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May 25, 2017

VIA E-MAIL

Hon. Jose Huizar, Chair
Hon. Committee Members
Planning and Land Use Management
Committee
Los Angeles City Council
200 N. Spring Street, Rm. 395
Los Angeles, CA 90012
Attn: Sharon Dickinson
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zina.cheng@lacity.org

Re: Council File 17-0537
DIR-2016-304-DB-SPR-1A
12440-12492 Venice Boulevard ("Property")
Objection to Hearing
Hearing Date: May 30, 2017

Honorable Chair Huizar and Members of the Committee:

We represent Crimson EHOFF 12444 Venice Investors, LP ("Crimson"), the owner and Applicant for the above-referenced Project, a density bonus project that would provide affordable and market-rate housing units on the housing-strapped West Side, just steps from a Major Transit Stop, without displacing a single resident or housing unit, and using only one density bonus incentive, though it is entitled to three.¹ We write to you under protest and with a full reservation of Crimson's rights.

The items before you are not ripe for consideration because Crimson has filed for, and the city has yet to act upon, a statutory exemption under the California Environmental Quality Act ("CEQA") pursuant to Pub. Res. Code §21155.1, known as the Sustainable Communities Project Exemption (hereafter "SB375 Exemption"). This SB375 Exemption was filed on March 29, 2017, has been and remains under consideration by the City Attorney and the Department of City Planning, and **would displace the mitigated**

¹ LAMC §12.22 A.25.

negative declaration ("MND") that is the subject of the pending CEQA appeal. Thus, hearing the appeal on the MND prior to hearing the SB375 Exemption would place the proverbial cart before the horse, defying logic and sound CEQA practice.

Further, the Charter section 245 motion adopted by the City Council to assert jurisdiction over the unanimous decision of the City Planning Commission ("CPC") already pre-judged the project, and provided and urged the use of illegal justifications for overturning the CPC decision, thereby foreclosing an impartial hearing.. This exposes the City to significant liability, including attorneys' fees, under State law.² Forcing the 245 motion hearing *prior* to hearing the 375 Exemption exposes the City even further with respect both to substance and procedure. Accordingly, the Planning and Land Use Management Committee ("**PLUM**") ***must, at a minimum, continue the scheduled hearing to June 6, 2017*** to allow a full and timely hearing that includes the pending SB375 Exemption application and analysis. This continuation will not prevent the City from timely acting on the Charter section 245 motion.

1. The CEQA Appeals are Not Ripe for Consideration.

The hearing notice for the March 30 PLUM hearing includes appeals filed by project opponents in accordance with CEQA section 21151(c) (appeal to the legislative body), but consideration of those appeals is premature, as is consideration of the MND in light of the pending SB375 statutory exemption available under CEQA section 21155.1.

(a) The City Council will Consider the MND as if in the First Instance.

In asserting jurisdiction under Charter section 245, the City Council has stepped into the shoes of the CPC with respect to considering the appeals filed by the opponents of the Project. (Charter §245(e)). As the CPC had the authority to adopt—and did adopt—the MND for the Project, the City Council retains the authority to do so as well. Because the City Council must now consider the MND as if in the first instance, an appeal of the CPC's adoption of the MND is necessarily premature. Further, because the City Council—the City's legislative body—will then have acted on the MND, CEQA provides no further appeal on that action.

² The density bonus law, Govt. Code §65915 et seq.; the Housing Accountability Act, Govt. Code §65589.5.

(b) The City Council Must Consider the Pending SB375 Statutory Exemption Prior to Considering the MND.

The Department of City Planning is processing an analysis regarding whether the Project is statutorily exempt from CEQA under CEQA section 21155.1, and has been doing so since March 29, 2017, one month prior to the City Planning Commission's approval of the MND on April 20, 2017. Crimson previously and repeatedly requested consideration of the statutory exemption even prior to the CPC hearing. However, the City Attorney and the Department of City Planning advised Crimson that only the City Council can consider the SB375 exemption, not the CPC. In response to City requests for information and analysis, including extensive soil sampling and preparation of an entirely new Phase II environmental site assessment, as well as extensive energy and water efficiency studies, Crimson has expended tens of thousands of dollars on a highly expedited basis, to provide this information specifically requested by the City so that a determination of its SB375 Exemption can be made. Now the City Council is rushing to a hearing for the express purpose of forcing a hearing before the City can consider the SB375 Exemption. This defies not only good CEQA practice and common sense, but also denies Crimson due process of law and constitutes prejudice to the Project.

Consideration of the SB375 statutory exemption must occur prior to consideration of the MND, as the statutory exemption would obviate any need for further CEQA review. If and only if the City Council determined the Project somehow failed to satisfy the checklist for the exemption would further consideration of the MND become warranted. Absent that determination, any consideration of the MND is premature.

(c) Consideration of the SB375 Statutory Exemption would Not Threaten Council's Jurisdiction under Charter Section 245.

Charter Section 245 requires the City Council to act within 21 days of asserting jurisdiction over an action. Here, the City Council asserted jurisdiction on Friday, May 19, 2017, which permits action until June 9, 2017. The Department of City Planning has assured our office that a hearing on June 6 would provide adequate time to complete the analysis and present a report to PLUM on the pending SB375 Exemption application. ***A June 6 PLUM hearing still provides three full days for the full Council to act on PLUM's recommendation.***

2. The Charter Section 245 Motion Urges Rejection of the Project on Illegal Grounds.

The Charter section 245 motion adopted by the City Council purports to focus on the Site Plan Review approval granted to the Project, rather than the affordable housing

aspects. However, that attempt ultimately runs afoul of the central purpose of Density Bonus Law, which was enacted to prevent rejection of affordable housing projects using the findings of the Charter Sec.245 motion. ***Further, the Municipal Code permits the proposed use, does not limit height for mixed-use structures on the parcel, and forbids a finding of impacts on the basis stated in the motion.***

(a) The Appeals Seek to Deny the Density Bonus Based on the Provision of Residential Uses and the Grant of an On-Menu Incentive.

Here one of central arguments regarding neighborhood compatibility ultimately rests on the single on-menu incentive the Project uses under the density bonus. This ignores both State law and the building envelope permitted by the underlying zoning and Community Plan designation.

The density bonus law specifically provides for residential units that exceed those otherwise permitted by local ordinance.³ Thus, the City may not use the proposed density bonus units to conclude the Project does not comply with residential density limitations in the Municipal Code or General Plan (or, here, Site Plan Review) or would result in a land use impact. To hold a Project "incompatible" because of the density bonus would contravene the strong State and local policy to promote development of affordable housing,⁴ as well as the Mayor's priority in providing additional affordable housing.

As discussed in the City Planning Commission Determination, the sole density bonus incentive provided to the Project is floor area, which is provided "on-menu."⁵ The density bonus itself and the use of the parking reduction provided under State law are automatic and intrinsic to any density bonus request, separate and apart from any incentives. Contrary to public policy, the Charter section 245 motion and project opponents illegally seek to eliminate this incentive and the parking reduction specifically on the basis of its purported impacts (shade/shadow, parking), in direct contravention of State and local law; that is, even if the State Density Bonus Law did not already preclude this, Senate Bill 743 ("SB743"; discussed separately below) and SB 744 do so,.

³ Cal. Govt. Code § 65915(f).

⁴ See Govt. Code §§ 65915(b)(3).

⁵ LAMC § 12.22 A.25(f)(5).

(b) The Project, with or without the Density Bonus Incentive, is Consistent with the Height Limits of the Zone.

Against State law and strong public policy, the appellants attempt to characterize the Project size as inconsistent with the zone and urge the City to overturn the Determination on that basis. They are wrong: ***no height limit applies to the Property, with or without the requested density bonus.*** As stated above, the zoning and the Community Plan designate the Property as Height District 1. Height District 1 limits the floor area of commercial structures, but not the height.⁶

(c) State Law Exempts the Project from Aesthetic Impact Analysis.

Senate Bill 743 provides that Projects located in transit priority areas are exempt from the requirement to study aesthetics impacts, GHG impacts, and parking impacts. Notwithstanding that the Project is statutorily exempt from CEQA, the MND previously circulated for the Project cited State law and properly declined to provide the analysis on that basis

Contrary to SB 743, the Charter section 245 motion urges rejection of the Project on the basis of its aesthetic impacts. By its terms, ZI 2452, which implements SB 743, still requires aesthetics analysis for otherwise exempt projects in only two circumstances: (1) the project is located in a historic preservation overlay zone, or (2) the project is located in a community design overlay district. Neither of those criteria apply here; therefore, the Project remains exempt from aesthetics analysis, and any attempt to reject the Project on the basis of such impacts is illegal and contrary to public policy.

(d) SB 743 and SB744 Preclude a Parking Impact Analysis.

The Charter section 245 motion also urges rejection or modification of the Project based on a claimed parking shortfall. However, not only does SB743 apply to the Project and preclude a parking impact analysis, but SB744 specifically provides for the reduction in vehicle parking and the increase in bicycle parking. The reductions provided by SB744 are mandatory, as is SB744's general prohibition on consideration of parking impacts, and the City cannot use Site Plan Review—a local provision—as a basis for an end-run around State law.

⁶ LAMC § 12.21.1-A.

3. The Council Either Must Continue the Hearing or Deny the Proposed Motion in its Current Form.

As described above, the Project is nothing more than an on-menu affordable housing project in a Transit Priority Area, an action for which State law both limits the City's discretion and forbids a finding of inconsistency or impact solely on the basis of the provision of density bonus residential units or the incentives provided. This is a project that strongly supports the Mayor's housing initiative, and that does so without any displacement of existing housing units or residents. Moreover, the Project is exempt from CEQA, as provided by SB375. The City must first consider this exemption prior to a decision on the adequacy of the environmental analysis prepared for the Project.

Therefore, PLUM must, at a minimum, continue consideration of the proposed action until June 6, 2017, so the City Council may hear the SB375 Exemption, which Crimson has patiently awaited, as the integral part of the CEQA appeal and Charter section 245 motion the exemption truly is. Alternatively, PLUM must deny the proposed motion, and allow the determination of the CPC to stand.

Make no mistake: this hearing constitutes a test of the City's commitment to affordable, transit-oriented housing, as well as its commitment to follow the laws of the State, which were crafted specifically to address the housing crisis our City currently faces and to overcome local resistance to affordable housing projects. The failure to uphold the CPC's unanimous approval of an affordable housing project, particularly on bases contrary to State and local law, would represent a complete failure of law and policy.

Sincerely,



BENJAMIN M. REZNIK and
NEILL E. BROWER of
Jeffer Mangels Butler & Mitchell LLP

BMR:neb

cc: Hon. Mike Bonin, Councilmember, District 11
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