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June 11, 2018

VIA ELECTRONIC MAIL

Councilmember Mike Bonin
Council District 11
200 N. Spring Street #475
Los Angeles, CA 90012

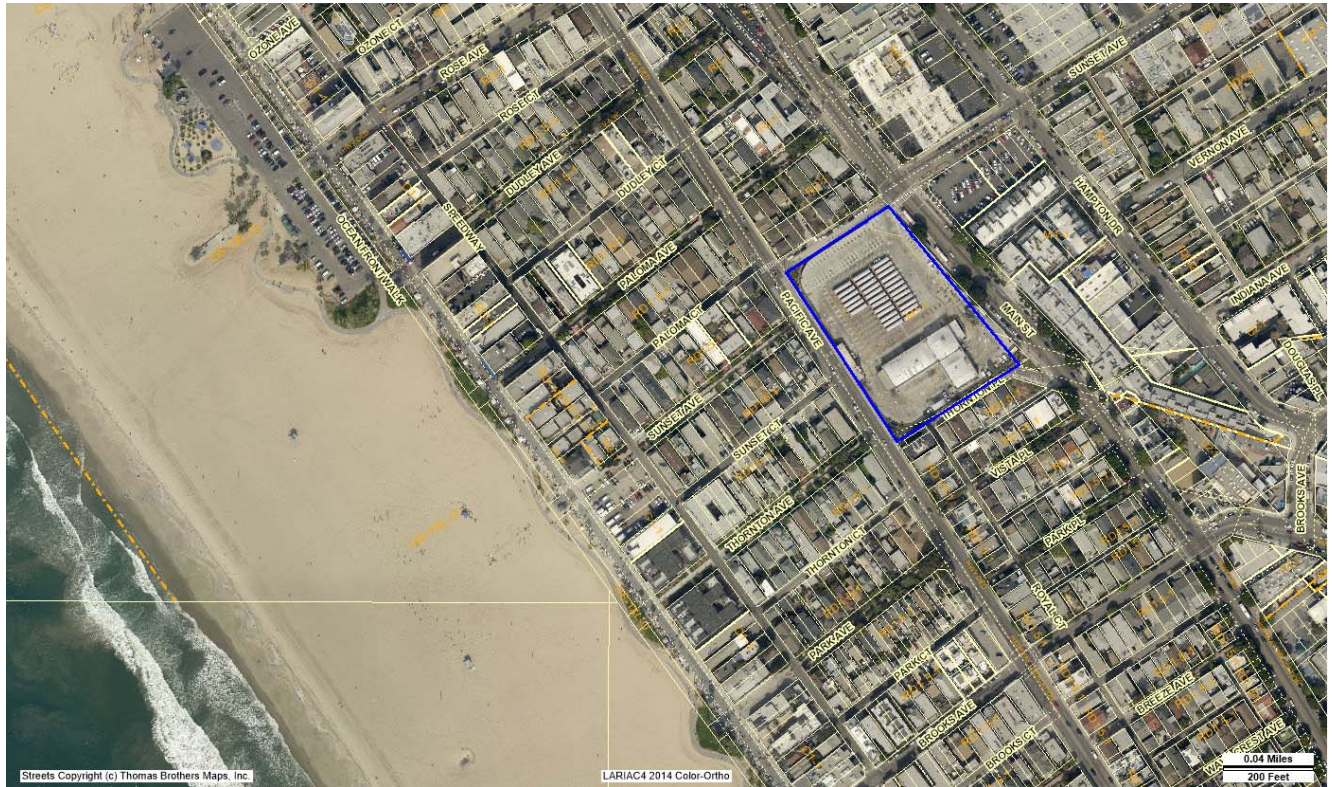
Re: Use of MTA Bus Facility at 100 E. Sunset Ave. in Venice for Homeless Shelter

Dear Councilmember Bonin:

I represent the Venice Stakeholders Association, a non-profit organization committed to civic improvement in the Venice neighborhood of Los Angeles. We understand that your office is favoring the construction of a temporary homeless shelter facility known as “Bridge Housing” at the 3-acre lot at 100 E. Sunset Ave. between Pacific Avenue and Main Street, which is presently the site of a Metropolitan Transit Authority (MTA) bus lot. The stated purpose of the “Bridge Housing” proposal is to house formerly homeless individuals and provide them with various services.

VSA does not categorically oppose the temporary use of the MTA bus yard as a stop-gap shelter for homeless persons. Such a facility may be appropriate if it truly does replace existing Venice encampments and prevents their re-establishment in the future. However, with that said, the concerns of Venice residents – and especially those who live closest to the proposed site – must be heard and addressed, and in its haste to put a shelter facility at the MTA site the City should not shortcut the pertinent laws pertaining to development and changes in land use which have long protected these residents.

Our initial review of the project as described by your office makes it clear that the project qualifies as “development” within the Coastal Zone and thus requires the issuance of a Coastal Development Permit by both the City and the California Coastal Commission. In addition, because the project may have a significant impact on the environment – and especially on matters such as traffic, parking, public safety, noise and aesthetics – a full Environmental Impact Report (EIR) should be prepared under the California Environmental Quality Act (CEQA) in order to evaluate these potential impacts. Finally, we question whether the M1 zoning of the site allows a homeless shelter on land not presently owned or leased by the City.



Proposed Shelter Site (Source: ZIMAS)

Proposed Shelter Requires a Coastal Development Permit.

A Coastal Development Permit must be obtained for any “development” within the Coastal Zone, which includes Venice Beach. California Public Resources Code section 30106 broadly defines “development” as including, among other things, “on land, in or under water, the placement or erection of any solid material or structure.” Courts have held that all manner of structures, no matter how small or unobtrusive, constitute “development” for purposes of the Coastal Act. See Gualala Festivals Committee v. California Coastal Com'n (2010) 183 Cal.App.4th 60, 67; Georgia-Pacific Corp. v. California Coastal Comm'n, (1982) 132 Cal.App.3d 678 (security fence met definition of “development” in Public Resources Code section 30106 because it “involve[d] the ‘erection’ of a ‘structure’ on ‘land,’ or the ‘construction’ of a ‘structure,’ or both.”).

Without a doubt, the placement of a homeless shelter about 2 blocks (1,000 feet) from the Venice Beach Recreation Area and the coastline – even a “temporary” one – is “development” under the Coastal Act. Accordingly a Coastal Development Permit should have been obtained beforehand. Moreover, because the City does not have a land use plan (LUP) certified by the Coastal Commission, development in this zone requires a Coastal Development Permit from both the City and the Coastal Commission.

Potentially Significant Environmental Impacts Require Preparation of an EIR.

Because the shelter project may have potentially significant impacts on the environment, the City of Los Angeles and the California Coastal Commission are obligated to comply with CEQA before implementing the project. Moreover, since it is highly unlikely that mitigation measures can be imposed which would fully mitigate these potentially significant impacts, even with mitigation there will still be a “fair argument” that the project may cause a significant impact on the environment. So that Venice residents are fully informed about the scope of the potential impacts, so that they can comment on the analysis, CEQA requires that an EIR be prepared. (See Public Resources Code section 21080, 21100; CEQA Guidelines section 15064.)

The Council Office states on its website (<https://11thdistrict.com/a-bridge-home/faq/>) that the facility will be substantial in size and scope, and operating at all hours of the day and night.

Unlike emergency shelters, bridge housing will be open to its residents 24 hours a day, 7 days per week. The facilities will accommodate pets, provide sufficient storage for personal belongings, and allow families and circles of friends to remain together. Bridge housing will include restrooms, showers, food, climate-controlled accommodations, storage and on-site, 24-hour security.

Through funding from Los Angeles County, bridge housing will provide onsite social wrap-around services, case management, and social workers to help find and prepare to transition into long-term housing for residents. The goal of the program is to help facilitate the transition of people into housing swiftly, with an intention of having people stay in the bridge housing for no more than 90 days at a time.

The stated purpose of the facility is to replace encampments in the Venice area and elsewhere in Council District 11 by providing homeless persons with a place to live. However, despite the best intentions of City politicians and City government, existing encampments in Venice and elsewhere may continue despite the existence of the facility. Indeed, because the proposed facility would not be restricted only to the residents of existing encampments, but can be used by any homeless person requiring shelter, the facility is likely to act as a magnet for homeless persons throughout the City of Los Angeles and beyond. Further, regardless of its size, there is no assurance that the facility will be large enough to accommodate all persons seeking housing or other services. Instead, it may become a magnet for new encampments in the immediate vicinity, as would-be users of the facility vie for housing and other services (perhaps unsuccessfully) and then choose to camp on nearby City streets or on private property.

In light of this, it is apparent on its face that the proposed facility may have a significant impact on the following environmental factors:

(1) Traffic, in this extraordinarily dense and congested neighborhood, whose narrow streets are shared by residents and the millions of people who visit Venice Beach each year;

(2) Parking, from persons visiting the facility or congregating around it, using scarce on-street parking for both passenger cars and recreational vehicles (RVs) that are regularly used by many homeless persons for shelter;

(3) Public Safety, as some of the people seeking services, visiting shelter residents, or simply congregating near the facility, create public safety hazards such as by littering, releasing sewage into alleys and storm drains, and in some instances by committing property or personal crimes, which would especially affect adjacent residential neighborhoods;

(4) Noise, as the facility's residents, staff, other people attracted by the facility, and their vehicles and pets subject residential neighborhoods to noise impacts, especially late at night when such activities can disturb sleep; and

(5) Aesthetics, as new encampments attracted by the facility affect the visual quality of this seaside neighborhood.

These potential impacts may be disputed, but they all must be evaluated in an EIR.

No Categorical Exemption From CEQA Applies to This Unusual Facility.

It may be tempting for City officials to propose the application of a “categorical exemption” under the City’s CEQA Guidelines due to the location of the facility and/or its operation by the City or related entities. However, no such exemption applies here. Even if one of the City’s categorical exemptions might be interpreted creatively to allow for a project of this type, the scope of the proposed facility, the atypical impacts from congregations of homeless persons in particular, and the proximity of the facility to a crowded residential area and a tourist destination visited by millions of people each year, are each “unusual circumstances” precluding the application of any such exemption. (See CEQA Guidelines section 15300.2(c); Lewis v. Seventeenth District Agricultural Association (3rd Dist. 1985) 165 Cal.App.3d 823.)

Moreover, regardless of recent case law that has arguably constrained the use of the “unusual circumstances” exception to categorical exemptions granted under the State CEQA Guidelines, it must be understood that in this case the shelter project is subject to the City’s own adopted CEQA Guidelines, which expressly preclude the use of an exemption when it can be “readily perceived” that the project may have a significant effect on the environment. Article III, Section 1 of the City CEQA Guidelines provides (emphasis added):

The Secretary for Resources has provided a list of classes of projects which he has determined do not have a significant effect on the environment and which are therefore exempt from the provisions of CEQA. The following specific categorical exemptions within such classes are set forth for use by Lead City Agencies, provided such categorical exemptions are not used for projects where it can be readily perceived that such projects may have a significant effect on the environment.

Applying the above language, it can be “readily perceived” that a large homeless shelter “may” have a significant effect on the environment under Article III(1) of the City CEQA Guidelines, and particularly on (a) traffic; (b) parking; (c) public safety; (d) noise; and (e) aesthetics. If a potential impact can be readily perceived as to any of these five categories, no categorical exemption can apply under the City CEQA Guidelines.

Indeed, by using the phrase “readily perceived” in combination with the term “may,” the City has effectively set its own threshold for the use of categorical exemptions, which is more stringent and more protective of the environment than the standard applied under the statewide CEQA statute and statewide CEQA Guidelines. Neither state law nor the statewide Guidelines pre-empts the City CEQA Guidelines on this point. State law does not relieve the City from the obligation to comply with the City CEQA Guidelines, which are a separate enactment formalized by a resolution of the City Council adopted in 2002. (See Council File 02-1507, at <https://cityclerk.lacity.org/lacityclerkconnect/index.cfm?fa=ccfi.viewrecord&cfnumber=02-1507>.) Instead, as long as the City CEQA Guidelines are more restrictive than the state CEQA Guidelines, the City is bound to follow the City CEQA Guidelines prohibition on the use of categorical exemptions when it can be “readily perceived” that the project “may” have a significant impact.

Zoning Does Not Allow Homeless Shelter Unless City Leases Property From MTA.

The MTA property at issue is zoned “M1” (Limited Industrial). This zoning classification does not allow a homeless shelter. (See LAMC section 12.17.6; see also, definition of “Shelter for the Homeless” at section 12.03.) We recognize that in 2017, the City Council adopted LAMC section 12.80 (HOMELESS SHELTERS – EMERGENCIES – CITY OWNED AND LEASED PROPERTY), which states that during a declared “shelter crisis,” “a shelter for the homeless (as defined in Section 12.03 of this Code) may be established and operated on property owned or leased by the City of Los Angeles in any zone as a matter of right without regard to the number of beds or number of persons served.” However, as we understand it the MTA bus facility is presently owned not by the City, but by the Metropolitan Transportation Authority, which is a state-chartered agency that operates transit throughout Los Angeles County. Unless the City purchases or leases this site from the MTA prior to the commencement of the project, the “shelter crisis” waiver of the zoning code set forth in LAMC section 12.80 cannot apply, and a rezone or variance would be necessary to authorize the project.

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Thank you for considering our input on this proposal. We trust that you will take our comments into consideration as you proceed.

Very truly yours,

A handwritten signature in blue ink, appearing to read "John A. Henning, Jr.", with a stylized flourish at the end.

John A. Henning, Jr.

cc: Mayor Eric Garcetti
Michael Feuer, City Attorney
Vince Bertoni, Director of Planning