
[EXT EMAIL] Comment on File No.: PL26-0010 (SPA) and PL26-0014 (GPA)

From: Tin Nguyen [REDACTED]
Sent: Wednesday, August 19, 2026 2:44 PM
To: Staar, Maria <MStaar@cityofchino.org>; Planning <Planning@cityofchino.org>
Subject: [EXT EMAIL] Comment on File No.: PL26-0010 (SPA) and PL26-0014 (GPA)

Dear Maria Staar and Members of the Planning Commission,

As a Preserve resident, I am writing to strongly oppose the proposed downzoning of the Falloncrest project from CC30 to CC16.

Reducing the density on this 13-acre site actively works against our region's desperate need for housing. The original master plan correctly clustered high-density housing here to prevent sprawl, support local businesses, and reduce vehicle miles traveled. Diluting that density now undermines those goals. It can literally become the literally crown center of the community.

Furthermore, under California's No Net Loss Law (SB 330), the city cannot simply erase housing capacity. Relegating these lost units to an unallocated "pool" within The Preserve without concurrently upzoning a specific, alternative parcel puts the city at risk of violating state housing mandates and our RHNA obligations.

I urge the Commission to reject this density reduction and reevaluate a better solution.

Sincerely,
Tin Nguyen

EXTERNAL EMAIL: Please verify sender email. If unknown, DO NOT open links/attachments. NEVER give out your user ID or password for any reason!

Date: August 18, 2026

Subject: *Objection to Agenda Item # 4: PL25-0103 (Site Approval), PL25-0104 (Special Conditional Use Permit) & PL26-0076 (Special Conditional Use Permit). A request to construct a 4,761 s/f convenience store with a Type 20 ABC license, a 3,724 s/f gas station island pump canopy, and a 3,284 s/f express car wash on a 1.98-ac site in the CS zoning district at the SEC of Central & Schaefer Avenues.*

To Planning Commission
via Planning@cityofchino.org

My name is Robert Nigg. I have been before this Planning Commission many times opposing the implementation of the 6th Cycle Housing Element and potential violations of the No Net Loss law. I feel the housing element as enacted was ill-advised and has resulted in failures that are in conflict with the state's Affordable Housing Laws.

The current proposed development on the corner of Central and Schaefer Avenues appear to violate California Housing Element Laws and the legal judgement under the *New Commune DTLA LLC v. City of Redondo Beach* appellate decision, which was upheld by the California Supreme Court.

The two parcels, APN: 1021-031-16 & 1021-031-22 are listed in the Housing Element as having an overlay classification of AFF-OV. It should be noted that the APN listed in the public notice as #1021-031-12 is deemed to be incorrect. The parcel on Central Ave. is listed on Table B-6 of the 6th Cycle Housing Element that corresponds to this proposed development as being APN 1021-031-22.

When combining APN 1021-031-116 and 1021-031-122 the two AFF-OV sites have an AFF-OV-RHNA obligation of 61 lower income housing units. Wherein, the two sites have a based zoning of CS and CO respectively, the loss of the low income capacity in the housing element creates two important violations of the housing element laws. Therefore, I object to the Planning Commission approving this proposed development as described under Agenda Item #4.

Redondo Beach Overlay Decision

A violation of law occurs when allowing the base zoning of CS and CO allows 100% commercial and does not include the Regional Housing Needs Allocation (RHNA) obligations for residential lower income housing units. The Second District Court of Appeal held that an overlay zone cannot satisfy state housing element law (Gov. Code § 65583.2) if the underlying base zoning permits pure 100% commercial or non-residential development with zero residential units. The California Supreme Court declined to hear the appeal, in which Chino became a participant, making the appellant court decision final.

While I am not opposed to commercial development and the associated tax revenue that can be generated, I am opposed to the methodology used in crafting Chino's 6th Cycle Housing Element. There are deemed to be many flaws in the implementation of the Housing Element which has created havoc and misguided high density developments in various residential neighborhoods throughout the city.

In Chino, the zoning code does allow the developer to elect to use the base zoning district land use regulations and development standards. Wherein a developer may build 100% commercial in the base zoning district land use regulations as permitted in the Zoning Code (previous in Section 20.09.090 - Overlay districts for affordable housing), the lawful requirements of the State Affordable Housing laws and the legality of the Housing Element still applies.

Since the legality of base zoning that continues to allow 100% commercial usage without guaranteeing a mandatory minimum residential floor-area or unit allocation on designated RHNA housing inventory, the sites are legally unprotected and considered non-compliant under the precedent of the Redondo Beach decision. The court ruled a city cannot simultaneously permit and prohibit/supplant a use effectively; an overlay that permits zero-housing outcomes that violates Government Code § 65583.2 minimum density and use rules.

By allowing the two proposed sites under Agenda Item #4 being developed at 100% commercial,, which would be a violation under Redondo Beach, it would necessitate revisions to the current Zoning Code. Approximately 80% or more of the 91 RHNA sites in the 6th Cycle Housing Element also allow base zoning in commercially zoned sites. In order for the Housing Element to remain compliance with state law, the RHNA sites would need to be removed from the RHNA Housing Element, or rezoned as not allowing based zoning.

Should the city not choose to take immediate corrective action, the entire 6th Cycle Housing Element should be ruled to be invalid.

The Planning Commission should deny the proposed development until the base zoning option is removed from the Updated Zoning Code or other sites are added to replace the RHNA capacity obligation.

No Net Loss Violations

This proposed development will remove 61 lower income housing units from the required RHNA obligation in the HCD certified Housing Element.

Under various provisions of the state's affordable housing laws, including but not limited to, Gov. Code § 65863, the city must make written findings pertaining to how a "No Net Loss" violation will not occur.

Under California's No Net Loss Law, including Gov. Code § 65863(b)(2), when a city or county approves a development project at a lower residential density or with fewer lower-income units than assumed in the housing element inventory, the planning agency must make formal written findings supported by substantial evidence that the remaining sites in the inventory are still adequate to meet the jurisdiction's regional housing needs allocation (RHNA). These written findings and records must be integrated into the administrative and public record before or at the time of project approval.

Inclusion in Public Records and Timing of Decision

Public Records Requirement: Any written decision, analysis, or finding regarding site capacity consistency and the No Net Loss evaluation must form part of the official public record considered by the decision-making body (such as the Planning Commission) during the hearing and approval process. The recommendations and reports submitted by the planning division did not include any written findings with substantial evidence as required by law in regards to how the No Net Loss law will be adequately enforced by the City of Chino..

Timing of Issuance: The written findings or determination must be made and issued at the time of approval to ensure that the city legally tracks any reduction in lower-income capacity and triggers a concurrent rezoning mandate if a shortfall occurs.

Key Legal Elements The "No Net Loss" tracking prevents local governments from reducing residential density or affordability below the estimates in their housing element sites inventory unless they formally prove remaining site adequacy.

Substantial Evidence: The record before the Planning Commission must contain the specific calculation showing that the reduction does not impair the jurisdiction's capacity to meet remaining lower-income RHNA needs.

Remedial Action: If the required findings of adequacy cannot be made because the reduction creates a capacity shortfall, the city is obligated to identify and make available additional adequate sites through a rezoning program.

The Planning Commission should deny the proposed development until the written findings containing substantial evidence are provided to the commission before taking the vote to approved or disapproved the project.

Sincerely,

Robert Nigg

Date: August 19, 2026

To: City of Chino Planning Commission

Re: Planning Commission meeting 081926

Agenda Item #4

- PL25-0103 (Site Approval), PL25-0104 (Special Conditional Use Permit) & PL26-0076(Special Conditional Use Permit)

Please note the staff report for this item indicates the zoning of the subject parcels to be Commercial (CS and CO). Absent from the report is the fact that these parcels are zoned as an Affordable Housing Overlay. As such, the Housing Element Law requires that any development in an overlay must include the minimum amount of housing and that development with zero housing units is not allowed. This was clarified in recent appeals court decisions:

I previously reached out to the City's PIO on this same matter regarding the City's Eden project, which has the same conditions as this proposed development; namely, ignorance of the housing requirements of the overlay. The following exchange took place:

City of Chino's response:

" Thanks for reaching out. In short, there is nothing in the New Commune decision that renders cities' approved overlays that provide optional rights to develop housing void. The decision impacted Redondo Beach and did not include any sweeping ruling affecting other cities' housing elements."

My reply:

" ... As I informed the City last year, the New Commune DTLA LLC v. City of Redondo Beach appellate decision was certified for publication on October 10, 2025. The published ruling was also finalized by the California Supreme Court (January, I believe) when it declined to review the case. California stare decisis principles require all trial courts statewide to adhere to published appellate decisions. (Auto Equity Sales, Inc. v. Superior Court, 57 Cal.2d 450 (1962)) Decisions of every division of the California Courts of Appeal are binding on all lower courts, including all Superior Courts for both trials and appeals. Therefore, the New Commune decision is binding on Chino's approval of Eden, because the City cannot approve something that is illegal, especially blatantly.

The New Commune opinion was simply a clarification of existing law, nothing else and nothing new. It makes very clear that it was merely applying the plain language of Government Code section 65583.2 as interpreted by the Fifth District's previous decision in a related appellate case. (Martinez v. City of Clovis (2023) 90 Cal.App.5th 193) The published opinion states: "An overlay cannot be used to satisfy the minimum density and residential use requirements set out in section 65583.2, subdivision (h)(2) (hereafter section 65583.2(h)(2)), where the base zoning expressly permits development that does not include housing."

As an interpretation of existing law, the opinion is, obviously, retroactive back to the effective date of the Housing Element Law.

The court found that Redondo Beach's overlay failed to require the mandatory minimum density of 20 units per acre because the underlying commercial and industrial zoning permitted development with no (zero) residential units. It stated that "section

65583.2(h) is unambiguous and imposes a mandatory minimum density requirement” and that the Statute’s plain language provides that sites “shall be zoned with the minimum density and development standards” and “shall be at least 20 units per acre” in suburban areas. (“shall” being mandatory) This is exactly the same situation and conditions as Chino’s proposed Eden project, except that the Eden underlying zoning is strictly commercial with no industrial. Exactly the same application.

Therefore, your above stated position is completely without merit. The City’s previously stated defense that it had State approval of its Housing Element is of no consequence. The City must comply with the law, a novel concept for Chino, I admit. And it can comply with both the law and its approved housing plan, as long as it does not allow the development of parcels in an overlay that do not include the minimum number of residential units (subdivision does not change zoning classification). Because the lack of residential units is what is against the law (probably why they call it a housing law ...).”

The *New Commune* decision is readily available online, as are numerous articles by California law firms confirming the decision and the law’s requirements. Please consider the actual law and the above when making any decision on this matter, which is hereby on record.

Respectfully submitted,

Stubbie Barr
resident