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August 21, 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: Zina Cheng
E-Mail: 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: August 22, 2017

Honorable Chair Huizar and Members of the Committee:

We represent Crimson EHOF 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]This is the second time a Charter Section 245 motion has brought the Project before you, on the same illegal grounds, and despite unanimous rejection by the City Planning Commission ("CPC") of the illegal modifications urged by Council District 11. In its August 17, 2017 letter to the Planning and Land Use Management Committee (the "CD11 Letter" and "PLUM," respectively), the Council District has renewed its calls for illegal and unprecedented modifications to the Project

Also, 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 ("SB375 Exemption).This SB375 Exemption was filed on March 29, 2017, has been reviewed by

[1] LAMC §12.22 A.25.

the City Attorney and the Department of City Planning, and would supersede the mitigated 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.

As with the prior motion—and heedless of the law and two unanimous CPC determinations—the current Charter section 245 motion adopted by the City Council to assert jurisdiction pre-judged the project, provided and urged the use of illegal justifications for overturning the CPC decision, proposed modifications to the Project that respond to criteria forbidden for consideration by Assembly Bill 744 ("AB744") and the Density Bonus Law[2], and would thwart the purpose of the Density Bonus law to reduce the cost associated with providing the affordable housing units.[3] This exposes the City to significant liability, including attorneys' fees, under State law.[4] 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 PLUM Committee must, at a minimum, continue the scheduled hearing to allow a full and timely hearing that includes the pending SB375 Exemption application and analysis. This continuation need not prevent the City from timely acting on the Charter section 245 motion. The PLUM Committee also should reject the proposed modifications to the Project, in accordance with multiple State laws.

1. Both Charter Section 245 Motions and the Council Office Letter Urge Modification of the Project on Illegal Grounds.

The Charter section 245 motion adopted by the City Council, as well as the CD11 Letter, purport 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.

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[2]Govt. Code §65915 *et seq*.
[3]C.f. Govt. Code §65915(k)(1) (findings requiring actual reductions in costs or rents as a result of the development concessions offered).
[4] The density bonus law, Govt. Code §65915 et seq.; the Housing Accountability Act, Govt. Code §65589.5.

This very committee rejected these requests the first time, and found them to fly in the face of statute in its last hearing of the 245 Motion on May 30, 2017. When PLUM rejected CD 11's illegal requests the first time, Councilmember Huizar stated"

> "My concern here is that should we change these conditions, would these conditions as proposed by CD 11 disregard some of the reasons why we have legislation to support additional affordable housing through some of the statutory exemptions provided? [. . .] ***I'm concerned we should not usurp any of the reasons why we have the statutory exemptions in the first place***"

(Emphasis supplied.)

(a) 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 Charter Section 245 motion and the CD11 Letter attempt to characterize the Project size as inconsistent with the Project's surroundings 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.[5] Thus, to the extent provision of the required density bonus incentives have the effect of increasing building height, that increase does not violate the General Plan or Municipal Code, even without the exemptions provided by the Density Bonus Law itself.[6]

(b) Modification of the Project on Site Plan Review Grounds Conflicts with the Density Bonus Law.

The central remaining argument of the CD11 Letter regards neighborhood compatibility, and ultimately rests on the density bonus and on-menu incentive provided for the Project. 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

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[5] LAMC § 12.21.1-A.

[6] Govt. Code §65915 LAMC § 12.22-A.25 ("inconsistency with the zoning ordinance or general plan ***shall not*** constitute a specific, adverse impact upon the public health or safety.")

ordinance.[7]State law also requires the City to provide other incentives in exchange for those units.[8]As discussed in the various determination letters for the Project, the sole density bonus incentive provided to the Project is floor area, which is provided "on-menu."[9]Moreover, the Density Bonus Law requires that the City "shall provide" the density bonus and incentives, absent specific findings of a significant impact to health, safety, or the physical environment.[10]To purport to find a Project "incompatible" on the basis of Site Plan Review fails to address two key facts: (1) the issue could only arise from the required provision of the density bonus and incentives, and (2) "compatibility" is not a cognizable standard under the Density Bonus Law or under SB744. Even if the State Density Bonus Law did not already preclude this (it does), Senate Bill 743 ("SB743"; discussed separately below) and AB 744 do so.

(c) State Law Precludes the Use of Aesthetics to Determine the Project Would Have a Significant Physical Effect.

The Charter Section 245 motion and the CD11 letter, in urging modifications to the Project based on aesthetic standards, contravene the strong State and local policy to promote development of affordable housing.[11]In fact, State law forbids the City from using the aesthetic effects of the proposed density bonus or incentives to conclude the Project conflicts with the Municipal Code (here, Site Plan Review).

As a preliminary matter, purely socioeconomic impacts are outside the purview of CEQA and are not considered impacts on the environment, let alone health and safety. Further, case law has long established that effects on neighborhood character are purely socioeconomic See, e.g., Gabric v City of Rancho Palos Verdes, 73 Cal.App.3d 183, 200 (1977). To the extent the CD11 Letter argues that the community character aspect of Site Plan Review requires modification of a density bonus project, that assertion violates the precepts of the Density Bonus Law.

Subsequent legislative enactments have further removed aesthetic effects from the universe of cognizable impacts on the physical environment. 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. Contrary to SB 743, the Charter

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[7] Cal. Govt. Code §65915, subdivs. (b)(1) and (f).
[8] Govt. Code §65915(d).
[9] LAMC § 12.22 A.25(f)(5).
[10] Govt. Code §65915(b)(1).
[11] *See* Govt. Code § 65915(b)(3).

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.

The use by the CD11 Letter of Site Plan Review as a basis for denying or modifying the Project violates the established precepts above and turns the Density Bonus Law on its head. The finding proposed by CD11 constitutes nothing more than a finding that the Project would have a significant environmental effect related to aesthetics, while ignoring the insufficiency of that finding under the Density Bonus Law. As discussed above, the Density Bonus Law requires a finding of a significant, specific effect on health, safety, or the environment to deny a bonus or incentives. However, both CEQA and SB743 remove aesthetics from the universe of effects on the environment.

(d) The PLUM Committee Previously—and Properly—Refused to Condition the Project in the Manner Requested.

Two comments by Councilmember Huizar, Chair of the Planning and Land Use Management ("PLUM") Committee of the City Council, during PLUM's consideration of the Charter Section 245 motion, perfectly crystallize the problems with the proceedings that lead to this point. At one point, when considering the basis for any action, Councilmember Huizar recognized that the rationale offered for the Charter section 245 motion ran afoul, at the very least, of strong public policy and legislative intent behind the various law implicating Density Bonus:

> "My concern here is that should we change these conditions, would these conditions as proposed by CD 11 disregard some of the reasons why we have legislation to support additional affordable housing through some of the statutory exemptions provided?[. . .] I'll recommend that we support CD 11's request to veto CPC action and remand for further action."

(Emphasis supplied.) Further,

> " I'm concerned we should not usurp any of the reasons why we have the statutory exemptions in the first place."

(Emphasis supplied.) Thus, the PLUM Committee previously recognized that State law forbade the considerations urged by CD11 and, therefore, the proposed Project modifications, as well.

The only facts that have changed since the prior consideration of the Project by the PLUM Committee was an accommodation to CD11 in the conditions applied to the Project.

(e) The Modifications Proposed by CD11 are Unprecedented for a Density Bonus Project and are Irrelevant Even to the Purported Problem.

The CD11 Letter makes three demands of the Project: (1) reduce the floor to ceiling heights of the various stories; (2) removal of the mezzanine area proposed for the uppermost level of the building; and (3) provision of all parking underground. The illegal basis of the demands aside, the measures themselves range from ineffective to illegal and threaten the feasibility of the Project.

(i) CPC TWICE Considered and Properly Rejected the Proposed Conditions.

The request to limit floor to ceiling heights is an unprecedented attempt to micro-manage the interior design of a project in the hope that might manifest as some exterior change. Regulation of such heights does not necessarily affect building height, but would affect the ability to market the building, as the market demand has been and remains for interior ceilings of at least nine feet. The requirement to reduce ceiling heights renders the Project potentially unmarketable, and at the very least substantially reduces the rents the market-rate units could comment: this reduces the ability of the market-rate component of the Project to offset the cost associated with providing the affordable units, in direct contravention of the Density Bonus Law.[12]

The most recent CPC action even accommodated CD11 by reducing the building height, despite the unlimited height permitted by the commercial zone on Venice Boulevard, and even as the CPC again determined the original height of the Project was compatible with existing and future development. The CPC unanimously rejected all other findings and requests by CD11. On July 13, 2017, after CPC Vice President Dake Wilson moved to limit the floor-to-ceiling heights of the Project, except for the commercial and mezzanine levels, to 8 1/2 feet, CD11 again requested a further reduction of those heights to 7 1/2 feet. The CPC refused, specifically stating the building code minimum was not enough and that the mezzanine levels, among other features, provided variation in the roofline and contributed to the architectural merit of the building. The City

[12] Govt. Code §65915(e)(1).

Council Must Consider the Pending SB375 Statutory Exemption Prior to Considering the MND.

(ii) Removal of the Mezzanine Lacks Justification and Constitutes Denial of a Density Bonus Incentive.

As stated above, this demand from CD11 seeks to reduce the height of a structure proposed in a zone that permits unlimited height, on the basis of a finding (aesthetic effect) that State law precludes. Even worse, removal of the mezzanine constitutes a denial of additional floor area—the single density bonus incentive associated with the Project. The Density Bonus Law therefore requires a finding of a significant impact on health, safety, or the environment: as described above, aesthetic or neighborhood compatibility cannot constitute such a finding here. Therefore, PLUM has no nexus to require what CD11 demands, and such a requirement would violate the Density Bonus Law and Housing Accountability Act. We also note that both CPC specifically and wholly rejected this request from CD 11 and the community preferred the appearance of the building with the mezzanines, which provide articulation of the roofline, in addition to increased living space.

(iii) A Requirement Only for Underground Parking Has No Nexus and Flies in the Face of Neighborhood Feedback.

CD11's final demand is illogical, bears no relationship to any aspect of the Project, and only serves to increase the cost of the Project and offset the benefit of the requested incentives. This violates the law.

The Project requires 46 parking spaces, all of which are provided in one floor of subterranean parking. The 26 at-grade spaces placed behind the commercial area and residential lobby were added at the request of CD11 and the neighborhood. As described in detail in our prior correspondence and before the CPC, the building code requires the Project to provide a 16-foot vertical clearance for loading at grade level. Consequently, the elimination of at-grade parking would not reduce the height of the building by a single inch, as the first floor must remain at its current height to satisfy code requirements for access. Furthermore, because the at-grade spaces are above and beyond the maximum required for the Project by AB744, removal of the parking would only result in this area remaining a concrete podium with no striping for parking. Therefore, the request has no nexus even to its illegal purpose. Forbidding the Project to stripe the podium area which will be provided at-grade parking represents a pointless exercise that negates the changes the developer made for the neighborhood and CD11 in the first place.

To the extent CD11 seeks to force provision of the proposed at-grade parking below grade instead, CD11 cannot do so. Any requirement to place voluntary parking underground, when at-grade space to accommodate that parking would exist under any scenario, would substantially increase the cost of providing that parking while simultaneously serving no policy or environmental purpose. The disproportionate cost associated with a requirement to provide additional, non-required underground parking, in addition to violating the United States Constitution,[13] also violates AB744, which specifically forbids a condition for greater parking than the 46 spaces required. Such as action also would violate the Density Bonus Law by potentially rendering infeasible the provision of affordable housing units.[14]]

The removal of at-grade parking also would remove a community benefit of the Project. As described at CPC and in the written determinations of the Director of Planning and the CPC, all parking provided at-grade is not required parking, but volunteered as an accommodation to the community. State law (AB744) establishes a parking requirement for the community of 46 vehicle spaces, all of which are provided in the single subterranean parking level currently proposed. The elimination of at-grade parking would, at best, deprive the community of the additional parking proposed above and beyond what the law requires, including the provision of guest spaces for the residential component of the Project and additional parking for the commercial component. Moreover, the removal of at-grade parking actually increases the likelihood that visitors to the commercial component of the Project would seek street parking, potentially in the adjacent neighborhood streets, as short-term visitors typically do not use underground parking.

2. State Law Exempts the Project from CEQA.

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

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[13] *See, e.g., Nollan v. California Coastal Commission*, 483 U.S. 825 (1987).
[14] Govt. Code §65915(b)(1).

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.

(a) 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 Tuesday, August8, 2017, which permits action until August 29, 2017. The Department of City Planning has already completed preparation of the SB375 Exemption. A short continuance to provide the required 72 hours' notice of consideration of the SB375 Exemption still provides two council days for the full Council to act on PLUM's recommendation.

(b) The PLUM Committee 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 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.

3. Modification of the Project Would Violate State and Local Law, and the PLUM Committee Should Uphold Both CPC Approvals.

As demonstrated above, neither the Council nor the appellants have advanced any factual or legal argument, at any stage in these proceedings, that address the constraints imposed by State and local law. Rather, appellants continue to urge rejection of the Project based on claimed plan inconsistencies, aesthetic impacts, density bonus incentives, or reduced parking requirements—grounds specifically forbidden by a constellation of laws governing affordable housing and transit priority projects.

Make no mistake: this Project 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 two unanimous approvals of an affordable housing project, particularly on bases contrary to State and local law, would represent a complete failure of law and policy and exposes the City to liability under the Density Bonus Law and the Housing Accountability Act.

Sincerely,

of
BENJAMIN M. REZNIK and
NEILL E. BROWER of
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BMR:neb
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