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BY MESSENGER

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

Re: Objections to Draft SEIR/Final SEIR and Proposed
Approval of 2008 Plan of Development (NFL Stadium)

Dear Mr. Kissell:

As you know, this firm represents the City of Diamond Bar ("Diamond Bar"). We have previously submitted to you a comment letter dated January 22, 2009 (the "January 22 Comment Letter") with respect to the Draft Supplement to Industry Business Center Environmental Impact Report (the "Draft SEIR") and the Final Supplement to Industry Business Center Environmental Impact Report (the "Final SEIR") for the NFL Stadium project (the "Project") proposed by Industry East Business Center, LLC (the "Applicant") on a 512-acre site¹ (the "Site") located at the eastern edge of the City of Industry ("Industry").²

¹ The NOP for the proposed Project and the 2008 Initial Study (page 9) both state that the 2008 Plan of Development would affect approximately 530 acres of the 592-acre IBC site. However, the Draft SEIR and other subsequent documents conflictingly state that the 2008 Plan of Development would only affect approximately 512 acres. See, e.g., Draft SEIR, p. 3-11. In addition, to our knowledge, the Draft SEIR never explains why the 2008 Plan of Development omits up to 80 acres of the original IBC site or the development plans for the omitted acreage.

² Capitalized terms used and not otherwise defined in this letter have the meanings set forth for them in the January 22 Comment Letter.

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This letter sets forth additional concerns regarding the adequacy of the Draft SEIR and the Final SEIR (collectively, the "SEIR"). In addition, we will discuss why the City Council has no legal authority to approve the 2008 Plan of Development.

Some of the analysis below is based on, or is supplemented by, reports and studies prepared by several reputable and well-qualified consultants that we retained to review the SEIR. Attached as Exhibit 1 is a letter report (the "MBA Air Quality Report") prepared by Michael Brandman Associates that discusses significant flaws in the SEIR. In addition, prior to the public hearing on February 26, we will be submitting (1) a letter report (the "STS Traffic Report") prepared by Sasaki Transportation Services, Inc. that addresses very significant defects in the SEIR's traffic analysis and (2) a letter report (the "IRM Water Report") that documents the numerous ways in which the water supply analysis in the SEIR violated CEQA and the California Water Code.

This letter reflects that the City Council certified the Final SEIR on January 22, 2009 pursuant to Resolution No. 2065. However, just moments ago we received additional project documents that our vendor obtained late yesterday from the City Clerk. One of the new documents is Volume I of a revised Final SEIR dated February 2009. Prior to receiving this document, neither we nor Diamond Bar had any idea that Industry had caused the preparation of a revised Final SEIR. It appears that Industry voluntarily elected to revise the Final SEIR because it wanted to respond to additional comments on the Draft SEIR submitted by Diamond Bar, the City of Walnut and the SCAQMD.

We further understand that the City Council intends to certify the revised Final SEIR tomorrow at its February 26 meeting. However, any such certification would violate Section 21092.5 of the California Public Resources Code, which requires the lead agency to "provide a written proposed response to a public agency on comments made by that agency which conform with the requirements of [CEQA]" at least 10 days prior to certifying an EIR. Since Industry elected to respond to the additional comments described above, it is required to provide the revised Final SEIR to Diamond Bar and the other public agencies at least 10 days prior to certifying the revised Final SEIR.

Diamond Bar did not receive Volume I of the revised Final SEIR until today and, as I just discussed with Jodi Scrivens, the Industry City Clerk, it has still not received a copy of Volume II of the revised Final EIR from Industry. Therefore, the City Council cannot certify the revised Final SEIR tomorrow.

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I.

SUMMARY

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

1. The Draft SEIR fails to evaluate parking demand.
2. The SEIR's analysis of the Project's traffic impacts is inadequate.
3. The SEIR's analysis of the Project's water supply impacts is inadequate and violates the Water Code's requirements for water supply assessments.
4. The SEIR's analysis of the Project's fire protection and emergency services impacts is inadequate.
5. The SEIR's analysis of the Project's air quality impacts is inadequate.
6. The SEIR unlawfully ignores the environmental impacts associated with the proposed Parking Structures.
7. The responses to comments in the Final SEIR are not based on good-faith, reasoned analysis.
8. Putting aside all of the significant defects in the Draft SEIR, it must be revised to incorporate the significant new information in the Final SEIR and then recirculated for public comment.
9. The City Council's approval of the proposed 2008 Plan of Development would be unlawful because the 2008 Plan of Development implicates numerous defects in the General Plan.
10. The City Council has no legal authority to approve the 2008 Plan of Development.

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II.

THE SEIR VIOLATES CEQA IN NUMEROUS RESPECTS

A. The Draft SEIR Fails To Evaluate Parking Demand.

The Draft SEIR's analysis of the Project's parking impacts is based on one threshold of significance (T-6), which is whether the Project would "[r]esult in inadequate parking capacity." Draft SEIR, p. 5.10-24. The parking analysis in the Draft SEIR consists of four paragraphs regarding "Impact 5.10-5", the heading of which is "Adequate Parking Would Be Provided For The Revised Project." *Id.*, p. 5.10-180.

However, contrary to that heading, the four-paragraph discussion does not include any analysis at all with regard to parking demand. Rather, the "analysis" is limited to how the parking for NFL games at the Stadium would be managed. The focus of this discussion is a contemplated Traffic and Parking Management Plan (the "TPMP") for the Project, which had not been prepared at the time the Draft SEIR was completed. The Draft SEIR states that the "focus [of the TPMP] is to accommodate parking demand . . . during NFL games." *Id.* In other words, the Draft SEIR once again unlawfully focuses solely on the mitigation for an impact that is never actually described or analyzed. The analysis concludes that "parking impacts associated with the revised Plan of Development would be less than significant", but never identifies those parking impacts.

While the Draft SEIR improperly omits any parking demand analysis, we have discovered that the Preliminary Parking Plan for the NFL Stadium Project (the "Walker Parking Plan") prepared by Walker Parking Consultants ("Walker"), which is dated July 2, 2008 and attached as Appendix I to the Draft SEIR, includes, under the heading "Project Description", a brief discussion of the Project's parking demand on an NFL game day. *Id.*, Appendix I, pp. 1-2. Walker concludes that 24,215 spaces would be required for an NFL game day. *Id.*, p. 2. That determination is allegedly based primarily on "parking demand projections" prepared by Linscott, Law & Greenspan ("LLG"), the traffic engineers for the Project. *Id.*

The cursory discussion of parking demand in the Walker Parking Plan cannot excuse the omission of any parking demand analysis in the Draft SEIR itself. Section 15147 of the Guidelines provides in part that "[t]he information contained in an EIR shall include summarized technical data, maps, plot plans, diagrams, and similar relevant information sufficient to permit full assessment of significant environmental

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impacts by reviewing agencies and members of the public." However, the Draft SEIR does not summarize any of the data and information in the Walker Parking Plan regarding the Project's parking demand. Moreover, the Walker Parking Plan fails to reference where the reader might find LLG's parking demand projections to determine the methodology used to derive those projections. Furthermore, to our knowledge, no such projections were included in the Traffic Impact Analysis prepared by LLG for the Project and included as Appendix H to the Draft SEIR (the "Traffic Impact Analysis").

Not only does the Draft SEIR omit the parking demand data in the Walker Parking Plan, the Draft SEIR includes contradictory information. For example, as previously discussed in Section II.E.2 of the January 22 Comment Letter, the project description in the Draft SEIR states that "striping for only 23,219 spaces is shown [on the Phase 1 Parking Plan] and not all spaces are expected to be filled" Draft SEIR, p. 3-29. If the parking demand for Phase 1 alone is 24,215 spaces, as alleged in the Walker Parking Plan, why does the Phase 1 Parking Plan for the Project only include 23,219 parking spaces and why does the Draft SEIR claim that Phase 1 would require less than 23,219 parking spaces? These omissions and contradictions further preclude informed decisionmaking and public participation, in violation of CEQA.

We also note that the minimal parking demand discussion in the Walker Parking Plan only relates to the parking required for the patrons who would attend NFL games. The exclusion of all of the other project components from the discussion was improper because (1) as expressly stated in the project description prepared by the Applicant and attached to its application letter dated November 11, 2008, which it submitted to Industry for the approval of the 2008 Plan of Development, "[w]hen the stadium is in use, the retail and commercial uses **would be open to the public,**" and (2) in any event, no condition of approval has been proposed with respect to the 2008 Plan of Development to restrict public access to the Site during NFL games or any other event at the stadium.

B. The SEIR's Analysis Of The Project's Traffic Impacts Is Inadequate.

As documented in the STS Traffic Report, there is not substantial evidence to support numerous aspects of the SEIR's traffic analysis. We will not restate the analysis in the STS Traffic Report here, but augment that analysis as set forth below.

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1. The Draft SEIR Fails To Explain Why Important Traffic Mitigation Measures In The 2004 Final EIR Were Eliminated.

As acknowledged in the Final SEIR, a governing body must state a legitimate reason for deleting an earlier-adopted mitigation measure, and must support that statement of reason with substantial evidence. Final SEIR, p. 2-3; see also Napa Citizens for Honest Government v. Napa County Bd of Supervisors, 91 Cal. App. 4th 342, 359 (2001).

The Draft SEIR violates this requirement. Specifically, it acknowledges that the 2004 Final EIR included a mitigation measure requiring Industry to "fully fund and build the traffic improvements to the Grand Avenue and SR-57/60 Interchange as indicated in 2015 mitigation measures." Draft SEIR, p. 5.10-190. However, with no explanation whatsoever, the Draft SEIR states that this mitigation measure has been eliminated. Id. In a rather startling reversal, the SEIR now takes the position that all of the traffic improvements associated with the SR-57/60 Confluence Project, as well as all of the traffic mitigation measures recommended in the Industry East (now known as Grand Crossing) EIR, would be constructed by Year 2015 and therefore assumes their completion in the analysis of cumulative background traffic conditions in the SEIR. Final SEIR, pp. 2-18-20. It does so notwithstanding the admission in the Final SEIR that no funding has yet been identified for the proposed SR-57/60 Confluence Project, the cost of which would be up to \$240 million, except for funding of approximately \$35 million allegedly committed by Industry.³ Id., p. 2-17. It also does so despite the fact that, as discussed in the Final SEIR, Industry and/or the developer of the Grand Crossing project (which we understand is the Applicant) is only required to fund a "fair share" of the traffic and improvements required as conditions of approval to the Grand Crossing project. Id., pp. 2-19, 3-212 (Response C10-71).

2. The Draft SEIR Unlawfully Limits The Traffic Mitigation For At Least 38 Significantly Impacted Intersections To Industry's Fair Share Of Funding For Such Improvements For A Period Of Less Than 10 Years.

As set forth in Table 5.10-12 of the Draft SEIR with respect to "Impact 5.10-1", the Project would significantly impact at least 38 intersections in Year 2015 during weekday AM and/or PM peak hours just from the operation of the proposed non-stadium uses on the Site. Draft SEIR, p. 5.10-131. With respect to this Impact 5.10-1,

³ We are unaware of any evidence in the Draft SEIR that Industry is committed, contractually or in any other binding way, to provide such funding.

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Mitigation Measure 14-1 provides that Industry would be responsible for providing 100% funding for the intersection improvements required to mitigate the significant traffic impacts on Intersections 56, 87 and 89, but only provide a "fair share of funding" for the intersection improvements designed to mitigate the significant traffic impacts at the other 35 intersections. Draft SEIR, p. 5.10-191. In the Final SEIR, the preparers of that document attempt to defend the fair-share limitation.

However, Mitigation Measure 14-1, and in particular the limited requirement of fair-share funding by Industry, is unlawful for numerous reasons. First, the SEIR ignores that the payment of a fair share of a mitigation measure or measures is only appropriate with respect to a project's contribution to a significant **cumulative** impact. Guidelines § 15130(a)(3). It has no application with respect to the mitigation of a project's direct environmental impacts. Here, the SEIR demonstrates that the Project would itself significantly impact dozens of intersections just with respect to the proposed non-stadium uses. Therefore, Industry is required to impose all feasible mitigation measures that would avoid or mitigate these significant traffic impacts. See Cal. Pub. Res. Code § 21081(a)(1).

And these traffic impacts are very significant. The Project would cause ICUs to worsen by 0.05 or more at numerous intersections that will already operate at unacceptable Levels of Service ("LOS") of "E" and "F" under Year 2015 conditions. Draft SEIR, Table 5.10-12 (Intersections 4, 8, 10, 12, 21, 25, 34, 63, 64, 65, 66, 73, 78). At many intersections, the Project would degrade ICUs by more than 0.1, which is equivalent to a full Level of Service and reflects a dramatic increase in traffic. Id. (Intersections 4, 6, 10, 12, 17, 19, 20, 23, 25, 42, 43, 44, 52, 61, 62, 63). At a number of intersections, ICUs would worsen by more than 0.2 and/or two full Levels of Service. Id. (Intersections 6, 12, 23, 25, 42, 43, 52, 56, 62). The Applicant and/or the City is obligated to mitigate these traffic impacts to the extent feasible, and the SEIR takes the position that all of the recommended traffic mitigation measures are feasible.

Through this misapplication of Section 15130(a)(3), not only would the Applicant and Industry escape full responsibility for mitigating dozens of significant traffic impacts directly caused by the Project, it is highly likely that they would avoid payment of any funds to improve the great majority of the impacted intersections because no funding has been identified to pay for the balance of the required traffic improvements there.

Indeed, Industry modified the text and tables in the Draft SEIR in a manner which acknowledges that the Project alone would significantly impact numerous traffic

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intersections and that the Project should bear 100% of the cost for mitigating those significant impacts. Specifically, the County of Los Angeles (the "County") stated in one of its comments on the Draft SEIR that Table 5.10-23 (Project Fair-Share Percentages) must be revised to state that the Project "will pay 100 percent of the mitigation costs at County intersections, which are significantly impacted by the project alone." Final SEIR, p. 3-283 (Comment C13-8). In response, Industry agreed to revise Table 5.10-23 (and the underlying Traffic Impact Analysis) to "indicate 100 percent fair share for the revised project if the Los Angeles County intersection is impacted under Existing plus Ambient plus Project conditions." *Id.*, p. 3-288 (Response C13-8). In revised Table 5.10-23 itself, Industry added Note [c], which states that full funding is required for such traffic improvements pursuant to unspecified "Los Angeles County Guidelines", but it is self-evident that this concept applies to all of the significantly impacted intersections. *Id.*, p. 4-57. The County elected to limit its comments to the impacted intersections within its own jurisdiction, but the principle it articulated, and to which Industry states that it has acquiesced, applies to all of the impacted intersections.

Second, even if Section 15130(a)(3) applied to direct project impacts (which it does not), Section 15130(a)(3) requires that fair-share mitigation fees must be part of a reasonable plan of actual mitigation that the public agency has committed itself to implementing. Anderson First Coalition v. City of Anderson, 130 Cal. App. 4th 1173, 1188 (2005). Here, there is no evidence that contribution to the cost of any of the traffic improvements identified in the SEIR is required in furtherance of any such plan. Therefore, there is not substantial evidence to support the statements in the SEIR that Mitigation Measure 14-1 would mitigate the Project's significant weekday traffic impacts (without a game), subject only to the approval of the traffic improvements by the applicable jurisdictions.

Third, the SEIR fails to identify a specific fair share for several of the traffic mitigation measures, as also required by Section 15130(a)(3). As previously discussed, in one of its comment letters on the Draft SEIR, the County requested that Industry revise Table 5.10-23 (Project Fair-Share Percentages) to state that the Project would pay 100% of the traffic mitigation costs with respect to any County intersection that would be significantly impacted by the Project alone. Draft SEIR, p. 3-283 (Comment C13-8). Industry responded that the Table was "revised to indicate 100 percent fair share for the revised project if the Los Angeles County intersection is impacted under Existing plus Ambient plus Project conditions." *Id.*, p. 3-288 (Response C13-8).

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That is untrue. What Industry actually did was to revise Table 5.10-23 to include a range of potential fair-share percentages for the four County intersections that would be significantly impacted by the Project. Final SEIR, Table 5.10-23 (Intersections 18, 47, 48, 78). In each case, the lower end of the range is the percentage stated in the Draft SEIR and the upper end of the range is 100%. Id. The ranges for Year 2015 are extremely broad, including a 26.3-100% range for Intersection 18, a 18.2-100% range for Intersection 47, a 16.5-100% range for Intersection 48 and 16.4-100% range for Intersection 78. Id.

In conjunction with these revisions, the Final SEIR adds a new sentence at the end of Mitigation Measure 14-1, which states that "[a] variety of methods were used to determine impact and fair share analysis at the request of respective jurisdictions; however, as lead agency, the City of Industry **has the authority to determine the ultimate methodology used for fair share.**" Id., p. 4-57; see also p. 3-57 (Response C7-1).

Accordingly, the Final SEIR fails to identify a specific fair-share percentage for four of the intersections that would be significantly impacted by the Project and indicates that Industry would determine the applicable fair share percentage for these intersections at some indeterminate point in the future, all in violation of Section 15130(a)(3).

Fourth, Mitigation Measure 14-1 only requires Industry to provide fair-share funds with respect to the identified traffic improvements through the year 2018. Based on this arbitrary cutoff date, Industry would have no obligation to provide any funds for any traffic improvements where, among other things, the balance of the funding cannot be obtained until after 2018. The Draft SEIR provides no explanation for this significant funding limitation and there is no evidence that an unlimited funding obligation would be infeasible. Rather, it appears that Industry has simply elected to further limit its obligation to provide any meaningful funding for the required traffic improvements.

Fifth, the whole notion of Industry providing "its" fair share of traffic mitigation costs is nonsensical. See, e.g., Final SEIR, pp. 2-19, 3-57. It is the Applicant, not Industry, that has the obligation to mitigate the traffic impacts associated with its project. To our knowledge, the SEIR never explains why the Applicant is not required to fund or construct any of the traffic improvements required to mitigate the Project's significant traffic impacts.

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3. The SEIR's Conclusion That All Of The Traffic Impacts With Respect To Impact 5.10-1 Are Significant And Unavoidable Is Not Supported By Substantial Evidence.

As previously discussed, the SEIR concludes that the Project's weekday peak hour traffic impacts (without a game) on dozens of intersections would be significant and unavoidable because "many of the intersections are outside of the control of the City of Industry and their implementation cannot be assured." Draft SEIR, p. 5.10-227.

However, there is no evidence to support this conclusion. As the Draft SEIR acknowledges, some of the significantly impacted intersections are fully within Industry's boundaries and subject to its exclusive control, including Intersections 39, 42, 56, 87 and 89. *Id.*, Table 5.10-23. Several other significantly impacted intersections are partially within Industry's control, including Intersections 21, 22 and 25. *Id.* Therefore, the SEIR improperly determined that all of the significant traffic impacts were unavoidable.

In addition, the City Council failed to make a finding in Resolution No. 2065 as to whether the proposed traffic mitigation is feasible. The SEIR suggests that all of the mitigation measures are feasible, in which case it had no basis for concluding that the Project's weekday peak hour traffic impacts (without a game) were significant and unavoidable.

4. The Draft SEIR Fails To Identify Any Mitigation Measures With Respect To The Project's Weekday Traffic Impacts With A Stadium Event.

As previously discussed, the Draft SEIR determined that the Project would significantly impact 38 of the 89 studied intersections in Year 2015 during weekday AM or PM peak hour "without a game", as summarized under the heading "Impact 5.10-1". Draft SEIR, p. 5.10-131.

The next section of the traffic analysis is "Impact 5.10-2", which addresses the Project's traffic impacts on weeknights "with games" during the PM peak hour. *Id.*, p. 5.10-153. The Draft SEIR concludes that 37 of the 89 key intersections would be significantly impacted during the PM peak hour. *Id.*, p. 5.10-153. As you would expect, most of these impacts are much greater than the corresponding PM peak hour impacts for weekdays without a game, and many are simply enormous.

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Here are a few representative examples with respect to Year 2015 weekday conditions, which are set forth in Table 5.10-12 of the Draft SEIR (without game) and Table 5.10-22 (with game). *Id.*, pp. 5.10-107, 5.10-166. Without a game, the Project would cause the ICU at the Grand Avenue/I-10 Eastbound Ramps intersection (Intersection 2) to worsen by 0.037, but that intersection would maintain a LOS of "C". With a game, however, the ICU would degrade by a staggering 0.332 and would lower the LOS from "C" to "F". *Id.*, pp. 5.10-107, 5.10-166. Similarly, without a game, the Project would cause the ICU at the Grand Avenue/Temple Avenue intersection (Intersection 10) to worsen by 0.131 during the PM peak hour, as compared to a whopping 0.351 decrease (and resulting ICU of 1.276) with a game. *Id.*, pp. 5.10-108, 5.10-167. As another example, the Project would degrade the ICU by 0.142 at the Grand Avenue/La Puente Road intersection (Intersection 19) without a game, but would worsen the ICU by 0.344 with a game. *Id.*, pp. 5.10-109, 5.10-168.

It is, of course, no surprise that the Project would have far more significant impacts on PM peak hour traffic with a game than without one. As set forth in the Draft SEIR, an NFL game would generate 10,644 PM peak hour trips, of which 10,550 would be in the same direction. *Id.*, p. 5.10-34. As discussed in the STS Traffic Report, it would take a 5-6-lane freeway (with a capacity of 2,000 cars per lane/hour) or a 10-12 lane arterial road to accommodate this amount of traffic.

The Draft SEIR acknowledges that the Project's impact when a weekday NFL game occurs would be significant (although it pointedly omits any specific description or comparison of weekday PM peak hour impacts with and without a game). However, notwithstanding that the "with game" weekday PM peak hour impacts would be far worse than the corresponding "without game" impacts, the Draft SEIR does not identify any traffic improvements that would mitigate these impacts. Instead, the only mitigation measure with respect to the "with game" weekday impact is Mitigation Measure 14-2, which requires an unidentified party to submit a TPMP to the City that includes certain specified elements. *Id.*, p. 5.10-224-226. In this regard, the Draft SEIR states that

"any impact associated with weekday game-day traffic would occur a maximum of two days per year. This impact does not warrant additional roadway improvements beyond those identified in Mitigation Measure 14-1 because game-day traffic congestion would occur very infrequently and is best managed through traffic and parking operations controls as required by Mitigation Measure 14-2. While Mitigation

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Measure 14-2 would optimize traffic flow on game days, the resulting traffic congestion is recognized as significant." Id., p. 5.10-227.

This novel mitigation approach facially violates CEQA. As the lead agency, Industry is required to impose all feasible mitigation measures to avoid or mitigate a project's significant effects on the environment. Cal. Pub. Res. Code § 21081. The Draft SEIR acknowledges that the Project would have enormous traffic impacts during the weekday PM peak hour with a game, but unlawfully fails to recommend any traffic improvements to mitigate these more significant weekday impacts at 37 identified intersections or explain why no such mitigation is feasible.

In addition, the statement quoted above includes numerous inaccurate and/or highly misleading statements. First, the notion that "game-day traffic congestion would occur very infrequently" is extremely unpersuasive. The references throughout this analysis to "game-day" traffic congestion and "with game" conditions are highly misleading because, as acknowledged in the SEIR and other documents, the Stadium would not only be used for NFL games, but a variety of other events. Moreover, neither the SEIR nor the proposed conditions of approval with respect to the 2008 Plan of Development include any condition that (a) limits the number of weekday events at the Stadium or (b) limits the number of stadium events, as claimed in the SEIR.

Second, the claim that "weekday game-day traffic would occur a maximum of two days per year" is both misleading and inaccurate. To start with, the Draft SEIR again falsely assumes that the only events that would occur at the Stadium would be NFL games. However, as the preparers of the SEIR are well aware, at least 30 "sell-out" stadium events are anticipated each year, of which only 12 would be NFL games, as well as at least 15 other events. Draft SEIR, p. 3-21. Furthermore, as discussed in the preceding paragraph, there is no limitation on the number of weekday events at the Stadium.

Third, the statement that traffic congestion on event days would be "best managed" through a TPMP is unsupported and obviously untrue. Given the Draft SEIR's determination that a broad range of traffic mitigation is required to mitigate the Project's weekday PM peak hour impacts without a game, the need for effective traffic mitigation is obviously much greater when the PM peak hour trips associated with the Project include stadium event trips.

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C. The Draft SEIR's Analysis Of The Project's Water Supply Impacts Is Inadequate And Violates The Water Code's Requirements For Water Supply Assessments.

The IRM Water Report documents numerous respects in which the Draft SEIR's analysis of water supply impacts is deficient, and also discusses the inadequacy of the 2004 WSA, both with respect to the 2004 Plan of Development and the unrelated 2008 Plan of Development. We add or emphasize several points here.

First, pursuant to Section 10910(c) of the Water Code, when a water supply assessment ("WSA") is required for a project, the water supply assessment must determine the projected water demand associated with that project, and that information must then be used in the water supply analysis included in the project EIR. However, the analysis of the Project's water demand in the Draft SEIR was **not** taken from the 2004 WSA. To the contrary, the water demand analysis for the Project appears for the first time in the Draft SEIR. In fact, as previously discussed in the January 22 Comment Letter, the Draft SEIR omits any explanation of the methodology used to calculate the water demand for the proposed Stadium, which the Draft SEIR claims is approximately 323,000 gallons per day. Draft SEIR, p. 5.9-17.

Second, we have previously observed in the January 22 Comment Letter that the 2004 WSA does not apply to the Project, and therefore a new WSA was required for the Project prior to the certification of the Final SEIR. In this regard, we note that Section 10910(h) of the Water Code provides as follows:

"(h) Notwithstanding any other provision of this part, if a project has been the subject of a water supply assessment that complies with the requirements of this part, no additional water supply assessment shall be required for subsequent projects that were part of a larger project for which a water supply assessment was completed and that is complied with the requirements of this part . . . , unless one or more of the following changes occurs:

- (1) Changes in the project that result in a substantial increase in water demand for the project.
- (2) Changes in the circumstances or conditions substantially affecting the ability of the public water

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system . . . to provide a sufficient supply of water for the project.

- (3) Significant new information becomes available which was not known and could not have been known at the time when the assessment was prepared."

This provision is relevant for several reasons. To begin with, it reflects that, even if a project is part of a larger project for which an adequate water supply assessment was previously prepared, a new WSA is nonetheless required if the project or circumstances or conditions relating thereto have substantially changed. It can be reasonably inferred from this statement that if a subsequent project is not part of a larger project, then a new water supply assessment must be prepared for the subsequent project. Here, at a minimum, a major portion of the proposed 2008 Plan of Development, including the Stadium and stadium-related uses, live theater, movie theaters, medical facilities and parking structures, are undisputably not part of the unapproved 2004 Plan of Development. Therefore, it is apparent that a new WSA was required for the Project prior to the certification of the Final SEIR.

Moreover, as discussed in the January 22 Comment Letter and the IRM Water Report, even if the 2008 Plan of Development had been part of the 2004 Plan of Development, Section 10910(h) would require the preparation of a new WSA for the 2008 Plan of Development. For one thing, the water demand for the 2008 Plan of Development is substantially greater than the water demand for the 2004 Plan of Development. In addition, the continuing drought in Southern California is a circumstance and condition that has substantially affected the ability of WWD to provide a sufficient supply of water for the 2008 Plan of Development.

Third, as discussed in the IRM Water Report, neither the 2004 WSA nor the SEIR discuss the recycled water required for landscape and irrigation with respect to the 2008 Plan of Development.

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

Following our submission of the January 22 Comment Letter, we received documents from Industry relating to the contemplated fire station in response to a Public Records Act request. Those documents disclose that Industry and the Los Angeles County Fire Department (the "LACFD") have been engaged in an ongoing dispute

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regarding whether Industry or the LACFD should pay for the cost to operate the fire station.

However, none of this information is disclosed in the Draft SEIR, so that the reader has no idea why "the City of Industry cannot ensure that the County Fire Department will commit to its operation" or the likelihood that this dispute will be resolved. Draft SEIR, p. 5.9-7. Perhaps more important, there is no evidence that Industry's proposal to "offer the use of the future fire station", but not to pay any of its operating costs, would mitigate the Project's impact on fire protection and emergency services "to the maximum extent feasible," as claimed in the Draft SEIR. *Id.*, pp. 5.9-6-7. There is no explanation as to why it is not feasible for Industry and/or the Applicant to contribute to the operating costs, or that the payment of the operating costs by Industry or the Applicant is actually infeasible. To the contrary, the data and analysis provided by the LACFD in its comment letter on the Draft SEIR and the additional correspondence in the administrative record strongly suggest that Industry's and/or the Applicant's payment of the operating costs is feasible and appropriate.

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

For the reasons set forth in the MBA Air Quality Report, the SEIR's analysis of the Project's air quality impacts is inadequate.

F. The SEIR Unlawfully Ignores The Environmental Impacts Associated With The Proposed Parking Structures.

For the most part, the SEIR ignores the three proposed Parking Structures, which would total 1,390,000 square feet in size, in the project description and environmental analyses. The SEIR reflects, and the preparers of the SEIR have stated, that the square footage of, and indeed the very existence of, the proposed Parking Structures is only relevant with respect to the analysis of the Project's air quality impacts.

For obvious reasons, that is untrue. In fact, the proposed Parking Structures would have a range of environmental impacts, including impacts related to aesthetics, hazards and hazardous materials, land use, noise and several public services and utilities. As one specific and rather obvious example, the presence of the three multi-story Parking Structures would contribute to the Project's visual impacts. Accordingly, it was highly improper for the SEIR to omit the square footage of the Parking Structures time and again in describing the overall square footage of the improvements associated with the

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Project and to thereafter ignore the proposed Parking Structures in all but one of the environmental analyses in the SEIR.

G. The Responses To Comments In The Final SEIR Are Not Based On Good-Faith, Reasoned Analysis.

"The evaluation and response to public comments is an essential part of the CEQA process." Discussion following Guidelines § 15088. The lead agency must specifically explain its reasons for rejecting suggestions received in comments and for proceeding with the project despite its environmental impacts. "There must be good faith, reasoned analysis and response. Conclusory statements unsupported by factual information will not suffice." Guidelines § 15008(b); see also People v. County of Kern, 39 Cal. App. 3d 830, 841 42 (1974) ("where comments disclose new conflicting data or opinions that cause concern that the agency may not have fully evaluated the projects and its alternatives, these comments may not simply be ignored); Environmental Protection Information Center v. Johnson, 170 Cal. App. 3d 604, 628 (1985) ("conclusory responses unsupported by empirical information, scientific authorities or explanatory information have been held to be insufficient to satisfy the requirement of a meaningful, reasoned response: conclusory responses fail to crystallize issues, and afford no basis for a comparison of the problems caused by the project and the difficulties involved in the alternatives").

For the reasons set forth in the January 22 Comment Letter, and as also discussed in other written and verbal comments you have received with respect to the SEIR, many of the responses to comments in the Final SEIR are not based on good-faith, reasoned analysis.

H. The Draft SEIR Must Be Revised To Incorporate The Significant New Information In The Final SEIR And Then Recirculated For Public Comment.

If the lead agency adds "significant new information" to an EIR after circulation of the draft EIR, but prior to certification of the final EIR, the lead agency must recirculate the revised draft EIR, or pertinent portions thereof, for additional public comment and interagency consultation. Cal. Pub. Res. Code § 21092.1. New information is "significant" if, as a result of the additional information, "the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect." Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova ("Vineyard"), 40 Cal. 4th 412, 447 (2007); accord Guidelines

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§ 15088.5(a). The courts will not "countenance the practice of releasing a report for public consumption that hedges on important environmental issues while deferring a more detailed analysis to the final [EIR] that is insulated from public review." Mountain Lion Coalition v. Fish and Game Com., 214 Cal. App. 3d 1043, 1052 (1989). The revised draft EIR must be subjected to the same "critical evaluation that occurs in the draft stage," so that the public is not denied "an opportunity to test, assess, and evaluate the data and make an informed judgment as to the validity of the conclusions to be drawn there from." Sutter Sensible Planning, Inc. v. Board of Supervisors, 122 Cal. App. 3d 813, 822 (1981).

As Industry is well aware, the Final SEIR contains significant new information relating to a number of important environmental areas, including, but not limited to, the following:

1. New Traffic And Parking Management Plan. In response to comments on the Draft SEIR that the preparation of the TPMP had been unlawfully deferred, a new 54-page TPMP is attached as Appendix A to the Final SEIR.
2. New And Modified Traffic Data. In response to a broad range of comments regarding the inadequacy of the traffic analysis in the Draft SEIR, Appendix B to the Final SEIR includes 47 new or modified tables regarding the Project's traffic impacts.
3. New Air Quality Analyses. Attached as Appendix D to the Final SEIR are new air quality data and analyses regarding the Project's air quality impacts, including a new 122-page analysis regarding the Project's localized construction emissions.
4. Revised Noise Analyses. In response to comments regarding the inadequacy of the noise analyses in the Draft SEIR, attached as Appendix E to the Final SEIR is a 107-page revised noise analysis with respect to traffic noise and noise and vibration technical issues, together with numerous supporting documents.
5. New Conceptual Lighting Plan. In response to comments that the Draft SEIR unlawfully deferred the preparation of a lighting plan for the Project, attached as Appendix G to the Final SEIR is a new 28-page conceptual plan regarding project exterior lighting.

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6. New Conceptual Sign Plan. In response to comments that the Draft SEIR unlawfully deferred the preparation of the sign program for the Project, notwithstanding the Draft SEIR's conclusion of the Project would not have a significant impact with respect to signage, attached as Appendix G to the Final SEIR is a 26-page Conceptual Sign Plan.

7. New Information In Responses To Comments. The responses to comments in the Final SEIR total more than numerical 500 pages and themselves include significant new information regarding the Project that was not included in the Draft SEIR or underlying technical reports.

III.

THE REQUESTED PD APPROVAL WOULD BE UNLAWFUL BECAUSE IT IMPLICATES NUMEROUS DEFECTS IN THE GENERAL PLAN

The issuance of discretionary approvals for a development project is beyond the authority of a public agency if that agency's general plan is deficient in its treatment of mandatory elements that are involved in the uses sought by the discretionary permit. Neighborhood Action Group v. County of Calaveras ("Neighborhood Action"), 156 Cal. App. 3d 1176, 1184 (1984); Kings County, 221 Cal. App. 3d 692, 742 (1990). Put another way, if the existing general plan is inadequate in any manner relevant to the uses sought by a zoning approval, that zoning approval is necessarily void. City of Carmel-by-the-Sea v. Board of Supervisors, 137 Cal. App. 3d 964, 974 (1982); Neighborhood Action, 156 Cal. App. 3d at 1184.

Here, the SEIR is vague and ambiguous regarding most of the zoning approvals required for the Project. However, it is apparent that Industry must approve a "plan of development" (a "PD Approval") for the Project pursuant to Chapter 17.24 of the Zoning Code to allow the proposed commercial uses on the Site. Draft SEIR, pp. 5.6-4, 5.6-13. Specifically, the City Council must approve the 2008 Plan of Development. However, based on the legal principles described above, the City Council has no legal authority to do so because the Industry General Plan (the "General Plan") is unlawful in numerous respects that relate to the uses sought by the 2008 Plan of Development. We discuss below each relevant defect in the Land Use and Circulation Elements of the

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General Plan and how each such defect is implicated by the uses sought by the requested PD Approval.⁴

1. Distribution, Location And Extent Of Commercial Uses.

The land use element of a general plan must designate "the proposed general distribution and general location and extent of the uses of the land for housing, business, industry, open space . . . and other categories of public and private uses of land." Cal. Gov't Code § 65302(a).

The Land Use Element of the Industry General Plan (the "Land Use Element") does not comply with these requirements. The primary land use designation in the Land Use Element is Industrial (M), and almost all of the land in Industry has that land use designation. Land Use Element, pp. 24-25. While the Land Use Element permits a land use designation of "Commercial", "[t]he land use element of the General Plan does not designate specific and individual areas as being the most suitable locations for commercial development except for an approximately 30-acre parcel on Amar Road within the City boundary." Id., p. 30.

However, while the Land Use Element makes no reference to commercial uses in its discussion of the Industrial land use designation (id., p. 25), it states in a subsequent section titled "Commercial" that the Industrial land use designation "also allows for commercial, professional and service uses." As stated in the Land Use Element, "[t]he General Plan takes a position that the *amount* of commercial development in the City need not be limited by planning policy" and that "the City of Industry plan departs from conventions often associated with other city general plans." Id., p. 30 (emphasis in original). It further states that "the *location* of commercial uses is not necessary within the context of the General Plan" because "[c]ommercial uses will environmentally compatible with their surroundings anywhere with the City limits." Id. (emphasis in original).

This failure to demarcate between industrial and commercial uses not only departs from convention, it departs from the legal requirements in Section 65302(a). As a result of this nebulous framework, the Land Use Element does not designate the general distribution or general location or extent of uses of the land for commercial uses. Rather,

⁴ While the discussion below is limited to the 2008 Plan of Development, Industry has no right to grant any discretionary approval with respect to the Project that relates to, among other things, building intensity on the Site.

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any commercial use (and any industrial use, for that matter) is permitted almost anywhere in the City and the Land Use Element provides no clue as to whether a given site will be devoted to commercial use (other than the single 30-acre site previously discussed). As expressly conceded in the Land Use Element, it intentionally omits the location and amount of commercial development.

We also note that Industry's own Zoning Code and the SEIR undermine the absurd claim in the Land Use Element that, regardless of where commercial uses are developed within the City, those uses will be environmentally compatible with the surrounding area. First, the Industrial (M) zoning designation established in the Zoning Code does **not** permit any commercial uses, as conceded in the SEIR (which is precisely why the Project cannot go forward unless Industry grants a PD Approval). Second, the Land Use Element expressly states that "the internal circulation system is inadequate" and therefore would not support a major commercial development like the proposed Project. Third, the SEIR, flawed though it is, concludes that the Project would have numerous and avoidable significant environmental impacts.

This fundamental defect in the Land Use Element relates directly to the uses sought by the requested PD Approval. The entire Site is currently zoned Industrial (M), which is inconsistent with all of the proposed commercial uses associated with the Project. According to the SEIR, the PD Approvals would permit all of the proposed commercial uses on the Site (except that, as discussed in the January 22 Comment Letter, we do not believe that is true with respect to the Stadium). However, the Land Use Element provides no guidance as to whether commercial uses are appropriate on the Site or the extent to which they should be permitted. To the contrary, it repeatedly states that the primary use should be industrial. Due to the Land Use Element's failure to identify the general distribution and general location and extent of commercial uses permitted in Industry, the City Council has no legal authority to adopt the requested PD Approval.

2. Building Intensity.

A land use element must contain standards for "building intensity" for the various land use districts designated therein. Cal. Gov't Code § 65302(a). Building intensity should be defined for each of the various land use categories in a land use element. Twain Harte Homeowners Assn. v. County of Tuolumne ("Twain Harte"), 138 Cal. App. 3d 664, 699 (1982).

Here, the Land Use Element does not include any standards for building intensity with respect to any land use category, including Commercial. It appears that the

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only reference to building intensity in the entire Land Use Element is a portion of a sentence in the introduction therein stating that "the building intensity is that which is applicable to the industrial and commercial uses." Land Use Element, p. 25. For obvious reasons, that circular statement does not actually establish any standards for building intensity and simply begs the question.

The Land Use Element then concedes its absence of building intensity standards, stating that "the intensity of building in various sections of the City or on an individual industrial site is a function of the type of facilities planned," and that no specific standards are required because "[t]he existing and proposed urban infrastructure is sufficient to satisfy the most intensive development feasible, because it is recognized that the function of each development in the City under the primary land use will reflect the appropriate density and intensity patterns" *Id.*

This significant defect in the Land Use Element also relates to the uses sought by the requested PD Approval. The Land Use Element includes no standards for building intensity to measure the propriety of the commercial uses that would be authorized by the requested PD Approval. There is no indication that the Land Use Element authorizes the development of almost 6.3 million square feet of commercial development on the Site, or that it includes any guidance on the subject at all. For this reason, the City Council cannot lawfully adopt the requested PD Approval.

3. Absence Of Development Policies, Objectives, Principles, Standards And Plan Proposals.

A general plan must consist of a statement of development policies and shall include a diagram or diagrams and text setting forth objectives, principles, standards and plan proposals. Cal. Gov't Code § 65302.

The Land Use Element does not conform to these requirements because it does not include any development policies, objectives, principles or standards. Instead, the Land Use Element only recommends two "positive steps", the first of which is that the Zoning Code "should impose development standards that will heighten the quality and visual appearance of development" and the second of which is that "locations appearing to have outstanding commercial potential . . . should be identified." Land Use Element, p. 30. These limited steps of providing commercial standards in the Zoning Code and identifying properties where commercial uses should be permitted (which the Land Use Element unlawfully failed to do) fall well short of compliance with the requirements in Section 65302.

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This defect also implicates the uses sought by the requested PD Approval because the Land Use Element does not include a meaningful mix of policies, objectives, principles, standards and plan proposals from which to determine whether the proposed commercial uses on the Site are appropriate.

4. The Land Use And Circulation Elements Are Not Correlated.

The circulation element of a general plan must include "the general location and extent of existing and proposed major thoroughfares, transportation routes, terminals . . . and other local utilities and facilities, **all correlated with the land use element of the plan.**" Cal. Gov't Code § 65302(b). To satisfy the correlation requirement, the circulation element must discuss the changes or increases in demand on the various roadways or transportation facilities of the jurisdiction as a result of changes in uses of land contemplated by the land use element. Concerned Citizens of Calaveras County v. Board of Supervisors, 166 Cal. App. 3d at 90, 100 (1985). The circulation element must be "closely, systematically, and reciprocally related to the land use element of the plan." Id.

Here, the Circulation Element of the Industry General Plan (the "Circulation Element") is not correlated with the Land Use Element at all. Looking first at the Land Use Element, that document does not discuss the amount of industrial or commercial development planned in Industry or when such development would occur. It states that Industry's "circulation system is inadequate," but does not discuss the prospect that the proposed improvements to the circulation system briefly discussed in the Circulation Element may be inadequate to handle the traffic generated by increased growth. Nor does the Land Use Element contain any policy, objective or standard by which unconstrained growth would be restricted in the event that the circulation system proved inadequate to handle future traffic.

In fact, it appears that, other than the acknowledgment that Industry's circulation system was inadequate, the only discussion of traffic circulation in the entire Land Use Element consists of the following two sentences in the section titled "Industrial": "Circulation network structured to maximize convenience and ease of traffic flow throughout the City has been outlined. This element was discussed earlier under the heading 'Circulation Element'." Land Use Element, p. 25.

These generic statements do not evidence any correlation of the Circulation Element with the Land Use Element. Indeed, it is difficult to understand what discussion is referenced in the statements since there is no discussion under the heading "Circulation

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Element" that precedes the Land Use Element. Rather, the heading "Circulation Element" appears several pages later at the beginning of the Circulation Element, which follows the Land Use Element. Circulation Element, p. 31.

Conversely, the Circulation Element is not correlated with the Land Use Element in any way. The Circulation Element makes no attempt to describe or discuss the extent to which the development anticipated in the Land Use Element would impact the transportation system or the extent to which the transportation system would need to be enhanced to accommodate such development. Indeed, the three-page Circulation Element never once references the Land Use Element. Circulation Element, pp. 31-33. Almost all of the minimal text in the Circulation Element consists of a description of the existing transportation system. *Id.* The Circulation Element also includes a short list of "Ultimate Improvements" to certain roads and a graphic titled "Circulation Plan", but (a) there is no evidence that any of these potential improvements relate to the development that could occur pursuant to the Land Use Element, (b) there is no evidence that any of those transportation improvements were feasible, (c) to the extent those transportation improvements were feasible, there is no discussion, either in the Circulation Element or the Land Use Element, of what amount of development they would permit, and (d) there is no discussion of what additional circulation improvements would be considered if the identified improvements were insufficient to accommodate development.

This lack of correlation is unsurprising because the Land Use Element does not proscribe any particular level of developments under any land use classification. Put simply, there is nothing for the Circulation Element to correlate with.

The absence of any correlation between the Land Use Element and the Circulation Element relates directly to the commercial uses that would be permitted by the requested PD Approval. As discussed in the SEIR, the development of these uses would significantly impact dozens and dozens of intersections, and the SEIR concludes that these impacts cannot be mitigated. Draft SEIR, p. 5.10-227. However, the Land Use Element provides no guidance as to whether, or the extent to which, such development should be permitted if the local and regional circulation systems are wholly inadequate to handle project traffic. Moreover, because the Circulation Element is not correlated with the Land Use Element, it includes no policies, objectives or standards that constrain, limit or otherwise affect the development of projects that exceed the capacity of the local and/or regional transportation systems or require traffic improvements as conditions to such development projects. Therefore, the City Council cannot lawfully adopt the requested PD Approval.

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IV.

THE CITY COUNCIL HAS NO LEGAL AUTHORITY TO GRANT
A PD APPROVAL FOR THE 2008 PLAN OF DEVELOPMENT

In order to grant the requested PD Approval for the Project, the City Council must make all of the five findings set forth in Section 17.24.080 of the Zoning Code. For the reasons set forth below, the City Council has no legal authority to make at least three of the five findings.

First, the City Council must find that there is "adequate street access, traffic circulation and parking capacity for the proposed development and uses." Zoning Code, § 17.24.080A.3. The SEIR demonstrates that the City Council cannot make this finding. As discussed in the Draft SEIR, the development of the Project would overwhelm the local and regional circulation system, significantly impacting at least 38 intersections located within several miles of the Site during the weekday PM peak hour just with respect to the non-stadium project uses. Draft SEIR, Table 5.10-23. The Draft SEIR concludes that the impacts to these intersections would be significant and unavoidable. *Id.*, p. 5.10-227. Therefore, Industry's certification of the Final SEIR reflects an express determination that there is not adequate traffic circulation for the proposed Project. Moreover, as set forth in the STS Traffic Report and other comments submitted with respect to the SEIR, the Project's traffic impacts are far more serious than acknowledged in the SEIR.

Section 3.3 of the proposed City Council resolution with respect to the 2008 Plan of Development includes recommended findings with respect to this issue. However, these findings ignore the Project's significant and unmitigated impacts on the traffic circulation system.

Second, the City Council must find that the proposed Project is "compatible with surrounding properties and uses." Zoning Code, § 17.24.080A.4. Once again, the Draft SEIR and Final SEIR amply demonstrate that the City Council cannot make this finding. In certifying the Final SEIR, the City Council determined that the Project would have multiple significant and unavoidable environmental impacts with respect to both construction-related and operational air quality, greenhouse gas emissions, at least 38 traffic intersections, vehicular noise, train noise, stadium event noise, groundborne vibration from trains, and fire protection and emergency services. In addition, contrary to the unsupported conclusions in the SEIR, the Project would have numerous other significant impacts, in particular a range of significant aesthetic impacts on adjacent and

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nearby residential areas and other sensitive receptors. For these reasons, the City Council cannot find that the Project is "compatible with surrounding properties and uses."

Section 4 of the proposed City Council resolution includes recommended findings with respect to this issue. However, these findings focus solely on environmental impacts that the SEIR claims would be mitigated, while ignoring all of the significant and unavoidable environmental impacts documented in the SEIR.

Third, the City Council must find that the proposed Project is not "detrimental to the public health, safety or general welfare." Zoning Code, § 17.24.080A.5. Once again, the City Council's certification of the Final SEIR precludes the City Council from making this finding. In certifying the Final SEIR, the City Council determined, among other things, that the Project would have significant and unavoidable environmental impacts with respect to construction-related and operational air quality, greenhouse gas emissions, vehicular noise, train noise, stadium event noise, groundborne vibration from trains, traffic and fire protection and emergency services. Draft SEIR, p. 6-1. All of these significant and unavoidable impacts are detrimental to the public health, safety or general welfare. Therefore, the City Council cannot make the finding that the Project would not be detrimental to the public health, safety or general welfare.

Section 3.5 of the proposed City Council resolution includes findings with respect to this issue. However, it once again ignores all of the Project's significant and unavoidable impacts described above. In particular, Section 3.5(e) claims that the required TPMP "will ensure the traffic generated by a major event at the stadium would be directed to and from the IBC site in an efficient manner with minimal interference with residential streets." This directly contradicts the conclusion in the SEIR that stadium events would prominently contribute to significant impacts on dozens of intersections on weeknights or weekends. Draft SEIR, pp. 5.10-153, 5.10-179. A subsequent finding in Section 3.5(i) grudgingly and vaguely acknowledges that the 2008 Plan of Development "creates some significant unavoidable environmental impacts, in particular significant traffic impacts." However, neither this finding nor any of the related findings explain why it is that the Project's significant and unavoidable traffic impacts would not be "detrimental to the public health, safety, or general welfare."

The last finding with respect to this issue in the proposed City Council resolution is Section 3.5(j), which asserts that "[w]ith respect to the other significant unavoidable environmental impacts identified in the SEIR the City Council finds that such impacts do not constitute significant detriment to the public health, safety, or welfare as such terms are used in IMC Section 17.24.080." This finding is inadequate

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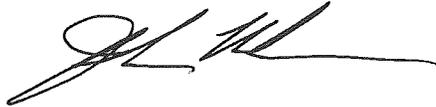
because, among other things, the finding is not supported by substantial evidence and does not "bridge the analytic gap between the raw evidence and ultimate decision or order." Topanga Assn. for a Scenic Community v. County of Los Angeles, 11 Cal. 3d 506, 511, 515 (1974).

V.

CONCLUSION

For the reasons set forth above, we respectfully request on behalf of Diamond Bar that Industry decertify the Final SEIR and take no further action with respect to the proposed Project until such time as Industry prepares a legally adequate SEIR for the Project and can make lawful findings to support the requested PD Approval for the 2008 Plan of Development.

Very truly yours,



Jack H. Rubens

for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

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Enclosures

cc: Mr. James DeStefano (w/encl.)
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