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BY E-MAIL AND HAND DELIVERY

May 21, 2019

Members of the Planning Commission  
City of Chula Vista  
c/o Stann Donn, Project Manager  
Development Services Department  
Public Services Building  
Chula Vista Civic Center  
276 Fourth Avenue  
Chula Vista, CA 91910  
[sdonn@chulavistaca.gov](mailto:sdonn@chulavistaca.gov)

**RE: Otay Ranch Planning Area 12 Project – Consideration of Addendum (IS17-0005) to Final Environmental Impact Report (FEIR) 02-04; Consideration of an amendment to the the Otay Ranch Freeway Commercial GDP (MPA17-0012), SPA Plan (MPA17-0011) and associated regulatory documents**

Dear Members of the Planning Commission and Mr. Donn:

I am writing on behalf of the **Supporters' Alliance for Environmental Responsibility ("SAFER")** and its members living in and around the City of Chula Vista ("SAFER") concerning the Otay Ranch Planning Area 12 Project, and the Third Addendum to the Final Environmental Impact Report for the Otay Ranch Freeway Commercial Sectional Planning Area (SPA) Plan Planning Area 12 (EIR-02-04 / SCH #1989010154). The City of Chula Vista has received an application (entitled Otay Ranch Planning Area 12 Project) for the development of 300 residential units to the northeastern portion of Planning Area 12, which is also referred to as Freeway Commercial North (FC-2) ("Project"). The matter is scheduled to be considered by the Planning Commission on May 22, 2019.

The City of Chula Vista ("City") is proposing to approve the Project without review under the California Environmental Quality Act ("CEQA"), Pub. Res. Code section 21000, et seq., based on the assertion that the Project is consistent with the previously certified 2003 Final Environmental Impact Report for the Otay Ranch Freeway Commercial Sectional Planning Area (SPA) Plan Planning Area 12 (EIR-02-04 / SCH

#1989010154) ("2003 SPA EIR" or "2003 EIR"). The City contends that under CEQA Guidelines sections 15162 and 15164, no further environmental review is required. Instead, the City relies on a brief addendum prepared for the Project, entitled "Third Addendum to EIR Otay Ranch Freeway Commercial Sectional Planning Area (SPA) Plan Planning Area 12" ("Third Addendum").

#### A. LEGAL STANDARD

CEQA contains a strong presumption in favor of requiring a lead agency to prepare an EIR. This presumption is reflected in the fair argument standard. Under that standard, a lead agency must prepare an EIR whenever substantial evidence in the whole record before the agency supports a fair argument that a project may have a significant effect on the environment (Pub. Res. Code § 21082.2; *Laurel Heights Improvement Ass'n v. Regents of the University of California* (1993) ("Laurel Heights II") 6 Cal. 4th 1112, 1123; *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75, 82; *Qual Botanical Gardens v. City of Encinitas* (1994) 29 Cal.App.4th 1597, 1602.)

The City relies on CEQA Guidelines §§ 15162 and 15164 to claim that no CEQA review is required. The court of appeal recently stated, "The addendum is the other side of the coin from the supplement to an EIR. This section provides an interpretation with a label and an explanation of the kind of document that does not need additional public review." *Save Our Heritage Organization v. City of San Diego* (2018) 28 Cal. App. 5th 656, 665. "It must be remembered that an addendum is prepared where '(2) Only minor technical changes or additions are necessary to make the EIR under consideration adequate under CEQA; and (3) The changes to the EIR made by the addendum do not raise important new issues about the significant effects on the environment.' ([Guideline] 15164, subd. (a).)" *Id.* (citing *Fund for Environmental Defense v. County of Orange* (1988) 204 Cal.App.3d 1538, 1553) (emphasis added).

Section 15164(a) of the State CEQA Guidelines states that "the lead agency or a responsible agency shall prepare an addendum to a previously certified EIR if some changes or additions are necessary, but none of the conditions described in Section 15162 calling for preparation of a subsequent EIR have occurred." Pursuant to Section 15162(a) of the State CEQA Guidelines, a subsequent EIR or Negative Declaration is only required when:

- (1) Substantial changes are proposed in the project which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;
- (2) Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR or Negative Declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or

(3) New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the negative declaration was adopted, shows any of the following:

- (A) The project will have one or more significant effects not discussed in the previous EIR or negative declaration;
- (B) Significant effects previously examined will be substantially more severe than shown in the previous EIR;
- (C) Mitigation measures or alternatives previously found not to be feasible would, in fact, be feasible and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or
- (D) Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.

## B. DISCUSSION

SAFER hereby requests that the City prepare an environmental impact report ("EIR") to analyze the significant environmental impacts of the Project and to propose all feasible mitigation measures and alternatives to reduce those impacts. The City may not rely on the 2003 SPA EIR for several reasons, including but not limited to the following:

1. The proposed Project is an entirely different project from the one that was analyzed in the 2003 EIR. The 2003 SPA EIR did not analyze this residential Project at all; it did not even contemplate it. In fact, the 2003 SPA EIR's analysis was limited to "freeway-oriented commercial uses that are anticipated to occur within Planning Area 12 FC Site" and that "[n]o residential or industrial uses are proposed in Planning Area 12." 2003 SPA EIR, p. 2-1 (emphasis added). A prior CEQA document may only be used for a later project that is "essentially the same project" as was analyzed in the prior document. *Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th 1307, 1320; *American Canyon Community v. American Canyon* (2006) 145 Cal.App.4th 1062. Addenda are limited to minor modifications to previously approved projects. This is not a minor modification or technical change – it is an entirely new project that raises important new issues about the significant effect on the environment. The 2003 SPA EIR did not analyze the Project at all, and thus it did not consider any impacts from the residential uses associated with the Project. The Third Addendum even admits that "the proposed modification represents new information that was not available at the time that the FEIR was certified." p. 4. The court of appeal has held that even an increase in size from 75 feet to 90 feet for a building is a substantial

change to a project requiring a supplemental EIR and not suitable for an addendum. *Ventura Foothill Neighbors v. Cty. of Ventura* (2014) 232 Cal. App. 4th 429, 436. Here the difference is much more drastic and a supplemental EIR is required.


2. The Project will have significant environmental impacts that were not analyzed in the 2003 SPA EIR. For example, the Project will have likely significant air quality impacts from diesel trucks and other sources. The Project described under the 2003 EIR already had both significant construction and operational air quality impacts. These impacts must be analyzed under the Office of Environmental Health Hazard Assessment ("OEHHA") guidelines, which have been updated since the 2003 SPA EIR. The Third Addendum does not contain its own air quality analysis. Nor does it analyze the potential impacts associated with indoor air quality at the Project.
3. The Project will certainly increase public service impacts such as police, fire protection and emergency medical services to levels above those required for the commercial project analyzed in the 2003 EIR. The Third Addendum seems to acknowledge these impacts and to mitigate them references the Public Facilities Finance Plan ("PFFP") that was prepared pursuant to the 2003 EIR. However, the Third Addendum contains no analysis of the PFFP, merely saying that it must be modified at some unknown future date. This lack of analysis and appropriate mitigation is not proper. There must be a supplemental EIR to analyze and mitigate these impacts.
4. The Project will have significant biological impacts based on changed circumstances since 2003. The 2003 SPA EIR identified northern harrier at the Project site based on 2002 surveys. It identified habitat for northern harrier and burrowing owls at the Project site. No mention is made of these species in the Third Addendum. Obviously, animals move and migrate. While certain species may not have been on the site in 2003, they may well be there now. No supplemental biological assessment was prepared for the Third Addendum, nor was one prepared for the First and Second Addendums. Furthermore, this Project includes proposed modifications that would increase the maximum building height to 84 feet and 8 inches above-grade. The City has not conducted any analysis of potential bird collisions and kills that would result from this change.
5. There are many mitigation measures that are now feasible that were not feasible or did not exist in 2003. For example, the 2003 SPA EIR concluded that the project would have significant unmitigated air pollution impacts. The Project could offset its air pollution and greenhouse gas emissions in part by installing solar photovoltaic panels, using only Tier 4 construction equipment, operating only 2010 or better diesel trucks, using only electrified forklifts and

related equipment, and many other measures that were not feasible in 2003. For example, Tier 4 construction equipment was not available until 2015, and is not required for the Project. A new EIR is required to analyze these measures. Also, greenhouse gas mitigation measures are now feasible that were not feasible in 2003, such as electric vehicles, electric forklifts, solar panels, and other measures.

6. While CEQA allows an addendum to an EIR, it does not have any provision allowing an addendum to an addendum to an addendum. Even if this were allowed, the current Third Addendum increases the number of residential units by 300 over the level in the prior addenda. This is a significant change that must be analyzed in a supplemental EIR.

For the above and other reasons, the City must prepare an EIR to analyze and mitigate the impacts of the Project. The City may not rely on the 16-year old 2003 SPA EIR.

Sincerely,

A large black rectangular redaction box covering the signature of Douglas Chermak.

Douglas Chermak