



T 510.836.4200  
F 510.836.4205

1939 Harrison Street, Ste. 150  
Oakland, CA 94612

www.lozeaudrury.com  
Amalia@lozeaudrury.com

## BY E-MAIL

May 24, 2023

City of Riverside Planning Commission  
Johnny R. Wilder, Chair  
Lorraine Mooney, Vice Chair  
Launa K. Wilson, Commissioner  
Raj. K. Singh, Commissioner  
Rafael Elizalde, Commissioner  
Richard L. Kirby, Commissioner  
James R. Rush, Commissioner  
Jonathan K. Parker, Commissioner  
Christine L. Roberts, Commissioner  
3900 Main Street  
Riverside, CA 92501  
c/o Frances Andrade  
[fandrade@riversideca.gov](mailto:fandrade@riversideca.gov)

Judy Eguez, Senior Planner  
City of Riverside  
3900 Main Street  
Riverside, CA 92501  
[jeguez@riversideca.gov](mailto:jeguez@riversideca.gov)

**RE: 1575 University Ave. Mixed-Use Project  
Planning Commission Agenda Item 5 (May 25, 2023)**

Dear Chair Wilder, Vice Chair Mooney, and Members of the Planning Commission:

I am writing on behalf of **Supporters Alliance for Environmental Responsibility** (“SAFER”) and its members living and/or working in and around the City of Riverside (“City”) concerning the 1575 University Ave. Mixed-Use Project (Planning Case PR-2022-001429 (PPE)) (“Project”) to be heard as Agenda Item 5 at the May 25, 2023 Planning Commission Meeting.

The City has not conducted any environmental review for this specific Project pursuant to the California Environmental Quality Act (“CEQA”). Rather, the City is claiming that the Project was adequately reviewed in the 2021 Final Environmental Impact Report prepared for the City’s Housing and Public Safety Element Updates and Environmental Justice Policies (“2021 EIR”).

When relying on a prior EIR for a project, CEQA provides certain procedures, including required findings, prior to a determination that no new environmental documentation is required. Although no new documentation is required in certain circumstances, CEQA also mandates the

circumstances in which reliance on a previous EIR still requires the preparation of an additional environmental impact report (“EIR”) or mitigated negative declaration (“MND”).

The proposed Project does not qualify for review pursuant to a prior EIR, because no project-specific review has been prepared for this Project, and because the significant and unavoidable impacts identified in the 2021 EIR will remain significant with the implementation of this Project. As such, SAFER is requesting that the Commission refrain from approval of the Project at this time until an EIR is prepared.

## **PROJECT DESCRIPTION AND BACKGROUND**

The Project proposes the demolition of an existing 27,593 square foot multi-tenant commercial building in order to facilitate the development of 257 dwelling units and 4,918 square feet of commercial space. The 4.29-acre Project site is located at 1575 University Avenue, between Chicago Avenue and Cranford Avenue in the Mixed Use-Urban and Specific Plan Overlay Zones, in Ward 2.

For CEQA review of the Project, the City has not prepared any new environmental documentation for the Project, but rather intends to rely entirely on the 2021 EIR prepared for the City’s Housing Element Update. The Agenda Item for the Project states that “[t]he Planning Division of the Community & Economic Development Department has determined that the proposed multiple family residential project is consistent with the Final EIR for the 2021-2029 Housing Element Update/Housing Implementation Plan certified in October 2021 (SCH No. 2021040089) subject to compliance with the approved Mitigation Monitoring and Reporting Program.” (May 25, 2023 Planning Commission Agenda, Item 5, p. 5.)

## **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) 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.)

CEQA permits agencies to ‘tier’ CEQA documents, in which general matters and environmental effects are considered in a document “prepared for a policy, plan, program or ordinance followed by narrower or site-specific [environmental review] which incorporate by reference the discussion in any prior [environmental review] and which concentrate on the environmental effects which (a) are capable of being mitigated, or (b) were not analyzed as significant effects on the environment in the prior [EIR].” (Pub. Res. Code (“PRC”) § 21068.5.) “[T]iering is appropriate when it helps a public agency to focus upon the issues ripe for decision at each level of environmental review and in order to exclude duplicative analysis of

environmental effects examined in previous [environmental reviews].” (*Id.* § 21093.) CEQA regulations strongly promote tiering of environmental review.

Where a program EIR has been prepared, such as the 2021 EIR, “[l]ater activities in the program must be examined in light of the program [document] to determine whether an additional environmental document must be prepared.” (14 CCR § 15168(c).) The first consideration is whether the activity proposed is covered by the program. (14 CCR § 15168(c)(2).) If a later project is outside the scope of the program, then it is treated as a separate project and the previous environmental review may not be relied upon in further review. (*See Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th 1307, 1320–21.) The second consideration is whether the “later activity would have effects that were not examined in the program.” (14 CCR § 15168(c)(1).) A program environmental review may only serve “to the extent that it contemplates and adequately analyzes the potential environmental impacts of the project . . . .” (*Sierra Nevada Conservation v. County of El Dorado* (2012) 202 Cal.App.4th 1156, 1171 [quoting *Citizens for Responsible Equitable Envtl. Dev. v. City of San Diego Redevelopment Agency* (2005) 134 Cal.App.4th 598, 615].) If the program environmental review does not evaluate the environmental impacts of the project, a tiered [CEQA document] must be completed before the project is approved. (*Id.* at 1184.)

Pursuant to Guidelines sections 15162(a) and 15168(c), a project is not within the scope of a previous program EIR, and subsequent environmental review is necessary, where:

- (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.

An agency's determination that none of the conditions of Section 15162 have been met and, therefore, that no subsequent EIR or MND is required for the new project must be supported by substantial evidence. (14 CCR § 15162(a); 14 CCR § 15168(c).)

## DISCUSSION

### **I. An Initial Study is Required Because This Project's Environmental Impacts Have Not Been Analyzed.**

The City is relying on the 2021 EIR for CEQA review of the Project pursuant to CEQA's subsequent review provisions, 14 CCR § 15162. However, under 14 CCR § 15162(a)(3)(A), an agency cannot avoid preparation of a subsequent EIR for a project if new information of substantial importance shows that the project will have one or more significant effects not discussed in the previous EIR or negative declaration. Here, there is new information regarding the Project's significant effects which was not discussed in the 2021 EIR, therefore the City must prepare a subsequent EIR or Negative Declaration. The environmental impacts of this Project have not been analyzed. Further, the 2021 EIR itself explicitly noted that further environmental review on a project-specific level would be necessary.

The 2021 EIR states that “[a] predevelopment checklist (environmental development checklist) will be developed as part of the Project to support the development review process for applicants proposing development on Opportunity Sites that is consistent with the Project.” (DEIR, p. 1-5.) It also states that “[t]he City prepared an initial study checklist in April 2021 to simplify the process of using this EIR as the basis for environmental analyses, focusing on key environmental issues. . . [a]s noted in Chapter 2, *Project Description*, a predevelopment checklist (environmental development checklist) will be developed as part of the Project to support the development review process for applicants proposing to develop Opportunity Sites consistent with the Project” (Id. at 5-5.) Additionally, with regard to air quality impacts in particular, the 2021 EIR states that “specific mitigation measures and/or project design features to reduce construction-related emissions would be determined during project-level analysis.” (DEIR, p. ES-10.)

The staff report for the Project does not mention having conducted any project-level analysis. The entirety of the environmental review section of the staff report consists of the following sentence: “The proposed project is consistent with the Final EIR for the 2021-2029 Housing Element Update/Housing Implementation Plan certified in October 2021 (SCH No. 2021040089) subject to compliance with the approved Mitigation Monitoring and Reporting Program.” (May 25, 2023 PC Hearing, Agenda Item No. 5 Staff Report, p. 7.)

The City has failed to demonstrate with substantial evidence that the Project is consistent with the 2021 EIR. The City must prepare an initial study which assesses the Project's impacts in all areas of CEQA in order to determine the appropriate level of CEQA review for the Project.

## **II. The Project Requires a Tiered EIR and Statement of Overriding Considerations Due to the Remaining Significant and Unavoidable Impacts.**

In addition to the requirement for an initial study due to the failure to conduct any project-level review under CEQA, an EIR is required for the Project due to impacts that remain significant and unavoidable. When a prior EIR, such as the 2021 EIR, admits significant and unavoidable impacts, a later project requires its own EIR and statement of overriding considerations for any impacts that remain significant and unavoidable. (*Communities for a Better Env't. v. Cal. Res. Agency* (2002) 103 Cal.App.4th 98, 124-25.)

The 2021 EIR found significant and unavoidable impacts to air quality, greenhouse gas emissions, noise, population growth, and transportation. (2021 EIR, pp. ES-48 – ES-49.) The staff report for the Project does not point to any measures which would render these impacts less than significant, therefore they will remain significant and unavoidable.

Even though these impacts were found significant and unavoidable in the 2021 EIR and the City adopted a statement of overriding considerations at that time, the City cannot “adopt one statement of overriding considerations for a prior, more general EIR, and then avoid future political accountability by approving later, more specific projects with significant unavoidable impacts pursuant to the prior EIR and statement of overriding considerations.” (*Communities for a Better Env't., supra*, 103 Cal.App.4th at 124.)

Therefore, the Project requires its own EIR and statement of overriding considerations to ensure that the City “go on the record and explain specifically why they are approving the later project despite its significant unavoidable impacts.” (*Communities for a Better Env't., supra*, 103 Cal.App.4th at 125.)

## **III. The City is Required to Share Its Environmental Review Process with the Public.**

The EIR is intended “to demonstrate to an apprehensive citizenry that the agency has, in fact, analyzed and considered the ecological implications of its action.” (*No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 86 [118 Cal.Rptr. 34, 529 P.2d 66] [hereafter *No Oil*]; Guidelines, § 15003, subd. (d).) Because the EIR must be certified or rejected by public officials, it is a document of accountability. If CEQA is scrupulously followed, the public will know the basis on which its responsible officials either approve or reject environmentally significant action, and the public, being duly informed, can respond accordingly to action with which it disagrees. (*People v. County of Kern* (1974) 39 Cal.App.3d 830, 842 [115 Cal.Rptr. 67]; Guidelines, § 15003, subd. (e).) The EIR process protects not only the environment but also informed self-government.

## CONCLUSION

For the above reasons, SAFER respectfully requests that the Planning Commission refrain from approving the Project at this time. Rather, the City should prepare a new EIR for the Project that tiers from the 2021 EIR prior to approval.

Sincerely,

A handwritten signature in black ink that reads "Amalia Bowley Fuentes". The signature is written in a cursive, flowing style.

Amalia Bowley Fuentes  
LOZEAU DRURY LLP