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HAND DELIVERED

Mr. Michael Kissell
Planning Director
City of Industry
15625 East Stafford Street, Suite 100
City of Industry, California 91744

Re: Supplement to Industry Business Center
Environmental Impact Report (NFL Stadium)

Dear Mr. Kissell:

This firm represents the City of Diamond Bar ("Diamond Bar"), which has requested our assistance in connection with the NFL Stadium project (the "Project") proposed by Industry East Business Center, LLC (the "Applicant") on a 530-acre site (the "Site") located at the eastern edge of the City of Industry ("Industry").

The proposed Project would be developed in two phases. Phase 1 includes an NFL stadium with 75,000-80,000 seats and approximately 1,900,000 square feet of floor area[1] (the "Stadium"), together with 280,000 square feet of stadium-related improvements, including team offices, an NFL attraction, team/retail stores, restaurants, banquet facilities and a training facility. Phase 1 would also include a 100,000-square-foot medical center, 50,000 square feet of restaurants and 400,000 square feet of retail shops. Phase 2 of the Project would include a 5,000-seat live theater with 60,000 square

[1] While Industry declined to include the square footage of the Stadium in the Draft SEIR (as defined below), the Applicant's PowerPoint presentation with respect to the Project states that the Stadium would include 1,900,000 square feet of improvements. Jim DeStefano, the Diamond Bar City Manager, and other Diamond Bar officials witnessed the PowerPoint presentation at two public meetings relating to the Project that were held on September 17, 2008 (at a Multi-Chamber Mixer held at the Pacific Palms Hotel in Industry) and October 30, 2008 (at a project presentation to Diamond Bar) and in both presentations personally observed this reference to the Stadium's square footage.

feet of improvements, a 1,200-seat movie theater with 60,000 square feet of improvements, 112,000 square feet of restaurants, 433,000 square feet of retail shops, 1,490,000 square feet of office space and three above-ground parking structures with 1,390,000 square feet of improvements (the "Parking Structures"). The project improvements, including the Stadium and the Parking Structures, total approximately **6,275,000** square feet.

The Project also includes a wide-ranging signage program that would play a significant role in the Project, although no specific information regarding that signage program was disclosed in the Draft SEIR (as defined below).

As you know, this is not the first development proposal involving the Site. In October 2004, the Industry City Council certified a Final Environmental Impact Report (the "2004 FEIR") for a conceptual, and otherwise very different, project on the Site. That project, which the City refers to as the 2004 IBC Plan of Development (the "2004 Plan of Development"), consisted of 4,779,000 square feet of commercial, office and industrial space to be located in 12 conceptual planning areas designated as Industrial Park, Business Park, Corporate Headquarters, Regional Retail, Commercial Center and General Office (the "Planning Areas"). However, the 2004 FEIR did not identify any specific uses or improvements at any specific location.

Earlier this year, the Applicant decided to abandon the conceptual 2004 Plan of Development and propose the entirely new Project, which is a specific development project centered around the Stadium. In April 2008, Industry caused the preparation of an Initial Study for the proposed Project (the "2008 Initial Study"), which it referred to as a "Revised Plan of Development – NFL Stadium" (the "2008 Plan of Development"). The 2008 Initial Study concluded that numerous environmental impacts associated with the Project did not have to be evaluated in the environmental impact report ("EIR") for the Project, either because (1) the Initial Study prepared for Industry with respect to the 2004 Plan of Development (the "2004 Initial Study") determined that the 2004 Plan of Development would not have any such environmental impacts or (2) those impacts had already been analyzed in the 2004 FEIR.

In September 2008, Industry circulated a Draft Supplement to Industry Business Center Environmental Impact Report (the "Draft SEIR") for the proposed Project. Volume I includes the text of the Draft SEIR, while Volumes II through VI include numerous appendices with underlying technical reports and additional environmental information regarding the Project.

Diamond Bar has significant concerns regarding the adequacy of the Draft SEIR, in particular that it repeatedly ignores or dramatically understates the Project's impacts on Diamond Bar and its residents. Diamond Bar has previously documented some of its objections to the Draft SEIR in a 102-page comment letter dated October 16, 2008 (the "October 16 Comment Letter"), which included more than 300 comments and which Diamond Bar has already delivered to Industry. The purpose of this letter is to augment the October 16 Comment Letter regarding Diamond Bar's concerns with respect to the Draft SEIR.

Last week, Industry released the Final Supplement to Industry Business Center Environmental Impact Report (the "Final SEIR"). Diamond Bar has not completed its review of the Final SEIR and may submit additional comments concerning that document prior to the public hearing scheduled for Thursday, January 22. However, this letter discusses certain information and analysis in the Final SEIR where appropriate.

I.

SUMMARY

Against that background, Diamond Bar has the following concerns with respect to the Draft SEIR, each of which is discussed in detail below.

1. The 2008 Plan of Development is a new project and the preparation of a supplemental EIR was unlawful.

2. The Draft SEIR unlawfully omitted the analysis of several environmental subjects.

3. The Draft SEIR cannot "tier" off the 2004 FEIR.

4. The Draft SEIR's project description is inadequate.

5. The Draft SEIR fails to identify the required project approvals in both the executive summary and the project description.

6. The Draft SEIR's analysis of the Project's aesthetic impacts is inadequate.

7. The Draft SEIR's analysis of the Project's air quality impacts is inadequate.

8. The Draft SEIR's analysis of the Project's land use impacts is inadequate.

9. The Draft SEIR's analysis of the Project's noise impacts is inadequate.

10. The Draft SEIR's analysis of the Project's population and housing impacts is inadequate.

11. The Draft SEIR's analysis of the Project's fire protection and emergency services impacts is inadequate.

12. The Draft SEIR's analysis of the Project's police protection services impacts is inadequate.

13. The Draft SEIR's analysis of the Project's wastewater impacts is inadequate.

14. The Draft SEIR's analysis of the Project's water supply impacts is inadequate.

15. The Draft SEIR's analysis of traffic and parking impacts is inadequate.

16. The Draft SEIR's analysis of the Project's electricity and natural gas service impacts is inadequate.

17. The Draft SEIR's analysis of alternatives is inadequate.

18. The Draft SEIR's analysis of the Project's growth-inducing impacts is inadequate.

19. The Draft SEIR's cumulative analysis with respect to many of the Project's environmental impacts is facially inadequate.

II.

THE DRAFT SEIR VIOLATES CEQA IN NUMEROUS RESPECTS

A. Overview of CEQA.

CEQA was enacted in response to the well-documented failure of state and local governmental agencies to consider fully the environmental implications of their actions. Selmi, The Judicial Development of the California Environmental Quality Act, 18 U.C.D. L. Rev. 197, 202 (1984).[2] The California Supreme Court has repeatedly affirmed that CEQA must be interpreted liberally "to afford the fullest possible protection to the environment within the reasonable scope of the statutory language." Laurel Heights Improvement Assn. v. The Regents of the University of California ("Laurel Heights"), 47 Cal. 3d 376, 390 (1988), quoting Friends of Mammoth v. Board of Supervisors, 8 Cal. 3d 247, 259 (1972).

Two of the central purposes of CEQA are to inform governmental decision makers and the public about the potential significant environmental effects of a proposed project and to identify ways that environmental damage can be avoided or significantly reduced. Guidelines §§ 15002(a) and (b).

The EIR is the heart of CEQA. Guidelines § 15003(a). As noted by the California Supreme Court, the EIR:

> "is the primary means of achieving the Legislature's considered declaration that it is the policy of this state to 'take all action necessary to protect, rehabilitate, and enhance the environmental quality of the state.' (§ 21001, subd. (a).) . . . Because the EIR must be certified or rejected by public officials, it is a document of accountability. If CEQA is scrupulously followed, the public will know the basis on which its responsible officials either approve or reject environmentally significant action, and the public, being duly informed, can respond accordingly to action with which it disagrees. The EIR process protects not only the environment

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[2] The Office of Planning and Research has promulgated guidelines to implement CEQA. 14 Cal. Code of Regs. §§ 15000 et seq. (the "Guidelines").

> but also informed self-government." Laurel Heights, 47 Cal. 3d at 392.[3]

An EIR must be "prepared with a sufficient degree of analysis to provide decision-makers with information which enables them to make a decision which intelligently takes account of environmental consequences." Guidelines § 15151. "The EIR must contain facts and analysis, not just the bare conclusions of a public agency. An agency's opinion concerning matters within its expertise is of obvious value, but the public and decision-makers, for whom the EIR is prepared, should also have before them the basis for that opinion so as to enable them to make an independent, reasoned judgment." Kings County Farm Bureau v. City of Hanford ("Kings County"), 221 Cal. App. 3d 692, 736 (1990), quoting from Santiago County Water Dist. v. County of Orange, 118 Cal. App. 3d 818, 831 (1981). The certification of an EIR constitutes a prejudicial abuse of discretion if the failure to include relevant information precludes informed decisionmaking and informed participation, thereby thwarting the statutory goals of the EIR process. Kings County, 221 Cal. App. 3d at 712.

B. The 2008 Plan Of Development Is A New Project And The Preparation Of A Supplemental EIR Was Unlawful.

Industry did not prepare a new EIR for the Project. Instead, it has characterized the Project as a "revision" of the 2004 Plan of Development and, on that basis, prepared the Draft SEIR, which is a "supplement" to the 2004 FEIR. Draft SEIR, pp. 1-4-5. It is apparent that Industry did so to avoid the preparation of a new EIR that evaluated all of the Project's impacts on the existing environment.

As a result, the scope of the Draft SEIR is unlawfully limited because (1) it omits analysis of numerous environmental topics that were previously discussed in the 2004 Initial Study and 2004 FEIR and (2) primarily compares the Project's environmental impacts against the environmental impacts associated with the abandoned 2004 Plan of Development, instead of analyzing the Project's environmental impacts on the existing

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[3] An EIR serves "to demonstrate to an apprehensive citizenry that the agency has in fact analyzed and considered the ecological implications of its action." No Oil, Inc. v. City of Los Angeles, 13 Cal. 3d 68, 86 (1974). An EIR also allows the public to "determine the environmental and economic values of their elected and appointed officials, thus allowing for appropriate action on election day should a majority of the voters disagree." People v. County of Kern, 39 Cal. App. 3d 830, 842 (1974). "The report . . . may be viewed as an environmental 'alarm bell' whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return." County of Inyo v. Yorty, 32 Cal. App. 3d 795, 810 (1973).

physical environment. With respect to the former limitation, the Draft SEIR does not include any analysis of the Project's impacts on biological resources, mineral resources, agricultural resources, cultural resources, schools, parks and recreation, based on claims in the 2004 Initial Study that those impacts had been fully addressed in the 2004 Initial Study or 2004 FEIR. 2008 Initial Study, p. 18.

In addition, with respect to the environmental topics that were addressed in the Draft SEIR, the Draft SEIR omits analysis of numerous and important components of those environmental subjects based on the prior analysis in the 2004 Initial Study and 2004 FEIR. For example, with respect to aesthetics, it does not evaluate the Project's impact on scenic resources. Draft SEIR, p. 5.1-15. With regard to air quality, the Project fails to analyze whether the Project would create objectionable odors. Id., p. 5.2-15. With respect to geology and soil impacts, the Draft SEIR ignores five of the eight thresholds of significance. Id., p. 5.3-17. Similarly, the Draft SEIR includes no analysis with respect to six of the eight thresholds of significance identified with respect to hazards and hazardous materials impacts. Id., p. 5.4-8. With respect to hydrology and water quality, four of ten thresholds of significance are ignored. Id., p. 5.5-12. The Draft SEIR also omits discussion with respect to two of the three thresholds of significance with respect to land use and planning impacts. Id., p. 5.6-12. The same is true with respect to two of the six thresholds of significance for noise, two of the three thresholds of significance for population and housing impacts, and two of the six thresholds of significance for transportation and traffic impacts. Id., pp. 5.7-23-24, 5.8-13, 5.10-24-25.

Consistent with its characterization as a supplemental EIR, the Draft SEIR also repeatedly and improperly analyzes the Project's impacts in comparison with the 2004 Plan of Development's environmental impacts as identified in the 2004 FEIR. This is particularly true with respect to the analyses of aesthetics (id., pp. 5.1-2, 5.1-18, 5.1-29-30, 5.1-33), air quality (id., pp. 5.2-1-2, 5.2-19-23, 5.2-25, 5.2-30, 5.2-38, 5.2-46-51), geology and soils (id., pp. 5.3-1-2, 5.3-18), hydrology and water quality (id., pp. 5.5-22-28), land use and planning (id., pp. 5.6-2, 5.6-13, 5.6-20-21, 5.6-55), noise (id., pp. 5.7-2, 5.7-27, 5.7-31-61, 5.7-75-80, 5.7-93-112), population and housing (id., pp. 5.8-1, 5.8-14-15), fire protection and emergency services (id., pp. 5.9-1, 5.9-2-8), wastewater (id., pp. 5.9-10, 5.9-11-12), water supply (id., pp. 5.9-13, 5.9-16-17), solid waste (id., pp. 5.9-19-21), electricity service (id., p. 5.9-23), natural gas service (id., pp. 5.9-23-24), transportation and traffic (id., pp. 5.10-6-7, 5.10-131, 5.10-179) and growth-inducing impacts (id., pp. 10-1-3).

The preparation of a supplemental EIR for the Project, which artificially curtailed the required environmental review under CEQA, was unlawful. The standards

for supplemental review in Section 21166 and the related Guidelines only apply when a prior EIR has been prepared and certified for "essentially the same project". Sierra Club v. County of Sonoma, 6 Cal. App. 4th 1307, 1320 (1992).

Looking at the totality of the circumstances, it is obvious that the proposed Project is not a modified version of the 2004 Plan of Development; it is a different project altogether. To begin with, the 2004 Plan of Development was a conceptual plan that did not identify any specific uses or specific improvements at any specific location. For that reason, the 2004 FEIR was a first-tier, program EIR that only evaluated the environmental impacts associated with the 2004 Plan of Development at a conceptual level. In comparison, the 2008 Plan of Development is a proposal for a specific development project for which a project-level EIR is required. For CEQA purposes, conceptual planning approvals and specific development proposals are entirely different types of projects and one does not modify the other. See, e.g., Guidelines § 15378(d). Under certain circumstances where a specific development project would implement a conceptual plan, the EIR for the development project can "tier" off of the EIR for the conceptual plan (which circumstances do not exist here, as discussed in more detail in Section II.D, below), but the EIR for the development project must still evaluate the Project's impact on the existing physical environment.

The apples-to-oranges notion that a development project is a "revision" to a conceptual plan is particularly suspect where the development project does **not** implement the conceptual plan, which is the case here. The Project is inconsistent in all material respects with the 2004 Plan of Development. The Project does not include any planning areas, nor does it include any industrial uses. It does include an NFL stadium and numerous ancillary uses, a live theater and move theaters, none of which were part of the 2004 Plan of Development. The Project is intended as "an iconic regional destination retail, entertainment, and commercial project," which is nothing like the conceptual project addressed in the 2004 FEIR. Draft SEIR, p. 3-2.

Furthermore, the configuration of uses in the 2008 Plan of Development is entirely different from what could have been developed in the conceptual Planning Areas identified in the 2004 Plan of Development. The proposed stadium facilities are located in Planning Areas designated as "Corporate Headquarters" in the 2004 Plan of Development, as is the proposed movie theater and much of the retail space. Much of the office space proposed in the 2008 Plan of Development would be located in the "Regional Retail" Planning Area identified in the 2004 Plan of Development. The "Industrial Park", "Business Park", "Commercial Center" and "General Office" Planning Areas identified in the 2004 Plan of Development east of Grand Avenue have been

eliminated altogether and replaced almost entirely with surface parking areas. In addition, none of the proposed retail space in the 2008 Plan of Development is located within the "Regional Retail" Planning Area identified 2004 Plan of Development. Id., compare Figures 3-4 and 3-5.

For these reasons, Industry's foundational argument that the 2008 Plan of Development is a "revision" to the 2004 Plan of Development is extremely unpersuasive. The standards in Section 21166 do not apply here because (1) the 2008 Plan of Development is a specific development project, while the 2004 Plan of Development is a conceptual planning proposal, (2) in any event, the 2008 Plan of Development is nothing like the 2004 Plan of Development, and (3) the 2004 FEIR did not include any project-specific analysis with respect to the proposed Project.

Because a new EIR is required for the Project that examines the Project's impacts on the existing physical environment, the Draft SEIR's analysis of project impacts in relation to the conceptual development approved in the 2004 Plan of Development was a violation of black-letter CEQA law. See, e.g., Environmental Planning and Information Council v. County of El Dorado, 131 Cal. App. 3d 350, 354, 357-58 (1982); Christward Ministry v. Superior Court, 184 Cal. App. 3d 180, 190 (1986).

We also note that, as discussed in the October 16 Comment Letter, even if Section 21166 applied to the Project (which it does not), the preparation of a supplemental EIR for the Project was unlawful. Draft SEIR, pp. 1-4-5. As noted in the Draft SEIR, a supplemental EIR is permitted when "[o]nly minor additions or changes would be necessary to make the previous EIR adequately apply to the project in the changed situation." Id., p. 1-4; Guidelines § 15163(a)(2). For obvious reasons, that requirement is not satisfied here. The text of the Draft SEIR is approximately 800 pages and the Appendices total approximately 7,800 pages.

Moreover, even if the use of a supplemental EIR was appropriate here (which it was not), the project impacts analyzed in a supplemental EIR must be compared to the existing physical environment. The Draft SEIR's failure to comply with that requirement violates CEQA.

C. The Draft SEIR Unlawfully Omitted The Analysis Of Several Environmental Subjects.

As previously discussed, based on the analysis in the 2008 Initial Study, the Draft SEIR did not analyze the proposed Project's impacts with respect to numerous

environmental subjects. Most, if not all, of the excluded environmental subjects are routinely analyzed in EIRs for projects of this size.

However, Industry failed to comply with the procedural requirements for excluding those impact analyses from the Draft SEIR. Pursuant to Section 15143 of the Guidelines, only environmental effects that are dismissed in an initial study as "**clearly insignificant and unlikely to occur**" can be omitted from an EIR unless the lead agency later receives information that is inconsistent with the findings of the initial study.

Industry violated the requirements of Section 15143 because the 2008 Initial Study did not determine that any of the Project's environmental effects were "clearly insignificant and unlikely to occur" or provide any fact-based analysis to support any such conclusion.

As one example, Item I(a) in the Environmental Checklist included in the 2008 Initial Study asked whether the Project would "substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway?" 2008 Initial Study, p. 20. In a brief response, the 2008 Initial Study concluded that the Project would have "No Impact" in this regard because the 2004 Initial Study stated that "there are no scenic highways adjacent to or in the vicinity of the project site" and "the nearest state scenic highway . . . is . . . approximately 25 miles north of the site." Id., p. 29. However, the 2008 Initial Study did not conclude that this impact was "clearly insignificant and unlikely to occur". Moreover, the document did not include substantial evidence to support its conclusion. The minimal response to Item I(b) focuses solely on potential impacts to scenic highways. However, Item I(b) is not solely concerned with scenic highways, but instead relates broadly to all "scenic resources", which include, but expressly are not limited to, state scenic highways. Id., pp. 20-29. The limited response in the 2008 Initial Study included no discussion of any scenic resources other than scenic highways and provided no basis to conclude that the Project's impact on scenic resources would be clearly insignificant.

In addition, with respect to 19 environmental topics, the Draft SEIR omits discussion of environmental impacts that the 2008 Initial Study determined were "Less Than Significant". Id., pp. 20-26; Draft SEIR, pp. 8-1-4. These omissions were all justified by comparing the Project's impacts with respect to those environmental subjects against the impacts analyzed in the 2004 FEIR for the 2004 Plan of Development. In none of these cases did the 2008 Initial Study conclude that the Project's impact would be clearly insignificant, but only that it would be less than significant, in contravention of Section 15143.

D. The Draft SEIR Cannot "Tier" Off The 2004 FEIR.

As discussed in the preceding section, Industry had no right to prepare a supplemental EIR or any other CEQA document for the Project pursuant to Section 21166. We note, however, that under certain circumstances the EIR for a specific development project can be "tiered" off a prior EIR for a conceptual plan to which the development project relates. Specifically, pursuant to subsections (a) and (b) of Section 21094 of the California Public Resources Code, where a prior EIR has been prepared and certified for a program, plan, policy or ordinance, the lead agency for a later project can be limited to environmental analysis that was not included in the first-tier EIR, provided that the later project (1) is consistent with the program, plan, policy or ordinance for which the first-tier EIR was prepared and certified, (2) is consistent with applicable local land use plans and zoning of the city in which the later project would be located and (3) is not subject to Section 21166. See also Guidelines § 15152(d).

In this case, however, the EIR for the Project could not be tiered off the 2004 FEIR. As acknowledged in the Draft SEIR, the Project is wholly inconsistent with the 2004 Plan of Development, which is the plan for which the program 2004 FEIR was prepared.

In addition, the Project is inconsistent with the zoning regulations in the Industry Zoning Code (the "Zoning Code") that are applicable to the Site. First, the City's zoning designation for the Site is Industrial (M). Draft SEIR, p. 3-2. Therefore, none of the proposed uses are consistent with the zoning designation for the Site. For that reason, it appears that the Applicant has filed an application for the approval of a "plan of development" (a "PD Approval") pursuant to Chapter 17.24 of the Zoning Code to allow commercial uses on the Site. The fact remains, however, that the Project, as proposed, is wholly inconsistent with the zoning designation for the Site.

Second, the proposed stadium use is prohibited under the Zoning Code even with a PD Approval. Section 17.24.030 of the Zoning Code states that the uses permitted pursuant to a PD Approval are limited to (1) all uses permitted in the commercial and industrial zones, (2) hotel and motel uses and (3) specified recreational uses. The Zoning Code does not permit a stadium in the commercial or industrial zone and a stadium is not a "recreational use".

Third, the Draft SEIR indicates that the Project does not comply with Industry's zoning standards for maximum building height or required parking dimensions, so that "zone exceptions" would be required. Draft SEIR, p. 3-56.

Fourth, the Draft SEIR indicates that the proposed signage program for the Project is inconsistent with Industry's signage regulations in the Industry Municipal Code (the "Municipal Code"). Id., p. 5.6-4.

Finally, for the reasons discussed in the preceding section, the Project is not subject to Section 21166.[4]

E. The Draft SEIR's Project Description Is Inadequate.

An accurate and stable project description is the *sine qua non* of an informative and legally sufficient EIR. Kings County, 221 Cal. App. 3d at 739. The courts have long held 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 benefits against its environmental cost, consider mitigation measures, assess the advantage of terminating the proposal and weigh other alternatives in the balance." County of Inyo v. City of Los Angeles, 71 Cal. App. 3d 185, 192-193 (1977). In other words, without a stable project description, the entire EIR is rendered inadequate.

For the reasons discussed in the October 16 Comment Letter and below, the project description in the Draft SEIR is inadequate and unlawful.

1. The Project Description Conveys The False Impression That The Project Has Significantly Less Square Footage Than The 2004 Plan Of Development.

The project description in the Draft SEIR repeatedly states, both in the text and in related Tables, that the 2008 Plan of Development would reduce the total buildout square footage by approximately 1,669,000 square feet. See, e.g., Draft SEIR, pp. 3-11, 3-12, 3-19-21. It does so in part by repeatedly and arbitrarily ignoring the square footage of the Stadium, notwithstanding that the Applicant has publicly informed the community that the Stadium would include approximately 1,900,000 square feet of improvements.[5]

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4 We note again that, even if the EIR for the Project could tier off the 2004 FEIR (which it cannot), the EIR for the Project would still be required to analyze the Project's impacts on the existing physical environment to the extent that the Project's impacts were not fully addressed in the 2004 FEIR.

5 It appears that the single reference to the square footage of the proposed Stadium is in the air quality analysis, where it was "assumed" to be 1,000,000 square feet. Id., p. 5.2-22. In response to comments on the Draft SEIR that this square footage was far too low, the Final SEIR includes a

The Draft SEIR's distorted calculation also omits the three Parking Structures that would be constructed in Phase 2 to support the Stadium and would include approximately 1,390,000 square feet of improvements. This inexplicable exclusion of the square footage associated with the Stadium and the Parking Structures is a transparent attempt to mislead the reader into believing that the 2008 Plan of Development would significantly reduce the size of the development on the Site, when the opposite is true. As previously discussed, when the square footage of the Stadium and the Parking Structures are properly included in the calculation of the Project's overall square footage, the Project includes approximately 6,275,000 square feet of improvements, as compared to the 4,779,000 square feet of improvements contemplated in the 2004 Plan of Development, a difference of almost 1,500,000 square feet.

As just discussed, in the Final SEIR, Industry now claims that the proposed Stadium includes approximately 1,437,540 square feet of floor area, but with no supporting analysis. Final SEIR, p. 4-21. For example, the Final SEIR includes revised text for the air quality analysis in the Draft SEIR, stating that the floor area for the Stadium has increased from 1,000,000 square feet to 1,437,540 square feet. Final SEIR, p. 4-21. Two paragraphs later in the air quality analysis, the text has been revised to reflect this increase in the square footage of the Stadium, stating that the proposed Project would reduce the floor area of the improvements on the Site by approximately 7% (instead of 17%, as stated in the Draft SEIR), from 4,779,000 square feet, as contemplated in the 2004 Plan of Development, to 4,422,540 square feet. Id. These changes were made in response to a comment in the October 16 Comment Letter. Id.

This revised text does not reflect good-faith, reasoned analysis. First, this calculation omits the 1,390,000 square feet of floor area associated with the proposed Parking Structures, notwithstanding that the air quality model used for the air quality analysis **included** the 1,390,000-square-foot Parking Structures, as stated in the very same sentence that describes the increased square footage of the Stadium. Id., p. 4-21; Draft SEIR, p. 5.2-22. Second, the revised text ignored that 125,000 square feet of industrial improvements approved as part of the 2004 Plan of Development are being developed at the southwest corner of Baker Parkway and Grand Avenue, notwithstanding that the Draft SEIR properly took that square footage into account in calculating the

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"revised estimate" of approximately 1,437,540 square feet. Final SEIR, p. 2-5. However, the Final SEIR includes no explanation regarding the calculation of this square footage or why it is substantially less than the square footage of all of the similar NFL stadia approved and/or constructed in recent years. It is apparent that this revised estimate is just as suspect as the original one.

difference between the square footages of the Project and the 2004 Plan of Development. Draft SEIR, p. 3-11.

It is abundantly clear that, even using the unsupported figure of 1,437,540 square feet for the proposed Stadium, the aggregate square footage of the Project substantially exceeds the overall square footage under the 2004 Plan of Development. To be precise, using the 1,437,540-square-foot figure, the total square footage of the Project would still be approximately **5,815,540** square feet, much larger than the 2004 Plan of Development.

This false distinction is carried forward into the environmental analyses and results in the unlawful segmentation of the Project's environmental impacts. As one example, the Draft SEIR's analysis of wastewater impacts states that the 2008 Plan of Development would generate 503,325 gallons per day less than the amount that would have been generated under the 2004 Plan of Development. Draft SEIR, p. 5.9-11. However, that analysis is based solely on the industrial, commercial and office uses associated with the two plans and omits the wastewater impacts associated with the Stadium use. Id. The Draft SEIR then separately discusses the wastewater impacts associated with the stadium use. Id., p. 5.9-12. In this manner, the Draft SEIR artificially splits the Project's wastewater impacts and thereby masks the overall wastewater impacts. This same strategy is employed with respect to the Draft SEIR's analyses of the Project's impacts on fire protection and emergency services (id., pp. 5.9-2, 5.9-5), police protection services (id., p. 5.9-8), water supply (id., pp. 5.9-16-17), solid waste (id., pp. 5.9-20-21), and electricity and natural gas services (id., pp. 5.9-23-24).

For these reasons, the repeated statements in the Draft SEIR (and the Final SEIR) that the Project would include less square footage than the 2004 Plan of Development is false and highly misleading and skewed the impact analyses in the Draft SEIR time and again. This arbitrary and misleading segmentation of the stadium and non-stadium project components is particularly improper because, as acknowledged in the project description, the Stadium and many non-Stadium project components would be in simultaneous use. Id., p. 3-21.

2. Unstable Description Of Project Parking.

The project description contains contradictory text and tables regarding the number of parking spaces required for the Project. With one exception, the project description repeatedly states that the Project will include "up to 25,000 parking spaces". That statement is in the Land Use Development Summary in Table 3-1, the Proposed

Phasing Summary in Table 3-2, and in the parking summary. Draft SEIR, pp. 3-11, 3-19, 3-28. As a result, the reader has no idea how many parking spaces would actually be provided for the Project.

In a subsequent discussion of the Phase 1 Parking Plan, the project description notes that "although enough area has been set aside in the parking lots to accommodate up to a total of 25,000 spaces, striping for only 23,219 spaces is shown and not all spaces are expected to be filled (see Section 5.10, *Transportation and Traffic*, for details)." Id., p. 3-29. This single sentence simultaneously indicates that the Project might include 25,000 parking spaces, 23,219 parking spaces or less than 23,219 parking spaces (since "not all spaces are expected to be filled"). Finally, in the discussion of the Phase 2 (Buildout) Parking Plan, the project description indicates that 40 acres of the surface parking areas would be eliminated (which would therefore also eliminate a substantial portion of the 23,219 striped parking spaces), but fails to state how many parking spaces the Project would include at buildout. Id.

Accordingly, the project description does not provide a stable basis for determining whether the parking spaces provided for the Project would satisfy the applicable code parking requirements in the Zoning Code or the parking demand associated with the Project. Indeed, while the discussion of the Phase 1 Parking Plan in the project description indicates that the subsequent transportation and traffic analysis would evaluate parking demand, the transportation and traffic section of the Draft SEIR does not include any such analysis. Id., compare p. 3-29 with p. 5.10-180.

F. The Draft SEIR Fails To Identify The Required Project Approvals In Both The Executive Summary And The Project Description.

A draft EIR must contain "a brief summary of the proposed actions and its consequences." Guidelines § 15123(a). In addition, the project description in a draft EIR must include "[a] list of permits and other approvals required to implement the project." Guidelines § 15124(d)(1)(B). Here, the Draft SEIR either mischaracterizes, understates or omits most of the discretionary actions and approvals required by Industry for the Project and thereby failed to comply with CEQA.

To begin with, the Draft SEIR's executive summary does not summarize any of the proposed actions, in violation of Section 15123(a).

The Draft SEIR's project description, on the other hand, includes a list of required approvals in Table 3-3, but it is inaccurate and uninformative in many important

respects. Draft SEIR, p. 3-56. To start with, the descriptions of most of the required discretionary entitlements are too vague to provide any meaningful information. For example, Table 3-3 states that "zone exceptions" will be required for "increased building-height limits and for decreased parking dimensions for parking spaces and parking structures." However, this nebulous statement provides no quantified information regarding the extent to which the Project would deviate from the height limits and parking dimensions established in the Industry Zoning Code. To make matters worse, the zoning consistency analysis in Section 5.6 (Land Use and Planning) of the Draft SEIR makes no mention of the amorphous "zoning exceptions" or the applicable code requirements for building height and parking dimensions in the Zoning Code. Id., p. 5.6-13.

Table 3-3 also states that the discretionary approvals that must be granted by the Industry Planning Commission and/or City Council for the Project to proceed include "Signage Regulation amendment and signage program approvals". However, this obscure description fails to explain what signage regulations need to be amended, how they would need to be amended, or what type of approvals are required for the proposed signage program. The reason that no meaningful information could be provided here is that the Draft SEIR does not include any description of the proposed signage program in the project description. Id., p. 3-22.

In addition, based on a review of the Zoning Code, it is apparent that the approval of a use permit and design review are required for the Project pursuant to Chapters 17.36 and 17.44 of the Zoning Code. Furthermore, as previously discussed in the October 16 Comment Letter, it appears that the approval of a subdivision map is required for the Project.

Finally, as previously discussed, the proposed stadium use is currently not permitted on the Site, even with a PD Approval. Therefore, the Draft SEIR omitted the zoning amendment that would also be required to permit that use.

In lieu of identifying the specific approvals required for the Project, the Draft SEIR generically states that the Project includes "[o]ther approvals required to implement the revised Plan of Development." Id., p. 3-56. This empty phrase does not comply with CEQA.

Table 3-3 also states that discretionary approvals would be required for "lease amendments and infrastructure approvals", "community facility districts and financing approvals" and "other approvals required to implement the revised Plan of

Development". Once again, these vague terms provide no meaningful information regarding the intended uses of the Draft SEIR.

G. The Draft SEIR's Analysis Of The Project's Aesthetic Impacts Is Inadequate.

For numerous reasons, the Draft SEIR's analysis of the Project's impacts on aesthetics is inadequate and ignores or distorts the Project's true aesthetic impacts.

1. Scenic Vistas/Visual Character.

The aesthetic section in the Draft SEIR fails to include distinct discussions with respect to two different thresholds of significance. The first of those thresholds of significance (AE-1) is whether the Project would "have a substantial adverse effect on a scenic vista." Draft SEIR, p. 5.1-15. The second threshold of significance (AE-3) is whether the Project would "substantially degrade the existing visual character or quality of the site and its surroundings." Id. However, the aesthetics analysis blends together the impact analyses with respect to those distinct thresholds of significance in its discussion of "Impact 5.1-1". Id., p. 5.1-18. To further confuse matters, the heading of that discussion describes only the second threshold of significance, as follows: "THE REVISED PROJECT WOULD NOT SUBSTANTIALLY DEGRADE THE AESTHETIC QUALITY OF THE AREA IN THE CONTEXT OF THE VISUAL CHARACTER OR SURROUNDING VICINITY." Id. This reflects that the discussion under Impact 5.1-1 is unrelated to whether the Project would have a substantial adverse effect on a scenic vista.

The two-page discussion under Impact 5.1-1 not only makes no distinction between the two thresholds of significance, it does not refer to either of them, except in one conclusory and unsupported sentence stating that "[a]s demonstrated in the photos and computer models, development of the revised Plan of Development would not have a substantial affect [sic] on scenic vistas or substantially degrade the visual appearance of the project site when compared to the 2004 IBC Plan of Development." Id., p. 5.1-29.

In our experience, we have never reviewed an EIR that combined the impact discussion with respect to these distinct thresholds of significance into one amorphous whole. Indeed, even the 2004 FEIR recognized the differences between these two thresholds of significance and considered them independently with respect to project impacts. 2004 FEIR, pp. 5-19-36.

Even more important, the analysis under Impact 5.1-1 with respect to these two thresholds of significance is facially inadequate. As a threshold matter, it does not analyze the Project's aesthetic impacts in relation to the existing environment. Instead, it is based almost solely on the comparison with the 2004 Plan of Development's aesthetic impacts. Id. Not only is this unlawful for the reasons discussed in Section II.B, infra, that comparison is nonsensical here because, as stated in the Impact 5.1-1 discussion, "[n]o specific locations for structures were established in the analysis of the [2004 Plan of Development] . . . ." Id., p. 5.1-18.

Moreover, the cursory analysis of the Project's primary aesthetic impacts, which consists of just three paragraphs at the end of page 5.1-18 and the beginning of page 5.1-28, is not supported by any evidence and does not even reference five of the eight locations (Locations 3, 4, 6, 7 and 8) for which crude "massing models" were prepared to support the aesthetics analysis. Id., Figures 5.1-2, 5.1-3a through 5.1-3c, 5.1-6a through 5.1-6c. The first of those three paragraphs states that "most of the sensitive receptors would have obscured or partially obscured views of the development, especially when fully landscaped as directed by the project's PDFs," and that "[e]xisting vegetation in the foreground of some of the views would also limit views of the revised project." Id., p. 5.1-18. However, there is no evidence to support either of these statements. As the Draft SEIR admits, none of the eight massing models incorporate either existing vegetation or any contemplated project landscaping. In addition, no attempt is made, even generally, to explain which "sensitive receptors" would have "obscured or partially obscured views of the Site" and which proposed PDFs would accomplish this.

In fact, the limited information in the Draft SEIR directly contradicts these generic and unsupported statements. To start with, the photographs of existing conditions in the Draft SEIR taken at Locations 3, 4, 6, 7 and 8, all of which are in close proximity to the Site, demonstrate that views of the Site from these locations are currently fully or largely unobscured. Id., Figures 5.1-3a through Figure 5.1-3c. In addition, none of the proposed PDFs would block views of the Project from the adjacent residential areas and other sensitive receptors. PDFs 1-1 through 1-4 relate solely to the revegetation of the manufactured slopes that would be created as part of the Project. Id., p. 5.1-16. None of these PDFs would shield views of the project improvements from the adjacent Diamond Bar residential areas and other sensitive receptors. PDF 1-5 requires the establishment of a fuel modification zone, which would require the elimination of a substantial portion of the trees and other vegetation at the eastern and western boundaries of the Site nearest the adjacent residential areas. Id. PDF 1-6 requires a minimum 150-foot buffer between

developed areas and residential areas. However, based on PDF 1.5, the vegetation in that buffer area would have to be minimized.

Finally, PDF 1-7 requires a transition zone between planned development and perimeter slopes and requires that a "variety of techniques" be employed to screen the views of parking lots. Id. However, neither the graphic for the 2008 Plan of Development nor any other graphic representation of the Project in the Draft SEIR reflects any such transition zone. Id., Figures 3-5, 5.1-2.

In any event, not only does PDF 1-7 not include any performance standards, the limited information in the Draft SEIR indicates that there is no meaningful expectation that proposed PDF 1-7 would be effective. That PDF apparently assumes that the elevation of the adjacent residential areas would be similar to the elevations of the developed Site. However, as acknowledged in the Draft SEIR, they would not be similar at all. Rather, the Site elevations would have to be substantially lowered to develop the proposed Project. Id., p. 5.1-18. As developed, the elevation of the proposed surface parking areas east of Grand Avenue would apparently range from 749 feet at the southern edge of those parking areas to approximately 690 feet at the northern edge. Id. On the other hand, the **lowest** elevation in the Diamond Bar residential areas directly east of the proposed surface parking areas would be approximately 753 feet, with a rise in elevation to the north. Id. The Draft SEIR concedes that much of the residential areas "would be looking down on and across the parking lots." Id. However, even that statement appears understated. If the highest elevation of the parking areas is 749 feet and the lowest elevation of the adjacent residential areas is 753 feet at the southern edge, then **all** of the residential areas would look down and across the parking lots.

While the Draft SEIR does not quantify the specific elevation differences at specific points along this boundary (or any other boundary), it is apparent that, based on the higher elevation of the residential areas, views of the parking areas could not be shielded. It is even more apparent that views of the Stadium, which would be at least 10 stories in height (id., p. 3-12), the stadium lighting and signage, and the other contemplated improvements, which would include a variety of buildings up to 10 stories in height (id., pp. 3-20-21) and even taller signs, would be starkly visible from those residential areas.

We also note that the Draft SEIR's discussion in this regard is contradictory and very confusing. For example, the Draft SEIR indicates that the elevation at the southern edge of the Diamond Bar residential area east of the Site is 749 feet, but states earlier that the elevation at Location 8, which is located at the southern edge of that

residential area, is 733 feet. Id., pp. 5.1-18, 5.1-4. Similarly, the Draft SEIR states that the elevation at Location 7, which is north of Location 8 in the same residential area, is 683 feet. However, the Draft SEIR subsequently states that the elevation of these residential areas **increases** from 753 feet as you travel north. Id., p. 5.1-18. If that is true, why is the claimed elevation at Location 7 (683 feet) 50 feet **lower** than the claimed elevation at Location 8 (733 feet). Moreover, if the lowest elevation of the residential areas at the easterly boundary of the Site is 753 feet, why didn't the Draft SEIR select a location in those residential areas with an elevation higher than 733 feet?

The second of the three paragraphs analyzing the Project's impacts on scenic vistas and visual character briefly discusses the other three locations for which crude massing models were prepared – Locations 1, 2 and 5. Id., pp. 5.1-29, 5.1-23-27. We first note that those computer-generated massing models were prepared and presented in a manner designed to ensure they have no informational value. The models are grouped three to a page, most with "wide-angle" views, so that the project improvements are barely visible and do not remotely convey that the Project includes more than 6 million square feet of improvements that would be prominently visible from many of the surrounding residential areas in Diamond Bar and Walnut. In addition, as the Draft SEIR itself states, "[t]he modeling has limitations in producing precise accuracies beyond the boundaries of the project site where data was not available."[6] Id., p. 5.1-18.

Furthermore, the handful of sentences in the second paragraph that compare the Project's aesthetic impacts with those of the 2004 Plan of Development play fast and loose with the facts. For example, the Draft SEIR states that "[w]hile the parking lots east of Grand Avenue are larger than typical office or warehouse development, regional shopping with big box development or car dealerships, which were anticipated in the 2004 Plan of Development, would also have created large parking areas." Id., p. 5.1-29. That statement is highly misleading. In fact, Phase 1 of the Project includes **215** acres of surface parking areas, including most of the Site located east of Grand Avenue, while the 2004 FEIR contemplated that a maximum of **10.5** acres of the Site would be used for "Auto Dealership/Regional Retail", and that acreage was located on the **west** side of Grand Avenue. Simply put, the development of the Project would create a sea of asphalt

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[6] In fact, massing models reflect antiquated technology that should not provide the primary basis for evaluating the aesthetic impacts of a major development proposal. As the preparers of the Draft SEIR are undoubtedly aware, it is now common practice to prepare meaningful and informative visual simulations of proposed improvements and landscaping combined with photographs of existing topography and improvements on or around the project site, to demonstrate a project's impacts on scenic vistas and the surrounding area.

that is highly incompatible with the adjacent residential and open space uses in Diamond Bar and the Draft SEIR attempts to deny this reality based on analysis that is not credible or intelligible.

The only other substantive statements in the second paragraph are that "[m]any of the adjacent residential areas also share views of warehouses" and "[t]he stadium by contrast is smaller than the warehouses and has a unique design . . . ." Id. This is not good-faith analysis either. First of all, the Draft SEIR does not provide any relevant information regarding the "large warehouses", so there is no way to compare the size of any given warehouse to the size of the proposed Stadium. Rather, it refers the reader to the photographs in Figure 5.1-3a earlier in the aesthetics analysis, which it claims "appear as large white boxes". Id. That is untrue. One of them, the small photograph in the middle of Figure 5.1-3a, which was taken from Location 2 and is a view to the northwest, includes a very small and very thin white area beyond the undeveloped Site. From that distance, it is impossible for the reader to determine whether this area includes structures at all, much less "large warehouses".

Moreover, given that the Stadium is much closer to the Diamond Bar residential area and other sensitive receptors than the warehouses, the fact that the Stadium is "smaller" is not relevant. Moreover, this "analysis" is nonsensical because it focuses solely on the Stadium and ignores all of the other 4,000,000+ square feet of improvements that comprise the Project.

Actually, the photographs taken from Locations 1-8 in Figures 5.1-3a through 5.1-3c contradict and undermine the unsupported aesthetics analysis in the Draft SEIR. First, of the views photographed from Locations 1-8, the warehouses are **only** visible from Location 2, which was taken from the top of a ridgeline at a considerable distance from the Site. The warehouses are not visible from Locations 1, 3, 4, 5, 6, 7 or 8, many of which, including Locations 3, 4, 6 and 7, are views from Diamond Bar residential areas or ballfields. Id., pp. 5.1-7-13. In many cases, the view of the warehouses is shielded by the Site itself, much of which is located at a higher elevation than the warehouse area. Id., see photographs of Locations 3, 4, 7 and 8. For example, the photograph taken from Location 8 at the edge of the Diamond Bar residential areas located to the east of, and adjacent to, the Site, consists of a view of the undeveloped, pastoral Site with no improvements visible in the background. Id., Figures 5.1-2, 5.1-3c.

In fact, it appears that, if anything, the development of Project would **expose** residents to views of the warehouses that are currently blocked by the Site. While the Draft SEIR includes incomplete and contradictory grading information, it appears that

site elevations would be reduced by as much as 109 feet on the portion of the Site located west of Grand Avenue. Id., p. 5.1-18. On the east side of Grand Avenue, it appears that site elevations would be reduced by up to **163** feet. This latter figure was calculated by taking the difference between (a) the highest existing elevation on the east side of Grand Avenue, which is **912** feet near the interchange of Grand Avenue and SR 57/60 and where the southern edge of the surface parking areas is located (id., pp. 4-7, 5.3-2), and (b) the post-development elevation of **749** feet at the southern edge of the surface parking areas (id., p. 5.1-18).[7]

Second, the photographs from Locations 1-8 demonstrate that the Project would indeed have a significant impact on a scenic vista, as well as substantially degrade the existing visual character and quality of the Site. Currently, Diamond Bar residents enjoy scenic views of the 530-acre Site from innumerable locations. The Project would eliminate this scenic resource and replace it with a dense urban development in immediate proximity to hundreds of homes and other sensitive receptors. The Draft SEIR's failure to include relevant and credible information regarding these significant aesthetic impacts precludes informed decisionmaking and informed public participation, in violation of CEQA.

The third and final paragraph in the "analysis" of scenic vistas/visual character concludes that the landscaping proposed for the perimeter of the Site "would provide an ample buffer for the surrounding community and aesthetic relief in an otherwise urbanized area," and that "implementation of the PDFs would address screening views from sensitive receptors, buffers, appropriate landscape planting . . . ." Id. However, there is no credible evidence, much less substantial evidence, in the Draft SEIR to support these statements. In particular, there is no evidence that any of the proposed PDFs would block views of the Project from the adjacent residential areas and other sensitive receptors, and the scant data and crude graphics in the aesthetics analysis demonstrate to the contrary.

For example, the massing models reflect that most or all of the Project would be visible from Locations 1, 2, 5 and 8, all of which are views from existing residential areas in Diamond Bar and Walnut. Id., pp. 5.1-7 (Fig. 5.1-2), 5.1-22

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[7] As reflected by the preceding citations to the Draft SEIR, the aesthetic analysis did not include all of this information. Rather, the data regarding the highest elevation east of Grand Avenue is buried in the environmental setting section of the Draft SEIR. Once again, the aesthetics analysis fails to include the minimal information, or reference to that information, necessary to provide any meaningful understanding of the Project's impacts on scenic vistas and visual character.

(Fig. 5.1-6a), 5.1-25 (Fig. 5.1-6b) and 5.1-27 (Fig. 5.1-6c). As previously discussed, the development of the Project would require significant grading that would substantially lower the elevation of the Site. As a result, the parking areas east of Grand Avenue would be located at a substantially lower elevation than the existing Diamond Bar residential areas directly to the east, so that virtually all of the project improvements, including the Stadium, would be fully visible from those residential areas. Id., p. 5.1-18. Once again, there is no evidence in the Draft SEIR that any of the PDFs would screen any of the massive improvements contemplated on the Site from these residential areas due to, among other things, the elevation differences and the requirement to maintain a fuel modification zone. To the contrary, the Draft SEIR indicates that no such mitigation is possible.

2. Signage Program.

The final paragraph in the discussion under Impact 5.1-1 relates to the project signage. This paragraph concludes that "[a]ssuming incorporation of the PDFs listed above, the signage associated with the revised Plan of Development would result in a less than significant aesthetic impact." Id., p. 5.1-29. This perfunctory signage analysis is flawed and inadequate for numerous reasons. To start with, neither the project description nor the aesthetics section includes any description or graphics with regard to the proposed signage, notwithstanding the acknowledgement in the one-paragraph "analysis" that the signage is "an essential component of the project" and further notwithstanding that the Applicant's website for the Project includes numerous project renderings that illustrate some of the proposed signage. In the absence of any such description or graphics, environmental review of the Project's aesthetic impacts with regard to signage is impossible and, therefore, the Draft SEIR includes no evidence to support the conclusion that such impacts would be insignificant.

Indeed, the single paragraph devoted to this topic does not include any environmental analysis regarding the aesthetic impacts of the project signage. Instead, the reader is assured that, based on the aesthetic PDFs formulated for the Project, there would be "a unified signage program that would be carefully integrated with the design of the architectural details of the buildings . . ." and that "the PDFs would assure that adjacent residential communities would have limited views of the signage." Id. In other words, the discussion focuses solely on mitigation for the aesthetic signage impacts without first describing those impacts. That is impermissible under CEQA.

In any event, there is no credible evidence that the proposed PDFs relating to signage would "result in a less than significant aesthetic impact." Id. While the one-

paragraph discussion does not even reference any specific PDFs, the PDFs that relate to signage are PDF 1-12 through PDF 1-16. Id., p. 5.1-17. However, only one of those PDFs would arguably mitigate the aesthetic impact of the contemplated signage on adjacent residential areas and other sensitive receptors. That is PDF 1-16, which states in part that "[i]ntense light sources shall be shielded and focused to reduce visibility from nearby residential areas and the habitat mitigation area along Diamond Bar Creek." Id., p. 5.1-17. However, there is no evidence in the Draft SEIR that compliance with this PDF would be possible or to what extent it would "reduce visibility" of the numerous intense light sources that apparently are contemplated as part of the Project. In particular, it is difficult to understand how the primary stadium lights, which the Draft SEIR acknowledges would be located above the exterior rim of the Stadium, could be "shielded" or "focused" in a way that would materially reduce the impact on the surrounding area. It is also difficult to imagine that the numerous advertising signs contemplated for the Project would be shielded or focused in any manner that would limit their visibility given their advertising function.

An additional defect in the one-paragraph signage discussion is that the analysis and conclusion relates generically to "aesthetic impact" without any specific discussion of the signage impacts in relation to the two distinct thresholds of significance relating to scenic vistas and the visual character of the surrounding vicinity.

H. The Draft SEIR's Analysis Of The Project's Air Quality Impacts Is Inadequate.

For numerous reasons, the Draft SEIR's analysis of the Project's impacts on air quality is inadequate and fails to properly inform the public and decisionmakers.

1. The Draft SEIR's Air Quality Management Plan Consistency Analysis Is Inadequate.

One threshold of significance in Appendix G to the Guidelines, which the Draft SEIR relies on, require that an EIR address whether a project conflicts with or obstructs the implementation of the applicable air quality plan. Draft SEIR, p. 5.2-19. The Project is located within the South Coast Air Quality Management District (the "SCAQMD") and is therefore subject to the Air Quality Management Plan (the "AQMP") for the South Coast Air Basin ("SoCAB"). Id., p. 5.2-2. The Draft SEIR acknowledges that the Project is regionally significant and thus must undergo an air quality consistency analysis with the AQMP. Id., p. 5.2-19. The Draft SEIR's analysis of this issue, however, falls flat.

The Draft SEIR properly states that projects which are consistent with the local general plan are considered consistent with the AQMP. Id. But then, the Draft SEIR improperly relies on the Project's alleged consistency with the Industry General Plan to vaguely conclude that "[b]ecause the 2004 IBC Plan of Development was found generally consistent with the City of Industry General Plan and was not considered significant in this respect, the reduced revised Plan of Development is also consistent with the planning goals of the City, and in this respect, the project does not represent a significant impact." Id., p. 5.2-20.

This is inadequate and unlawful in at least three respects. First, the Draft SEIR digs itself an analytical hole by failing to provide any meaningful General Plan or AQMP consistency analysis for the 2008 Plan of Development. The Draft SEIR simply – and wrongly – relies on the 2004 FEIR's finding that the 2004 Plan of Development was "generally" consistent with the AQMP and then magically translates that finding to mean that the 2008 Plan of Development is also consistent with the AQMP. Id., p.5.2-20. This is done with no evidentiary or analytical support and in a manner that vitiates the AQMP consistency analysis requirement. As previously discussed, the 2004 Plan of Development is not comparable to the 2008 Plan of Development. To the contrary, they are separate and distinct projects. Therefore, the Draft SEIR cannot rely on the findings of the former to substantiate the AQMP consistency analysis with respect to the latter.

Second, finding that the 2004 Plan of Development is "generally" consistent with the Industry General Plan is much too vague and does not allow for informed decisionmaking. What does that statement mean? Are there "some" inconsistencies? It is impossible to decipher whether there is actual consistency. The Draft SEIR does not include any evidence to support its conclusion. Id., p. 5.2-19-20.

Third, the conclusion that "the reduced revised Plan of Development is also consistent with the planning goals of the City, and in this respect, the project does not represent a significant impact" is facially incapable of demonstrating General Plan (and thereby AQMP) consistency. Consistency with unspecified "planning goals" does not equate to consistency with the General Plan.

2. The Project's Construction-Related Air Quality Impacts Are Significantly Understated And Based On False Assumptions.

The Draft SEIR analyzes the Project's construction-related air quality impacts based on the faulty assumption that the Stadium would be 1,000,000 square feet in size. Draft SEIR, p. 5.2-21. As previously discussed, that is a dramatic

understatement given that the Applicant has previously informed the community that the Stadium would include approximately 1,900,000 square feet of improvements. In addition, our review of other documentation regarding modern NFL stadiums indicates that such stadiums typically range from 1,600,000 to 2,000,000 square feet. Thus, the Draft SEIR seriously underestimated construction-related air quality impacts caused by development of the Stadium.

The Final SEIR concedes in part this gross underestimation and now claims that the true Stadium square footage is approximately 1,437,530 square feet. Final SEIR, p. 2-5. The Final SEIR includes a new construction air quality analysis that incorporates the significant increase in the size of the Stadium (id., pp. 4-21-22, 4-28-30), but the public was denied the opportunity to review and comment on this somewhat more accurate analysis of the Project's construction-related impacts.[8]

In addition, the Draft SEIR engages in questionable logic by omitting the entire Stadium and all of the Parking Structures from its assessment of construction air quality impacts related to architectural coatings. Together, those two project elements total at least 2,827,540 square feet of improvements, and almost certainly much more. Draft SEIR, p. 5.2-22. The Draft SEIR acknowledges that the primary source of project-related volatile organic compound ("VOC") pollution would be from architectural coatings. Draft SEIR, p. 5.2-23. Nonetheless, it boldly reasons that no architectural coating emissions will result from those structures because "[t]he parking structures would not be painted and the stadium would be largely prepainted." Id., p. 5.2-22. It is very difficult to imagine that no architectural coatings of any kind would be applied to the Stadium or the Parking Structures. In addition, "largely prepainted" implies that at least some components of the Stadium would in fact be painted. These flawed assumptions result in a significant understatement of the Project's VOC construction impact.

The Draft SEIR also claims that the Stadium and Parking Structures were modeled as "industrial warehouses" for purposes of analyzing construction-related air quality impacts. Id. However, it is obvious that the construction of an NFL stadium, as well as multi-level parking structures, involves far more complex construction than an industrial warehouse, which usually consists of little more than four walls and a ceiling

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[8] Given the Applicant's repeated statements that the square footage of the Stadium is actually 1,900,000 square feet, it is apparent that the new construction air quality analysis is still based on a significant understatement of the Stadium's square footage.

constructed on a concrete pad, with little or no excavation required. The Draft SEIR does not include any evidence or justification for this nonsensical substitution and it results in a significant underestimation of the Project's construction-related air quality impacts.

Finally, the Draft SEIR concludes that "construction air quality impacts would be similar to those analyzed in the 2004 IBC EIR." Id., p. 5.2-23. This conclusion is meaningless for at least three reasons. First, as previously discussed, it is unlawful. Second, and in any event, the Draft SEIR does not provide any quantitative comparative analysis regarding the magnitude of the difference between the construction-related air quality impacts of the 2004 and 2008 Plans of Development. Third, the list of criteria pollutants analyzed in the 2004 FEIR was different than those analyzed in the Draft SEIR. Id. Therefore, a grossly generalized conclusion that construction air quality impacts are "similar" is untrue and further impairs informed public participation and decisionmaking.

3. The Project's Operational Air Quality Impacts Are Based On Unsubstantiated Assumptions.

The Draft SEIR analyzes the Project's operational air quality impacts in Section 5.2-3. Draft SEIR, p. 5.2-23. The Industry Business Center SEIR Focused Air Quality Study (the "Air Quality Study") contains technical informational supporting that analysis. The Draft SEIR recognizes that most emissions generated during project operation are from mobile sources. Id., 5.2-25. Yet, neither the Draft SEIR nor the Air Quality Study provides any evidence that the mobile source modeling assumptions are accurate or reasonable.

For example, the Air Quality Study claims that the URBEMIS model used to assess mobile source air quality impacts does not include a stadium-type of land use. Air Quality Study, p. 32. So, the Stadium was modeled as a "City Park". Id. This assumption is extremely suspect because 75,000 people would not arrive simultaneously and spend many hours (as they would for game day at the Stadium) at a city park. Moreover, this assumption is made without any explanation or substantiating evidence. Similarly, the Air Quality Study claims that theaters are not included in the URBEMIS model. So, the theaters are modeled as a "Place of Worship". Whether these two uses are comparable is impossible to tell because there is again no explanation or evidence to support the distinction. Therefore, the Air Quality Study's faulty assumptions call into serious question the adequacy of the Draft SEIR's analysis of the Project's operational air quality impacts and further precludes informed public participation and decisionmaking.

4. The Draft SEIR Understates Air Quality Impacts On Sensitive Receptors.

The construction-related air quality impacts on sensitive receptors have been calculated using the wrong methodology. The Draft SEIR uses the SCAQMD's Final Localized Significance Threshold Methodology to analyze impacts on nearby sensitive receptors. Draft SEIR, p. 5.2-31. That methodology defines receptor locations as "off site locations where persons may be exposed to emissions from the project . . . for an hour or longer at a time." Id. Homes are considered sensitive receptors. Id. The Draft SEIR is supposed to consider the impacts on the actual location of known sensitive receptors. Id. Only if such locations are unknown or varied may they be assumed to be at the SCAQMD default distances of 25, 50, 100, 200 and 500 meters. Id. In cases where proximate receptors may be closer than 25 meters a value of 25 meters is to be used in the analysis as a worst-case scenario. Id., p. 5.2-32.

As clearly illustrated on Figure 3-5: Revised Plan of Development, there are several hundred homes (i.e., sensitive receptors) located immediately east of the project boundary within Diamond Bar's jurisdiction. These homes are literally adjacent to the Site. The Draft SEIR's analysis denies knowledge of their existence by electing to use SCAQMD's default distance of 25 meters to analyze impacts. The Draft SEIR claims that default distance was used because "the project area is urbanized with numerous nearby receptors." Id. That fact, however, does not relieve the Draft SEIR from analyzing impacts on clearly identifiable and known sensitive receptor locations adjacent to the Site. Using such a methodology conceals the extent of significant localized construction emissions on the residents most affected by project construction.

5. The Draft SEIR's Analysis Of Global Climate Change Impacts Is Inadequate.

a. The Analysis Is Based On An Unlawful Threshold Of Significance.

Section 5.2.4 of the Draft SEIR states that the threshold of significance with respect to the Project's global climate change impact (AQ-6) would "[c]umulatively contribute to global climate change impacts in California or be substantially affected by global climate change impacts." Draft SEIR, p. 5.2-15. This is an improper and unlawful threshold of significance because it focuses solely on the Project's cumulative impact and has nothing to do with the project-specific impact on global climate change.

While the appropriate threshold of significance and analytical framework for evaluating a project's impact on global climate change is the subject of an evolving

discussion, we are unaware of any public agency that has taken the position that such threshold of significance and analysis should focus solely on cumulative impacts. Most recently, on January 8, 2009, the Governor's Office of Planning and Research released Preliminary Draft CEQA Guideline Amendments for Greenhouse Gas Emissions. While that draft document will undoubtedly engender debate, all of the relevant text in it reflects that an EIR must analyze global climate change impacts on a project-specific basis. For example, proposed Section 15064.4 of the Guidelines includes a number of factors that a lead agency should consider in assessing the significance of impacts from greenhouse gas emissions on the environment, all of which focus on project-specific impacts and none of which focus on cumulative impacts.

In addition, the threshold of significance should be aligned with the greenhouse gas emissions reduction goals of Assembly Bill 32 ("AB 32"). AB 32 mandates that by the year 2020 statewide emissions of greenhouse gases must be equivalent to 1990 levels. Through Executive Order S-3-05, greenhouse gas emission reduction targets have been set as follows: by 2010, reduce greenhouse gas emissions to 2000 levels; by 2020, reduce greenhouse gas emissions to 1990 levels; and by 2050, reduce greenhouse gas emissions to 80% below 1990 levels. With these requirements in place, the emerging performance standard for compliance with AB 32 is at least "25% below business-as-usual."[9]

The preparers of the Draft SEIR appear aware of these types of standards, given that the Draft SEIR references the Climate Change Draft Scoping Plan goals prepared by the California Air Resources Board to ". . . meet a 30 percent reduction in GHG emissions from business as usual by the year 2020." Draft SEIR, p. 5.2-41. However, the Draft SEIR provides no meaningful project-specific analysis that would indicate whether the project complies with, or interferes with, California's ability to achieve the greenhouse gas emission reduction targets of AB 32 and Executive Order S-3-05. Table 5.2-22 in the Draft SEIR purports to discuss the Project's consistency with the Scoping Plan's recommended emission reduction strategies, which are all project-specific. However, this table not only fails to explain whether the Project actually complies with AB 32 goals, it concedes that the Project is designed to result in no more

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[9] Business-as-usual is generally understood to be the emission levels that would occur if California continued to grow and add new greenhouse gas emissions, but did not adopt any measures to reduce emissions. For example, application of Title 24 energy efficiency requirements, without more, could be considered business-as-usual with respect to a project's energy efficiency.

than 5% reductions from business-as-usual. Id., p. 5.2-42. That minimal percentage falls well short of the adopted greenhouse gas emission reduction requirement.

Ultimately, the Draft SEIR claims that ". . . it is speculative to determine how project-related GHG emissions would contribute to global climate change . . . ." Id., p. 5.2-44. However, even in an uncertain and evolving regulatory atmosphere, it is clear the Draft SEIR cannot simply claim the Project's direct impacts are too "speculative" to warrant a proper analysis.

b. The Draft SEIR Unlawfully Compares The Project's Global Climate Change Impact To Statewide Impacts.

The Draft SEIR's cumulative analysis mischaracterizes the Project's global climate change impact as a percentage of statewide emissions with respect to both construction-related and operational impacts. Draft SEIR, pp. 5.2-39-41. For example, it states that, when the Project is completed in 2015, project operations would represent approximately 0.02 percent of the State's projected annual CO_2 emissions budget for the year 2015. Id., pp. 5.2-40, 5.2-41. The Draft SEIR provides this data to suggest that the Project's contribution to global climate change is minimal.

This "analysis" is defective for several reasons. Most important, the relevant issue is not the relative impact of the Project when compared to the cumulative increase in CO_2 for the entire State of California, but simply whether the global climate change impact associated with the Project is significant. For example, in Kings County, 221 Cal. App. 3d 692, 717-18 (1990), a draft EIR concluded that a proposed cogeneration plant would have an insignificant impact on ozone levels in the area because the plant would emit relatively minor amounts of ozone precursors compared to the total amount of precursors emitted in the county. The court held that this analysis was unlawful because it trivialized the project's impacts.

The Draft SEIR does the same thing here. While the Draft SEIR goes on to state in conclusory terms that the Project would have a cumulatively significant impact on global climate change, it leads the reader to believe that the Project's contribution to that significant impact is minimal.

Furthermore, the Draft SEIR's selection of the entire State as the point of comparison was arbitrary and inexplicable. If Industry was determined to ignore the Project's global climate change impact on the existing physical environment, it could have at least compared the Project's CO_2 impact to the City of Industry's projected CO_2

impact. Instead, the Draft SEIR throws the baby out with the bathwater and compares the global climate impact of a single project in a relatively small area to the global climate change anticipated throughout all of California.

This unlawful comparison is particularly inappropriate here because the Draft SEIR does not include any explanation as to why the Project's global climate change impact is cumulatively significant. Instead, with respect to both construction and operational impacts, the Draft SEIR merely states, without reference to any meaningful quantitative or qualitative threshold of significance, that those impacts would be cumulatively significant. Id., pp. 5.2-39, 5.2-41.

c. The Draft SEIR Does Not Require All Feasible Climate Change Mitigation Measures.

As discussed, the Draft SEIR concludes that the Project's climate change impact is significant on a cumulative basis. Thus, Industry is required to adopt all feasible mitigation measures to lessen the Project's greenhouse gas emissions. Guidelines § 15091(a)(3). Those measures must be enforceable. Id., 15091(d). Similarly, the OPR has provided guidance that "[t]he lead agency must impose all mitigation measures that are necessary to reduce greenhouse gas emissions to a less than significant level." OPR, Technical Advisory, CEQA and Climate Change: Addressing Climate Change Through CEQA Review, June 19, 2008. Despite these requirements, the Draft SEIR offers only garden variety mitigation measures with loose language and minimal commitments to reduce "business-as-usual" emissions by meaningful percentages. Draft SEIR, pp. 5.2-46-49. This mitigation approach is not consistent with AB 32 or CEQA requirements.

6. The Final SEIR's Air Quality Conclusions Conflict With The Draft SEIR.

The Draft SEIR concludes that all air quality impacts (except consistency with the AQMP) are significant and unavoidable. Id., pp. 5.2-49-51. Those conclusions are based on the assumption that the Stadium is 1,000,000 square feet in size. Id., p. 5.2-21. The Final SEIR acknowledges that the Draft SEIR drastically underestimated the Stadium square footage and now claims that the Stadium includes approximately 1,437,540 square feet of floor area. Final SEIR, p. 2-5. Nonetheless, the Final SEIR somehow concludes that "[t]he air quality calculations were rerun . . . based on this higher figure, but the impact was still found to be less than significant." Id. This conclusion flies in the face of reason. The Final SEIR provides no analysis, or revisions to the Draft SEIR, regarding how the original conclusion of "significant and unavoidable"

can be flipped to "less than significant" when the Stadium size is increased by almost 50%.

I. The Draft SEIR's Analysis Of The Project's Land Use Impacts Is Inadequate.

The land use and planning analysis in Section 5.6 of the Draft SEIR includes three thresholds of significance to be considered in determining whether the Project has a significant land use impact, although two of the three are unlawfully ignored. The one surviving threshold of significance is whether the Project would "[c]onflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purposes of avoiding or mitigating an environmental effect." Draft SEIR, p. 5.6-12.

The Draft SEIR concludes that the Project would have a less-than-significant impact with respect to this significance threshold. However, for the reasons set forth below, the conclusions that the Project is consistent with the Industry General Plan (the "General Plan") and the Zoning Code are unsupported by any data or analysis in the Draft SEIR.

1. The Draft SEIR Omits A General Plan Consistency Analysis.

The first section in the land use impact analysis is titled "City of Industry General Plan and Zoning Consistency Analysis". Draft SEIR, p. 5.6-13. That analysis consists of four paragraphs. However, the entire analysis relates solely to zoning consistency and does not evaluate in any way the Project's consistency with the General Plan. As the preparers of the Draft SEIR are undoubtedly aware, it is common practice for draft EIRs to analyze a project's consistency with all applicable policies, objectives and standards in the relevant general plan, and other portions of the land use analysis indicate that the preparers of the Draft SEIR fully understand how to prepare such a consistency analysis. For example, the land use analysis includes a detailed consistency analysis with respect to no less than forty-six 2004 SCAG regional policies and SCAG's Compass Blueprint principles. Id., pp. 5.6-14-20. Nonetheless, the land use analysis ignores the consistency of the Project with the General Plan altogether, notwithstanding that it is the "constitution" for development in Industry. This significant omission violates CEQA.

2. The Project Is Inconsistent With The Zoning Designation For The Site And Numerous Development And Signage Standards In The Zoning Code.

As acknowledged in the four-paragraph zoning consistency analysis in the Draft SEIR, the Project is wholly inconsistent with the zoning designation for the Site. The current zoning designation is Industrial (M). Draft SEIR, p. 5.6-13. However, the Project does not include any industrial uses. As a result, the Applicant has apparently requested that Industry grant a PD Approval for the Project to permit the proposed commercial uses on the Site. Id.

The zoning consistency discussion in the Draft SEIR also vaguely states that the unidentified signage program for the Project would require multiple amendments to unspecified "sign regulations". Id. Therefore, the "anticipated" sign program is inconsistent with the signage regulations in the Municipal Code.

Other than brief discussions of the Project's inconsistency with the current zoning designation for the Site and Industry's existing "sign regulations", the Draft SEIR does not discuss the Project's consistency (or inconsistency) with any of the development standards in the Zoning Code. This omission also violates CEQA. The absence of any such analysis is particularly surprising given that Table 3-3 (Intended Uses of the EIR) in the project description indicates (albeit vaguely) that the Project is also inconsistent with the applicable height limitations and required dimensions for parking spaces in parking structures in the Zoning Code.[10] Id., p. 3-56.

Notwithstanding the Draft SEIR's acknowledgment that the Project is fundamentally inconsistent with the zoning designation for the Site and certain development standards in the Zoning Code applicable to the Site, as well as the unidentified sign regulations in the Municipal Code, the Draft SEIR nonetheless concludes that project implementation would not conflict with any zoning regulations. Id., pp. 5.6-55, 1-28. Specifically, each time the Draft SEIR acknowledges that the Project conflicts with a zoning designation or standard, it nonetheless concludes that the Project will be consistent with that requirement, and therefore would not have a significant land use impact, because the Applicant is requesting entitlements that would change the inconsistent designation or standards.

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[10] Given the virtual absence of any General Plan or zoning consistency analysis in the Draft SEIR, it is not surprising that the Bibliography in Section 13 of the Draft SEIR omits both the General Plan and the Zoning Code.

For example, the zoning consistency analysis states that "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." Id., p. 5.6-13. As a second example, it states that "[a]lthough the signage program for the revised Plan of Development has not been fully detailed, approval of the signage program and amendments to the sign regulations would be consistent with the PDFs and analysis presented in this SEIR." Id.

This reasoning was self-servingly circular. Obviously, the Applicant has to request those zoning amendments or the Project cannot be approved, but that has no bearing on the environmental review required for the Project. The Project, as proposed, is flatly inconsistent with the current Industrial (M) zoning designation for the Site and multiple development standards applicable to the Site. In addition, according to the Draft SEIR, the sign program apparently conflicts in multiple ways with the sign regulations in the Zoning Code. The baseline for evaluating the Project's land use impacts is the **existing** environmental setting, including existing zoning designations and standards. Guidelines § 15125(a). Under the Draft SEIR's unpersuasive reasoning, no project would ever have a significant land use impact, no matter how much it deviated from applicable zoning designations and standards.

Furthermore, the statements in the Draft SEIR that, with the approval of the requested zoning exceptions, the Project would be consistent with the Zoning Code, are incorrect. The approval of an exception does not eliminate an inconsistency between a project and a zoning requirement, it **permits** a deviation from a zoning requirement. Zoning Code, § 17.40.020A.

J. The Draft SEIR's Analysis Of The Project's Noise Impacts Is Inadequate.

As previously discussed in the October 16 Comment Letter, Diamond Bar believes that the Draft SEIR's noise analysis is inadequate. Diamond Bar intends to submit additional comments regarding the inadequacy of the noise analysis following its review of the significant new information regarding the Project's noise impacts in the Final SEIR.

However, we make one observation here. Two of the thresholds of significance used in the Draft SEIR with respect to noise are designated as N-3 and N-4. Threshold N-3 is whether the Project would result in "[a] substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project." Draft SEIR, p. 5.7-23. With respect to this threshold of significance, the Draft SEIR

states that such a noise impact would be significant if "project-related traffic increases the CNEL at any noise-sensitive receptor by an audible amount . . . of 3 dBA or more when the existing CNEL is 65 dBA or more in the vicinity of any noise-sensitive receptors." Id., p. 5.7-24. Threshold N-4 is whether the Project would result in "[a] substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project." Id. The Draft SEIR states that such an impact would be significant if the Project "would increase the hourly noise levels (dBA L_{eq}) an audible amount . . . of 3 dBA or more anytime in the vicinity of noise-sensitive receptors." Id.

These thresholds of significance are unlawful. As several courts have determined, an EIR cannot conclude that a noise impact is significant (or not) merely because it is generally recognized that an increase of at least three dBA is usually required before most people will perceive a change in noise levels. See, e.g., Gray v. County of Madera, 167 Cal. App. 4th 1099, 1123 (2008); Los Angeles Unified School Dist. v. City of Los Angeles, 58 Cal. App. 4th 1019, 1026 (1997).

K. The Draft SEIR's Analysis Of The Project's Population And Housing Impacts Is Inadequate.

The Draft SEIR's analysis of the Project's population and housing impacts is based on one threshold of significance (P-1), which is whether the Project would "[i]nduce substantial population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)." Draft SEIR, p. 5.8-13. The actual population growth analysis consists of only three paragraphs. That analysis begins by stating that "[t]he revised project would, however, generate a number of jobs and thus could attract future residents from outside the City of Industry to the surrounding jurisdictions." Id.

Strangely, this sentence refers vaguely to "a number of jobs" when the next section of the population and housing section discusses the precise number of projected employees. Specifically, as discussed under the subsequent heading "Employment Generation", the Project is estimated to generate approximately 4,428 full-time employees. Id., p. 5.8-15. According to this discussion, the Project would also generate an additional 1,515 part-time jobs for the 45 football games and other events that the Draft SEIR states would occur at the Stadium on an annual basis. That results in a total of 5,943 new employees, a significant number. Id.

The population growth analysis then states that unemployment within a 10-mile radius is more than 56,000 and that this "could represent a source of potential

employees currently residing within the study area, and thus, the revised project would not result in an increase in population." Id., p. 5.8-13. The next sentence, however, directly contradicts this conclusion and states that "it is unlikely that all of the revised project's future employees would be drawn from this source . . . ." Id. The analysis then contends that "it is expected that existing unemployed residents would fill a number of positions." Id. The analysis concludes that "as the revised project would likely employ a large number of existing residents and would not attract a substantial amount of new residents, the potential increase in population would be less than significant." Id., p. 5.8-14.

It is self-evident that there is not substantial evidence to support this conclusion. The addition of 5,943 employees, a figure not discussed in the population growth analysis, would induce substantial population growth if those new jobs attracted a substantial number of new residents to the project area. Besides simultaneously stating that the Project would, but would not, result in a population increase in the local area, the Draft SEIR does not discuss what "number of positions" the "existing unemployed residents" would fill and what portion would be filled by future project residents. Moreover, the analysis does not include any data that would support this omitted analysis, including the types of jobs that would be created by the Project or the extent to which those jobs require expertise beyond the skill level of existing unemployed residents. There is not a shred of evidence to support the conclusion that the Project, which would include approximately 6.3 million square feet of commercial improvements, would not induce substantial population growth.

L. The Draft SEIR's Analysis Of The Project's Fire Protection And Emergency Services Impacts Is Inadequate.

The Draft SEIR includes one threshold of significance (PS-1) to evaluate whether the Project would have a significant impact on fire protection and emergency services, as follows:

> "PS-1 Result in a substantial adverse physical impact associated with the provisions of new or physically altered government facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for fire protection services." Draft SEIR, p. 5.9-2.

The Draft SEIR's impact analysis with respect to this threshold of significance is defective for numerous reasons. First, the impact analysis separately discusses the Project's impacts on fire protection and emergency services on non-event days and event days and thereby fails to consider the combined impact of stadium and non-stadium uses. This arbitrary segmentation of the Project violates CEQA.

Second, with respect to the Project's impact on non-event days, the Draft SEIR states that the demand for fire protection services "would likely be less than the 2004 IBC Plan of Development." Id. As previously discussed, however, that is an unlawful comparison. Moreover, the fire protection analysis makes no attempt to quantify that difference in terms of acceptable service ratios, response times or other performance objectives for fire protection services, as specified in the threshold of significance. This is presumably why the analysis vaguely concludes that the impact on fire protection services would "likely" be less than under the 2004 Plan of Development, rather than unambiguously stating whether it would be or not.

Third, with respect to stadium event impacts on fire protection and emergency services, the Draft SEIR does not include any data or analysis at all. The entire discussion consists of the following sentence: "The high volume of traffic near the stadium has the potential to impact emergency access and response times in and around the stadium." Id., p. 5.9-5. The inadequacy of this "analysis" is self-evident. To begin with, the only information in the Draft SEIR regarding existing fire protection and emergency services is that Station No. 120 is the closest fire station to the Site (1.7 miles), it is equipped with one engine company and one patrol unit and would have an average response time of five minutes to the Site. Id., p. 5.9-1. Other than that, the Draft SEIR provides no information regarding the four existing fire stations that might provide assistance to the Site, including the services they offer or their average response times. It also ignores that Station No. 120 only has a single fire engine and has no emergency vehicles at all, such as a paramedic unit, leaving the reader with no idea of how far the closest emergency vehicles are located from the Site or what the average response time of those vehicles would be. In addition, it fails to describe the maximum response time or other performance objectives for fire protection services required by Industry or the extent to which the existing response times or other performance objectives with regard to the Site and the surrounding area would be impacted by the Project.

In fact, the Draft SEIR does not even clearly state whether, in the absence of mitigation, the Project would, or would not, impact fire protection and emergency services, but instead vaguely and unlawfully states only that it has the "potential" to do

so.[11] Id., pp. 5.9-5, 5.9-6. Moreover, the first paragraph of the analysis contradicts this ambiguous conclusion, stating that 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 only during peak entry and arrival times." Id., p. 5.9-5.

Fourth, instead of actually analyzing the Project's event-day impacts on fire protection and emergency services, the Draft SEIR focuses solely on potential mitigation for the undiscussed impact. The Draft SEIR states that the three recommended mitigation measures (12-1, 12-2 and 12-3) "would mitigate the potential impacts of the revised project to the maximum extent feasible." Id., p. 5.9-6.

However, there is no evidence that these proposed mitigation measures would mitigate the Project's impacts on fire protection and emergency services to the "maximum extent feasible", or at all. The first recommended mitigation measure is 12-1, which requires that "[t]he project applicant shall pay all applicable fire facility fees required by the Los Angeles County Fire Department." Id. However, as stated in Comments C6-1, C6-2, C6-4 and C6-5 in an October 10, 2008 comment letter from the Los Angeles County Fire Department (the "LACFD"), the LACFD does **not** require the payment of "applicable fire facilities fees" within Industry. Final SEIR, p. 3-50. The Final SEIR concedes this point in Response C6-2.[12] Id., p. 3-53.

The second recommended mitigation measure (12-2) is that the Applicant "shall submit an emergency access plan to the Los Angeles County Fire Department including, but not limited to, identification of alternate routes for emergency access during construction to areas potentially blocked by project-related construction activities." Id., p. 5.9-6.

This mitigation measure is also unlawful and does not mitigate the Project's impact on emergency services. Instead, it impermissibly defers mitigation of that impact because it does not include any performance standards that would mitigate the Project's significant impact on emergency services. It does not even require that one lane of Grand Avenue remain open for emergency vehicles, which the Draft SEIR previously states would "ensure" adequate emergency and fire protection access. In any event, it would be

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[11] The Draft SEIR reaches this conclusion with respect to several environmental impacts, and each such conclusion is unlawful.

[12] Despite this significant error, the text of the fire protection and emergency services analysis has not been modified in any way in the Final SEIR.

impossible to formulate any credible performance standards because the Draft SEIR fails in the first place to identify Industry's standards with respect to acceptable service ratios, response times or other performance objectives with respect to emergency services or the Project's impact with respect to those objectives.

The third mitigation measure is 12-3, which states that "[t]he 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." Id. In relation to this mitigation measure, the fire protection analysis states earlier that:

> "[t]he City of Industry plans to work with the LACFD to finance and operate the proposed fire station using funds generated from the increase in property taxes generated by the Plan of Development. However, because the City of Industry cannot ensure that the County Fire Department will commit to its operation, this impact is considered significant and unavoidable." Id., pp. 5.9-5, 5.9-6.

Mitigation measure 12-3 would obviously not mitigate the Project's impacts on fire protection and emergency services to the "maximum extent feasible". To start with, there is no requirement that the Applicant contribute in any way to the funding for the construction of the fire station, notwithstanding that the proposed Project contributes significantly to the need for new fire facilities. It is clear from the text that precedes the proposed mitigation measure that Industry never intended to require any contribution from the Applicant. Perhaps Industry believed that the unspecified "fire facility fees" required in Mitigation Measure 12-1 would constitute the Applicant's contribution to the construction of the fire station, but, as previously discussed, the LACFD does not require the payment of any such fee.

Moreover, the Draft SEIR does not explain why Industry could not provide immediate funding for the fire station, given that several other projects have recently been approved in the eastern end of Industry, which the new fire station would primarily serve. Final SEIR, p. 3-53 (Response C6-6).

In addition, the Draft SEIR does not discuss (1) the cost of the contemplated fire station, (2) the existing property taxes for the Site, (3) the extent to which those property taxes would increase based on the development of the Project, (4) how long it would take to generate sufficient incremental property tax revenue to provide the necessary funds to construct the new fire station, (5) what legal mechanism

would be employed to permit the use of the surplus property taxes for this purpose or (6) why the Applicant is not required to provide any funds for the construction or operation of the potential fire station. Without this information, it is impossible for the reader to understand whether this mitigation measure is feasible or when, if ever, the fire station would be constructed.

The mitigation measure's focus on the "operation" of the potential fire station is the tail wagging the dog. It matters little whether the County will operate the fire station if it is never built. Furthermore, while redevelopment agencies can use tax increment from increased property taxes to fund public improvements, the Site is not located in a redevelopment project area. The Draft SEIR includes no explanation as to how the City could use this vehicle to provide funding for the fire station.

Fifth, the Draft SEIR fails to analyze the environmental impacts associated with the development of a new fire station.

M. The Draft SEIR's Analysis Of The Project's Police Protection Services Impacts Is Inadequate.

The Draft SEIR's analysis of the Project impact on police protection services is based on a single threshold of significance, as follows:

> "PS-2 Result in a substantial adverse physical impact associated with the provisions of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which would cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for police protection services." Draft SEIR, p. 5.9-7.

The police protection analysis is inadequate, largely for the same reasons described in the preceding section with regard the Draft SEIR's discussion of the Project's impacts on fire protection and emergency services and other reasons discussed in the October 16 Comment Letter. In particular, the Draft SEIR's discussion of the Project's impacts on police protection services does not actually explain what that impact is. Once again, the sole focus is on potential mitigation for an unidentified and "potentially significant" impact. Id., pp. 5.9-8-9.

N. The Draft SEIR's Analysis Of The Project's Wastewater Impacts Is Inadequate.

In the wastewater impact analysis, the Draft SEIR again bifurcates the Project's stadium and non-stadium impacts. Draft SEIR, pp. 5.9-11-12. This is another unlawful segmentation of the Project because it ignores that the stadium and non-stadium components would both be in operation for at least 45 days each year. Nonetheless, the analysis provides separate figures for the wastewater that would be generated by the stadium and non-stadium uses, rather than providing the larger cumulative gallons of wastewater that would be generated by the Project during the combined operation of stadium and non-stadium components.

In addition, the Draft SEIR includes no evidence to substantiate its calculation of the wastewater impact associated with the Stadium. The wastewater impact analysis states that "[i]t is estimated that approximately 300,000 gallons of wastewater would be generated during a capacity event day." Id., p. 5.9-12. However, unlike the analysis of the wastewater generation associated with the non-stadium components, the preparers of the Draft SEIR declined to explain any aspect of the calculation, including the square footage of the Stadium or the generation factor, or to set forth that calculation in a simple table. Id., compare p. 5.9-12 with 5.9-11. It is apparent that the Draft SEIR conceals this information in part so that it does not have to disclose the square footage of the Stadium and thereby undermine its repeated claim that the Project includes less square footage than the 2004 Plan of Development.

O. The Draft SEIR's Analysis Of The Project's Water Supply Impacts Is Inadequate.

The Draft SEIR concludes that the Project would not have a significant water supply impact because it would use less water than the 2004 Plan of Development. Draft SEIR, pp. 5.9-16, 5.9-17. As previously discussed, that comparative analysis is unlawful.

It is also unsupported by substantial evidence. The Draft SEIR indicates that the 2004 Plan of Development, which included 4,779,000 square feet of industrial, office, commercial and retail improvements, would generate the use of 413,470 gallons per day of water. Id., p. 5.9-13, 5.9-16. It then states that, in comparison, the 2,985,000 square feet of office, commercial and retail improvements associated with the Project would only generate the use of 82,200 gallons per day of water. Id. In other words, the Draft SEIR contends that the square footage of the office, commercial and retail uses would decrease by approximately **30%**, but that the water usage would correspondingly decrease by more than **80%**.

This analysis is nonsensical and unsupported by any explanation in the text of the water supply analysis. However, Table 5.9-2 reveals that the 80% reduction is based on the acreage relating to the industrial, commercial and office uses contemplated in the 2004 Plan of Development as compared to the acreage of the commercial and office uses associated with the proposed Project. Specifically, Table 5.9-2 claims that the industrial, commercial and office uses in the 2004 Plan of Development would be located on 331.1 acres, while the commercial and office improvements included in the proposed Project would be located on only 68.5 acres. Id., p. 5.9-16.

Neither figure is credible. The 331.1 acres identified for the 2004 Plan of Development exceeds the combined acreage of all of the 12 Planning Areas, which is 306.5 acres. Id., Figure 3-4.

The 68 acres identified for the Project's commercial and office improvements is even more suspect. While the Draft SEIR fails to explain how this acreage was calculated, it is apparent that, at a minimum, it omits all of the surface parking areas and, most likely, the areas in which the proposed Parking Structures would be located, notwithstanding that the conceptual Planning Areas in the 2004 Plan of Development obviously included surface parking areas and would have accommodated parking structures fore the contemplated uses. At full buildout, the Site would include approximately 175 acres of surface parking area and approximately 11 acres designated for the three Parking Structures. Id., p. 3-29.

If the water usage is decreased proportionately with the reduction in square footage, as common sense dictates, the water supply required for the non-stadium components of the Project would be approximately **258,256** gallons per day.

The water supply analysis then separately discusses the water supply requirements with respect to the proposed Stadium, which it states would be 323,000 gallons per day for a capacity event, but then claims that this is "less than the daily amount of water necessary to serve the 2004 IBC Plan of Development . . . ." Id., p. 5.9-17. There are two significant problems with this analysis. First, like the wastewater analysis with respect to the Stadium, there is no evidentiary basis for it. The Draft SEIR does not describe the methodology used to calculate the 323,000 figure, including the generation factor or the square footage of improvements or acreage used to derive that number.

Second, the Draft SEIR again unlawfully segments the stadium and non-stadium project components based on the false assumption that the Stadium and the other

project improvements would never be used on the same day. Since they would be, the Draft SEIR should have combined the water use figures for all of the project components That cumulative total is 405,200 gallons per day (323,000 + 82,200). However, that cumulative figure is based on only 82,200 gallons per day of water with respect to the non-stadium uses. If that number is properly increased to 258,256 gallons per day, which, as discussed above, is based on a proportionate 38% reduction in the non-stadium water use, rather than the more than 80% reduction claimed in the Draft SEIR, then the peak water usage would be at least **581,256** gallons per day (323,000 + 258,256), which is significantly higher than the 413,470 gallons per day identified in the water supply analysis.

This is particularly important because the 2004 Water Supply Assessment (the "2004 WSA") for the 2004 Plan of Development only determined that the Walnut Valley Water District (the "WVWD") had an adequate supply of water to serve a project that required 413,470 gallons per day of water. It did not determine whether, in 2008, there was an adequate water supply for a project on the Site that required 581,256 gallons per day. Therefore, not only does the Draft SEIR significantly understate the Project's water supply impact, its conclusion that the Project would not have a significant water supply impact is based on the inadequate and outdated 2004 WSA.

The minimal water supply analysis is also based on the assumption that the WVWD's available water supply has remained stable since 2004, when the 2004 WSA was prepared. However, as the WVWD has acknowledged in two different comment letters on the Draft SEIR, it has substantially decreased. The WVWD's October 16, 2008 comment letter states that "even though the potable project water demands [for the Project] have decreased with the revised plan, there is a different water supply outlook due to the current drought conditions." Id., pp. 3-303-304. While the WVWD declined to quantify the reduction in water supply, it implicitly acknowledged that the current water supply could not accommodate the proposed Project. For example, the comment letter states that "the additional demand for this project could be offset with recycled water expansion as a mitigation measure" or "through the expansion of the District's recycled water system and conversion of existing non-consumption (irrigation) uses to recycled water." Id., p. 3-304. However, neither the comment letter nor the Final SEIR explains the extent to which the water supply has been reduced or how the suggested mitigation measures would address that deficit. In any event, the Final SEIR does not recommend any new mitigation measures with respect to the Project's water supply impacts.

We surmise that Industry was quite unhappy with the WVWD's October 16 comment letter and, as a result, the WVWD submitted a second comment letter on the Draft SEIR dated November 17, 2008 in an effort to "clarify" its earlier comments. Id., p. 3-483. However, this second letter only confirms that the WVWD has experienced a substantial decrease in available water supply over the past five years. It once again states that "there is a different water supply outlook due to the current drought conditions" and that it was "working with the City of Industry, and other local public agencies, to reduce the demand for potable water for current and future developments within the City of Industry and other jurisdictions." Id.

However, in a misguided effort to minimize the damage from its prior letter, the November 17 letter also notes that "the normal daily demands (non-stadium event days) from the project will be approximately 330,000 gallons per day less than the original IBC project." Id. Like the Draft SEIR, however, this statement reflects an unlawful segmentation of the stadium and non-stadium project components. As previously discussed, the proposed Project likely requires substantially more water on event days than the 2004 Plan of Development. Moreover, it is evident that, at the time the WVWD submitted its first comment letter on October 16, it was aware of the claim in the Draft SEIR that the proposed Project would require less water than the 2004 Plan of Development. Again, the October 16 comment letter from the WVWD states that "even though the potable water project demands have **decreased** with the revised plan, there is a different water supply outlook due to the current drought conditions." Id., pp. 3-303-304.

We also note that the Final SEIR did not respond to the comments in the WVWD's October 16 and November 17 comment letters with good-faith, reasoned analysis. First, it did not respond at all to the statements in the October 16 comment letter regarding the WVWD's potential inability to provide an adequate water supply for the proposed Project. Instead, it refers to and summarizes the response to the November 17 comment letter. Id., p. 3-305 (Response C15-4). That response disregards all of the statements regarding the change in the WVWD's water supply and the vague mitigation measures that might permit the WVWD to provide adequate water for the Project. Instead, it claims that the WVWD "certified" in its November 17 comment letter "that is has capacity to service the revised project, even with current drought conditions," and that "the revised project would reduce water demand by approximately 331,270 gallons per day, significantly reducing water demand for the project site." Id.

These statements are all untrue. The November 17 comment letter did **not** certify that the WVWD had capacity to service the proposed Project. Rather, it again

indicated that its water supply had been substantially impacted by drought conditions and that it was working with Industry and other public agencies to determine if it would be possible to mitigate the decreased water supply. Id., p. 3-483. In addition, as previously discussed, the claim that the Project would reduce water demand by approximately 331,270 gallons per day simply ignores the stadium component of the Project, committing the same CEQA sin evident throughout the Draft SEIR.

The Final SEIR's response to the November 17 comment letter went a step further and actually recharacterized the comment that it was responding to. Specifically, Response F3-1 claims that the WVWD "corrected" the previous comments in its October 16 letter by stating that the water demand for the proposed Project would be significantly lower than the 2004 Plan of Development. This is both untrue and irrelevant. It is untrue because, as previously discussed, the October 16 letter **did** state that the proposed Project would require less water than the 2004 Plan of Development. It is irrelevant because the actual issue is whether the WVWD can provide an adequate water supply for the Project given what appears to be a substantial reduction in the water available to it. Response F3-3 entirely ignores this relevant issue.

Accordingly, it is apparent that the 2004 WSA is outdated and that there is no substantial evidence to support the Draft SEIR's conclusion that the Project does not have a significant water supply impact. The Draft SEIR's reliance on the 2004 WSA therefore violated CEQA and Sections 10910-10915 of the California Water Code. Furthermore, a new water supply assessment was required for the proposed Project because, as previously discussed, it is a different project from the 2004 Plan of Development. The Draft SEIR's reliance on a water supply assessment for a different project also violated both CEQA and Sections 10910-10915 of the California Water Code.

P. The Draft SEIR's Analysis Of Traffic And Parking Impacts Is Inadequate.

As previously discussed in the October 16 Comment Letter, Diamond Bar believes that the Draft SEIR's analysis of traffic and transportation impacts is inadequate. Diamond Bar intends to submit additional comments regarding the traffic analysis for the Project after it has completed its review of the significant new traffic data and analysis in the Final SEIR.

Q. The Draft SEIR's Analysis Of The Project's Electricity And Natural Gas Services Impact Is Inadequate.

In calculating the electrical energy demand with respect to the Project, the Draft SEIR again unlawfully segments the stadium and non-stadium components. Draft SEIR, pp. 5.9-23, 5.9-24. It is even more difficult here for the reader to determine the cumulative electrical energy demand because the Draft SEIR measures the non-stadium components in kilowatt hours per month, while measuring the demand for a single stadium event in kilowatts per hour. Moreover, the electricity demand for the Stadium cannot easily be converted into kilowatt hours per month because the Draft SEIR only provides the electricity demand for a single event, notwithstanding that there would be almost four events per month at the Stadium, according to the Draft SEIR.

The brief analysis of the Project's impact on natural gas service is even more problematic because it omits any discussion of the natural gas required with respect to the operation of the Stadium. Id., p. 5.9-24.

Finally, the electricity and natural gas service analyses fail to comply with the requirements in Appendix F to the Guidelines. As stated in Appendix F, "the California Environmental Quality Act requires that EIRs include a discussion of the potential energy impacts of proposed projects, with particular emphasis on avoiding or reducing inefficient, wasteful and unnecessary consumption of energy." However, the Draft SEIR does not include any discussion regarding "avoiding or reducing inefficient, wasteful and unnecessary consumption of energy." In addition, Appendix F includes a lengthy list of energy-related data and analyses that should be included in various section of a draft EIR. The Draft SEIR omits almost all of this information.

R. The Draft SEIR's Analysis Of Alternatives Is Inadequate.

Pursuant to CEQA, a draft EIR must include a discussion of a reasonable range of alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project and evaluate the comparative merits of the alternatives. Guidelines § 15126.6. This requirement compels the lead agency to (1) identify a range of feasible alternatives, including alternative sites, that could attain the project objectives, (2) identify alternatives that would avoid or substantially lessen the significant environmental impacts of the project and (3) discuss the comparative environmental effects of the alternatives and the project. The discussion of the alternatives' environmental impacts must include adequate factual information, including quantitative data. Kings County, 221 Cal. App. 3d 692, 733-734 (1990). In essence, the

alternatives analysis must be sufficient to allow informed public participation and informed decisionmaking. Guidelines § 15126.6(a); Laurel Heights, 47 Cal. 3d 376, 404 (1988).

The analysis of alternatives in the Draft SEIR fails to comply with these and other fundamental CEQA requirements and is legally inadequate for the reasons discussed below.

1. The Draft SEIR Does Not Include An Adequate No Project Alternative.

The lead agency is required to analyze the impacts of the no project alternative by projecting "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." Guidelines § 15126.6(e)(2). Here, the No Project Alternative assumes that the Site would be developed according to the 2004 Plan of Development if the Project is not approved. Id., p. 7-6.

This no project alternative violates CEQA because it is manifestly unreasonable to assume that approximately 4,779,000 square feet of commercial, office and industrial development would occur on the Site by 2015, which is the time frame for the proposed Project. Based on the current distress in the real estate market, it is more reasonable to assume that little or no developments would occur on the Site during that period. The Draft SEIR does not include any explanation as to why full buildout under the 2004 Plan of Development is reasonably expected to occur over the next several years.

Because the no project alternative significantly overestimates the development likely to occur on the Site within the buildout schedule for the Project, the comparative impact analyses in the no project discussion often incorrectly conclude that the No Project Alternative would have a greater environmental impact than the proposed Project, when in fact the opposite is true in each case.

2. The Draft SEIR Does Not Include A Reasonable Range Of Alternatives.

As noted above, a draft EIR must describe a range of reasonable alternatives to the project or to the location of the project that would feasibly attain most of the basic project objectives and avoid or significantly lessen any of the significant effects of the project. Guidelines § 15126.6(a). The Draft SEIR runs afoul of these requirements.

The inadequate no project alternative is a non-evaluative alternative that cannot be considered as part of the reasonable range of alternatives required in a draft EIR. Therefore, the Draft SEIR only includes two actual project alternatives, which are (1) the "Anaheim Alternative" and (2) the "Phase One Reduced Development Alternative" (the "Reduced Development Alternative"). Draft SEIR, p. 7-5. As discussed below, neither of these is a legitimate project alternative for the purpose of CEQA.

The alternatives analysis in the Draft SEIR undermines itself at the outset by conceding that all of the Project alternatives selected for further analysis "may not achieve the most basic project objectives." Id. In addition, the Draft SEIR states in self-contradiction that "[a]lthough an alternative location outside the City of Industry would not allow several of the basic project objectives to be achieved, this SEIR has reviewed a number of alternative locations." Id., p. 7-4. These acknowledgements render the entire alternatives analysis meaningless because alternatives that do not meet even the most basic project objectives are not alternatives at all. Section 15126.6(c) of the Guidelines clearly states that "[t]he range of potential alternatives to the proposed project shall include those that could feasibly accomplish most of the basic objectives of the project . . . ." Here, by the Draft SEIR's own admission, that is not the case.

It appears that the preparers of the Draft SEIR recognized these weaknesses and attempted to broaden the range of alternatives in the Draft SEIR by claiming that the ". . . three alternatives, in addition to the alternatives previously analyzed in the 2004 IBC EIR, have been determined to represent a reasonable range of additional alternatives . . . ." Id. Reliance on the 2004 FEIR project alternatives, however, is misplaced and unlawful because CEQA requires that an EIR describe a reasonable range of alternatives "to the project." As previously discussed, the Project is entirely different than the 2004 Plan of Development analyzed in the 2004 FEIR. Therefore, the Draft SEIR cannot utilize the 2004 FEIR project alternatives to support its claim that the 2008 Draft SEIR includes a reasonable range of project alternatives.

a. The Draft SEIR's Alternative Sites Are Unreasonable.

The Draft SEIR also attempts to artificially expand its range of alternatives by listing three alternative sites, including the Los Angeles Memorial Coliseum Alternative, the Rose Bowl Alternative and the Anaheim Alternative. Id., pp. 7-15-22. The Draft SEIR claims that those alternatives were selected for "further analysis". Id., p. 7-5. That is mostly untrue and highly misleading.

First, with respect to the Coliseum and Rose Bowl Alternatives, the Draft SEIR summarily dismisses both of them as infeasible for numerous reasons and does not even analyze their comparative impacts with the proposed Project. Id., p. 7-15-16. Strangely, the Draft SEIR expressly reverses its prior statement that these alternatives were selected for further analysis and concludes that neither of them warrant further analysis. Id., p. 16. Therefore, the Coliseum and Rose Bowl Alternatives should never have been included in the Draft SEIR's range of alternatives and are nothing more than window dressing.

The Draft SEIR includes a brief comparative analysis with regard to the Anaheim Alternative. However, preceding that discussion, the Draft SEIR acknowledges that the Anaheim Alternative, too, is not feasible at a basic level and did not justify inclusion in the alternatives analysis. In addition to acknowledging that the Anaheim Alternative would not allow several of the basic project objectives to be achieved, the prefatory discussion regarding the Anaheim Alternative makes it clear this alternative faces insurmountable obstacles due to size limitations, jurisdictional restraints and the difficulty of securing control of the site. The Draft SEIR concedes at the outset of that discussion that there are "significant size limitations on the Anaheim site" and that "[t]he lease between the City of Anaheim and the Angels provides a number of restrictions on the use of the Anaheim Alternative site and the Angels parking lot, which may make development of the Anaheim Alternative site difficult." Id., p. 7-17. The Draft SEIR later concludes that "[i]t is not clear that the development of the revised Plan of Development could be accomplished at the Anaheim Alternative site due to size constraints and approval required from the Angels." Id., p. 7-22. These formidable obstacles explain why no stadium proposal has moved forward on the Anaheim Alternative site, notwithstanding considerable effort over the past 13 years. Id., p. 7-17.

The Anaheim Alternative also fails to satisfy another prerequisite for its inclusion as an alternative. Section 15126.6(f)(2)(A) of the Guidelines states that "[t]he key question when analyzing an alternative location is whether any of the significant effects of the project would be avoided or substantially lessened by putting the project in another location." The Draft SEIR provides a limited comparative impact analysis with respect to the Anaheim Alternative and then concludes that "[b]oth the revised Plan of Development and the Anaheim Alternative would produce significant impacts to air quality, noise, and traffic, although impacts within the Anaheim area would be expected to be less intense." Id., p. 7-22. The comparative analysis of the proposed Project and the Anaheim Alternative does not indicate anywhere in the discussion that the Anaheim Alternative would avoid or substantially lessen any of the Project's significant impacts.

b. The Reduced Development Alternative Is Unreasonable.

The Reduced Development Alternative offers no meaningful information. It is no different from the Project; rather, it is simply the first phase of the Project. The location, design and uses associated with this alternative are identical to Phase 1 of the Project. Accordingly, the Draft SEIR does not evaluate a single alternative that, as compared to the proposed Project, involves any different uses, any different design, any different configuration, or any different density, distribution or height with regard to the improvements that comprise Phase 1. Therefore, the Reduced Development Alternative does not foster informed decisionmaking or public participation. Guidelines § 15126.6(a).

Moreover, even if the Reduced Development Alternative could be considered a meaningful alternative (which it cannot), a single alternative obviously does not constitute a "reasonable range of alternatives," particularly for a massive development proposal like the Project.

3. The Comparative Analysis Of The Alternatives And The Proposed Project Is Inadequate.

Pursuant to Section 15126.6(d) of the Guidelines, an EIR "shall include sufficient information about each alternative to allow meaningful evaluation, analysis, and comparison with the proposed project. A matrix displaying the major characteristics and significant effects of each alternative may be used to summarize the comparison." The alternatives analysis in the Draft SEIR does not satisfy these requirements.

To begin with, the Draft SEIR's analysis of the Reduced Development Alternative lacks quantitative and comparative data and thereby precludes informed decisionmaking. For example, the four sentences of air quality analysis provides no quantitative information regarding the level of air pollutant reduction associated with the alternative. Draft SEIR, p. 7-13. The hydrology section simply states that the alternative would result in "similar" impacts and require "fewer" changes to the natural drainage pattern. Id. The land use section wrongly concludes that land use impacts on surrounding jurisdictions would be less than significant and then amorphously claims that indirect land use impacts caused by needed roadway improvements would "be reduced" under this alternative. Id., p. 7-14. Similarly vague, the population and housing sections states that this alternative would provide "considerably fewer" jobs. Id. Likewise, the public services sections guesses that this alternative would "lessen the demand" for services. Id. Following suit, the transportation section provides that traffic would be

reduced at "certain" intersections. Id., p. 15. And, the Draft SEIR concludes that the Reduced Development Alternative would "meet or partially meet" the revised objectives. Id.

This type of vague analysis leaves the public and decisionmakers to ponder: by how much would air pollution be reduced; what is the extent of drainage impacts; which roadway improvements would be affected and by how much; how many jobs will not be created; what will the real demand on public services be; where would traffic be reduced? Without answering these types of questions, the Reduced Alternative analysis is incapable of fostering meaningful evaluation.

The limited comparative analysis with respect to the Anaheim Alternative is even less helpful. It also suffers from a lack of quantified comparable data. In addition, the vague comparative analyses repeatedly reference a 1996 EIR prepared for a prior stadium proposal on the Anaheim Alternative site. It is highly inappropriate to rely on an environmental document that was 12 years old at the time the Draft SEIR was prepared and that obviously involves a different project from the proposed Project. Indeed, the comparative analyses have a bipolar quality because some of the discussion assumes that the Anaheim Alternative is identical to the proposed Project, but located at another site, while the other portion of the discussion reflects that the Anaheim Alternative is the proposal analyzed in the 1996 EIR. To further confuse this discussion, the alternatives analysis never clearly identifies the development proposal in the 1996 EIR. All of this makes for a fundamentally confused and uninformative discussion.

The Draft SEIR's approach to the alternatives analysis subverts the legal requirement that a draft EIR must contain sufficient information about the environmental aspects of the alternatives to permit the decisionmakers a reasonable choice of alternatives.

In summary, the Draft SEIR does not include adequate and unambiguous information about the two evaluative alternatives to allow meaningful evaluation, analysis and comparison with the proposed Project and therefore violates Section 15126.6 of the Guidelines.

4. The Draft SEIR Fails To Compare The Alternatives' Climate Change Impacts To The Project.

The fundamental purpose of an alternatives analysis is to examine alternatives that can eliminate or reduce significant environmental impacts. Guidelines

§ 15126.6. The Draft SEIR identifies the Project's climate change impacts as significant and unavoidable. Draft SEIR, p. 5.2-21. It follows that the Draft SEIR must meaningfully compare the alternatives with the proposed Project regarding their respective contributions to climate change and greenhouse gas emissions. However, there is no comparison whatsoever between the Project and either the Reduced Development Alternative or the Anaheim Alternative regarding climate change impacts. Id., p. 7-13, 7-18.

In addition, the Draft SEIR should have analyzed greenhouse gas emissions associated with the Project's alternatives in determining the "environmentally superior alternative." Guidelines § 15126(e)(2). The Draft SEIR admits that even the Reduced Development alternative would result in 49,758 average daily trips on event days and 22,231 on non-event days. Id., p. 7-15. Construction activities would release approximately 60,938 tons of CO_2 and operation of Phase 1 (i.e., the Reduced Development Alternative) would create an additional 61,122 tons per year or CO_2 emissions. Id., pp. 5.2-39-40. The Draft SEIR completely ignores these substantial greenhouse gas emissions in determining the environmentally superior alternative to the Project. Id., pp. 7-22-23.

S. The Draft SEIR's Analysis Of The Project's Growth-Inducing Impacts Is Inadequate.

An EIR must adequately describe any growth-inducing impacts of the proposed project, and discuss the ways in which the project could directly or indirectly foster economic or population growth in the surrounding environment. Guidelines § 15126.2(d). The EIR must also discuss the characteristics of projects which may encourage and facilitate other activities that could significantly affect the environment, either individually or cumulatively. Id.

The Draft SEIR's analysis of the Project's growth-inducing impacts is fundamentally flawed because it makes no determination as to whether the Project would, or would not, have a significant growth-inducing effect. For example, one of the "questions" responded to in the analysis is whether the Project would "result in the need to expand one or more public services to maintain desired levels of service?" Draft SEIR, p. 10-2. The Draft SEIR confirms its prior analysis that the Project would have a significant adverse effect on fire protection and emergency services, but never actually states whether the Project would in fact require the expansion of fire protection and emergency services (which it would) or determine whether that need results in a

significant growth-inducing impact. Moreover, the growth-inducing analysis does not include any discussion of potential mitigation. Id., pp. 10-2-3.

The same is true with respect to another "question" in the analysis, which asks whether the Project would "remove obstacles to growth . . . through changes in existing regulations pertaining to land development?" Id., p. 10-1. In this case, the Draft SEIR acknowledges that the Project would be growth-inducing in this regard because the current zoning designation for the Site prohibits the entire Project. Id., p. 10-2. However, there is no determination as to whether this growth-inducing impact is significant or, if so, whether any feasible mitigation exists to ameliorate that significant impact.

We also note that the Draft SEIR's conclusion with respect to the latter question states that the Project would be growth-inducing with respect to the removal of obstacles to growth "within the project site." Id. This implies that, despite the development of an "iconic regional destination" with an NFL stadium and a plethora of associated mixed uses (i.e., retail, restaurants, office and entertainment), the Project would not remove any obstacles to growth outside the Site. This implicit logic is untenable considering the high likelihood that compatible businesses and housing would spring up around the Project to either exploit or support it. Indeed, Industry and Applicant officials have stated that the Project is intended to, and would, spur growth in the surrounding area. The Draft SEIR ignores these apparent truths.

T. The Draft SEIR's Cumulative Analysis With Respect To Many Of The Project's Environmental Impacts Is Facially Inadequate.

A draft EIR must discuss "cumulative impacts" when they are significant. Guideline § 15130(a). However, even if a cumulative impact is not deemed significant, the document must explain the basis for that conclusion. Citizens To Preserve The Ojai v. County of Ventura, 176 Cal. App. 3d 421, 429 (1985). "Cumulative impacts" are defined as "two or more individual effects which, when considered together, are considerable or compound or increase other environmental impacts." Cal. Pub. Res. Code § 21083(b); Guidelines § 15355. A project has "cumulatively considerable" impacts when its incremental effects "are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects. Cal. Pub. Res. Code § 21083(b); see also Guidelines § 15355(b). Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time. Id.

A seminal case explains why the cumulative impacts analysis is essential:

> "[T]he development of downtown San Francisco generally occurs bit by bit. No one project may appear to cause a significant amount of adverse effects. However, without a mechanism for addressing the cumulative effects of individual projects, there could never be any awareness of or control over the speed and manner of downtown development. Without such control, piecemeal development would inevitably cause havoc in virtually every aspect of the urban environment." San Franciscans for Reasonable Growth v. City and County of San Francisco, 15 Cal. App. 3d 61, 76 77 (1984).

Time after time, the Draft SEIR ignores the cumulative impacts associated with an environmental category, as discussed below.[13]

1. The Draft SEIR's Cumulative Impact Analyses Are Flawed In Several Common Respects.

The Draft SEIR's cumulative impact analyses have several overarching flaws. First, nearly all of the cumulative impact discussions include nothing more than conclusory statements, with virtually no quantitative or qualitative analysis of whether, or the extent to which, the Project and the related projects could result in cumulatively considerable impacts. See, e.g., Draft SEIR, pp. 5.1-33 (aesthetics), 5.2-44-45 (air quality), 5.4-12 (hazards and hazardous materials), 5.6-22 (land use and planning), 5.7-94 (noise), 5.9-5 (fire protection and emergency services), 5.9-9 (police protection services), 5.9-12 (wastewater), 5.9-17 (water supply), 5.9-21 (solid waste), 5.9-24 (electricity and natural gas service), which exemplify the conclusory method of cumulative impact analysis employed throughout the Draft SEIR.

Second, the Draft SEIR includes a list of related projects (id., pp. 4-10-13), but the Draft SEIR neither summarizes the environmental impacts associated with those related projects nor discusses them in any of the cumulative impact analyses, other than the traffic and noise analyses.

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[13] In addition, the Environmental Summary at the beginning of the Draft SEIR fails to summarize virtually any of the Project's cumulative impacts.

Third, Section 15130(b)(1)(3) of the Guidelines provides that, as part of an adequate discussion of significant cumulative impacts, the "[l]ead agencies should define the geographic scope of the area affected by the cumulative effect and provide a reasonable explanation for the geographic limitation used." No intelligible definition or explanation of that scope is provided in the Draft SEIR.

Fourth, the minimal cumulative analyses with respect to most of the environmental topics often improperly conclude that the Project would not contribute to a cumulatively significant impact because the project-specific impacts do not represent a substantial increase in, or would be less than, the corresponding cumulative impacts associated with the 2004 Plan of Development. See, e.g., Draft SEIR, pp. 5.9-12 (wastewater), 5.9-21 (solid waste).

2. The Draft SEIR's Cumulative Analysis Of Impacts In Many Environmental Impact Categories Is Inadequate.

In general, almost all of the Draft SEIR's cumulative impact sections suffer from a lack of adequate analysis. The following examples are some of the Draft SEIR's more egregious violations of CEQA's legal requirements relating to the analysis of cumulative impacts.

a. Aesthetics.

The one-paragraph discussion in the Draft SEIR regarding the Project's cumulative aesthetic impact does not include any quantitative or qualitative analysis of whether the combined aesthetic impacts of the proposed Project and the 24 "cumulative projects" identified in Table 4-1 of the Draft SEIR would be cumulatively significant. Draft SEIR, p. 5.1-33. Instead, it is limited to a summary of the Project's aesthetic impacts that were previously discussed in the aesthetics section of the Draft SEIR. Id. In particular, the Draft SEIR ignores the cumulative aesthetic impacts of the Project and the Industry Business Center and the undeveloped portions of the Grand Crossing project, which will be developed adjacent to the Site, and the other related projects that would be developed in proximity to the Project. Id., pp. 4-11, Figure 4-2. This is a significant defect in the Draft SEIR.

b. Hazards and Hazardous Materials. In a one-paragraph discussion, the Draft SEIR indicates that the Project and the related projects would not have a cumulatively significant hazards and hazardous materials impact in part because "all other development projects are subject to the same regulations concerning hazards and

hazardous materials." Draft SEIR, p. 5.4-12. In other words, instead of analyzing the combined hazards and hazardous materials impacts of the Project and related projects, the Draft SEIR effectively states that no cumulative analysis is necessary based on the apparent assumption that each project's individual hazards and hazardous materials impacts will be mitigated by compliance with applicable regulations.

However, that flawed reasoning would obviate the need for cumulative impact analysis altogether. The whole purpose of cumulative analysis is to determine whether combined impacts of multiple projects, **when considered together**, are considerable. Guidelines § 15355. Evaluation of cumulative impacts plays a crucial role in the CEQA process because environmental damage often occurs incrementally, with no one project appearing to cause significant adverse effects, but "which cumulatively may have disastrous consequences." Bozung v. Local Agency Formation Com., 13 Cal. 3d 263, 283-84 (1975).

c. Land Use and Planning. In another one-paragraph discussion, this time with respect to the Project's cumulative land use impacts, the Draft SEIR states that the cumulative land use impacts associated with the Project and related projects would not be significant because "other proposed developments are presumed to be consistent with the adopted land use plans and programs of the cities of Diamond Bar, Industry, Pomona, and Walnut," so that "development of related projects would also be consistent with regional growth forecasts as developed by SCAG." Draft SEIR, p. 5.6-22.

This analysis is highly improper for several reasons. First, the Draft SEIR once again fails to actually analyze the combined impact of the Project and the related projects. Second, the notion that the Project and the related projects would not have a cumulatively significant land use impact because all related projects will be consistent with applicable land use plans and programs again undermines one of the central purposes of cumulative analysis – to determine whether the combined impact of multiple projects has significant environmental effects, even when some or all of them individually do not.

Third, there is no evidence to support the "presumption" that all related projects are consistent with relevant land use plans and programs. To the contrary, it is unimaginable that none of the other related projects require, or required, general plan amendments or zone changes. The Project itself is entirely inconsistent with the current industrial zoning designation for the Site. We understand that the same is true with respect to Areas A-3 and A-4 of the Grand Crossing project (Item Nos. 15 and 16 in Table 4-1) and the Concourse Shoppes retail center (Item 12 in Table 4-1). The preparers

of the Draft SEIR could easily have determined the extent to which the related projects deviate, or deviated, from applicable land use and zoning requirements at the times applications were submitted for those projects, but failed to do so.

d. Noise. With respect to cumulative construction noise impacts, in yet another one-paragraph discussion, the Draft SEIR states that no significant cumulative construction noise impacts would occur because "[t]he 2004 IBC EIR did not identify any construction related noise or vibration impacts" and "[c]onstruction-related impacts would be similar to those identified in the 2004 IBC EIR." Draft SEIR, p. 5.7-94. This "analysis" is defective and incomprehensible for several reasons. First, to the extent that the statements quoted above relate to the Project's noise impacts, they have nothing to do with the cumulative impacts of the Project **and** the related projects. Moreover, the statements would be untrue because the 2004 FEIR determined that the Project would have a measurable construction noise impact on the adjacent Diamond Bar residential areas and other sensitive receptors. 2004 FEIR, pp. 5-238-239, 5-246-251.

Second, there is no evidence whatsoever in the one-paragraph discussion that the construction noise impacts associated with the Project would be "similar" to those identified in the 2004 FEIR.

Third, as previously discussed, the analysis of environmental impacts solely in relation to the 2004 FEIR is unlawful.

Fourth, to the extent that the statements in the cumulative discussion were intended to refer to the construction noise impacts associated with the related projects (even though it does not say this), the statements are highly misleading. They suggest that the 2004 FEIR evaluated the construction noise impacts of the related projects and that the Project and the related projects would not cumulatively impact any sensitive receptor. However, the 2004 FEIR does not include any cumulative construction noise analysis at all. Id., pp. 5-252-255.

e. Population and Housing. The Draft SEIR's cumulative analysis with respect to population and housing impacts is based on two SCAG Traffic Analysis Zones ("TAZs"). The analysis first acknowledges that TAZ 240331200, which includes the Site and the Grand Crossing project site, has an employment projection of 1,187 in year 2015, and that the existing employment in that TAZ (811), together with the employment projections for the Project (4,428 full-time employees) and the Grand Crossing development (3,620), would "greatly exceed" the TAZ employment projection. Draft SEIR, p. 5.8-20, Figure 5.8-2. When these existing and projected employment figures are

added together (which the Draft SEIR fails to do), the cumulative total is 8,859 employees, approximately eight times the employment projection. We also note that the reference to 4,428 employees with respect to the Project once again omits the 1,515 part-time employees that operation of the Project would require.

However, the Draft SEIR goes on to determine that there would be a sufficient supply of affordable housing to meet future demand based on the employment projections of both TAZ 240331200 (which, as just discussed, includes a dramatically understated employment projection) and adjacent TAZ 240330300, which is "generally fully developed" and the employment projection for which substantially exceeds existing employment. Id., p. 5.8-21.

This cumulative analysis is unlawful for several reasons. First, it ignores all of the 24 related projects other than the Grand Crossing development. Second, the cumulative analysis relies on employment projections in fully-developed TAZ 240330300, notwithstanding that **none** of the related projects are located in that TAZ. Third, there is no evidence in the cumulative analysis that there is sufficient housing in the area to accommodate the cumulative increase in employment with respect to the Project and all of the related projects.

f. Fire Protection and Emergency Services. In a two-paragraph discussion, the Draft SEIR states that "other related projects would be assessed development fees for fire protection services provided by the LACFD," but that "because the operation of the fire station is a responsibility of the LACFD 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." Draft SEIR, p. 5.9-5.

This cumulative analysis is also unlawful for a number of reasons. First, there is no combined analysis of the combined impact of the Project and the related project on fire protection and emergency services. Once again, the discussion begins and ends with potential mitigation. Second, even the mitigation discussion ignores most of the 24 related projects, apparently those located anywhere other than in the "eastern part of Industry". Id. Third, the claim that related projects in the eastern part of Industry would be assessed development fees for fire protection services provided by the LACFD is untrue. As previously discussed, the LACFD does not require the payment of any such fee.

The second paragraph of the cumulative analysis references the mitigation measures relating to the Project's impact on fire protection and emergency services, including the contemplated new fire station. Id., p. 5.9-6. However, this is not a cumulative analysis because it again says nothing about the combined impact of all of the related projects.

g. Water Supply. The two-paragraph discussion of cumulative water impacts suffers from all of the "overarching" flaws previously discussed. Draft SEIR, pp. 5.9-17-18. We emphasize, however, that this analysis is "cumulative" in name only – it does not include a word concerning the related projects. Instead, it very briefly summarizes the preceding project-specific discussion of water supply impacts.

III.

CONCLUSION

For the reasons set forth above, we respectfully request on behalf of Diamond Bar that Industry take no action with respect to the proposed Project until such time as Industry has prepared and certified an EIR for the Project that fully complies with CEQA.

Very truly yours,

Jack H. Rubens

for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

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Enclosures

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