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February 3, 2011

Community Redevelopment Agency of Los Angeles (CRA/LA)
THE GARLAND CENTER
1200 W. 7TH Street
Los Angeles, CA 90017

Kenneth H. Fearn, Chairman
Madeline Janis, Vice Chair
Joan Ling, Treasurer
Dr. Lula Ballton
Dwayne A. Gathers
Gregory N. Lippe
Christine Essel, Chief Executive Officer (CEO)

Sent via email

Subject: CRA/LA Meeting for February 3, 2011, Agenda Item 6, Los Angeles City Council File No. 11-0086

COOPERATION AGREEMENT WITH CITY OF LOS ANGELES. ACTIONS RELATED TO AMENDING THE $930,000,000 COOPERATION AGREEMENT WITH THE CITY OF LOS ANGELES TO SUPPLEMENT THE LIST OF CAPITAL IMPROVEMENT, PUBLIC IMPROVEMENT AND AFFORDABLE HOUSING PROJECTS TO BE FUNDED BY THE CRA/LA LOCATED WITHIN THE CURRENTLY DESIGNATED 31 REDEVELOPMENT PROJECT AREAS.

Honorable Commissioners and CEO:

Please accept my formal objections to Agenda Item 6 for the CRA/LA meeting scheduled for February 3, 2011 as referenced above. I have submitted previous

objections to this honorable commission and to the LA City Council and this supplements my previous objections.

Please note that even though a partial report was available on-line, the attachments were not disclosed so it is not possible to determine what is contained in those attachments and make comments on those items. Ms. Joyce Dillard emailed objections to this very fact on February 2, 2011.

Also please note in the language of the Agenda notice for February 3, 2011, Agenda Item 6 specifically supplements the action taken by the CRA/LA Special Board of Commissioners (CRA/LA Board) meeting of January 14, 2011. Agenda Item 6 for the CRA/LA Board meeting reads in part **"…SUPPLEMENT THE LIST OF…"**

The item before you today is based on actions taken by the CRA/LA on Friday, January 14, 2011, and because of Brown Act violations of that meeting and other objections including, but not limited to State and City Ethics Conflicts of Interest, the January 14, 2011 meeting should be invalidated. Therefore, Agenda Item 6 of today's CRA/LA Board meeting should not be heard, discussed, or acted upon.

1. State and City Ethics Law/Conflicts of Interest

I attended the Los Angeles Alliance of Neighborhood Councils meeting of January 22, 2011. One of the guests, "Special Guest #2" was Jim Dantona, Chief Deputy to Christine Essel, CEO of the CRA/LA. During the meeting, I asked Mr. Dantona when was the plan and report prepared for the CRA/LA's Special meeting of January 14, 2011 and who was involved in the planning and preparation of the

report for the January 14, 2011 CRA/LA Special meeting. Mr. Dantona answered that the report was prepared on Wednesday, January 12, 2011 in a meeting of the Executive Staff of the CRA/LA. Mr. Dantona said that the following persons were at the January 12, 2011 meeting:

Christine Essel, Chief Executive Officer (CEO) of CRA/LA.
Jim Dantona, Assistant to the CEO of CRA/LA.
Calvin Hollis, Chief Operating Officer of CRA/LA.
Steve Valenzuela, Chief Financial Officer (CFO) of CRA/LA
Dalila Sotelo, Deputy Chief of Operations for CRA/LA'

Mr. Dantona also explained that based on inside information from a contact "in Sacramento," the Executive Staff made a decision to formulate the plan that was presented to the CRA/LA Board of Commissioners on January 14, 2011.

All of the above members of the Executive Staff (CRA/LA Management Team) where in attendance and participated in the January 14, 2011 CRA/LA Special Meeting.

On the last page of the report(s) submitted to the CRA/LA Commissioners which are part of the administrative record and in the Los Angeles City Council File No. 11-0086 next to the names of **Christine Essel** and **Calvin Hollis** is the following sentence:

> **There is no conflict of interest known to me which exists with regard to any CRA/LA officer or employee concerning this action.**

At the CRA/LA Special Meeting of January 14, 2011 the CRA/LA Commissioners approved the following which was part of a Report:

> INSTRUCT the CEO to negotiate within the cooperation agreement the designation of a <u>**Successor Entity**</u> to implement the work program on

> behalf of the City upon the conclusion of CRA's statutory authority; and that such entity be either a non-profit organization or development corporation approved by the City Council **and managed by the CEO, with support from designated members of the management team and staff.** [Bold and Underlined added for emphasis]

During the January 14, 2011 CRA/LA Board meeting, Ms. Sotelo gave the first presentation and explained the urgency of the situation with the possibility of the CRA/LA funding to be shut off by July 1, 2011. It was clear that the plan presented to the Board was intended to obligate (and encumber) by contract, State Property tax funds, to continue projects set forth in the "pipeline" at various stages.

But by presenting this contract, the CRA/LA Executive Staff/Management Team, specifically carved out a financial obligation to protect their future employment and benefits security and specifically excluded the very rank-and-file CRA/LA employees who were being touted about during the discussion of planned projects at the January 14, 2011 Board meeting.

This is a clear financial conflict of interest for all of the CRA/LA management team who Mr. Dantona identified.

2. Brown Act Objections and CRA/LA Action Report Based on Meeting Held that was in Violation of the Brown Act

In addition to all of my objections regarding violations of the Brown Act, I am hereby supplementing the objections of Ms. Joyce Dillard in her email of February 2, 2011.

3. Other Objections

At a minimum, if your actions today involve any transfer of money, funds or assets, then the agenda descriptions are woefully inadequate in not even informing the public of that most basic and critical information since critical attachments are missing.

It can be concluded that the City is about to approve an unconstitutional gift of public funds, in violation of Cal. Const., art XVI, § 6, and that it is also about to approve illegal expenditures and a waste of public funds. Your actions are an attempt to bypass the Governor's recently-announced proposed legislation. We believe that any actions taken here can and will be deemed retroactively invalid to the date of the January 10, 2011 announcement by the Governor of his proposed legislation. To analogize to the bankruptcy law context, what you are doing would be called a "voidable preference," in other words, an illegal attempt to hide funds that should be declared retroactively invalid.

Taxpayers can seek to stop the City from committing illegal expenditures or waste of public funds pursuant to Code of Civil Procedure Section 526a. See also Fort Emory Cove Boatowners vs. Cowett (1990) 221 Cal.App.3d 508, 513: "Courts have been very liberal in applying the rule allowing taxpayers to bring an action to prevent the illegal conduct of public officials [citations], and have even allowed taxpayers to sue on behalf of a city or county to recover funds illegally expended." We contend that the actions that you are taking are illegal, and subject to suit, including under Code of Civil Procedure Section 526a.

In addition, your actions today violate the California Environmental Quality Act ("CEQA"). Beyond illegally piecemealing portions of redevelopment projects by granting certain approvals today, the City's entire panicked approach violates CEQA. Proceeding with anything other than a full EIR in place, which EIR should have been properly circulated

to the public and other responsible agencies, including the County and State, makes your actions today illegal.

That is because the proposed changes that you seek to implement will result in unmitigable impacts to the environment. CEQA mandates that these impacts be examined before approval of the changes you are considering. If a simple disposition and development agreement ("DDA") approval requires CEQA compliance, which it does, then this vast financial shuffle absolutely does. Whatever mechanisms and changes you are activating here will have an inevitable impact on the environment, including, among other things, from accelerating redevelopment projects and construction by rushing to get them in "under the wire." CEQA mandates that you analyze what is reasonably likely to occur, directly or indirectly, before taking such actions.

In Carmel-By-The-Sea v. Board of Supervisors (1986) 183 Cal.App.4d 229, a county proposed to rezone an approximately 21-acre property. The county also proposed to adopt a Negative Declaration in connection with impacts of the zoning change. The real party asserted that the proposed zone change was "only a preliminary approval with no significant environmental effect." Id. at 241.

Following the decisions of Bozung v. Local Agency Formation Com. (1975) 13 Cal.3d 263 and Citizens Assn. for Sensible Development of Bishop Area v. County of Inyo (1985) 172 Cal.App.3d 151, the Court in Carmel-By-The-Sea concluded:

> "The fact that the environmental consequences of a rezoning may be more amorphous than those flowing from a precise development plan does not compel the conclusion that no EIR is required. The CEQA guidelines recognize that an EIR for zoning purposes will necessarily be less detailed than one prepared for a specific construction project.

> Guidelines section 15146, subdivision (b) provides that '[a]n EIR on a project such as the adoption or amendment of a comprehensive zoning ordinance . . . should focus on the secondary effects that can be expected to follow from the adoption . . . but the EIR need not be as detailed as an EIR on the specific construction projects that might follow.'" Carmel-By-The-Sea, supra, 183 Cal.App.3d at 250.

As further noted by the Court in Carmel-By-The-Sea, the Supreme Court in Bozung:

> "**extended the concept of project to include an annexation of land, even though the annexation itself involved only 'governmental paper shuffling' producing no direct environmental effect.** 'The notion that the project itself must directly have such an effect was effectively scotched in Friends of Mammoth. The granting of a conditional use permit -- a piece of paper -- does not directly affect the environment any more than an annexation approval -- another piece of paper.' Bozung v. Local Agency Formation Com., supra, 13 Cal.3d at 279. The Bozung court stressed the need to consider the cumulative environmental effects of agency action before a project gains irreversible momentum. **The annexation was a necessary first step in a chain of events which would culminate in physical impact on the environment**; in order to fulfill CEQA requirements,

> environmental review was mandated 'at the earliest possible stage,' even though additional EIRs might be required for later phases of the project. Id. at 282." Carmel-By-The-Sea, supra, 183 Cal.App.3d at 242, emphasis added.

As in Bozung, the proposed significant changes under consideration by you are "a necessary first step in a chain of events which would culminate in physical impact on the environment." As a result, CEQA review is mandated, and a Notice of Exemption, if that has even occurred here, is improper.

The Court in Carmel-By-The-Sea also noted that in County of Inyo, the Court of Appeal rejected deferring environmental review when adopting a general plan amendment and zone clarification until there were more specific projects:

> "[County of Inyo] involved governmental approval of a general plan amendment and zoning classification on the basis of a negative declaration. The rationale behind the decision was similar to that advanced by the agency in Bozung and rejected by the Supreme Court, namely that preparing an EIR would be premature at the zoning stage since the tentative map for the project, a shopping center, was not before the agency. In County of Inyo, when the tentative map was in fact before the Board it was again recommended that no EIR was needed since the proposed use now conformed to the existing zoning. The court of appeal, citing Bozung, found that this approach -- division of the project into two parts with 'mutually exclusive' environmental

> documents -- was 'inconsistent with the mandate of CEQA' and constituted an abuse of discretion." Carmel-By-The-Sea, supra, 183 Cal.App.3d at 242-243, discussing County of Inyo, supra, 172 Cal.App.3d at 167.

Deferring environmental study of the effects of these proposed changes until there are specific projects is contrary to CEQA because such deferral constitutes "piecemeal" environmental review, "chopping a large project into many little ones – each with a minimal potential impact on the environment – which cumulatively may have disastrous consequences." Bozung, supra, 13 Cal.3d at 283-284. This is especially true when these approvals today could accelerate certain specific and defined proposed redevelopment projects – and thus physical changes to the environment – such as the controversial and improper proposed expansion of the Americana at Brand project, which would directly impact the Golden Key Hotel and the general environment, including as relates to traffic, noise, air quality, parking, pedestrian safety, greenhouse gases, cumulative impacts, growth inducing impacts, and increased demand on infrastructure and public services, including on roadways, parks, electricity, landfills and solid waste disposal, water, sewers, police, fire, and paramedics.

CEQA Guidelines Section 15378(c), states that "[t]he term 'project' refers to the activity which is being approved and which may be subject to several discretionary approvals by governmental agencies. The term 'project' does not mean each separate governmental approval."

In an analogous situation, the California Chapter of the American Planning Association published a report which stated that the "density bonus law," "SB 1818 will require agencies to adopt ordinances that **may result in significant indirect effects on the environment by reducing the effectiveness of existing protective standards.** Adopting new, less restrictive

standards may result in a significant effect." (Emphasis added.) Attached hereto at **Exhibit 1** is a true and correct copy of the "CCAPA's Answers to Frequently Asked Questions Regarding SB 1818 (Hollingsworth) – Changes to Density Bonus Law – 2005 available at http://www.calapa.org/attachments/articles/15/SB-1818-Q-A-Final-1-26-05.pdf (last visited January 21, 2011.)

The Planning Association states that cities will be required to examine the environmental impacts of implementing SB 1818 in greater detail, rather than avoid discussion by claiming CEQA exemptions. The same approach applies to the legal changes that will flow from your decisions today. They are analogous to zone changes or adoption of implementation ordinances that can, and will, cause direct and indirect physical impacts to the environment.

Finally the Planning Association analysis cites to City of Redlands v. County of San Bernardino (2002) 96 Cal.App.4th 39, as an example where Courts require agencies to conduct thorough environmental review, in the form of an EIR, when cities and counties change their land use *policies*. The proposed approvals today by you are analogous.

In Redlands, the City of Redlands and other cities sued San Bernardino County over a general plan amendment which modified existing County general plan provisions relating to development within City spheres of influence. Whereas previous County policy had been to defer to City development standards within the spheres (including more restrictive regulations and growth control measures), the general plan amendment would have provided the County more leeway to approve projects that did not conform to City standards. The County adopted a negative declaration for the general plan amendment.

The Court in Redlands held that "CEQA reaches beyond mere changes in the language in the agency's policy to the **ultimate consequences of such changes to**

the physical environment." (Emphasis added.) The Court ordered the preparation of an EIR to study the impacts of these changes in the county's land use policies.

Here, the proposed changes will similarly result in developers being able to proceed with more redevelopment projects, more quickly, which will invariably lead to changes to the physical environment. It is reasonably foreseeable that the rushed actions today will spur new construction.

We urge you to reject these proposed changes, and at a minimum, to instead require thorough and proper environmental review pursuant to CEQA as a condition precedent for any further consideration of these proposed changes.

Sincerely,

Robert Blue

Robert Blue
Attachments

Bob Blue <bob.b.blue@gmail.com>

Comments to CRALA Agenda No. 6 -$930,000,000 Cooperation Agreement with the City of Los Angeles

Joyce Dillard <dillardjoyce@yahoo.com> **Wed, Feb 2, 2011 at 4:26 PM**
To: Sharon Hasley <shasley@cra.lacity.org>, Arlester Esther Morris <amorris@cra.lacity.org>, The Honorable Carmen Trutanich <CTrutanich@lacity.org>, William Carter <william.carter@lacity.org>
Cc: The Honorable Richard Alarcón <councilmember.alarcon@lacity.org>, The Honorable Tony Cardenas <councilmember.cardenas@lacity.org>, The Honorable Eric Garcetti <Councilmember.Garcetti@lacity.org>, The Honorable Janice Hahn <councilmember.hahn@lacity.org>, The Honorable Jose Huizar <councilmember.huizar@lacity.org>, The Honorable Paul Koretz <Paul.Koretz@lacity.org>, The Honorable Paul Krekorian <Councilmember.Krekorian@lacity.org>, The Honorable Tom LaBonge <councilmember.labonge@lacity.org>, "The Honorable Bernard C. Parks" <councilmember.parks@lacity.org>, The Honorable Jan Perry <councilmember.perry@lacity.org>, "The Honorable Ed P. Reyes" <councilmember.reyes@lacity.org>, The Honorable Bill Rosendahl <councilmember.rosendahl@lacity.org>, The Honorable Greig Smith <councilmember.smith@lacity.org>, "The Honorable Herb J. Wesson Jr." <councilmember.wesson@lacity.org>, "The Honorable Dennis P. Zine" <councilmember.zine@lacity.org>

Comments to CRALA Agenda No. 6 -$930,000,000 Cooperation Agreement with the City of Los Angeles

You have omitted the attachments to the report. All information should be available to the public 72 hours before the meeting. The missing attachments are:

- Attachment A: Supplemental List of Activities
- Attachment B: Resolutions

The Brown Act requires that these reports be available 72 hours ahead of time. If you post the first pages of the report, then there is no reason not included all backup. It reads:

"54957.5. (b) (1) If a writing that is a public record under subdivision (a), and that relates to an agenda item for an open session of a regular meeting of the legislative body of a local agency, is distributed less than 72 hours prior to that meeting, the writing shall be made available for public inspection pursuant to paragraph (2) at the time the writing is distributed to all, or a majority of all, of the members of the body.

(2) A local agency shall make any writing described in paragraph (1) available for public inspection at a public office or location that the agency shall designate for this purpose. Each local agency shall list the address of this office or location on the agendas for all meetings of the legislative body of that agency. The local agency also may post the writing on the local agency's Internet Web site in a position and manner that makes it clear that the writing relates to an agenda item for an upcoming meeting."

This is deliberate non-disclosure.

Council did not approve File No 11-0086 and continued the item until February 9, 2011. This cannot possibly be an amendment, but a correction or a new item.

Have you corrected all 31 Implementation Plans involved? We elect to comment on Implementation Plans but have not seen notice to comment on any changes. We also elect to comment on Redevelopment Plan Amendments and have not seen notice to comment on any changes.

Health and Safety Section 33445 reads:

"33445. (a) Notwithstanding Section 33440, an agency may, with the consent of the legislative body, pay all or a part of the value of the land for and the cost of the installation and construction of any building, facility, structure, or other improvement that is publicly owned and is located inside or contiguous to the project area, if the legislative body determines all of the following:

(1) That the acquisition of land or the installation or construction of the buildings, facilities, structures, or other improvements that are publicly owned are of benefit to the project area by helping to eliminate blight within the project area or providing housing for low- or moderate-income persons.

(2) That no other reasonable means of financing the acquisition of the land or installation or construction of the buildings, facilities, structures, or other improvements that are publicly owned, are available to the community.

(3) That the payment of funds for the acquisition of land or the cost of buildings, facilities, structures, or other improvements that are publicly owned is consistent with the implementation plan adopted pursuant to Section 33490.

(b) (1) The determinations made by the agency and the local legislative body pursuant to subdivision (a) shall be final and conclusive.

(2) For redevelopment plans, and amendments to those plans that add territory to a project, adopted after October 1, 1976, acquisition of property and installation or construction of each facility shall be provided for in the redevelopment plan.

(3) A redevelopment agency shall not pay for the normal maintenance or operations of buildings, facilities, structures, or other improvements that are publicly owned. Normal maintenance or operations do not include the construction, expansion, addition to, or reconstruction of, buildings, facilities, structures, or other improvements that are publicly owned otherwise undertaken pursuant to this section.

(c) (1) When the value of the land or the cost of the installation and construction of the building, facility, structure, or other improvement that is publicly owned, or both, has been, or will be, paid or provided for initially by the community or other public corporation, the agency may enter into a contract with the community or other public corporation under which it agrees to reimburse the community or other public corporation for all or part of the value of the land or all or part of the cost of the building, facility, structure, or other improvement that is publicly owned, or both, by periodic payments over a period of years.

(2) The obligation of the agency under the contract shall constitute an indebtedness of the agency for the purpose of carrying out the redevelopment project for the project area, and the indebtedness may be made payable out of taxes levied in the project area and allocated to the agency under subdivision (b) of Section 33670 or out of any other available funds.

(d) In a case where the land has been or will be acquired by, or the cost of the installation and construction of the building, facility, structure, or other improvement that is publicly owned has been paid by, a parking authority, joint powers entity, or other public corporation to provide a building, facility, structure, or other improvement that has been or will be leased to the community, the contract may be made with, and the reimbursement may be made payable to, the community.

(e) (1) Notwithstanding any other authority granted in this section, an agency shall not pay for, either directly or indirectly, with tax increment funds the construction, including land acquisition, related site clearance, and design costs, or rehabilitation of a building that is, or that will be used as, a city hall or county administration building.

(2) This subdivision shall not preclude an agency from making payments to construct, rehabilitate, or replace a city hall if an agency does any of the following:

(A) Allocates tax increment funds for this purpose during the 1988-89 fiscal year and each fiscal year thereafter in order to comply with federal and state seismic safety and accessibility standards.

(B) Uses tax increment funds for the purpose of rehabilitating or replacing a city hall that was seriously damaged during an earthquake that was declared by the President of the United States to be a natural disaster.

(C) Uses the proceeds of bonds, notes, certificates of participation, or other indebtedness that was issued prior to January 1, 1994, for the purpose of constructing or rehabilitating a city hall, as evidenced by documents approved at the time of the issuance of the indebtedness.

(f) As used in this section, "contiguous" means that the parcel on which the building, facility, structure, or other improvement that is publicly owned is located shares a boundary with the project area or is separated from the project area only by a public street or highway, flood control channel, waterway, railroad right-of-way, or similar feature.

(g) Notwithstanding Section 33445.1, an agency may pay for all or part of the value of the land for and the cost of the installation and construction of any building, facility, structure, or other improvement that is publicly owned and is partially located in the project area, but extends beyond the project area's boundaries, if the legislative body makes the determinations required by subdivision (a)."

Has the public had due process on all issues before this agreement can be approved by your body? Can we see fiscal impacts and legislative impacts?

You require name identification to enter the building at 1200 W. 7th Street.

Please do not act on this issue until cured.

Joyce Dillard
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