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January 17, 2023

Mr. David Zisser
Assistant Deputy Director
Department of Housing and Community
Division of Housing Policy Development
2020 W. El Camino Ave., Suite 500
Sacramento, CA 95833

Re: *Highrose Development*
401 Rosecrans Ave. and 3770 Highland Ave., Manhattan Beach, CA

Dear Mr. Zisser:

I represent Chill The Build, a not-for-profit community group composed of residents of the City of Manhattan Beach, many of whom live or work near the proposed Highrose Development that is the subject of your November 28, 2022 letter to Mr. Bruce Moe, the City Manager of the City of Manhattan Beach (“HCD”).

Respectfully, although your letter purports to assert as the official position of the State of California that the City’s prior denial of the approval of the Project was illegal, the HCD lacks jurisdiction to so opine.

This is not a matter of code enforcement designed to cure substandard residential dwelling conditions or a matter of promoting or funding programs seeking to enhance affordable housing in California. We support those notions.

However, this is a matter of statutory construction and, in that regard, your letter is incorrect, incomplete and, whether intentionally or not, omits core, dispositive, statutory provisions.

In fact, it is utterly devoid of legal analysis and recitation of the facts and its treatment of the single Government Code provision it does mention is sufficiently questionable so as to suggest a lack of independence or a lack of diligence.

Although the genesis of your letter, as is the case with a baffling remarkable number of dubious aspects related to this project, remains shrouded in secrecy, to the extent it is intended by the sender, or by the recipient, as a means by which to convey the verisimilitude of political cover or the sanitization of illegal local agency action, the residents of this City will not tolerate such betrayal.

As to the single legal point raised in the letter, *i.e.*, the condition precedent to project approval of the absence of a specific finding of an adverse impact on health and safety under the SDBL (Cal. Govt Code Section 65915(d)) or the HAA (Cal. Govt Code Section 65589.5(j)(1)), rather than support your argument, instead it exposes the fallacy of it.

That is to say, where, as here, there were no efforts to ascertain whether or not conditions that might result in such findings being made were undertaken, either by the project proponent or by the City.

In prior public comments and submissions, my client has convincingly demonstrated this fact, but this part of the record is not discussed in your letter.

Moreover, given that my client and the HCD both support *responsible* increased affordable housing, *i.e.*, development that does not pose an adverse risk to public health and safety, it is curious indeed that the HCD would order the City to repeal its prior action and approve the project without any mention of the option that is the most compelling and the most aligned with the Government Code, namely, remanding the project for the development of an adequate factual record.

If ever there was an example of ignoring the elephant in the corner, this is it.

Based on that, the City Council safely can approve or disapprove the project rather than cloak itself behind an ill-founded, ultra vires, HCD letter which – you must surely know – will have the spotlight shone upon it before a Superior Court Judge; a reckless and unnecessary option where, as here, there is a safe (and sane) easy way out for everyone.

If the project is remanded and the proper procedures are followed, the residents of the City of Manhattan Beach will have their faith restored in their elected officials and the state agencies that may from time to time fulfill their proper role as it relates to affordable housing.

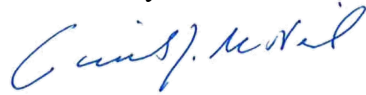
If, on the other hand, the City Council, based on your letter, continues to bury its head in the sand, one might well expect a different sequence of events to unfold in response thereto.

Lastly, as far as your statement that the HCD may refer this matter to the Attorney General, my client whole-heartedly encourages and welcomes that.

To be sure, all of us support responsible increased affordable housing.

At the same time, the Attorney General has an exemplary record when it comes to identifying and taking decisive action in furtherance of environmental justice, which to date has been a factor that has been sorely lacking.

Sincerely,



Richard J. McNeil
Crowell & Moring

cc: Bruce Moe, City Manager
Quinn Barrow, City Attorney