15-0703

10978 Elinda Pl.
Sun Valley
Ca. 91352

To The Plum Committee,

I am asking the committee to review the appeal against the proposed Studio Production building and Warehouse building project at 11038, 11070 and 11000 W. Peoria St. in Sun Valley The council file is No. 15-0703.

My way of life and that of our neighbourhood would be severely impacted by this project. My house is approximately 120' away from the proposed project's boundary. Mr. Butler proposes a building that is 54' high at its highest point and is 500' long. This is the smaller of the 2 buildings. Mr. Butler plans to build a 10' or 11' high wall on the eastern boundary closest to me and use plants and trees to disguise the fact that I will only be able to see that building when I look to the west. No more sunsets, just a huge building. Why should I have to live the rest of my life with an enormous building that close to my house?

Mr. Butler has repeatedly invited the neighbourhood to come down and visit his facility in Hollywood. What has that to do with Sun Valley? I am glad that he has a business in Hollywood My husband retired from the movie industry and we have first hand knowledge of the business and we know that we don't need it next door to us. Mr. Butler proposes to run the business 24/7

and it will absolutely have a negative impact on we the people who live in this neighbourhood. Traffic will be greatly increased and will change how the horses and their riders have to act and change their ways.

Please listen to we the people who need your help with this appeal. One neighbourhood council after they heard the facts changed their support of this project to objecting to it. There are 150 signatures collected to oppose this project. This project is just not appropriate on this parcel of land so close to an old, established RA1 zone area.

Thank You for reading this.
Pamela Nesmith.

● McQUISTON ASSOCIATES
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(323) 464-6792 FAX same
consultants to technical management

July 24, 2015

CF15-0703 ✓
ITEM 7, PLUM 7/28/15
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STATEMENT of J.H. McQUISTON on CONVERSION of LAND USE CONTRARY to STATE CONSTITUTION

Honorable Chairman and Members of the Committee:

There are many violations of State Constitution and Laws regarding the subject attempt to convert the use of the subject property. I raised these violations at the Commission's hearing on the matter, and as a Los Angeles City property owner, and as a Los Angeles City resident, I am empowered to act as "private attorney general" to enlist the power of the State to prevent the violations.

1. **The Charter of Los Angeles is its "constitution" regarding matters compatible with State law.** The Elected Charter Commission, which the electors created to **reform** the pre-1999 Charter, listened to people's complaints regarding the City Planning Commission and **responded** by creating "Area Planning Commissions, **membership thereon being restricted to residents of the area.** The Charter Commission explained their operation thusly to the voters when the "draft" became law after the vote in 1999 (binding on the City's operation of all Commissions):

""**Executive Summary - Proposed Charter**

"The Elected Los Angeles Charter Reform Commission

"Introduction

"The **Elected** Los Angeles Charter Reform Commission has spent the last year and a half carefully studying every aspect of City government and debating how to improve it. The proposed draft Charter is designed to create a **government that is more responsive, more accountable, and more efficient**. This summary describes the **reforms, contained in our draft Charter, designed to achieve each of these objectives**.

"The draft Charter is much, much shorter than the existing Charter and is *more of a constitution* than the current Charter, which is akin to a detailed operations manual. [ ]

"● Area Planning Commissions. The proposed Charter creates five **Area Planning Commissions which will bring zoning and development decisions closer to the people. This will allow land use decisions to be made by those more familiar with the areas affected and sensitive to their needs**." (*Emphasis added)*

Since 1999, the Department inconsistently-follows Charter Section 552 ("Area Planning Commissions"); in the subject case **it did not obey the restriction per the above Summary. People failed to get** the decision from Commissioners "more familiar with the area and sensitive to its needs", as their constitution the Charter prescribes.[1] **The City Planning Commission's decision is void *ab initio*.**

2. **State Government Code requires separation of uses.** As *Lesher* said at 535-536:

"A general plan must set out a statement of the city's development policies and objectives, and include specific elements among which are land use and circulation elements. (§ 65302[2] subds. (a) & (b).) Once the city has adopted

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[1] Planning decreed the matter did not affect the City's environment, so Planning thereby had to put the matter to the Area Planning Commission per the Charter, not the City Planning Commission. The City Planning Commission's product is void *ab initio*. *See, e.g,* Lesher Communications v City of Walnut Creek, 52 Cal 3d 531, 539-541 and 543-546 (S Ct In Bank 1990).

2. The land use element must designate "the proposed general distribution and general location and extent of the uses of the land for housing, business, industry, open space, including agriculture, natural resources, recreation, and enjoyment of scenic beauty, education, public buildings and grounds, solid and liquid waste disposal facilities, and other categories of public and private uses of land. The land use elements shall include a statement of the standards of population density and building intensity recommended for the various districts and other territory covered by the plan...." (§ 65302, subd. (a).) The circulation element must consist "of the general location and extent of existing and proposed major

a general plan, all zoning ordinances must be consistent with that plan, and to be consistent must be 'compatible with the objectives, policies, general land uses, and programs specified in such a plan.' (§ 65860, subd. (a)(ii).)"

Los Angeles claimed that to subject it to the State Law Section 65860 was "unconstitutional". In response the Court in *City of Los Angeles v. State of California*, 138 Cal.App.3d 526 (1982), said at 532:

"**[G]eneral law prevails over local enactments of a chartered city, even in regard to matters which would otherwise be deemed strictly municipal affairs, where the subject of the general law is of statewide concern.**" (*Professional Fire Fighters, Inc.v. City of Los Angeles* (1963) 60 Cal.2d 276, 292 [32 Cal. Rptr. 830, 384 P.2d158]; *Baggett v. Gates* (1982) 32 Cal.3d 128, 136 [185 Cal.Rptr. 232, 649 P.2d824].)

"[ ] Here, we can but conclude that the challenged statute is not unconstitutional on its face." *ibid at* 535.

The issue remains that the so-called "conditional use" is actually a "use variance". Land planned for one use *may not* be used by the artifice of "conditional use" for another use not "specified" in the Plan.

In the LAMC it is clear that **no use not specifically permitted by the Plan may be allowed.**[3]

To allow the intended nonconforming use, the General Plan consisting of all its components would require amendment.

3. In *Philip Anaya v City of Los Angeles,* BS 099892 (2006)[4], the Court decided that a buffer zone is protected from violation if the Plan requires such protection for an adjoining use.

The Appeal cites the requisite protection is indeed part of the Plan.

The implied issue is that City employees do not yet grasp the Legislature's *raison d'etre* for revising the Government Code to prohibit *ad hoc planning*, which this case certainly is, or perhaps the City's aim is to "gouge" developers and appellants. *deVita v County of Napa,* 9 Cal 4th 763, 772-773 (S Ct 1995) elaborated:

"In 1971 several legislative **changes were made to significantly alter the status of the general plan**. For the first time, proposed subdivisions and their improvements were **required to be consistent** with the general plan (Gov.Code, § 66473.5 [formerly in Bus. & Prof.Code, § 11526]), **as were zoning ordinances** (Gov.Code, § 65860). (Stats.1971, ch. 1446, §§ 2, 12, pp. 2855, 2858; *City of Santa Ana, supra,* 100 Cal.App.3d at p. 532, 160 Cal.Rptr. 907.)

"Moreover, **charter cities were no longer completely exempted** from the requirements of the planning law; these cities had to at least adopt general plans with the required mandatory elements. (Gov.Code, § 65700, subd. (a); Stats.1971, ch. 1803, § 2, p. 3904.) Thus after 1971 the **general plan truly became, and today remains, a " 'constitution' for future development**" (*Lesher Communications, Inc. v. City of Walnut Creek* (1990) 52 Cal.3d 531, 540, 277 Cal.Rptr. 1, 802 P.2d 317) located at the top of "the hierarchy of local government law regulating land use" (*Neighborhood Action Group v. County of Calaveras* (1984) 156 Cal.App.3d 1176, 1183, 203 Cal.Rptr. 401).

"The general plan consists of a 'statement of development policies ... setting forth objectives, principles, standards, and plan proposals.' (Gov.Code, § 65302.) The plan must include seven elements--land use, circulation, conservation, housing, noise, safety and open space--and address each of these elements in whatever level of detail local conditions require (id., § 65301). General plans are also required to be 'comprehensive [and] long [ ]term (id., § 65300) as well as 'internally consistent.' (Id., § 65300.5.) The planning law thus compels cities and counties to undergo the discipline of drafting a master plan to guide future local land use decisions."

There is industrial land available in the City for Media use. This Committee lately heard applications to convert

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thoroughfares, transportation routes, terminals and other local public utilities and facilities, all correlated with the land use element of the plan " (§ 65302, subd (b))

[3] See e g §12 27 D 5 "A variance shall not be used to grant a special privilege or to **permit a use substantially inconsistent** with the limitations upon other properties in the same zone and vicinity " See also *Lesher* at 541 "Tail doesn't wag the dog" This prohibition rests on Constitution Article I §7(b) ("Equal protection") and cannot be evaded by legislation.

[4] The case was neither defended , nor was the adverse decision appealed, by Los Angeles. The City Attorney refused to defend the case in which the Council enacted a zoning variance incompatible with the controlling Community Plan. The variance would take away the buffer zone created to protect single-family housing from more-dense uses. So far, the City apparently chooses to operate as if may ignore *California, Lesher*, and *Anaya* among the City's many similar court-setbacks.

substantial amounts of restricted-industrial land and buildings to non-industrial use (violating the General Plan). **There being no facts in the record proving Applicant's use cannot be located anywhere else in Los Angeles where the Plan authorizes such use,** an amendment or other allowance for Applicant's non-conforming use for this parcel would be constitutionally-invalid.[5]

4. Government Code §65301(b) permits:

"The **general plan may be adopted as a single document or as a group of documents relating to subjects or geographic segments of the planning area.**"

Los Angeles divided its General Plan as permitted by §65301, creating at least 37 documents controlling specific zoning on its land area. **But City fails to observe §65358, thereby putting the Legislature's 1971 commands** for Plans to control *future, orderly* development in the wasebasket. *deVita* noted at 790-791:

"Commentators have noted the **tension between the ideal of the general plan as a long-range vision of local land use, and the reality that general plans are often amended in a fragmentary fashion to accommodate new development**. One survey of California city and county planning departments shows that approximately 75 **percent of proposed planning and zoning amendments are privately initiated in conjunction with development applications, and that approximately 66 to 75 percent of these amendments are ultimately approved**. (Dalton, *Limits of Regulation: Evidence from Local Plan Implementation in California* (1989) 55 J.Am. Planning Assn., 151, 156, 159 (hereafter *Limits of Regulation*); *see also Fulton, Guide to California Planning* (1991) 66; Glickfeld, *Local Initiatives in the 90s: Coming to Terms with an Imperfect Voice of Democracy in 1 Land Use Forum* (Cont.Ed.Bar 1992) pp. 99, 100 (hereafter *Local Initiatives in the 90's*); and *see, e.g., Yost v. Thomas, supra,* 36 Cal.3d at p. 569, 205 Cal.Rptr. 801, 685 P.2d 1152; *Citizens Assn. for Sensible Development of Bishop Area v. County of Inyo* (1985) 172 Cal.App.3d 151, 156-157, 217 Cal.Rptr. 893.)

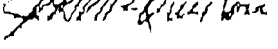
"As the author of that survey has concluded, the **planning and zoning amendment process has become in many communities one of "piecemeal adjustment" by local planners and local legislators in response to development pressures**. (*Limits of Regulation, supra,* 55 J.Am. Planning Assn. at pp. 151, 159.) This conclusion comports with the well-known phenomenon commonly referred to as the "**fiscalization** of land use," whereby **planning decisions are frequently driven by the desire of local governments to approve development that will compensate for their diminished tax base** in the post-Proposition 13 era. (See Fulton, *Guide to California Planning, supra,* at pp. 15-17, 208-213.)

"**It was presumably to curb an excessively** *ad hoc* **planning process that the Legislature limited in 1984** the **number of amendments** to any mandatory element of the general plan to **four per year**. (Gov.Code, § 65358, subd. (b).) General **plans that change too frequently** to make room for new development will obviously **not be effective in curbing 'haphazard community growth'** (*Selby Realty Co. v. City of San Buenaventura, supra,* 10 Cal.3d 110, 120, 109 Cal.Rptr. 799, 514 P.2d 111.)"

Los Angeles seems to amend its General Plan at almost every weekly session. It apparently utilizes the Josef Stalin approach to abiding law, namely "How many police has the Court?"

In this case Los Angeles **must stop its scofflaw-approach to Charter, State and Constitution and laws.**

Respectfully submitted,



J. H. McQuiston

c: Interested parties

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[5]See discussion of the distinction between "use" and "bulk" explained in *Topanga Assn v County of Los Angeles,* 11 C 3d 506, 511 n5 (S Ct In Bank 1974): "A third paragraph added to section 65906 declares: 'A variance shall not be granted for a parcel of property which authorizes a **use** or activity which is **not** otherwise **expressly authorized** by the zone regulation governing the parcel of property.' This paragraph serves to **preclude "use" variances**, but apparently does not prohibit so-called "bulk" variances, those which prescribe setbacks, building heights, and the like." The prior section is the LAMC citation *supra,* which implicitly is the same as what *Topanga* quoted..