



T 510.836.4200  
F 510.836.4205

410 12th Street, Suite 250  
Oakland, Ca 94607

www.lozeaudrury.com  
richard@lozeaudrury.com

BY E-MAIL AND OVERNIGHT MAIL

June 28, 2019

Steve Lewis, Chairperson and  
Members of the Planning Commission  
City of Chino  
c/o Rosa Olguin, Administrative Secretary  
13220 Central Avenue  
Chino, CA 91710  
[ROlguin@cityofchino.org](mailto:ROlguin@cityofchino.org)

Nick Liguori, Director of Development Services  
Andrea Gilbert, Senior Planner  
City of Chino  
13220 Central Avenue  
Chino, CA 91710  
[AGilbert@cityofchino.org](mailto:AGilbert@cityofchino.org)  
[NLiguori@cityofchino.org](mailto:NLiguori@cityofchino.org)

**RE: Euclid Business Center Project.  
Addendum to the Program Environmental Impact Report  
For The Preserve Specific Plan (SCH No. 2000121036)**

Dear Chairperson Lewis and Honorable Members of the Planning Commission:

I am writing on behalf of the Supporters' Alliance for Environmental Responsibility ("SAFER") and its members living in and around the City of Chino ("SAFER") concerning the Euclid Business Center Project ("Project"), and the Addendum to the Program Environmental Impact Report for the Preserve Specific Plan (SCH No. 2000121036)). MASTER SITE APPROVAL (CASE NO. 18-0070); SITE APPROVAL (CASE NO. 18-0072); SPECIAL CONDITIONAL USE PERMIT (CASE NO. 18-0071); WILLIAMSON ACT CONTRACT CANCELLATION (CASE NO. 18-0066).

The Project involves the development by Alere Property Group, LLC, of an approximately 18.5-acre property located at the northeast corner of the Euclid Avenue/Bickmore Avenue intersection in the City of Chino, San Bernardino County,

California. The Project Applicant proposes to develop a business center with eight (8) buildings that could support warehouse, light industrial, and business park land uses. The Project would develop up to 363,626 square feet (s.f.) of floor area, with buildings ranging in size from 13,050 s.f. to 206,118 s.f.

The 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 Preserve Specific Plan (hereafter, “PSP”) and the associated EIR (State Clearinghouse Number 2000121036, hereafter, “PSP EIR”) certified on March 25, 2003 – 16 years ago. The City contends that under CEQA Guidelines section 15162 and 15164, no further environmental review is required.

### 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; *Quail 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.” “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).) *Save Our Heritage Organization v. City of San Diego*, 28 Cal. App. 5th 656, 664–65 (2018) (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 PSP EIR for several reasons, including but not limited to the following:

1. The PSP EIR did not analyze this Project. It conducted only very broad program level analysis and did not analyze Project-level impacts. 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*, 145 Cal.App.4th 1062. The PSP EIR did not analyze the Project at all.
2. The PSP EIR included mitigation measures that were not implemented. Since the City has failed to implement the mitigation measures required by the PSP EIR, it may not now rely on that document. See, *Katzeff v. Dept. of*

*Forestry* (2010) 181 Cal.App.4th 601, 611, 614; *Lincoln Place Tenants v. City of Los Angeles* (2005) 130 Cal.App.4th 1491, 1507 n22.

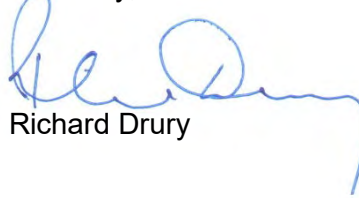
3. The Project will have significant environmental impacts that were not analyzed in the PSP EIR. For example, the Project will have significant air quality impacts from diesel trucks and other sources. These impacts must be analyzed under the Office of Environmental Health Hazard Assessment (“OEHHA”) guidelines, which have been updated since the 2003 PSP EIR.
4. The Project will have significant biological impacts. Obviously, animals move and migrate. While they may not have been on the site in 2003, they may well be there now.
5. There are many mitigation measures that are now feasible that were not feasible or did not exist in 2003. For example, the PSP 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. The 2003 PSP EIR admitted that the Project would have significant unmitigated environmental impacts in six areas: Agricultural Resources, Air Quality, Biological Resources, Land Use, Transportation and Traffic, and Utilities. (Addendum, p. 1-2). Since the PSP EIR admitted these significant unmitigated impacts, a supplemental EIR is required for the Euclid Project to propose all feasible mitigation measures to reduce these impacts, and if the impacts remain significant and unmitigated, then a new statement of overriding considerations will be required. In the case of *Communities for a Better Environment v. Cal. Resources Agency* (2002) 103 Cal.App.4th 98, 122-125, the court of appeal held that when a “first tier” EIR admits a significant, unavoidable environmental impact, then the agency must prepare second tier EIRs for later phases of the project to ensure that those unmitigated impacts are “mitigated or avoided.” (*Id.* citing CEQA Guidelines §15152(f)) The court reasoned that the unmitigated impacts were not “adequately addressed” in the first tier EIR since they were not “mitigated or avoided.” (*Id.*) Thus, significant effects disclosed in first tier EIRs will trigger second tier EIRs unless such effects have been “adequately addressed,” in a way that ensures the effects will be “mitigated or avoided.” (*Id.*) Such a second tier EIR is required, even if the impact still cannot be fully mitigated

and a statement of overriding considerations will be required. The court explained, “The requirement of a statement of overriding considerations is central to CEQA’s role as a public accountability statute; it requires public officials, in approving environmental detrimental projects, to justify their decisions based on counterbalancing social, economic or other benefits, and to point to substantial evidence in support.” (*Id.* at 124-125)

7. There are numerous changed circumstances that have occurred since 2003 that require renewed environmental review. For example, traffic in the area is much heavier not than in 2003, population has grown in the area, etc. One obvious changed circumstance is that the area is now home to numerous warehouse and distribution centers that were not foreseen in 2003 and have significant cumulative impacts on traffic and air quality.

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 PSP EIR.

Sincerely,



Richard Drury