City of Diamond Bar

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October 16, 2008

City of Industry
Attention: Mike Kissell, Planning Director
15625 East Stafford Street
City of Industry, California 91744

Subject: Draft Supplement to Industry Business Center Environmental Impact Report - SCH No. 2003121086 (NFL Stadium based development proposal)

Dear Mr. Kissell,

The City of Diamond Bar (City) appreciates the opportunity to review and comment upon the "Draft Supplement to Industry Business Center Environmental Impact Report, SCH No. 2003121086" (DSEIR or SEIR), as released under the provisions of the California Environmental Quality Act and its implementing guidelines (CEQA). The DSEIR notes that the "revised Plan of Development would include, among other things, a National Football League (NFL) stadium with practice fields, team training facilities, and team offices; a sports medical center; retail uses; restaurants; entertainment uses; other office buildings; and parking areas to accommodate all uses" (DSEIR, p. 1-6, p. 3-2).

The "revised Plan of Development" envisioned for the Industry Business Center (IBC) and described in the DSEIR differs substantially from the "2004 IBC Plan of Development" (original project) identified and evaluated in the "Final Environmental Impact Report – Industry Business Center, SCH No. 2003121086" (Final IBC/EIR), as certified on October 28, 2004.

The City has examined the proposed NFL stadium based development project as described within the DSEIR to ensure that sufficient information has been made available to allow an informed decision regarding the likely benefits and potential consequences of a project of the scale proposed. Looking beyond those efforts, the nature and potential significance of the proposed project requires that the City view the project not on architectural design and its site planning considerations but more specifically on the project's local and neighborhood implications.

Non-compliance with CEQA

One of the policy mandates established under CEQA is that public agency actions take place with a reasonable understanding of the environmental implications of those actions and with the goal of preventing environmental damage while providing

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a decent home and satisfying living environment to every Californian (§21000[g]). CEQA contains requirements for public participation as well as specific findings that an agency must make when evaluating a project's environmental impacts. An agency must find that a project has a significant effects on the environment if the possible effects of that project are individually limited but cumulatively considerable (§21083[b]). Similarly, agencies must find that a project has a significant environmental effect if a proposed project's impacts will directly or indirectly cause substantial adverse effects on human beings (§21083[c]).

The City asserts that the Lead Agency has not included sufficient relevant information about the "revised project" and its impacts and, as a result, has precluded informed decision making and public participation. Unless the document's shortcomings, and the myriad of technical and procedural defects outlined herein are remedied, any project-specific actions by the Lead Agency would constitute a prejudicial abuse of discretion under CEQA.

A number of established residential neighborhoods in Diamond Bar (i.e., Sunset Crossing/Neil Armstrong Elementary School and Lycoming/Washington) abut portions of the project site and will be negatively impacted by the stadium based project. Additionally a substantial portion of project related traffic will utilize Diamond Bar's street network in order to access the subject property and the land uses now proposed. As indicated in the DSEIR, on "NFL game days, nearly 82% of the traffic will approach the project via Grand Avenue. It is anticipated that 38.6% of the traffic will approach from the east on the freeways, and merge with approximately 30.4% approaching from the west on the freeway and from farther south on Grand. The remaining 12.9% will arrive from the north on Grand Avenue" (DSEIR, Appendix I, p. 2).

Not only will stadium events subject the City to detrimental traffic and other impacts, but impacts related to the many other proposed land uses will create negative impacts to the Diamond Bar community. In order to mitigate project-related and cumulative traffic impacts, numerous traffic, intersection, and mid-block improvements may be required in Diamond Bar. As a result, Diamond Bar becomes the recipient of all the detrimental impacts of the proposal while the City of Industry receives all of the beneficial aspects of the project.

The concept of "environmental justice," is defined as the fair treatment of people of all races, cultures, and incomes with respect to development, adoption, and implementation of environmental laws, regulations, and policies. Environmental justice relates to ensuring that development in one community does not result in that community's retention of all the inherent benefit and the exportation of all the resulting hardships to another community and to a constituency that the decision-making agency neither represents nor speaks for.

The comments presented herein are submitted on behalf of all residents, property owners, and business interests in Diamond Bar and reserve to those parties the rights available themselves of the comments, statements, and substantial evidence presented herein should any such party elect to pursue judicial remedies in response to the Lead Agency's failure to comply with its CEQA obligations.

The Final IBC/EIR, upon which the DSEIR is derived, acknowledged: "[A]ll agencies responsible for approving traffic-generating projects must work cooperative with the agencies responsible for implementing road improvements. These agencies include the Cities of Industry, Walnut, Diamond

Bar and Pomona, the County of Los Angeles, Caltrans, Cal Poly Pomona and others. These agencies will all have responsibilities to assess, collect and contribute mitigation fees for the purpose of funding needed roadway improvement. Most of these agencies will also be responsible for implementing roadway improvements needed within their jurisdictional boundaries" (Final IBC/EIR, Response to Comments, Response H-2).

As further indicated in the Final IBC/EIR: "Industry shall work cooperatively with responsible agencies, including Caltrans, County of Los Angeles and the Cities of Diamond Bar, Pomona, Walnut and West Covina and other appropriate agencies to secure funding for and to cause the implementation of the following or equivalent traffic improvements" (Final IBC/EIR, p. 1-38). With regards to "traffic improvements," the Lead Agency formally acknowledged Diamond Bar's responsible agency status through Resolution No. 2065, as adopted by the Industry City Council on October 28, 2004 (FOF/SOQ, Mitigation Measure 5.14-1, p. 3-28).

As mitigation for the "transportation and traffic" impacts associated with the "revised project," the DSEIR states: "The City of Industry shall work cooperatively with responsible agencies, including Caltrans; County of Los Angeles; the Cities of Diamond Bar, Pomona, Walnut, West Coving; and other appropriate agencies to implement the following or equivalent traffic improvements" (DSEIR, p. 5.10-191). As such, the Lead Agency acknowledges that Diamond Bar is a responsible agency under CEQA.

Because the City will be required to rely upon the information presented in the EIR, as required under CEQA, responsible agencies, shall respond to consultation by the Lead Agency in order to assist in preparing an adequate environmental document for the project (14 CCR 15096[b]) and shall reach their own conclusions on whether and how to approve the project (14 CCR 15096[a]).

As indicated in the Final IBC/EIR and as contained in the administrative record for that earlier project, a number of Industry-adopted mitigation measures and conditions of approval were previously established by Industry which may have continued bearing on the "revised Plan of Development". As a result, with the exception of Industry itself, this community will be substantially impacted by the project's development. It is, therefore critical to the City, that the environmental review and decision-making processes be founded on a thorough and accurate assessment of the likely effects that the proposed project will create, not only with regards to impacts to Industry but also with regards to the project's effects on the City and throughout the region.

As indicated in the Final IBC/EIR: "The Industry Urban Development Agency, which owns the property has developed a preferred plan of development for the IBC" (Final IBC/EIR, p. 4-2). In the absence of any reference to any conveyance instrument, it is not known whether the IUDA subsequently conveyed to the Applicant or to another party, any control over or rights to that property. If such conveyance has occurred, the Lead Agency needs to disclose the nature of that conveyance, identify the benefited party, and explicitly state what rights or benefits were so conveyed.

In the absence of any reference to the possible inclusion of the IUDA, any reference to the "Lead Agency" herein should be interpreted as inclusive of the City (including its decision makers, advisory bodies, and various departments), the IUDA, and any other separate division or public

entity of Industry involved, either directly or indirectly, with the "2004 IBC Plan of Development" and/or the "revised Plan of Development."

All public and private activities or undertakings pursuant to or in furtherance of a redevelopment plan constitute a "single project" (§21090). An EIR on a redevelopment plan shall be treated as a program EIR with no subsequent EIRs required for individual components of the redevelopment plan unless a subsequent or supplemental EIR is required (14 CCR 15180). As a result, to the extent that the project site is located within an existing redevelopment plan area, the "revised Plan of Development" needs to be linked to the first-tier CEQA documentation establishing the redevelopment project area in which the NFL Stadium based project site exists. The project's consistency or lack of consistency with that redevelopment plan and the first-tier EIR needs to be evaluated. Similarly, the Lead Agency's plans to provide any form or amount of public subsidy for the project's development and/or operation, including any infrastructure improvements predicated by or benefiting that project, needs to be disclosed and the potential impacts of that subsidy (e.g., diversion of public funds from other alternative actions) needs to be fully disclosed.

On April 17, 2008, the Los Angeles Times reported Mr. Ed Roski of Majestic Realty stated that no public funds (whether in the form of public subsidies or in monies otherwise diverted from other special districts) would be involved in the advancement of the stadium project. However, among the list of discretionary actions for which the DSEIR has been prepared, the Lead Agency states that the "intended use of the EIR" includes "financing approvals" (Table 3-3, p. 3-56).

What is the Lead Agency's definition of and meaning of "financing approvals"? Who would be the beneficiary of those approvals? Why is "financing approvals" designated by the Lead Agency as a discretionary action? What physical change in the environment could potentially result from those approval?

The City of Industry's Mayor Dave Perez in a June 28, 2008 article in the Pasadena Star News. is quoted as stating: "Hell yeah we'll get our money back." In that same article, Rick Eckstein, author of "Public Dollars, Private Stadiums: The Battle over Building Sports Stadiums," is quoted as stating: "This sounds like one of those kind of hidden subsidies where money does not change hands but some other kind of assistance is provided."

Absent from the DSEIR is any declaration concerning whether the Lead Agency and/or the IUDA have an economic interest (of any kind) in the project's advancement and/or would benefit (either directly or indirectly) from the project's approval. For example, if public dollars will be invested in or in furtherance of the NFL Stadium based development project, the Lead Agency may have an economic motivation to see the project move forward and succeed because those public dollars may be riding on the project's success. If there are any economic interests or if Industry, the IUCA, and/or any of the project's decision makers would benefit economically from the project's approval, those interests must be identified in order to ensure full disclosure for the public to independently ascertain the presence of any public funding or the existence of an economically-motivated agenda.

The Lead Agency must disclose under what lease terms the Applicant's possessory interests in the underlying real property was established. Other than through increased property valuation, does

there exist any terms or other provisions in that agreement or any related agreement whereby or through which Industry and/or the IUDA could economically benefit?

The Lead Agency's failure to disclose the presence of public subsidies is contrary to the purpose of CEQA (14 CCR 15002[a][4]) and, because public funding is itself a project subject to CEQA (14 CCR 15378[a][2]), constitutes an unsupportable truncation of the "revised project."

The Lead Agency's planned commitment of public funds to benefit (either directly or indirectly) the NFL Stadium based development project would suggest the existing presence or planned approval of a development agreement, owner participation agreement, disposition and development agreement, or similar instrument between the City of Industry and/or the IUDA and the Applicant. No reference is, however, made in the DSEIR as to whether such an agreement now exists or is currently being negotiated. Recently, the City of Industry announced it's intent to apply "excise taxes" upon admission to certain entertainment uses in the City of Industry and parking fees. The NFL stadium based development project provides a multi-million dollar revenue source directly to the City of Industry and an additional project benefit derived from the decisions of the Lead Agency to approve the NFL stadium based development project, a clear conflict exists for Industry to provide an unbiased consideration of the proposal.

Incomplete Project Description

The DSEIR contends that the project now under consideration is not, in fact, the NFL Stadium based development project at all but now houses all the "paper" development that was included in the "2004 IBC Plan of Development." As stated in the DSEIR, (i.e., "The project area is currently vacant land. . .No structures are present on the property," p. 4-3). When assessing the resulting environmental implications of an NFL stadium based development project, the Lead Agency states that the property is not vacant at all. In defining the project as only the incremental difference between the unfulfilled vision of how Industry once saw the build-out of the subject property and the alternative future that the Applicant now envisions, the project and its resulting impacts are erroneously reduced to an accounting exercise based on a "net change" rather than in accordance with a CEQA-obligated "physical change."

CEQA states that the purpose of an EIR is to "provide public agencies and the public in general with detailed information about the effect which a proposed project is likely to have on the environment" (§21061). CEQA defined the "environment" to mean "the physical conditions which exist within the area which will be affected by a proposed project" (§21060.5). Ignoring the fact that the "IBC site has historically been used for leased cattle grazing and a portion of the site is currently being used for such purpose" (DSEIR, p. 4-3) and the fact that the "project area is current vacant land" (DSEIR, p. 4-3), in describing its analytical methodology, the Lead Agency erroneously states that "the SEIR considers the project approved in the IBC EIR as its baseline" (DSEIR, p. 4-10).

The Lead Agency seeks to compare the "revised project" against those hypothetical conditions that may exist under the "original project." Citing only a few examples, the DSEIR notes that:

(1) "Each topical area within this section analyzes whether the revisions to the 2004 IBC Plan of Development would result in new significant effects, a decrease in the severity of previously identified significant effects, or in an increase in the severity of previously identified significant effects" (DSEIR, p. 1-3);

(2) "The proposed changes to the 2004 IBC Plan of Development would eliminate the current conceptual Planning Areas in favor of a project plan that would reduce the total square footage of office, retail and industrial space on the IBC" (DSEIR, p. 1-6);

(3) "The No Project/Existing Development Alternative. . .would result in a worsening of air pollution and greenhouse gas emissions because of the large increase in the amount of development that would occur" (DSEIR, p. 1-7);

(4) "[T]he amount of commercial/office development with the revised Plan of Development would be substantially less than previously planned" (DSEIR, p. 3-12);

(5) "[T]he revised Plan of Development would result in 1,161,000 square feet less of office and commercial use and 508,000 square feet less of industrial use" (DSEIR, p. 5.6-13);

(6) "The current project downsizes that proposed in the [Final IBC] EIR reducing the proposed development by 1,794,000 square feet" and "the project is estimated to reduce trips" (DSEIR, Appendix C, p. 21);

(7) "When compared against the weekday daily, AM peak hour, and PM peak our traffic generation of the 2004 IBC plan of development, the project as now proposed would result in a lower traffic generation. . . the current project could generate 14,221 fewer weekday daily trips, 2,961 fewer AM peak hour trips, and 2,187 fewer PM peak hour trips than the original project traffic generation" (DSEIR, Appendix H, p. 39);

Although the Lead Agency attempts to define the "revised project" not as a stand-alone action but as the difference between the "2004 IBC Plan of Development" and the proposed "revised Plan of Development," it must be noted that neither the "original project" nor the Final IBC/EIR actually considered any definitive land use plan. The land-use plan contemplated in the prior EIR was only conceptual in nature.

As indicated in the Final IBC/EIR: "[T]his document is a programmatic EIR and the project design is conceptual in nature" (Final IBC/EIR, Response to Comments, Response F-11). As further indicated therein: "[T]he project is a 'plan of development' that will provide the framework for future development that takes place in the area. The broad categories of suggested uses (i.e., corporate headquarters, commercial center) and their relationship to each other is based upon solid planning practices and knowledge of the real estate market needs in these areas. The City of Industry only has two zones, commercial and industrial, and the commercial zone includes both retail and office buildings. The plan of development is intended to distinguish as much as is possible what would occur under the broadly defined zones of commercial and is intended as a guiding document as specific projects are presented in the future" (Final IBC/EIR, Response to Comments, Response N-6).

None of the building square footage calculations presented in the DSEIR include any square footage numbers assigned to the NFL Stadium itself (e.g., "the revised Plan of Development would reduce the total buildout square footage, not including the seating and concession areas for the stadium, by approximately 1,669,000 square feet," DSEIR, p. 3-12). The failure to assign a square footage to the stadium results in a fatal defect which is subsequently carried throughout the SEIR.

It is further noted that the DSEIR is not internally consistent in that the alleged "difference" is alternatively stated as "1,669,000 square feet" (DSEIR, p. 3-12) and "1,794,000 square feet" (DSEIR, p. 5.8-15), making a clear and consistent description of Lead Agency's assertion as to what comprises the "revised project" unclear. In fact, public presentations by Majestic Realty have revealed the size of the football stadium at 1,900,000 square feet. Therefore, the actual size of the proposed NFL stadium based development project is greater, not less than, the previously approved IBC proposal.

In County of Inyo v. City of Los Angeles (1977), the EIR was found to be legally insufficient as it failed to provide "an accurate, stable and finite project description." The size of the "revised development" and the square foot differences between the "2004 IBC Plan of Development" and the "revised Plan of Development," cannot be accurately deciphered and have not been consistently applied by the Lead Agency throughout the DSEIR.

The methodology employed in the DSEIR is not the same analytical methodology that was employed in the development of the Final IBC/EIR. With regards to the "No Project/Existing Zoning Alternative" examined in the first-tier document, the Final IBC/EIR states that "[t]his alternative assumes the existing zoning would remain in place for the entire site and a total of approximately 6,412,000 square feet of industrial building space would be constructed" (Final IBC/EIR, pp. 9-4 and 9-7). It is apparent that "[t]he EIR's right hand does not appear to know what its left hand is doing" (County of Inyo v. City of Los Angeles [1981]). No factual basis now exists to apply two substantially different analytical methodologies in the Final IBC/EIR and the DSEIR while, at the same, asserting a mere "supplement" (14 CCR 15163) is all that is necessary to make the Final IBC/EIR apply to the "revised project."

The inherent problem with regards to the manner in which the project is described leads to a fundamental deficiency with the DSEIR and negates its value for CEQA purposes. As indicated by the Lead Agency, the DSEIR "has been prepared to analyze revisions to the 2004 IBC Plan of Development analyzed in the IBC EIR (SCH #20033121086) and any environmental effects that are different than those identified in the certified IBC EIR. . .This SEIR will therefore analyze those specific issue that are different or of greater impact than those identified in the IBC EIR" (DSEIR, p. 4-1). Rather than describing and evaluating the NFL Stadium project as a "new project" (e.g., "the 2004 IBC Plan of Development did not include a stadium," DSEIR, p. 5.10-153), the existing environmental setting used by the Lead Agency for the purpose of impact assessment in the SDEIR is based on a hypothetical condition that does not now exist (e.g., "the SEIR considers the project approved in the IBC EIR as its baseline," DSEIR, p. 4-10).

The Lead Agency has inaccurately identified the environmental baseline. Other than through the preparation of independent environmental studies, neither the City nor the public have the ability to assess the environmental effects of the revised project NFL stadium based development project.

Inappropriate Tiering of Environmental Documents

As indicated in the Final IBC/EIR: (1) "This document has been prepared as a program EIR" (Final IBC/EIR, p. 2-7); (2) "[T]his document is a programmatic EIR and the project design is conceptual in nature" (Final IBC/EIR, Response to Comments, Response F-11); and (3) "The Industry

Business Center EIR is a program-level document" (Final IBC/EIR, Response to Comments, Response L-3).

As noted in 2004 by the Lead Agency: "The precise development of specific planning areas or specific projects cannot be determined at this time" (Final IBC/EIR, Response to Comments, Response C-5). The DSEIR acknowledges in several statements the "conceptual" nature of the "2004 IBC Plan of Development" and the subsequent transition from that earlier broad-based plan, based on the concept of individual "Planning Areas," to the "detailed" development plan now brought forward in the "revised Plan of Development" for the NFL stadium based project. Except through the preparation of an original "master EIR" (14 CCR 15169), which is not the case here, site-specific development proposals (particularly those as large as a NFL stadium based development project) are routinely categorized as "new projects" and agency's routinely conduct independent CEQA-compliance documents prepared for agency consideration.

At the time of certification of the Final IBC/EIR, the IUDA owned the property and sought to formulate a "preferred plan of development for the IBC" in order to "[p]rovide for comprehensive planning of the site" and to "[p]rovide private investment opportunities within the City to enhance the City's revenues" (Final IBC/EIR, p. 4-2). The Lead Agency concluded that 4,779,000 square feet of mixed office, commercial, and industrial use would obtain a higher price than lands allowing for "approximately 6,412,000 square feet of industrial building space" (Final IBC/EIR, p. 9-7).

CEQA states that a "program EIR" is "an EIR which may be prepared on a series of actions that can be characterized as one large project" and are related in specified ways (14 CCR 15168[a]). An advantage of using a program EIR is that it can "[a]llow the lead agency to consider broad policy alternatives and program wide mitigation measures at an early time when the agency has greater flexibility to deal with basic problems or cumulative impacts" (14 CCR 15168[b][4]). A "program EIR" is separate and distinct from a "project EIR" which is prepared for a specific project and must examine, in detail, site-specific considerations (14 CCR 15161).

In the sequence of environmental review, the Lead Agency seeks to move from a "program EIR" in which "no specific facility plans have been submitted for the IBC" (Final IBC/EIR, pp. 4-23 and 4-24) to a "project EIR" for a "regionally significant" NFL stadium based project while asserting that the appropriate environmental review is through the preparation of a "supplemental EIR" which need only focus on the "differences" between the hypothetical "buildout assumptions" used when building plans are unknown" (FEIR IBC/EIR, p. 4-23) to a detailed development plan with 2,985,000 square feet of commercial and office use and a NFL stadium of at least 1,900,000 additional square feet of building construction.

However, rather than only seeking to present "minor additions or changes (14 CCR 15163[a][2]), the Lead Agency seeks to rewrite the entire foundation upon which the remainder of the book is derived. As the story opens, the project's "baseline" is no longer the vacant site acknowledged in both the Final IBC/EIR and SDEIR but is now represented as a fully development property containing 4,779,000 square feet of commercial and office use.

The Lead Agency acknowledges that the "proposed signage program has not yet been finalized" (DSEIR, p. 3-22). Although the nature of the "signage program" is never disclosed, the Lead

Agency nevertheless acknowledges that the "proposed signage program" will "require an amendment to the municipal code" (DSEIR, p. 3-27). Code amendments are not typically processed unless: (1) existing policies need to be modified to accommodate a previously unauthorized use; and/or (2) a proposed use exceeds existing standards, necessitating a modification to those standards if the use is to be authorized. It is, therefore, unreasonable for the Lead Agency to assert or suggest that an activity requiring a code amendment is consistent with that code prior to the approval of such amendment. Absent from the DSEIR is any discussion of the existing nature of that inconsistency.

In essence, the Lead Agency is stating that Industry plans to amend its municipal code but will not tell the public how and to what extent that code will be amended, including any potential applications of that code amendment extending beyond the project boundaries. Since municipal code amendments can and typically often do have broad-based application beyond the specific site for which those amendments are initially proposed, the absence of any disclosure as to the precise nature of those amendments, the on-site and off-site application thereof, and the potential environmental effects of those changes are never disclosed in the EIR.

By failing to reasonably describe and evaluate a key project element (e.g., "proposed signage program") which, under the Lead Agency's own admission, will "play a significant role," the public is denied the ability to comment on the environmental effects of that element, assess the efficacy of any proposed measures or other actions formulated in response to those effects, and/or to suggest any reasonable alternatives thereto. Since the public has been denied the ability to consider and comment on the proposed code amendment(s), the Lead Agency's non-disclosure of that amendment (and its environmental implications) constitutes a violation of CEQA.

As evidence of both the defer of disclosure and the conversion of discretionary to ministerial actions, the DSEIR notes: "Prior to the approval of improvement plans for the surface parking areas east of Grand Avenue, the project applicant shall submit an off-street parking lighting plan for review and approval by the Department of Public Works" (PDF 1-18). Although the "[A]pplicant is required to submit an off-street parking lighting plan" and "the lighting plan is required to include the amount, location, height, and intensity of street and parking-area lighting" (DSEIR, p. 5.1-33), none of the "required" plans have been included in the DSEIR. However, even in the absence of those undisclosed lighting plans and undisclosed electronic billboards, the Lead Agency is nonetheless able to conclude that "nighttime lighting impacts would be less than significant and no mitigation measures are necessary" (DSEIR, p. 5.1-33).

Improper Use of a Supplement Environmental Impact Report

Under CEQA (14 CCR 15163), the Lead Agency is only authorized to prepare a supplement to an EIR (rather than a "subsequent EIR") if "only minor additions or changes would be necessary to make the previous EIR adequately apply to the project in the changed situation." Because "a supplement to an EIR need contain only the information necessary to make the previous EIR adequate for the project as revised," the Lead Agency's procedural approach (i.e., "supplemental EIR") is inconsistent with CEQA and only serves to minimize the disclosure of the NFL Stadium project's direct, indirect, and cumulative environmental effects, foreclose consideration of a full array of mitigation measures, and limit discussion of a range of reasonable alternatives.

Objectives used to derive the "2004 IBC Plan of Development" included, but were not limited to: (1) "Provide complementary commercial, professional and service uses to support manufacturing, distribution, and industrial uses within the City of Industry, and residential uses within the surrounding communities"; (2) "Allow for reasonable use of lands within the project site reflecting current and projected market demand considering adjacent existing and planned development"; and (3) "Initiation of capital improvement programs and incentives to serve existing Industry and to stimulate and support investment" (FEIR IBC/EIR, p. 4-2).

In contract, the objectives of the NFL Stadium project include, but are not limited to: (1) "To construct a state-of-the-art football stadium in conformance with or exceeding the generally accepted standards of design for National Football League stadiums, thus enabling the project applicant to acquire and maintain an NFL franchise in the greater Los Angeles area"; (2) "To provide a suitable venue capable of hosting a wide variety of regional entertainment events, such as concerts and other sporting events"; (3) "To develop facilities adjacent to the stadium that support and complement its use, including an NFL attraction, NFL team training complex, and associated retail and entertainment uses"; and (4) "To provide an iconic regional destination retail, entertainment, and commercial project" (DSEIR, p. 3-2).

The "2004 IBC Plan of Development" was designed and intended to accommodate a range of locally-serving land uses (e.g., "Provide complementary commercial, professional and service uses to support manufacturing, distribution, and industrial uses within the City of Industry," FEIR IBC/EIR, p. 4-2). In contrast, the "revised Plan of Development" is being designed to serve regional needs (e.g., "regional destination retail, entertainment, and commercial project," DSEIR, p. 3-2). This change in the general character of the proposed use(s) and the market base from those uses seek to draw constitutes a substantive change.

The DSEIR notes that "the revised Plan of Development seeks to create a retail/recreation destination and draws from a much larger region" (DSEIR, p. 7-9). In contrast, the "2004 IBC Plan of Development" sought to create "a mix of land uses more typical of the City of Industry and the industrial projects north of the site" (DSEIR, p. 7-9). The change from a local use to a regional magnet has far-reaching implications with regards to the revised project's environmental implications (e.g., alternatives analysis and cumulative impacts).

When the "2004 IBC Plan of Development" objectives are compared against the "revised Plan of Development," the two projects are substantially different both in purpose and intent (and thus in terms of environmental effects). One of the CEQA consequences of the Lead Agency's significant modification of the project's objectives is that such change produces an equally significant change in the range of reasonable alternatives formulated in response to those objectives. When comparing the Final IBC/EIR and the DSEIR, not only are the objectives different but so is the range of alternatives formulated in response to those alternatives. The fundamental change in the project's objective from those with a locally-based to a regionally-based focus have other far-reaching implications. Not only are the objectives themselves different but, as evidenced in the resulting analysis, so is the inventory of project's collectively producing cumulative impacts, the operational characteristics of the use comprising the "2004 IBC Plan of Development" and the

"revised Plan of Development," and the environmental impacts resulting from those substantially different projects.

According to statements in the DSEIR and publicly stated by Majestic, construction of Phase One must begin by December 2008 in order to meet the August 2011 scheduled stadium opening. Clearly, the Lead Agency has not allotted any time to conduct further project-level environmental review following certification of this EIR and prior to the initiation of grading operations. The Lead Agency's own project schedule constitutes substantial evidence that the DSEIR is intended to serve as the project-level CEQA compliance document for the NFL Stadium. In addition, the City of Industry's rejection of any additional time to allow the public and the two adjacent municipal governments an opportunity to review and respond to the DSEIR documents serves to refute any assertion by the Lead Agency that the DSEIR constitutes a "supplemental program EIR" but is clearly intended to serve as a "supplemental project EIR" and is being processed under an expedited schedule for entitlements and construction.

As specified under CEQA, the tiering of environmental review, as is now being proposed by the Lead Agency, "shall be limited to situations where the project is consistent with the general plan and zoning of the city or county in which the project is located" (14 CCR 15152). However, as indicated in the DSEIR, implementation of the "revised project" will necessitate: (1) zone change(s) (e.g., "approval of a revised Plan of Development and zone change," DSEIR, p. 3-2); (2) imposition of a general plan and/or zoning code overlay (e.g., "The project proponent has submitted an application for a P-D Overlay and has prepared a revised Plan of Development," DSEIR, p. 3-2; "with the implementation of a PD Overlay Zone, the proposed stadium, retail, office, entertainment, and sports related uses would be consistent with the City of Industry's zoning designation for the project site," DSEIR, p. 5.6-13); and (3) municipal code amendment(s) (e.g., "The proposed signage program would require an amendment to the municipal code," DSEIR, p. 3-27).

Additionally, a subsequent EIR is prepared when: (1) substantial changes are proposed in the project which will require major revisions of the previous EIR 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 due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; and/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 shows any of the following (a) the project will have one or more significant effects not discussed in the previous EIR, (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 proponent declined 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 proponent declined to adopt the mitigation measure of alternative (14 CCR 15162[a]).

By undertaking the preparation of a supplemental EIR, the Lead Agency acknowledges that one or more of the conditions specified in Section 21166 of the Public Resources Code (PRC) and/or Section 15162(a) of the California Code or Regulations (CCR) now exists, otherwise, the Lead Agency would have no reason to prepare a "supplemental EIR."

Since a "supplement to an EIR need only contain the information necessary to make the previous EIR adequate for the project as revised" (14 CCR 15163[a][b]), it would appear inappropriate for the Lead Agency to suggest that the introduction of a new, 75,000-seat professional football stadium based development project designed to accommodate the Super Bowl and a wide array of other "sell-out events," could be fully examined with "only minor technical changes or additions" to the Final IBC/EIR.

Failure to Satisfy CEQA Standards for a Supplemental EIR

Because the project's baseline is misrepresented in the DSEIR, the Lead Agency's resulting environmental analysis also misrepresents the nature and severity of the project's environmental effects. As such, the information presented in the DSEIR neither constitutes a credible source for nor a determinant of whether the "revised project" satisfies applicable CEQA criteria warranting the preparation of a subsequent. A Lead Agency cannot prepare an inadequate EIR and then seek to rely on the information presented therein. Similarly, commenting parties should not be tasked with performing the work that CEQA requires the Lead Agency to perform.

Notwithstanding the inadequacies of the DSEIR and the problems those inadequacies impose on the City and the affected public, substantial evidence exists to support each of the criteria contained in CEQA calling for the preparation of a "subsequent EIR." Substantial evidence addressing each of those criteria is provided below and can be found elsewhere throughout the City's comments.

- **Substantial changes are proposed in the project** (14 CCR 15162[a][1] and 15163[a][1]).

  Differences exist between the "2004 Plan of Development" and the "revised Plan of Development" (e.g., introduction of a new 75,000-seat NFL Stadium designed to accommodate the Super Bowl), the Final IBC/EIR was identified as a "program EIR" while the DSEIR is assumed to constitute a "supplemental project EIR." Under CEQA, the degree of specificity required in an EIR corresponds with the degree of specificity involved in the underlying activity. CEQA requires that an EIR prepared on a construction project be more detailed in the specific effects of the project than an EIR prepared for the adoption or amendment of a local general plan or zoning ordinance which focuses on those secondary effects that can be expected to follow from adoption or amendment (14 CCR 15146).

  As indicated in the Final IBC/EIR: "The intent of the EIR is to provide sufficient information on the potential environmental impacts of the proposed Industry Business Center Plan of Development to allow the City of Industry to make an informed decision regarding approval of the plan" (Final IBC/EIR, p. 2-1). The Final IBC/EIR was based on the premise that the "precise development of specific planning areas or specific projects cannot be determined at this time" (Final IBC/EIR, Response to Comments, Response C-5). In contrast, the

DSEIR examines the "implementation of the revised Plan of Development," including "subsequent development" (DSEIR, p. 1-1). As a result, the two documents' different intents and the substantive differences in the level of specificity of the resulting EIRs (as required under CEQA) constitutes substantial changes in both the nature of the "project" under consideration and the CEQA documentation required to address those changes.

- **Substantial changes to the circumstances under which the project is undertaken** (14 CCR 15162[a][2] and 15163[a][1]).

With regards to ensuring that traffic impacts are fully mitigated, the Final IBC/EIR acknowledged the "critical importance of maintaining traffic flow through" the SR-57/60 interchange (Final IBC/EIR, Response to Comments, Response N-19). As indicated in the Final IBC/EIR: "Because of the critical importance of maintaining traffic flow through this interchange, the City of Industry will initiate the long process of planning, designing and constructing needed improvements. Modifications to Mitigation Measure 5.14-1 commit the City of Industry to prepare a Project Study Report/Project Report and associated environmental documentation as required [by] Caltrans and complete the design for the interchange improvements prior to occupancy of any non-public buildings at the IBC" (Final IBC/EIR, Response to Comments, Response N-19).

"Mitigation Measure 5.14-1" stated, in part, that "Industry shall work cooperatively with responsible agencies, including Caltrans, County of Los Angeles and the Cities of Diamond Bar, Pomona, Walnut and West Covina and other appropriate agencies to secure funding for and to cause the implementation of the following or equivalent traffic improvements. . .The City of Industry shall fully fund and build the traffic improvements to the Grand Avenue and SR-57/60 Interchange as indicated in 2015 mitigation measures. The City [of Industry] shall fully fund the cost of preparing any necessary Project Study Report/Project Report and associated environmental documentation for the interchange improvements and complete design drawings per Caltrans specifications prior to the first occupancy of any building in the Industry Business Center. Construction of the improvements shall commence when the total traffic volume from project intersections on Grand Avenue reaches 2,000 PM peak hour trips (in and out) or the volume at Intersection #56 [Brea Canyon Cutoff at Pathfinder Road] reaches 7,500 peak hour trips (in and out), which is determined to be the threshold volume where level of service would be near unacceptable" (Final IBC/EIR, p. 1-38; FOF/SOQ, p. 3-28).

As now noted in the DSEIR, "Mitigation Measure 5.14-1" is "not retained from the 2004 IBC EIR" (DSEIR, p. 5.10-190). More specifically, the DSEIR states that "improvements to this interchange would include modifications to the Grand Avenue interchange, a new bypass, collector and distributor roads, auxiliary lanes, and improvements ramps, independent of the revised Plan of Development" (DSEIR, p. 4-9) and "improvements that are planned to be constructed in the future and are not related to the revised Plan of Development include the Grand Crossing Development project, City of Industry improvements along Grand Avenue, and Caltrans improvements for the SR-57/SR060 Confluence at Grand Avenue" (DSEIR, p. 5.10-41). As such, not only does the Lead Agency now seek to eliminate its obligations under "Mitigation Measure 5.14-1" but it also rejects any obligation to prepare

any "necessary Project Study Report/Project Report" as may be required to advance design and engineering and to provide any funding in furtherance of those improvements. Instead of fulfilling its stated mitigation obligations, the Lead Agency now seeks to defer its obligations to both Caltrans and to other affected public agencies and private parties.

There exists no information in the Final IBC/EIR and/or in the DSEIR demonstrating Caltrans' ability to implement those improvements in any time period commensurate with the development of the "revised project." Presently, no design plans have been finalized and no funding has been allocated by Caltrans for those traffic improvements which are delineated in Mitigation Measure 5.14-1. As such, no factual information has been provided to indicate that traffic conditions on the SR-57/60 corridor and along Grand Avenue will, in fact, be as presented in the DSEIR.

As further indicated in the DSEIR: "The improvements that are planned to be constructed in the future, and are not related to the proposed Industry Business Center project, include. . .Caltrans improvements for the SR-57/SR-60 Confluence and Grand Avenue" (DSEIR, Appendix H, p. 54). The DSEIR then asserts that the "City of Industry or the project applicant is only responsible for a fair-share of improvements attributable to the project related traffic generated from the revised Plan of Development" (DSEIR, p. 5.6-23). In the Final IBC/EIR, the Lead Agency commits to the payment of the entire cost of identified traffic improvements. However, in the DSEIR, the Lead Agency rejects that measure and commits only to the payment of a "fair-share" of those costs.

The DSEIR states that "the project is expected to cause significant traffic impacts at four of the five freeway mainline segments under Year 2015 conditions, as follows: [1] SR-60 east of Nogales (eastbound) – Project fair-share percentage: 20.2%. [2] SR-60 west of Brea Canyon Road (eastbound) – Project fair-share percentage: 20.1%. [3} SR-60 east of Junction SR-57 North (eastbound) – Project fair-share percentage: 19.9%. (4) SR-57 south of Pathfinder Road (northbound) – Project fair-share percentage: 13.2%" (DSEIR, Appendix H, p. 164). The change from the payment of 100% to the payment of 13.2 to 20.2% constitutes a substantial change to the circumstances under which the project is undertaken.

- **Project will have significant effects not discussed in the previous EIR** (14 CCR 15162[a][3][A] and 15163[a][1]).

In order to compare the impacts presented in the Final IBC/EIR and those addressed in the DSEIR, in light of the Lead Agency's assertion that "a Supplement to the 2004 Industry Business Center Environmental Impact Report is necessary" (NOP), since a supplemental EIR can only be used in which circumstances where a "minor change" is proposed to a project with a certified EIR, the City would anticipate the impacts outlined in the Final IBC/EIR would be carried over (generally verbatim) to the DSEIR and the minor changes between the "2004 IBC Plan of Development" and the "revised Plan of Development" would be clearly identified and examined in the context of those same carried forth measures. However, rather than seeking anything approximating the same list of environmental

impacts, the effects presented in the Final IBC/EIR are virtually ignored and a totally new set of impacts (generally absent from the Final IBC/EIR) are identified in the DSEIR.

For example, posited in the form of questions, the Final IBC/EIR lists the following aesthetic impacts with respect to the "2004 IBC Plan of Development"; (1) "Would the project have a substantial visual effect on a scenic vista" (Final IBC/EIR, p. 5-19); and (2) "Would the project substantially degrade existing visual character or quality of the site and its surroundings" (Final IBC/EIR, p. 5-36). In contrast, posited in the form of pre-drawn conclusions, the DSEIR lists the following aesthetic impacts with respect to the "revised Plan of Development"; (1) "The revised project would not substantially degrade the aesthetic quality of the area in the context of the visual character of surrounding vicinity" (DSEIR, p. 5.1-18); and (2) "The revised project would not create a new source of substantial light or glare that would adversely affect day or nighttime views in the area" (DSEIR, p. 5.1-19). As a result, in the DSEIR, the Lead Agency has presented a format which prevents both a ready comparison between the two documents and a clear assessment of the impacts attributable to the "revised project."

More significantly, as evidenced by these variations, the DSEIR: (1) identifies new impacts that were not addressed in the Final IBC/EIR; (2) elevates the potential significance of impacts that were described therein; and/or (3) fails to bring forward for supplemental analysis impacts that were identified in the Final IBC/EIR.

A comparative analysis of the existence of potential environmental effects is made more difficult by the Lead Agency's failure to carry forward the same threshold of significance criteria listed in the Final IBC/EIR and to utilize a consistent set of threshold standards in the DSEIR. For example, under the assessment of "population and housing," the Final IBC/EIR stated that: "SCAG views significant impacts as those which would: Result in population, housing and employment growth inconsistent with the regional level of growth projected under the Southern California Association of Government's Regional Comprehensive Plan" (Final IBC/EIR, p. 5-272). No comparable threshold of significant standard is, however, found in the DSEIR (DSEIR, p. 5.18-12).

The "revised project" will have numerous "new" significant effects which were neither discussed nor deemed to be significant in the previous EIR. For example, the Lead Agency notes:

(1) "Because the 2004 IBC Plan of Development did not include a stadium, the 2004 IBC EIR did not identify any significant impacts related to project-generated traffic associated with large scale event traffic" (DSEIR, Impact 5.7-4, p, 5.7-43). With regards to Impact 5.7-4, the DSEIR notes: "No mitigation measures are feasible to reduce noise generated by project-related traffic to below the City's significance threshold. . .Traffic noise impacts are a new significant impact of this SEIR" (DSEIR, p. 5.7-111).

(2) "The 2004 IBC EIR did not identify any significant impacts related to project-generated mobile-source or train noise" (DSEIR, Impact 5.7-5, p, 5.7-75). With regards to Impact 5.7-5, the DSEIR notes: "No mitigation measures are feasible to

reduce single-event noise generated by project-related traffic to below the City's significance threshold. The 2004 IBC EIR did not evaluate noise from project-generated train traffic because the original IBC EIR did not generate train activities. Single-event train noise impacts are a new significant impact of this SEIR" (DSEIR, p. 5.7-111).

(3) "Because the 2004 IBC Plan of Development did not include a stadium, the 2004 IBC EIR did not identify any significant stadium-related noise impacts" (DSEIR, Impact 5.7-7, p, 5.7-80). With regards to Impact 5.7-7, the DSEIR notes that "no mitigation measures would [be] available to reduce noise from nighttime cleanup activities in the stadium, parking lot, fireworks and noise generated by helicopters. In addition, impacts from a concert would extend beyond the local vicinity of the project site and are a significant adverse impact. . .Consequently, noise impacts generated during a stadium event are considered significant and unavoidable. . .Stationary-source noise impacts associated with operation of the stadium, including parking areas and helicopters, are a new significant impact of this SEIR" (DSEIR, pp. 5.7-111 and 112).

(4) "The 2004 IBC EIR did not identify any significant vibration impacts associated with operation of the revised [sic] project" (DSEIR, Impact 5.7-8, p, 5.7-93). With regards to Impact 5.7-8, the DSEIR notes: "No mitigation measures are feasible to reduce vibration generated by project-related train traffic to below the level of perception. Impacts from project-generated trains are considered significant and unavoidable. . .Single-event train vibration impacts are a new significant impact of this SEIR" (DSEIR, p. 5.7-112).

As further indicated in the project's "noise" analysis:

(1) "The 2004 IBC EIR did not evaluate mobile-source noise impacts associated with large numbers of people leaving during the off-peak hour. Consequently, mobile-source noise impacts associated with the flux of traffic after a game or concert ends is a new significant impact of this SEIR" (DSEIR, p 5.7-62).

(2) "Noise levels at the nearest residences could reach 70 dBA Leq. Impacts from a concert event are a significant adverse impact. The 2004 IBC EIR did not evaluate stationary-source noise impacts associated with stadium noise. Consequently, operational-source noise impacts associated with the stadium is a new significant impact of this SEIR" (DSEIR, p. 5.7-83).

(3) "The 2004 IBC EIR did not evaluate ingress/egress-source noise impacts associated with a large flux of people entering/existing the project site at once during a stadium event as the 2004 IBC EIR would not have generated impacts in this manner. Consequently, ingress/egress-source noise impacts associated with the stadium is a new significant impact of this SEIR" (DSEIR, p. 5.7-83).

(4) "Because the 2004 IBC EIR land uses would not have promoted the use of parking lots in this manner, operational-source noise impacts associated with the tailgating in the parking lots is a new significant impact of this SEIR" (DSEIR, p. 5.7-84).

(5) "Because the 2004 IBC EIR land uses would not have prompted the use of helicopters in this manner, this would be considered a new mobile-source impact of this SEIR" (DSEIR, p. 5.7-84).

(6) "Because the 2004 IBC EIR land uses would not have generated trains in this manner, train-related vibration impacts associated with the stadium is a new significant impact of this SEIR" (DSEIR, p. 5.7-93).

(7) "[I]mpacts identified for train noise and vibrations are new significant cumulative impacts of this SEIR" (DSEIR, p. 5.7-108).

As further indicated in the project's "air quality" analysis:

(1) "The 2004 IBC EIR did not evaluate global climate change impacts. . .impacts from GHG [greenhouse gases] associated with construction-related activities would be cumulatively significant" (DSEIR, pp. 5.2-38 and 39).

(2) "[T]he total annual amount of CO2 emissions generated by operation of the revised Plan of Development would be substantial and therefore cumulatively significant" (DSEIR, p. 5.2-41).

(3) "[T]he revised Plan of Development's GHG emissions and contribution to global climate change impacts would be considered cumulatively considerable and therefore cumulatively significant" (DSEIR, p. 5.2-43).

(4) "The project's contribution to global climate change is a new cumulatively significant impact in this SEIR" (DSEIR, p. 5.2-44).

- **Significant effects previously examined will be substantially more severe** (14 CCR 15162[a][3][B] and 15163[a][1]).

As a result of the EIR's analytical methodology, a comparative assessment of the "2004 IBC Plan of Development" and the "revised Plan of Development" is virtually impossible (e.g., "the trips generated by the revised project represent a decrease from those projected for the 2004 IBC Plan of Development," DSEIR, p. 5.2-20). Commenting agencies and the affected public are, therefore, placed at an unfair disadvantage because, unless those parties were to conduct their own independent analysis (a feat which could not be realistically completed within the limited comment period established by the Lead Agency), the only basis for comparison is the information presented in the DSEIR.

As indicated below, based only on the information which is presented, numerous examples of the increased severity of environmental impacts attributable to the "revised project" can, however, be extracted from the EIR.

(1) "While the land use impacts at many intersections affected in the 2004 IBC EIR have been eliminated, seven new intersections would be affected by the traffic mitigation for the revised Plan of Development" (DSEIR, p. 5.6-55).

(2) "Traffic noise impacts would be greater than those identified in the 2004 IBC EIR because this SEIR identifies nighttime traffic noise after an event that was not previously analyzed in the 2004 IBC EIR because the 2004 IBC Plan of Development did not include a stadium. Traffic noise impacts are a new significant impact of this SEIR" (DSEIR, p. 5.7-111).

As indicated in the Final IBC/EIR, all impacts on fire protection services could be mitigated to "less than significant" (Final IBC/EIR). However, as indicated in the project's "public services and utilities and service systems" analysis, the DSEIR now concludes: (1) "because the City of Industry cannot ensure that the County Fire Department will commit to its operation, this impact is considered significant and unavoidable" (DSEIR, p. 5.9-5); and (2) "because the operation of the fire station is the responsibility of the LACFD [Los Angeles County Fire Department] and the City of Industry cannot ensure its operation, the impact of new, recently completed and proposed developments in the eastern part of Industry is considered a significant cumulative impact and the revised project is considered cumulatively significant" (DSEIR, p. 5.9-5).

- **Mitigation/alternatives previously found not to be feasible would be feasible** (14 CCR 15162[a][3][C] and 15163[a][1]).

As indicated in the Final IBC/EIR, under the heading "Alternatives Considered and Rejected during the Scoping/Project Planning Process," with regards to the inclusion of an "alternative sites" alternatives analysis, the Lead Agency concluded that "[n]o sites of this size were identified" (Final IBC/EIR, p. 9-3). Based on those findings, in the Final IBC/EIR, the Lead Agency rejected consideration of any "Alternative Sites" (Final IBC/EIR, p. 9-3). In contrast, the DSEIR included an "Alternative Sites" analysis and, in fact, identifies a number of alternative sites, including an alternative site "considered environmentally superior to the revised Plan of Development" (DSEIR, p. 7-22).

- **Mitigation/alternatives considerably different from those in the previous EIR** (14 CCR 15162[a][3][D] and 15163[a][1]).

The Final IBC/EIR, the DSEIR acknowledges that numerous mitigation measures and other conditions of approval for the "2004 IBC Plan of Development" have been eliminated and deemed inapplicable to the "revised Plan of Development." As indicated in the DSEIR: (1) "These mitigation measures have not been carried through to this SEIR as the revised project would eliminate the current conceptual Planning Areas of the previous 2004 IBC Plan of Development (which outlines potential uses that could be development within each Planning Area) in favor of a development plan that would include site-specific uses" (DSEIR, pp. 5.4-9 and 5.5-32); (2) "Some of the previous PDFs [Project Design Features] were deemed unnecessary because they were originally intended to provide guidance for a conceptual Plan of Development that included Planning Areas rather than the detailed project description and site plan presented in the revised Plan of Development" (DSEIR, p. 5.1-15); and (3) "The following mitigation measure from the 2004 IBC EIR is no longer applicable and has not been carried through to this SEIR" (DSEIR, pp. 5.2-48, 5.3-24, 5.4-13, and 5.5-31). Each of those changes are too numerous to individually list herein. However, a listing can be found following each of the page referenced cited above.

As noted in the Final IBC/EIR, "the 2004 IBC EIR noted that the proposed landscaping as well as other PDFs established for the 2004 IBC Plan of Development would reduce visual impacts. . .While some residents would experience a change in views, such view impacts would be mitigated through PDFs and a buffer zone between the proposed structures and

residential communities. . .Therefore, upon incorporation of the PDFs, view impacts were found to be less than significant" (DSEIR, p. 5.1-2). Based on those statements, it is evident that the Lead Agency acknowledges the importance of the adopted PDFs in reducing otherwise significant visual impacts to a less-than-significant level.

As required under CEQA, the Lead Agency is required to "adopt a reporting or monitoring program for the changes made to the project or conditions of project approval, adopted in order to mitigate or avoid significant effects on the environment. The reporting or monitoring program shall be designed to ensure compliance during project implementation (§21081.6[a][1]). CEQA further stipulates that "[m]itigation measures must be fully enforceable through permit conditions, agreements, or other legally-binding agreements" (14 CCR 15126.4[a][2]).

As noted in the Final IBC/EIR: "In the City of Industry, PDFs will be implemented as Special Development Requirements, and their implementation will be assured through inclusion in the mitigation monitoring and reporting program" (Final IBC/EIR, p. 2-6). As noted in the MMP, each of the PDFs identified in the Final IBC/EIR were, in fact included in the Lead Agency's MMP for the "2004 IBC Plan of Development."

Because, in the Final IBC/EIR, PDFs were elevated to the status of "mitigation measures" under CEQA, there inclusion in the MMP provided reasonable assurance that those features would be implemented and enforced. It is, therefore, the declaration of the Lead Agency (as stated in the first-tier EIR) that "Project Design Features" are "mitigation measures" and constitute enforceable project-level commitments made by the Lead Agency to ensure that environmental impacts will be reduced to the maximum extend feasible. Many of the PDFs presented in the Final IBC/EIR have been eliminated or substantially modified.

The Lead Agency has not provided substantial evidence to support the elimination of mitigation measures adopted following certification of the Final IBC/EIR. When the substitute PDFs presented in the DSEIR, and presenting the rational for the rejection of adopted PDFs, are compared with the replacement PDFs, the "revised Plan of Development" is invalidated.

CEQA requires that the "discussion of mitigation measures shall distinguish between the measures which are proposed by project proponents to be included in the project and other measures proposed by the lead, responsible or trustee agency or other persons which are not included but the lead agency determines could reasonably be expected to reduce adverse impacts if required as conditions of approving the project" (14 CCR 15126.6[a][1][A]).

The City believes that there exists no supportable basis, either under CEQA or as a result of the precise nature of the "revised project" now under consideration for use of a "supplemental EIR" for the NFL Stadium based development project. Because the proposed 75,000-seat stadium should more appropriately be considered a "new project" rather than a "minor addition or change" to an

existing project (14 CCR 15163[a]), the Lead Agency is obligated to prepare either a "subsequent EIR" or a new "project EIR".

Project Description Inclusive of Two Professional Sports Teams

As reported by the San Gabriel Valley Tribune on August 28, 2008: "Majestic Realty Vice President John Semcken" said that he "believes there is a possibility two NFL teams could wind up playing in the $800 million stadium Roski wants to build in Industry." As reported in the Daily Titan on September 9, 2008: "The stadium has a chance of not just hosting one franchise, but two. The construction plans for the stadium are for two teams, according to Semcken. . .This stadium is designed to accommodate two teams."

Based on the Applicant's own admission, there is clear intent to secure "two teams." Since the Applicant currently has no NFL team(s) and since the prospects of securing one or two teams seem equivalent, the Lead Agency cannot, without even acknowledging that a second team could play at the NFL Stadium, fail to include that analysis as part in the EIR.

As now drafted, the DSEIR states that "NFL home games would occur up to 12 times a year at the stadium. These events would consist of 2 preseason games, 8 regular season games, and up to 2 playoff games" (DSEIR, p. 5.9-8). Ignoring possible use by one or more college teams, or professional soccer teams, at a minimum, if a second team were added to the stadium's roster, those numbers would at least double. Potential impacts associated with a doubling of the site's NFL stadium use are not addressed in the DSEIR and no prohibition again an expanded use have been nominated by the Applicant or formulated by the Lead Agency. The "revised project" should incorporate, as part of the "project description," the use of the NFL Stadium by two teams (e.g., two professional football teams; one professional football team and one professional soccer team).

Incomplete and Inaccurate Project Description

The courts have stated that "all of the participants in the CEQA process must have the opportunity to test the 'no project' and 'project' descriptions. These definitions must run the gauntlet of CEQA process scrutiny to acquire legitimacy" (County of Inyo v. City of Los Angeles [1984]). An adequate project description is important in that it ensures that CEQA's goals of providing information about a project's environmental impacts to government agencies and the public to allow consideration of mitigation measures and alternatives not be rendered useless (County of Inyo v. City of Los Angeles 1981]).

The courts have indicated that "CEQA contemplates serious and not superficial or pro forma consideration of the potential environmental consequences of a project" and emphasizes "the importance of an accurate project description to fulfilling the goals of CEQA" (Leonoff v. Monterey County Board of Supervisors). The courts have further stated that a "curtailed or distorted project description may stultify the objectives of the reporting process. Only through an accurate view of the project may affected outsiders and public decision-makers balance the proposal's benefit against its environmental cost, consider mitigation measures, assess the advantage of terminating the proposal (i.e., the 'no project' alternative) and weigh other alternatives in the balance. An accurate, stable and finite project description is the sine qua non of an informative and legally

sufficient EIR" (County of Inyo v. City of Los Angeles). The courts have repeatedly held that the purpose of CEQA "is to inform the public and its responsible officials of the environmental consequences of their decisions before they are made" (Laurel Heights Improvement Association v. University of California).

Pursuant to CEQA, a "project" is defined to mean "the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment" (14 CCR 15378[a]). The entire project being proposed must be described in the EIR as a complete project description necessary to ensure that all of the project's environmental impacts are considered (City of Santee v. County of San Diego).

By focusing only upon what is "different" (DSEIR, p. 4-1) between the "2004 IBC Plan of Development" and the proposed revisions to that plan, rather than focusing on the "revised project" itself, the Lead Agency has inappropriately sought to carve off a certain portion of the project (including the potential environmental effects thereof) for the apparent purpose of precluding or otherwise limiting the disclosure of those effects, thus preventing the preparation of an accurate environmental assessment of the "revised Plan of Development."

Neither the programmatic Final IBC/EIR nor the approval of a "Plan of Development" that followed that document's certification established any vested rights with regards to any precise entitlements to the real property addressed therein (e.g., "actual development levels would depend on approved plans for future projects," Final IBC/EIR, p. 4-23; "The precise development of specific planning areas or specific projects cannot be determined at this time," Final IBC/EIR, Response to Comments, Response C-5). Since densities are typically represented as a range rather than a precise number, neither a general plan nor a zoning designation, in and of themselves (absent a development agreement or vesting subdivision map), create an entitlement for a specified floor-area-ratio or square footage of any use that may be authorized therein. Similarly, any predevelopment expenditures that may have been undertaken by the Applicant or the Lead Agency do not establish any vested rights.

Although the Final IBC/EIR was previously certified, no discretionary actions were subsequently taken by the Lead Agency with regards to the property now the subject of the DSEIR (e.g., "A Plan of Development was prepared for the IBC in 2004 with the intention of rezoning to Commercial when individual projects were presented. No areas have been zoned for commercial use and the project site remains [designated as] Industrial," DSEIR, p. 5.6-4). As such, the "revised project" does not constitute a modification of an existing permit that had been issued by the Lead Agency or which any authorization which become final (whereby a party had been granted a legal right to build). As such the "revised Plan of Development" constitutes a "new project" under CEQA.

The Lead Agency's approach to the assessment of the NFL Stadium project, whereby the square footage contemplated in the Final IBC/EIR can be subtracted from the proposed "revised Plan of Development" (as the basis for defining the proposed action and assess the environmental effects of the "revised project") is unreasonable since no precise entitlements are, in fact, in place and no use rights have been granted.

As indicated in the Final IBC/EIR, with regards to the "2004 IBC Plan of Development, the "precise development of specific planning areas or specific projects cannot be determined at this time" (Final IBC/EIR, Response to Comments, Response C-5). Notwithstanding that declaration, the DSEIR is based, in part, on the false assumption that "the revised Plan of Development would result in 1,161,000 square feet less of office and commercial use" (DSEIR, p. 5.6-13). Since no precise entitlements now exists, the unanswered question arising from the Lead Agency's assertion is "less' than what?" Unlike a situation where an existing use is being demolished to make way for a new use (such that actual vehicle trips attributable to the existing use would be removed from area's roadways), although offering an interesting accounting exercise, this mistaken approach has no application to CEQA.

Without conceding to the accuracy of the figure, the EIR's air quality study discloses that "1,000,000 square feet are allocated for the stadium structure" and an additional "1,390,000 square feet are allocated to the parking structure (DSEIR, p. 5.2-22; Appendix C, pp. 19 and 20). Based on available information, the 1,000,000 square foot figure is, at best, a gross underestimation of the actual square footage of the stadium. Public presentations by Majestic Realty have revealed the size of the stadium at 1,900,000 square feet which is consistent with recent similar sized stadium projects across the country.

As reported by the Wall Street Journal on September 27, 2004, "larger concourses, more concessions and ample bathrooms have all become hallmarks of football stadiums." As a result, with regards to the current size of NFL stadium's "1.6 million to two million square feet is [the] standard size now, compared with one million to 1.2 million square feet before, but seating capacities haven't changed."

The absence of the estimated 1,900,000 square feet of new "regional destination" development is not limited to only the EIR's "project description" but permeates each of the accompanying technical analyzes presented therein. No analysis of and no mitigation for those additional construction-term impacts (inclusive of greenhouse gas emissions) is presented in the DSEIR.

The Applicant has established an Internet website which provides information concerning the proposed development (http://www.losangelesfootballstadium.com/stadium). As indicated therein, the proposed 75,000-seat stadium will be built so as to be "expandable to 80,000 for Super Bowl games" (http://www.stadiumsofnfl.com/future/LAStadium.htm). The presence of an additional 5,000 undisclosed fans represents an approximately seven percent increase in in-seat stadium attendance above the figures represented in the DSEIR. Absent from the DSEIR is any analysis of the potential impacts of an additional 5,000-seated fans at a Super Bowl game and at any of the "30 major sell-out events" (DSEIR, p. 3-31) or "45 major events per year" (DSEIR, Table 5.8-7). Since no analysis is presented, the potential impacts attributable to and the potential need for additional or expanded mitigation resulting from that added attendance are not considered in the DSEIR.

The DSEIR never states whether the terms "75,000 seats" and "maximum allowable attendance" are synonymous. In a newspaper article describing the NFL Dallas Cowboys' new stadium in Arlington, Texas, the Los Angeles Times on October 1, 2008 reports that "[f]ans will be able to buy standing-room tickets to watch from areas high above either end zone. . .Or they can picnic outside

and follow the action on gigantic video screens." Many arenas can increase attendance by selling "standing room tickets" and providing for "in-field" seating during concert events, as well as including designated areas to accommodate physically disabled fans.

Similarly, the "75,000-seat" figure (or even the Applicant's stated 80,000-seat expansion capabilities) does not appear inclusive of a wide range of other individuals that would be expected to be within the stadium, including those occupying the luxury boxes or other VIP areas, athletes, trainers, coaches, referees, other team personnel, sponsors, sponsors' representatives and other personnel, medics, media representatives, sound crews, stadium officials, vendors, concessionaires, ushers, security and law enforcement personnel, maintenance crews, scouts, agents, drivers, aids, personal assistants, cheerleaders, color guards, marching bands, entertainers, performers, and any of a larger group of others that would be expected to be in attendance during a "major" event.

In addition to the stadium itself, the Applicant seeks to develop "an iconic regional destination of retail, entertainment, and commercial project" (DSEIR, p. 3-2). Besides those individuals drawn to the game itself, a substantial number of other people would be expected to be on the site in order to enjoy the "associated retail and entertainment uses" (DSEIR, p. 3-2). The Lead Agency confirms that the stadium would "be connected to other uses that may include several football-themed attractions, including NFL-themed attractions, football-themed dining, sponsored areas, team/retail stores, club/banquet/ conference space, team offices, and other retail facilities" (DSEIR, p. 3-12). Since not all fans can afford the price of tickets, it is likely that these areas would draw large attendance independent of the stadium itself.

By defining total attendance as the 75,000-seat stadium, the Lead Agency seeks (by failure of analysis or intentional misrepresentation) to under-represent the actual impacts of the project. Since many environmental issues stem (directly, indirectly, or ultimately) from the number of individuals that could potentially be on the property site at any one time, it is critical that the Lead Agency attempt to accurately represent those conditions that could occur should the project be developed. Unless both the Lead Agency and the Applicant intent to impose and enforce site-access restrictions to the project site to everyone unless they possess game-day tickets, the assertion that, "[o]n game days, the stadium-related uses are not expected to generate additional trips beyond traffic generated by the game" (DSEIR, p. 5.10-28) is clearly erroneous because it fails to understand and accurately represent both the intended and the actual nature of intended on-site use.

In order to purport a reduction in traffic and parking requirements, the DSEIR asserts that "[o]ffices would be closed prior to the start of weekday games" (DSEIR, p. 3-21) and the "medical office and general office components will be closed before 2:00 PM on game days" (DSEIR, Appendix H, p. 37). However, in contrast, the "project description" states that "office" hours will extend between "6:00 AM to 6:00 PM" (DSEIR, p. 3-21). With 75,000+ fans on the property at any one time, there would clearly be a benefit to encourage the "medical center (out patient)" (DSEIR, p. 3-11) and "sports medical center and clinic" (DSEIR, p. 3-20) to remain open to assist other on-site personnel deal with the many medical problems that would routinely and non-routinely be expected to occur during the "major events."

It is readily apparent that attendance figures can and will exceed the assumptions presented in the DSEIR. No provisions are, however, made by the Lead Agency to either limit the operational characteristics of the project to only those assumptions described in the EIR (i.e., 75,000-seats) or to institute additional off-setting measures to mitigate the incremental increase in environmental effects attributable to higher attendance levels above those stated assumptions. In the absence of those restrictions and/or off-sets, the Lead Agency's actions would constitute a violation of CEQA.

Although the "revised project" is generally represented as a new "NFL Stadium," it is evident that the proposed venue is, in reality, intended to accommodate a much larger regional entertainment draw. As indicated in the DSEIR, assuming only one NFL team, a "typical year" would include only 12 pre-, regular-, and post-season home games (for a total of 12 annual NFL football games). However, a "total of 30 major sell-out events" and "15 minor events with attendance of 25,000 or less" (DSEIR, p. 3-21) are proposed.

Absent from the DSEIR are any conditions or other measures restricting the number of "major" and "minor" events to the numbers indicated, thus allowing for a substantial increase in on-site uses beyond the number assumed by the Lead Agency and serving as the bases upon which the project's impact assessment is derived. Similarly, the Lead Agency identifies a third category of on-site events, namely "special events" (DSEIR, p. 3-28); however, that term is never defined and, because its separate categorization remains elusive, may be distinct from other "major" and "minor" events.

In contrast to the declarations presented in the DSEIR, "[a]t the time of its opening, it was estimated that Reliant Stadium and Reliant Park would host more than 400 events each year" (http://www.houstonarchitecture.info/Building/537/Reliant_Stadium.php). Similarly, "Ford Field hosts more than 120 events per year" (http://www.dexigner.com/design_news/4147.html). In the absence of explicit and enforceable restrictions, attendance at the proposed NFL Stadium must be assumed be comparable to that found at other similar venues.

Since the stated objectives of the project include the provision of a "suitable venue" capable of hosting "other sporting events" (DSEIR, p. 3-2), what is left unaddressed is what types of "other sporting events" are now envisions and which other events could potentially occur. One important and unanswered question is whether the stadium is being designed or would be readily adaptable to accommodate the playing fields and spatial configuration of any other professional sport. Although a declared project objective, the term "suitable venue" is left undefined both by the Applicant and by the Lead Agency.

As reported by the San Gabriel Valley Tribune on August 28, 2008: "Majestic Realty Vice President John Semcken" said that he "believes there is a possibility two NFL teams could wind up playing in the $800 million stadium Roski wants to build in Industry."

Once the stadium is built, since the presence of a second team has already been stated by the Applicant, it would be disingenuous for the Lead Agency to subsequently disclose the addition of a second major stadium user, to authorize that expanded use under the same set of entitlements as may be issued for the stadium's initial construction, or to limit a later CEQA review to the incremental environmental effects associated with that expanded site use.

Since the term "generally" is neither defined nor conditioned, the statement that "[s]tadium uses for concerts and other sporting events would generally be limited to Saturday and Sundays" (DSEIR, p. 3-21) has no informative value under CEQA, imposes no limitations or restrictions on the Applicant, and seriously devalues any environmental analysis relating (directly, indirectly, and/or cumulatively) to the site's intended use. Because "generally" imposes no inherent limitations or restrictions with regards to the site's ultimate use, the DSEIR includes no factual bases to state that "except for limited use on weekdays (not more than two games/large events a year), the stadium will not be used for games/large events during Monday through Friday" (DSEIR, Appendix H, p. 30).

Since the profitability of the stadium is likely enhanced as the number of scheduled events increases, absent limitations to the contrary, the total number of annual sell-out (≥75,000 attendance) and minor (≤25,000 attendance) events would be expected to exceed the artificial limitations used as the basis for the EIR's environmental analysis (e.g., "Aside from official NFL game days the stadium may be used for concerts, exhibitions, or other sports events," DSEIR, p. 5.8-15).

Qwest Field, build to accommodate both footfall and soccer, is an example of a multi-sports stadium. The stadium is the home of the NFL Seattle Seahawks and Major League Soccer's Seattle Sounders FC. In addition, Qwest Field also hosts the Washington State Cougars' college football team. Qwest Field has a 67,000-seat capacity but includes an additional 5,000 additional seats available for special events and 1,400 seats for fans with disabilities. As noted, seating for fans with disabilities is not included in the stadium seating capacity (thus suggesting that the NFL Stadium project will also accommodate attendance figures greater than the stated number of seats).

In the absence of any restrictions to the contrary and in light of the Applicant's own statement that "two NFL teams" could potentially play at the proposed stadium, the DSEIR errors by analyzing an artificially low assumption concerning the site's likely utilization and occupancy. Since much of the venue's actual use would be expected to occur during weekdays, contributing to peak-hour traffic volumes along the region's arterial highways and local roadways, the DSEIR's environmental analysis substantially misrepresents potential project-related impacts.

In an April 21, 2008, article in the Inland Valley Daily Bulletin, Mr. Roski states that the project will "become an entertainment complex comparable to Staples Center and Universal City's City Walk" (DSEIR, p. 3-2). Consistent with SCAG's finding that the "revised project" is "regionally significant," it is evident that Applicant seeks not to create a typical commercial use (with typical use characteristics and typical trip generation rates) but a "regional destination" similar to Universal City's City Walk (e.g., "the revised Plan of Development seeks to create a retail/recreation destination and draws from a much larger region," DSEIR, p. 7-9).

In terms of at land-use characteristics and use-related trip generation, the DSEIR suggests that all commercial uses are interchangeable (e.g., "the revised Plan of Development would result in 1,161,000 square feet less of office and commercial use," DSEIR, p. 5.6-13). Based on that characterization, under the Lead Agency's methodology, the addition of one square of "iconic

regional destination retail" is equal to the reduction of one square foot of a more traditional commercial use (e.g., grocery store).

Since the Lead Agency purports that all commercial uses are the same, when comparing two development plans, the DSEIR can then falsely assert that "impacts" (assuming that impacts themselves are generic and interchangeable) from alternative planned commercial uses would be appreciably reduced merely because "the amount of commercial/office development with the revised Plan of Development would be substantially less than previously planned" (DSEIR, p. 3-12).

The "project description" assumes the existence of "roadway improvements in the vicinity" (DSEIR, p. 3-29), initiated by others, which are not currently in place, where improvement plans have not yet been finalized, and where construction has not been slated. As indicated in the DSEIR, with regards to the "Diamond Bar/Industry interchange corridor of SR-57 and SR-60," the DSEIR states that the "Cities of Industry and Diamond Bar, in a joint effort with Metro, are in the process of developing the necessary engineering and transportation studies that are needed to bring the remaining improvements to this interchange corridor to fruition, independent of the revised Plan of Development" (DSEIR, pp. 3-30 and 4-9).

Those "remaining improvements" include, but may not be limited to, the following: (1) SR-60 westbound off-ramp; (2) SR-57 southbound/SR-60 westbound on-ramp; and (3) SR-60 eastbound on-ramp. Absence any supporting evidence, the Lead Agency asserts that those "improvements are expected to be completed by 2015, and have been included in the analysis of year 2015, year 2025 and year 2030 cumulative base and cumulative plus project conditions for the two key ramp intersections at the Grand Avenue interchange." Additional uncommitted and unfunded "improvements are anticipated to be completed by 2025, and have been presumed in the analysis of year 2025 and year 2030 cumulative base and cumulative plus project conditions (DSEIR, p. 5.10-42).

In describing the differences between the "2004 IBC Plan of Development" and the "revised Plan of Development," the Lead Agency does not acknowledge that the development schedule has been substantially modified. While the Final IBC/EIR is based on a project "completed by 2025, the "revised project" is projected to be completed by 2015 (DSEIR, Table 3-2, p. 3-19). However, since "Phase One is assumed to be completed and open for business by 2011" (DSEIR, p. 3-19), freeway improvements which will not be completed until 2015 will prove of limited benefit during the early years of the NFL Stadium's operation. Absent from the DSEIR is any discussion of the potential traffic and other environmental consequences should the improvements to the SR-57/60 corridor not be in place prior to kickoff.

The Lead Agency has failed to include applicable project elements as part of the its environmental assessment. The DSEIR notes that unrelated "improvements to this interchange would include modifications to the Grand Avenue interchange, a new bypass, collector and distributor roads, auxiliary lanes, and improvements ramps, independent of the revised Plan of Development" (DSEIR, p. 4-9). The DSEIR further notes that the "improvements that are planned to be constructed in the future and are not related to the revised Plan of Development include the Grand Crossing Development project, City of Industry improvements along Grand Avenue, and Caltrans

improvements for the SR-57/SR-60 Confluence at Grand Avenue" (DSEIR, p. 5.10-41). The Lead Agency, therefore, asserts that it has no CEQA-based obligation to: (1) assess obviously critical "roadway improvements in the [project] vicinity"; (2) include those improvements under the umbrella of the environmental review of the "revised project"; (3) address the potential post-project environmental implications (e.g., traffic gridlock) should those improvements not be implemented in the time period and/or in the manner assumed; or (4) impose any conditions or mitigation measures establishing those improvements as events precedent to the commence of the facility's Phase One operations.

This position contradicts earlier statements by the Lead Agency and presented in the Final IBC/EIR. As indicated therein: "Because of the critical importance of maintaining traffic flow through this interchange, the City of Industry will initiate the long process of planning, designing and constructing needed improvements. Modifications to Mitigation Measure 5.14-1 commit the City of Industry to prepare a Project Study Report/Project Report and associated environmental documentation as required [by] Caltrans and [to] complete the design for the interchange improvements prior to occupancy of any non-public buildings at the IBC" (Final IBC/EIR, Response to Comments, Response N-19). As noted in the DSEIR, however, "Mitigation Measure 5.14-1" is "not retained from the 2004 IBC EIR" (DSEIR, p. 5.10-190).

By ignoring any need or obligation to condition the NFL Stadium project on the physical improvement of the SR-57/60 corridor (as evidenced by the elimination of "Mitigation Measure 5.14-1"), the Lead Agency seeks to rescind a critical mitigation measures used to support the findings upon which the "2004 IBC Plan of Development" was originally approved (FOF/SOQ, p. 3-28) and to erroneously exclude the California Department of Transportation (Caltrans) from the list of responsible agencies which are presented in the DSEIR (DSEIR, Table 3-3, p. 3-56).

Numerous discretionary actions logically associated with the "revised project" are never disclosed in the DSEIR and insufficient information is presented therein allowing for any reasonable supposition concerning the nature of or any additional impacts attributable to those actions. For example, as indicated in the Final IBC/EIR: "Individual projects in the planning areas would be required to submit a tentative parcel map and development plans to the City of Industry for approval that will adhere to the City's design guidelines as stated in Chapter 17.36 of the Municipal Code" (Final IBC/EIR, Response to Comments, Response N-6). Based on that statement, it can be concluded that the "revised project" includes a tentative subdivision map. No such map is, however, included or referenced in the DSEIR.

The DSEIR further states that the "site consists of a 245-acre parcel on the east side of Grand Avenue and a 347-acre parcel on the west side of Grand Avenue" (DSEIR,p. 3-2). Based on the proposed project phasing, the planned development of an internal street system, and the demarcation of a variety of distinct land uses and structures, it can be assumed that the "revised project" includes an undisclosed tentative tract map. Rather than indicate that the project includes the subdivision of the project site, the Lead Agency merely states that the DSEIR is intended for "[o]ther approvals required to implement the revised Plan of Development" (DSEIR, p. 3-56).

Under CEQA, an adequate project description must include "[a] general description of the project's technical, economic, and environmental characteristics, considering the principal engineering

proposals if any and supporting public service facilities" (14 CCR 15124[c]). The Lead Agency has failed to provide sufficient (and in some cases any) information concerning the technical, economic, and environmental characteristics of the project and the supporting public service facilities.

A number of major items are either absent from the "project description" or are discussed in such a brief or nebulous fashion as to offer no explanation of what is, in fact, being proposed as part of the "revised project." In the absence of even a fundamental description (e.g., height of the stadium), the affected public is denied the ability to understand the nature of the proposed action and/or to independent assess the potential environmental implications of those features.

Missing and critical components of the "project description" include, but are not limited to:

- **Traffic and Parking Management Plan.** As indicated in the DSEIR: "Significant impacts at key intersections during the weeknight game PM arrival, Sunday game midday arrival, and Sunday game PM departure peak hours would be addressed through the implementation of a Traffic and Parking Management Plan (currently being prepared for the project) when NFL games are held at the proposed stadium. . .it was concluded that the implementation of a Traffic and Parking Management Plan, and the expected fine-tuning of that Plan as more games are actually held at the proposed stadium, would effectively address the traffic access and circulation needs of the project during games (instead of the construction of permanent, physical mitigation measures at key intersections and along key roadways" (DSEIR, Appendix H, p. 150).

  The EIR states that the Lead Agency has decided to reject "permanent, physical mitigation measures at key intersections and along key roadways" for unspecified future actions whose implementation will be deferred until "more games are actually held." The Lead Agency, therefore, appears to accept gridlock as the acceptable game-day conditions and, at some unknown time in the future, see if there may exist any low-cost and CEQA exempt solutions that might help move traffic along. Besides ignoring the nexus that exists between a proposed development and that development's obligations to proactively address the impacts it creates, the Lead Agency ignores the extensive lead-time required to institute actual physical improvements to affected intersections and roadways, to disclose and mitigate the impacts that physical traffic improvements can themselves create, and the purpose of preparing a project-level in EIR in the first place.

  The Lead Agency's deferral of a "traffic and parking management plan" prevents interested parties, the affected public, and public agencies with established expertise in formulating, designing, and implementing "physical mitigation measures at key intersections and along key roadways" from commenting on the nature of that plan and suggesting improvements or other modifications that might prove advantageous to the stadium's operation.

- **Lighting Plan.** As indicated in the DSEIR: "Light and glare impacts are also determined through a comparison of the existing light sources with the proposed lighting plan or policies" (DSEIR, p. 5.1-2). However, the Lead Agency acknowledges: (1) "a detailed lighting plan has not yet been designed for the stadium" (DSEIR, p. 5.1-30); and (2) "Other

than the directives of Section 15.32.070, the City of Industry does not have a lighting ordinance specifying the maximum amount of lighting that may be generated by new projects" (DSEIR, p. 5.1-33).

Based on the Lead Agency's own admission, it is not possible to assess the "light and glare impacts" of the proposed project absent a detailed understanding and quantitative assessment of the "proposed lighting plan." Since a "detailed lighting plan has not yet been designed," Industry's admission serves as the Lead Agency's declaration that lighting impacts have not been reasonably and appropriately examined.

Although absent from the "project description," the DSEIR states that the stadium would employ lighting that would emit "300 to 350 foot-candles" (DSEIR, p. 5.1-30). As illustrated in Figure 3-6b – Stadium Elevations (DSEIR, unpaginated), the high-intensity sports lights will be mounted on large light banks extending substantially above the top of the stadium, so as to be observed from any fore-ground, middle-ground, or back-ground location where a view of the stadium would exist.

As indicated in Illuminating Engineering Society of North America's (IESNA) Lighting Design + Application publication (Vol. 32, No. 7, July 2002), the lighting design firm of Flack + Kurtz, Inc. (F+K Lighting Group), with regards to the Paul Brown Stadium (home of the NFL's Cincinnati Bengals) noted: "To meet the stringent requirements of ESPN broadcast standards, over six hundred 200 W metal halide sports lights were used." As indicated, lighting design is required to accommodate lighting levels higher than those required for individual sports in order to obtain "ESPN broadcast standards" established for television coverage. Absent from the DSEIR is any discussion of sports lighting in general, much less information concerning the nature of lighting proposed for the NFL Stadium portion of the overall development project, lighting requirements for night football in general, and lighting standards for media coverage.

- **Signage Plan.** As indicated in the DSEIR: "The proposed signage program has not yet been finalized, however, it is anticipated that signage would play a significant role in the revised Plan of Development" (DSEIR, p. 3-22);

  Notwithstanding this key architectural feature and the importance of signage to the proposed operation of the "revised project," the following excerpts reflect the totality of the discussion of "lighting" found in the "project description": (1) "It is anticipated that the signage program would include signage on the rim of the NFL Stadium. Additionally, the proposed signage plan would include free-standing pylon (pole) signs, including one near the Grand Avenue exit from the SR-60/57. Directional and informational signage would also be included in and around the project site to direct pedestrians and vehicular traffic and provide public access information, as needed. Signage would also be incorporated into the retail, entertainment, and office components of the project. The proposed signage program would incorporate signage both on the IBC site and exterior to the IBC site adjacent to the freeways. Proposed signage associated with the revised Plan of Development may include LED or other electronic and/or animated signage, illuminated building identification, tenant identification, storefront signs, wayfinding signs, and other graphic elements ranging from

banners to interactive electronic displays. The revised Plan of Development would also include advertising and sponsorship signage" (DSEIR, p. 3-22); and (2) "The bridges could also serve as opportunity areas for advertising and/or signage" (DSEIR, p. 3-28). From this, all that can be discerned is that there will be lots of project-related signs (on buildings, on walls, on bridges, on freestanding signs) both on and off the project site.

On the Applicant's internet website (http://www.losangelesfootballstadium.com/images), numerous architectural renderings of the "Los Angeles Stadium" are illustrated. Many of those drawing depict giant signage stating "Los Angeles Stadium," "Super Bowl," "Sony," "Miller." Giant billboards and animated displays (e.g., scoreboards) are shown, laser beams and other high-intensity promotional lighting are depicted, and fireworks are shown illuminating the night sky. A blimp is shown flying over the stadium with an electronic "Coca-Cola" sign (depicting additional undisclosed off-site signage). Many of the signs are electronic and depict letters which appear to be multi-stories tall.

Although no signage program has been "finalized," rather than being diligent to maintain at least some semblance of propriety, the Lead Agency seeks to deny the public's right to scrutinize the Applicant's proposed signage plans and to, based on Applicant's own self-serving PDFs, convert signage to a ministerial action no longer subject to CEQA compliance (e.g., "Along with the request for an amendment, the applicant would be required to submit a signage program for the City's (Industry) review and approval consistent with the PDFs and analysis presented in the SEIR," DSEIR, p. 3-27; "The signage program would be required to be consistent with the PDFs outlined in this section when reviewed and approved by the City of Industry," DSEIR, p. 5.1-29).

- **Wall and Fencing Plan.** No wall and fencing plan has been included in the DSEIR. Only a single reference to walls and/or fences is presented in the "project description." As indicated therein: "Curbing, sidewalks, lighting, landscaping, and gated entries are also proposed within the parking areas as well as security fencing/walls where necessary" (DSEIR, p. 3-28).

  Because the DSEIR acknowledges that "under the current plan many [residents] would be looking down on and across the parking lots" (DSEIR, p. 5.1-18), the Applicant's plans for perimeter fencing (if any) need to be disclosed so the effectiveness of those plans to screen the project site from sensitive receptor locations (e.g., abutting residential neighborhood in Diamond Bar) (e.g., proximal residential neighborhoods in Walnut) can be independently evaluated. The type, location, and design of perimeter fencing is made more critical because the Lead Agency asserts that "potential significant" aesthetics impacts will be reduced to a less-than-significant level through the application of the Applicant's PDFs. However, only the following two PDFs included any reference to walls or fences: (1) "Where parking lots would be visible from adjacent residential areas on the eastern boundary, the transition zone shall employ a variety of techniques, such as berms with tree and shrub massing or vine-covered low walls or decorative fences to screen the views" (PDF 1-7); and (2) "Parking lots I, J, H and G east of Grand Avenue shall be fenced where adjacent to perimeter slopes to prevent entry into landscaped areas" (PDF 1-11). Because neither the "project description" nor the "aesthetic" analysis include any further reference to walls and

fencing, absent reasonable detail, there exists no certainty that the identified PDFs will have any mitigative effects.

- **Landscape Plan**. No landscape plan has been included in the DSEIR. However, the Lead Agency notes that the "landscape plan for the revised project would retain many of the features of the 2004 IBC Plan of Development" (DSEIR, p. 3-22). No "landscape plan" was, however, included in the Final IBC/EIR and no requirement for the preparation of that plan was included therein. Additionally, the Lead Agency states that "[a]ll PDFs from the certified 2004 IBC EIR have been updated, condensed and replaced herein with ones that are tailored to this specific site plan. Some of the previous PDFs were deemed unnecessary" (DSEIR, p. 5.1-15).

  Although no landscape plan is included, the Lead Agency asserts that "implementation of the PDFs would address screening view from sensitive receptors, buffers, appropriate landscape planting, and light and glare reduction" (DSEIR, p. 5.1-29) and "PDF requirements for landscaping would also provide sufficient screening in the buffer to reduce visibility of these [sports and parking lot] light sources" (DSEIR, p. 5.1-30). However, in direct contradiction to any inferences that extensive landscaping will be provided, the DSEIR specified that "landscaping within the parking areas must be limited" (DSEIR, Appendix I, p. 6).

  Based on the stadium's potentially significant visual impacts (NOP, pp. 20 and 29) upon adjacent residential areas located in Diamond Bar, the Lead Agency must demonstrate in the EIR the project's landscaping will, in fact, produce the desired benefits with regards to "screening" those abutting and proximal sensitive receptor areas from project site.

- **Truck Delivery and Loading Plan**. Feeding 75,000 or more fans during a football game would result in significant food and beer deliveries and resulting trash which would need to be hauled away following a game. Although the delivery of food and other products and the removal of wastes would be a significant part of the stadium's daily operation, absent from the "project description" is any reference to or discussion of deliveries, shipping, hauling loading, and unloading activities associated with scheduled on-site operations. Only a single reference is provided to "trash" anywhere in the "project description" (i.e., "Trash receptacles and recycling bins would also be provided for patrons throughout the complex including parking areas," DSEIR, p. 3-12). No loading, unloading, docking, storage, or staging areas, no trash pick-up locations are depicted, and no discussion of trucking operations, of any kind, have been provided by the Lead Agency. The fact that the Lead Agency failed to include any reference to trucking operations, loading dock locations and activities, and waste collection and disposal is further evidence of an incomplete "project description."

- **Solid Waste Reduction Plans and Procedures**. The DSEIR states that "[a]ll on-site uses shall implement waste reduction programs, including the maximum extent possible, recycling programs" (PDF 12-3). Although a worthwhile statement, since it includes no explicit requirements for waste reduction, contains no performance standards, and leaves

compliance and enforcement to the discretion of individual "uses," there exists no assurance that it will accomplish its intended purpose.

Since programs are typically in place or can be readily implemented for standard retailers, office buildings, and medical clinics, recycling efforts can be reasonably expected as part of the routine operation of many site users. However, noticeably absent are any provisions stipulating any requirements for the site's major waste generator (i.e., NFL Stadium).

According to the DSEIR, a "maximum-capacity event would generate approximately 31 tons of solid waste (930 tons per year). Of this amount, 24 tons (713 tons per year) would be garbage, and the other 7 tons per event (217 tons per year) would be recycled materials" (DSEIR, p. 5.9-21). Based on that statement, the Lead Agency is stating that about 29 percent of the stadium's waste stream is comprised of "recycled materials." Because nothing in the EIR obligates the Applicant to achieve that or any level of recycling, both the document and the Lead Agency are remiss by their failure to impose definitive, performance-based requirements for waste diversion. Waste that is not diverted ends up in local landfills or in the yards and properties of nearby residences and businesses or on local streets and become the responsibility and at the cost of others. As a result, it is not sufficient for the Lead Agency to turn a blind eye to waste reduction and recycling and to delegate to the Applicant the responsibility for not only formulating a waste reduction plan but self-monitoring its performance.

Parking lot cleanup "activities [would occur] for approximately six to eight hours after a game" (DSEIR, p. 5.7-84). As indicated by the Lead Agency "Sunday night games typically start at 5:00 or 6:00 PM" and the "typical length of a game is approximately 3.5 hours" (DSEIR, p. 3-21). Assuming that "cleanup activities" commence one-hour after the completion of a game (starting at 10:30 PM) and last for eight hours, noise generating uses will be occurring between 10:30 PM and 6:30 AM during night football games. If concerts or other events were allowed to conclude at a later time (e.g., "concerts would typically conclude by 12:00 AM," DSEIR, p. 5.7-62), parking lot noise would commence later and continue longer. Similarly, the "movie theater/entertainment venue" will remain open until "2:00 AM" (DSEIR, p. 3-21).

It becomes immediately evident that adjoining residential receptors will be subjected to a 24-hour a day bombardment of project-generated noise. Since CEQA requires that impacts be mitigated to the maximum extend feasible, the Applicant and the Lead Agency must demonstrate that are acting proactively to reduce impacts on adjoining land uses.

- **Neighborhood/Business Preservation Plan**. The Lead Agency states that the project would generate a "[s]ignificant impact if there would be substantial encroachment on the adjacent land use that would disrupt/displace structures or parking areas that could render uses sub-standard or non-conforming with development standards; or adjacent remaining uses could be exposed to substantially increased environmental concerns such as noise, air pollutant emissions, etc." (DSEIR, p. 5.6-13). The Lead Agency, however, never applies that same threshold of significance criteria to the stadium's likely impacts on those residences and businesses located in Diamond Bar.

The availability of on-site parking is predicated upon certain assumptions concerning both the maximum attendance at the stadium, the occupancy of individual vehicles arriving at the game, the percent of fans electing to use public transit, the absence of additional vehicle trips attributable to non-stadium activities, and the closure of other on-site businesses during scheduled events. If any of those assumptions are wrong or understated (which many appear), available on-site parking will prove inadequate and site visitors will be required to find the nearest off-site parking spaces.

Additionally, parking fees at special events can often top $25 per vehicle. Many fans, by choice of economics, often look for free parking opportunities near venues. Fan websites are often devoted to telling others how and where to park for free off the stadium site.

In the case of the NFL Stadium project, proximal off-site parking opportunities include, but are not limited to, on-street parking within adjacent, established residential neighborhoods located to the east and west of the stadium in Diamond Bar (i.e., Sunset Crossing/Neil Armstrong Elementary School and Lycoming/Washington) and off-street parking which is used and operated by existing businesses (e.g., Burger King and Target, Ayres Suites), religious institutions (e.g., Calvary Chapel Golden Springs), public uses (e.g., Diamond Bar Golf Course), and other public buildings (e.g., South Coast Air Quality Management District) are located near the stadium.

Stadium attendances using those parking spaces minimize parking available to local residents and businesses, block driveways and fire hydrants, increase traffic volumes along streets where children play, generate noise during hours when many residents are sleeping, and adversely impact business operations by reducing parking otherwise available to customers and other authorized site users.

Absent from the DSEIR are any plans or indication of future plans to be instituted by the Lead Agency and/or the Applicant to minimize or prevent cut-through traffic and parking in residential neighborhoods and in business areas in Diamond Bar. Because the EIR does not even address this issue, no attempt has been made by the Lead Agency to ascertain its significance, to assess its impacts, or to suggest actions to minimize project-related impacts on off-site uses.

- **Overflow Parking Contingency Plan.** Instead of committing to an actual number of parking spaces that will be provided on the project site, the Lead Agency states that "up to 25,000 parking spaces would be accommodated within the project site" (DSEIR, p. 3-28). That statement neither commits the Lead Agency to the establishment and enforcement of actual project condition nor establishes a definitive any parking ratio tied to the actual number of on-site individuals. Based on a one-size-fits-all approach, the same number of parking spaces will be available whether attendance is ≤75,000 or ≥80,000. Similarly, the DSEIR recognizes that "about 10% of the spaces may be lost due to tailgating and other activities" (DSEIR, Appendix I, p. 2).

Because "Phase Two" is not being constructed at the same time as "Phase One" (i.e., "Phase Two would commence after the completion of Phase One," DSEIR, p. 3-20), some undisclosed number of parking spaces may be lost or otherwise forfeited during the "Phase Two" construction period. Absent from the EIR are any guarantees that a specified number of parking spaces will be available on the project site prior to the commencement of stadium use, throughout the construction term," at build-out.

Absent from both the DSEIR is any reference to or discussion of contingency plans in the event that available on-site parking proved to be inadequate to accommodate event requirements. Because the Lead Agency has misrepresented the number of individuals that will on the project site during certain major events, it then follows that any calculation of parking requirements based on that same underestimation would itself fall short of the amount of on-site parking actual needed. Additionally, because certain events (e.g., Super Bowl) might involve extensive media coverage (displacing fan parking to make way for large media trucks and trailers), sponsor-paid activities staged in parking lot areas (further displacing fan parking), and attract both ticket-holders and others who choose to be on the site merely to partake in non-stadium activities, basing parking solely on the number of seats in the stadium will generate significant parking problems.

The absence of a contingency parking plan in the "project description" or any obligations requiring the preparation of that plan prior to the commencement of operations indicates that the Lead Agency has failed to fully assess the potential off-site impacts attributable to the NFL Stadium based development project.

- **Project Schedule.** The DSEIR states that "Phase One is assumed to be completed and open for business by 2011. . .[U]nder Phase One, it is expected that the NFL stadium, 115,000 square-foot team training facility, training fields, 400,000 square feet of retail, 50,000 square feet of restaurants, 100,000 square feet of medical facilities, roadway system and surface parking to serve this phase would be constructed by 2011" (DSEIR, p. 3-19). Although absent from the "project description," found in the technical analysis is the statement that "Phase 1 is estimated to begin in December 2008 and end in August 2011" and "Phase 2 is anticipated to be completed in August 2014 (DSEIR, Appendix C, p. 20). In direct contradiction, the "project description" states that "Phase Two (buildout) would commence after the completion of Phase One and would be completed and open for business approximately four years after Phase One" (DSEIR, p. 3-20). If that schedule were correct, Phase Two would be completed in August 2015 or precisely twelve months after the date used as the basis for impact analysis. This leads to one of two conclusions: (1) the dates presented in the DSEIR are internally inconsistent; or (2) the construction period for Phase Two is misrepresented.

  As such, based on conflicting statements in the EIR, it is not possible to ascertain the length of construction or any increased severity of those environmental effects (e.g., additional construction-term air emissions) that may relate, either directly or indirectly, to the length of the construction process.

- **Procedures for Plan Revisions and Modifications**. Left unaddressed in the DSEIR is any description concerning how the Lead Agency intends to reconcile any proposed future changes (e.g., changes to the illustrated site plan; changes to the list of proposed on-site uses; changes to the height, location, and configuration of buildings and other structures) with the analysis presented in the EIR, including: (1) a declaration whether the requested change(s), or even what change(s), would be deemed to be a discretionary or ministerial action; and (2) how the Lead Agency would go about determining whether the requested change(s) was adequately examined in the EIR, including any new or modified mitigation measures or other conditions of approval.

  The "Plan of Development" concept is unique to Industry and is likely governed by specific local code and/or other provisions. Since the "City of Industry General Plan" and the "City of Industry Municipal Code" are neither available for viewing few readers would have any understanding of the intent, purpose, or application of a "Plan of Development" as a land-use and zoning tool. Since it is Industry's intent to adopt a "revised Plan of Development," it is incumbent upon the Lead Agency to provide an overview of what a "Plan of Development" actually is, how precisely does it dictate the type, size, placement, and orientation of buildings and uses its presages, and how modifications to that plan are administrative addressed.

  Similarly, the DSEIR does not include a clear statement concerning what land uses would be authorized by right and what uses would be authorized subject to a conditional use permit (CUP). The Lead Agency states that "among other things," proposed uses include "training facilities and offices, sports medical clinic, retail shops and uses, restaurants, other office uses, [and] entertainment uses" (DSEIR, p. 3-11). The term "among other things" indicates that other uses, besides those stated, could and will probably be developed on the project site.

The Lead Agency's failure to fully and precisely define the proposed project prevents commenting parties from independently assessing the environmental consequences of the approval, construction, and operation of the "revised project."

Deferral of Information and Analysis

As illustrated in Figure 3-6b – Stadium Elevations (DSEIR, unpaginated), the "tallest part of the stadium" is not, as represented by the Lead Agency, the "tower on the west side" (DSEIR, p. 3-12) but the high-intensity sports lighting used to illuminate the playing field. The DSEIR indicates that "the stadium would employ lighting that would emit 300 to 350 foot-candles" (DSEIR, p. 5.1-30). The DSEIR acknowledges that: (1) "a detailed lighting plan has not yet been designed for the stadium" (DSEIR, p. 5.1-30); and (2) "the City of Industry does not have a lighting ordinance specifying the maximum amount of lighting that may be generated by new projects" (DSEIR, p. 5.1-33). The DSEIR further acknowledges that the "proposed signage program has not yet been finalized, however, it is anticipated that signage would play a significant role in the revised Plan of Development" (DSEIR, p. 3-22).

Rather than including specific details in the DSEIR, the Lead Agency seeks to defer the submittal of important information until after the certification of the EIR (following the approval of the proposed project) and to made the approval of the lighting and signage plans submit to a ministerial rather than a discretionary action (e.g., "Prior to the approval of improvement plans for the surface parking areas east of Grand Avenue, the project applicant shall submit an off-street parking lighting plan for review and approval by the Department of Public Works," PDF 1-18).

Narrowly Defined Objectives Preclude Reasonable Range of Alternatives

As indicated in the NOP: "The City of Industry has prepared an Initial Study for the proposed project and has determined that a Supplement to the 2004 Industry Business Center (IBC) Environmental Impact Report is necessary." In order to allow for the use of a "supplement to an EIR," the Lead Agency must demonstrate that the "revised project" meets qualifying CEQA standards (14 CCR 15163), including the finding that '[o]nly minor additions or changes would be necessary to make the previous EIR adequately apply to the project in the changed situation."

The Final IBC/EIR includes seven objectives which establish the project's stated purpose. As indicated therein, the very first objective states: "Provide for comprehensive planning of the project site through the approval of a Plan of Development and Zone Change in conformance with the City's General Plan" (Final IBC/EIR, p. 4-2). That objective would appear to constitute the Lead Agency declaration of the project's "underlying purpose" (14 CCR 15124[b]). As such, one would logically conclude that the same purpose (and the same set of objectives) would be carried over for any later project(s) being processed through a "supplement to the EIR" (e.g., limited to only "minor additions or changes"). Rather than retaining that same common thread, the Lead Agency now declares that the fundamental "underlying purpose" of the "revised project" has now changed substantially (from those presented in the Final IBC/EIR), such than none of the original objectives apply and an entirely new set of objectives are now required.

Instead of merely pursuing the worthwhile goal of "comprehensive planning," the Lead Agency now states that the project's primary purpose is to "construct a state-of-the-art football stadium" (DSEIR, p. 3-2).

Misrepresentation of Environmental Baseline

CEQA requires that the EIR describe the physical environmental conditions in the vicinity of the project as they exist at the time the NOP is published. This environmental setting will normally constitute the baseline physical conditions by which the lead agency determines whether an impact is significant. Where a proposed project is compared with an adopted plan, the analysis shall examine the existing physical conditions at the time the NOP is published as well as the potential future conditions discussed in the plan (14 CCR 15125).

Although the DSEIR acknowledges that the subject property is "currently vacant land" (DSEIR, p. 4-3), the EIR nonetheless assumes that the property now containing "4,779,000 square feet of industrial and commercial space" (DSEIR, p. 5.9-2) and bases its impact analysis on the hypothetical conditions contemplated by the existing plan and not with the actual existing physical

conditions ("the SEIR considers the project approved in the IBC EIR as its baseline," DSEIR, p. 4-10).

Deficient Cumulative Impacts Analysis

As indicated in the Final IBC/EIR, the "potential study area" extends "across political boundaries" and encompasses "a 10-mile radius of the site" (Final IBC/EIR, Response to Comments, Response M-5). Similarly, the DSEIR notes that "a 10-mile radius around the study area revealed approximately 56,000 unemployed individuals" (DSEIR, p. 5.8-1) and a "10-mile radius is considered a reasonable commute distance" (DSEIR, p. 5.8-2).

Notwithstanding those declarations, in direct contrast, the cumulative impact analysis presented in the DSEIR is artificially limited to "approved and reasonably foreseeable projects in the vicinity of the revised project area" (DSEIR, p. 4-10). The resulting inventory or related projects (DSEIR, Table 4-1, p. 4-11) only includes projects in the Cities of Diamond Bar, Industry, and Walnut, at California State University – Pomona (Cal Poly), and a single project in unincorporated Los Angeles County (partly in Diamond Bar's Sphere of Influence).

Noticeably absent from the Lead Agency's list of related projects are those adjacent traffic improvement projects which are planned but not yet constructed. With regards to improvements to the SR-57/60 corridor, the DSEIR states that "improvements to this interchange would include modifications to the Grand Avenue interchange, a new bypass, collector and distributor roads, auxiliary lanes, and improvements ramps, independent of the revised Plan of Development" (DSEIR, p. 4-9) and "improvements that are planned to be constructed in the future and are not related to the revised Plan of Development include the Grand Crossing Development project, City of Industry improvements along Grand Avenue, and Caltrans improvements for the SR-57/SR060 Confluence at Grand Avenue" (DSEIR, p. 5.10-41). Although the DSEIR's traffic analysis is premised on the implementation of those "future" improvements (e.g. "The above improvements are expected to be completed by 2015, and have been included in the analysis of year 2015, year 2025 and year 2030 cumulative base and cumulative plus project conditions," DSEIR, p. 5.10-42), absent from the list of "cumulative projects" is any reference to those, as yet unbuild and unfunded, traffic improvements.

With regards to Grand Avenue, the DSEIR notes that the "City of Industry and the City of Diamond Bar embarked on a joint effort to improve traffic flow along Grand Avenue. The improvements widen Grand Avenue to provide eight travel lanes, four in each direction, from south of Baker Parkway to north of Golden Springs Drive. Construction for this improvement is planned for Fall 2008. Therefore, the Grand Avenue widening improvements have been presumed in the evaluation of Year 2011, Year 2015, Year 2025 and Year 2030 Cumulative Base and Cumulative plus Project traffic conditions at key intersections along Grand Avenue" (DSEIR, Appendix H, p. 54). As of the publication of the DSEIR, none of those improvements had yet to commence. Similarly, the "Fall 2008" timeline will not be achieved.

The exclusion of the SR-57/60 and Grand Avenue improvements from the cumulative impact analysis and/or the Lead Agency's failure to include those same improvements as part of the "whole of the action" constitutes a violation of CEQA in that those actions result in a deficient

cumulative impact analysis. There exclusion from both the project description and inventory of related projects serves as further evidence of the Lead Agency's "truncated project concept."

Failure to Examine Economic and Other Indirect Impacts

Since the "revised project" is projected to generate 4,428 full-time and 1,515 part-time jobs (DSEIR, p. 5.8-15), it can be reasonably assumed that the metropolitan area experience the loss of a professional football franchise would lose not less than a comparable 5,943 full- and part-time jobs. Because, absent from the DSEIR is any discussion of the potential indirect job and revenue gains within the Los Angeles metropolitan area, no information is provided by the Lead Agency regarding the job and revenue losses within the metropolitan area losing an existing franchise that can be linked to the project. The DSEIR fails to satisfy the standards for an adequate Draft EIR (14 CCR 15088.5[a][1]-[4]).

Employment figures presented in the DSEIR fail to include employment and payroll directly attributable to the NFL franchise that would be relocate from outside of the Los Angeles metropolitan area to within that area. Additionally, the DSEIR fails to disclose the jobs that are indirectly associated with an NFL team, upon whose existence the NFL's operation may be partially or fully dependent. As such, the DSEIR fails to disclose the potential indirect jobs and housing impacts attributable to the proposed project.

Based on the Applicant's own declaration, a relocated NFL franchise will likely come from Bloomington, Minnesota (Vikings), New Orleans, Louisiana (Saints), Buffalo, New York (Bills), Jacksonville, Florida (Jaguars), San Diego, California (Chargers), Oakland, California (Raiders), and/or San Francisco, California (49ers). If, as indicated by the Applicant, two teams were to relocate to the Los Angeles area, two metropolitan areas would experience the economic loss of their existing NFL franchises.

Failure to Demonstrate the Efficacy of Mitigation Measures

Throughout the EIR, the Lead Agency lists mitigation measures of unknown and questionable efficacy and concludes that the referenced measures will reduce or avoid otherwise significant environmental effects. Many of those measures contain no milestone stipulating the events that cannot be passed until the measure is implemented, no quantitative standard against which performance can be judged, and/or no enforceability because performance remains open to broad interpretation or contains a limiting caveat allowing for non-fulfillment or non-compliance based on the Applicant's or the Lead Agency's discretion.

For example, the Lead Agency at least recognizes that the "high volume of traffic near the stadium has the potential to impact emergency access and response times in and around the stadium" (DSEIR, p. 5.9-5). As mitigation for this "potentially significant" effect, the following measures are recommended: (1) "The project applicant shall submit an emergency access plan to the Los Angeles County Fire Department including, but not limited to, identification of alternative routes for emergency access during construction to areas potentially blocked by project-related construction activities"; (2) The City of Industry shall offer the use of the future fire station at the intersection of Grand Avenue and Garcia Avenue to the Los Angeles County Fire Department" (DSEIR, p. 5.9-6);

(3) "The project applicant shall submit an emergency access plan to the Los Angeles County Sheriff's Department including, but not limited to, identification of alternative routes for emergency access during construction to areas potentially blocked by project-related construction activities" (DSEIR, p. 5.9-10); and (4) "A parking and transportation management plan shall be submitted to the Los Angeles County Sheriff's Department" (DSEIR, p. 5.9-10).

Nowhere in any of these measures is any timing specified and none of the measures mandate acceptance of the "emergency access plan" or timely construction of the "future fire station." Additionally, the "emergency access plan" and "parking and transportation management plan" neither require that existing response times and capabilities be maintained nor requires the Applicant to demonstrate that project-induced traffic will not become a serious impediment to effective emergency response.

The Lead Agency has failed to establish a factual basis for supporting the allegation that: (1) "The mitigation measures identified above would mitigate the potential impacts of the revised project to the maximum extent feasible" (DSEIR, p. 5.9-7); and (2) "The mitigation measures identified above would reduce potential impacts associated with police protection to a level that is less than significant" (DSEIR, p. 5.9-10).

Although the Lead Agency has the ability to condition the project on specific performance, provide sufficient fees to the County to allow for the facility's construction, and/or provide the LACFD with a turn-key facility, the Lead Agency states that "because the City of Industry cannot ensure that the County Fire Department will commit" to the construction, staffing, and equipment purchasing associated with a "future fire station," impacts on fire protection and public safety are "considered significant and unavoidable" (DSEIR, p. 5.9-6).

Deferral of mitigation obligations, as now proposed by the Lead Agency, to other agencies is precluded under CEQA. Clearly, the Lead Agency has both the ability and the authority to mitigate the health and safety impacts attributable to the "revised project." Because "CEQA establishes a duty for public agencies to avoid or minimize environmental damage where feasible" (14 CCR 15021[a]), the fact that Industry chooses not to mitigate those impacts is contrary to its obligations under CEQA. There exists no rationale whereby the Lead Agency deems acceptable any project which results in the creation of significant unmitigatable health and safety impacts affecting not only facility users but also the general public, including those who reside or work in close relationship to the project and whose lives may be imperiled by the Lead Agency's unwillingness to mitigate known safety conditions. The affected public is primarily located in Diamond Bar.

As noted in the Final IBC/EIR: "In the City of Industry, PDFs will be implemented as Special Development Requirements, and their implementation will be assured through inclusion in the mitigation monitoring and reporting program" (Final IBC/EIR, p. 2-6). In contrast, the DSEIR notes that PDFs "do not constitute mitigation measures by definition, although they have a mitigating effect. However, given their critical importance in ensuring that significant impacts are avoided, PDFs are treated similarly to mitigation measures and will be included in the comprehensive Mitigation Monitoring Program (MMP) for this SEIR" (DSEIR, p. 1-10).

From this statement, the Lead Agency seeks to make a clear distinction that PDFs are not mitigation measures under CEQA but are, in fact, something called "Special Development Requirements." Although the implications of that explicit disclaimer is unclear, it would appear that the Lead Agency is stating that, while included in the MMP, PDFs need to be considered and treated in a different (lesser) and distinct fashion than other "mitigation measures" identified in the DSEIR. Similarly, absent from the DSEIR is any declaration that "Special Development Requirements are comparable to other "conditions of approval" that may be imposed on the project by the Lead Agency.

As evident throughout the DSEIR, the identified PDFs are not tied to specific impacts but are presented as precursors to the Lead Agency's discussion of impacts that follow there identification under individual topical headings. In that fashion, they are should more appropriately considered project components and part of the "project description" rather than mitigative actions formulated in response to any identified impact. Similarly, following the identification of impacts throughout the DSEIR, the Lead Agency does not disclose which (if any) of the PDFs would have mitigative benefits with regards to that impact and/or to what extend each feature could be expected to facilitate the purposeful "avoidance" of that environmental effects. As such, PDFs fail the test of mitigation in that they are not linked to any specific impact.

A preponderance of the listed PDFs are neither measureable nor tied to specific milestone events, such as issuance of building permits. For example, if it is assumed that PDFs addressing signage are intended to reduce visual impacts associated with project signage, then one would assume that the listed PDFs would impose some condition that could be demonstrated to reduce newly introduced visual effects. For example, one PDF stipulates that "[s]ignage shall accentuate the architecture of the project and contribute to a lively and visually stimulating experience" (PDF 1-12). Instead of reducing the impacts of signage, based on the Lead Agency's own threshold criteria (e.g., "Substantially degrade the existing visual character or quality of the site and its surroundings" and "Create a new source of substantial light or glare," DSEIR, p. 5.1-15), the PDF could actually increase the negative impacts of the project's signage.

Mitigation measures must be fully enforceable through permit conditions, agreements, or other legally-binding instruments (14 CCR 15126.4[a][2]). Mitigation measures that contain limiting language, are not quantifiable, imply some level of discretion, or convey responsible to the Applicant for interpretation and compliance cannot be demonstrated to produce the desired effect.

Lead Agency Irreparably Severed Connectivity with the Program EIR

With the exception of limited remedial grading, the original "program EIR" neither resulted in any subsequent discretionary actions modifying the physical characteristics of project site nor altered the environmental baseline conditions that existed prior to the certification of the Final IBC/EIR. As a result, with limited exceptions, the site that exists today is virtually the same site that existed prior to 2004.

In 2004, the Lead Agency certified the Final IBC/EIR and adopted the "2004 IBC Plan of Development." Although it was Industry's intent to rezone the subject property from "Industrial" to "Commercial" use, those actions did not occur (i.e., "A Plan of Development was prepared for the

IBC in 2004 with the intention of rezoning to commercial when individual projects were presented. No areas have been zoned for commercial and the project site remains zoned as Industrial," DSEIR, p. 4-9).

Failure to Include a "No Project/No Development" (No Build) Alternative

As required under CEQA: "The specific alternative of 'no project' shall also be evaluated along with its impact. . .The 'no project' analysis shall discuss the existing conditions at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced, as well as what would be reasonably expected to occur in the foreseeable future if the project were not approved, based on current plans and consistent with available infrastructure and community services" (14 CCR 15126.6[e][1]-[2]).

Notwithstanding that requirement, as indicated in the DSEIR, with reference to the Final IBC/EIR, the "No Project/No Development Alternative was considered in 2004 and was rejected in favor of a mixed-use development" (DSEIR, p. 7-2). As such, a "No Project/No Development Alternative" was not evaluated in the first-tier EIR and the project's decision makers and the affected public were denied the opportunity to examine the impacts of the "revised project" against an environmental baseline that assumes the retention of the site in its existing undeveloped state (i.e., "The project area is currently vacant land," DSEIR, p. 4-3)

Other than with regards to the Final IBC/EIR (e.g., "The 2004 IBC EIR reviewed in detail four alternatives to the original project: No Project/No Development Alternative, No Project/Existing Zoning Alternative, Reduced Intensity Alternative, and the Wetland Avoidance Alternative," DSEIR, p. 7-2), absent from the second-tier EIR is any reference to a "No Project/No Development Alternative" and/or any rationale for the Lead Agency's failure to include that scenario therein As such, there exists no evidence demonstrating that the "No Project/No Development Alternative" was even considered in this EIR.

In defining the assumptions inherent in the DSEIR's "No Project/Existing Plan of Development Alternative," the Lead Agency states that "the site would be developed as reviewed in the EIR prepared for the 2004 Plan of Development.

Approximately 4,146,000 net square feet of office and/or commercial space and 633,000 square feet of industrial space would be developed throughout the Industry Business Center" (DSEIR, pp. 1-7 and 7-6). The Lead Agency, however, acknowledges that the assumptions inherent in that alternative do not reflect existing public policies and would necessitate a zone change (i.e., "The zoning would change in some areas from Industrial to Commercial," DSEIR, p. 1-7).

In light of the Lead Agency's asserted changes to the project's fundamental "underlying purpose" (14 CCR 15124[b]), the "revised project" constitutes a "new project" under CEQA and the Lead Agency is, therefore, obligated to prepare an EIR conforming to its CEQA obligations, including an alternatives analysis in full compliance with applicable CEQA requirements (14 CCR 15126.6). Similarly, because the list of related projects presented in the Final IBC/EIR and in the DSEIR differ substantially, even assuming the project site remains in its current condition, the resulting cumulative impact analysis could result in the identification of different cumulative impacts.

Alternatives Capable of Meeting Specific Project Objectives

The Lead Agency asserts that the "LA Memorial Coliseum Alternative" would "not be feasible" because it would "not include many of the off-site amenities proposed with the revised Plan of Development." However, because the Lead Agency acknowledges that the "selection of this alternative could accommodate a renovated NFL stadium" (DSEIR, p. 7-16), selection of a Coliseum alternative would satisfy the "underlying purpose" of the "revised project."

The Lead Agency also examined a "Rose Bowl Alternative." Similarly, it is the Lead Agency's position that, although capable of providing seating for "65,000 attendees, with an additional 10,000 seats that could be added for special events," the "Rose Bowl Alternative" would "not be feasible" because it "could not accommodate the revised Plan of Development" (DSEIR, p. 7-16).

As reported in the Pasadena-Star News on September 4, 2008: "Roski wants to buy at least a 30-40 percent share of an NFL team and move it to the Rose Bowl by next season, with plans to relocate the team to his 75,000-seat stadium by 2011, Majestic Realty Vice President John Semcken said. . . By January, Semcken hopes to have approved plans for the stadium, environmental clearance from Industry and a deal in place for the team to play two seasons at the Rose Bowl while Roski's Los Angeles Stadium is built." As further reported in the Los Angeles Times on April 17, 2008: "Roski said that if an NFL team is willing to relocate, construction on the stadium can begin this fall and be finished in time for the 2011 season. He added the team could begin playing in Los Angeles by the 2009 season, and conceivably use the Coliseum or Rose Bowl as a temporary home in the interim."

Based on the Applicant's own declaration that both the Coliseum and the Rose Bowl can accommodate an NFL team, the DSEIR'S rejection of the "Rose Bowl Alternative" and "LA Memorial Coliseum Alternative" appears intended solely to support a pre-determination in favor of the Applicant's development plan.

The administrative record clearly shows that the Applicant first sought rights to the Los Angeles Memorial Coliseum, then to the Rose Bowl, and only now in the City of Industry. Because the Applicant's own objectives encompass "the greater Los Angeles area," no factual basis exists to now assert that a feasible alternative site can be rejected merely because they are neither in "Industry or the project site." For the purpose of CEQA compliance, the Lead Agency is required to return to its original set of objectives, as outlined in the Final IBC/EIR, and examine a reasonable range of alternatives which would "allow for reasonable use of lands within the project site" (FEIR IBC/EIR, p. 4-2).

The Lead Agency states that the following additional alternatives are "infeasible" and, therefore, warrant elimination: (1) "Reduced Intensity Alternative" (e.g., "While this alternative would lessen many of the impacts associated with the original project, it was rejected as economically infeasible," DSEIR, p. 7-2); and (2) "Reduced Stadium Size Alternative" (e.g., "The feasibility of reducing the size of the stadium component of the revised Plan of Development to reduce overall project impacts is determined in large part by whether an NFL team and the NFL would approve a stadium with a substantially reduced capacity," DSEIR, p. 7-4). Since the NFL has neither

approved nor rejected a particular design plan nor specified a minimum number of seats, the Lead Agency has no factual basis to assert that a "Reduced Stadium Size Alternative" would be deemed "infeasible" (DSEIR, p. 7-5) by the NFL.

Failure to Consider Additional Alternative Sites

If the Applicant's "underlying purpose" is to "acquire and maintain an NFL franchise in the greater Los Angeles area," the stipulation that the NFL franchise must be located in Industry and must only be located on the project site are both self-imposed restrictions and unreasonably narrow the range of options that should be considered as part of any CEQA analysis. While the DSEIR did examine a "Los Angeles Memorial Coliseum Alternative," a "Rose Bowl Alternative," and an "Anaheim Alternative" as sites upon which recent plans have been formulated and which have been suggested as conducive to the attainment of that objective, the Lead Agency presents no factual basis for including other alternative sites that have also been suggested as suitable for that same purpose.

Additional Alternatives and Mitigation Measures Responding to Significant Effects

In addition to requiring identification of significant environmental impacts, CEQA also requires public agencies to discuss ways in which those impacts can be avoided or reduced. Agencies must "systematically identif[y] both the significant effects of proposed projects and the feasible alternatives or feasible mitigation measures which will avoid or substantially lessen such significant effects" (§21002).

CEQA requires that the an EIR describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project (14 CCR 15126.6[a]). In formulating a "reasonable range of alternatives," the Lead Agency must, therefore, first define the "significant effects of the project" that might be reduced or eliminated.

As indicated in the DSEIR, the Lead Agency acknowledges the existence of a number of "significant and unavoidable" environmental effects. The statements presented in the "executive summary" constitute irrefutable declarations on the part of the Lead Agency of the presence of unmitigable environmental consequences.

Although the City believes that the list is not inclusive of all the significant and unavoidable impacts identified in the EIR, the Lead Agency's acknowledged significant air quality, noise, and transportation and traffic impacts are separately addressed below.

- **Air Quality**. As indicated in the DSEIR, the Lead Agency acknowledges the existence of the significant and unavoidable "air quality" environmental effects. Since most large-scale projects would be anticipated to produce significant air quality impacts, other than through a reduction in the overall scale of the project or the relocation of the project to a conforming air basin, few alternatives may be available that would reduce air quality impacts to a less-than-significant level.

- **Noise.** As indicated in the DSEIR, the Lead Agency acknowledges the existence of the significant and unavoidable "noise" impacts: (1) "On a day with a stadium event, project-related traffic would not substantially elevate average daily noise levels but would substantially elevate hourly traffic noise levels in the hours after a stadium event" (DSEIR, Impact 5.7-4, p. 1-31); (2) "On days with a stadium event, Metrolink trains generated by the project during special event service would generate substantial noise from train passby events and train horn noise" (DSEIR, Impact 5.7-5, p. 1-32); (3) "On a day with a stadium event, noise from stadium activities would exceed the maximum permissible noise level limits at nearby noise-sensitive uses" (DSEIR, Impact 5.7-7, p. 1-32); and (4) "Metrolink train trips generated by the revised project on days with a stadium event would create perceptible levels of groundborne vibration from train passby events" (DSEIR, Impact 5.7-8, p. 1-33).

  Because noise impacts can often be readily reduced to a less-than-significant level through feasible design and operational changes, additional noise-based alternatives need to considered because those alternatives are both implementable and would continue to allow for the attainment of the Applicant's objectives. As discussed below, alternatives focusing specifically on stadium-related and parking lot-related noise need to be considered.

  - **Stadium Noise Alternatives** (Covered Stadium). With regards to stadium-based noise, the SDEIR indicates: (1) "Noise levels at the nearest residences could reach 70 dBA Leq. Impacts from a concert event are a significant adverse impact" (DSEIR, p. 5.7-83); (2) "No mitigation measures are available to reduce noise generated by crowd noise or fireworks during a stadium event" (DSEIR, p. 5.7-110); and (3) "[I]mpacts from a concert would extend beyond the local vicinity of the project site and are a significant adverse impact" (DSEIR, pp. 5.7-111 and 112). Clearly, significant noise levels will emanate from the stadium (e.g., marching bands, crowd noise, loud speakers, and other amplified noise). Based on the Lead Agency's own admission, existing stadium design plans will not reduce those noise impacts to a less-than-significant level, resulting in long-term adverse impacts upon those sensitive located near the stadium (including adjoining residential areas in the City of Diamond Bar).

    With the exception of fireworks, each of those noise sources originates from within the stadium, overtop the stadium's walls, and extend outward encompassing abutting properties. Noise generated inside the stadium could be effectively controlled through the construction of a fixed-roof.

    As indicated in the DSEIR, "exterior-to-interior transmission loss from standard building construction results in a minimum 24 dBA" (DSEIR, Appendix G, p. 114). As a result, covering the stadium would result in a "minimum 24 dBA" reduction in noise transmission from in-side to out-side the stadium itself. It is likely that level of structural attenuation would reduce impacts from proximal residential receptors attributable to noise generated from inside the stadium to a less-than-significant level.

◊ **Tailgating Noise Alternatives** (Restricting Tailgating to Defined Areas). As indicated in the DSEIR, "operational-source noise impacts associated with the tailgating in the parking lots is a new significant impact of this SEIR" (DSEIR, p. 5.7-84). Because tailgating is a popular activity which will occur prior to during NFL games (and may be expected to continue throughout the game and after its completion) and because areas where tailgating might actually occur are located directly adjacent to existing residential areas in Diamond Bar, the Lead Agency cannot merely accept the existence of those effects without examining all feasible alternatives (and mitigation measures) that, if implemented, could reduce those impacts to a less-than-significant level.

The City believes that noise impacts attributable to tailgating could be effectively reduced by establishing specific "tailgate welcome" areas away from near-site sensitive receptors and posting "no tailgating or loitering" signage in areas closer to those receptors.

As now proposed, only two mitigation measures have been identified by the Lead Agency addressing tailgating, namely: (1) "No tailgating shall be permitted within 150-foot buffer area located adjacent to residential areas"; and (2) "Tailgating shall be prohibited after 10:00 PM in the parking lots" (DSEIR, Mitigation Measures 10-3 and 1004, p. 5.7-110). As acknowledged by the Lead Agency, those measures did not reducing associated noise impacts to below a level of significance. However, because noise atmospherically attenuates over distance, if tailgating could be located 600-feet or 1,200-feet away from those residences, to specially designated landscaped areas, the Lead Agency would likely be able to conclude that tailgating-related noise could be reduced to a less-than-significant level.

CEQA establishes a duty for public agencies to avoid or minimize environmental damage where feasible. CEQA further specifies that public agencies should not approve a project, as proposed, if there are feasible alternatives or mitigation measures available that would substantially lessen any significant effects that the project would have on the environment (14 CCR 15021). As such, in addition to the alternatives outlined above, the City recommends that the EIR be expanded to include the following additional mitigation measures designed to reduce noise impacts to the maximum extend feasible.

◊ **Pre-Event Noise Management Plan.** The Lead Agency concludes that noise impacts from the stadium's operation will produce significant and unmitigable noise impacts, including, but not necessarily limited to: (1) "Noise levels at the nearest residences could reach 70 dBA Leq. Impacts from a concert event are a significant adverse impact" (DSEIR, p. 5.7-83); (2) "No mitigation measures are available to reduce noise generated by crowd noise or fireworks during a stadium event" (DSEIR, p. 5.7-110); and (3) "[I]mpacts from a concert would extend beyond the local vicinity of the project site and are a significant adverse impact" (DSEIR, pp. 5.7-111 and 112).

Although never addressed, it can be assumed that different types of stadium events (e.g., football games and concerts) have the potential to produce quite varied noise impacts at near-by residences. Because of the possible diversity with regards to the types of concerts and other events that may be scheduled and potential substantial differences in sound characteristics, sound systems, and physical layout, it is recommended that a "noise management plan" be prepared prior to any scheduled "major," "minor," and other "special" event, as those terms are defined (or in the case of "special events" not defined) in the DSEIR. The goal of each noise management plan would be to ensure the project's and the event's strict compliance with the noise standards governing proximal residential receptors.

Concert speaker systems are often located in speaker clusters near the stage and directed at the audience. These speaker clusters usually are fairly directional in contrast to public address type sound systems. Since the speaker clusters are usually farther away from the audience than public address system speakers, the concert noise from central speaker clusters will tend to be louder at the same distance.

Development of a noise management plan is recommended to minimize disturbance of nearby residents from concert and other events resulting from sound amplification at the stadium that addresses the specifics related to any proposed event. The plan would assess the precise nature of the event and specify appropriate mitigation, such as line array of speaker systems and optimum speaker aiming.

◊ **Additional Noise Attenuation.** The NFL Stadium project site directly abuts two residential neighborhoods in Diamond Bar (i.e., Sunset Crossing/Neil Armstrong Elementary School and Lycoming/Washington) and the stadium's operation will subject those sensitive receptors to noise levels deemed to be "significant and unavoidable" by the Lead Agency. As such, all reasonable efforts need to be taken to reduce exterior noise levels in those areas to the maximum extent feasible.

As mitigation for "concert noise" the Lead Agency recommends that "[a]coustical design features shall be incorporated into the project design and verified through an acoustical report. Acoustical design features may include exterior features to reduce noise such as berms/walls at the stadium, lowering speaker height, and other architectural features to reduce noise spillage from the stadium to less than 55 dBA Leq as measured at the property line of the adjacent residential land uses. These architectural features shall be shown on all building plans and shall be incorporated into construction of the project" (DSEIR, Mitigation Measure 10-2, p. 5.7-110).

Independent of and in addition to whatever efforts may be implemented to fully comply with Mitigation Measure 10-2, in order to more effectively mitigation operational noise impacts attributable to the NFL Stadium project, the EIR should include and the Lead Agency's decision-making body should adopt the following additional mitigation measures:

1. With regards to the Sunset Crossing/Neil Armstrong Elementary School neighborhood, at the Applicant's sole cost and expense, prior to the issuance of any occupancy permits or final inspection for any land use located on the subject property, the Applicant shall design, install, and thereafter fully maintain (including landscaping and graffiti removal) the following improvements along and adjacent to the property boundary of all existing sensitive residential receptors located along Rock River Road, South Palo Cedero Drive, North Palo Cedero Drive, Eaglespur Road, and Deep Hill Drive in the City of Diamond Bar: (1) an earthen and extensively landscaped berm, with a minimum berm height of not less than 15-feet extending above the existing grade, as measured at the high point of the shared property line(s) separating those existing residential receptors from the project site; and (2) a decorative, solid, masonry block wall, with a minimum height of 8 feet above finish grade, installed along or directly adjacent to the property boundaries of those existing residential receptors sharing a common property line(s) with the project site. The wall design shall seek to accomplish the duel goals of providing effective noise mitigation to proximal residential receptors and providing a functional, attractive, and safe design element enhancing the visual character of those homes and that abutting neighborhood.

2. With regards to the Lycoming/Washington neighborhood, in accordance with the Federal Railroad Administration's (FRA) "Final Train Horn Rule," as published in the Federal Register on June 24, 2005 and amended on August 17, 2006, including any and all guidance documents associated therewith, at the Applicant's sole cost and expense, prior to the issuance of any occupancy permits or final inspection for any land use located on the subject property, the Applicant shall design, install, and thereafter fully maintain (including landscaping and graffiti removal) those safety, noise attenuation, and other related improvements associated with any existing or future "quiet zone" that may be established in the vicinity of Lemon Avenue and Lycoming Street or as identified by the City of Diamond Bar in its application to the FRA for "quiet zone" status, including the annual or more frequent monitoring of "quite zone" compliance.

◊ **Residential Insulation and Noise Reduction Program.** California's Noise Insulation Standards (Title 24, Part 2, California Code of Regulations) establish an interior noise standard of 45 dBA for residential space (CNEL or Ldn). Acoustical studies must be prepared for residential structures located within noise contours of 60 dBA or greater (CNEL or Ldn) from freeways, major streets, thoroughfares, rail lines, rapid transit lines, or industrial noise sources. The studies must demonstrate that the building is designed to reduce interior noise to 45 dBA or lower (CNEL or Ldn).

While it does not appear not specifically intended for affected off-site receptors, the Lead Agency states that "[a]coustical design features incorporated into construction of the revised project shall include exterior features to reduce noise, such as berms/walls and/or architectural features, such as Sound Transmission Class (STC) rated windows, doors, and attic baffling, to ensure interior noise levels in noise-sensitive habitable rooms will not exceed 45 dBA CNEL, as defined by the California Building Code" (DSEIR, PDF 16, p. 5.7-26). The application of new construction practices, materials, and techniques will ensure that all on-site uses achieve that standard. However, existing sensitive uses located beyond the project boundaries should not be subjected to noise levels which diminish or otherwise detract from the use and enjoyment of those properties.

Although the DSEIR specified that noise impacts upon proximal sensitive receptors will be "significant and unavoidable," the EIR does not specify the distances from the stadium where significant noise impacts will extend. Excluding the noise associated with firework displays, the Lead Agency should establish a "residential insulation and noise reduction program" within that geographic area where exceedance conditions are documented.

Since exterior noise impacts are deemed significant and unmitigable, in compensation for residential exposure to those impacts, the Applicant should fully fund such structural attenuation improvements as may be required to achieve a significant interior reduction from stadium noise levels while ensuring the style, character, and liveability of participating homes is maintained. As a performance criteria, the program should encompass such acoustical insulation as may be required to ensure that the interior noise level of any habitable room, due to exterior sources, does not exceed 45 dBA Leq, L_{02}, L_{08}, L_{25}, L_{50}, or Lmax, whichever standard would be the more restrictive.

Existing residential neighborhoods that would be eligible for participation in this program would include, but may not be limited to Lycoming/Washington and Sunset Crossing/Neil Armstrong Elementary School.

- **Transportation and Traffic.** As indicated in the DSEIR, the Lead Agency acknowledges that "[w]ithout mitigation, the following impacts would be potentially significant: [1] "On weekdays without games, the revised project would generate traffic that would impact levels of service for the existing area roadway system" (DSEIR, Impact 5.10-1, pp. 1-37 and 5.10-189); (2) "On weeknights with games, the revised project would generate traffic that would impact levels of service for the existing area roadway system" (DSEIR, Impact 5.10-2, pp. 1-60 and 5.10-190); and (3) "On Sundays with games the revised project would generate traffic that would impact levels of service for the existing area roadway system" (DSEIR, Impact 5.10-3, pp. 1-65 and 5.10-190).

  Traffic impacts can be reduced to a less-than-significant level through the implementation of the identified traffic improvements, including the payment of all applicable fair-share contributions to each of the State and local responsible agencies in whose jurisdiction those

improvements are located, inclusive of those associated with the SR-57/60 corridor and Grand Avenue. In recognition of both the difficulty likely to be encountered in implementing some of those improvements and the CEQA-based obligation on the Lead Agency to reduce environmental impacts to the maximum extent feasible, the following additional mitigation measures are recommended by the City.

◊ **Permanent Shuttle Bus Operations**. As proposed, a "private shuttle service" will be operated between the stadium and the Metrolink station only "during game days and special events" (e.g., "By providing private shuttle services from the Metrolink station to the stadium during game day and special events, the revised project would be providing a beneficial and viable long-term mode of alternative transportation," DSEIR, p. 3-28). However, by limiting shuttle operations to only event days, the statement that the Lead Agency and/or the Applicant are making any meaningful contribution to a "viable long-term of alternative transportation" is, at best, misleading.

The Applicant is promoting not only a NFL Stadium but also a "regional destination retail, entertainment, and commercial project" (DSEIR, p. 3-2) which is "comparable to Staples Center and Universal City's City Walk" (Valley Daily Bulletin, April 21, 2008). Improved connectivity between the Metrolink station and the NFL Stadium project would help to reduce the number of vehicle driving to the planned "regional destination" to the maximum extent feasible.

The proposed "shuttle service," therefore, needs to be extended to not only "game days and special events" but to all hours when the "regional destination retail, entertainment, and commercial project" would be open for business (e.g., increased visitor population," DSEIR, 5.9-9). The Applicant states that the operating hours of the "entertainment venue" extend between "8:00 AM to 11:00PM or and 2:00 AM" (DSEIR, p. 3-21). The proposed "shuttle service" needs to operate continuously during those hours or during such hours as Metrolink services are available.

◊ **Dedicated Shuttle Bus Overpass or Undercrossing**. The Lead Agency states that the project would produce a significant traffic impact if the project were to "substantially increase hazards due to a design feature" (DSEIR, p. 5.10-24). However, the EIR never discloses that placing an open-air, slow-moving shuttle on a major arterial highway in travel lanes shared with other motorists represents a safety hazard to shuttle riders. As a result, a potentially significant traffic impact is never disclosed in the DSEIR.

As illustrated in the DSEIR, the route of the "conceptual shuttle system" (DSEIR, Figure 3-9, unpaginated) indicates that the shuttle system will operate on Grand Avenue rather than along a dedicated shuttle route that would not place the "rubber-tired shuttles" (DSEIR, p. 3-28) on public roadways, in competition with other motorists for those same travel lanes. Slow moving shuttles will likely impede traffic flow and would effectively reduce traffic volumes along Grand Avenue. As such, because the Applicant asserts that the shuttle system will remove 1,250 cars from

the roadway (DSEIR, Table 5.10-9, p. 5.10-33), the system's operations would prove counter-productive if it would be reduce the capacity of the roadways upon which it were to travel (e.g., "1,600 vehicle per hour per lane as the practical capacity for through lanes," DSEIR, Appendix H, p. 11).

In order to maximum the potential benefits of the "shuttle system," the project should be designed to create a dedicated on-site travel-way for the shuttle to operate, thus keeping the shuttles off public roadways to the maximum extend possible. Such a dedicated routing plan could be easily implemented with only minor changes in the proposed site plan, including the construction of a dedicated bridge overpass or undercrossing extending from the eastern parking area (east of Grand Avenue) to the stadium area.

◊ **Bicycle Route Improvements.** The Lead Agency states that the project would produce a significant traffic impact if the project were to "conflict with adopted policies, plans, or programs supporting alternative transportation" (DSEIR, p. 5.10-24). As indicated in the DSEIR, implementation of those proposed traffic improvements identified by the Lead Agency will result in the elimination of a number of existing dedicated bicycle lanes.

Intersections and/or street segments where existing bicycle lanes will be eliminated include, but are not limited to: (1) Intersection 4 – Grand Avenue at Cameron Avenue (DSEIR, p. 5.10-192); (2) Intersection 6 – Grand Avenue at Mountaineer Road (DSEIR, p. 5.10-192); (3) Intersection 7 – Grand Avenue at San Jose Hills Road (DSEIR, p. 5.10-193); (4) Intersection 8 – Nogales Street at Amar Road (DSEIR, p. 5.10-193); (5) Intersection 9 – Lemon Avenue at Amar Road (DSEIR, p. 5.10-193); (6) Intersection 10 – Grand Avenue at Temple Avenue (DSEIR, p. 5.10-194); (7) Intersection 16 – Diamond Bar-Mission Boulevard at Temple Avenue (DSEIR, p. 5.10-198); (8) Intersection 18 – Nogales Street at La Puente Road (DSEIR, p. 5.10-199); (9) Intersection 19 – Grand Avenue at La Puente Road (DSEIR, p. 5.10-199); (10) Intersection 28 – Diamond Bar Boulevard at SR-57 NB Ramp (DSEIR, p. 5.10-203); (11) Intersection 29 – Diamond Bar Boulevard at Sunset Crossing Road (DSEIR, p. 5.10-203); (12) Intersection 30 – Diamond Bar Boulevard at SR-60 WB Ramp (DSEIR, p. 5.10-203); (13) Intersection 31 – Diamond Bar Boulevard at SR-60 EB Ramp (DSEIR, p. 5.10-203); (14) Intersection 34 – Diamond Bar Boulevard at Golden Springs Drive (DSEIR, p. 5.10-204); (15) Intersection 58 – Gateway Center Drive at Golden Springs Drive (DSEIR, p. 5.10-208); (16) Intersection 59 – Copley Drive at Golden Springs Drive (DSEIR, p. 5.10-208); (17) Intersection 68 – Diamond Bar Boulevard at Montefino Avenue (DSEIR, p. 5.10-211); (18) Intersection 69 – Diamond Bar Boulevard at Quail Summit Drive (DSEIR, p. 5.10-211); (19) Intersection 70 – Diamond Bar Boulevard at Mountain Laurel (DSEIR, p. 5.10-212); (20) Intersection 71 – Diamond Bar Boulevard at Kiowa Crest Drive (DSEIR, p. 5.10-212); (21) Intersection 77 – Diamond Bar Boulevard at Pathfinder Road (DSEIR, p. 5.10-213); (22) Intersection 81 – Diamond Bar Boulevard at Golden Springs Lane (DSEIR, p. 5.10-215); (23) Intersection 82 –

Brea Canyon Road at Diamond Bar Boulevard (DSEIR, p. 5.10-215); and (24) Intersection 84 – Diamond Bar Boulevard at Gold Rush Drive (DSEIR, p. 5.10-216).

The "revised project" is anticipated to have a significant adverse impact on bicycle safety. No mitigation of any kind is, however, recommended by the Lead Agency and no acknowledge of this impact exists anywhere in the EIR.

CEQA states that mitigation includes compensating for the impact by replacing or providing substitute resources or environments (14 CCR 15370[e]). As mitigation for the project's impacts on "alternative transportation" systems, the Lead Agency is required to provide reasonable compensation to each agency in whose jurisdiction a bicycle lane(s) will be eliminated. The appropriate amount of compensation need to be determined by the affected agency based on a technical analysis of options available to each agency and the actions deemed appropriate by that agency to mitigate those impacts. In most case, affected agencies will be required to amend their general plans and/or park and recreation plans to both change the status of affected bicycle routes and to identify alternatives thereto.

Additional Undisclosed Indirect Impacts

In Laurel Heights Improvement Assn. v. Regents of University of California, the Supreme Court discussed the issue of what circumstances require consideration in an EIR of future action related to the proposed project. While recognizing that "'where future development is unspecified and uncertain, no purpose can be served by requiring an EIR to engage in sheer speculation as to future environmental consequences'" [citation], it held future effects must be included if: "(1) it is a reasonably foreseeable consequence of the initial project; and (2) the future expansion or action will be significant in that it will likely change the scope or nature of the initial project or its environmental effects" (City of Santee v. County of San Diego).
Based a review of the DSEIR, a number of additional, undisclosed, potential indirect impacts have been identified. Those impacts are separately discussed below.

- **Reasonably Foreseeable Future Uses.** As discussed elsewhere, substantial evidence suggests that "[t]his stadium is designed to accommodate two teams" (Daily Titan, September 9, 2008). Absent from the EIR is any discussion or evaluation of the potential expanded use of the NFL Stadium accommodating a greater intensity of use that disclosed in the DSEIR.

  With regards to "emergency response and evacuation planning," the Lead Agency states that "the proposed stadium, its associated practice fields, and surface parking areas could also serve as a venue for staging emergency services and/or temporary shelter during major disasters or other crises in the region. For example, given its proposed location and sheer size, the stadium could be utilized by the American Red Cross for the provision of temporary shelter and/or the administration of medical services during a major disaster" (DSEIR, p. 5.4-12).

Because the Lead Agency state that the proposed project could, in the future, become a key element in regional emergency planning efforts, that intent must be considered a "reasonably foreseeable future use" warranting further consideration in the EIR. Since the Lead Agency has itself volunteered the NFL Stadium as an emergency staging site, Industry must accept an obligation (under CEQA) not to merely assert the existence of a "beneficial impact" (DSEIR, p. 5.4-12), which might be subsequently cited as part of any findings adopted following certification of the EIR, but to present a reasonable analysis which supports that conclusion.

The Lead Agency states that the proposed project would have a significant environmental effect if the project were to "[i]mpair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan" (DSEIR, p. 5.4-8).

Use of the site as temporary housing for "an estimated 15,000 people" (DSEIR, p. 5.4-12) under dire conditions could introduce additional environmental impacts which are not yet disclosed. Since the DSEIR does state whether the Lead Agency has adopted an "emergency response plan," no information is provided to assess the stadium's future use in the context of existing public policies and previous analyses.

The Lead Agency's identification of the NFL Stadium as a "venue for staging emergency services and/or temporary shelter" further suggests the need to amendment or otherwise modify an "adopted emergency response and evaluation plan" to include the stadium as part of regional emergency responsiveness efforts. If the NFL Stadium were to become the site where regional emergency efforts were concentrated, it would appear logical that regional plans then acknowledged that stated purpose and intent.

- **Growth-Inducing Impacts.** With regards to "growth-inducing impact," an "EIR must discuss growth-inducing impacts even though those impacts are not themselves a part of the project under consideration, and even though the extent of the growth is difficult to calculate" (Napa Citizens for Honest Government v. Napa County Board of Supervisors). In determining if a project has growth-inducing impacts, the courts generally look to whether the project sets in motion market forces that can lead to economic pressure for growth.

Since, as part of any findings adopted following certification of the EIR, it must be assumed that the Lead Agency will seek to claim that the "revised project" will serve as an "economic catalyst," the Lead Agency is required to base its findings on substantial evidence presented in the EIR. In direct contradiction, the documentation of lost property value attributable to a stadium's proposed presence would appear to refute any such claim.

To the extent that the NFL Stadium project were to put downward pressures on residential valuation due to the "negative externalities" attributable to the project (e.g., traffic congestion, noise, loss of privacy, and crime), those impacts would most likely occur in Diamond Bar and manifest as lost revenues to the State, the County, and the City.

Available evidence indicates that the economic consequences of the NFL Stadium project on Diamond Bar will likely be substantial. The Lead Agency's subsequent release of an

economic evaluation, without sufficient opportunity for the City and other parties, to conduct an appropriate review of the report's findings (including hiring a qualified economic consultant with the experience and capabilities to independently evaluate any Applicant-based assumptions) would prove contrary to CEQA because it would reward the Lead Agency for withholding key information and preclude sufficient opportunity for the public to reasonably assess the project's direct, indirect, and cumulative effects. Additionally, the Lead Agency's response to comments can neither be used as a substitute for what should be included in nor cure the defects of the DSEIR. Such a tactic has been repeatedly condemned because it frustrates CEQA's twin goals of public participation and informed decisionmaking. "This requirement of 'public and agency review' has been called 'the strongest assurance of the adequacy of the EIR.'" (Sundstrom v. County of Mendocino).

In the Lead Agency's FOF/SOQ, allegedly basing its conclusions on factual information already in the administrative record, Industry concluded that "[a]s the project develops, similar uses will be attracted to neighboring areas with similar zoning stimulating investment and increasing the economic vitality of this eastern end of the San Gabriel Valley as a whole" (FOF/SOC, p. 4-2). By this statement, the Lead Agency represents that the "2004 Plan of Development" will attract similar uses and will stimulate development beyond the project boundaries. In contrast, the "revised Plan of Development" will "not, therefore involve a precedent-setting action that could be applied to other properties and thereby encourage or facilitate growth that would not otherwise occur" (DSEIR, p. 10-4). In that statement, the Lead Agency has itself limited the rationale it can subsequent present with regards to any statement of overriding considerations that it may wish to present in support of the "revised Plan of Development."

CEQA requires that the decision-making agency balance the economic, legal, social, technological, or other benefits of a proposed action against its unavoidable environmental risk (14 CCR 15093). Absent any economic analysis made subject to peer review and comment, the Lead Agency has not created an administrative record which would support the approval of a statement of overriding considerations on any economic grounds.

In a variety of CEQA cases, the courts have rejected the argument that information found in a document that was not circulated for public review, such as a response to comments, can substitute for information required in a draft EIR. In Mountain Lion Coalition v. California Fish and Game Commission, the court condemned the agency practice of insulating environmental analysis from public review. As the court stated: "If we were to allow the deficient analysis in the draft EID [Environmental Impact Document] to be bolstered by a document that was never circulated for public comment. . .we would be subverting the important public purposes of CEQA. . .To evaluate the draft EID in conjunction with the final EID. . .would only countenance the practice of releasing a report for public consumption that hedges on important environmental issues while deferring a more detailed analysis to the final EID that is insulated from public review".

Failure to Adequately Identify the Impacts of Recommended Mitigation Measures

As required under CEQA: "If a mitigation measure would cause one or more significant effects in addition to those that would be caused by the project as proposed, the effects of the mitigation

measures shall be discussed but in less detail than the significant effects of the project as proposed" (14 CCR 15126.4[a][1][D]).

With regards to "transportation and traffic" mitigation, as indicated in the Final IBC/EIR: "The City of Industry recognizes that certain intersection improvements would require the acquisition of additional right-of-way and possible displacement of existing land uses" (Final IBC/EIR, Response to Comments, Response M-7). As indicated in the DSEIR, with regards to project-related and/or cumulative traffic impacts, addition right-of-way (ROW) will need to be purchased at the following intersections located in Diamond Bar. As excerpted from the DSEIR, without the City stating its concurrence with the EIR's preliminary findings, the Lead Agency's "additional ROW requirements for LOS D mitigation and land use impact assessment" is provided for each of the identified intersection located in the City.

(1) Intersection No. 16 - Diamond Bar Boulevard-Mission Boulevard at Temple Avenue. "West side of Diamond Bar Boulevard: An additional ROW requirement of 22 feet would encroach on slope bank/landscaping and restaurant parking lot adjoining the SB approach on Diamond Bar Boulevard. Additionally, a 6 feet ROW adjoining the SB departure will affect existing landscaping/wall and residential use. Significant Impact" (DSEIR, pp. 5.6-32, 5.10-198, and 5.10-199).

(2) Intersection No. 30 - Diamond Bar Boulevard at SR-60 WB Ramps. "East side of Diamond Bar Boulevard: An additional ROW of 11 feet required would encroach on existing commercial parking lot on Diamond Bar Boulevard. The encroachment represents a decrease in the number of commercial parking spaces. Potentially Significant Impact" (DSEIR, pp. 5.6-38, 5.6-39, and 5.10-203).

(3) Intersection No. 31 - Diamond Bar Boulevard at SR-60 EB Ramps. (1) "North side of SR-60 EB: An additional ROW of 7 feet required would encroach on an existing freeway landscaping. Less than Significant Impact" and; (2) "East side of Diamond Bar Boulevard: An additional ROW of 11 feet required will encroach on an existing landscaping and commercial use on Diamond Bar Boulevard. Potentially Significant Impact" (DSEIR, pp. 5.6-39 and 5.10-203).

(4) Intersection No. 34 - Diamond Bar Boulevard at Golden Springs Drive. (1) "South side of Golden Springs Drive: An additional ROW of 12 feet required would reduce school grounds and playfield and increase traffic noise impacts. The encroachment would disturb and reduce school grounds and jeopardize the safety of students. Significant Impact"; (2) "North side of Golden Springs Drive: An additional ROW of 10 feet required would encroach on an existing gas station on Golden Springs Drive. Potentially Significant Impact" and; (3) "North side of Golden Springs Drive: An additional ROW of 11 feet required would encroach on an existing gas station on Golden Springs Drive. Significant Impact" (DSEIR, pp. 5.6-40 and 5.10-204).

(5) Intersection No. 52 - SR-60 at Golden Springs Drive. (1) "North side of Golden Springs Drive: An additional ROW requirement of 2 feet would encroach on an existing fast-food restaurant. The encroachment is less than significant as it represents a minimal amount of land. Less than Significant" and; (2) "North side of Golden Springs Drive: An additional ROW requirement of 13 feet would encroach on an existing fast-food restaurant. ROW requirements would encroach on developed site and could affect structures. Potentially Significant Impact" (DSEIR, pp. 5.6-42 ad 5.10-207).

(6) Intersection No. 53 - Brea Canyon Road at Golden Springs Drive. (1) "South side of Golden Springs Drive: An additional ROW requirement of 11 feet would encroach on an existing landscaping and restaurant. The encroachment on a restaurant on Golden Springs could be potentially significant as there are a limited number of commercial parking spaces on all corners of the intersection. Potentially Significant Impact"; and (2) "South side of Golden Springs Drive: An additional ROW requirement of 11 feet would encroach on an existing landscaping and restaurant. Significant Impact" (DSEIR, pp. 5.6-43 and 5.10-207).

(7) Intersection No. 59 - Copley Drive at Golden Springs Drive. "South side of Golden Springs Drive: An additional ROW requirement of 11 feet would encroach on an existing slope/landscaping/office parking lot. Potentially Significant Impact" (DSEIR, pp. 5.6-43 and 5.10-209).

(8) Intersection No. 60 - Grand Avenue at Golden Springs Drive. (1) "East side of Grand Avenue: An additional ROW requirement of 22 feet would encroach on an existing gas station/structure. Significant Impact"; (2) "West side of Grand Avenue: An additional ROW requirement of 11 feet would affect the existing golf course on the SB approach and landscaping/commercial use on the SB departure. Less than Significant Impact"; and (3) "East side of Grand Avenue: An additional ROW requirement of 11 feet would encroach on existing gas station structure. Potentially Significant Impact" (DSEIR, pp. 5.6-44 and 5.10-209).

(9) Intersection No. 63 - Diamond Bar Boulevard at Grand Avenue. (1) "East side of Diamond Bar Boulevard: An additional ROW requirement of 22 feet would substantially encroach on existing bank/commercial use (NB approach). An existing 11 feet would also encroach on existing bank/commercial use on NB departure [Significant Impact]" (2) "West side of Diamond Bar Boulevard: An additional ROW requirement of 11 feet on the SB approach would encroach on existing shopping center/commercial center. This is continued past Grand on the SB departure [Significant Impact]"; (3) "South side of Grand Avenue: An additional ROW requirement of 11 feet would encroach on commercial buildings on the EB departure. These ROW requirements represent significant impacts as the intersection corners are fully developed with commercial buildings. Significant Impact"; and (4) "North of Grand Avenue: An additional ROW requirement of 10 feet would encroach on existing bank/commercial on the WB approach on Grand Avenue. Potentially Significant Impact" (DSEIR, pp. 5.6-45, 5.6-46, and 5.10-210).

(10) Intersection No. 68 - Diamond Bar Boulevard at Montefino Avenue. (1) "South side of Montefino Avenue: An additional ROW requirement of 11 feet would encroach on an existing parking lot of a convenience store. This could potentially have an impact as there is already a limited amount of parking space available at the site. Potentially Significant Impact"; and (2) "North side of Montefino Avenue: An additional ROW requirement of 11 feet would encroach on an existing post office adjoining the SB approach on Diamond Bar Boulevard. The decrease in parking spaces could be a potential impact to post office patrons. Potentially Significant Impact" (DSEIR, pp. 5.6-47 and 5.10-211).

(11) Intersection No. 70 - Diamond Bar Boulevard at Mountain Laurel. (1) "North side of Mountain Laurel: An additional ROW requirement of 11 feet would encroach on an existing wall/landscaping and residential use adjoining the WB departure on Mountain Laurel Way. The ROW requirement encroaches on residential area that could potentially disturb their quality of life. Potentially Significant Impact"; and (2) "West side of Diamond Bar Boulevard: An additional ROW requirement of 11 feet would encroach on an existing wall/landscaping

and residential use adjoining the SB approach on Diamond Bar Boulevard. The ROW requirement encroaches on a residential area that could potentially disturb their quality of life. Potentially Significant Impact" (DSEIR, pp. 5.6-47, 5.6-48, and 5.10-212).

(12) Intersection No. 73 - Brea Canyon Road at Pathfinder Road. (1) "North side of Pathfinder Road: An additional ROW requirement of 11 feet would encroach on an existing landscaping and commercial parking lot. The encroachment on landscaping and partial encroachment onto commercial parking lot could take away parking spaces. Potentially Significant Impact"; and (2) "South side of Pathfinder Road: An additional ROW requirement of 10 feet would encroach on existing slope/landscaping. Less than Significant [Impact]" (DSEIR, pp. 5.6-48 and 5.10-212).

(13) Intersection No. 74 - SR-57 SB Ramps at Pathfinder Road. "West side of SR-57 SB: An additional ROW requirement of 10 feet would encroach on existing highway landscaping and commercial use. Potentially Significant Impact" (DSEIR, pp. 5.6-49 and 5.10-212).

(14) Intersection No. 77 - Diamond Bar Boulevard at Pathfinder Road. (1) "West side of Diamond Bar Boulevard: An additional ROW requirement of 5 feet would affect existing landscaping and residential use. This ROW requirement is less than significant as the residential use on Diamond Bar Boulevard is minimally affected. Less than Significant Impact"; (2) "East side of Diamond Bar Boulevard: An additional ROW requirement of 12 feet would encroach on existing landscaping and residential neighborhood. The encroachment of residential land use could potentially affect the quality of life for the residential community. Potentially Significant Impact"; and (3) "West side of Diamond Bar Boulevard: An additional ROW of 11 feet would encroach on existing landscaping and residential neighborhood. The encroachment of residential land use could potentially affect the quality of life for the residential community. Potentially Significant Impact" (DSEIR, pp. 5.6-49, 5.6-50, and 5.10-213).

(15) Intersection No. 76 - Brea Canyon Road (East)-Fern Hollow Drive at Pathfinder Road. (1) "East side of Brea Canyon Road: An additional ROW requirement of 11 feet would encroach on existing residential neighborhood [Significant Impact]"; and (2) "West side of Brea Canyon Road: "An additional ROW requirement of 22 feet would encroach on the residential neighborhood and on street-parking on Brea Canyon Road. ROW requirements would encroach substantially into the residential neighborhood. Significant Impact" (DSEIR, pp. 5.6-49 and 5.10-213).

(16) Intersection No. 81 - Diamond Bar Boulevard at Cold Springs Lane. (1) "South side of Cold Springs Lane: An additional ROW requirement of 5 feet would encroach on existing landscaping and residential neighborhood [Potentially Significant Impact]"; and (2) "North side of Cold Springs Lane: An additional ROW requirement of 5 feet would encroach on existing landscaping and residential neighborhood. Potentially Significant Impact" (DSEIR, pp. 5.6-51 and 5.10-215).

(17) Intersection No. 82 - Brea Canyon Road at Diamond Bar Boulevard. "South side of Diamond Bar Boulevard: An additional ROW requirement of 11 feet would encroach on existing open space. Less than Significant [Impact]" (DSEIR, pp. 5.6-52 and 5.10-215).

(18) Intersection No. 83 - Brea Canyon Road at Silver Bullet Drive. (1) "West side of Brea Canyon Road: An additional ROW requirement of 11 feet would encroach on existing freeway landscaping [Potentially Significant Impact]"; and (2) "East side of Brea Canyon Road: An additional ROW requirement of 11 feet would encroach on existing residential neighborhood. Potentially Significant Impact" (DSEIR, pp. 5.6-52 and p. 5.10-216).

Because the Lead Agency asserts that improvements to Grand Avenue and the SR-57/60 corridor are the responsible of others and do not constitute an obligation upon the "revised project," unaddressed in any of the above referenced intersections are the impacts on the Diamond Bar Golf Course (22751 E. Golden Springs Drive, Diamond Bar) and other properties directly abutting the SR-57/60 Freeway that will be impacted by those improvements. As a result, secondary impacts to existing businesses and properties in Diamond Bar are likely to be greater than now disclosed in the DSEIR.

As indicated above, numerous commercial, residential, and institutional uses will be significant impacted by those project-related and cumulative traffic improvements identified in the DSEIR. The potential impacts of those improvements include, but are not limited to, the loss of existing housing inventory, the displacement of existing residents, the cessation and displacement of existing businesses, the reduction in available commercial parking, the closure of school facilities, and the loss of open space and street-adjacent landscaping. Although the DSEIR provides general information, the precise nature of the impacts on abutting properties cannot be accurately ascertained from the information provided by the Lead Agency (e.g., precise number of dwelling units affected, functionality of residential and commercial uses with diminished land area; operational impacts on businesses with loss parking).

Many of these impacts are particularly onerous to the affected residents and businesses and include substantial undisclosed direct and indirect costs associated with the displacement and relocation activities that would be required in order for the City to effectuate the traffic improvements identified in the DSEIR which are located in Diamond Bar Walnut. If the stated improvements are not feasible or cannot be feasibly implemented, the Lead Agency cannot assume their implementation and must, therefore, either identify alternative improvements or reassess post-project traffic conditions absent those improvements.

Under CEQA, a "project" is defined as the "whole of the action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment" (14 CCR 15378). The acquisition of additional ROW to accommodate project-related and cumulative impacts constitutes a direct impact of the NFL Stadium project and the resulting impacts on abutting properties (including the displacement of existing residents and businesses) constitutes an indirect impact.

In the Final IBC/EIR, the Lead Agency sought to truncate the "2004 IBC Plan of Development" by stating than the CEQA analysis of any such improvements was not the responsibility of Industry but fell solely on the agency in whose jurisdiction those improvements were located. As indicated in the Final IBC/EIR: "The City of Industry has prepared the Industry Business Center EIR to evaluate the potential environmental effects of the project without regards to jurisdictional boundaries. In furtherance of this duty, the City of Industry identified various roadway impacts that require mitigation. Some of those impacts are predicted to occur within the boundaries of other jurisdictions, including the City of Diamond Bar. Pursuant to CEQA the City of Industry is obligated to identify mitigation measures that may reduce such impacts to a less than significant impact. However, the identification of such mitigation measures does not elevate the City of Diamond Bar to the role of responsible agency for the Industry East Project. If Caltrans proceeds with

improvements to freeway ramps and other jurisdictions, such as Diamond Bar, proceed with roadway improvements within their jurisdictions, these agencies will be responsible for the preparation of CEQA documentation as required by their roles as lead agencies for said improvements" (Final IBC/EIR, Response to Comments, Response N-4).

As indicated in the Final IBC/EIR: "While each jurisdiction will determine the desirability and ultimate fate of its transportation system and road network, the mitigation measures identified in the EIR are feasible but implementation may also impact adjacent land uses" (Final IBC/EIR, Response to Comments, Response L-3). However, the Lead Agency also states that "Industry recognizes the difficulty in phasing improvements and that certain improvements may be found to be infeasible or undesirable by the local agency" (Final IBC/EIR, Response to Comments, Response L-8).

The Lead Agency found that all the traffic mitigation presented in the Final IBC/EIR was "feasible." CEQA defined "feasible" as "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors" (§21061,1 and 14 CCR 15364).

Since roadway improvements designed to mitigate project-related and cumulative traffic impacts are identified by the Lead Agency (both in the Final IBC/EIR and DSEIR) the implementation of those improvements is indistinguishable from the implementation of water and sewer systems needed to support the proposed development. The Lead Agency has already identified water and sewer providers as "responsible agencies" (DSEIR, Table 3-3, p. 3-56).

Absent from the Final IBC/EIR and the DSEIR is sufficient analysis to allow the City and the affected public to reasonably ascertain the impacts of those "feasible" mitigation measures, including "impact [to] adjacent land uses." Since cost implications of those improvements are not presented in the DSEIR, the City has not been provided information concerning the Lead Agency's assessment of those costs. Absent the disclosure of those costs (including the methodology used to derive those costs), the City has been denied critical information concerning any fair-share cost allocation that is being proposed by the Lead Agency to off-set the costs of those traffic improvements now proposed (by the Lead Agency) in the City.

As such, the Lead Agency seeks to defer the responsibility for all traffic mitigation identified in other cities to the each local government but denies to those same agencies: (1) the opportunity to avail themselves of the CEQA documentation created by the agency primarily responsible for the inducement of the impacts upon which those improvements are predicated; (2) information concerning the physical impacts on those improvements on affected properties so as to allow each agency to independent assess the direct and indirect impacts of the recommended traffic improvements; (3) critical economic information concerning the costs of those improvements, including the methodology used to estimated those costs; and (4) the Lead Agency's proposed fair-share contributions to be allotted to each agency for those improvements.

In lieu of presenting any reasonable analysis, the Lead Agency merely concludes that "the proposed project is expected to build-out over a 15-year timeframe and the time horizon for some of these improvements is 2025. With such long-term timeframes it is pure speculation that these or

other alternative mitigation measures are not feasible" (Final IBC/EIR, Response to Comments, Response L-3). The response ignores a full range of "economic, environmental, social, and technological factors," the mere passage of time does not assure that infeasible mitigation measures will be made feasible or that feasible mitigation measures can overcome permitting, environmental, and economic obstacles so as to allow timely effectuation.

Contradictory and unsupported statements by the Lead Agency suggest that Industry has not conducted a reasonable assessment of the feasibility of implementing the identified traffic improvements located in Diamond Bar. Instead of conducting that analysis, the Lead Agency seeks to defer to other agencies and to later CEQA processes a determination of the feasibility of those measures.

Traffic Impact Analysis Deficiencies

The DSEIR contains a Traffic Impact Analysis ("TIA") identified as the "Industry Business Center SEIR" prepared by Linscott, Law & Greenspan, Engineers ("LL&G") and dated August 11, 2008.

1. Unless there is data showing the number of project trips will be inconsequential, the following roadways should be analyized and added to the traffic impact study:

    a. Grand Avenue south of the WB 60 ramps
    b. Grand Avenue north of Baker Parkway
    c. Diamond Bar Boulevard between Golden Springs Drive and WB 60 ramps
    d. Lemon Avenue north of Golden Springs Drive

2. Caltrans Traffic Impact Study Guidelines require the evaluation of freeway facilities including mainline segments and ramp junctions when a project:

    a. Generates over 100 peak hour trips assigned to a State highway facility.

    b. Generates over 50 to 100 peak hour trips assigned to a State highway facility and affected State highway facilities are experiencing noticeable delay and approaching unstable traffic flow conditions (LOS C or D)

    c. Generates 1 to 49 peak hour trips assigned to a State highway facility and affected State highway facilities are experiencing significant delay and approaching unstable or forced traffic flow conditions (LOS E or F)

    Therefore, the traffic study should be revised to incorporate Caltrans requirements and include all other freeway facilities including mainline segments and ramp junctions that meet the above criteria, in addition to the five mainline segments already included in the study.

3. Traffic analysis for freeway mainline segments and ramp junctions should apply the HCM methodology recommended by Caltrans, in addition to the demand/capacity ratio method identified in the CMP.

4. Several intersection analysis assumptions are not reasonable. For example, the heavy vehicle percentage was assumed to be 0% and the peak hour factor was assumed to be 1.0 in the traffic study.

5. The traffic analyses focus on "game day" conditions, which are assumed to focus on football games. The applicant has acknowledged that the stadium will be used for other events and that will primarily occur on the "weekends". The "weekends" are assumed to include Friday nights and Saturdays, which are likely to be a more critical "background" condition than a Sunday afternoon. The traffic impact study must be revised to ensure that the most critical condition (peak hours, peak days, etc.) have been analyzed in the DSEIR and TIA.

6. Information vital to the Project transportation evaluations are incorrect, as provided on page 5.10-41 and 5.10-42 of the SEIR (and in the TIA as well). These erroneous assumptions must be corrected and the analyses updated to properly reflect actual conditions:

    a. The SEIR and TIA assume widening of Grand Avenue between Baker Parkway and Golden Springs Drive to eight lanes, to begin construction in Fall 2008. The City of Diamond Bar has not approved the project. As this roadway widening is proposed as a part of the Grand Avenue Interchange widening project and timing, the funding for this project is still unknown. This improvement cannot be assumed as a given and the DSEIR must be modified to identify appropriate mitigations for impacts at this location.

    b. The last sentence on page 5.10-41 indicates that under "a first phase of development, the Caltrans improvements for the SR-57/SR-60...involve". This statement is incorrect. The potential improvements for the SR-57/SR-60 are still conceptual and not yet funded. In addition, the Metro consultant (CH2MHill) for the project has not completed their evaluations. The City of Diamond Bar has not begun public review of the potential alternatives and has not selected a specific alternative. The City of Industry has stated that the City of Industry desired "first phase" improvements identified may need to change depending on the outcome of the overall SR-57/SR-60 study, etc. Further study is required within the TIA and incorporated into the environmental impact report.

    Based on the factors identified above, these improvements cannot be assumed as a "given". The impacts of the Project without these improvements in place must be identified, and adequate mitigation measures developed.

    c. The "SR-60 Eastbound On-Ramp" (page 5.10-42) is only one option being considered to be a part of the potential improvement that may occur at this interchange. A viable option is to maintain the "diamond" ramp configuration on the City of Diamond Bar side of the interchange. If that design is not viable to serve this Project, the "SR-60 eastbound loop on-ramp" must be analyzied and identified as a mitigation measure for the Project.

d. The SEIR indicates that the improvements identified on page 5.10-42 "are expected to be completed by 2015". Several regional transportation agencies have indicated the current funding for the SR-57/SR-60 is not programmed until year 2030. The transportation project has not yet been defined, so estimation of a completion date is not possible.

7. The study should identify all the potential roadway improvements within the study area, and these improvements should be considered in the procedure of traffic forecasts. For example, the study did not assume the SR-60/Lemon Avenue interchange currently undergoing environmental review and the SR-60 HOV project in place by 2025 or 2030.

8. Applying a simple growth rate is not accurate for locations where major roadway improvements will occur by 2025, with the resulting potential change in travel patterns. For example, the improvements on SR-60 (i.e., HOV lane and SR-60/Lemon Interchange) will change travel patterns for that area. The TIA must analize forecasts to reflect likely changes in travel patterns.

9. The growth rates used for projections should be supported by historical data. For example, the study assumed a growth rate of .07% per year for intersections in the City of Diamond Bar from 2015 to 2030. The study should provide the source or rationale to use this growth rate.

10. The study should confirm the list of pending and approved projects in adjacent communities is current/accurate. For example, Table 9 in Appendix H does not have the accurate land use assumptions for additional projects in Diamond Bar.

11. The NFL stadium based development project which includes the stadium facility and various other mixed land uses would result in a significant changes to the character of the surrounding area and would be expected to induce land use changes and growth for the surrounding areas outside of the project development boundaries. The traffic analyses must address potential transportation impacts of the growth inducing factors associated with the proposed Project (i.e., if the Project results in the golf course changing to commercial development, which would result in significantly greater traffic demand for the Grand Interchange and surrounding areas).

12. Overall, the traffic volume projections (e.g. at the SR-57/60 interchange at Grand Avenue, Grand/Golden Springs intersection, SR-60 interchange at Brea Canyon, etc.) do not appear consistent with the traffic projections and on-going analyses that are now known to exist for the Grand Interchange project and SR-57/60 Metro "Big Fix" alternatives evaluations.

    a. The discrepancies in the traffic volume projections between the analyses presently being conducted for the freeway mainlines and interchanges, compared to the volume projections for this Project, must be resolved.

b. In the case of the SR-57/60 interchange at Grand Avenue, the level of analyses must be consistent with the evaluations (i.e., traffic simulations, etc.) that have been completed to date for the related projects, such that the results of the TIA will be accurate, consistent, etc. and all potential transportation impacts can be accurately evaluated and proper mitigation measures and or project alternatives can be prepared.

13. Existing lane configurations at several of the TIA study intersections are inaccurate. For example, Figure 4B indicates dual left-turn lanes on the westbound approach at intersection 53, which should be one left-turn lane. The northbound right-turn movement at intersection 56 should have an overlap instead of permitted phase.

14. It must be assured that existing traffic counts reflect typical roadway conditions (i.e., no road work, road closures, etc.) and/or any anomalies have been accurately and properly accounted for in the analyses.

15. The City provided comments to the Lead Agency on the NOP and explained that "Standard traffic analyses (i.e., Intersection Capacity Utilization ("ICU"), Highway Capacity Manual - Highway Capacity Software ("HCM-HCS", etc.) are not anticipated to accurately describe the potential impacts of the proposed Stadium Project. The Project is expected to have traffic characteristics such as high volumes of traffic arriving/leaving during short periods of time, significant vehicle queues, need for modified traffic signal operations, potential for manual/police traffic controls, significant pedestrian activities, impacts on weekend and weekday conditions, etc. that require evaluations that accurately reflect proposed operations. Accepted traffic engineering methodologies that involve more sophisticated analyses are needed and must be included in the TIA and DSEIR, to fully disclose the potential traffic impacts of the Project.

    a. These NOP comments were not fully addressed through the SDEIR and TIA. Some specific examples are highlighted in Table 5.10-4 of the SEIR, and include but are not limited to:

    b. The Grand / SR-57/60 EB Ramps intersection is identified to have LOS B operations during the PM peak in the SEIR and TIA, but this does not accurately reflect the existing southbound left turn queue that occurs at this intersection and is not representative of LOS B operations.

    c. The Grand / SR-57/60 WB Ramps intersection in the SEIR/TIA is shown to have LOS B operations, which does not accurately reflect the vehicle queues for the off-ramp. This off-ramp is critical to the proposed Project. If it is not properly analyzed for existing conditions, these inaccuracies are carried through to the future conditions and the Project impacts are not properly evaluated.

    d. The Brea Canyon / Golden Springs intersection is shown to operate at LOS B for the PM peak hour, but there are often significant queues for the westbound Golden Springs approach to this intersection.

e. The Brea Canyon / SR-60 WB Ramps are shown to be at LOS A during the AM and PM peak hours, which does not reflect actual operations.

f. These examples confirm our NOP comments which requested supplemental analyses will be required for conditions that are currently congested (in particular when specific movements are impacted) in order to provide accurate evaluations and fully disclose potential Project impacts.

16. All inaccuracies for existing conditions must be corrected and subsequent evaluations updated. Errors in the existing conditions translate to problems with the future conditions analyses, which include lack of accurate documentation of Project related impacts.

17. The study assumes the breakdowns by travel mode for the game-related trips (i.e., 65% for season ticket passenger car, 20% for VIP passenger car, 10% for bus, and 5% for Metrolink shuttle) and the vehicle occupancies for each mode (i.e., 3 people for one season ticket passenger car, 3.5 people for one VIP passenger car, 40 people for one bus, and 40 people for one shuttle). There is no documented basis for these assumptions. The basis for these assumptions should be documented.

18. The study assumes 5% of the game-related trips would use Metrolink on weekdays and weekends. Metrolink schedule information does not permit train arrivals and departures sufficient to serve the game day patrons. For example, the last Metrolink train arrives at the Industry Station before 7:30 PM; however, the weekday games won't end until after 9 PM.

19. The study assumes that 25% of daily trips and 15% of peak hour trips will be internal trips within the project site. The basis for this assumption should be documented.

20. There are numbers of problematic assumptions, questions, and concerns related to the "Project Trip Generation" analyses (beginning on page 5.10-28 of the SEIR). Overall there are under-estimations of Project generated trips, which results in potential Project transportation impacts that remain undisclosed.

21. The TIA and the DSEIR evaluations are stated to be based on operation of a 75,000 seat stadium, but the DSEIR indicates the Project may actually have events with a capacity of 80,000 seats or more. The current analyses may therefore be understated by at least six percent, which could be the difference between a traffic impact conclusion of "significance" and "not significant".

22. The "standard" trip generation assumptions for the restaurants, movie theaters, retail, live theater, and office uses were dramatically reduced for weekday Project conditions, when the stadium is assumed to be in use (Table 5.10-9 and Table 7 of the TIA). We believe these assumptions are incorrect and cannot be substantiated, resulting in an under estimations of Project traffic impacts. The problematic assumptions include but are not necessarily limited to:

- The restaurants (30,000 square feet ("SF") of "Stadium Restaurants", 50,000 SF of other Phase 1 restaurants, and 112,000 SF of Phase 2 restaurants) were all assumed to have "zero" weekday, PM peak hour trip generation impact on the surrounding streets, when the stadium is in use. The assumption is that for "Without Game" conditions the restaurants will have typical (as described by the Institute of Transportation Engineers ("ITE")) trip generations, but for "With Game" conditions there will be essentially zero PM peak hour, restaurant traffic impacts on the surrounding streets. Unless every restaurant customer (arriving and leaving during the PM peak) will also be attending the stadium use, the potential traffic impacts are not fully nor properly disclosed in the DSEIR.

- The movie theater weekday PM peak hour trip generation impacts on the surrounding streets were reduced by 80 percent for "with game" conditions. This would essentially mean that 80 percent of the movie theater customers, typically arriving/leaving during the 4:00-6:00 PM period would no longer arrive/leave during the PM peak hour, as they would also be attending the stadium event (in addition to a movie). We do not find this assumption credible and if more than 20% of the movie patrons are not also stadium patrons, then the traffic impacts have been underestimated.

- Similarly the retail uses (400,000 SF for Phase 1 and 433,000 SF for Phase 2) PM peak hour trip generation assumptions were reduced by 80 percent for "With Game" conditions This assumes that 80 percent of the customers that would arrive/depart the retail during the PM peak hour would attend the "Game" or no longer be a part of the PM peak hour. We do not find this assumption credible and if more than 20% of the retail patrons are not also stadium patrons, then the traffic impacts have been underestimated

- For the movie theater and retail uses, the 80 percent PM peak hour, trip generation reductions, were then further reduced by another 15 percent to account for "internal trip reductions". The trip generation reduction assumptions do not appear reasonable and would result in undisclosed traffic impacts.

- The live theater is assumed to be closed when the stadium is in use. Mitigation measures and Project conditions will need to be implemented to assure that the live theater operations are consistent with this assumption.

- For the offices uses (100,000 SF of medical office for Phase 1 and 1,490,000 SF of general office for Phase 2), the Project traffic analyses essentially assumes that "zero" PM peak hour trip ends and traffic impacts will be generated by the office uses for weekday, "with game" conditions. It is assumed that all offices will close at 2:00 PM when the stadium is in use and there will be zero PM peak hour trips generated by these buildings during the PM peak. We do not believe this is a credible or feasible assumption, and would not be possible to regulate. The traffic analyses need to provide traffic evaluations assuming typical operations for the office uses.

- An example of the extreme nature of the assumed trip generation reductions for the land uses near the stadium, is reflected in Table 5.10-9 (Table 7 of the TIA), near the bottom of the table, for "Buildout Gross Trip Generation (A + B + D)". The weekday daily trip generation for "Without Game" is 76,835 trip ends and "With Game" is less with 69,744 trip ends, meaning there will be less traffic generated on "Game Day"? The other trip generation assumptions show increases, but still not to levels that would be considered reasonable.

- Under estimations of the Project trip generation means that all of the traffic analyses (i.e., intersection analyses, street segment evaluations, freeway mainline and ramp analyses, etc.) need to be updated. The City of Diamond Bar will need adequate time to review the updated evaluations.

- The City cannot fully evaluate the analyses contained in the SEIR and TIA and understand the impacts to the community until these updated evaluations are corrected and provided for review.

23. As indicated in the NOP comments, the City of Diamond Bar determines significant project impacts based on project impacts during peak conditions. The TIA/DEIR need to examine the extent of Project impacts during peak conditions. The City of Diamond Bar requests development of adequate mitigation measures to reduce impacts to a level of insignificance. Limiting the stadium operations (i.e., to certain days, certain time periods, etc.) in order to offset traffic impacts is not reasonable or possible to enforce; especially when the impacts occur outside the City of Industry jurisdiction. The comment would also be applicable to limiting other Project uses (e.g. the office buildings being closed at cleared by 2:00PM on "Game" days).

24. The rational for the trip reductions assumed in Table 5.10-9 appear problematic and in conflict. The SEIR indicates a strong interrelationship between the stadium and the other uses (i.e., retail, restaurant, movie theaters, etc.), which results in significant trip reductions for these uses on "Game" days. The SEIR, however, also downplays the number of days that the stadium will operate indicating the retail, restaurant, movie theaters, etc. will need to be successful operations, independent of the stadium patrons. The traffic analyses therefore need to provide evaluations for the real and expected conditions, whereby the other uses (i.e., retail, restaurant, movie theaters, etc.) operate essentially the same on "With Game" and "Without Game" conditions.

25. The ITE "Trip Generation Handbook" is referenced as the basis for making the internal reductions (page 5.10-29) shown in Table 5.10-9. The worksheets (i.e., Figures 7.3, 7.4, and 7.5, that illustrate steps 4-9 of the internal trip analyses) for the internal trip analyses need to be referenced and included in SEIR. The current internal trip reductions applied in Table 5.10-9 appear over estimate the internal trip reductions, which would result in greater traffic impacts (not currently shown) on the surrounding street system

26. The weekday PM peak hour assumptions for a "Game" and/or other event at the stadium, appear to add to the under estimation of Project related transportation impacts. Table 5.10-9 (and TIA Table 7) show that only one-half of the stadium traffic is assumed to occur (arrive during the PM peak hour). The "Game", however, is assumed to start at 6:00 PM so the highest hour of arrivals is expected to occur within the 4:00-6:00PM peak period and should be greater than one-half of the total patrons. In addition, for weekday events, many people would be arriving from work further "compressing" the arrivals (increasing the peak hour traffic)

27. The SEIR indicates (page 5.10-28) that the travel mode splits and average vehicle occupancies ("AVO") are based on "prior stadium traffic studies and operational information from the NFL. These references and data need to be provided to allow proper review and full disclosure.

28. The prior studies / operational information should also be useful in verifying other questionable Table 5.10-9 assumptions for the stadium operations. These assumptions include, but are not necessarily limited to:

    - The employees are shown to have zero impact on the stadium peak hours studied for "With Game" conditions on either a weekday or Sunday. Table 5.10-9 (and TIA Table 7) under "Project Component", "Game Employees and Team" shows no measurable ("nominal") vehicle trips during any of the peak hour movements studied. It does not appear feasible that all "non-stadium seat" traffic will occur outside the peak hours.

    - The Project trip generation assumes that during the peak stadium "arrival" periods, virtually "zero" stadium related vehicles would be departing the site. Conversely when vehicles are exiting the stadium, it is assumed in Table 5.10-9 that virtually no vehicles arrive. For most land uses, especially ones as large as a stadium, there is always a component of traffic that is traveling in the direction (i.e., departing/arriving) opposite to the predominant movement.

    - Only one-half of the "club/VIP" passenger cars and charter/shuttle buses are assumed to arrive during the Project peak hour. It is anticipated that a higher percentage these types of vehicles would arrive at similar times (i.e., within the peak hour), since they all be focused on arriving at the "ideal" time.

    - Is the 40.0 AVO for the charter buses and shuttles the maximum seating capacity for these vehicles?

    - Assuming that only 65% of the total patrons arrive by passenger vehicle appears overly optimistic. If a higher percentage of patrons arrive by passenger car, then the impacts on the surrounding street system will be greater than documented in the current analyses. This percentage appears particularly low for weekday condition (i.e., more people arriving direct from work, less opportunity to access charter

buses, more difficulty to utilize Metrolink since everyday commuters comprise much of the train capacity, etc.)

- What safeguards can and will be put in place if the 65% maximum (and other assumed percentages) are not achieved?

29. For some of the proposed land uses, Friday represents increased trip generation impacts (e.g. restaurants, movie theaters, etc.) above those impacts generated during the other weekdays. Has the SEIR accounted for these Friday factors in the traffic analyses? Clear documentation should be provided in the SEIR and TIA.

30. The bottom of Table 5.10-9 shows a comparison of the weekday Project trips (subject to comments above) to the previously assumed land uses. A similar comparison should be shown for the "Sunday" conditions.

31. This study used the same trip distribution assumptions for all the analysis years. The land use and roadway network settings would likely be different between interim years and cumulative years, which would affect driver destinations and routes. The TIA report should be revised accordingly.

32. The Project trip distributions may be significantly impacted by the measures that are to be implemented in the Traffic and Parking Management Plan (TPMP). This is why it is imperative to develop, identify, and require as mitigation, the specific measures that are to be implemented so the Project will be accurately analyzed and the impacts correctly identified.

33. The freeway mainline was analyzed using the LA County CMP method instead of the HCM method typically requested by Caltrans. The CMP method is highly simplified and doesn't consider operational conditions such as weaving. The freeway ramps were not analyzed by the study. In addition to potentially understating impacts, the freeway-related analysis is unlikely to satisfy Caltrans.

34. The study should include a list of improvements planned in the area, whether or not to assume those improvements as "givens" in the future year analysis, and whether or not those improvements have committed funding. Those without committed funding should not be assumed as given.

35. The NOP had specific example of IBC mitigation requirements that need to be brought forward and clearly identified in this document. Specifically there were conditions related to the SR-57/60 interchange at Grand Avenue. The current DSEIR/TIA may have assumed these issues had been addressed through the assumptions of interchange improvements "being in place", but those assumptions are incorrect and are understood to be in conflict with CEQA requirements.

36. The City response to the Lead Agency NOP emphasized concerns that previous IBC EIR traffic analyses assumed various "Industry East Mitigations" to be in place prior to

considering the IBC project. The City of Diamond Bar indicated that this assumption was erroneous and must be corrected in the updated draft. The implementation of needed mitigation measures must be assured (i.e., by providing the required funding to the City of Diamond Bar for impacts within their jurisdiction) as a condition of this Project. The "Industry East Mitigations" had no definitive implementation plan or funding.

37. The funding (share) necessary to offset Project related impacts must be provided directly to the affected Agencies as stated in the NOP. This would be a much more genuine "good faith" effort to mitigate Project impacts. The City of Industry has a history of holding funds that have proven to be difficult to access, which has resulted in a number of unmitigated impacts, for various City of Industry developments. This problematic mitigation methodology is again proposed as "mitigation" for the current Project.

38. It is noted that in Table 1-1 that 100% of the funding for improvement of intersections #56, # 87, and #89 are required of the Project. It must be noted that the ramp improvements for #56 (Grand Avenue / SR-57/60 WB Ramps) that were assumed in the DSEIR/TIA as a "given" are not finalized or fully funded. The Project will need to include responsibility for these improvements as a mitigation measure.

39. The study did not analyze the traffic impacts to roadway and freeway segments under "Weeknight with Game" and "Sunday with Game" conditions. However, traffic impacts for these conditions need to be revealed for the following reasons:

    a. Traffic during the Sunday midday peak hour without the game could also be heavy, especially for the retail areas.
    b. Some roadways or freeway facilities may not be able accommodate the large amount of game-related traffic before and after the game, resulting people using residential or other streets to cut through the congested area.

40. The document does not identify any impacts from the project on the freeway system. This doesn't seem reasonable given the size and location of the project. It is also not consistent with Caltrans Traffic Study Guidelines, which identifies that any traffic added to the freeway segments that operate at LOS E or F would cause a significant impact.

41. The study assumes that the traffic impacts on roadway segments would be alleviated by the implementation of intersection mitigation measures. This is not a reasonable conclusion. Detailed mitigation measures should be developed for the impacted roadway segments.

42. The study does not include discussion on how neighborhoods in the surrounding communities will be protected from traffic and parking impacts. This discussion needs to be added to this EIR.

43. The study states that a Traffic and Parking Management Plan (TPMP) be submitted to the City for approval six months prior to the first scheduled patron-attended event. The Plan should be submitted and approved earlier in the final EIR stage, with inclusion of detailed information on parking management, traffic control, emergency access routes, and etc.

44. The NOP comments identified specific need for a detailed TPMP to be developed and included as mitigation, within the SEIR. Development of this plan could have significant effects that could change the accuracy of the current analyses (e.g. changing the trip distribution patterns for the Project, etc.). While potential general measures are currently discussed, the specific operations that will be required of the Project and implemented throughout the life of the Project must be clearly identified and included as Project mitigation measures.

45. The study assumes the Alternative 3 design for the Grand Avenue interchange as a "given". The PSR of the Grand Avenue interchange is still in the review process, and the preferred alternative at this location may be changed during the PR/ED phase. Consultants should note this in the report.

46. The documents should identify what mechanisms will be used to generate the money needed to implement the proposed traffic mitigation measures.

47. The "Mitigation Monitoring Program, Industry Business Center Environmental Impact Report, SCH #2003121086" dated October 28, 2004 ("2004 MMP-EIR") contains some significantly changed and different, "Traffic" mitigation measures, when compared to the current DSEIR. Examples of a few of the changes include but are not limited to:

    a. The 2004 MMP-EIR documents that the "City of Industry shall fully fund and build the traffic improvements to the Grand Avenue and SR57/60 Interchange as indicated in the 2015 mitigation measures" (MM 5.14-1) The City shall also fully fund the preparation of all "Project Study Report/Project Report and associated environmental documentation...and complete design drawings" for the interchange improvements prior to any occupancy in the IBC.

    b. The 2004 MMP-EIR Mitigation (MM 5.14-1) also requires construction of the interchange improvements to commence once 2,000 PM peak hour trip ends is reached (the mitigation states "total traffic volume", but even assuming this conditions intends to mean "Project traffic"), therefore, construction of the interchange improvements must begin prior to occupancy of the Stadium.

    c. The current TIA and SEIR suggestion that a "TPMP" is sufficient to address Stadium impacts is incorrect. Based on the 2004 MMP-EIR construction of the Grand Interchange improvements must begin prior to occupancy of the Stadium and/or any other uses that generate any significant amounts of traffic (i.e., 2,000 PM peak hour trips or less – "less" based on the actual project condition).

    d. As detailed in earlier comment there are various incorrect assumptions and errors in the TIA and SEIR analyses that have contributed to incorrect reductions in mitigation responsibilities, for the current Stadium Project. For example in the 2004 MMP-EIR, the intersection of "Grand Avenue @ SR-60 WB Ramps" (MM 5.14-1) required addition of a fourth lane on Grand Avenue in each direction as well as

added turn lanes, resulting in the need for about 21-22 feet of additional right-of-way ("ROW") at various intersection legs, as well as ten added feet of ROW on the north side of the SR-60/57 westbound off-ramp. The current SEIR requires the project to provide 100% funding of mitigation at this intersection (Grand Avenue @ SR-60 WB Ramps), but the current SEIR suggests only a "reconfiguration" (perhaps restriping?) of the eastbound approach to provide two right turn lanes is required (for the Stadium Project). This is enormous shift in IBC mitigation responsibility, which is not technically reasonable or correct (for various reasons including those cited in earlier comments).

e. At the "Grand Avenue @ SR-60 EB Ramps" in the 2004 MMP-EIR there is a third southbound left turn lane required on Grand Avenue as well as a widening of the EB on-ramp to accommodate the third left turn lane. The widening of the ramp was expected to require about eleven feet of ROW. The current SEIR now indicates that "No project mitigation necessary" at this intersection.

f. There are other examples of significant changes in traffic mitigation responsibilities from the 2004 MMP-EIR to the current SEIR document, which we understand is problematic from a CEQA perspective. Even if found to be consistent with CEQA, it is not acceptable for the City from a traffic impact perspective.

g. The City of Diamond Bar does not find these changes acceptable for a number of reasons, but also because of one major defect – these conclusions do not account for traffic impacts generated by the operations of the Stadium (portion of the Project during a weekday).

48. The potential improvements at the Grand Avenue Interchange at SR-57/60, whether as identified in the 2004 MMP-EIR or under the current concepts being considered, are all directly linked to providing mitigation for developments in the IBC. It is misleading to now in the current SEIR, separate the interchange improvements and assume they will be completed by "others". The IBC development/current Stadium Project are primary traffic generators for the area and generate a significant portion of the need for these interchange improvements. The Grand Interchange mitigations/improvements must remain directly linked any developments that may occur in the IBC.

49. The TIA and SEIR trip generation analyses are based on erroneous assumptions that would be impossible to regulate. Footnote "f" to Table 7 of the TIA states that "During games, these uses would not generate additional trips (beyond traffic generated by the game) during the time periods analyzed. The medical office (100,000 SF) and general office (1,490,000 SF) uses will be closed before 2:00PM on game days, and closed all day on weekends. Also there will be no performances scheduled in the live theater (5,000 seats) on game days. It is anticipated that all restaurants would be serving game patrons during peak hours on game days."

a. What is the definition of "game day"? The TIA references one football team with two weekday "game days", but what about say a weekday soccer match that fills the

stadium, weekday/Friday concert, weekday/Friday vehicle event, etc. We do not believe it would not be possible to apply the footnote "f" assumptions to any "game day", much less all weekday events that could possibly occur. The TIA and SEIR, therefore, do not address all potential traffic impacts associated with the project.

b. How will the 100,000 SF of medical offices and 1,490,000 SF of general offices be closed by 2:00PM on weekday/Friday event days so that they have zero peak hour impacts as assumed in the TIA and SEIR? What specific measures are planned to implement these conditions, during all Stadium events (as well as during NFL games)?

c. How can it be assured that the approximately 192,000 SF of restaurant uses will generate zero added peak hour traffic during all events (weekday and weekend)? What specific measures are planned to assure that the assumed conditions actually occur, during all Stadium events (as well as during NFL games)?

d. How can it be assured that the approximately 863,000 SF of retail use will generate a maximum of 20% of its normal weekday peak hour traffic during weekday events and a maximum of about 16% of its normal weekday peak hour during weekend events? What specific measures are planned to assure that the assumed conditions actually occur, during all Stadium events (as well as during NFL games)?

e. How can it be assured that other uses such as Stadium Team Administrative Offices (45,000 SF), Stadium NFL Hall of Fame (40,000 SF), Stadium Banquet Facilities (20,000 SF) NFL Team Training Facilities and Offices (115,000 SF), Practice Fields (4 fields), etc. will all have zero peak hour traffic impacts on weekday and weekend event days? For example during soccer games, concerts, other events, it does not appear feasible to assure that these other facilities will not be used?

f. It is our understanding that the live theater may have a view of the Stadium interior. Therefore, even if a "theater event" is not scheduled, it is possible that the seating may be used, which has not be accounted for in the TIA and SEIR.

g. How can it be assured that the movie theater daily traffic will be reduced by about 80% on any weekday or weekend "event" day, as assumed in the TIA and SEIR. Movie theater patrons and Stadium patrons would be expected to be separate customers and an "overlap" of uses would not be expected? An "overlap" that would warrant an 80% reduction in movie theater daily traffic on event days, appears unreasonable and incorrect, resulting in undisclosed impacts. What specific measures are planned to assure that the assumed conditions actually occur, during all Stadium events (as well as during NFL games)?

h. The SEIR indicates "numbers of events" that would suggest that many would occur on Saturdays. The TIA would need to assume closure of the office buildings and similar circumstance as described in footnote "f", to occur on Saturdays as well. This may not be a reasonable assumption.

i. It is likely that Saturday "background" traffic would actually produce greater impacts than the Sunday conditions analyzed in the TIA and SEIR.

j. What conditions and mitigation measures have been made a part of the SEIR and Stadium Project that will ensure the trip generation assumptions will occur as assumed?

k. We do not believe that adequate Project conditions and mitigations are available to ensure the trip generation assumptions, will realistically occur. Therefore, revised traffic analyses would be required using more realistic trip generation assumptions. The assumptions to be used should be discussed and agreed upon with the City of Diamond Bar, prior to completing revised analyses.

50. Traffic counts should be conducted to determine if Saturday conditions would actually result in greater impacts, rather than Sunday conditions.

51. The TIA and SEIR addresses the Project trip generation at the project site boundaries, which is acceptable for many uses, but not necessarily for a Stadium uses. In considering the trip generation and traffic impacts for a Stadium use, there are people that drive to areas near a stadium (e.g. Rose Bowl patrons drive passenger vehicles to the "Parsons" building parking lot near the Rose Bowl, then are shuttled to the Rose Bowl on buses), then park and use bus/shuttles, "carpools" (i.e., from nearby off-site location, e.g., to save on parking costs, find one another more easily, etc.), etc., to then go through the "gates" at the Project site The current TIA and SEIR only capture the buses/shuttles, carpools, etc. going through the "gates at the site" and does not address Project traffic associated with people "parking off-site" (i.e., in the City of Diamond Bar, at the City Hall/AQMD parking lot, church parking lots, etc.). These are Stadium traffic trips, directly generated by the Project, that are impacting off-site streets and intersections, but are not accounted for in the current TIA and SEIR. The TIA and SEIR must be revised to account for these Stadium Project traffic impacts that are currently undisclosed.

52. It is our understanding that the 75,000 seats and "Game Employees and Team" assumptions in the TIA and SEIR, do not account for people in the luxury suites, media personnel, deliveries, vendors, etc., which results in an under-estimation of potential traffic impacts.

53. There are no traffic/transportation analyses of potential Project construction impacts. These analyses need to be added to the documentation.

54. In the TIA (section 6.14, page 150) it is documented that intersection mitigations contained in the TIA and SEIR do not address traffic impacts associated with events being held at the Stadium. This is a serious flaw, when traffic/transportation impacts and required mitigations, are not provided for public review, for a significant portion (i.e., the Stadium operations) of the Project.

This section 6.14 also focuses on "NFL games" in particular. As detailed in earlier comments, we have a number of comments and concerns related to the TIA and SEIR analyses of "NFL game" conditions, however, there is also a troubling omission of analyses/mitigations related to other events that would occur at the Stadium.

a. Section 6.14, page 150 states that "In consideration of the "special-event" aspect of the NFL game component of the project, it was concluded that the implementation of a Traffic and Parking Management Plan...would effectively address the traffic access and circulation needs of the project during games..." The City of Diamond Bar is extremely concerned about various impacts (including Traffic/Transportation) associated with the Project, even if the Stadium operates less than 365 days per years.

b. What specific threshold(s) is the consultant using when defining the operation of the Stadium operations as a "special event"? This is a critical threshold as the TIA concludes that based on the "special event" status, a TPMP can be used as mitigation "instead of the construction of permanent, physical mitigation measures at key intersections and along key roadways".

c. Whatever threshold the consultant may be using to define "special event" and the criteria for making the conclusion to implement "non-permanent" mitigations, must be clearly documented in the TIA and SEIR. The City of Diamond Bar must have opportunity to review and comment on these thresholds, criteria, and conclusions (since they were not presented in the SEIR). The consultant's "thresholds" may not be appropriate for use in the City of Diamond Bar.

d. We do not know what "effectively address" means in terms of technical evaluation of project impacts and adequacy of mitigation measures. Will all potential Stadium traffic impacts be mitigated by the Traffic and Parking Management Plan ("TPMP")? What portion of Stadium and overall Project impacts would remain, after the TPMP is implemented?

e. If there are any remaining traffic/transportation impacts that cannot be fully mitigated by the TPMP, then these impacts must be clearly analyzed, identified, and mitigated in the SEIR.

f. Based on the current SEIR document, it is not possible for the City of Diamond Bar and/or the public to review and evaluate the traffic/transportation impacts that may result from the operations of the Stadium and/or overall Project. There needs to be clear and objective analyses of the traffic/transportation conditions that will result, after the TPMP is implemented. These analyses need to be clearly documented and presented for public review in the SEIR.

g. As stated in the City of Diamond Bar NOP comments, details of any "TPMP" plans need to be developed as a part of the environmental documentation and included as mitigation measures. The specific TPMP actions that will occur, to achieve the

mitigation results needed and anticipated, must be clearly identified and defined in the environmental document; otherwise the potential impacts of the Stadium operations and the Project as a whole, remain undisclosed and without mitigation.

h. The Stadium traffic is expected to impact the entire study area (and perhaps beyond the study area). The City of Diamond Bar is concerned that there will be significant traffic and transportation impacts (e.g., within the City of Diamond Bar) that are not currently indentified in the TIA and SEIR. It is likely that a significant portion of the impacts will remain even after implementation of the TPMP. While this would likely be an unacceptable condition, the public cannot comment, as these facts are not currently a part of the SEIR.

i. For Stadium traffic impacts at intersections within the City of Diamond Bar, how will the TPMP mitigate these impacts on NFL game days and during other events held at the Stadium? What specific Project conditions and mitigations measures are currently within the SEIR, to assure that adequate funding will be provided by the Project to the City of Diamond Bar, so that the City of Diamond Bar will be able to address the impacts of the Stadium uses.

j. Section 6.14 indicates that "fine tuning" of the TPMP is expected to occur after the Stadium begins operations. What specific problems and potential impacts are expected to be faced, that are not currently identified in the TIA and SEIR.

k. What "mitigation area" was assumed by the consultant, when making conclusions about the TPMP? The locations/areas where mitigations will be implemented by the TPMP need to be clearly identified in the TIA and SEIR.

55. The focus in Section 6.14 is on "NFL games" but it should be remembered that the trip generation analyses assumed huge trip reductions (which we disputed through earlier comments) for the other on-site uses during these NFL game days. The SEIR does not address potential traffic/transportation impacts that will result when "smaller" events occur, which would be additive traffic to the "other" on-site uses.

56. It is unclear if the TPMP is specific to NFL games or would be applicable to all events that will occur at the Stadium? Will there be different TPMPs for different uses at the Stadium?

57. We believe the TIA and DSEIR are very unclear and misleading. For example, the trip generation analyses show (TIA, Table 7) evaluations for the all uses and development at the site, which is defined as the "Project", but the analyses of the different baseline years plus the "Project", actually excludes the weekday operations of the Stadium. This also leads to other problems as identified in the comments above. As an informational document, however, the public would naturally assume that the detailed "Project" traffic analyses would include the operations of the Stadium (even if it is on a weekday).

Failure to Demonstrate that Mitigation Measures and Alternative are Infeasible

CEQA requires that, before approving a project, the lead public agency find either that the project's significant environmental effects identified in the EIR have been avoided or mitigated, or that the mitigations and alternatives identified in the EIR are infeasible and the unmitigated effects are outweighed by the project's benefits; if the public agency makes the latter finding, it must explain its reasoning in a statement of overriding considerations (Community for a Better Environment v. California Resources Agency [Court of Appeals, Third District]).

An agency's findings must be based on information presented in the project's administrative record. The courts have stated that the purpose of "restricting review. . .to the administrative record" is to ensure that the courts do not "engage in independent fact finding rather than engaging in a review of the agency's discretionary decision" (Friends of the Old Trees v. Department of Forestry & Fire Protection). The courts have further noted that "agency consideration of otherwise reasonable alternatives in the administrative record cannot replace the CEQA mandated discussion of alternatives in the EIR" (Citizens of Goleta Valley v. Board of Supervisors).

With regards to mitigation measures, as indicated in the DSEIR: (1) "No mitigation measures are feasible to reduce single-event noise (train passbys and train horn noise) generated by project-related train traffic to below the level of perception" (DSEIR, p. 1-32); (2) "No mitigation measures are available to reduce noise generated by crowd noise or fireworks during a stadium event" (DSEIR, p. 1-32); (3) "No mitigation measures are feasible to reduce noise generated by project-related traffic to below the City's significance threshold. . .Traffic noise impacts are a new significant impact of this SEIR" (DSEIR, p. 5.7-111); (4) "No mitigation measures are feasible to reduce single-event noise generated by project-related traffic to below the City's significance threshold" (DSEIR, p. 5.7-111); and (5) "[N]o mitigation measures would [be] available to reduce noise from nighttime cleanup activities in the stadium, parking lot, fireworks and noise generated by helicopters. In addition, impacts from a concert would extend beyond the local vicinity of the project site and are a significant adverse impact" (DSEIR, pp. 5.7-111 and 112).

With regards to alternatives, as indicated in the DSEIR: (1) "[T]he "Reduced Intensity Alternative" was "rejected as economically infeasible" (DSEIR, p. 7-2); (2) "The Coliseum site would not be feasible for the revised Plan of Development" (DSEIR, pp. 1-8 and 7-16); and (3) "[T]he Rose Bowl Alternative would not feasible for the development of the revised Plan of Development" (DSEIR, pp. 1-8 and 7-16).

"Feasible" is defined in as capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors (§21061.1; 14 CCR 15364). Any assertion that an alternative or mitigation measure is infeasible must, therefore, factually demonstrate that one or more of those factors would prevent its successful implementation within a reasonable time period. Unsubstantiated statement would not suffice (14 CCR 15088[b]).

As presented, the administrative record fails to include any substantial evidence supporting the Lead Agency's assertion that mitigation measures and other alternatives could not be feasibly implemented to reduce or eliminate the project's significant environmental effects. Similarly, the

EIR contains no evidence that any mitigation measures were identified, considered, and eliminated based on any traceable analytical process.

Lead Agency Obligation to Mitigate Extraterritorial Environmental Effects

CEQA compels public agencies to disclose, in an EIR, their projects' contributions to any significant environmental problems, even if those contributions are indirect; even if project-specific contributions, if viewed in isolation, would seem small; and even if those impacts occur partly outside the agency's jurisdictional boundaries. CEQA does not include provisions whereby one government agency can accept, on the part of another government agency, the introduction of new significant impacts without first taking all actions reasonable and feasible to reduce those effects to the maximum extent possible.

That functional definition invokes no political boundaries. Rather, if an area is affected, it is part of the relevant physical environment, regardless of the governmental authority exercising local jurisdiction.

Topic-Specific Comments

CEQA stipulates that the "degree of specificity required in an EIR will correspond to the degree of specificity involved in the underlying activity which is described in the EIR. (a) An EIR on a construction project will necessarily be more detailed in the specific effects of the project than will be an EIR on the adoption of a local general plan or comprehensive zoning ordinance because the effects of the construction can be predicted with greater accuracy" (14 CCR 15146). Agencies must make "an objective, good-faith effort to comply [with CEQA]" (Residents Ad Hoc Stadium Commission v. Board of Trustees). Based on statements presented in the DSEIR, it is assumed that the "revised project" is a "construction project" and, therefore, needs to be analyzed to a degree consistent with that intent. The following topic-specific comments point to those environmental issues where the DSEIR fails to fulfill that intent.

- **Aesthetics.** An accurate portrayal of the impacts from a proposed project is a fundamental tenant of CEQA. That tenant, however, appears to have been overlooked by the Lead Agency. For example, none of the graphics presented in the DSEIR have dimensionable scales allowing distances to be measures. As such, readers are required to rely on the information presented in the EIR as the basis for assessing impacts. However, the document is internally inconsistent and contradictory. In attempting to define the separation distances between the NFL Stadium and residential uses in Diamond Bar, the DSEIR represents that distance as "2,000 feet" (DSEIR, p. 5.1-3), "approximately 2,000 feet" (DSEIR, p. 5.1-30), and "over 2,500 feet" (DSEIR, p. 5.7-83).

  The role of the EIR is to make manifest a fundamental goal of CEQA, namely to "inform the public and responsible officials of the environmental consequences of their decisions before they are made" (Laurel Heights Improvement Association v. Regents of University of California). To do this, an EIR must contain facts and analysis, not merely bare conclusions.

The DSEIR's analysis of environmental impacts fails to provide the necessary facts and analysis to allow the Lead Agency, other responsible agencies, and the affected public to make an informed decision concerning the project, mitigation measures, and project alternatives. Without such detail, the DSEIR is deficient under CEQA.

As indicated in the NOP, the Lead Agency states that the "revised project" has the potential to create the following "potentially significant impacts": (1) Have a substantial adverse effect on a scenic vista; (2) Substantially degrade the existing visual character or quality of the site and its surroundings; and (3) Create a new source of substantial light or glare which would adversely affect day or nighttime views of the area" (NOP, p. 20). Notwithstanding that preliminary determination, the DSEIR only lists the following aesthetic impacts with respect to the "revised Plan of Development"; (1) "The revised project would not substantially degrade the aesthetic quality of the area in the context of the visual character of surrounding vicinity" (DSEIR, p. 5.1-18); and (2) "The revised project would not create a new source of substantial light or glare that would adversely affect day or nighttime views in the area" (DSEIR, p. 5.1-19). As such, the Lead Agency's representations concerning the project's potential environmental effects (as presented in the NOP) was not consistently applied to the project's evaluation (as presented in the DSEIR).

As indicated in the DSEIR, the "2004 IBC Plan of Development would also introduce new sources of light and glare. However, many of the proposed buildings, such as the office buildings, would not remain lighted at night. Additionally, many nearby residential areas would be shielded from new sources of light due to screening and shielding measures included in the PDFs and landscaping on the project site. Therefore, the 2004 IBC EIR concluded that the impacts associated with light and glare would be less than significant" (DSEIR, p. 5.1-2).

As further indicated in the DSEIR, the "most sensitive viewing receptors would be residential areas where occupants would have sustained views of the project area. . .An increase in the length of viewing time tends to increase sensitivity to the views" (DSEIR, p. 5.1-3). The "lowering of the site in the area represents the single biggest change from the previous project" and "under the current plan many [residents] would be looking down on and across the parking lots" (DSEIR, p. 5.1-18). In addition, all of the adopted PDFs have been "deleted from the 2004 IBC EIR" (DSEIR, p 5.1-15). As a result, the entire basis for asserting that visual impacts attributable to the "2004 IBC Plan of Development" would be reduced to a less-than-significant level (i.e., buildings not illuminated at night, intervening buildings, adopted PDFs) have been eliminated from the "revised project" as has the Lead Agency's rationale for its earlier findings.

The Lead Agency's analysis of project-related impacts on "scenic vistas" (inclusive of the loss of open space views from abutting residential neighborhoods) has to be ferreted from various sections of the DSEIR. Once assembled, the parts fail to account for a reasoned analysis, are conclusionary in nature, and the project's "potentially significant impact" is quickly relegated to insignificant through reference to broad, unenforceable, and generally meaningless PDFs (e.g., Assuming incorporation of the PDFs listed above," DSEIR, p. 5.1-29).

Since "[n]o mitigation measures were outlined in the 2004 IBC EIR" and since the DSEIR concludes that "[n]o mitigation measures are necessary" (DSEIR, p. 5.1-34), it is evident that the Lead Agency has not elevated the listed PDFs to the status of mitigation measures under CEQA. With limited exception, none of the PDFs specifically state the precise actions to be implemented by the Lead Agency and/or the Applicant, remain subject to broad interpretation, have not been included in the "project description" as actual components of the project, and are likely unenforceable.

For example, although "under the current plan many [residents] would be looking down on and across the parking lots" (DSEIR, p. 5.1-18), none of the PDFs presented in the DSEIR can be demonstrated to have any beneficial impact as to their ability to screen the views from those residents to and across the parking lot to the NFL Stadium beyond. Clearly, low-lying groundcover and scrubs would have no screening potential. The Lead Agency states that the project's only obligation concerning the planting of trees and/or the construction of perimeter walls includes: (1) "One local native tree species shall be planted at a rate of one per 10,000 square feet. The mixture of trees shall include some fast growing species" (PDF 1-1); (2) "Where parking lots would be visible from adjacent residential areas on the eastern boundary, the transition zone shall employ a variety of techniques, such as berms with tree and shrub massing or vine-covered low walls or decorative fences to screen the views" (PDF 1-7); and (3) "Parking lots I, J, H and G east of Grand Avenue shall be fenced where adjacent to perimeter slopes to prevent entry into landscaped areas" (PDF 1-11).

None of the proposed features provides any assurance that visual impacts can be reduced to below a level of significance. Similarly, other declarations contained in the DSEIR directly countermand the PDFs and indicate that any stated or inferred benefits are no more than window dressing (e.g., "landscaping within the parking areas must be limited," DSEIR, Appendix I, p. 6).

Even if those and other PDFs are adopted, the language of the replacement PDFs is intentionally design to prevent definitive meaning and preclude implementation in any meaningful fashion. Rather than incorporating mandatory language, many PDFs use the word "should" instead of "shall" (e.g., PDFs 1-13 and 1-17), use limiting language (e.g., "to the greatest extent possible" and "as appropriate"), and defer critical details until after the project is approved (e.g., "Prior to the approval of improvement plans for the surface parking areas east of Grand Avenue, the project applicant shall submit an off-street parking lighting plan for review and approval by the Department of Public Works," PDF 1-18).

As such, little meaning or mitigation value can be assigned to the Applicant-nominated PDFs. Even the few PDFs that have quantitative rather than qualitative language (e.g., 150-foot buffer) cannot be demonstrated to reduce those "potentially significant impact" (as identified in the NOP) to a "less than significant" (DSEIR, p. 5.1-34) level. Nowhere has the Lead Agency demonstrated that the significance of the stadium's visual intrusion will diminish over the specified distance or that landscaping will eliminate light-of-sight vistas from residential areas "looking down and across the parking lots" (i.e., "landscaping would

provide an ample buffer for the surrounding community and aesthetic relief in an otherwise urbanized area," DSEIR, p. 5.1-29).

However, in direct contradiction to any inferences that extensive landscaping will be provided, the DSEIR specified that "landscaping within the parking areas must be limited" (DSEIR, Appendix I, p. 6).

As indicated in the NOP: "The Supplement will address the potential impacts of the proposed project on views from surrounding locations. Mitigation measures will be recommended as feasible and appropriate" (NOP, pp. 29-30). Now, with minimal analysis and absent any mitigation measures or Lead Agency recommended revisions to any component of the "revised project," the Lead Agency has converted three "potentially significant [aesthetic] impacts" (NOP, p. 20) to a "less than significant" level.

"A clearly inadequate or unsupported study is entitled to no judicial deference" (Laurel Heights Home Improvement Association v. Regents of the University of California). If a reviewer where to only examine the issue of aesthetics, it become immediate apparent that the Lead Agency has crafted a pro-project document, absent any credible assessment of due-diligence, and has failed to reasonably and objectively examine the potential impacts of the proposed action.

The DSEIR acknowledges that the "proposed signage program has not yet been finalized" (DSEIR, p. 3-22) and "a detailed lighting plan has not yet been designed" (DSEIR, p. 5.1-30). In the absence of conceptual signage and lighting programs, the statements that "signage associated with the revised Plan of Development would be an essential component of the project, that would contribute to the overall environment as a sports, retail, and entertainment destination by providing an exciting e [sic] visual experience for patrons and establishing a unique identify for the project site" (DSEIR, p. 5.1-29) provides little evidence that signage and/or lighting will not "have a substantially effect on a scenic vista."

The lead agency is responsible for the adequacy and objectivity of the draft EIR (14 CCR 15084[e]). As indicated in many excerpts throughout the DSEIR (including those cited above), the Lead Agency has failed in the fulfillment of that obligation. The Lead Agency confuses promotional materials prepared by or in behalf of the Applicant from independent, objective environmental analysis prepared for the purpose of demonstrating faithful compliance with CEQA.

Similarly, although Figure 3-6b – Stadium Elevations (DSEIR, unpaginated) illustrates that "sports lighting" will be placed substantially above the structural elements that comprise the stadium, the Lead Agency (absent any factual evident) states that the "stadium structure acts as a shield to limit lighting to adjacent areas" (DSEIR, p. 5.1-30).

Additionally, it appears that the Lead Agency lacks any understanding of the differences to be "light" and "glare" (including direct glare and reflective glare). Although it is unclear how, in the absence of "detailed lighting plan" the Lead Agency can assert that "stadium lighting

spill light calculations are projected at less than one foot-candle 1000 feet from the edge of the stadium" (DSEIR, p. 5.1-30), the EIR ignores the more apparent impacts of direct glare attributable to an unimpeded light-of-sight view of sports lighting illuminated to 350 foot-candles (e.g., "it is anticipated that the stadium would employ lighting that would emit 300 to 350 foot-candles," DSEIR, p. 5.1-30).

The statement that "spill light calculations" have been performed and field lighting levels established indicate the Lead Agency's possession of critical information that has withheld from the public. In the absence of the disclosure of the documentation from which that information is derived, the City and the affected public have been denied the ability to independently review and validate the information.

Since high-intensity sports lighting will tower above the height of all other on-site structures (as evident in Figure 3-6b – Stadium Elevation), abutting residential receptors in Diamond Bar will be provided a clear and unimpeded view of the stadium and its pole-mounted sports lighting displays (as evident in Figure 5.1-6c – Computer Modeled Views from Surrounding Vicinity), it isinnappropriate for the Lead Agency to suggest, in the obvious absence of any such buildings or topography, that "intervening buildings or topography" may "block light spillage to adjacent off-site areas" (DSEIR, p. 5.1-30). It appears that the EIR's authors based their analysis without the benefit of either a site or grading plan.

Artificial light can escape the confines of the sports field in three forms: spill light, glare, and sky glow. Spill light involves light intended for the sports field entering an area where it was not intended. Glare can result from an over-abundance of light bathing the playing field or by fixtures aimed in such a manner that looking at them causes discomfort. Sky glow is light thrown (either directly or reflectively) upward, obscuring one's ability to see stars in the night's sky. Reflective glare or veiling reflection is the glare resulting from reflections of high luminance from specular, glossy, or polished surfaces within the field of view. Direct glare is defined as the visual discomfort resulting from insufficiently shielded light sources in the field of view (i.e., the luminaire is positioned directly in the field of vision of the observer). Few, if any, of those undesirable consequences of lighting are even addressed in the DSEIR.

The DSEIR includes no or, at best, only a cursory discussion and analysis of potential spill light, direct glare, and sky glow efforts associated with the proposed project. Similarly, absent from the DSEIR is any discussion of the reflectivity of surfaces and the implications with regards to reflective light.

"Light trespass" or "spill light" is defined as the light shining beyond the area to be illuminated, caused either by the uncontrolled direct component from luminaires or from light reflected from the task being illuminated. The California Energy Commission (CEC) further defines "light trespass" as "unwanted light from a neighboring property. Any source of light can create trespass, but complaints are related mostly to sports lighting, billboards, and street lighting. Light trespass is annoying, but it can also become a nuisance or even a serious health and safety risk if it adversely affects visibility for other tasks. Light trespass may also be a source of glare, including disabling, discomfort, veiling luminance, and

annoyance glare that can also be serious public health and safety risk" (California Energy Commission, California Outdoor Lighting Standards Synopsis, February 1, 2002, p. 1).

Views of the NFL Stadium from residential areas in Diamond Bar are illustrated in Figure 5.1-6c – Computer-Modeled Views from Surrounding Vicinity (DSEIR, unpaginated). As illustrated for "Location 8," Industry's characterization of on-site views from off-site receptors is refuted by the Lead Agency's own computer simulations.

As indicated in the FOF/SOQ: (1) "Adherence to the Plan of Development, the proposed Project Design Features and Existing Codes and Regulations concerning development standards will prevent the occurrence of any significant impacts to scenic vistas for the reasons set forth in the Draft EIR" (FOF/SOQ, p. 3-3); (2) "Adherence to the Plan of Development, the proposed Project Design Features and Existing Codes and Regulations concerning development standards will prevent the occurrence of any significant impacts related to visual character or quality for the reasons set forth in the Draft EIR" (FOF/SOQ, p. 3-3); and (3) "Adherence to the Plan of Development, the proposed Project Design Features and Existing Codes and Regulations concerning development standards will prevent the occurrence of any significant impacts related to light and glare for the reasons set forth in the Draft EIR" (FOF/SOQ, p. 3-3).

The DSEIR references four code sections which are "potentially applicable to the revised Plan of Development," including: (1) Chapter 15.32 (Sign Regulations); (2) Section 17.12.050 (Regulations); (3) Section 17.36.060 (Standards of Review and Development Guidelines); and (4) Section 17.36.080 (Standard Conditions of Approval) (DSEIR, p. 5.1-4). Neither the precise language nor the relevant implications of those code sections are, however, presented in the DSEIR. With the exception of Section 17.12.050, none of those code sections are available at the Lead Agency's website. As such, it is not possible to know how, or whether, those code sections apply to the "revised project" and what standards or performance obligations, if any, are contained therein. Because the Lead Agency acknowledges that "[o]ther than the directives of Section 15.32.070, the City of Industry does not have a lighting ordinance specifying the maximum amount of lighting that may be generated by new projects" (DSEIR, p. 5.1-33), it would appear that the code citations have little direct relevance and/or actual mitigative environmental effect.

Although the Lead Agency found that "adherence to. . .the proposed Project Design Features" served, in whole or in part, as the basis for the mitigation of aesthetic impacts, the DSEIR states that all of the PDFs have been "deleted from the 2004 IBC EIR" (DSEIR, p. 5.1-15) and replaced with new Applicant-nominated features. Certain PDFs included in the Final IBC/EIR and now eliminated from the "revised project," however, have no comparable measures in the DSEIR. Examples of PDFs that have been eliminated but not replaced include: (1) PDF 5.1-16 ("A 20-foot landscape buffer will be required at the eastern edge of the development pad"); (2) PDF 5.1-17 ("Buildings in these project sites will have varying height limitations dependant on visibility from nearby residential areas"); (3) PDF 5.1-18 ("This north-facing slope will be planted with 100% coverage"); and (4) PDF 5.1-19 ("The west/northwest facing slopes along the western edge of the project site will have an appropriately landscaped buffer and building setback to minimize views from the residential

neighborhood to the west") (Final IBC/EIR, p. 5-35). As such, it is readily apparent that there does not exist any demonstrable comparability between the PDFs contained in the Final IBC/EIR and those now presented in the DSEIR.

Since PDFs are neither linked to the impacts that they are intended to address nor are enforceable actions binding on either the Applicant or the Lead Agency, it is not possible to conclude that: (1) the impacts which predicated the original PDFs will, in fact, be comparably mitigated by the replacement PDFs; and/or (2) the impacts which now predicate the replacement PDFs will be effectively mitigated, such as to substantiate the Lead Agency's unsupported assertions that otherwise significant impacts will be reduced to less-than-significant levels merely through reference to the new PDFs. For example, the Lead Agency asserts that "the fixture requirements and foot-candle limitations of PDF 1-16 would further reduce the visibility of light sources" (DSEIR, p. 5.1-30). However, absent from the DSEIR is any evidence that PDF 1-16 (or any of the PDFs identified by the Lead Agency) constitute enforceable commitments.

When PDF 1-16 is examined, there is no substantial evidence to suggest that the implementation of that measure will have any mitigating impacts on the visual impacts identified in the DSEIR. Focusing only on potential light intrusion associated with the direct line-of-sight vantage point of the massive NFL Stadium from abutting residential areas in Diamond Bar (as depicted in Figure 5.1-6c – Computer-Modeled Views from Surrounding Vicinity), PDF 1-16 states that "light spill beyond parking lots or roadways on the perimeter of the site shall not be greater than 0.5 foot-candles" (DSEIR, p. 5.1-17). Unspecified is whether the 0.5 foot-candle (FC) standard is to be measured as horizontal foot-candles (HFC) or vertical foot-candles (VFC) and what uniformity ratio is being applied to on-site lighting. The uniformity ratio describes the average level of illumination in relation to the lowest level of illumination for a given area. For example, with a uniformity ratio of 4:1 for a given area, the lowest level of illumination is not less than four times the average level of illumination. As such, absent that information, even the Lead Agency's stated standard remains subject to broad interpretation.

HFC is a measure of luminous flux density (lm/f^2) reaching a horizontal surface, normal to or three feet above the ground. VFC is a measure of luminous flux density within a vertical plane. VFC would be calculated by pointing the light meter directly toward the light source while HFC would be measured pointing the light meter toward the ground. The distinction between HFC and VHF can be both substantial and profound.

No evidence has been submitted by the Lead Agency that the 0.5 standard can be obtained. In addition, no PDFs are proposed to address direct glare.

Although never referenced in the DSEIR, NFL lighting standards call for 150 VFC on the field and a high level of light uniformity. Since no lighting levels are identified with regards to appropriate HFC and VFC levels and uniformity ratios for professional football, no evidence is provided that the "300 to 350 foot-candles" (DSEIR, p. 5.1-30) levels referenced in the DSEIR is even adequate to obtain the desired on-field levels required for television coverage.

It is, therefore, meaningless for the Lead Agency to assert that off-site lighting impacts will be less than significant merely by stating that "[l]ighting shall incorporate 'cut-off' shields as appropriate to minimize any increase in lighting at adjacent properties" (PDF 1-19) (DSEIR, p. 5.1-17). No evidence is provided that "cut-off shields" have any application to the lighting needs of the project and/or can be effectively implemented based on the high levels required for media coverage.

Similarly, absent from the DSEIR are any commitments to ensure that maximum perimeter lighting standards will be obtained, routinely monitored and measures, the demonstrated qualifications of any monitor, the reporting practices to be instituted, and how (or whether) any exceedances will be corrected. Additionally, no mechanism is established through which complains can be filed, no assurances that the Applicant commits to responding to those compliances, and how the Lead Agency intends to verify that corrective actions have been instituted.

Absent from the DSEIR is any documentation, as derived from the IESNA or other credible sources, examining lighting levels associated with the proposed use. No documentation is presented indicating whether the Lead Agency has conducted its own due-diligence with regards to the identification and evaluation of project-related impacts or only sought to rely upon information provided by the Applicant.

The Lead Agency states that the "revised Plan of Development includes structures of a similar type and massing as that considered in the 2004 IBC EIR" (DSEIR, p. 5.1-33). Ignoring, for the moment, the introduction of a 75,000-seat sports arena, the "revised project" includes numerous structures described as: (1) "10 stories in height" ("the tallest part of the stadium structure would be the tower on the west side, which would be up to 10 stories in height" (DSEIR, p. 3-12); (2) "The buildings would typically range between two and ten stories" (DSEIR, p. 3-20); and (3) "The office buildings would typically range between four and ten stories in height" (DSEIR, p. 3-21). No specific discussion of building heights could, however, be found anywhere in the Final IBC/EIR (e.g., "Buildings in these project sites will have varying height limitations dependant on visibility from nearby residential areas," Final IBC/EIR, p. 1-5).

The Final IBC/EIR acknowledge that "no specific facility plans have been submitted for the IBC" (Final IBC/EIR, pp. 4-23 and 4-24). As a result, there exists no factual information to support the Lead Agency's assertion that the "2004 IBC Plan of Development" and the "revised Plan of Development" includes structures of similar "type and massing."

As indicated in the Final IBC/EIR, with regards to existing and proposed land uses in Diamond Bar, "it is unlikely that this residential neighborhood would be able to view significant portions of the Industry Business Center upon build out of the project site" (Final IBC/EIR, p. 5-193). That false representation is contradicted by the DSEIR which acknowledges that "most of the buildings including the stadium would be visible to the surrounding residential neighborhoods located farther away" (DSEIR, p. 5.6-21). As illustrated in Figure 3-16 – Conceptual Grading Plan (DSEIR, unpaginated), any intervening

topography that may now separate existing residential areas in Diamond Bar from a direct view of the project site will be eliminated under the "revised project." As a result, adjoining sensitive receptors in Diamond Bar are positioned at higher elevations and will have an unobstructed view of the NFL Stadium.

The DSEIR states that "some residents would experience a change in views" (DSEIR, p. 5.1-2) and "[a] portion of both residential communities on the western and eastern boundaries would have views of the project site" (DSEIR, p. 5.6-21). The Lead Agency erroneously asserts that "view impacts would be mitigated through PDFs and a buffer zone between the proposed structures and residential communities" (DSEIR, p. 5.1-2) and "visual impacts would be further mitigated though a 150 foot landscaped buffer between the revised Plan of Development and both residential areas" (DSEIR, p. 5.6-21). Because certain residential areas will have unimpeded views of the project site, the Lead Agency has failed to demonstrate how the proposed setback and PDFs will mitigate the aesthetic impacts associated with the substantial change from existing open space views to a 75,000-seat stadium, numerous 10-story tall buildings, and 350-FC high-intensity sports lighting.

Similarly, the Lead Agency makes further misrepresentation of the visual impacts by stating that "similar office and retail uses are also within view along with industrial buildings comparable in size to the stadium" (DSEIR, p. 5.6-21). Nowhere in the project area are three million square foot high-rise structures with high-intensity sports lights towering over those structures and topped with 350-FC sports lighting. To suggest that the NFL Stadium is comparable to a low-rise, flat-roofed, enclosed warehouse is like saying that a grape is similar to a watermelon.

Similarly, with "45 major events" (DSEIR, Table 5.8-7) and "15 minor events" (DSEIR, p. 3-21) per year and with the presence of overhead lighting, at 350 foot-candles, the Lead Agency states that "the limited schedule of nighttime events at the stadium would not substantially increase nighttime light in the project area" (DSEIR, p. 5.1-33). Without establishing any defensible standard, the Lead Agency mistakenly equated "significance" with "frequency." The Lead Agency cannot arbitrary state that impacts that occur every sixth day on average throughout the year would be insignificant because of their "limited" frequency.

As illustrated in Figure 3-7 - Phase One Revised Plan of Development (DSEIR, unpaginated), driveway and internal street configuration orient vehicle headlights directly towards abutting sensitive receptors. Design elements, as simple as the gradient of those driveways and those roadways, can have a major effect upon the intrusion of those project-related light sources on adjoining land uses. However, since the impact is never disclosed, the City and the affected public have been denied the ability to assess the significant of the resulting impacts and to suggest design changes and other measures which, if enacted, would reduce potentially significant impacts on adjoining residential uses.

- **Air Quality.** With regards to odors generated from cooking, the DSEIR states that "[o]perational odors would be produced from on-site food preparation, including tailgate

parties" (DSEIR, Appendix C, p. 46). The Lead Agency asserts that "these odors are common in the environment and would not constitute a significant impact" (DSEIR, Appendix C, p. 46). While agreeing that barbeques and neighborhood-serving restaurants might be common in and adjacent to residential areas, a restaurant seating 75,000 hungry fans could not be considered "common." The Lead Agency's assessment of the potential operational odor impacts associated with the NFL Stadium and the numerous restaurants now proposed and tailgate barbeques throughout the project site is relegated to a meaningless two-sentence assessment. A through examination and series of mitigation measures is required.

- **Hazards and Hazardous Materials.** Absent from the DSEIR is any continuity whereby the findings of one section can be reconciled with the findings of another. As such, what is presented is a constantly moving target which prevents both the EIR's authors from preparing a consistent analysis and prevents the public from presenting comments in response to a stationary and static project description.

  For example, the "hazards and hazardous materials" analysis alleges that "[d]uring the operation phase, the revised project would not interfere with any of the operations of LACFD or LASD in and around the project area during an emergency event" (SDEIR, p. 5.4-11). In clear contradiction, the DSEIR states:

  - "[O]n event days, demand for fire protection services is likely to be greater due to the unique demands that a stadium event requires for fire and emergency services" (DSEIR, p. 5.9-2);
  - "Grand Avenue may experience temporary delays" (DSEIR, p. 5.9-9);
  - "[H]igh volume of traffic near the stadium has the potential to impact emergency access and response times in and around the stadium" (DSEIR, p. 5.9-5);
  - "[C]ongestion on the surrounding roadway network could cause delays in emergency response or other logistical problems. This would be of particular concern immediately prior to and after events when vehicles are queued on local streets" (DSEIR, p. 5.4-11);
  - "Event-related congestion on local roadways could also impede emergency response in the event of a major emergency at the stadium while it is occupied" (DSEIR, p. 5.4-11);
  - "Police service could decrease due to elevated police workload associated with the increased visitor population of cumulative development" (DSEIR, 5.9-9); and
  - "[B]ecause the City of Industry cannot ensure that the County Fire Department will commit to its operation, this impact is considered significant and unavoidable" (DSEIR, p. 5.9-7).

  The Lead Agency's preliminary findings that "the revised project would not interfere with an adopted emergency response or evacuation plan" (DSEIR, p. 5.4-12) is based, in part, on "the provision of on-site police, fire, and/or medical emergency personnel during event days" (DSEIR, p. 5.4-12). No such commitment is, however, stated anywhere in the EIR and no mitigation measures or other conditions are presented requiring the Applicant to pay costs incurred by the Los Angeles County Fire Department (LACFD) and/or Los Angeles

County Sheriff's Department (LACSD or LASD) for such purposes. The mere fact that the LACSD "confirms that they have enough part-time officers for traffic control on game days" (DSEIR, p. 5.9-8) does not guarantee the availability or sufficiency of "on-site police, fire, and/or medical emergency personnel" or ensure that the affected public is not burdened by costs appropriately borne by the Applicant.

Since it appears that the LACFD and the LACSD did not even respond to the NOP (DSEIR, pp. 2-2 through 2-14), no evidence is presented to verify any such "confirmation" or the presence of any unresolved issues that may have been raised by those departments. To the extent that any project-related correspondence or other communications exists between the Lead Agency and the LACFD and/or LACSD, that correspondence and those communications need to be fully disclosed so that any representations made by the Lead Agency with regards to impacts on police and fire protection services can be independently verified.

- **Hydrology and Water Quality.** The water tank rupture analysis summarized in the Final IBC/EIR and referenced in the DSEIR (DSEIR, p. 5.5-27) is based on the premise that rupture would "uniformly release 2 million gallons of water radially outwards" (Final IBC/EIR, p. 5-173; DSEIR, p. 5.5-27). Although a uniform radial release could constitute one possible scenario, because "residential homes are located in the impact zone" (Final IBC/EIR, p. 5-173), a more conservation modeling assumption (i.e., concentrated release in the direction of adjoining residents) should have also been evaluated.

  It appears that a more conservation analysis was either quantitatively or qualitatively included in the DSEIR (e.g., "in the event that the tank ruptured in such a manner that would direct the majority of the water flows in a northeasterly direction towards the existing residences, the amount of water released could inundate a number of residences," DSEIR, p. 5.5-28). In recognition of those potential health and safety hazards, the Lead Agency asserts that "PDF-7-1 would ensure that flows remain on-site" (DSEIR, p. 5.5-28). PDF-7-1 stipulates that the "final grading plan for the water tank shall provide a berm along the eastern property edge near the water tank to protect the residences from any potential inundation associated with the tank failure" (DSEIR, p. 5.5-13).

  The City seeks the Lead Agency's acknowledgement that "any potential inundation" includes the scenario wherein the totality of the water in the tank is instantaneously release in the direction of those residences in a manner and at rates with the greatest potential to cause damage or harm to those properties. Water discharge and berm height calculations need to be presented to and independently verified by the City so that affected residences are provided reasonable assurance that documented safety hazards have, in fact, been addressed.

- **Land Use and Planning.** As indicated in the DSEIR: "Certain land uses are particularly sensitive to noise and vibration, including residential, school, and open space/ recreational areas where quiet environments are necessary for enjoyment, public health, and safety. Sensitive receptors in the vicinity of the project site include the Diamond Bar golf course,

schools in the project vicinity, and the residential communities surrounding the project site" (DSEIR, p. 5.7-6).

The City adamantly disagrees with the Lead Agency assertion that the "revised project" is consistent with "existing and proposed land uses in the City of Diamond Bar" (DSEIR, p. 5.6-21). It is commonly held that land-use conflicts can surface when dissimilar land uses (including uses with substantially different operational characteristics) either abut or are located in close proximity to one another. In Euclid v. Ambler Realty Company, the courts confirmed that "[n]o serious difference of opinion exists in respect of the validity of laws and regulations fixing the height of buildings within reasonable limits, the character of materials and methods of construction, and the adjoining area which must be left open in order to minimize the danger of fire or collapse, the evils of over-crowding, and the like, and excluding from residential sections offensive trades, industries, and structures likely to create nuisances."

Two existing and well established residential neighborhoods located in the City directly abut the NFL Stadium site (e.g., "Residential communities within the border of the City of Diamond Bar exist to the east and west of the site," Final IBC/EIR, p. 5-178) The mere fact that these residential areas exist in the City, while the "revised project" exists in Industry, independent of jurisdiction demarcations, does not negate the basis planning principal that land-use conflicts can and typically due arise from the adjacency of dissimilar activities.

The Lead Agency lacks any basis to assert that the operational characteristics of a residential use (e.g., relative quiet, minimal light and noise intrusion) are similar to those of the "revised project." While the operational characteristics of the NFL Stadium are never actually disclosed, it is self-evident that the cacophony of 75,000 fans would be disharmonious with the quiet serenity one seeks at home. Similarly, parking lot maintenance activities (e.g., sweeping likely to occur on a 24-hour per day basis), since numerous on-site uses will remain open until 2:00 AM (DSEIR, p. 3-21) and existing residential areas abut the parking lots that cater to those uses, as further evidence of undisclosed impacts, the Lead Agency alleges that "impacts to residential areas from the revised Plan of Development would be reduced or eliminated through mitigation measures and project design features" (DSEIR, p. 5.6-21).

The Lead Agency's conclusions are refuted by its own analyses. As indicated in the DSEIR: "Noise levels at the nearest residences could reach 70 dBA Leq. Impacts from a concert would extend beyond the local vicinity of the project site. Consequently, impacts from a concert event are a significant adverse impact" (DSEIR, p. 5.7-83). Similarly, the DSEIR states that "street sweeping would occur in the evening and would exceed 45 dBA Leq at the property line of the residences bordering the site to the northeast, [and] would be significant" (DSEIR, p. 5.7-84). Additionally, "helicopter flyover events during a stadium event would be frequent noise intrusion for media and traffic coverage [and] are considered significant" (DSEIR, p. 5.7-84).

The acoustical analysis concludes: (1) "No mitigation measures are available to reduce noise generated from project related traffic from increasing the ambient noise environment

by 3 dBA" (DSEIR, p. 5.7-109); (2) "No mitigation measures are feasible to reduce single-event noise generated by project-related train traffic to below the level of perception" (DSEIR, p. 5.7-110); (3) "No mitigation measures are available to reduce noise generated by crowd noise or fireworks during a stadium event" (DSEIR, p. 5.7-110); (4) "No mitigation measures are available to reduce noise levels or flight patterns from helicopter overflights associated with media and traffic coverage during a stadium event" (DSEIR, p. 5.7-110); (5) "No mitigation measures are feasible to reduce vibration generated by project-related train traffic to below the level of perception" (DSEIR, p. 5.7-111); (6) "No mitigation measures are feasible to reduce noise generated by project-related traffic to below the City's [Industry] significance thresholds. Traffic noise impacts would remain significant and unavoidable" (DSEIR, p. 5.7-111); and (7) "No mitigation measures are feasible to reduce vibration generated by project-related train traffic to below the level of perception. Impacts from project-generated trains are considered significant and unavoidable" (DSEIR, p. 5.7-112).

Based on the Lead Agency's own evidence, noise associated specifically with the stadium's planned operations cannot be mitigated to a less-than-significant level. Those residential areas that adjoin the stadium will be adversely and significantly impacted by the stadium's scheduled use. In direct contradiction to the Lead Agency's mischaracterization of the project's consistency and the stadium's compatibility with existing and proposed land uses in Diamond Bar (e.g., "Other impacts to residential areas from the revised Plan of Development would be reduced or eliminated through mitigation measures and project design features," DSEIR, p. 5.6-21), the EIR demonstrates that the NFL Stadium is, in fact, incompatible with those existing uses that predate the stadium's introduction.

Since the Lead Agency states that the "revised project" would be deemed "significant" if it were to "[c]onflict with any applicable land use plan, policy or regulation" (DSEIR, p. 5.6-12), the stadium's demonstrated incompatibility should result in a determination that the "revised Plan of Development" will result in an unmitigable land-use impact. Despite substantial evidence to the contrary, the Lead Agency erroneously asserts that "no significant unavoidable adverse impacts related to land use and planning remain" (DSEIR, p. 5.6-55). Based on substantial evidence presented in the EIR, that finding cannot be reconciled with the information presented in the DSEIR.

Both the NOP (Initial Study, pp. 32-33) and the DSEIR (DSEIR, p. 8-2) conclude that all "biological resource" impacts will either be "less than significant" or "no impact." Based on those findings, "biological resources" are not addressed in the DSEIR. Although determined not to be relevant to the "revised project," the Lead Agency states that one of the only three "threshold of significance" criteria applicable to the assessment of land-use impacts relate to impacts upon biological resources (i.e., "Conflict with applicable habitat conservation plan or natural community conservation plan," DSEIR, p. 5.6-12). Based on the Lead Agency's preliminary findings and the absence of any refuting testimony, stating that land-use impacts would manifest if development were to impinge upon sensitive biological resources only serves to divert public attention away from other legitimate land-use considerations. For example, no threshold standards have been formulated by the Lead Agency which address the Lead Agency's own declarations that houses and

businesses may be displacement in Diamond Bar as a result of the recommended traffic improvements listed in the DSEIR.

Under CEQA, environmental effects cannot be so compartmentalized as to allow the Lead Agency to present an impact analysis is one section, conclude for insignificance based on a self-imposed limited number of threshold standards delineated in that section of the EIR while concurrently ignoring threshold standards that the Lead Agency presents in another section of the EIR. For example, under the discussion of "population and housing," the Lead Agency states that the project would be deemed to produce a significant effect if it were to "[d]isplace substantial numbers of existing housing" and/or "[d]isplace substantial numbers of people" (DSEIR, p. 5.8-13). That Lead Agency established threshold standard is not considered in the DSEIR's evaluation of "transportation and traffic" impacts.

As indicated in the DSEIR, many of the proposed traffic improvements proposed in Diamond Bar will have either "significant" or "potentially significant" environmental effects. Under CEQA, mitigation measures or alternatives shall be identified where project-related or cumulative environmental impacts occur at levels above the established threshold of significance criteria. Through the Lead Agency's own admission, as a result of the need for additional right-of-way needed to accommodate the identified infrastructure improvements, significant or potentially significant land-impacts are projected to occur at or near the following intersections: (1) Intersection No. 16 - Diamond Bar Boulevard-Mission Boulevard at Temple Avenue (potential loss of restaurant parking and/or use; potential loss of residential units); (2) Intersection No. 30 - Diamond Bar Boulevard at SR-60 WB Ramps (potential loss of commercial parking and/or use); (3) Intersection No. 31 - Diamond Bar Boulevard at SR-60 EB Ramps (potential loss of commercial parking and/or use); (4) Intersection No. 34 - Diamond Bar Boulevard at Golden Springs Drive (potential loss of institutional use; increased hazards to children; potential loss of service station); (5) Intersection No. 52 -SR-60 at Golden Springs Drive (potential loss of restaurant parking and/or use); (6) Intersection No. 53 - Brea Canyon Road at Golden Springs Drive (potential loss of restaurant parking and/or use); (7) Intersection No. 59 - Copley Drive at Golden Springs Drive (potential loss of office parking and/or use); (8) Intersection No. 60 - Grand Avenue at Golden Springs Drive (potential loss of commercial parking and/or use); (9) Intersection No. 63 - Diamond Bar Boulevard at Grand Avenue (potential loss of bank/commercial/shopping center parking and/or use); (10) Intersection No. 68 - Diamond Bar Boulevard at Montefino Avenue (potential loss of convenience store parking and/or use; potential loss of post office parking and/or use); (11) Intersection No. 70 - Diamond Bar Boulevard at Mountain Laurel (potential loss of residential units); (12) Intersection No. 74 - SR-57 SB Ramps at Pathfinder Road (potential loss of commercial parking and/or use); (13) Intersection No. 77 - Diamond Bar Boulevard at Pathfinder Road (potential loss of residential units); (14) Intersection No. 76 - Brea Canyon Road (East)-Fern Hollow Drive at Pathfinder Road (potential loss of residential units); (15) Intersection No. 81 - Diamond Bar Boulevard at Cold Springs Lane (potential loss of residential units); and (16) Intersection No. 83 - Brea Canyon Road at Silver Bullet Drive (potential loss of residential uses).

Based on the traffic mitigation proposed by the Lead Agency, it can be reasonably concluded that, in order to support the EIR's conclusion that traffic impacts can be reduced

to a less-than-significant level, widening of numerous roadways in Diamond Bar will be required. Substantial evidence demonstrates that the implementation of those recommended improvement plans formulated by the Lead Agency will result in direct and/or indirect impacts to existing homes, businesses, and institutional uses along the affected street segments. Substantial evidence further demonstrates that an unspecified number of homes will need to be demolished and businesses closed, resulting in direct impacts on those residents and those business and indirect impacts on Diamond Bar (e.g., lowered property and sales tax revenues, reduced housing and employment opportunities, diminished community amenities and public services)

Despite substantial evidence to the contrary, the Lead Agency states that "no significant unavoidable adverse impacts related to land use and planning remain" (DSEIR, p. 5.6-55). Based on the threshold standards presented under "population and housing," as evidenced by substantial evidence presented in the EIR, that preliminary finding cannot be reconciled with the information presented in the DSEIR.

- **Noise.** As indicated in the DSEIR: "After a major stadium event, up to 75 percent of the spectators would leave within the first hour after the event, thereby generating a flux of traffic on the local roadway network. . .Football events would generally conclude by 9:30 PM and concerts would typically conclude by 12:00 AM" (DSEIR, p. 5.7-62).

  While the DSEIR assumes "45 major events per year" (DSEIR, Table 5.8-7), the project's acoustical analysis assumes "12 sell-out games" and "18 major nonfootball sell-out events" per year (DSEIR, p. 5.7-80). As a result, the acoustical analysis is not based on the same project that serves as the basis for the EIR. Based on those differences, at best, the Lead Agency's own acoustical analysis underestimates the likely environmental impacts resulting from the project's approval and operation.

  The DSEIR concludes that a broad range of noise impacts cannot be mitigated to below a level of significance, including "project related" (DSEIR, p. 5.7-109), "project-related train traffic" (DSEIR, pp. 5.7-110, 111, and 112), "crowd noise or fireworks during a stadium event" (DSEIR, p. 5.7-110), "flight patterns from helicopter overflights associated with media and traffic coverage during a stadium event" (DSEIR, p. 5.7-110), and "vibration generated by project-related train traffic" (DSEIR, p. 5.7-111). Many of those significant and unmitigable impacts would adversely affect sensitive receptors in the City. Although the Lead Agency acknowledges that project-related activities will create those adverse consequences, the EIR fails to disclose how project-generated noise will impact sensitive residential areas located in Diamond Bar. In essence, the Lead Agency is stating that, although acknowledging the presence of unmitigable noise impacts, the implication of those project-induced conditions do not necessitate further analysis upon those receptors likely to be most affected.

  Noise is defined by the United States Department of Housing and Urban Development (HUD) as that "which interferes with normal activities such as sleeping, conversation, or recreation. The noise causes actual physical harm or adversely affects mental health." Human response to increase noise levels can include pain and hearing fatigue, hearing

impairment including tinnitus, annoyance, interferences with social behavior, interference with speech communication, sleep disturbance and all short-term and long-term consequences, cardiovascular effects, hormonal responses (stress hormones) and their possible consequences on human metabolism (nutrition) and immune system, and diminished performance at work and school. Proximity to prolonged noise sources have also been demonstrated to result in diminished residential property valuation.

Objections from affected homeowners might properly rise in a nuisance action (Greater Westchester Homeowners Association v. City of Los Angeles) because the property owners' fundamental rights have already vested prior to the offending behavior. The Lead Agency failure to mitigate the noise impacts created by the NFL Stadium project on proximal residential receptors demonstrates that Industry and the Applicant will deprive those parties of their fundamental rights without the provision of just compensation (e.g., "Impact 5.7-7 – No mitigation measures are available to reduce noise generated by crowd noise or fireworks during a stadium event," DSEIR, p. 5.7-110).

On June 24, 2005, the Federal Railroad Administration (FRA) issued its "Final Train Horn Rule" allowing public authorities to establish "quiet zones" where locomotive horns are not routinely sounded at the public grade crossings. The result may be improved living conditions as loud train horns are silenced.

Absent from the DSEIR is any discussion of a noise mitigating "quiet zone" on Lemon Avenue. As a result, the Lead Agency's conclusion that the "revised project" would result in a significant impact as a result of increased train horn noises (e.g., "On days with a stadium event, Metrolink trains generated by the project during special event service would generate substantial noise from train passby events and train horn noise," DSEIR, Impact 5.7-5, p. 1-32). Although remedies can be readily implemented, no such actions are recommended in the EIR.

Unaddressed in the DSEIR is any discussion of on-site events that may not occur within the stadium itself. Many stadiums (including Anaheim Stadium) routinely hold events within their parking lots, including car shows and sales and mobile home and home improvement expos. Since those events would occur outside the confines of the stadium (whose walls offer some noise attenuation), additional, undisclosed, and undocumented noise impacts could befall adjoining sensitive receptors. Absent from both the "project description" and the impact analysis is any discussion of possible and allowable multiple use of the on-site parking areas, including a discussion of what uses could occur in those areas and what uses would be prohibited.

Arguably, the approval of a project without even attempting to provide mitigation for or consider alternatives which would result in the avoidance of significant impacts on affected residents constitutes a violation of due process of law and amounts to a taking in violation of Article I of the California Constitution.

- **Employment growth**

  As indicated in the Federal Reserve Bank of Philadelphia's "Working Paper No. 02-12R": "It is fair to say that economists have cast a skeptical eye on the claims that professional sports franchises contribute to the economic health of the surrounding area, regardless of how that surrounding area is defined. Baade and Sanderson and Coates and Humphreys examine employment and income, respectively, in metropolitan areas and find that the presence of professional sports teams induces substitution across leisure activities rather than stimulating new expenditures within the cities. The multiplier effects appear to be small."

  As further indicated in a recent article in the Economic Review entitled "What are the Benefits of Hosting a Major League Sports Franchise," the authors note that "taking explicit account of job losses and using estimates of the local multiplier from independent studies suggest that the net number of jobs created from hosting a professional sports team is quite low. It is almost certainly less than 1,000 and likely to be much closer to zero. The bottom line, then, is that the benefit to a host metro area from increased economic activity as measured by net job creation and increased tax revenue appears to fall far short of the public outlays typically needed to retain and attract professional sports teams" (Economic Review, First Quarter 2001).

  With regards to "employment," every job attributed to the new stadium is falsely considered new "job creation" when, in actuality, many of those jobs might constitute "job diversion." For example, assume an individual gets a job in the new stadium and is paid $50,000. Many would attribute the entire $50,000 to the new stadium; however, this approach would be incorrect. If the individual was working for $40,000 before the new stadium opened, then the stadium should only be credited with $10,000 for this individual. If some other individual left a job of $38,000 to take the $40,000 job vacated by the new stadium worker, then only $2,000 could be accredited to the stadium.

  Although asserting that the "revised project" will create expanded job opportunities, the DSEIR asserts that the "medical office and general office components will be closed before 2:00 PM on game days" (DSEIR, Appendix H, p. 37). Absent from the DSEIR is any information concerning the lost revenues to employees and reduced productivity that would result from those forced closures. Similarly, with the mandatory closure of "medical offices," the DSEIR includes no discussion concerning what alternatives may be available to individuals seeking medical attention during "major" events.

- **Public Services and Utilities and Service Systems.** As further evidence that the project examined in the Final IBC/EIR has little similarity with the "revised project" examined in the DSEIR, only a single threshold of significance criteria is presented in the DSEIR (DSEIR, p. 5.9-2) while no less than ten threshold standards are listed in the Final IBC/EIR (Final IBC/EIR, p. 5-291). As a result, because the Lead Agency has elected to modify the threshold criteria against which the significance of impacts are evaluated, without any explanation as to the rationale for that change, it is not possible to compare the findings in the DSEIR with those previously presented in the Final IBC/EIR.

Comments addressing fire and police protection, solid waste, and wastewater are separately presented below.

◊ **Fire Protection.** Threshold of significance criteria presented in one section of an EIR must be assumed to have applicability under other sections. For example, under "land use and planning," the Lead Agency states that a project would be deemed to have a significant effect on the environment if the project were to "[p]hysically divide an established community" (DSEIR, p. 5.6-12). As indicated under "public services and utilities and service systems," the Lead Agency notes that numerous LACFD and LACSD facilities now servicing Diamond Bar are located to north of the project site.

Should traffic or other conditions between those facilities and portions of the City east of the SR-57/60 corridor become impeded (such as might occur along Grand Avenue during stadium events), emergency response (inclusive of both police and fire) to Diamond Bar would be adversely impacted, community-wide safety hazards would increase, and public safety would diminish. Since CEQA does not define "community" as the boundaries of a single jurisdiction, isolating public service providers (including the LACFD and LACSD) and critical public facilities from the individuals they serve would result in an activity with a potential to "physical divide an established community" and would, therefore, constitute an undisclosed significant environmental effect.

The Lead Agency's failure to consider and subsequently apply the Lead Agency's own established threshold of significance criteria (as identified in the Final IBC/EIR and SDEIR) from one section of the EIR to another and conclude for insignificance based solely on those self-imposed blinders (e.g., ignoring the threshold standards established by the Lead Agency and listed under other sections of the EIR) constitutes a violation of CEQA and has resulted in the Lead Agency's release of a deficient EIR.

The Lead Agency recognized that: (1) "Grand Avenue may experience temporary delays" (DSEIR, p. 5.9-9); (2) "high volume of traffic near the stadium has the potential to impact emergency access and response times in and around the stadium" (DSEIR, p. 5.9-5); (3) "congestion on the surrounding roadway network could cause delays in emergency response or other logistical problems. This would be of particular concern immediately prior to and after events when vehicles are queued on local streets" (DSEIR, p. 5.4-11); and (4) "Event-related congestion on local roadways could also impede emergency response in the event of a major emergency at the stadium while it is occupied" (DSEIR, p. 5.4-11).

Absent from the DSEIR, however, is any discussion of project-related impacts on emergency response capabilities and emergency response times between those emergency service providers and critical public facilities located to the north of the

project site and that portion of Diamond Bar located to the south of the NFL Stadium during any of the scheduled sell-out events.

The DSEIR states that "the City of Industry would ensure adequate emergency and fire protection access to and from the stadium by keeping at least one lane of Grand Avenue open for emergency vehicles during peak entry and arrival times" (DSEIR, p. 5.9-5) and "during peak entry and exit hours from the stadium, one lane of Grand Avenue would be dedicated for emergency vehicle access only" (DSEIR, p. 5.4-11). Left unaddressed is how the Lead Agency will enforce the proviso that this dedicated "emergency vehicle access only" lane be maintained in free-flow conditions while, at the same time, accommodating "nearly 82%" of all stadium traffic via Grand Avenue (DSEIR, Appendix I, p. 2).

As illustrated in Figure 5.10-3a – Opening Day Inbound Traffic Circulation Plan (DSEIR, unpaginated), focusing only on the traffic detail presented for the main intersection of the main parking lot entry along Grand Avenue (Traffic Detail E), proposed is one dedicated left-turn lane, three dedicated right-turn lanes, and one dedicated through lane. If, as indicated in the EIR, it is the Lead Agency's intent to dedicate one through lane for "emergency vehicle access only," zero through lanes remain for northbound traffic along Grand Avenue. Based on the Lead Agency's own statements, during football games, Grand Avenue is thus closed to northbound traffic. The Lead Agency's analysis is based on impractical assumptions that would realistically not be expected to come to fruition, particularly absent any enforceable conditions of approval mandating compliance.

Additionally, even if the Lead Agency sought to create an "emergency vehicle access only" lane, it is unclear how a free-flowing travel lane will be maintained or whether such a statement is reasonably feasible based on the traffic volumes anticipated and the lane configuration depicted. Because this commitment is not also reflected in the traffic analysis, the Lead Agency needs to demonstrate that the traffic study contains a comparable commitment and that the calculated level of service (LOS) conditions which are stated during stadium events are based on the enforcement of these public safety-derived traffic controls.

The more likely scenario is that grid-lock will occur both before and after the "big game." It is also reasonable to assume that traffic conditions would substantially delay emergency response. Because a significant adverse impact would result should the project fail to "maintain acceptable service ratios, response times or other performance objectives" (DSEIR, pp. 5.9-2 and 5.9-7), the EIR is remiss in failing to quantify pre- and post-project response times from LACFD and LACSD facilities to a specified and reasonably representative location in Diamond Bar.

Based on its own self-imposed threshold criteria, the Lead Agency has failed to present any documentation indicating that "acceptable service ratios, response times or other performance objectives" can and will be maintained. The DSEIR does, however, find that traffic flow will be impeded. The empirical evidence,

therefore, suggests that response times will diminish and Diamond Bar's businesses and residents would suffer.

Similarly, the DSEIR indicates that "[p]olice service could decrease due to elevated police workload associated with the increased visitor population of cumulative development" (DSEIR, 5.9-9). That statement is a misrepresentation since, other than the "revised project" itself, there is no "cumulative development" identified by the Lead Agency which will "increase visitor population" in the general project area. It is, therefore, the "revised project" and not other "related projects" that will result in diminished police services otherwise available in Diamond Bar.

Options to Diamond Bar include the acceptance of decreased police and fire protection services and longer response times or the need to increase City expenditures merely to "maintain acceptable service ratios, response times or other performance standards" (DSEIR, pp. 5.9-2 and 5.9-7) at those levels that exist prior to the Lead Agency's approval of the "revised project." Acceptance of a reduced level of police and fire protection merely to accommodate the "revised project" is an unacceptable option of Diamond Bar.

Based solely on the "revised Plan of Development," the City's municipal expenditures allocated for public safety for the City's residents and businesses will need to increase. During major events, the City may be required to pre-position police and fire personnel and equipment south of the stadium so that response times would not be adversely affected by the project. Additional public facilities may need to be constructed and/or real property may need to be leased to adequately accommodate that personnel and equipment and new communication facilities provided in support of that pre-positioning. Notwithstanding those impacts, absent from the EIR are any mitigation measures or other conditions committing either the Applicant or the Lead Agency to off-setting those increased municipal costs which will be incurred by the City in order to maintain existing police and service levels.

Although Industry may be willing and able to accept the creation of "significant and unavoidable" public health and safety impacts on behalf of its residents and business community (e.g., "because the City of Industry cannot ensure that the County Fire Department will commit to its operation, this impact is considered significant and unavoidable," DSEIR, p. 5.9-7), Diamond Bar asserts that the Lead Agency is obligated to fully and fairly compensate this community for any and all costs that may be incurred to maintain adequate levels of public safety, to pre-position public safety personnel in the City during stadium events and to off-set any diminishment thereto attributable to any land-use entitlements in Industry.

◊ **Law Enforcement.** As indicated in the DSEIR, "on event days, demand for police protection services is likely to be greater due to the unique demands that a stadium event requires for police protection services" (DSEIR, p. 5.9-8). Absent from the EIR, however, is any discussion of what "unique demands" the Lead Agency fails to disclose.

Because the "parking lots would typically open four hours prior to the beginning of a game" (DSEIR, p. 3-21), both the Lead Agency and the Applicant are, in essence, encouraging fans to arrive early and have impromptu, minimally regulated tailgate parties in the parking lot, including areas located directly adjacent to existing homes in Diamond Bar.

Although not made a condition of project approval, the Lead Agency nonetheless states that about "200 private security personnel would provide security within and around the stadium during these events" (DSEIR, p. 5.9-8). With a ratio of no better than 400 fans to 1 security guard, it is uncertain how effective non-deputized personnel will actually be in both observing and preventing unlawful and/or inappropriate behavior. The DSEIR suggests that no sworn officers will be situated on site but will be confined to traffic enforcement duties exterior to the stadium property (i.e., "The Los Angeles County Sheriff's Department confirmed that they have enough part-time officers for traffic control during game day," DSEIR, p. 5.9-8).

The EIR contains no evidence that "200 private security personnel" will prove adequate to effectively patrol the entire 592-acre property and ensure the safety of families, women, children, and other fans and to control undesirable behavior. The SDEIR never specifies what training and what authority the "private security personnel" will have to recognize, respond, and deter that behavior, much less what behavior will be scrutinized.

Absent from the EIR is any evidence that the Lead Agency has sought to fully understand and reasonably address the "unique" operational characteristics of a professional football stadium. Absent from the DSEIR is any evidence the Lead Agency or the document's authors interviewed any law enforcement personnel or stadium operators with direct, first-hand knowledge of the challenges that law enforcement at large venue actually face. No statistical information is presented comparing the rate of incidence and nature of crimes in a business park setting ("2004 IBC Plan of Development") and that which has been documented at NFL football games ("revised Plan of Development"), including trespass, public urination, loud and offensive language, vandalism and other property damage, the propensity for public drunkenness, and the increased presence of impaired drivers leaving the stadium.

Instead of performing a reasonable analysis and presenting factual evidence, the Lead Agency seeks to defer both disclosure and response to after the EIR has been certified (e.g., "the project applicant would coordinate the preparation and implementation of an Emergency Operations Plan (EOP) or equivalent plan for the proposed stadium. The plan would be designed to provide specific guidelines in the event of a major emergency at the stadium while it is occupied," DSEIR, p. 5.9-8). Since the preparation of the EOP is neither included as part of the "project description" not explicitly identified as a mitigation measure in the DSEIR (in a nebulous "development plan" category under the discussion of "hazards and

hazardous waste" [DSEIR, p. 5.5-15] rather than under the discussion of law enforcement), there exists no evidence that the Applicant or the Lead Agency has even committed to its preparation or determined how the plan's effectiveness will be evaluated. Similarly, by focusing on "hazards and hazardous wastes" and the collective whole, the EOP appears to utterly ignores the behavior of individuals that could prove adverse to the quality of life of those residents located adjacent to the stadium's parking lots.

Although failing to adequately address the range of law enforcement concerns raised herein, as mitigation for the project's impacts on police services, the Lead Agency includes the following measure: "12.4 – The project applicant shall pay all applicable police facility fees required by the Los Angeles County Sheriff's Department to staff additional personal and equipment as needed (previous Mitigation Measure 5.12-2)" (DSEIR, p. 5.9-9). The City requests that "Mitigation Measure 12.4" be expanded or one or more new mitigation measures formulated to also require direct payment by the Applicant or the Lead Agency to the City of Diamond Bar for any and all additional police and fire protection services as may be incurred as a result of the Lead Agency's approval of the "revised Plan of Development," as determined in the sole discretion of the City.

◊ **Solid Waste.**

As noted in the DSEIR, stadium operations would include "45 major events per year" (DSEIR, Table 5.8-7) and an unspecified number of "special" events (DSEIR, p. 3-28). The Lead Agency's annual estimate of waste generation ignores the presence of any wastes attributable to: (1) any "major events" in excess of "30 sell-out events per year" (DSEIR, p. 5.9-21); (2) any of the "15 minor events with a capacity of up to 25,000 spectators" (DSEIR, p. 5.9-21); (3) any other events occurring within the stadium, including routine maintenance; (4) any of the other on-site land uses, such as the 5,000-seat live theatre, 1,200-seat movie theater, 965,000-square feet of shops and restaurants, and 100,000-square feet of medical facilities. Because solid waste generation estimates are misrepresented, no factual basis has been provided to support the Lead Agency's conclusion that "the revised project's contribution to cumulative solid waste impacts is less than significant" (DSEIR, p. 5.9-21).

According to the DSEIR, the project would produce a significant impact if the project were to "[c]reate objectionable odors affecting a substantial number of people" (DSEIR, p. 5.2-15). Notwithstanding the existence of that threshold standard, absent from the DSEIR is any discussion of potential odor impacts resulting from the putrefied food wastes that will occur as a result of the stadium's use (calculated by A-Trojan Disposal & Recycling Services to be as much as 38.5 tons during a single Super Bowl event), including: (1) the length of time those wastes may be present on the site; (2) where those wastes will be stored pending their disposal; (3) how odors will be minimized; (4) how scavenger bird, rodents, flies, and other vectors, will be controlled; and (5) how complains about odors and/or vectors will be addressed.

◊ **Wastewater.** With regards to "wastewater," left unaddressed in the DSEIR are the odor impacts associated with massive use of available comfort facilities, including any port-a-potties which will be used anywhere on the project site during stadium and other large-scale events. Absent from the EIR is any discussion of the Applicant's plans for provisions for the use of temporary restroom facilities located throughout the 25,000 parking spaces proposed on the site or in the areas of public gathering. With the prevalence of tailgate parties, the level of alcohol consumption that typically occurs at NFL events, the distance between the stadium and remote parking areas, the need for long waits for shuttle busses, the traffic delays that can be anticipated as all 75,000 fans depart the stadium within an hour after the game, people parking off-site because insufficient or costly on-site parking. Because the EIR includes no reference to or provisions for those portables, there exists no prohibition that they would not be positioned close to existing homes.

- **Transportation and Traffic.** Absent from the DSEIR is any discussion of potential public safety hazards associated with the presence of the NFL Stadium project and the freeway-adjacent "LED or other electronic and/or animated signage" (DSEIR, 3-22) associated therewith.

  As indicated in a recent article in the April 2008 ITE Journal ("Debate Over Digital Billboards: Can New Technology Inform Drivers without Distracting Them?"), a September 2001 Federal Highway Administration (FHWA) report ("Research Review of Potential Safety Effects of Electronic Billboards on Driver Attention and Distraction") concluded: "Determining the effect of roadway commercial advertising billboards on safety is a difficult endeavor for several theoretical and methodological reasons. . .Regardless of these difficulties, researchers have examined the effects of billboards on safety. The results are mixed and inconclusive." Despite this, the report did note: "Studies were identified that verified that: an increase in distraction, a decrease in conspicuity, or a decrease in legibility may cause an increase in the crash rate."

  Absent from the DSEIR is any assessment of the distraction potential and the resulting safety hazards to motorists traveling along adjacent freeway segments that may result from freeway adjacent signage, electronic billboards, animated signs, other allowable signage, and fireworks displays.

  Each section of the DSEIR appears to be based on a unique set of assumptions which appear rarely consistent throughout the environmental analysis. As such, there exists no internal consistent throughout the EIR, only a revolving and evolving description of the project's operational considerations. For example, the DSEIR notes that "[o]n a day with a stadium event, 80 percent of the project-generated trips are assumed to be attributable to the game" (DSEIR, p. 5.7-43). In contrast, the DSEIR elsewhere states that "[o]n game days, the stadium-related uses are not expected to generate additional trips beyond traffic generated by the game. . .it is assumed that 80 percent of the total game-day trips generated by these Phase Two components would be attributable to the game" (DSEIR, pp.

5.10-28 and 29). Clearly, there is an obvious distinction between 80 percent of all trips and 80 percent of the substantially lower Phase Two trips.

As illustrated in the DSEIR (Figure 5.10-4b, unpaginated) all traffic exiting the southern toll plaza from the parking lot east of Grand Avenue will be required to turn south onto Grand Avenue, such that right turns (northbound) traffic will be prohibited (Traffic Detail E). Any vehicles wishing to travel north on Grand Avenue would then need to continue southward to "B Street" or Golden Springs Boulevard in order to make a U-turn toward their intended destination. As proposed, , because may motorists many be unfamiliar with the stadium's operational plans and/or may be directed toward scare parking that not ideal for each motorists actual travel patterns, instead of alleviating traffic congestion in Diamond Bar, the facility's operational plan may actually increase congestion.

The Lead Agency states that the project would produce a significant traffic impact if the project were to "conflict with adopted policies, plans, or programs supporting alternative transportation" (DSEIR, p. 5.10-24). In recognition of agency-nominated threshold, the Lead Agency must accept some responsible to actually examine "alternative transportation." As now drafted, the DSEIR mistakes the statement that "no persons are assumed to walk/bike/use non-motorized mode of transportation" (DSEIR, Table 5.10-9, p. 5.10-39) as a sufficient assessment of: (1) the project's consistency with "adopted policies, plans, or programs supporting alternative transportation"; and (2) any reasonable examination of the project's potential impacts on pedestrians and bicyclists.

The Lead Agency states that the project's "transportation and traffic" analysis is based, in part, on the information presented in the "Preliminary Parking Plan, NFL Stadium Project, Walker Parking Consultants, July 2, 2008" (DSEIR, p. 5.10-1), as included in Appendix I of the EIR. That plan, however, includes no discussion of: (1) off-site pedestrian activities; (2) on-site or off-site bicycle use, travel patterns, and access; and/or (3) potential project-related impacts on pedestrians and bicyclists. However, as indicated above, proposed traffic improvements will result in the elimination of existing bicycle lanes along at least twenty-three roadways (e.g., Intersections 4, 5, 6, 7, 8, 9, 10, 16, 18, 19, 28, 29, 30, 31, 34, 58, 59, 68, 69, 70, 71, 77, 81, 82, and 84). These impacts are neither discussed nor is any mitigation suggested.

Similarly, the DSEIR included no discussion of public transportation, other than with regards to the statement that "private shuttle services from the Metrolink station to the stadium" will be provided "during game days and special events" (DSEIR, p. 3-28). As a result, absent from the EIR is both a reasonable assessment of: (1) the project's impacts on public transportation; and (2) possible enhancement to existing public transportation systems and service that, if instituted, could reduce vehicle trips.

For example, the DSEIR notes that there may exist a need to "increase the number of charter buses to offset any potential constraints related to Metrolink train service during games" (DSEIR, Mitigation Measure 14-2, p. 5.10-225) and "there are not enough Metrolink trains to provide rail transit service during Monday night games" (DSEIR, Appendix H, p. 37). Absent from the EIR is any substantial evidence that existing Metrolink services and

train operations occur at those times and those days when "major," "minor," and other "special" events may be scheduled at the project site.

As indicated in the DSEIR, "3,750 persons" are projected to use Metrolink trains during an NFL game (DSEIR, Table 5.10-9, p. 5.10-33). The Industry Metrolink station (15651 E. Stafford Street, City of Industry) is located on the "Riverside Line." Currently, train service along that line is limited to such an extend that train ridership would not be an available option during most "major," "minor," and other "special" events. It is, therefore, readily apparent that the Lead Agency has misrepresented potential public transit use and, in so doing, underestimated the number of vehicle trips attributable to the proposed project. An underestimations of project-related traffic results in a reduced "fair-share" contribution to areawide traffic improvements, shifting the cost of those improvements away from the "revised project" and onto the backs of those communities in which those improvements are located.

Although specific traffic mitigation measures have been identified, the Lead Agency states that Industry will work cooperatively with "responsible agencies" and "other appropriate agencies" in order to implement the identified "or equivalent traffic improvements" (DSEIR, Mitigation Measure 14-1, p. 5.10-191). Since Diamond Bar retains the responsibilities for instituting traffic improvements within its jurisdiction, Diamond Bar retains the exclusive right to determine whether the identified improvements or an "equivalent improvement" will be undertaken.

Ultimately, the City will determine whether the EIR's recommended traffic improvements are feasible or whether the impacts on the community (e.g., displaced homes and businesses) may be too great of an environmental and socioeconomic cost to bear. That decision, however, does not alleviate the Lead Agency from the fulfillment of its obligation to reduce or eliminate the impacts of its actions (e.g., "The City of Industry shall be responsible for providing 100 percent funding for Intersections #56, #87 and #89 and a fair share of funding for other listed intersection improvements," DSEIR, Mitigation Measure 14-1, p. 5.10-191).

To the same extend that Industry retains autonomy with regards to land-use decisions within its jurisdiction, the City has autonomy to act in what it deems to be the best interest of its constituents. Just as Diamond Bar has not asserted jurisdiction over the City's review of the "improvement plans" for the NFL Stadium, the Lead Agency can neither condition the fulfillment of its own CEQA obligations on a condition precedent (i.e., "Upon presentation of completed improvement plans and cost estimates for non-Industry intersections, the City of Industry shall submit its fair share of costs to an escrow account," DSEIR, Mitigation Measure 14-1, p. 5.10-191) nor can it withhold the unconditional release of its appropriate "fair-share" commitment to the City beyond the issuance of the first discretionary approval associated with the implementation of the "revised project." Since off-setting improvements need to be in-place concurrent with the commencement of stadium's operations, any delay in releasing funds to the City would only serve to ensure that the improvements upon with the EIR's findings are predicated will not, in fact, be in place at that time.

> The City rejects the Lead Agency's retention of "fair-share" funding, the conditioning of the "fair-share" payment to the City, and the Lead Agency's retention of any discretion as to the performance of its obligations (i.e., "Funds shall be released to the jurisdiction responsible for the improvement upon initiation of construction or earlier as directed by the City of Industry through the year 2018," DSEIR, Mitigation Measure 14-1, p. 5.10-191).

CEQA documents are not intended to be promotional documents designed to facilitate the advance of individual development projects but rather objective analyses of each project's potential environmental impacts. The City's concern regarding the objective analysis necessary is illustrated in the following ten general areas: (1) failure to acknowledge the proposed action as a "new project" and the inappropriate and unsupportable application of a "supplemental EIR" as the basis for CEQA compliance; (2) methodological shortcoming comparing the proposed project against a hypothetical build-out scenario that ignores the existing environmental baseline condition; (3) failure to provide an accurate, stable, and finite project description; (4) substantial evidence that the Lead Agency has failed to describe the totality of the planned development, resulting in a truncation of the project and the piecemealing of its direct, indirect, and cumulative environmental effects; (5) failure to reasonably and accurately describe the project's technical, economic, environmental characteristics, and principal engineering proposals, including planned site uses and operational characteristics; (6) failure to disclose substantial changes to the original project, the circumstances under which the project is undertaken, and the existence of new information of substantial importance; (7) presentation of unsupported statements concerning the project's potential environmental effects in lieu of reasoned analysis; (8) failure to reasonably assess potential cumulative impacts through the application of an artificially constrained inventory of related projects; (9) failure to examine a reasonable range of alternatives, including those not involving the construction of the NFL Stadium; and (10) failure to formulate reasonable and prudent mitigation measures to reduce or avoid potentially significant environmental effects, including the acceptance of Applicant-proposed PDFs in lieu of reasonable, measurable, and enforceable mitigation measures.

Requested Time Extension Denied by Lead Agency

In recognition of the potential impacts of the proposed project and numerous requests from our constituency for information about the NFL Stadium project, in recognition of the City's status as both a responsible agency and a transportation planning agency and public agency which has transportation facilities within its jurisdiction which could be affected by the project (14 CCR 15086[a][5]), the City submitted a written request to the Lead Agency for a reasonable time extension to allow the City the opportunity to review the DSEIR. Because the Lead Agency neither initiated early consultation with the City (14 CCR 15083) nor consented to extension of the comment period on the DSEIR, the City's and the affected public's ability to formulate comments on the EIR was severely limited.

Substantial Evidence

"Substantial evidence has been defined as 'relevant evidence that a reasonable mind might accept as adequate to support a conclusion' [citation], or 'evidence of "ponderable legal significance. . .reasonable in nature, credible, and of solid value"' [citation]" (Bowman v. City of Petaluma).

"Substantial evidence" under CEQA "includes fact, a reasonable assumption predicated upon fact, or expert opinion supported by fact" (§21080[e][1]). Diamond Bar asserts that comments submitted by and on behalf of the City constitute "export opinion" within the meaning of Section 21080 of CEQA.

The City's efforts to present additional substantial evidence have clearly been frustrated by the Lead Agency's lack of disclosure with regards to both the proposed project and the impacts likely to result the project's approval and operation. The Lead Agency cannot be rewarded for releasing a defective EIR, prepared absent a good-faith effort, and the affected public subsequently penalized for its efforts to call the Lead Agency to task for its shortcoming and to solicit reasonable and objective disclosure.

The defects in the EIR preclude remedy other than through redrafting and recirculation of the DSEIR. These comments demonstrate that the draft SEIR is so fundamentally and basically inadequate and conclusionary in nature that meaningful public review and comment were precluded" (14 CCR 15088.5[a][4.

Through these comments, the City has sought additional information and analysis to allow those deficiencies to be addressed. Should you have any questions concerning this letter or wish to schedule a meeting to discuss the City's comments, please feel free to contact my office at (909) 839-7010.

Sincerely,

James DeStefano
City Manager

Cc: City Council
City Attorney