieve a high level of quality, distinctive character, and compatibility with existing uses and development.

- Require that any proposed development be designed to enhance and be compatible with adjacent development.
- Presence community character, scale and architectural diversity.

The proposed Project not only fails to meet these Commercial and Residential Policies, it exacerbates the very issues and concerns identified in the Community Plan. Its mass, scale, and height, as well as location immediately abutting surrounded by one to five story structures puts it at odds with all of these Community Plan objectives.

The area surrounding and adjacent to the proposed Project (including buildings on Mateo, Molino and Hewitt Street) is comprised of historic distressed brick buildings that form the unique architectural community of the Arts District. These buildings are older, one to five stories, and made mostly of brick and concrete.

The Project will leave the occupants of adjacent buildings and dwelling units without natural light or air. In the afternoon, the glass tower will act as a mirror on the adjacent structures. Its size, density, materials, and design conflict with the existing structures and will have the effect of Balkanizing the community.

What's more, with the use of a Zoning Administrator's Adjustment, the Project proposes a less than required number of parking spaces. This is specifically contrary to the Community Plan which notes the lack of overall parking as an ongoing problem.

Simply stated, the proposed Project is completely inconsistent and incompatible with the character and architecture of this community, and therefore violative of the Central City North Community Plan, as set forth above.

**III. The Findings for Site Plan Review cannot be made with substantial supporting evidence.**

- a. The Project is not in substantial conformance with the purposes, intent and provisions of the General Plan and the Central City North Community Plan;

For all the reasons set forth herein, the Project is not in substantial conformance with the Central City North Community Plan.

- b. The Project does not consist of an arrangement of buildings and structures (including height, bulk and setbacks), off-street parking facilities, loading areas, lighting, landscaping, trash collection, and other such pertinent improvements, that is or will be compatible with existing and future development on adjacent properties and neighboring properties.

As further discussed hereinabove.

**IV. The Findings pursuant to the Subdivision Map Act cannot be made with substantial supporting evidence.**

- a. The Proposed Map and the design and improvement of the Proposed Subdivision are not consistent with the City's General Plan, Land Use Element, and the Central City North Community Plan.

The State of California *Government Code* §§ 66473.1, 66474.60, .61 and .63 (the Subdivision Map Act) require that all Proposed Maps, as well as the design and improvement of all proposed subdivisions be consistent with applicable general and specific plans.

- b. The Design of the Subdivision and Proposed Improvements are likely to Cause Substantial Environmental Damage.

The Environmental Impact Report ("EIR") for the Proposed Project is inadequate for the reasons stated below. Therefore, the Proposed Project is likely to cause substantial environmental damage.

V. **The EIR is inadequate under CEQA**

- a. **The EIR does not adequately apprise all interested parties of the true scope of the Project;**

An EIR must provide the decision-makers, and the public, with all relevant information regarding the environmental impacts of a project. *Public Resources Code* §21061 (the fundamental purpose of an EIR is to provide public agencies and the public in general with detailed information about the effect which a proposed project is likely to have on the environment). If a final EIR does not adequately apprise all interested parties of the true scope of the project, informed decisionmaking cannot occur under CEQA and a final EIR is inadequate as a matter of law. Here, the EIR here fails as an informational document because, in contrast to the CEQA mandates, it is premised, *on the whole*, upon future environmental review, including:

- i. In order to assess geology and soils<sup>2</sup>, the EIR bases its analysis on a Report of Geotechnical Information submitted by RFTA Geotechnical Engineering. But the Report itself admits that it, and the recommendations therein, are based upon nothing more but a conceptual theory of a multi-story apartment building with subterranean parking. No Project plans were submitted or reviewed as part of the environmental analysis on geology and soils. An EIR cannot adequately analyze the impacts *of the Project* on the environment without analyzing any details of that Project.

Indeed, the actual assessment of the Project's impacts on geology and soils is improperly deferred by the EIR to the building permit process. Regulatory compliance measure GEO-RCM-1 requires that a geotechnical report submitted after Project approval assess potential consequences of any soil strength loss, estimation of settlement, lateral movement or reduction in foundation soil-bearing capacity, and discuss mitigation measures that may include building design consideration. In order to comply with CEQA, however, all of this analysis and mitigation formation must be done *before* the Project is

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<sup>2</sup> The EIR admits that the Project poses a potentially significant impact on geology and soils.



approved. CEQA's informational purpose is not satisfied by simply stating information will be provided in the future. *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 441.

- ii. The EIR fails to do any analysis to discuss the fact that the Project will potentially impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan. It simply requires the future submission and consultation with the City's Fire Department.
- iii. The EIR is contradictory in its analysis of water quality, first by assuming that the Project would not violate water quality standards, otherwise degrade water quality, or provide substantial additional sources of polluted runoff, but later admitting that appropriate project design features and compliance with the local, state, and federal regulations, code requirements, and permit provisions are *necessary* to prevent significant impacts related to the release of potentially polluted discharge into surface water via the municipal storm drain system during construction and operation of the Project. But the EIR does not analyze any such project design features, instead requiring only that a future Storm Water Pollution Prevention and Low Impact Development plan be submitted and analyzed.
- ii. In assessing wastewater (utilities and service systems), the EIR includes absolutely no analysis of whether there is sufficient capacity in the local and trunk lines to accommodate the Project's wastewater flows or whether and where a specific sewer connection point exists. Instead, it simply defers such analysis to the building permit process.

This issue is particularly egregious considering that the wastewater generation quantities set forth in the EIR are the wastewater generation quantities of the originally proposed project. The EIR is devoid of any analysis of the wastewater generation anticipated from Alternative 4.

Such deferment of environmental analysis has left the EIR without any specific data to substantiate its conclusions. Specificity and use of detail in EIR's must be used since conclusory statements that are unsupported by empirical or experimental data, scientific authorities, or explanatory information afford no basis for comparison of the problems involved with a proposed project and the difficulties involved in the alternatives. *Whitman v. Board of Supervisors* (1979) 88 Cal.App.3d 397, 411. Accordingly, the EIR fails as an informational document.

b. The impacts of the Approved Project (Alternative 4) are not adequately assessed;

*Public Resource Code* §21002 provides that proposed projects should not be approved if there are feasible alternative available which would substantially lessen the significant environmental effects of such projects, and that the procedures required by CEQA are intended to assist public agencies in systematically identifying both the significant effects of proposed projects and the feasible alternatives which will avoid or substantially lessen such significant effects. To such extent, it is well established that the core of an EIR is the mitigation **and alternatives** sections. *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564. Indeed, caselaw is clear that one of an EIR's major functions is to ensure that all reasonable alternatives to proposed projects are **thoroughly assessed**. *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 400. *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 568 (the duty of identifying and evaluating potentially feasible project alternatives lies with the proponent and the lead agency, not the public).

Here, Alternative 4, the Alternative ultimately adopted by the City as "the Project" was not thoroughly and adequately assessed, and, therefore, the EIR for the Project actually approved fails as an informational document. Indeed, the EIR for the Project analyzed Alternative 4 only with regard to air quality, greenhouse gas, traffic and noise. No analysis at all was provided for any other protected environmental category, including, most egregiously, geology and soils, hazards and hazardous materials, public services and utilities and service systems (see wastewater discussion above). Such deficiency is inherently against the CEQA mandates. An EIR must provide the decision-makers, and the public, with all relevant information regarding the environmental impacts of a project and if a final EIR does not adequately apprise all interested parties of the true scope of

the project for intelligent weighing of the environmental consequences of the project, informed decisionmaking cannot occur under CEQA and a final EIR is inadequate as a matter of law.

- c. The impacts on Hazards and Hazardous Materials are not adequately assessed;

The EIR admits that the Project would involve the temporary transport, use, or disposal of potentially hazardous materials, including paints, adhesives, surface coatings, cleaning agents, fuels, and oils. Yet it does not include any mitigation measures to mitigate such impacts to a level of insignificance. The EIR's cursory review of regulatory measures does not equate to mitigation (for example, how would the fact that hazardous waste transporters would be required to complete and carry with him/her a hazardous waste manifest mitigate such impacts?).

Furthermore, pursuant to the City Ordinance regulating methane, methane mitigation is required for *all* sites located in a Methane Zone or a Methane Buffer Zone, regardless of results obtained in a methane investigation. Except for mentioning its existence as an Ordinance, the EIR fails to analyze or discuss the Project's impacts on hazards/hazardous materials (or air quality<sup>3</sup> or greenhouse gas emissions for that matter) as a result of the Project being located in a Methane Zone.

- d. The EIR fails to provide adequate analysis and mitigation measures with regard to the soil contamination on the Project site and potential impacts from such contamination during construction;

CEQA requires an assessment of whether the Project has the potential to create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment.

The EIR does not do an assessment on this issue, particularly with regard to construction. It simply states that the Project's hazardous materials would be

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<sup>3</sup> A Health Risk Assessment (HRA) to assess potential impacts to nearby residential sensitive receptors is further warranted but not provided.

used and stored in accordance with manufacturers' instructions and handled in compliance with applicable standards and regulations. But that is no analysis at all. Indeed, we know from the limited Phase II assessment of the Project site that the Project site is contaminated. The EIR must assess the spread of such contamination during construction in order to comply with CEQA.

- e. The EIR fails to accurately analyze construction impacts by assuming, without any supporting evidence, that construction will not occur at all allowable times pursuant to the Los Angeles Municipal Code; and

It is uncontested that the legal hours of construction in the City of Los Angeles are 7:00 A.M.-9:00 P.M., Monday-Friday and 8:00 A.M.-6:00 P.M. on Saturday. However the construction impacts of the Project are evaluated based upon the "Project Applicant's expectation" that Project construction would occur over a normal 8-hour (plus lunch/breaks) day. This work hour assumption, based upon nothing other than "expectation," is inadequate under CEQA. If only eight hours of construction are proposed (as analyzed in the EIR) then such limitation on construction hours needs to be included as a fully enforceable mitigation measure. Otherwise, the construction impacts need to be fully evaluated based upon the entirety of the allowable construction hours.

- f. The EIR fails to use accurate and up to date data to analyze traffic impacts during construction.

Traffic counts for the Project were conducted in 2013-2015. In 2016, the Project experienced a delay due to redesign, but, and even though it was entirely possible to update traffic information in 2016, the Project Applicant and the EIR did not. Instead, 2013-2015 counts were used with the addition of a percentage growth rate to reflect 2016 conditions. The EIR explains that at three locations along or immediately parallel to the 4<sup>th</sup> Street corridor, historic counts were used because the 6<sup>th</sup> Street bridge construction had already commenced and it was felt that the 2008-09 counts utilized in the analysis were more representative of pre-construction conditions.

The explanation for use of historical data in the EIR is nonsensical. Construction of the Project will occur at the time and will significantly overlap with the 6<sup>th</sup> Street bridge construction. Accordingly, traffic counts with the

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incorporation of the 6<sup>th</sup> Street bridge construction are exactly representative of environmental conditions that the Project, and especially its construction activities, will have an impact on. The use of an ambient growth rate in lieu of actual, readily available data is inexcusable.

For all of these reasons, the City should grant our clients' appeal, deny the Project, as proposed, and send the Project and EIR back for further review.

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