

Beth S. Dorris
Law Offices of Beth S. Dorris
3226 Mandeville Canyon Road
Los Angeles, California 90049

September 17, 2019

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: 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; **AGENDA ITEM NO. 15**

Honorable Councilmembers:

This letter is on behalf of Hollywood Heritage, Inc. (“Hollywood Heritage”) and Donna Williams (as an individual). It updates, 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. **Based On Updates From The CRA/LA, The City Should, Wait (For Potentially As Little As A Month) For The CRA/LA To Correct Outstanding Violations Of The Court Order and Hollywood Redevelopment Plan Settlement.**

The CRA/LA has reported to us that it has prepared draft plans required under the Court Order and Hollywood Redevelopment Plan Settlement (and the HRP, FEIR and MMP as well). These plans include an urban design plan for the Franklin and Hollywood Boulevard areas, Sunset Boulevard design guidelines, a transportation/parking management plan, and density transfer procedures (as more fully described in said Court Order/HRP Settlement, the “Remaining Plans”). Thus, little remains to be done. It is dismaying (and an egregious violation of the Court Order) that the CRA/LA has not already submitted the Remaining Plans to the governing board for approval. Nonetheless, the CRA/LA certainly can still do so, and do so in the next month or so (if not weeks).

This raises a serious timing issue. Passing the Ordinance and Resolution at the very last minute, now, would remove from the CRA/LA the very land use authority it needs to correct its pre-existing violations of the Court Order, and present the Remaining Plans to its Board for approval. Based on the CRA/LA’s own reports as to its status, the CRA/LA could present Remaining Plans to its board for approval in as little as a few weeks. Neither the City nor the CRA/LA have proffered even a good faith reason as to why the CRA/LA has not already done so, but instead are pushing to transfer the necessary land use authority from the CRA/LA to the City. The timing is particularly suspect. The City has been deliberating some version of the Resolution and Ordinance to transfer land use authority for at least 4 years. Doing the transfer now, frankly, looks like the worst of bad faith, contempt of court, and deliberate unconstitutional impairment of contract.

¹ Capitalized terms have the meaning set forth in our August 27, 2019 comment letter on this matter unless otherwise specified herein.

2. The Proposed Actions Seek To Block Court Order/HRP Settlement Terms That Specifically Require The City Assume Land Use Authority Of The CRA/LA On Transfer Of Land Use Authority.

The Resolution, Ordinance, and IS/ND have been revised in advance of the current PLUM Committee review. These actions still purport limit the transfer to CRA/LA obligations under the HRP only. In so doing, the actions continue to preclude transfer of land use responsibilities provided, acknowledged or clarified under the Court Order, HRP Settlement, or even the FEIR and MMP. This result would be unlawful and unenforceable for the reasons set forth in prior comments, as supplemented below and in the subsequent sections of this comment letter.

The Court Order and associated HRP Settlement expressly requires that the CRA/LA's obligations thereunder be transferred as part of the land use authority transfer to the City under H&S Section 34173(i). The Court Order, Attachment 1, Section 2 states: "If and when the City of Los Angeles or any other governmental agency assumes the land use authority in the Hollywood Redevelopment Proect area, said land use authority successor and not the CRA/LA shall be responsible for the CRA/LA's obligations" as to the Remaining Plans and the Updated Survey.

The HRP Settlement enforced by the Court Order also expressly binds the CRA/LA's land use successor to the other land use authority implementation measures in the HRP settlement provisions, including without limitation the "interim measures" in the original settlement:

"The Parties acknowledge and affirm that the CRA/LA's obligations under the Settlement are part of may not be segretated from its land use authority and functions, including without limitation any assignment or other transfer of all or any part of the CRA/LA's land use authority or functions to the City of Los Angeles (or City Planning) or other qualified governmental agency, and in the event of any transfer of or assumption of the CRA/LA's land use authority over the Hollywood Redevelopment Area, the successor agency shall succeed to the CRA/LA's obigations under the Settlement which obligations may not be terminated by the successor agency, notwithstanding any contrary provision herein.... In addition, the CRA/LA's obligations under the settlement and continuing court jurisdiction under Section 664.6 related to enforcement thereof shall be deemed "litigation" requiring automatic transfer of the CRA/LA's obligations under the Settlement to any successor authority under Health and Safety Code section 34173...."

(Court Order Attachment 1 Section 5.)

We note that the CRA/LA legally must *oppose* the Resolution and Ordinance to the extent they preclude successor liability under the Court Order and HRP Settlement. Otherwise they are directly agitating to violate and block the Court Order. Yet the CRA/LA has informed the public, Hollywood Heritage, the court, PLUM and the City Council that it strongly supports the Resolution and Ordinance, without qualification. The CRA/LA cannot do so without being in contempt of court under the Court Order. Further, any approval of the Resolution, Ordinance, and IS/ND would make the City a knowing co-conspirator to the CRA/LA's blatant contempt of court under the Court Order (as well as successor).

3. The Constitution Precludes The Impairment Of Contract Contemplated By The Ordinance And Resolution, And The Associated Interpretation of H&S Code Section 34173(i).

California Constitution Article 1, Section 9 provides that "a bill of attainder, ex post facto law, or law impairing the obligations of contracts may not be passed." The United States Constitution Article 1, Section 10 provides "No State shall . . . pass any Bill of Attainder, ex post facto law, or law impairing the Obligation of Contracts . . ." Legislation running afoul of these constitutional protections can be stricken. (*Teachers Retirement Board v. Genest* (2007) 154 Cal.App.4th 1012; *Valdes v. Cory* (1983) 139 Cal.App.3d 773.) These constitutional

provisions were put into place to prevent the legislative branch from enacting bills that prevented the performance of existing contractual obligations.

The Resolution, Ordinance, and IS/ND appear to present a novel interpretation of Section 34173(i). The interpretation would allow the transfer of only *some, but not all*, of the CRA/LA's land use authority and function parameters in the Hollywood Redevelopment area. Under this interpretation, the land use authority/functions to be transferred to the City would be circumscribed by the HRP, but specifically exclude the land use authority parameters under the Hollywood Redevelopment Plan Settlement and associated Court Order. Further, the contractual obligations the City seeks to thwart here are not payment of money, but rather exercise of land use authority in its purest form (review of land use plans and protocols and completion and incorporation of an updated historic survey). The Resolution, Ordinance and IS/ND unconstitutionally impair contract, and thus are void and unlawful.

The City purports to rely on Section 34173(i) to void its successor obligations under the Court Order. If correct, the City's apparent interpretation of Section 34173(i) would also make Section 34173(i) unconstitutional. The only other alternative is that the City's statutory interpretation is wrong. Nothing in Section 34173 limits the land use authority transferred under subsection (i) to just the redevelopment plans themselves, and not also to associated planning controls such as those in the Court Order and Hollywood Redevelopment Plan Settlement.

Beyond this, the Court Order/HRP Settlement, by its own terms, is ongoing land use authority litigation requiring assumption by the City as successor to that authority. (Court Order, Att. 1, Section 5.) Nothing in Section 34173 restricts, or can constitutionally restrict, the City from subsuming the role of the CRA/LA in the HRP Settlement, under the ongoing litigation associated with the Court Order. To the extent that the Resolution and Ordinance purport to do so, they are invalid and void.

4. **Councilmember Concern About Great Expense To The City Is Simply Not Valid Here.**

At the last PLUM meeting, staff and at least one committee member expressed concern that the City could not assume responsibilities under outstanding settlement agreements (and court orders/judgments enforcing them) without taking on significant unfunded costs. Nothing could be further from reality as to the Court Order and Hollywood Redevelopment Plan Settlement. The CRA/LA reports that it set aside the cost of consultants' preparation of the Remaining Plans and Updated Survey (as defined in the Court Order as HRP Settlement); that the draft Plans are done, and that the Updated Survey is on track for completion by the date required under the Court Order (18 months after the Effective Date of August 1, 2018). Further, the Updated Survey and Remaining Plans are independently required for effective implementation of the HRP, FEIR and MMP.

5. **The Actions Require Further CEQA Study 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. Further, the revised Actions purport to exclude land use functions and authority not directly in the HRP or associated Regulations. Any failure to transfer to the City obligations under the FEIR and MMP also creates potential significant environmental impacts in the same categories, otherwise mitigated by mitigations and project measures the FEIR and MMP, as detailed therein. This continues a long standing practice of CEQA avoidance started more than 20 years ago, as detailed in prior comments and attachments (including the original Complaint).

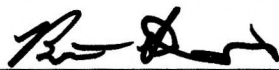
Beyond this, changes to the definition of the land use authorities and functions being transferred are changes to the project definition, and necessarily require reposting, noticing and circulation with additional comment of the IS/ND (and CE).

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. Thus far we have received and seen only meeting notice, not hearing notice, for the IS/ND. The City committed to a public hearing in its Notice of Intent. 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.

We very much appreciate your careful review and consideration of these comments.

Very truly yours,

Law Offices of Beth S. Dorris

By 
Beth S. Dorris

cc. sharon.dickinson@lacity.org
twebber@goldfarbblipman.com (Thomas Webber, counsel for CRA/LA)
MKosla@bwslaw.com (Martin Kosla, counsel for City)