VIA EMAIL AND U.S. MAIL

Supervisor Mark Ridley-Thomas, Chairman
Members of the Board of Supervisors
500 W. Temple Street, Room 383
Los Angeles, CA 90012
markridley-thomas@bos.lacounty.gov
executiveoffice@bos.lacounty.gov

Re: Meta Housing Corporation: 4161, 4169, 4200-4224 Whittier Blvd. (Appeal of CUP RPPL 2016005207, RPPL 2016005212, Housing Permit RPPL 2017006970, RPPL 2017006968)

Dear Chairman Ridley-Thomas and Members of the Board,

This office represents Meta Housing Corporation (“Meta”) in the above-referenced appeal (“Appeal”) before the Los Angeles County Board of Supervisors (“Board”). This sets forth Meta’s legal position with respect to the grounds for the Appeal.

1. BACKGROUND.

A. The Project.

The project consists of two components located at different sites on either side of Whittier Boulevard near the intersection of South Downey Road and Whittier Boulevard in unincorporated East Los Angeles. The two sites are referred to as “Downey I” and “Downey II.” Both components are referred to collectively as the “Project.”

   (1) Downey I.

   Downey I consists of a three-story, 42-unit apartment building with 100 percent affordable housing units for low and very low-income and special needs groups. The Project would feature 1,161 square feet of commercial space at the ground level. It would include six parking spaces for the commercial use, 21 spaces for the residential use and four guest spaces. The Project would be located on a .69-acre site at 4164 and 4169 Whittier Boulevard on three parcels (APNs 5236-005-032, -033, -034) (the sites for Downey I and Downey II are collectively referred to as the “Project Site”).

   Downey I is located within two zones: C-3 (General Commercial) and R-3 (Residential). Because of the inclusion of 100 percent affordable housing, the Project is entitled to a 110 percent density bonus, height increases and parking incentives, pursuant to the State Density Bonus Law, Government Code section (Gov. Code, § 65915) (“DBL”).
The Project requires the following entitlements:

(a) Conditional Use Permit (“CUP”) RPPL2016005207: to authorize an apartment use in the C-3 zone.

(b) Administrative Housing Permit (“AHP”) RPPL2017006970: to approve the 110 percent DBL density bonus and incentives, including increase in maximum height of 40 feet in C-3 zone to 44 feet, increase in maximum height of 35 feet in R-3 zone to 36 feet, inclusion of eight compact parking spaces for an apartment house use.

(2) Downey II.

Downey II consists of a four-story, 71-unit apartment building with 100 percent affordable housing units for low and very low-income and special needs groups. The Project would feature 3,208 square feet of commercial space at the ground level. It would include 15 parking spaces for the commercial use and 77 spaces for the residential use. The Project would be located on a 1.45-acre site at 4200-4224 Whittier Boulevard in unincorporated East Los Angeles on nine parcels (APNs 5236-016-025 - 032).

Downey II is located within two zones: C-3 (General Commercial) and R-3 (Residential). Because of the inclusion of affordable housing, the Project is entitled to a 65 percent density bonus, height increases and parking incentives, pursuant to the DBL. Like Downey I, Downey II requires the following entitlements:

(a) Conditional Use Permit (“CUP”) RPPL2016005212: to authorize an apartment use in the C-3 zone.

(b) Administrative Housing Permit (“AHP”) RPPL2017006968: to approve a 65 percent DBL density bonus (allowing an additional 28 units) and incentives, including increase in maximum height of 40 feet in C-3 zone to 53 feet, increase in maximum height of 35 feet in R-3 zone to 57 feet, inclusion of compact parking spaces for an apartment house use.

The Project is located in the East Los Angeles Community Plan area, which designates the Project Site with the “CC” (Community Commercial) and the “MD” (Medium Density Residential) land use designations. The Staff and the RPC (defined below) both determined that the Project is consistent with the East Los Angeles Community Plan, as well as the Housing Element and the Land Use Element of the Los Angeles County General Plan 2035 (“General Plan”).

B. CEQA.

The Regional Planning Commission (“RPC”) found that the Project qualifies for an exemption from the California Environmental Quality Act (Pub. Resources Code, § 21000, et seq.) (“CEQA”) pursuant to Public Resources Code section 21155.1, which applies to qualifying “transit priority projects” (“TPPs”). Specifically, section 21155.1 states that a TPP “shall be exempt” from CEQA if it meets certain criteria set forth at section 21155.1 subdivisions (a), (b) and (c). A more thorough discussion of this CEQA exemption follows below.
C. The Regional Planning Commission Approval and this Appeal.

On May 31, 2017, the Regional Planning Commission (“RPC”) convened to deliberate on the Project. The RPC voted unanimously to approve the Project, finding, among other things, that the Project was consistent with the General Plan and the East Los Angeles Community Plan and otherwise satisfied the findings required for the approvals of the CUP, AHP and CEQA exemption. The Appeal was filed on June 13, 2017.

2. APPLICABLE LAW GOVERNING THE APPEAL.

A. Housing Accountability Act.

This is a housing project. It therefore occurs in the context of an overriding area of statewide concern. The California State Legislature has made the following legislative findings:

(1) That “[t]he availability of housing is of vital statewide importance … ;”

(2) That “the early attainment of decent housing and a suitable living environment for every Californian … is a priority of the highest order;”

(3) That “[t]he early attainment of this goal requires the cooperative participation of government and the private sector in an effort to expand housing opportunities and accommodate the housing needs of Californians of all economic levels;” and

(4) That “[l]ocal and state governments have a responsibility to use the powers vested in them to facilitate the improvement and development of housing to make adequate provision for the housing needs of all economic segments of the community.”

(Gov. Code, § 65580, subds. (a), (b), (d).) Government Code § 65589.5, the Housing Accountability Act, presents additional legislative findings concerning the statewide concern in securing adequate housing, as follows:

(1) “The lack of housing, including emergency shelters, is a critical problem that threatens the economic, environmental, and social quality of life in California.”

(2) “California housing has become the most expensive in the nation. The excessive cost of the state’s housing supply is partially caused by activities and policies of many local governments that limit the approval of housing, increase the cost of land for housing, and require that high fees and exactions be paid by producers of housing.”

(3) “Among the consequences of those actions are discrimination against low-income and minority households, lack of housing to support employment growth, imbalance in jobs and housing, reduced mobility, urban sprawl, excessive commuting, and air quality deterioration.”

(Gov. Code, § 65589.5, subd. (a).)
“Many local governments do not give adequate attention to the economic, environmental, and social costs of decisions that result in disapproval of housing projects, reduction in density of housing projects, and excessive standards for housing projects.”

(Gov. Code, § 65589.5, subd. (a).)

Because of the above legislative findings, qualifying housing projects are entitled to special status and local governments cannot deny them or require a reduction in density, absent very strict findings. A denial -- or forced density reduction -- of a housing project that complies “with applicable, objective general plan and zoning standards and criteria, including design review standards, in effect at the time that the housing development project’s application is determined to be complete” -- such as this one -- must be supported by specific, written findings “based upon substantial evidence in the record” that one of the following conditions exists:

1. “The housing development project would have a specific, adverse impact upon the public health or safety unless the project is disapproved … . As used in this paragraph, a ‘specific, adverse impact’ means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.”

2. “There is no feasible method to satisfactorily mitigate or avoid the adverse impact identified pursuant to paragraph (1), other than the disapproval of the housing development project or the approval of the project upon the condition that it be developed at a lower density.”

(Gov. Code, § 65589.5, subd. (j) (1), (2), emphasis added.) Notably, at least one court has found that this section “imposes a substantial limitation on the government’s discretion to deny a permit.” (See, *N. Pacifica LLC v City of Pacifica* (N.D. Cal., 2002) 234 F.Supp.2d 1053, 1059.) The same court held that the limitations on discretion to deny a permit gave rise to a constitutionally protected property right. (*Ibid.*)

**B. State Density Bonus Law.**

As the County staff determined, the Project also qualifies as an affordable housing project because it contains 100 percent affordable housing. The Project therefore is entitled to a density bonus and land use incentives, pursuant to the DBL (Gov. Code, § 65915) and the County’s own Density Bonus Ordinance (LACC, § 22.52.1840.) A request for a density bonus under the DBL must be granted “when an applicant for a housing development seeks and agrees to construct a housing development” that meets one or more of the statute’s thresholds. (Gov. Code § 65915, subd. (b)(1); *Wollmer v. City of Berkeley* (2011) 193 Cal.App.4th 1329, 1339 [122 Cal.Rptr.3d 781].) If a developer agrees to dedicate the required percentage of a development’s overall units to lower-income or very low-income housing, the municipality is required to grant the developer a density bonus of at least 20 percent. (*Friends of Lagoon Valley v. City of Vacaville* (2007) 154 Cal.App.4th 807, 825 [65 Cal.Rptr.3d 251].)
Density bonus requirements are triggered when a residential developer sets aside a minimum designated percentage of units (threshold):

- 10 percent of the total units as affordable to low income households; or
- 5 percent of the total units as affordable to very low income households; or
- Senior housing pursuant to Section 798.76 or 799.5 of the Civil Code.

As noted above, The Project, as proposes 100 percent of the residential units as lower and very low-income units. For the inclusion of such units, the DBL mandates approval of the proposed the density bonuses and incentives.

More importantly, the Project would have a beneficial impact on the County by addressing the critical need for affordable housing as expressly noted in the General Plan Housing Element. (Los Angeles County Housing Element, 2014-2021 (“Housing Element”), p. 11). Specifically, the DBL Project furthers Housing Element Goal 1, to provide “[a] wide range of housing types in sufficient supply to meet the needs of current and future residents, particularly for persons with special needs, including but not limited to low income households” and Policy 1.3 to “Coordinate with the private sector in the development of housing for low and moderate income households and those with special needs. Where appropriate, promote such development through incentives.” (Ibid.).

C. Regional Housing Needs Assessment (RHNA).

“Local and state governments have a responsibility to use the powers vested in them to facilitate the improvement and development of housing to make adequate provision for the housing needs of all economic segments of the community.” (Gov. Code, § 65580, subd. (d).) The statutes governing the development of housing elements express the Legislature’s intent “[t]o assure” local governments “recognize their responsibilities in contributing to the attainment of the state housing goal” (id., § 65581, subd. (a)), in part by “prepar[ing] and implement[ing] housing elements which, along with federal and state programs, will move toward attainment of th[at] ... goal” (§ 65581, subd. (b)).

Government Code section 65584 requires the State of California to allot to each local governmental jurisdiction its share of existing and future regional housing needs. The allotment is called the “Regional Housing Needs Assessment,” or “RHNA.” Government Code section 65863 subdivision (a) requires local governments, such as the County to ensure that they set aside sufficient sites to comply with the state-mandated RHNA in the housing elements of their general plans. In this case, the Housing Element expressly identifies the Project Site as a “vacant or underutilized site” suitable for housing units for meeting the County’s RHNA requirements. (See Housing Element, Table A-1.)

3. THE APPEAL.

The above legal requirements, constraints and policies must guide the Board’s review of the Appeal. The Appeal centers on a number of contentions ranging from lack of proper outreach to purported environmental impacts. None of the grounds cited in the Appeal is sufficient to disrupt the findings of the RPC or otherwise meet the stringent requirements of the
State housing laws for denying housing projects. Each ground of the Appeal is addressed, in turn, as follows:

(a) **Community Outreach:**

Beginning in Spring 2016, Meta commenced a series of outreach meetings at which community input was solicited from local residents and stakeholders. Community members living within one quarter of a mile of the Project and stakeholders identified by the District 1 Supervisorial staff were invited to a March 1, 2016, informal Community Open House meeting at which the Project was introduced to the community. Community comments and feedback were collected and summarized in a comment matrix. A second meeting was convened on May 12, 2016. As with the first meeting, neighbors and stakeholders were invited, and approximately 47 participated. Community preferences for the design and retail space were discussed in greater detail. This community input drove the schematic design of the Project that was employed to win public financing of over $12.9 million.

Meta representatives returned to brief the community on project progress in May 2017 when a total of 3,000 flyers were mailed out to residents within a one-quarter-mile radius of the Project, inviting them to a community meeting on May 16, 2017. Meta’s outreach team canvassed the surrounding neighborhoods on May 9 and May 11, 2017, and knocked on a total of 330 doors. Resident concerns were recorded so they could be addressed at the community meeting. Residents who were not at home were left a flyer giving details of the project and inviting them to the meeting. 126 community members attended the May 16, 2017, meeting. A project status report was provided and breakout meetings convened to discuss residential leasing opportunities, the neighboring Calvary Cemetery Walking Path, prospective tenants for the community-serving retail space, and questions for Meta. The outreach efforts have resulted in actionable feedback that has resulted in a Project that is responsive to the needs of community.

Meta will continue to conduct outreach to the community to ensure that appropriate tenants are found for the retail spaces within the Project.

As the RPC’s findings confirm, “the community was appropriately noticed of the public hearing by mail, newspaper (East Los Angeles Tribune), site property posting, library posting and DRP website posting.” (Project Findings [RPC, May 31, 2017] at p. 5.) The RPC also found that “case materials were available on Regional Planning’s website and at El Camino library located in the vicinity of the East Los Angeles County.” (Id. at p. 15.) The record confirms that at total of 155 notices were mailed to all property owners within 500 feet of the Project Site, as well as courtesy notices sent to those on the courtesy mailing list for the Eastside Unit 1 Zoned District and other interested parties. (Ibid.)

In short, the Appeal’s suggestion that the residents were somehow not sufficiently informed of the Project is not borne out by the record.

(b) **Arsenic:** The Appeal contends that the Project features no remediation plans for removal of hazardous materials in the soil, including arsenic. This contention also is refuted by the record. Specifically, in a memorandum dated May 23, 2017, the Fire Department’s Health Hazardous Material Division (“HHMD”) noted that “[s]mall quantities of shallow soil at two known onsite locations are impacted by elevated arsenic.” (See Memorandum of County of Los
Angeles Fire Department, Health Hazardous Material Division, to Jolee Hui [May 23, 2017].) The HHMD cleared the Project for approval, however, with conditions requiring excavation and disposal of certain arsenic-impacted soil prior to grading, as well as the approval and implementation of a soil management plan that addresses, among other things, dust suppression. (Ibid.) The RPC mandated compliance with the HHMD directive, as a condition of approval. (See Project Conditions of Approval [RPC, May 31, 2017] at p. 7.) Accordingly, Meta is required to address arsenic concerns with environmental agency oversight during field work on the Project, contrary to the assertions in the Appeal. On that ground, the RPC found that the Project would adequately mitigate arsenic impacts. (See Project Findings [RPC, May 31, 2017] at p. 3.)

(c) **Asbestos:** The Appeal supplies no evidence of asbestos at the site. In any event, regarding the concerns of airborne dust, the Project findings note that the Department of Public Health, in letter dated February 6, 2017, cleared the Project for public hearing with conditions requiring the Project comply with best management practices for noise mitigation and dust suppression requirements during construction. (Project Findings [RPC, May 31, 2017], at p. 3.) Such dust suppression requirements would mitigate any airborne asbestos – to the extent any is found to be present at the site.

(d) **Greenhouse Gas Analysis:** The Appeal’s contention that the Project failed to consider potential impacts arising from greenhouse gas emissions is a CEQA argument. CEQA requires an analysis of such impacts for those projects under its sway. (See CEQA Guidelines, Guidelines §§ 15064.4, 15126.4, subd. (c).) What the Appeal fails to consider, however, is that the Project is exempt from CEQA pursuant to Public Resources Code, section 21155.1 (discussed in more detail below). The Appeal does not directly contest or otherwise rebut the findings of the RPC concerning the applicability of that exemption.

(e) **Construction Times:** The Appeal contends that the construction hours provided in the Project findings would unduly impact residents. It bears noting that the construction hours set forth in the findings are consistent with those provided by the County Code. (See, LACC, § 12.12.030.) Regarding the concerns of airborne dust, the Project findings note that the Department of Public Health, in letter dated February 6, 2017, cleared the Project for public hearing with conditions requiring the Project comply with County Noise Control Ordinance requirements during operation and best management practices for noise mitigation and dust suppression requirements during construction. (Project Findings [RPC, May 31, 2017], at p. 3.)

(f) **Traffic:** The Appeal’s concerns about traffic impacts are not borne out by the Traffic Impact Study, contained in the administrative record, which provides substantial evidence -- in the form of traffic trip count data and expert analysis -- that no significant traffic impacts will result at the five study intersections. The County Department of Public Works agreed with the conclusions of that report. (See Letter of Dean R. Lehman, Assistant Deputy Director, Traffic and Lighting Division, to Clare M. Look-Jaeger [May 15, 2017].) Any rebuttal of that analysis would have to rest on substantial evidence, not merely the opinions of project opponents. As the courts repeatedly have concluded, substantial evidence “means more than a mere scintilla; it means ‘such relevant evidence as a reasonable man might accept as adequate to support a conclusion ….‘” The term “substantial evidence “cannot be deemed synonymous with
Supervisor Mark Ridley-Thomas, Chairman  
Members of the Board of Supervisors  
July 13, 2017  
Page 8


(g) Parking: As the RPC found, the Project’s 100 percent affordable housing units, as well as its proximity to a major transit stop, qualify the Project for reduced parking ratios, pursuant to section 65915 subdivision (p)(2) of the DBL, which prohibits local governments from imposing parking ratios greater than 0.5 spaces per bedroom. Accordingly, the County’s regular parking ratios are superseded by state law. The State Legislature therefore has made a legislative determination that the provision of affordable housing is paramount over concerns regarding project-specific parking impacts. The RPC also properly determined that the commercial component of the Project meets the County’s parking requirements, as set forth in section 22.52.1100 of the LACC. (See Project Findings [RPC, May 31, 2017] at p. 11.)

(h) Character of Community: The Appeal’s contentions concerning incompatibility with the community are terse and conclusory. They do not provide specifics concerning aesthetic impacts, or otherwise provide any information beyond the assertion that the project is “too large.” The RPC made official findings that the Project qualified for DBL height incentives, but otherwise is compatible with the surrounding neighborhood, which is developed with a diverse mix of commercial uses and housing types. (See Project Findings [RPC, May 31, 2017] at p. 14.) Moreover, the County was required by state law – namely the DBL -- to provide the height limit incentives.

(i) CEQA Exemption: As noted above, the RPC and County Planning Staff determined the Project to be exempt from CEQA pursuant to Public Resources Code section 21155.1, which applies to qualifying TPPs. Specifically, section 21155.1 states that a TPP “shall be exempt” from CEQA if it meets certain criteria set forth at section 21155.1 subdivisions (a), (b) and (c). The County made the appropriate findings for the section 21155.1 exemption. Specifically, the RPC made the following required findings:

(a) The Project is consistent with the general plan designation, density, building intensity, and applicable policies in an approved sustainable community strategies or alternative planning strategy.

(b) The Project is at least 50 percent residential use based on area and a floor area ratio (FAR) of not less than 0.75.

(c) The Project has a density of at least 20 units per-acre.

(d) The Project is within 1/2 mile of a major transit stop or high-quality transit corridor included the RTP/SCS (a high-quality transit corridor means a corridor with fixed route bus service with service intervals no longer than 15 minutes during peak commute hours).
(See Project Findings [RPC, May 31, 2017] at p. 4-5.) The RPC also found that the Project met the environmental criteria of section 21155.1 subdivision (a) and the criteria set forth at subdivisions (b) and (c). (Ibid.) The Appeal did not rebut or otherwise contest the RPC’s findings. On that ground alone, those findings must stand.

3. CONCLUSION.

Meta firmly believes that the Project will enhance the local community as it advances the County’s RHNA needs, provides commercial uses to activate currently dormant sites and provides critical affordable housing. On the basis of the foregoing, Meta respectfully requests that the Board affirm the decision of the RPC.

Meta’s representatives will be on hand at the Board’s hearing of this Appeal to answer any questions.

Very truly yours,

Michael W. Shonafelt

cc: Richard J. Bruckner, Director, Regional Planning, County of Los Angeles (rbruckner@planning.lacounty.gov)
Maria Masis, Supervising Regional Planner, County of Los Angeles (mmasis@planning.lacounty.gov)
Taylor Rasmussen, Project Manager, Meta Housing Corporation (trasmussen@metahousing.com)

MWS:mws