

# City of Diamond Bar

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September 13, 2017

Paul J. Philips, City Manager  
City of Industry  
P.O. Box 3366  
City of Industry, CA 91744-0366

Re: *City of Industry Request for General Plan Conformance Determination  
Tres Hermanos Ranch Dated September 1, 2017*

Dear Mr. Philips:

This is in response to your letter of the above date ("Letter"). The City of Diamond Bar ("Diamond Bar") has adopted a general plan which is applicable to approximately 730 of the 2,450 acres of property (the "Property") referenced in your letter and thus, it is appropriate to place this matter before Diamond Bar's Planning Commission for a general plan conformance finding.

**Jimmy Lin**  
Mayor

**Ruth M. Low**  
Mayor Pro Tem

**Carol Herrera**  
Council Member

**Nancy A. Lyons**  
Council Member

**Steve Tye**  
Council Member

Initially, Industry's request appears to be untimely. I am informed that Industry's City Council may have already approved the purchase of the Property. The clear intent of Government Code Section 65402 is that the general plan conformity finding be submitted to Diamond Bar's Planning Commission prior to Industry approving the acquisition of real property so that Industry's City Council has that determination before it and considers it during its deliberations concerning the Property. Submitting it after such determination undermines the clear intent of the statute. As such, *after* Diamond Bar's Planning Commission makes its determination, the purchase of the Property should be placed back on Industry's City Council agenda and the purchase of the Property reconsidered.

The Letter states that Industry does not have any definitive plans for the Property, which is problematic on several fronts. Initially, Government Code Section 65402(b) requires that as part of its submission that Industry identify the "location, purpose and extent of such acquisition ..." prior to acquiring the Property. The Letter, however, does not identify Industry's "purpose" in acquiring the Property. Given that by definition a general plan is a *land use* document, a determination as to whether Industry's acquisition is consistent can

only be made if Industry identifies and provides reasonable details regarding the purpose, i.e., the use, for which it is acquiring the Property. Merely identifying the location and extent of the acquisition without identifying the purpose, does not provide the Planning Commission with adequate information to perform its statutory duty.

Second, the Letter states that Industry is purchasing the Property in "compliance with Government code Section 37351." Section 37351 permits Industry to purchase property outside its jurisdiction "as is necessary or proper for municipal purposes." It is unclear how it is that Industry can, on the one hand, state it is acquiring the Property in accordance with Section 37351 and on the other hand, state it has no definitive plans for the Property.

Third, the statement that Industry has no definitive plans for the Property appears contradicted by the fully executed and apparently binding "MASTER GROUND LEASE" between Industry and San Gabriel Water and Power, LLC, a private entity (the "Lease"), which Diamond Bar just recently received a copy. By way of the Lease it appears that upon acquisition of the Property Industry has committed itself to leasing the Property to San Gabriel Water and Power, LLC, for a minimum of 25 years for a "solar farm and a reservoir." In particular the Lease requires San Gabriel Water and Power to prepare an initial study for a "photovoltaic solar project totaling, in the aggregate, at least ... 450 ... megawatts of rated annual output ...." In addition the Lease provides that San Gabriel Water and Power must use the Property only for the purposes set forth in the Lease. Please apprise the undersigned if this Lease has in fact been approved by the City Council and whether Industry considers it binding. Additional information that will assist the Planning Commission would be the meeting date the City Council approved the Lease and the agenda materials relating thereto and how this Lease may constitute a public use as set forth in Section 37351.

Given that the Letter does not identify the purpose for which Industry is acquiring the Property or provide any details regarding that use, the matter has not been properly "submitted" to Diamond Bar, therefore, does not comply with Government Code Section 65402(b). As such, the 40-day period for planning commission review has not commenced. Once a Letter is submitted in compliance with Section 65402(b), this matter will be placed on the Diamond Bar Planning Commission's agenda for review.

Sincerely,



Greg Gubman, AICP  
Community Development Director