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January 5, 2026

VIA EMAIL

Susan Cola
Deputy City Attorney
City of Santa Monica

Susan.Cola@santamonica.gov

Re: Off-Site Affordable Housing Pilot Incentive Program

Dear Ms. Cola:

We represent Cypress Equity Investments (“CEI”) and its associated entities and investors in connection with several pending and approved housing development projects in the City of Santa Monica (“City”). As you know, on August 12, 2025 the City Council adopted an Emergency Interim Zoning Ordinance (“IZO”) #2824 creating an Off-Site Affordable Housing Pilot Incentive Program (“Pilot Program”), but capped eligibility for the Pilot Program at 1,000 units. CEI timely submitted applications for five projects totaling 930 units (“Pilot Program Projects”) under the unit-capped Pilot Program and City staff confirmed that CEI had secured 930 of the 1,000 units available under the Pilot Program.

We understand that on January 13, 2026, the City Council will consider an ordinance related to the Pilot Program, which would add two sections to the Santa Monica Municipal Code (“SMMC”). Proposed SMMC Section 9.64.065 would permanently codify the terms of the unit-capped Pilot Program and would only apply to applications submitted under the unit-capped Pilot Program, including CEI’s previously submitted and vested Pilot Program Projects. The requirements in Section 9.64.065 are substantially the same as the requirements in the unit-capped Pilot Program approved under the IZO. Proposed SMMC Section 9.64.075 would adopt an expanded and modified version of the Pilot Program, which would only apply *prospectively* to previously entitled project sites. Section 9.64.075 would not include a unit cap and – significantly – would add several additional restrictions not included in Section 9.64.065 (“Additional Restrictions”). These Additional Restrictions reflect direction City Council provided to staff on September 30, 2025 for the expanded Pilot Program. The City Council direction expressly exempted the first 1000 units utilizing the IZO unit-capped Pilot Program from any of the Additional Restrictions that would be imposed on the expanded Pilot Program.

We appreciate that the proposed draft ordinance to permanently codify the IZO unit-capped Pilot Program is consistent with prior City Council direction and does not add any new requirements. However, out of an abundance of caution, we also want to apprise you that any future attempt to add the Additional Restrictions to Section 9.64.065, or otherwise apply the Additional Restrictions (or any other new requirements not included in the IZO) to CEI’s vested Pilot Program Projects, would be

Susan Cola, Deputy City Attorney

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extremely disruptive and detrimental to CEI's business operations. CEI has substantially relied in good faith on the City's Council's prior approval of the unit-capped Pilot Program and staff's confirmation that CEI has successfully secured 930 of the eligible units under that program. Moreover, CEI has since made significant financial commitments in direct reliance on the unit-capped Pilot Program to move the 930 secured units forward, which include incurring construction financing obligations.

Additionally, any action by the City to retroactively alter the IZO and impose new requirements on CEI's Pilot Program Projects would violate the Housing Accountability Act (Government Code Section 65589.5) by imposing new standards on multiple housing projects where (a) the project applications have already been deemed complete and (b) the projects complied with the City's objective standards – including the Pilot Program standards – at the time the applications were deemed complete.

Consequently, if the City seeks to retroactively impose new requirements on CEI's Pilot Program Projects, CEI will have no choice but to seek all available legal remedies, including, if necessary, litigation, to protect its right to develop the Pilot Program Projects under the terms of the unit-capped Pilot Program approved under the IZO in August 2025..

Thank you.

Sincerely,

Dave Rand

Dave Rand
Partner
of RAND PASTER & NELSON, LLP