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Planning and Land Use Management Committee
Los Angeles City Council
200 North Spring Street
Los Angeles, CA 90012
By Hand and Via Electronic Delivery to LACounselComment.com and clerk.plumcommittee@lacity.org

Re: Proposed Resolution ("Resolution"), Ordinance ("Ordinance"), Initial Study/Negative Declaration ("IS/ND"), and Categorical Exemption ("CE") (collectively, the "Actions") to Transfer the Land Use Functions of the CRA/LA, a Designated Local Authority ("CRA/LA DLA"), Successor of the CRA/LA ("Original CRA/LA" and, jointly with the CRA/LA DLA, the "CRA/LA"), to the City of Los Angeles and its Planning Department (jointly, the "City");CF 13-1482-S3; CPC-2018-6005-CA, CEQA: ENV-2019-4121-ND & ENV-2018-6006-CE

Honorable Chair Harris-Dawson and Councilmembers:

This letter is on behalf of Hollywood Heritage, Inc. ("Hollywood Heritage") and Donna Williams (as an individual). It incorporates and supplements all comments previously provided by or on behalf of Hollywood Heritage on the proposed land use authority and function transfer from the CRA/LA to the City.[1]

1. **The Long Standing Absence Of Plans, Measures And Historic Surveys Required For The Hollywood Redevelopment Area Forced Hollywood Heritage To Seek Court Enforcement Against The City and CRA/LA - Not Once But Twice.**

For decades, the CRA/LA and the City have failed to live up to firm, governing board-approved land use planning and mitigation commitments for the Hollywood Redevelopment area.[2] These planning commitments were first made the Hollywood Redevelopment Plan of 1986, then in the amended version in 2003, and in associated FEIRs and MMPs (collectively, the "HRP"). Over 20 years later, when those commitments remained unfulfilled, Hollywood Heritage filed its first enforcement action. (*Hollywood Heritage, Inc. v. City of Los Angeles et al.,* LASC Case BS108249.) That case resulted in a detailed settlement agreement signed and approved by both the City and the CRA/LA in April 2009. A copy of this agreement was provided in our prior comments ("First Hollywood Redevelopment Plan Settlement").

The First Hollywood Redevelopment Plan Settlement affirmed, by all parties including the City, the CRA/LA's obligation to prepare and review for approval by its governing board, by set dates ("First Planning Deadlines"): (a) detailed urban design plans to protect cultural/historic resources in the Sunset Blvd. and Franklin Blvd. design areas and Hollywood Core Transition District Development Guidelines to ensure development compatibility with the surrounding low density residential area; (b) a certain transportation and parking plan in the Hollywood Redevelopment Plan area to ease transportation, parking, and associated aesthetic and cultural/historic resource impacts in the historic core of Hollywood; and (c) a density transfer protocol to protect

[1] Incorporated prior comments include, without limitation, those submitted by me for Hollywood Heritage on or about December 19, 2018, in multiple parts on April 18. 2019, and on April 19, 2019. Incorporated prior comments also include those made on the City's prior (now expired) attempt to do the same transfer via CPC-2013-3169-CA; ENV-2013-3170-CE, Council File: 11-0086, and Council Files 13-1482-S1.

[2] The City had oversight authority over the CRA under "Oversight Ordinance", LA Ord. No. 166735. (LA Admin. Code 8.99.04; see also LA Ord. No. 166736.)

historic properties from development pressures (collectively, "Plans"). In addition, the CRA/LA and City affirmed the CRA/LA's land use function to: (d) provide a an updated historic meeting standards specified therein and made publically accessible ("Survey"); and (e) detailed interim measures ("Interim Measures") to help protect architectural and historic resources pending completion of the Survey.

Hollywood Heritage tried for years to *help* the CRA/LA comply with its Plan, Survey and Interim Measure commitments. Its professional architects and preservationists met regularly (often several times a year) with CRA/LA and City Planning staff and submitted detailed historic information from its own records. Hollywood Heritage also commented extensively on whatever draft Plans and initial Survey information (or associated scopes of work) were made available to it or the public.

Notwithstanding all Hollywood Heritage's cooperative efforts, the CRA/LA (and City) blew by the First Planning Deadlines with little tangible progress. These defaults forced Hollywood Heritage back to court a second time, to seek enforcement of the first settlement with the City and CRA/LA. The second action resulted in a Court enforcement order under CCP section 664.6, dated September 11, 2018 (submitted, with its proof of prior service on the City, to PLUM in our 3/18/19 emailed comments) (the "Court Order"). The Court Order enforces terms that, among other matters: (i) extended the First CRA/LA Plan Deadlines ("Extended CRA/LA Planning Deadlines"); and (ii) **expressly binds and runs to the CRA/LA's successor in interest to land use plan authority and land use functions**. (The First Hollywood Redevelopment Plan Settlement as extended and amended in the terms attached to the Court Order, are referred to jointly as the "Hollywood Redevelopment Plan Settlement.")

The City cannot in good faith profess ignorance of its role as successor-in-interest to the CRA/LA under the Hollywood Redevelopment Plan Settlement and associated enforcement order. The City, through the City Attorney's Office, was served a copy of the terms to be enforced by the Court and the proposed order, and did not object. City attorneys serving as counsel of record in the Hollywood Heritage litigation or otherwise involved in supervising it, including Terry Kaufmann Macias, have also been involved in the Actions, according to the 8/23/19 Report from the City Attorney's Office.

2. **The CRA/LA Has Egregiously Violated The Court Order, By Failing To Meet Even The Extended CRA/LA Planning Deadlines -- After The City Proposed The Actions**.

Once again, the CRA/LA has blown past the Extended CRA/LA Planning Deadlines for the Plans, enforceable under the Court Order. In so doing, it shows shocking disrespect for the Court Order and the land use planning requirements enforced thereunder. (It might still meet the final Survey deadline, which is looming. (*See* Court Order).) If the City adopts the Actions before the CRA/LA corrects its Plan defaults, the City will force Hollywood Heritage to go back to the court, this time to obtain sanctions (including potential criminal sanctions) for violation of the Court Order. The Actions would also make the City the CRA/LA's successor-in-interest to the CRA/LA's land use plan and functions, thus causing the City to step into the CRA/LA's shoes as to the Court Order and associated HRP Settlement.

3. **The City Needs To Hold Off Approval Of The Actions Pending The CRA/LA's Completion of Plan/Survey Tasks Otherwise Subject To Court-Imposed Sanctions Under The Order – Or, In The Alternative, Immediately Assume Responsibility For Timely Completion By The City.**

Accordingly, adoption of the Actions now, while the CRA/LA is in violation of the Court Order, leaves the CRA/LA exposed to sanctions, even potentially criminal sanctions. If the Actions are passed before the CRA/LA performs the Plan tasks it was required to complete months ago under the Court Order, a mere extension would have no chance of bringing Hollywood Heritage back to the same relief it would get than if the Plans had been presented to the CRA/LA Board with full land use authority still residing there.

Moreover, the CRA/LA (and, as explained further below, the City) have already demonstrated insensitivity to Court-enforced deadline extensions. This makes further extensions an unrealistic remedy. So the City is well forewarned of the prospect of criminal or other severe sanctions, and would be choosing to adopt the Actions now in spite of this prospect.

Beyond this, the CRA/LA has told the City that it thoroughly supports the Actions. Any City approval of the Actions now, while the CRA/LA remains in default, raising the question of complicity or conspiracy to default under the Court Order with escape hatches purportedly provided in the City's Actions. This concern is accentuated by the City's timing. After abandoning the idea of a CRA/LA land use transfer first pursued years ago (*see* expired file numbers listed in the subject line above), the City chose to renew the effort only just after the Court Order went into effect. In so doing, it necessarily encouraged the CRA/LA to risk violating the Court Order deadlines, with the hope that the City would come through with the Actions this time. Should the City adopt the Actions before the CRA/LA has corrected its existing defaults, it would be potentially complicit in depriving Hollywood Heritage of the Court-Ordered relief.

4. **The City's Proposed Actions Are Unlawful Because They Repudiate Or Allow Unilateral Voiding Of The CRA/LA Land Use Planning Commitments/Limits Under The HRP, The Associated Hollywood Redevelopment Plan Settlement, and the Court Order.**

The Actions purport to authorize the City to unilaterally modify or walk away from all or any of the CRA/LA's Land Use Functions. The City has no legal right to walk away from any of the Plan, Survey and Interim Measure commitments, now subject not only to the HRP, but also to the Hollywood Redevelopment Plan Settlement agreement with Hollywood Heritage and Court-ordered enforcement.

Health and Safety Code section 34171 et seq. allows each city or other sponsoring agency to make a choice as to how to handle dissolution of its redevelopment agency. None of the options would allow the City to simply walk away from the CRA/LA's land use plan and function commitments under the HRP Settlement or the Court Order.

One option is for the sponsoring agency to takeover virtually all aspects of the original redevelopment agency, including project-specific development commitments and payments or financial liabilities therefor. (Health and Safety ("H&S") Code section 34173.) The City is not proposing to take this option.

Another option is for the sponsoring agency to opt out of becoming a successor of the *original* CRA agency, by formally electing to do so. (H&S Code section 34173(d)(1).) Exercise of this option automatically triggered creation of a new entity, the CRA/LA DLA, that left no land use authority, function, or power in the hands of the original CRA, and transferred all such authority, function and power into the hands of the new CRA DLA successor agency, which was to remain separate from the sponsoring agency. (*Id.)* As acknowledged in the record by the City, the City exercised this election by the January 13, 2012 statutory deadline. (*Id.)* Accordingly, the original CRA/LA no longer has any land use authority to transfer to the City. Instead, that authority resides in the new CRA/LA DLA. (H&S Code section 34173(d).)

The City now seeks to take advantage of what it claims is a third option: transfer of the *original* CRA's land use plans and functions (H&S Code section 34173(i)). The statutory language, on its face, does not say anywhere that the City gets to pick and choose which plans and functions committed to by the CRA/LA it decides to do. It's all or nothing. Further, nothing in the statutory provisions allows the City to walk away from liability as the successor in interest to the CRA/LA's land use plans and functions. Rather, it necessarily steps into the CRA/LA's shoes in pending court-supervised litigation and orders concerning land use plans and functions that depend on CRA/LA authority therefor. (H&S Code section 34171(d); H&S Code section 34171 et seq.; *see also* Court Order (enforcing terms that bind the successor to the CRA/LA's relevant land use planning authority and functions).

As previously commented, H&S Code section 34173(i) does not provide for the transfer of land use authority from a *successor agency,* like the CRA/LA DLA, to the sponsoring city, but only from the *original* CRA – previously dissolved as a result of the City's prior election. City Staff has responded that the legislature was aware of the City's prior election to transfer the original CRA's land use authority and functions to the DLA, but meant to allow the City to take advantage of section 34173(i) anyway. This argument cannot stand. If, as the City claims, the legislature chose the specific language in the statute with knowledge of the City's prior election to transfer to the CRA DLA, the legislature thus had every reason to adjust the language to allow the City to acquire powers from the successor DLA, but did not. Beyond this, it would violate basic legal principles supporting settlements, in order to protect judicial efficiency and honor the expectations of the settling parties. Nor is it appropriate for the City (or a court) to ignore the plain language of the statute. This is especially true here, where the City was a party to, and formally authorized, the first Hollywood Redevelopment Plan Settlement.

More problematic still, the City is now, through the Actions, essentially attempting to block and walk away from the CRA/LA's land use related plan obligations and functions under the Hollywood Redevelopment Plan Settlement and enforcing Court Order. Nothing in Section 34173(i), or the related statutes, allows a sponsoring agency to avoid land use related plan and function requirements under a settlement agreement or ongoing litigation/court enforcement jurisdiction. (H&S Code section 34171 et seq.) The City's walking away would be particularly egregious here, where (a) the City itself approved imposition of the land use plan and function requirements on the CRA/LA under the First Hollywood Redevelopment Plan Settlement [which remains largely in effect]; (b) the court retained jurisdiction to enforce the full Hollywood Redevelopment Plan Settlement in the Court Order, as the City was fully apprised and failed to timely object; and (c) the City's walking away further delays or blocks altogether mitigating plans and project features promised in the Hollywood Redevelopment Plan and associated FEIR and MMP. Section 34173(i) does not allow this. On the contrary, it requires transfer of all the CRA/LA's land use planning and functions, including land use planning commitments required under prior agreements (especially where the City is also a party to the agreement, as in the First Hollywood Redevelopment Plan Settlement) and under all court-enforcement orders, including the Court Order. (*Id.; see also* H&S Code sections 34177(a), 34167(d), 34171(d).)

To highlight just how "underhanded" the City's Actions are here, the City could be above board still, and fully succeed to *all* the powers and functions of the CRA/LA DLA. "A city … that authorized the creation of a redevelopment agency and that elected not to serve as the successor agency under this part, may subsequently reverse this decision and agree to serve as the successor agency pursuant to this section. Any reversal of this decision shall not become effective for 60 days after notice has been given to the current successor agency and the oversight board and shall not invalidate any action of the successor agency or oversight board taken prior to the effective date of the transfer of responsibility." (H&S Code section 34173(d)(4).) Notably, this allowance for a post-hoc transfer comes with *necessary protections,* to enable successor agencies like the CRA/LA DLA to settle litigation). These protections include a 60 day notice period and a prohibition against invalidating any action of the successor agency (such as the Hollywood Redevelopment Plan Settlement). (H&S Code section 34173(d)(4).)

Beyond the statutory restrictions, it is unlawful for the City to adopt Actions that delay, interfere with or invalidate the CRA/LA DLA's prior land use authority commitments under the Settlement. That would constitute unlawful interference with contract as to the Hollywood Redevelopment Plan Settlement. It also constitutes a breach of the City's covenant of good faith and fair dealing and/or cooperation and the like (express or implied) as to the first settlement agreement with Hollywood Heritage.

5. **The Actions Require Further CEQA Study, Hamper Meeting Affordable Housing Requirements, And Continue A Longstanding Unlawful Pattern And Practice.**

The Hollywood Redevelopment Plan Settlement settled CEQA claims (among others) and claims of noncompliance with mitigations required under CEQA documents, including the FEIR and MMP for the Hollywood Redevelopment Plan now in effect. Any interference with performance under that settlement will necessarily cause or exacerbate potential significant adverse impacts as to cultural/historic resources, transportation/parking, aesthetics, air quality, infrastructure overburden, land use plan inconsistency, and urban decay.

The IS/ND attempts to respond to our CEQA concerns, but essentially only obfuscates the problem. (IS/ND at pages 23-24.) Despite assertions to the contrary, the IS/ND does not actually address our concerns about CEQA impacts caused by the Actions and the City's declared into to unilaterally void or ignore the CRA/LA's Plan, Survey and Interim Measure obligations under the HRP Settlement and Court Order. Instead, the IS/ND attempts to pick and choose what the City will do to mitigate significant historic resource impacts, without regard to the HRP Settlement and associated Court Order. The IS/ND makes no mention of assuming responsibility for completing the required, and long missing, Plans. (*Id.)* As for the Interim Measures, the IS offers only to contact Hollywood Heritage about demolitions, without regard to the many other land use function requirements in the Interim Measures. (*Id.)* As for the Survey, the IS offers to rely on historic survey information "approved" by the "former CRA/LA". (*Id.)* One interpretation is that the IS commits only to accepting the very outdated survey information gathered by the now defunct original CRA/LA – the horrifically outdated and incomplete information that the new Survey *was supposed to fix and complete*. This interpretation makes little sense, though, and would be unlawful. The City is obligated to update its historic database, and has offered no good governmental reason to reject survey performed by or on behalf of the CRA/LA DLA under the HRP Settlement and Court Order (or otherwise).

Beyond this, the IS/ND entirely ignores potential CEQA impacts other than historic resource impacts, itemized above and in our other comments. Such non-historic CEQA impacts are part and parcel to the Actions' impairing, voiding, and/or further delaying completion of the Plans.

The City's use of the Actions to avoid completion and approval of the Plans also is in direct conflict with Section 511 of the HRP. This violation comes from refusing to delay the issuance of demolition, grading, foundation, building, renovation, and other permits for development projects that involve or otherwise adversely affect architecturally significant or historic buildings or places.

As noted by other commenters (including in the 3/19/19 letter from Doug Carstens to PLUM, incorporated here by reference), removing land use authority from the CRA/LA may also cause further affordable housing reductions. The City is already out of compliance. An HUD study of the effects of incapacitating redevelopment agencies, with a focus on Los Angeles, confirms significant adverse impacts on the affordable housing supply. ("Redevelopment Agencies in California: History, Benefits, Excesses, and Closure, Working Paper No. EMAD-2014-01) (provided via electronic submission as Ex. B). Beyond this, the lack of historic preservation measures required under the HRP has contributed to the affordable housing shortage. Destruction of our older buildings serves primarily to replace affordable housing with more expensive units. It also forces the "market" upward, thus forcing up the price of what could then pass as "affordable".

In sum, the City and its CRA/LA have had a long established pattern and practice of unlawfully avoiding, delaying, and obstructing the Plans, Surveys and other measures long promised to help protect against the adverse impacts of development contemplated in the HRP. This pattern and practice began more than 30 years ago with 1986 HRP. The City's apparent aim, through the Actions, is to continue this unlawful pattern and practice even longer.

6. **Other Issues.**

For informed decision making, notice and due process requirements, City staff need to clearly explain how the proposed Resolution and Ordinance will impact land use function and plan commitments of the CRA/LA under the Hollywood Redevelopment Plan Settlement and Court Order, as to each and every commitment therein. Thus far, the City has only presented a jumble of contradictory statements in the record presented to the public. In some statements, the City has claimed that the Actions would not impair the CRA/LA's ability to perform under the Hollywood Redevelopment Plan Settlement. Yet the City also has claimed the absolute, unilateral right to take away the CRA/LA's land use authority, while at the same time ignoring or voiding the CRA/LA's obligations under the HRP Settlement and Court Order. The IS/ND and Ordinance now being presented to PLUM only confuse this issue further, for the reasons described above. This jumble only serves to confuse us, the general public, and City decision-makers. The Actions are still missing the basic presentation that allowed all of us to "connect the dots", as required under *Laurel Heights I* (at p. 392).

The City has now further hopelessly confused the public (and responsible parties) and tainted the preceding review process, by having only now just added a new IS/ND study with a different specifically designated lead agency for all CEQA review of the Project. The last minute CEQA "switcharoo" in turn created insuperable notice, due process, and CEQA compliance problems. Each of the following contributed to the chaos:

- The Notice of Intent to Adopt the IS/ND was only issued months after various stages of City department, commission, and committee-required review based solely on the Categorical Exemption. Assuming the IS/ND serves any purpose at all, Planning and PLUM needed the IS/ND to properly review the other Actions in earlier proceedings.

- The Notice of Categorical Exemption identified City Planning as the Lead Agency. Members of the public thus had no reason to check for or expect further CEQA studies would be posted to the City Council's files, and not the designated lead agency's files at City Planning. No rationale was provided for the switch of lead agency for the IS/ND from Planning to the City of Los Angeles itself (through its Council, not Planning).

- The City claims the CE is moving forward in tandem with the IS/ND. This means two different entities are now claiming to be "the" lead agency for same project (City Planning v. the City of Los Angeles [through its Council]. CEQA does not allow two governmental entities to claim the title of "the" lead agency as here. (*See* CEQA Guidelines Section 15367 and 15051.) Nor should it be allowed here, where the change is made only after full categorical exemption was claimed and relied on in earlier review proceedings by Planning and others. The fact that the two entities vying for "lead agency" simultaneously are related only compounds the resulting confusion. Commenters had no reason to check the City Clerk's website for additional CEQA study, or physically check for a "public" posting (a tacked up piece of paper) from the City rather than City Planning. After all, only the latter had been designated as the CEQA lead agency for the Project, at the outset.

- The City chose to deny notice of the IS/ND by email to prior commenters and those who had requested file addition notice previously. The City (and Planning which, again, has notice responsibility while it remains "lead agency" for the Project under CEQA) had already committed to emailing commenters and other who requested email notice or registered for email notice at the City Clerk's website. No one involved with Hollywood Heritage, even those who had registered for email notice with the City Clerk or with Planning (through Gisele Corella primarily), received the promised notice by email. Yet we all received by email other additions to the City Clerk's file on a routine basis. The City's decision to exclude the IS/ND from the normal email notice stream to Hollywood Heritage and others involved with Hollywood Heritage is particularly troubling. After all, the IS/ND expressly claims that the IS/ND was intended to respond to Hollywood Heritage's prior comments. (IS/ND at pp. 23-24.) The lead agency (whoever that is) is supposed to deliver responses to comments directly to the commenter under CEQA. The deviation from normal (and promised) notice practices, shows intent on the part of the City to "slip under the rug" the IS/ND, or "responses" to comments by Hollywood Heritage therein.

We note that the Notice of Intent to Adopt the IS/ND states that a hearing on the IS/ND will be held before City Council review and approval. The Actions thus cannot be a consent item and full hearing notice will need to be provided. No public hearing on the IS/ND has yet occurred or been properly noticed.

Very truly yours,

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