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11 City of Walnut

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **FOR THE COUNTY OF LOS ANGELES**

14 CITY OF WALNUT)

CASE NO.:

15 Petitioner,)

16 v.)

PETITION FOR WRIT OF MANDATE

17 CITY OF INDUSTRY)

18 Respondent.)

(California Environmental Quality Act; State Planning Law; State Water Code; State Fish and Game Code; Seismic Mapping Hazard Act; State Redevelopment Law; Public Records Act; City of Industry Municipal and Zoning Codes)

19 MAJESTIC REALTY CO.; INDUSTRY)

20 EAST LAND, LLC; INDUSTRY EAST)

21 BUSINESS CENTER, LLC; INDUSTRY)

22 URBAN-DEVELOPMENT AGENCY;)

23 EDWARD ROSKI, JR., as President of)

24 Majestic Realty Co.; JOHN SEMCKEN, as)

25 Vice President of Majestic Realty Co.; and)

26 DOES 1 to 10;)

27 Real Parties in Interest.)

1 **INTRODUCTION**

2 1. Over tremendous public opposition and in violation of the California
3 Environmental Quality Act (“CEQA”), on February 26, 2009 the City of Industry (“Industry”)
4 approved a massive, 592-acre development based upon an inadequate environmental impact
5 report (“EIR”).

6 2. The project generally consists of: (1) a 75,000-seat National Football League
7 (“NFL”) Stadium, potentially expandable to 80,000, of indeterminate square footage; (2) a
8 115,000 square foot training facility containing a gym, locker rooms, staff offices, and four full-
9 sized practice fields; (3) a 100,000 square foot outpatient medical center; (4) 2,958,000 square
10 feet of undetermined commercial and office uses, including 1,490,000 square feet of office
11 buildings, 833,000 square feet of retail stores, 162,000 square feet of restaurants, a 60,000
12 square foot live theater capable of accommodating 5,000 patrons, a 60,000 square foot movie
13 theater capable of accommodating 1,200 patrons; and (5) 25,000 parking spaces. In addition to
14 the customary concessions, food service, and retail facilities, the stadium structure would also
15 include 165,000 square feet for team offices, an “NFL Attraction,” a team store, retail stores,
16 restaurants, and banquet facilities. These uses would be connected by plazas, walkways, and
17 2.5 miles of new roadways. Walnut has referred to this project as the Stadium/Entertainment
18 Complex Project, and for simplicity it is hereafter referred to as “Project” or “Stadium Project”
19 even though there are many elements, in addition to the Stadium.

20 3. The project originally proposed for this site was known as the Industry Business
21 Center (IBC), a conceptual project that would have guided the development of nearly 4.7
22 million square feet of retail, industrial, and office uses. The programmatic EIR for the IBC
23 Project was certified on October 28, 2004, and limited approvals were granted for construction
24 of a fire station to support the project and two industrial buildings. However, the proposed fire
25 station has been moved to another location outside the IBC project area, and the plans for the
26 industrial buildings expired without construction ever taking place.

27 4. In April of 2008, Industry East Land LLC filed an application for what it called a
28 revised Plan of Development with Industry. Despite being denominated a revision to the IBC
Project, the changes proposed, adding an NFL stadium complex and removing all industrial

1 uses, were so great as to constitute an entirely new project under CEQA. Even so, Industry
2 unlawfully elected to require only a Supplemental EIR, even though a new, project-specific EIR
3 was required.

4 5. The Project is proposed for a densely-populated region of the San Gabriel Valley
5 along the interchange of State Routes 57 and 60 that already endures daily traffic delays and
6 unhealthful air quality. Because of its size and the inclusion of the NFL stadium, the Project
7 would result in many serious adverse impacts, including a huge amount of new traffic—over
8 62,837 vehicle trips on peak days for an event with 75,000 fans—with the associated air
9 pollution and congestion.

10 6. The Project site is one of the last large tracts of open space in the region,
11 consisting of grassland (including rare purple needlegrass), native tree stands, riparian habitat,
12 and coastal sage scrub. Riparian habitat and Riversidian sage scrub are considered “depleted
13 communities” by the California Department of Fish and Game. The site is home to over 75 bird
14 species and 100 species overall. It also provides hunting grounds for at least six species of
15 special concern and may be an important habitat linkage for migrating birds, based on its
16 location along the Pacific Flyway.

17 7. Residential neighborhoods, a public golf course, and a Little League baseball field
18 surround the proposed Project on three sides. The views of the Walnut and Diamond Bar
19 residents – many of whom reside within 500 feet of the Project site – are dominated by the
20 existing open space. Recreational users of the golf course and ball fields have the same view.
21 Construction of the Project will not only destroy scenic views, an impact not evaluated by
22 Industry, but it will subject these residents and recreational users to nighttime lighting and
23 glare. Additionally, these residents would be significantly impacted by noise from cars and
24 people visiting the Project, and by trash service, deliveries, and clean up activities for the
25 Project that would occur 24 hours per day, seven days per week.

26 8. From the beginning of the process, the Industry City Council and Mayor were
27 intent on approving the Project, resulting in a process where public hearings were held in
28

1 manner that showed the lack of interest of the decisionmakers, who asked not a single question
2 about this complex Project.

3 9. Further, despite repeated Public Records Act requests for critical documents,
4 Industry repeatedly failed to disclose requested documents in a timely manner.

5 10. The environmental review documents relied upon by Industry for the Project are
6 inadequate in many regards, often understating or even ignoring significant impacts on the
7 environment.

8 11. Documents containing significant new information were not recirculated for
9 public review and comment.

10 12. Industry violated its duty not to approve the Project with significant adverse
11 environmental affects because it ignored feasible alternatives and failed to adopt all feasible
12 mitigation measures.

13 **JURISDICTION**

14 13. This Court has jurisdiction over the writ action under section 1094.5 of the Code
15 of Civil Procedure, and sections 21168 and 21168.5 of the Public Resources Code.

16 14. This Court also has jurisdiction over the writ action under section 1085 of the
17 Code of Civil Procedure.

18 **PARTIES**

19 15. Petitioner City of Walnut (“Walnut”) is a political subdivision of the State of
20 California. Walnut is mainly a residential bedroom community with limited neighborhood
21 serving businesses located approximately a half mile northwest of the Project site. Due to
22 topography and limited roadway access to the community, the Project site will be extremely
23 visible from many of the residential neighborhoods. The City of Walnut is concerned about the
24 traffic, noise, air quality and light and glare impacts that the Project would have on the
25 community and its residents.

26 16. Respondent City of Industry is a political subdivision of the State of California.

27 17. Real Party in Interest Majestic Realty Co. is a California Corporation.
28

1 24. Industry has no business taxes and is funded primarily through retail sales taxes
2 from shopping centers located within its limits. The headquarters for numerous companies are
3 located in Industry.

4 25. The Project site is located on the eastern boundary of Industry along the north
5 side of State Routes 60 and 57, south of Valley Boulevard. The site consists of 592 acres, a
6 245-acre parcel on the east side of Grand Avenue and a 347-acre parcel on the west side of
7 Grand Avenue. Diamond Bar borders the eastern and western property lines, the City of
8 Pomona lies at the far northeastern tip of the Project site, and Walnut is only a half mile to the
9 northwest. From the Project site, it is 8.3 miles to Industry City Hall, but only one mile to
10 Walnut City Hall and Diamond Bar City Hall. Moreover, there appear to be no Industry
11 residents that live close to the Project site, while tens of thousands of Walnut and Diamond Bar
12 residents live adjacent and in close proximity to the site.

13 26. The site has historically been leased for cattle grazing, and a portion of the site is
14 still being grazed. Between 1954 and 1968, the Valley Land Development Company operated a
15 landfill on approximately 11.2 acres in the southeastern portion of the Project site east of Grand
16 Avenue.

17 27. There are no structures located on the Project site, and it is currently one of the
18 last remaining open space areas in the vicinity. The site is within the low rolling eastern Puente
19 Hills, an east–west-trending range of hills that separates the Los Angeles Basin to the south
20 from the San Gabriel Valley to the north.

21 28. In 1978, Industry established hillside areas and the land below those hills as a
22 “buffer preserve” area between the Industry and neighboring residential communities in
23 Diamond Bar.

24 29. Diamond Bar Creek, a perennial stream, is located on the southern boundary of
25 the Project site. Diamond Bar Creek flows into San Jose Creek, which empties into the San
26 Gabriel River. The San Gabriel River is an impaired water body for high coliform count,
27 bacteria, nutrients, trash, lead, and pH. A small tributary to Diamond Bar Creek is also located
28 on the Project site, as is a small tributary to San Jose Creek. This unnamed, unchannelized

1 creek runs for approximately 300 feet along the northeastern tip of the property. The Project
2 site contains 1.86 acres of Federal jurisdiction waters and wetlands and 11.7 acres of State
3 jurisdiction waters and wetlands.

4 30. Several native vegetation communities are located in the Project site: Riversidean
5 Coastal Sage Scrub, Purple Needlegrass Grasslands, and Mulefat Scrub. The majority of the
6 site is made up of annual grasslands, although black walnut and other trees are also scattered
7 around the site.

8 31. Over 95 species of birds are expected to use the Project site regularly, including
9 several species of raptors: Cooper's hawk (species of special concern); Northern Harrier
10 (species of special concern); white-tailed kite; sharp-shinned hawk and great horned owl. Other
11 bird species of special concern that frequent the Project site include the California Horned Lark,
12 Loggerhead Shrike, and Ashy Rufous-crowned Sparrow. These species, as well as the Northern
13 Harrier, are extremely rare in southern California, and their status has significantly worsened in
14 the past five years due to the extensive development of grasslands and scrublands. The
15 majority of the Project site is raptor foraging habitat and provides a connection between the
16 remaining few large open spaces areas nearby such as the Puente Hills, San Jose Hills, and
17 Whittier Narrows.

18 32. The majority of industrial uses planned for the Grand Crossing development
19 adjacent to the northern boundary of the Project site have been developed since certification of
20 the EIR for the 2004 IBC plan of development. Bordering the far north-eastern corner of the
21 site is the Plantation development (north of and adjacent to Ferrero parkway), an industrial
22 park. The Diamond Bar YMCA facility and ball fields are located to the north east. There are
23 also institutional land uses in the general vicinity north of the Project site, including the
24 Lanterman Developmental Center, California State Polytechnic University at Pomona, and
25 Mount San Antonio College. The Metrolink Industry Line, serviced by the Metro Express Blue
26 Line, runs approximately one mile northwest of the Project site, and runs from downtown Los
27 Angeles to Riverside. Diamond Bar residential communities are located to the east and west.

1 The public Diamond Bar golf course is located south of the Project site, to the south of State
2 Route 60.

3 33. Walnut, located between the steep San Jose Hills mountain range and the gently-
4 rolling Puente Hills, offers its residents a pleasant blend of semi-rural country living and urban
5 conveniences. Walnut hosts a top-rated state school system and Mount San Antonio College.
6 Walnut boasts one of the lowest crime rates in the San Gabriel Valley.

7 34. The proposed stadium/entertainment complex abuts and will directly impact
8 residents of the City of Walnut who belong to ethnic minority groups, many of whom do not
9 speak English. In 2000, the population of the Walnut was 29.5 percent Chinese and 6.4 percent
10 Korean, over 60 percent of whom did not speak English. Of voting-age residents, 65.3 percent
11 of the Chinese and 62.3 percent of the Korean residents were limited-English proficient.
12 Walnut also has significant Spanish-speaking and Tagalog-speaking populations that will be
13 impacted by the stadium complex.

14 35. Although Industry knew that the stadium/entertainment complex would impact
15 large Chinese, Korean, Tagalog and Spanish-speaking populations in Walnut, it failed to
16 provide notices for the Project in any language other than English.

17 36. Walnut is primarily a residential community with a few scattered industrial and
18 commercial areas.

19 37. The interchange of State Routes 57 and 60 separates the Project site from the 170-
20 acre public Diamond Bar Golf Course to the southeast.

21 38. Pomona lies to the northeast side of the Project site, and is a community of
22 residential, commercial, and industrial uses. Pomona land uses nearest the Project site are
23 industrial, institutional, and agricultural in nature, and include the Lanterman Development
24 Center, the Titech titanium casting facility and Cal Poly Pomona's 130-acre Spadra Farm.

25 39. The study area lies within a mosaic of industrial and residential development.
26 Natural open space lies roughly two miles to the northwest in the San Jose Hills and similarly to
27 the southeast in the Puente Hills. The topography of the Project site is hilly and variable with
28 elevation ranging from approximately 570 feet to approximately 912 feet. Natural slope

1 gradients typically range from 2:1 to 4:1 (horizontal to vertical), but in places are as steep as
2 1.5:1.

3 40. The Project site lies atop the active Puente Hills thrust fault, which is capable of
4 producing earthquakes measuring in excess of 7.0 on the Richter scale.

5 41. State Routes 60 and 57 merge for two miles along the Project site's southern
6 border, resulting in severe capacity constraints and congestion. The route is widely used by
7 commuters and trucks transporting goods between Los Angeles, Orange, Riverside, and San
8 Bernardino Counties, and has led to weaving conditions between Grand Avenue and the actual
9 interchange of these freeways. Although this interchange is listed with Metro's 2001 Long
10 Range Transportation Plan for improvements that will improve safety, traffic congestion, and
11 air quality, funding has not been secured.

12 42. Continued commercial and industrial growth in Industry will further impact
13 Grand Avenue and State Routes 60 and 57.

14 43. The confluence of State Routes 60 and 57 has been identified as a potential
15 terrorist threat.

16 44. Industry is located in the South Coast Air Basin ("SCAB"), a 6,600 square-mile
17 coastal plain bounded by the Pacific Ocean to the west and the San Gabriel, San Bernardino,
18 and San Jacinto mountains to the north and east. The South Coast Air Quality Management
19 District ("SCAQMD") and the Southern California Association of Governments ("SCAG") are
20 responsible for formulating and implementing the Air Quality Management Plan ("AQMP") for
21 the SCAB, a comprehensive plan that includes control strategies for stationary and area sources,
22 as well as for on-road and off-road mobile sources.

23 45. The Project site is located in an extreme nonattainment area for ozone, a serious
24 nonattainment area for PM10 and a nonattainment area for PM2.5.

25 46. Industry's General Plan primarily emphasizes industrial uses, but the industrial
26 land use designation also allows for commercial, professional, and service uses. The General
27 Plan does not have a commercial designation or specific locations for commercial development,
28 but does allow for areas to be zoned for commercial use. Industry adopted a Planned

1 Development Overlay (“P-D Overlay zone”) to be applied to development of large parcels with
2 diversified development plans. With the application of a P-D Overlay zone, commercial uses
3 would be developed using the existing commercial development standards, and industrial uses
4 would adhere to industrial standards. The Industry General Plan does not establish any building
5 intensity or density limits, as required by state law.

6 **The Proposed Project**

7 47. While the revised Project eliminates 508,000 square feet of industrial uses and
8 1,161,000 square feet of commercial and office uses, these reductions in Project size are offset
9 by the addition of the NFL Stadium and parking lots. Moreover, the Stadium will have many
10 new impacts that the IBC Project would not have had, including day and nighttime noise,
11 extensive lighting, and traffic on weekends and at times completely different than those that
12 would occur with the suburban industrial/business project envisioned under the 2004 plan of
13 development.

14 48. The Project is proposed to be completed in two phases. Phase One, which is
15 proposed to be completed by 2011, would consist of mass grading and the construction of the
16 NFL Stadium, team training facility, four full-sized practice fields, 400,000 square feet of retail,
17 50,000 square feet of restaurants, medical facilities, roadways, and parking lots. Phase Two is
18 proposed to be completed approximately four years after Phase One and would consist of the
19 balance of the Project’s retail, commercial, office, and theater construction.

20 49. The stadium would hold 75,000, and potentially 80,000 spectators, and contain
21 general admission seats, club seats, and suites with the possibility of expansion for the Super
22 Bowl.

23 50. The stadium is projected to host 30 sell-out events, of 75,000 patrons, and 15
24 events up to 25,000 patrons, per year. Further, the conditions of approval authorizes up to
25 80,000 at Super Bowl events, even though the impacts of this additional 5,000 people was
26 dismissed in the SEIR as “speculative”.

27 51. The stadium has been designed to accommodate not one, but two NFL teams, and
28 would host approximately twelve NFL games each August-January season. Most games would
occur on Sunday afternoons or evenings, but two weeknight evening games would likely occur

1 each season. On occasion, the stadium could host both the Super Bowl and Saturday afternoon
2 games. Afternoon games would begin between noon and 2:00 p.m., evening games between
3 5:00 p.m. and 6:00 p.m. NFL games last an average of 3.5 hours. In order to accommodate the
4 influx of 75,000, or even 80,000 spectators and tailgate activities, parking lots would open four
5 hours prior to game time.

6 52. Other purported uses for the stadium include large concerts, soccer games,
7 monster truck rallies, motocross events, festivals, expositions, conferences, weddings, corporate
8 events, swap meets, and holiday celebrations.

9 53. Fireworks would be permitted for all stadium events.

10 54. Anticipated retail uses would operate from 8:00 a.m. to 1:00 a.m. Office uses are
11 expected to operate between 6:00 a.m. and 6:00 p.m. The live theater, movie theater, and
12 restaurants would operate from 8:00 a.m. to between 11:00 p.m. and 2:00 a.m. Trash collection
13 and cleaning would take place after patrons have departed, potentially long into the night.

14 55. Although the concessions, food service, and retail facilities of the stadium
15 structure would only operate on event days, the structure's associated team offices, NFL
16 Attraction, team store, retail stores, restaurants, and banquet facilities would operate daily, year
17 round.

18 56. Many of the Project's structures would be massive and rise high above the
19 existing hillside. Modern NFL stadiums average over 1,500,000 square feet in total size. The
20 proposed stadium's west tower would rise five stories in height. Support buildings for retail,
21 commercial, and office uses could be as large as 250,000-414,000 square feet each and would
22 range from two to four stories in height. The parking structures would total 1,390,000 square
23 feet and range between two and four stories in height. Parking lots would cover 215 acres.

24 57. The Project would install several bright, electronic advertising signs in and
25 around the stadium on a site that has no existing light sources. The two major Project signs,
26 oriented to the freeway, would consist of two-sided, 120-foot tall light emitting diodes (LED)
27 marquees with panels that are 24 feet tall and 48 feet wide. Four other marquee signs are
28 proposed, ranging from 40 to 60 feet in height. The stadium itself would be adorned by three
mounted LED panels, the largest of which would be 24 feet tall and 160 feet wide. Signage

1 with the name the stadium would be 90 feet high and 280 feet wide. Additional signage would
2 be placed to guide patrons to and around the Project as well as to advertise the Project's other
3 commercial, office, entertainment, and retail components. This signage would include LED or
4 other electronic or animated signage, illuminated building identification, tenant identification,
5 storefront signs, directional signs, advertising, sponsorship signage, and other graphic elements
6 ranging from banners to interactive electronic displays. Parking lot lighting would be provided
7 by 30 and 50-foot tall street lights. Roadway lighting would employ 30-foot high streetlamps.
8 Lighting would also be required for berms, pedestrian corridors, and building interiors.

9 58. Primary vehicular access into the Project would occur via Grand Avenue and
10 Baker Parkway, an extension of Grand Crossing Parkway.

11 59. The 2.5 miles of proposed roadways would connect to existing streets in the
12 Grand Crossing development as well as to Grand Avenue, in two places. Each would be
13 developed as four-lane, undivided highways containing center turn lanes. Two new all-way
14 signalized intersections would be constructed along Grand Avenue north of State Routes 57 and
15 60, one at each new street. The intersection of Grand Avenue and Baker Parkway would be
16 upgraded to a 4-way signalized intersection. Additionally, Grand Crossing Parkway would be
17 extended into the Project to Old Brea Canyon Road, which it would replace. This extension
18 would provide access to properties in the Diamond Bar.

19 60. The Project also proposed to utilize shuttles that would transport patrons between
20 the stadium and its parking lots, as well as between the stadium and the nearest Metrolink
21 station, which would be an approximate 2.5 mile trip on the roads in each direction. However,
22 Metrolink provided comments on the Project indicating that train service on Sundays and
23 evenings during the week would not be available.

24 61. Potable water would be provided to the Project site by the Walnut Valley Water
25 District, which it receives its supply from Three Valleys Municipal Water District, which in
26 turn receives water from the Metropolitan Water District. The Metropolitan Water District is
27 currently in a "Condition 2 Water Supply Alert" due to the combination of several years of
28 below-average rainfall, court-ordered cutbacks for wildlife, and population growth.

1 62. The Project anticipates using reclaimed water, when possible, for landscaping and
2 irrigation purposes.

3 63. Because the Project does not include waste water treatment facilities, the Los
4 Angeles County Sanitation District would receive all wastewater generated by the Project.

5 64. Stormwater generated by the Project would require a new stormwater collection
6 system that would eventually discharge into San Jose Creek and then the San Gabriel River, an
7 impaired water body. Stormwater would also be captured and conveyed by Diamond Bar
8 Creek, which also flows eventually into the impaired San Gabriel River.

9 65. The construction of the proposed massive structures on hilly terrain would require
10 17.63 million cubic yards of grading, and the removal of vegetation from 468 of the Project
11 site's 592 acres. Construction of Phases One and Two are expected to take 30 months, and 21
12 months, respectively.

13 66. Although the entirety of Industry is zoned for industrial uses, adjacent portions of
14 Walnut, Diamond Bar, and Pomona are zoned for residential and agricultural use.

15 **The 2004 IBC Project**

16 67. The Notice of Preparation for the original IBC Project was posted on December
17 12, 2003 and contemplated a conceptual plan for the development of the 592 acres. The project
18 was proposed by the Industry Urban Development agency, the owner of the land. The concept
19 contained 2,787,000 square feet of offices, 1,268,000 square feet of retail, and 633,000 square
20 feet of industrial and research and development uses. The IBC Project would also have
21 required construction of a water tank, the construction of a fire station, and restoration of
22 Diamond Bar Creek.

23 68. During the scoping process, the cities of Pomona and Diamond Bar, the Los
24 Angeles County Sheriff, Walnut Valley Unified School District, the California Department of
25 Transportation, the Los Angeles County of Public Works, and others submitted comments to
26 Industry detailing their concerns about the IBC Project's potentially significant impacts on air
27 quality, traffic, loss of open space buffers for residential areas, noise, school enrollments, public
28 safety, wetland habitat, and solid waste disposal.

 69. Industry released the draft EIR on June 2, 2004.

1 70. Walnut, Diamond Bar, and Pomona submitted comments on the draft EIR, again
2 raising their concerns about traffic impacts, mitigation of traffic impacts, changes to scenic
3 vistas, the EIR's vague Project description, and the draft EIR's failure to respond to their
4 comments on the NOP.

5 71. The Final EIR for the IBC project was certified on October 28, 2004, but no
6 project was approved.

7 72. Since certification of the original IBC EIR, no construction has occurred on the
8 Project site to implement the IBC Project's office, retail, or industrial uses.

9 73. On July 10, 2006, Industry received an application from the Los Angeles County
10 Fire Department for a permit to construct a fire station on 4 acres at the intersection of Baker
11 and Grand Avenues. On July 13, 2006, Industry completed an Initial Study and decided to
12 prepare a Mitigated Negative Declaration on the Fire Station. On September 19, 2006, Industry
13 issued a Notice of Determination regarding the fire station and approved a Development Plan
14 and Conditional Use Permit for it. All plans for construction of the fire station on the IBC site
15 designated in the 2004 EIR were shelved on February 6, 2007.

16 74. In October of 2007, Industry East Business Center LLC submitted an application
17 for the development of two buildings for industrial use totaling 125,000 square feet at the
18 intersection of Baker and Grand Avenues, originally the site of the fire station. The application
19 proposed to move the fire station to the intersection of Garcia and Grand Avenues, expanding it
20 to cover 5.5 acres.

21 75. In December 2007, Industry prepared an addendum to the 2004 IBC EIR to
22 analyze the potential effects of two industrial buildings and the fire station.

23 76. On January 24, 2008, Industry approved Development Plan No. 08-03 for the
24 construction of the two industrial buildings at the intersection of Baker and Grand Avenues.
25 Although limited grading for the industrial buildings has taken place, construction has not yet
26 commenced, and approvals have since expired.

26 **The 2008 Stadium Project**

27 77. In April of 2008, Industry East Business Center LLC filed an application for what
28 it called a "Revised Plan of Development" with Industry. This application provided for

1 building the 75,000 person capacity NFL stadium and the removal of all industrial uses from
2 the site. The new application contained far more detail than the merely conceptual 2004 IBC
3 Plan of Development that was proposed by the Industry Development Agency..

4 78. After the April 2008 initial study concluded that the Stadium Project may have
5 significant impacts on the environment, and an environmental analysis was required, Industry
6 decided to prepare a Supplemental Environmental Impact Report (“SEIR”), rather than a
7 project specific EIR.

8 79. On April 7, 2008, Industry issued a Notice of Preparation (“NOP”) of a
9 Supplemental EIR for the Stadium Project, rather than prepare a new EIR for the new Project.

10 80. Prior to the close of the comment period for the Notice of Preparation on May 19,
11 2008 Diamond Bar, the County of Los Angeles, South Coast Air Quality Management District
12 and others submitted letters detailing their concerns about the Stadium Project. These concerns
13 included, but were not limited to, the use of a supplemental EIR for a new project, traffic
14 impacts, fair share mitigation of traffic impacts, air quality impacts, aesthetic impacts, and solid
15 waste impacts.

16 81. Walnut specifically requested an opportunity to consult with Industry before
17 release of the SEIR.

18 82. On September 3, 2008, the Draft SEIR (“DSEIR”) on what Industry calls the
19 Revised IBC Project was released and circulated for a 45-day comment period, until October
20 17, 2008.

21 83. The DSEIR was 826 pages long, not including the 7,675 pages of appendices, and
22 was thus even longer than the first DEIR. It was made available only in English.

23 84. The DSEIR added five new and specific project objectives to replace three
24 objectives for the IBC project, thus expanding the list of project objectives to nine.

25 85. On September 11, 2008, Petitioner Walnut requested an extension of the public
26 comment period because of the great public interest in the Project, the dramatic differences
27 between the IBC and the Stadium Projects, and the length and complexity of the SDEIR.
28

1 Despite other requests for extensions of the comment period from the Diamond Bar and the
2 County of Los Angeles, Industry refused to extend the comment period.

3 86. Prior to the close of the official comment period on October 17, 2008, the
4 neighboring cities of Diamond Bar, Walnut, Chino Hills, West Covina and Pomona submitted
5 comments on the DSEIR, expressing concern regarding traffic, air quality, and aesthetic
6 impacts the Stadium Project would generate, as well as regarding the use of a supplemental
7 EIR. Commenting agencies included the County of Los Angeles, South Coast Air Quality
8 Management District, Walnut Valley Water District, and the California Department of
9 Transportation, conveyed apprehension about the Stadium Project's impacts on waste disposal,
10 public health, water supply, and traffic.

11 87. The Notice of Availability of Industry's Responses to Comments and of the Final
12 SEIR ("FSEIR") was posted on January 12, 2009. Many of the responses to comments were
13 cursory and nonresponsive.

14 88. Despite the fact that the Industry Planning Commission had yet to consider the
15 Stadium Project, the City Council certified the FSEIR by a 5-0 vote (Resolution 2263); adopted
16 findings of fact; adopted a Statement of Overriding Considerations, and established a mitigation
17 monitoring program on January 22, 2009, even though they were not considering the Project,
18 and could not do so until after the Planning Commission considered the Project

19 89. Three weeks later, on February 12, 2009, the City Planning Commission voted 4-
20 0 to recommended certification of the FSEIR.

21 90. On February 17, 2009, Industry posted a Notice of Hearing for its February 26
22 City Council meeting. This notice, like all other notices related to the Project, was available in
23 English-only.

24 91. Two days prior to the City Council hearing to discuss the Stadium Project,
25 Industry released a revision to the FSEIR. This Revised Final SEIR was 858 pages in length,
26 excluding over 900 pages in appendices, and included Industry's responses to comments.

27 92. On February 26, 2009, the City Council certified the Revised FSEIR by a 5-0 vote
28 (Resolution 2264), adopted findings of fact, adopted a statement of overriding considerations,

1 and established a mitigation monitoring program. Additionally, the City Council approved
2 Resolution 2265, granting the Planned Development Overlay zoning pursuant to Chapter 17.24
3 of Title 17 of the Industry Municipal Code. The Notice of Determination was also filed on the
4 same date.

5 93. The FEIR and the Revised FSEIR underestimate many impacts and refuse to
6 analyze or provide feasible mitigation related to traffic, noise, air quality, light and glare,
7 biological and geotechnical resources.

8 94. Nonetheless, the Revised FSEIR acknowledges 12 significant and unavoidable
9 environmental impacts that residents of Walnut must live with forever if the Project proceeds as
10 proposed.

11 **The Bond Measure**

12 95. On October 23, 2008, the City Council passed an ordinance calling for a special
13 election on January 20, 2009. The ordinance would allow City to sell up to \$500 million in
14 bonds for the provision of infrastructure to support the Stadium Project.

15 96. The infrastructure bond measure passed with a vote of 60 to 1 on January 20,
16 2009.

17 **The Diamond Bar Creek Tree Removal**

18 97. On August 16, 2006, Industry submitted a Streambed Alteration Agreement
19 application to the California Department of Fish and Game for the implementation of Diamond
20 Bar Creek restoration plan, as contemplated in the 2004 IBC EIR. The Streambed Alteration
21 Agreement was approved on August 29, 2008.

22 98. The Streambed Alteration Agreement prohibits the removal of vegetation from
23 the streambed or bank between January 15 and September 15 without the presence of a
24 qualified biologist or approval by the Department of Fish and Game.

25 99. On August 11, 2006, Industry submitted an application to the United States Army
26 Corps of Engineers to obtain a permit under Section 404 of the Clean Water Act for the
27 implementation of the Diamond Bar Creek restoration plan, as contemplated in the 2004 IBC
28 EIR. The permit requires approval of a Habitat Mitigation and Monitoring Plan by the Army

1 Corps before work in waters of the United States may begin. Although there is no evidence that
2 a Plan has been submitted, work has been done in the Diamond Bar Creek and habitat has been
3 removed.

4 **Public Records Act Requests**

5 100. On January 14, 2009, Chatten-Brown & Carstens submitted a letter to the
6 Industry City Clerk requesting “any documents that would constitute a project approval within
7 the meaning of Public Resources Code Section 21167 based upon the certified 2004 IBC EIR”
8 under the Public Records Act. The letter also requested “any documents that the City of
9 Industry relied upon to satisfy its obligations under the California Environmental Quality Act
10 related to the placement of the infrastructure bond measure on the January 20 ballot pursuant to
11 Ordinance 747 of October 23, 2008.”

12 101. On January 15, 2009, Chatten-Brown & Carstens submitted another letter to the
13 City Clerk, also pursuant to the Public Records Act, asking for copies of documents that
14 followed the certification of the 2004 IBC EIR.

15 102. The City Clerk responded to Chatten-Brown & Carstens on January 26, 2009 with
16 a request for further clarification and an admonition: “It is not the role of my department under
17 the Public Records Act to interpret the meaning of such statutes, nor does the Act require me to
18 perform research for a member of the public.”

19 103. Although they believe the requests were clear, Chatten-Brown & Carstens
20 attempted to further clarify its request on January 29, 2009, asking for: “documents that provide
21 evidence of the approval of the project described in the 2004 IBC EIR, or any elements of that
22 project. If any subsequent approvals were granted to implement any portions of the IBC project
23 described in the 2004 EIR, we would like to know. For example, if Industry (which would
24 include the Industry Urban Development Agency) issued permits or other approvals to build
25 any of the structures described in the 2004 EIR, we wish to obtain copies of those permits or
26 other approvals. If Industry did not approve any projects within the scope of the 2004 IBC EIR
27 subsequent to the EIR certification, there would be no documents responsive to this request. If
28 there are no responsive documents, we would also like to know this for a fact.”

1 104. A box of documents responsive to the original request were received on February
2 9, 2009, nearly four weeks after the original Public Records Act requests and 18 days after the
3 City Council's initial certification of the EIR.

4 105. No documents related to tree removal in Diamond Bar Creek pursuant to the 2004
5 IBC Project were received until February 25, 2009, the day before the Project approval. These
6 documents were only released in response to Chatten-Brown & Carstens' specific request on
7 February 20, 2009.

8 **Tree Removal Activities in Diamond Bar Creek**

9 106. On February 18, 2009, counsel for Walnut received evidence that mature willow
10 trees were being removed from the banks and bed of Diamond Bar Creek, within the boundaries
11 of the Project site. No biologist was present, nor was there evidence of prior approval by the
12 California Department of Fish and Game.

13 107. Later that afternoon, the City Attorney for Industry confirmed that the tree
14 removal was part of a City-authorized creek restoration.

15 108. On February 20, 2009, the city attorney for Industry confirmed that the creek
16 restoration was the same restoration contemplated in the mitigation and monitoring program
17 approved in the 2004 IBC EIR and asserted that all appropriate permits had been issued.

18 **Impacts of the Stadium Project**

19 **a. Air Quality Impacts**

20 109. Being located in a nonattainment area for PM 2.5, serious nonattainment area for
21 PM 10, and an extreme nonattainment area for ozone, the communities around the Project site
22 already endure unhealthful air quality. The SEIR projects that the Stadium Project will attract
23 many new vehicle trips on non-event days and up to 62,837 vehicle trips on event days. When
24 combined with the fugitive dust that will be emitted during the grading and construction phases,
25 the Project will adversely affect air quality in the eastern San Gabriel Valley.

26 **b. Traffic Impacts**

27 110. The eastern San Gabriel Valley, and especially the interchange of State Routes 60
28 and 57, already faces some of the worst vehicular traffic in Southern California. The addition

1 of a 75,000-seat NFL stadium, potentially expandable to 80,000 for a Super Bowl, and its
2 associated entertainment and support complex will undoubtedly add to freeway congestion and
3 increase unsafe use of surface streets and weaving conditions.

4 **c. Noise Impacts**

5 111. The DSEIR admits that the Stadium Project would have significant noise impacts
6 on Walnut and Diamond Bar residents that it claims would be unavoidable due to tailgating,
7 stadium speakers, crowds cheering, fireworks, and parking lot clean up.

8 **d. Biological Resources**

9 112. Despite the fact that the Stadium Project will require grading of over 28 million
10 cubic yards of earth over nearly the entire 592-acre parcel, the SEIR contains no discussion of
11 impacts to biological resources.

12 **e. Public Services and Safety**

13 113. The SEIR acknowledges significant and unavoidable impacts to public safety
14 because Industry cannot guarantee cooperation with the Los Angeles County Fire Department
15 to operate a fire station near the Stadium Project. The document further admits that that
16 response times for police and fire services would increase. The Los Angeles County Sheriff's
17 station that serves the City of Industry and the Project is eight miles from the Project site.
18 Response times already exceed ten minutes.

19 **f. Geotechnical Impacts**

20 114. The SEIR does not properly account for the Stadium Project's siting atop the
21 Puente Hills Blind Thrust fault system and the consequent hazards to public safety.

22 **g. Water Supply Impacts**

23 115. The Stadium Project and its five, full-sized natural grass football fields will
24 require millions of gallons of water in annual maintenance in addition to hundreds of thousands
25 of gallons of water per event in drought-saddled Southern California.
26
27
28

1 **h. Climate Change Impacts**

2 116. The SEIR does not include a proper baseline for greenhouse gas (GHG)
3 emissions, underestimates emissions despite admitting that emissions are cumulatively
4 significant, and fails to include maximum feasible mitigation for climate change impacts.

5 **i. Aesthetic Resources**

6 117. The Stadium Project will require the grading of 17.63 million cubic yards of
7 earth, flattening of the naturally rolling topography, and striking reductions in site elevation.
8 The SEIR admits that views will be irreversibly changed and that Project elevations will make
9 it difficult, if not impossible, to screen views for the many nearby residents.

10 118. Additionally, the Project will add a large source of nighttime glare by virtue of its
11 electronic billboards, lighted signage, stadium lights, and parking and streetlights.

12 **j. Solid Waste Disposal Impacts**

13 119. The DSEIR's methodology underestimates solid waste generation. Despite
14 conceding that local landfill capacities are limited and replacement facilities are not yet
15 completed, the DSEIR improperly declares that solid waste impacts are neither directly nor
16 cumulatively significant.

17 **k. Water Quality Impacts**

18 120. The stadium and entertainment complex and its 25,000-space parking lot drain
19 into several on-site creeks and wetlands that then empty into the San Gabriel River, an impaired
20 water body.

21 **l. Parking Impacts**

22 The SEIR does not analyze the effects of on-street parking, even though the Project
23 proposes that a 75,000-seat NFL stadium, potentially expandable to 80,000, several
24 entertainment attractions, office complexes, commercial complexes, and retail centers share
25 25,000 parking spaces.

26 **m. Land Use Impacts**

27 121. The roadway improvements necessary to support the Project's traffic will require
28 the condemnation of land currently being used for non-road purposes.

1 **n. Growth-Inducing Impacts**

2 122. The Stadium Project and its associated entertainment, commercial, retail, and
3 office complex will generate thousands of low-wage jobs for the region, necessitating the
4 provision of adequate housing for Project employees.

5 **o. Cumulative Impacts**

6 123. In addition to the Stadium Project, also permitted and ready for construction in
7 Industry is a 500 megawatt natural gas-fired power plant. The cumulative impacts of these
8 projects were not discussed.

9 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

10 **AND INADEQUATE REMEDIES AT LAW**

11 124. Petitioner objected to the Project in the administrative process, and fully
12 exhausted its administrative remedies. Petitioner appeared at various public hearings raising
13 the issues set forth herein.

14 125. Petitioner has no plain, speedy or adequate remedy in the course of ordinary law
15 unless this Court grants the requested writs of mandate and injunctive relief. In the absence of
16 such remedies, Respondent's approval of the Planned Development Overlay would form the
17 basis for a development project which would proceed in violation of state law.

18 126. Petitioner has complied with Public Resources Code section 21167.7 by filing a
19 copy of this petition with the California Attorney General. A copy of that notice is attached as
20 Exhibit A.

21 127. Petitioner has complied with Public Resources Code section 21167.5 by
22 providing Industry with notice of its intention to commence the action. A copy of that notice is
23 attached as Exhibit B.

24 128. Petitioner elects to prepare the administrative record. A copy of that election is
25 attached as Exhibit C.

1 accepted standards of design for National Football League stadiums, thus enabling the Project
2 applicant to acquire and maintain an NFL franchise in the greater Los Angeles area,” “provide a
3 suitable venue capable of hosting a wide variety of regional entertainment events, such as
4 concerts and other sporting events,” “develop facilities adjacent to the stadium that support and
5 complement its use, including an NFL attraction, NFL team training complex, and associated
6 retail and entertainment uses,” and “provide an iconic regional destination retail, entertainment,
7 and commercial project.” The objectives of the new Project are fundamentally different than
8 those of the 2004 IBC Project. At no point do they overlap with or even mention the provision
9 of uses complementary to the existing industrial and residential uses nearby. The proponents
10 contemplate an entirely new project.

11 134. Put another way, the 2008 Project affects 512 acres of the 592-acre site
12 contemplated in the 2004 IBC Plan of Development, 86 percent of the total site. The new plan
13 adds an NFL stadium, four practice fields, a medical facility, restaurants, shopping centers, a
14 live theater, and a movie theater, and removes 600,000 square feet of industrial uses. Thus,
15 instead of a business center, the Project has become a stadium and entertainment complex.

16 135. Since the environmental impacts of a business center and a stadium and
17 entertainment complex will be vastly different, the 2008 Revised IBC Plan of Development is
18 clearly a new project within the meaning of CEQA. As such, Industry violated its duty to
19 prepare a new and complete environmental impact report when it instead commissioned a
20 supplement to the 2004 IBC EIR.

21 **Failure to Prepare a Subsequent EIR, Rather than a Supplemental EIR, if a New EIR**
22 **Was Not Required**

23 136. When a project has undergone dramatic changes but remains essentially the same
24 project, CEQA permits the lead agency to prepare a subsequent EIR. (CEQA Guidelines §
25 15162.)

26 137. More specifically, a subsequent EIR is required when substantial changes in the
27 project will require “major revisions of the previous EIR” due to the involvement of new
28

1 significant environmental effects or a substantial increase in the severity of previously
2 identified significant effects. (CEQA Guidelines § 15162(a)(1).)

3 138. A lead agency may only prepare a supplement to an EIR rather than a subsequent
4 EIR when “only minor additions or changes would be necessary to make the previous EIR
5 adequately apply to the project.” (CEQA Guidelines § 15163.)

6 139. In contrast to a supplemental EIR, which “only need contain the information
7 necessary to make the previous EIR adequate for the project as revised,” a subsequent EIR is
8 not so limited and is subject to stricter disclosure requirements. (CEQA Guidelines §§ 15162,
9 15163 (b).) For example, a subsequent EIR would be required to use the existing physical
10 condition of the Project site as the baseline from which all analyses are performed. (CEQA
11 Guidelines § 15125 (e).)

12 140. Even if the project is treated as a modification to the 2004 project, the changes to
13 the Project, new information, and the changes in circumstances were so significant that a
14 subsequent rather than a supplemental EIR was required, even if a new EIR was not required.

15 141. Much more than minor revisions would be required to make the 2004 IBC EIR
16 apply to the Stadium Project, necessitating a subsequent, rather than supplemental EIR to
17 comply with CEQA, even if an entirely new EIR was not required.

18 142. That the 2008 DSEIR ran 826 pages, with 7,675 pages in appendices
19 demonstrates the need for major, rather than minor, revisions to the 2004 IBC EIR to make it
20 apply to the Stadium Project.

21 143. The use of a supplemental, rather than subsequent EIR, resulted in a systematic
22 understatement of environmental impacts that permeated every category of analysis. Due to the
23 use of the 2004 IBC Plan of Development, rather than the existing physical condition of the
24 Project site, most environmental impacts of the Stadium Project, especially those relating to
25 biological resources, water supply, and solid waste disposal, were omitted from the DSEIR
26 entirely.

27 144. Thus, Industry violated CEQA when it elected to prepare a supplemental, rather
28 than a subsequent EIR.

1 **Improper Use of Tiering**

2 145. CEQA allows tiering of EIRs to reduce delay and duplicate analysis. (Public
3 Resources Code § 21093.) Generally, a programmatic EIR is prepared first, followed by
4 project-oriented supplemental EIRs that implement specific portions of the already-analyzed
5 program.

6 146. Tiering is only appropriate when a project is “consistent with the program...for
7 which an EIR has been prepared and certified.” (Public Resources Code § 21094 (b).)

8 147. Since construction of an NFL stadium and its associated entertainment complex is
9 not consistent with the development of an industrial business park, the Stadium Project SEIR
10 cannot properly tier off of the IBC Project EIR. The 2004 Plan of Development was
11 completely abandoned in favor of the 2008 Revised Plan of Development that includes the
12 stadium and entertainment complex.

13 148. In tiering the Stadium Project SEIR off of the 2004 IBC EIR, Industry concealed
14 many impacts that the stadium and entertainment complex will have on the environment, which
15 cascaded into its failure to analyze these impacts, seek alternatives to the Project that lessen
16 these impacts, or mitigate these impacts.

17 149. Therefore, Industry’s tiering of the two environmental documents violates CEQA,
18 and a new EIR is required.

19 **Exclusion of Impacts from Initial Study**

20 150. If the initial study indicates any chance that a project will have significant impacts
21 to the environment, these impacts must be analyzed in the EIR. Only impacts dismissed in the
22 Initial Study as “insignificant and unlikely to occur” may be omitted from the EIR. (CEQA
23 Guidelines § 15143.)

24 151. The Initial Study for the 2008 Stadium Project SEIR improperly excluded certain
25 potentially significant impacts, with no evidence to support such exclusions. Exclusion of these
26 impacts from the Initial Study led to omission of these impacts from the SEIR impact analysis.

27 152. For example, with regard to aesthetics, the Initial Study determined that the
28 Stadium Project will not “substantially damage scenic resources, including, but not limited to,

1 trees, rock outcroppings, and historic buildings within a scenic highway” based upon the
2 absence of a scenic highway on the Project site, even though scenic resources are explicitly “not
3 limited to” those abutting scenic highways. This limitation on the Initial Study threshold of
4 significance is improper.

5 153. Considering that the Stadium Project will drastically change the topography of
6 592 rolling acres and convert open space grasslands into a stadium and parking lots, the Initial
7 Study cannot rationally conclude that damage to scenic resources is “insignificant and unlikely
8 to occur” within the meaning of CEQA.

9 **Failure to Recirculate FSEIR and Revised FSEIR**

10 154. When a lead agency adds “significant new information” to an EIR after
11 circulation of the draft EIR, but before certification, the agency must recirculate the revised
12 draft EIR for public comment and agency consultation. (Public Resources Code § 21092.1.)
13 This requirement applies equally to an SEIR.

14 155. New information is “significant” if: (1) a significant new environmental impact
15 would result from the project or from a new mitigation measure proposed to be implemented;
16 (2) a substantial increase in the severity of an environmental impact would result unless
17 mitigation measures are adopted that reduce the impact to a level of insignificance; or (3) a
18 feasible project alternative or mitigation measure that considerably differs from others
19 previously analyzed would clearly lessen the environmental impacts of the Project, but the
20 Project’s proponents decline to adopt it. (CEQA Guidelines § 15088.5.)

21 156. The revised draft SEIR must be subjected to the same “critical evaluation that
22 occurs in the draft stage,” so that the public is not denied “an opportunity to test, assess, and
23 evaluate the data and make an informed judgment as to the validity of the conclusions to be
24 drawn therefrom.” *Sutter Sensible Planning, Inc. v. Board of Supervisors* (1981), 122 Cal. App.
25 3d 813, 822.

26 157. Recirculation of the 2009 FSEIR is required in this case for numerous reasons,
27 including: (1) the FSEIR discusses, then rejects, feasible mitigation measures proposed by
28 public comments, such as those for noise, water supply and reduction of the size of the Project;

1 (2) the FSEIR discloses, for the first time, the conceptual lighting plan, conceptual signage plan,
2 and a traffic and parking plan; and (3) the FSEIR includes analyses, prepared in response to
3 comments, that indicate substantial increases in the severity of traffic, noise, and air quality
4 impacts than previously disclosed.

5 158. Although this is all significant new information that must be circulated to allow
6 for public review and comment, an FSEIR was certified by the City Council on January 22,
7 2009, without recirculation of the SEIR.

8 159. In addition, on February 24, 2009, Industry released a Revised FSEIR that
9 contains additional significant new information not contained in the FSEIR certified in January,
10 including: (1) localized air quality modeling, (2) noise impact modeling; (3) over 500 pages of
11 responses to comments, some of which constitutes significant new information, that must be
12 recirculated for public evaluation and comment; and (4) an explanation for the basis for
13 rejection of feasible mitigation measures.

14 160. Industry violated CEQA when it certified the FSEIR on January 22 and the
15 Revised FSEIR on February 26, 2009, without recirculating the new information that was added
16 for public comment.

17 **Failure to Make Responses to Comments Available in a Timely Manner**

18 161. Under CEQA, the lead agency must “provide a written proposed response to a
19 public agency on comments made by that agency” at least ten days prior to certifying an EIR.
20 (Public Resources Code § 21092.5.)

21 162. Industry elected to respond to comments made by Walnut, Diamond Bar, and the
22 South Coast Air Quality Management District after the end of the official comment period in a
23 Revised FSEIR, which was not made available until February 24, 2009. The response to
24 comments portion of the Revised FSEIR was over 500 pages long and could not have been read
25 or analyzed prior to the certification meeting.

26 163. Industry certified this Revised FSEIR two days later, on February 26, 2009.

27 164. By providing less than ten days notice of the response to comments, Industry
28 violated Public Resources Code section 21092.5.

1 **Failure to Accommodate Non-English Speaking Residents**

2 165. The ultimate purpose of CEQA is to involve and inform members of the public in
3 making decisions that will affect the environment. (CEQA Guidelines § 15002 (a)(1).)

4 166. An agency violates CEQA when it fails to provide public notices and
5 environmental documents in the languages spoken by persons who will be affected by a project.
6 *El Pueblo Para el Aire y Agua Limpio v. County of Kings* (Sacramento Superior Court, 1991,
7 No. 366045).

8 167. The Stadium Project’s various public notices and environmental documents were
9 never made available in the languages spoken by many of the persons who will be impacted by
10 the Project, despite the fact that Industry knows that many Walnut residents are non-English
11 speaking, and speak only Chinese, Korean, Spanish or Tagalog. By effectively excluding much
12 of the community that will be directly affected by the Stadium Project, Industry violated the
13 intent of CEQA and Guidelines § 15002 (a)(1).

14 **SECOND CAUSE OF ACTION**

15 **(CEQA VIOLATION)**

16 **INADEQUATE ANALYSIS IN THE 2004 IBC EIR**

17 168. Petitioner incorporates all previous paragraphs as if fully set forth.

18 169. Despite certification of the IBC Project EIR in 2004, the project itself was never
19 approved.

20 170. Under CEQA, challenges to certification of an EIR must be filed within 30 days
21 of project approval and the filing of a Notice of Determination. (Public Resources Code §
22 21167 (c), CEQA Guidelines §15112 (c).)

23 171. A project is not approved until there has been a “decision by a public agency
24 which commits the agency to a definite course of action in regard to a project.” (CEQA
25 Guidelines § 15352 (a).)

26 172. Although Industry filed a Notice of Determination on October 28, 2004, Industry
27 granted no permits or other entitlements for the IBC Project that would constitute approval.

28 173. To date, the only permit granted for the IBC Project was a conditional use permit

1 for construction of a fire station and 125,000 square feet of industrial space on the site's
2 perimeter. As Industry has refrained from committing to a definite course of action with regard
3 to 586.5 acres of the site, the IBC Project was never approved within the meaning of CEQA.

4 174. Although responsible agencies have approved permits for the restoration of
5 Diamond Bar Creek, seemingly contemplated in the 2004 IBC EIR, no City approval for such
6 project has occurred.

7 175. Both the fire station and streambed restoration projects have independent utility.

8 176. Since certification of the 2004 IBC EIR, no construction has occurred; the
9 proposed fire station has been moved; and the permits for the industrial building have expired.

10 177. Because no project was approved in 2004, CEQA's statute of limitations did not
11 begin to run until February 26, 2009, the date that Industry approved the planned development
12 overlay for the Stadium Project.

13 178. Thus, the 2004 EIR is still subject to challenge for its inadequacies.

14 **a. Aesthetic Impacts Were Not Sufficiently Analyzed**

15 179. The 2004 EIR failed to analyze impacts to scenic resources because the Initial
16 Study improperly excluded this threshold of significance based on the absence of a scenic
17 highway. This is improper, given that the SEIR admits that the Project will have irreversible
18 impacts to the site's rolling hills and to 592 acres of open space.

19 180. The EIR concluded that the Project would not have any significant impacts on
20 scenic vistas, despite explicitly noting that "the resulting form would be substantially different
21 from the rolling hills that exist today" and that "the introduction of structures...on the hillsides
22 would ...represent a substantial change in the visual character of the site." (2004 EIR, p. 5-19.)
23 This determination lacks substantial evidence, given the abundance of sensitive receptors in the
24 form of residents who live within 500 feet of the Project site.

25 181. The 2004 EIR further asserts that substantial changes in scenic vistas will not be
26 significant because the resulting Project will better match existing commercial developments in
27 the region. On the contrary, the fact that the undeveloped rolling hills would be transformed
28

1 entirely into urban uses conclusively establishes a significant impact that must be analyzed and
2 mitigated.

3 182. The 2004 EIR misapplied thresholds of significance for aesthetic impact. For
4 example, the EIR reasons that the Project will not contribute to “degradation of the visual
5 character and quality of the Project site” because the development of the site will bring it into
6 conformity with urban and suburban uses. However, the EIR never explains why conformity is
7 preferable to open space and mature trees.

8 183. Moreover, the 2004 EIR inadequately analyzed nighttime lighting and glare.

9 **b. Growth-Inducing Impacts Were Not Sufficiently Analyzed**

10 184. Under section 15126.2(d) of the CEQA Guidelines, an EIR must discuss “the
11 ways in which the proposed project could foster economic or population growth, or the
12 construction of additional housing, either directly or indirectly, in the surrounding
13 environment.”

14 185. Despite the stated IBC Project objective of “providing additional employment” to
15 the region, the 2004 EIR failed to estimate both the number and types of jobs that the IBC
16 Project would create. This resulted in an inability to quantify how many jobs would be filled by
17 existing residents and how many would be filled by new residents. Consequently, the EIR’s
18 assertions that existing housing in Walnut and Diamond Bar will meet the needs of potential
19 employees are not supported by substantial evidence.

20 186. The 2004 EIR did not analyze alternative sites to the project, due to artificial
21 restrictions on appropriate geographical radius, restrictions to sites with certain zoning
22 characteristics, and restriction to contiguous parcels of 600 or more acres.

23 187. The 2004 EIR improperly rejects a reduced build alternative which admittedly
24 would have fewer impacts and meet all of the 2004 IBC Project objectives, based on an
25 unsupported assertion that the reduced build project is not financially feasible.

26 **d. Inadequacy of the Description of Environmental Setting**

27 188. An EIR must include a “description of the physical environmental conditions in
28 the vicinity of the project.” (CEQA Guidelines Section 15125(a).) In that description, “special

1 emphasis should be placed on environmental resources that are rare or unique to that region or
2 that would be affected by the project.” (CEQA Guidelines Section 15125(c).)

3 189. Although the environmental setting section of the 2004 EIR notes that the Project
4 site is devoid of structures, it does not characterize it as grassland, scrub habitat, or even as
5 open space, thus downplaying the potentially significant environmental effects of developing
6 the site.

7 190. The 2004 EIR is also misleading in its characterization of nearby land uses,
8 stating that residential areas in Walnut will be buffered from the project by existing industrial
9 areas. This is untrue. Walnut residents are within a half a mile from the site and due to the
10 topographic character of the hillside community, there will be many neighborhoods with
11 entirely unobstructed views of the stadium and site.

12 **e. Vague Project Description**

13 191. Every EIR must contain a project description that gives a “general description of
14 the project’s technical, economic, and environmental characteristics.” (CEQA Guidelines
15 Section 15124(c)).

16 192. The EIR prepared for the 2004 IBC Project fails to satisfy this requirement in that
17 it never discloses what the end uses of the site are. As a result, it is not possible to determine
18 the potential environmental effects of the project’s development.

19 193. Since industrial and commercial uses are permitted in all Industry zoning, it does
20 not matter that the site is divided into discrete planning areas with different zoning
21 designations. For example, areas zoned “C” would allow development ranging from office
22 complexes to corporate headquarters to regional retail facilities, uses which would attract
23 people at different times and in different densities. (2004 EIR, p. 4-2.) Areas zoned “M” could
24 become either industrial parks or research and development facilities, uses which would have
25 very different impacts on air quality depending upon whether the primary traffic was large
26 diesel trucks or passenger vehicles. (Figure 4.3.1).

27 194. The 2004 EIR also fails to provide building locations, footprints, height
28 restrictions, design restrictions, or even the actual mix of commercial, retail, and industrial uses

1 that will be built, thus depriving the public of any meaningful participation in the review
2 process.

3 195. In all, the vague project description results in the omission of any discussion of
4 these potentially disparate effects from the 2004 EIR in violation of CEQA.

5 196. The 2004 EIR also fails to list all of the permits and approvals required to
6 implement the IBC Project, as required by CEQA Guidelines Section 15124(d)(1)(B). The
7 project description's project approvals section is cursory at best, neglecting to list the specific
8 zoning changes that will be required, variances, design review approvals, and building and use
9 permits.

10 **e. The Alternatives Analysis for the 2004 IBC EIR is Inadequate**

11 197. The methodology used to evaluate off site alternatives unduly restricted the search
12 for appropriate alternative sites. The EIR only looked at a ten mile radius; restricted the search
13 to commercial and industrial zoned property (despite the fact that one of the objectives of the
14 project was to rezone the site); and restricted the search to 600 acre contiguous parcels when a
15 smaller site would clearly have been feasible, since the EIR admitted that a reduced density
16 alternative with 48% less development met all project objectives.

17 198. The Reduced Density Alternative would avoid or substantially lessen impacts on
18 aesthetics, air quality, hazards/ hazardous materials, land use, noise, public services, utilities,
19 recreation, and traffic/ circulation, while meeting the project objectives, and thus should have
20 been selected as a matter of law (See Pub. Res. Code Section 21002). The SEIR contains a
21 single conclusory sentence that the reduced density alternative is "fiscally unfeasible" but
22 provides includes no information to back up this assertion.

23 **THIRD CAUSE OF ACTION**

24 **(CEQA VIOLATION)**

25 **THE SUPPLEMENTAL EIR IS INADEQUATE.**

26 199. Petitioner incorporates all previous paragraphs as if fully set forth.

27 **The Project Description is Both Inadequate and Unstable**

28 200. Every EIR must contain a project description that gives a "general description of

1 the project's technical, economic, and environmental characteristics.” (CEQA Guidelines
2 Section 15124(c)).

3 201. The project description in the SEIR is inadequate because it failed to give a stable
4 description of the square footage of the stadium and the parking structures.

5 202. The DSEIR's analysis of the Stadium Project's impacts is largely based on the
6 unsupported assumption that the Stadium Project is smaller than the 2004 IBC Project.

7 203. However, this is only true because the DSEIR-determined “size” of the Project
8 includes only the amount of commercial, retail, and office square footage. It does not include
9 the stadium itself, which is estimated at 1,000,000 square feet in the air quality analysis, nor
10 does it include the parking structures, which the SEIR predicts will cover 1,390,000 square feet.

11 204. By excluding the stadium and parking structure square footage, the SEIR
12 deceptively claims that the stadium and entertainment complex would be smaller than the 2004
13 IBC Project, while it would actually be larger.

14 205. In responding to comments, the SEIR indicates that the size of the stadium is
15 irrelevant for all purposes not relating to construction-based air quality impacts. This is untrue.
16 The stadium size is relevant for determining the aesthetic impact of the Project, for determining
17 impacts to the hillside out of which the stadium will be dug, and for determining the true size of
18 the Project in comparison with the 2004 IBC Project.

19 206. When the stadium is mentioned in the SEIR, its description is unstable. The air
20 quality analysis of the DSEIR estimated a size of 1,000,000 square feet. However, in the
21 FSEIR, the stadium size was 1,437,540 square feet.

22 207. In the responses to comments in the SEIR, Industry excused the unstable stadium
23 size based upon the “inherent difficulties in calculating stadium size,” (FEIR C10-14) but this is
24 no excuse. The SEIR cannot omit key aspects of the Project.

25 208. The SEIR estimate is likely understated given that recently-constructed NFL
26 stadiums of similar capacity are closer to 2,000,000 square feet in size. This conclusion is
27 supported by presentations given by Majestic Realty Co.
28

1 209. Additionally, though the Project is described as a 75,000 seat stadium, the project
2 that was approved allows up to 80,000 seats for a Super Bowl.

3 210. Visual simulations presented by Majestic to the public show that the Project
4 would include search-lights and fireworks displays that are not included in the SEIR's project
5 description, nor analyzed for impacts. Industry officials were aware of these features, but did
6 nothing to correct the misimpression created by the vague description of the Project included in
7 the SEIR.

8 211. The project description relies on the complete removal of industrial square
9 footage (508,000 square feet) from the 2004 IBC Project to create the illusion that the new
10 Stadium Project is smaller by comparison. However, the project description omits the 125,000
11 square foot industrial buildings that were permitted under the 2004 IBC Project EIR. Since
12 Industry indicates that these buildings will be constructed, the SEIR cannot ignore them and
13 must analyze the impacts of hazardous materials, industrial uses, and large truck traffic that
14 they will generate.

15 212. Consequently, Industry's basis for not mitigating many significant impacts of the
16 Stadium Project, that it is smaller than the 2004 IBC Project and will therefore have no new
17 significant impacts, is not supported by substantial evidence.

18 213. The SEIR fails to describe project approvals that will be required for the Project
19 to proceed, despite an explicit requirement in CEQA to do so. (CEQA Guidelines 15123(a).)
20 This is particularly important in light of the 2004 certification of an EIR without any project
21 approvals; the lack of clarity (and vacillation) on whether the Project is consistent with the
22 zoning code; because of lack of clarity, whether that the signage ordinance will have to be
23 amended or whether a use permit and design review is required.

24 **Failure to Use the Appropriate Baseline**

25 214. The SEIR failed to analyze impacts utilizing the existing environment as the
26 baseline, but instead compared, in most instances, the impacts of the Stadium Project against
27 the impacts of the conceptual industrial and commercial plan analyzed in the 2004 IBC EIR.
28

1 215. An EIR should use a baseline of the physical environmental conditions in the
2 vicinity of the project, as they exist at the time the notice of preparation is published. (CEQA
3 Guidelines § 15125 (a).)

4 216. Where a proposed project is compared with an adopted plan, the analysis shall
5 examine the existing physical conditions at the time the notice of preparation is published.
6 (CEQA Guidelines § 15125 (e).)

7 217. The Notice of Preparation for the Stadium Project was made available on April 7,
8 2008. At that time, the Project site was an undeveloped, vacant hillside.

9 218. Despite both the lack of development on the site at the time of Notice of
10 Preparation publication, the DSEIR's environmental baseline assumes that the 2004 IBC
11 Project was completed.

12 219. Consequently, the DSEIR systematically underestimates impacts of the Stadium
13 Project on the environment. Instead of analyzing the environmental effects of building an
14 entire NFL stadium and entertainment complex on a vacant hillside, it merely analyzes the
15 effects of adding a stadium to an existing business complex.

16 220. This improper baseline is used to obscure many of the Stadium Project's
17 significant impacts. For example, the SEIR (inaccurately) states that because the Stadium
18 Project will use less water than the IBC Project, it will have no impact on regional water
19 supply, despite using hundreds of thousands of gallons of water per day. The SEIR uses the
20 same misleading analysis with regard to traffic circulation. Since the SEIR (again,
21 inaccurately) determines that the Stadium Project will create less traffic than the IBC Project, it
22 determines that it will not have a significant impact on regional traffic. The SEIR also relies on
23 this improper baseline to completely omit analysis of the Stadium Project on biological
24 resources, even though the Project will completely develop what is currently 592 acres of open
25 space.

26 221. Industry's abuse of baseline environmental conditions hides many significant
27 environmental impacts attributable to the Stadium Project, thus precluding meaningful
28

1 evaluation of the Project by decisionmakers and the public, or the consideration of feasible
2 mitigation measures.

3 **Inadequate Analysis of Alternatives**

4 222. CEQA imposes upon Industry a clear duty to consider a reasonable range of
5 alternatives, including any feasible alternative which could substantially lessen the significant
6 environmental effects of the Project. Despite this duty, the SEIR rejects feasible on site and off
7 site alternatives and fails to consider potentially feasible alternatives in detail.

8 223. The SEIR lists nine objectives, five of which could be fulfilled by the IBC
9 Project, or any other development of the site. These objectives include comprehensive planning
10 for the site, employment near housing and transportation, enhancing Industry's revenues, and
11 developing a strategy with sustainable building practices.

12 224. Two other objectives were added that a strictly commercial and industrial project
13 could not meet: one is adding a venue for entertainment events, such as concerts and sporting
14 events, and the other is an iconic regional destination for entertainment, retail and commercial.
15 Neither of these objectives require an NFL stadium. However, one objective is building a state
16 of the art stadium, and the other is to build facilities associated with a Stadium.

17 225. To be considered *potentially* feasible, and thus require analysis of part of a
18 reasonable range of alternatives, a project must only meet *most* of the project objectives.
19 Industry has also included circular project objectives, including the objective to "develop the
20 revised Plan of Development." By definition, any alternative that is not the preferred
21 alternative cannot meet this objective.

22 226. The SEIR only identified as alternatives for detailed analysis (and even these are
23 not very detailed) three alternatives: 1) a "No Project/Existing Plan of Development
24 Alternative," which is not really a "no project" alternative, but only comparison with the IBC
25 Project that was analyzed in the 2004 EIR, but never actually approved as a project, and has not
26 been built; 2) Alternative Sites (but the Coliseum and the Rose Bowl are both discussed in less
27 than one-half a page, and had already been rejected for detailed analysis, so it is really only a
28 brief discussion of the Anaheim Stadium alternative; and 3) only building Phase One, which

1 really is not a meaningful alternative, since during phase I the entire east side of Grand Avenue
2 would be a parking lot, and eventually the property would be developed as a separate project, if
3 the parking is not required.

4 227. The SEIR relies in large measure on the alternatives analysis in the 2004 EIR, but
5 this is a new project, and a new analysis of alternatives is required, especially because of the
6 emphasis by Industry in having a stadium at the site.

7 228. Industry rejects potentially feasible alternatives for a stated failure to meet *all*
8 project objectives, instead of using the proper test under CEQA, which is whether an alternative
9 meets *most* of the *basic* project objectives. The objectives used by Industry mandate selection
10 of the preferred alternative. For example, Industry's objective of constructing a new football
11 stadium is improperly used to justify the rejection of the feasible alternative of renovating
12 existing stadiums, even though a new stadium was only one of the objectives.

13 229. Because of the reliance on narrow objectives dictated by Majestic, Industry has
14 not exercised its independent judgment as required by CEQA, and the SEIR is a document of
15 project advocacy, not analysis.

16 230. The SEIR did not include a true no-build alternative, because Industry improperly
17 relied on a SEIR to the 2004 IBC EIR, rather than beginning a new EIR process for what was
18 clearly a new project and fundamentally different use of the site with new project objectives.

19 231. The SEIR rejects the no project/existing IBC plan of development alternative as
20 infeasible because it would not meet *all* of Industry's objectives. Again, this rejection is
21 improper, because CEQA considers an alternative that meets *most* of the *basic* project
22 objectives as feasible.

23 232. The SEIR does not include substantial evidence to support the assertion that a
24 smaller stadium would be financially infeasible or unacceptable to the NFL, even though
25 approximately half of existing NFL stadiums are smaller than the proposed stadium.

26 233. The SEIR concedes that a reduced build alternative with a stadium and ancillary
27 facilities, 400,000 square feet of retail, and 50,000 square feet of restaurants would meet *all* of
28 Industry's objectives and would have fewer environmental impacts than the preferred

1 alternative. The rejection of this alternative was thus improper as a matter of law. (Pub. Res.
2 Code. §21002)

3 234. The SEIR did not include economic data on the financial feasibility of the
4 alternatives considered. Thus, the SEIR does not include substantial evidence to support
5 conclusions made about the feasibility of alternatives, but rather just includes Industry's bare
6 opinions.

7 235. The omission of economic data also violated the Health and Safety Code (Section
8 33433), which requires provision of economic data by a redevelopment agency before it sells or
9 leases property.

10 236. The SEIR improperly rejects off site alternatives for the Stadium portion of the
11 Project, and fails to conduct a detailed analysis of the comparative environmental impacts of
12 other locations that have been the subject of considerable interest, despite the fact that they are
13 *potentially* feasible: such sites include the Los Angeles Coliseum and the Rose Bowl, without
14 substantial evidence.

15 237. As the SEIR states:

16 One of the main components of the revised Plan of Development is
17 a proposed National Football League (NFL) stadium. Over the past
18 decade or more, at least six locations have been discussed as
19 possible sites for an NFL football stadium for the greater Los
20 Angeles region, including the Los Angeles Memorial Coliseum
21 (Los Angeles), the Rose Bowl (Pasadena), Hollywood Park
22 (Inglewood), Anaheim Stadium property, and a former landfill site
23 in the City of Carson. Other locations, including Long Beach and
Irwindale, have also been mentioned.

24 238. Further, the SEIR acknowledges that EIRs have already been prepared on
25 renovation plans for the Rose Bowl and the Los Angeles Coliseum, but the SEIR states that
26 these alternatives were rejected during the scoping process on the current Project.

27 239. The grounds given for not carrying the Los Angeles Coliseum site into the SEIR
28 for a detailed analysis is an asserted lack of on site parking. However, the SEIR does not

1 include on site parking as a project objective, so rejection of the Coliseum site, without analysis
2 of availability of off site parking, is improper. Also, the SEIR fails to consider whether the far
3 greater availability of public transportation at the Coliseum site can compensate for lack of on
4 site parking; whether on site parking structures could be built to replace the surface parking
5 now at the Coliseum; or whether off site parking, perhaps at the University of Southern
6 California or other nearby locations, would fill the need for parking.

7 240. The SEIR fails to provide a detailed analysis of the Coliseum alternative because
8 the Coliseum would be renovated, instead of being a newly stadium built. But only one of the
9 project alternatives is to build a state of the art stadium. In any case, the environmental impact
10 of building even a Leadership in Environment and Energy Design (LEED) certified Stadium is
11 almost certainly greatly in excess of that which would result from renovating the existing
12 stadium. And while the SEIR thus relies on improperly narrow project objectives to reject the
13 Coliseum is historically significant, and renovations would have to be done with an eye to
14 maintaining the historical integrity of the site, there is nothing to suggest that it could not be
15 renovated in a way that would incorporate solar and other green building standards.

16 241. The SEIR refuses to provide a detailed analysis of the renovation of the Rose
17 Bowl due to its proximity to residential areas. However, this objection applies with equal force
18 to the proposed stadium site in Industry, which directly abuts residential areas of Diamond Bar
19 and is close to residences in Walnut. The SEIR does not provide any analysis to differentiate
20 why proximity to residences at the Rose Bowl is a fatal flaw, but proximity to residences in
21 Diamond Bar or Walnut is not.

22 242. A comparative analysis of the environmental impacts of constructing the Stadium
23 at other locations should have been provided.

24 243. The SEIR also rejects development of a stadium in Anaheim, despite finding that
25 the Anaheim site would be environmentally superior due to the availability of existing
26 infrastructure to support an NFL stadium. Again, the SEIR rejects the Anaheim alternative
27 because the alternative would not meet *all* of the project objectives. However, again, the proper
28 test for CEQA is that an alternative meet *most* of the *basic* project objectives, and the SEIR

1 implicitly admits that the Anaheim site meets this test. Furthermore, the stadium could be built
2 in Anaheim, and the non-NFL associated parts of the Project could be built in Industry.

3 244. Further, the SEIR rejects, without detailed analysis, construction of a smaller
4 stadium. However, the SEIR does not include substantial evidence to support the assertion that
5 a smaller stadium would be financially infeasible or unacceptable to the NFL, even though
6 approximately half of existing NFL stadiums are smaller than the proposed stadium.

7 245. The SEIR concedes that a reduced build alternative with a stadium and ancillary
8 facilities, 400,000 square feet of retail, and 50,000 square feet of restaurants would meet *all* of
9 Industry's objectives and would have fewer environmental impacts than the preferred
10 alternative. The rejection of this alternative was thus improper as a matter of law. (Pub. Res.
11 Code. §21002)

12 246. The SEIR did not include economic data on the financial feasibility of the
13 alternatives considered. Thus, the SEIR does not include substantial evidence to support
14 conclusions made about the feasibility of alternatives, but rather just includes Industry's bare
15 opinions.

16 **Use of Unsupported Conclusions**

17 247. The SEIR contains many statements that are not supported by the analysis
18 contained in the Draft EIR.

19 248. In particular, in many instances conclusions about significance of impacts and
20 adequacy of mitigation measures are wholly unsupported.

21 249. Although evidence may sometimes be found in the numerous appendices, this is
22 not always the case, and the SEIR does not provide direction on where to find supporting
23 information.

24 **Inadequate Response to Comments**

25 250. Under CEQA, the lead agency must "provide a written proposed response to a
26 public agency on comments made by that agency." (Public Resources Code § 21092.5.)
27 Responses require good faith, reasoned analysis. (CEQA Guidelines § 15088(c).)
28

1 251. Objections to the lead agency’s position must be “addressed in detail giving
2 reasons why specific comments and suggestions were not accepted.” (CEQA Guidelines §
3 15088(c).

4 252. Industry responded to comments in both the January 2009 FSEIR and the
5 February 2009 Revised FSEIR.

6 253. The responses to comments in both the FSEIR and the Revised FSEIR are full of
7 cross-references that render them difficult to navigate and understand because each response
8 requires looking up several sections of what has become a very large EIR.

9 254. Instead of being good faith responses, as required by CEQA, many of the
10 responses to comments were off-point and non-responsive.

11 255. The inadequate responses to comments include, but are not limited to, the
12 following examples.

13 256. The SEIR does not address the problem of roadway segments exceeding capacity
14 at mid block areas, and the FSEIR failed to respond to comments raised by Walnut on this
15 issue.

16 257. In responding to Walnut’s concerns about geotechnical impacts caused by the
17 Puente Hills Blind Thrust fault, the City reiterated that all construction will comply with state
18 building codes. This response fails to address whether these codes account for the Puente Hills
19 Blind Thrust fault, the source of Walnut’s comment.

20 258. The response to comments says it is unnecessary to consider drought or delta
21 cutbacks in the SEIR’s water supply analysis because California state agencies are engaged in
22 comprehensive planning. The programs mentioned have been ongoing for over a decade
23 (CalFed) and will not produce magical solutions before Project implementation. This response
24 highlights Industry’s failure to fully analyze the true impacts of the Project.

25 259. In response to a comment that the Project should use lighter colored paving to
26 reduce urban heat island effects, Industry claims this would impact the parking plan and cause
27 more traffic congestion air quality impacts because motorists would not be able to see the lines
28 delineating parking stalls on the pavement and will not park as quickly or well. This is an

1 absurd reason for claiming a mitigation measure is infeasible; the Project could just use darker
2 colored paint for the parking stalls.

3 260. Instead of responding to a comment that asked for provision of public restrooms
4 in the tailgate areas to reduce human waste impacts on water quality due to run-off; Industry
5 directed the commenter to another response that indicates temporary restroom odors will not
6 impact residents.

7 261. Caltrans recommended analysis of traffic impacts without assuming the SR-57/60
8 Confluence mitigation measures would be implemented, stating “Caltrans is not pursuing
9 funding for them” and “Without those improvements, the proposed revised development plan
10 has the potential to deteriorate traffic operations on the surrounding freeway network.” (FEIR,
11 p. 3-480.) Industry referred to a response elsewhere that stated it is reasonable to assume the
12 Confluence mitigation measure would be completed. (FEIR, p. 2-17 to 2-18.) However, the
13 explanation shows that the cost would be “between \$200 million and \$240 million” with
14 Industry providing approximately \$35 million. Industry then relies on federal funding of \$130
15 million and state funds of \$30 million. Unless Industry can show where such funding has been
16 committed (for example in a Regional Transportation Plan), in light of Caltrans’ comment
17 criticizing such an assumption, it is unreasonable to rely on funding in these amounts to assume
18 mitigation would occur. Therefore, as Caltrans requested, the completion of the Confluence
19 project should not be assumed and the EIR should evaluate the impact without assuming this
20 mitigation would be in place.

21 **Inadequate Analysis of Impacts**

22 262. CEQA requires Industry to conduct adequate environmental review prior to
23 making any formal decision regarding projects subject to the Act. (CEQA Guidelines, 14 Cal.
24 Code Regs. § 15004).

25 263. CEQA imposes upon Industry a clear, present and mandatory duty to certify an
26 EIR only if the EIR fully discloses to the public the significant environmental effects that may
27 occur. The 2004 FEIR and 2008 SEIR lack the necessary analysis.

28 264. Further, Industry did not adequately respond to many of the public comments

1 regarding these impacts. Thus, the FSEIR also failed to provide an adequate analysis of
2 impacts. These impacts include, but are not limited to, the following:

3 **a. Local and Regional Air Pollution Impacts Were Minimized**

4 265. The SEIR's analysis of air quality impacts is inadequate and not supported by
5 substantial evidence.

6 266. The construction air quality analysis contained in the FSEIR assumes the
7 maximum area to be graded in a single day is 54 acres. However, the input into the air quality
8 dispersion modeling is 467.7 acres, which is the assumed amount of the total project
9 disturbance. As a result, the SEIR assumes dilution of air pollution over a much larger area than
10 is actually the case when a disturbance is occurring. Thus, the SEIR underestimates mass
11 grading emissions at numerous sensitive receptors by a factor of 8.7 for PM10 and NO2.
12 Further, the dispersion modeling assumed average meteorological conditions, rather than
13 reasonable worst case meteorological conditions. Thus, both the severity of the impact and
14 number of residents impacted are much greater than disclosed in the SEIR.

15 267. Also, because of these errors, the FSEIR incorrectly concludes that construction
16 emissions of PM 2.5 will not be significant, that PM10 levels at the Armstrong Elementary
17 School in Pomona will not be significant, and that construction NO2 impacts will not be
18 significant.

19 268. The SEIR also failed to adequately analyze the health impacts of Project related
20 air pollution. It fails to include operational emissions from the stadium, and therefore does not
21 allow for an accurate assessment of health impacts from the project as a whole, or the
22 cumulative health impacts of the stadium/entertainment complex development and other
23 projects.

24 269. The 2004 EIR did not include a health risk assessment for diesel particulate
25 emissions. Even if it was proper to tier off the 2004 EIR (and Walnut believes it is not), much
26 more is known today about the severe health impacts that occur as a result of exposure to diesel
27 particulate emissions, and a health risk assessment should have been prepared. Such an
28

1 assessment is especially important since the record contains evidence that asthmatic children
2 live in Walnut in close proximity to the Project site.

3 270. The SEIR contains contradictory statements regarding the number of trucks in
4 comparison with the 2004 EIR. Again, while Walnut does not believe that it is proper to tier off
5 the 2004 EIR, the contradictory statements about truck traffic make a meaningful assessment of
6 health impacts from truck traffic, including particulate emissions, impossible.

7 271. The SEIR failed to adequately evaluate potential for significant odor impacts
8 caused by tailgating activities, or include adequate mitigation for such impacts.

9 272. The SEIR did not account for diesel particulate emissions from idling
10 refrigeration units needed for game events. As a result of all of these inadequacies, it is
11 impossible to confirm the conclusory claim in the SEIR that the Project will comply with
12 SCAQMD Rule 1401 regarding increases in cancer risks. SCAQMD Rule 1401 requires that
13 new emission sources requiring a permit to operate that release a listed toxic air contaminant
14 (including diesel particulates) meet the 10 in one million maximum individual cancer risk
15 significance threshold established by the SCAQMD. A diesel standby generator would require a
16 permit to operate. There is no technical means of demonstrating compliance with SCAQMD
17 Rule 1401 unless a comprehensive health risk assessment is performed. The SEIR also indicates
18 that the Project would adhere to SCAQMD Rule 1401 but fails to indicate how the Project
19 would comply with this rule.

20 **b. Traffic Impacts were Not Sufficiently Analyzed**

21 273. The SEIR traffic analysis is not supported by substantial evidence, omits key
22 information, makes unjustified assumptions, and improperly defers mitigation measures.

23 274. The SEIR assumes an average vehicle occupancy of 3.1 persons and a combined
24 charter bus/transit mode split of 15%. Neither assumption is justified. Readily available data
25 for comparable local facilities (i.e., the Rose Bowl in Pasadena and the Coliseum in Los
26 Angeles) show that substantial evidence only exists to support an assumed 2.85 average vehicle
27 occupancy and 7.25% charter bus/transit mode split. Industry provides no data to support its
28 own assumptions.

1 275. As a result of the flawed assumptions used in the SEIR, which are contrary to the
2 accepted methodological practices spelled out in the Institute of Transportation Engineers Trip
3 Generation Handbook, the SEIR underestimates stadium traffic generation by 18%, and fails to
4 fully disclose impacts.

5 276. As a result of the underestimation of traffic, numerous intersections will
6 experience worse congestion than reported in the SEIR. The SEIR thus fails to disclose the full
7 impacts of project related traffic on local intersections in Walnut, Diamond Bar, Chino Hills,
8 Pomona, and West Covina.

9 277. As a result of the underestimation of traffic, the SEIR also underestimates the
10 foreseeable parking demand for the Project by about 3,000 vehicles.

11 278. As a result of the underestimation of traffic, the SEIR also fails to evaluate
12 foreseeable traffic impacts in adjacent residential and commercial areas of Walnut and
13 Diamond Bar, or to evaluate the foreseeable problem of parking spill-over into adjacent
14 residential and commercial areas.

15 279. Further, the SEIR does not analyze the foreseeable potential that the requirement
16 for non-season ticket holders to pay for parking at the event will lead patrons to seek off site
17 parking in adjacent residential and nearby commercial areas.

18 280. The SEIR does not compare the traffic impacts of the project with the existing
19 environment, but rather only evaluates the impact of project traffic when compared with future
20 conditions. As a result, the SEIR artificially inflates “background” traffic numbers, and
21 proportionately underestimates project contributions to traffic congestion.

22 281. The failure to evaluate traffic impacts against current conditions also violates the
23 requirement that environmental impacts must be measured against the existing environment,
24 and results in the use of an improper baseline for analysis.

25 282. The roadway segment analysis fails to include an evaluation of weekday
26 conditions with a game event at the stadium.

27 283. The roadway segment analysis contradicts itself on whether roadway segment
28 impacts should be considered significant.

1 284. The SEIR wrongly overestimates intersection capacity by assuming construction
2 of various intersection improvements. However, many of the improvements are not funded or
3 programmed, and are thus speculative. As a result, the SEIR underestimates likely project
4 traffic impacts at numerous intersections.

5 285. Similarly, the improvements at the Grand Avenue/ SR-57/SR- 60 confluence are
6 also speculative, as only \$35 million in funding is secured against a projected cost of \$236
7 million, and no timetable for project implementation exists, according to the Project Study
8 Report for the improvements. The SEIR makes exactly the opposite conclusions, and thus is
9 unsupported (and in fact directly contradicted) by substantial evidence that this key
10 improvement will not be in place when stadium operations begin, if the Project proceeds. The
11 SEIR therefore greatly underestimates traffic impacts.

12 286. Exclusion of the speculative improvements at the Grand Avenue/SR-57 /SR-60
13 confluence would have yielded the conclusion that the Project would have significant freeway
14 impacts along the SR 57/SR-60 confluence, and significant impacts from traffic diversion at
15 arterial intersection in the project area, including the SR-60 ramps and Grand Avenue.

16 287. As pointed out by Walnut and Diamond Bar, the SEIR assumes the feasibility of
17 numerous roadway improvements in those cities without substantial evidence, and in fact in the
18 face of statements by the affected cities that the improvements are infeasible because of
19 negative impacts due to lack of available rights-of-way, loss of bicycle lanes, pedestrians, and
20 urban design. Moreover, even if the improvements were feasible, the SEIR does not analyze
21 secondary impacts associated with the improvements, such as the need to acquire right-of-way
22 and the resulting impacts to the loss of that property, or the loss of bicycle lanes as a viable
23 alternative mode of transportation and recreational amenity that serves area residents,
24 businesses and colleges.

25 288. The SEIR does not comply with Caltrans guidelines regarding study of freeway
26 related facilities. From the analysis in the SEIR, despite the significant underestimate of overall
27 traffic impact, following the Caltrans guidelines should have resulted in the inclusion of six
28

1 additional freeway segments and 31 additional ramps for analysis. As a result, the SEIR does
2 not fully disclose freeway impacts or propose adequate mitigation.

3 289. The SEIR even fails to analyze the freeway segments in the SR-57/SR-60
4 confluence, even though those segments are directly adjacent to the Project.

5 290. The SEIR fails to include a proper baseline for analysis of freeway impacts,
6 because, in violation of Caltrans' Guidelines, it fails to use the accepted Highway Capacity
7 Manual methodology for freeway facility analysis, and did not use "micro-simulation"
8 modeling required by Caltrans when a state highway experiences saturated traffic flows, which
9 exist in the SR-57/SR-60 confluence.

10 291. In some cases, Project impacts at intersections may be so great that "fair share"
11 analysis is inapplicable and Industry and/or the Project applicant should fully fund
12 improvements. However, given the dearth of information in the SEIR, it is impossible to
13 determine which intersections may fall into this category.

14 292. The SEIR does not analyze truck trips associated with the necessary
15 transportation of numerous large rocks present on the Project site, or alternatively, the impacts
16 associated with blasting of large rocks followed by transport of rock shards.

17 293. The Metrolink comment letter raises serious concerns that rail service (which the
18 SEIR assumes will carry 5% of game day traffic) will not be available. In response, the SEIR
19 states that rail service would be replaced by charter buses, which contradicts the response to
20 comments that a number of alternatives to rail service would be employed, including pre-paid
21 parking. But use of charter buses would result in substantially higher emissions than the use of
22 rail. The SEIR does not include any analysis of the additional trips associated with the
23 foreseeable use of pre-paid parking, which would give event patrons a strong incentive to drive
24 to events rather than use other modes of transit, since pre-paid parking would constitute a sunk
25 cost.

26 294. The SEIR failed to analyze the potential safety and traffic flow impacts from
27 driver distraction caused by circulating blimps, which often carry messages on bright video
28 screens. The proximity of the stadium to SR-57 and SR-60 creates a distraction hazard due to

1 the blimps, and could also cause drivers to slow down or be in accidents, thereby exacerbating
2 traffic in the area.

3 295. Industry refuses to accept responsibility for intersection improvements within
4 Walnut, despite a request by Walnut for a written agreement to accept such responsibility.
5 Industry's refusal to accept responsibility is improper, because it relies on the improvements
6 being located in another jurisdiction (i.e., Walnut), without supplying evidence that it would be
7 truly infeasible for Majestic to undertake responsibility for the improvements in Walnut.

8 296. The SEIR omits relevant intersections within the traffic study area, despite a
9 request from the City of Walnut that intersections within the study area be analyzed. As a
10 result, the SEIR does not disclose the full extent of intersections significantly impacted by
11 project traffic.

12 297. The SEIR does not address the secondary impacts of traffic improvements caused
13 by loss of bicycle lanes within Walnut, nor does it demonstrate that alternative mitigation that
14 would preserve bicycle lanes is truly infeasible. Instead, the SEIR improperly attempts to
15 place the onus on the City of Walnut to demonstrate that alternative mitigation is available that
16 would preserve bicycle lanes within the City of Walnut.

17 298. The SEIR does not disclose the basis for the assumption that 80% of
18 restaurant/retail/movie traffic will be related to game events on game days, despite requests
19 from Walnut and Diamond Bar to provide justification for this assumption, especially since the
20 retail component is intended to be part of a regionally significant development. The assumption
21 is unsupported by substantial evidence, and likely leads to greatly underestimating total game
22 day traffic from the Stadium/Entertainment Complex, since much more traffic is likely
23 generated by the restaurant/retail/movie component of the project on game days.

24 **c. Noise Impacts were Not Sufficiently Analyzed**

25 299. The DSEIR found that crowd cheers, fireworks and other stadium noise during
26 NFL games and other stadium events would result in new significant and unavoidable noise
27 impacts. The FSEIR included new mitigation measures of questionable benefit for fireworks
28 noise and does not include any mitigation for noise impacts due to cheering crowds and other

1 stadium noise, except for construction of a six foot sound wall. Industry's findings for the
2 statement of overriding considerations also state that crowd cheers, fireworks and other stadium
3 noise could significantly increase the noise levels experienced at residences. However, it then
4 claims that all stadium noise impacts are reduced to a less than significant level by the
5 mitigation measure for fireworks. There is no support for this finding; without real mitigation,
6 the noise impacts from crowd cheers and other stadium noise remain significant.

7 300. Moreover, the mitigation proposed for fireworks does not reduce this impact to a
8 less than significant level. The FSEIR includes a mitigation measure that prohibits fireworks
9 after 10 p.m. and limits fireworks to ground, proximate, and aerial, except on the Fourth of July.
10 The FSEIR contains no evidence that limiting types of fireworks allowed would reduce the
11 noise impacts to a less than significant level prior to 10 p.m.

12 301. The SEIR failed to study the potential impacts associated with removing
13 oversized rocks at the Project site. Blasting may be required to break up oversized rocks on site
14 before hauling them away. However, the SEIR did not analyze the noise or ground borne
15 vibration impacts that the Project could have if blasting is required to remove the oversized
16 rocks that are likely to be on site.

17 302. The FEIR claims that noise impacts from helicopters should be considered less
18 than significant because the Federal Aviation Administration prohibits helicopters from
19 hovering below 3,000 feet. However, the SEIR fails to analyze the noise levels that would be
20 generated by helicopters at this altitude or even set forth the specific language contained in the
21 Federal Aviation Authorities regulations. Once again, without any evidence to support its
22 claim, the FSEIR waves off a potentially significant impact.

23 **d. Biological Resources were Not Sufficiently Analyzed**

24 303. The SEIR does not include any analysis of biological impacts, claiming the
25 Stadium Project would not increase any biological impacts above what the 2004 IBC Project
26 would have had. However, the Stadium Project would have new significant impacts that have
27 not been analyzed, and new information regarding several of the biological impacts analyzed in
28

1 the 2004 EIR has since become available. Furthermore, the baseline from which impacts must
2 be measured is the existing environment, which is essentially open space.

3 304. The Stadium Project would include significantly greater sources of artificial
4 nighttime lighting from the stadium and parking lot lights, animated and moving signs, vehicle
5 headlights, and, according to Majestic's mock-ups of the complex, numerous search lights and
6 fireworks. The design of the Stadium Project also allows more artificial lighting into the
7 landscaped buffers areas that are intended as mitigation habitat for biological impacts. This
8 artificial lighting would have significant impacts on wildlife species that were not analyzed in
9 the 2008 SEIR. Additionally, the benchmark study on the significance of artificial lighting
10 impacts on wildlife was not published until 2006, after the 2004 EIR had been certified.

11 305. The SEIR fails to analyze the potential impacts to migrating birds from the
12 helicopters that would hover over the Project site during football games and other events, and
13 from the use of fireworks.

14 306. The Stadium Project would produce much higher noise levels than the 2004 IBC
15 project, and this noise would have an adverse impact on the many grassland bird species that
16 currently rely on the large, quiet areas in the center of the Project site.

17 307. The SEIR fails to analyze the conflicts between the revised project design
18 features set forth in the aesthetics section of the 2008 SEIR and mitigation measure 5.3-6,
19 which was brought forward from the 2004 EIR and requires the landscaping of 200 acres of
20 manufactured slopes with local native grasses, herbs, and shrubs to mitigate the loss of 109
21 acres of Riversidian Coastal Sage Scrub and 591.7 acres of raptor foraging habitat.

22 308. The new project design features for the Stadium/Entertainment Complex require
23 the planting of trees in the 200 acre mitigation habitat. However, raptors, and other special
24 status bird species, need open grassland and scrubland, without trees, for foraging. While
25 raptors roost in trees, roosting habitat is not what would be destroyed by the Project and
26 therefore is not the type of habitat that needs to be replaced. Additionally, the SEIR claims the
27 trees could be used by raptors, but only certain types of trees are appropriate, and it is unclear
28

1 what type of trees will be planted as part of the mitigation habitat, especially since Industry
2 apparently has not produced the required Habitat Mitigation Plan.

3 309. The new project design features also require that the plant species for the
4 mitigation habitat be chosen from the Los Angeles Department of Regional Planning's Hillside
5 Design Guidelines. These guidelines allow for the use of many exotic and aggressively
6 invasive plant species that would not provide adequate mitigation habitat.

7 310. The mitigation habitat would be subject to a fuel modification zone under the new
8 project design features, requiring brush clearance and non-flammable plants, which eliminates
9 the use of replacement native sage scrub, a sensitive natural community, in the mitigation
10 habitat, since this scrub is flammable.

11 311. The project design features require the entire mitigation habitat area to be
12 irrigated. Irrigation promotes the invasion of alien insect species into the area, and these insect
13 species significantly impact native arthropods by preying on them and competing with them for
14 resources, which in turn negatively impacts vertebrate species.

15 312. The proposed design of the stadium and entertainment complex significantly
16 reduces the ecological value of the site. The current value of the Project site is the presence of a
17 large expanse of open area, which allows for an interior area that is far from the edges. In
18 contrast, the manufactured slopes that are proposed to be the location of mitigation plantings
19 are spread out in a thin band around the perimeter of the site, reducing the attractiveness of the
20 site for foraging.

21 313. Based on the recommendations of the geotechnical investigations prepared after
22 the 2004 EIR, the SEIR requires that up to 30 feet of soil be removed from the area of the
23 Project site adjacent to Diamond Bar Creek to reduce potential landslide impacts. The area
24 adjacent to Diamond Bar Creek includes up to 11.7 acres of riparian habitat. The removal of all
25 soil to a depth of 30 feet in areas containing riparian habitat was not required in the 2004 EIR.
26 It is a new biological impact that was not studied in the SEIR.

27 314. The SEIR fails to update the analysis of impacts to special status species. Due to
28 the change in project design features, the Stadium Project would leave significant adverse

1 impacts to special status species and natural plant communities unmitigated. Additionally,
2 several of the special status species and natural habitats found on the Project site have
3 significantly declined since 2004, which is new information not analyzed in the 2008 SEIR.
4 The further decline in these species and habitats may make it necessary for the Project to
5 provide a larger ratio of mitigation habitat.

6
7 **e. Aesthetic Impacts were Not Sufficiently Analyzed**

8 315. Instead of comparing the Project to the existing vacant hillsides and grasslands,
9 the SEIR compares the Stadium Project to the un-built 2004 IBC Project. Due to the SEIR's
10 reliance on an improper baseline, the Stadium project's aesthetic impacts were impermissibly
11 minimized.

12 316. The SEIR failed to analyze impacts to scenic resources because the Initial Study
13 improperly excluded this threshold of significance based on the absence of a scenic highway.
14 This is improper, given that the SEIR admits that the Project will have irreversible impacts to
15 the site's rolling hills and to 592 acres of open space.

16 317. Analysis and mitigation of significant signage impacts were improperly deferred
17 until the conceptual signage plan, which was not released until the FSEIR and therefore was not
18 circulated for public comment and input.

19 **f. Nighttime Lighting Impacts were Not Sufficiently Analyzed**

20 318. Majestic's representations of the Project to the public include searchlights, the
21 existence and impacts of which are never discussed in the SEIR.

22 319. The DSEIR's lighting analysis fails to specify the type of foot-candle used,
23 rendering it inadequate.

24 320. As the conceptual lighting plan was not released until the FSEIR, it constitutes
25 significant new information that has not been subject to public comment and the input of
26 responsible agencies and should be recirculated.

1 **g. Public Services and Safety Impacts were Not Sufficiently Analyzed**

2 321. Many important decisions about public safety were improperly deferred until the
3 Emergency Operations Plan. This deferral was done without establishing performance
4 standards, in violation of CEQA.

5 322. Since the SEIR defers analysis of police services to the Emergency Operations
6 Plan, it does not address the police response times that the stadium and entertainment complex
7 can expect. Under current conditions, “routine service” response times already exceed ten
8 minutes since the nearest sheriff’s station is eight miles away. (DSEIR, p. 5.9-7.) The SEIR
9 must analyze the impact of stadium calls on police services, which would likely be outside the
10 scope of routine service. Furthermore, the SEIR fails to analyze the impact that the Stadium
11 Project will have on response times and police service in Walnut, Diamond Bar, and Pomona.

12 323. The DSEIR admits that Grand Avenue may experience construction delays that
13 “may result in a temporary increase in the response times for fire and emergency services.”
14 (DSEIR, p. 5.9-5). However, the DSEIR, FSEIR, and Revised FSEIR fail to quantify either the
15 potential delays in services or the number of people that may be affected, leaving
16 decisionmakers without an opportunity to adequately review the Project’s construction impacts
17 on public services and safety.

18 324. Despite acknowledging that Industry cannot guarantee operation of the proposed
19 fire station, the SEIR refused to analyze the wildfire dangers to the Project, based on its
20 determination that the generally flattened topography and limited fuel of the site would render it
21 relatively fire-proof. (Revised FSEIR, Comment F4-72 and FSEIR 3-275.) This conclusion is
22 not supported by substantial evidence in light of the existing hilly grassland and the damage
23 done to nearby areas in the wildfires of October 2008.

24 325. The SEIR fails to analyze whether the proposed fire station will adequately
25 mitigate increased regional fire services needs, even if it is ultimately constructed, funded, and
26 operated.

1 326. The SEIR claims five hours of sustainable water pressure for firefighting but fails
2 to provide any support. This is particularly irresponsible in light of the October 2008 Freeway
3 Complex Fire, which affected portions of Diamond Bar.

4 327. The SEIR ignores terrorist threats to the interchange of SR-60 and SR-57 and to
5 the stadium, despite the listing of the interchange on FBI watch-lists and repeated requests for
6 such an analysis.

7 **h. Geotechnical Impacts were Not Sufficiently Analyzed**

8 328. The SEIR relies on the outdated analysis of seismic impacts found in the 2004
9 EIR. Several studies made available after the 2004 EIR was certified have found that seismic
10 hazards in this area of the state are greater than previously thought. The SEIR states that
11 maximum magnitude for the area of the San Andreas Fault Zone is 7.1, whereas recent studies
12 have found the maximum magnitude for the Project site area to be 7.6 up to 7.8. A recent study
13 also found that the San Gabriel Valley and East Los Angeles area, where the Project site is
14 located, would be the area subject to the strongest and longest shaking during an earthquake
15 along the San Andreas Fault.

16 329. The seismic impacts of the Puente Hills blind thrust were also underestimated.
17 The 2004 EIR found the Puente Hills Thrust to have a maximum magnitude of 7.1. However,
18 studies prepared since that time have found a maximum magnitude of 7.2 to 7.5 to be more
19 accurate for this fault.

20 330. The SEIR underestimates the amount of time needed for compacted fill to settle,
21 which could result in unstable construction if conducted before the soil has adequately settled.

22 331. The SEIR fails to analyze bedrock rebound, which could result from deep cuts in
23 the soil required for the Project. Bedrock rebound can result in upward heaving of the area,
24 causing distress to improvements, such as cracking or separations of concrete.

25 332. The SEIR also fails to analyze the potential for oil seepage due to the deep cuts
26 required for the Project. Oil seeps have been observed in many projects with such deep cuts
27 throughout the Puente Formation. Oil seeps could be corrosive to metals and concrete and
28 detrimental to plant growth.

1 333. The SEIR fails to analyze the need to remove oversized rocks from the Project
2 site and the potential impacts if blasting or exporting are required to accomplish this.

3 **i. Water Supply Impacts were Not Sufficiently Analyzed**

4 334. CEQA requires a detailed analysis of the availability of water for a project, a
5 determination the water is reasonably available, and an analysis of the impact of supplying that
6 water, among other requirements.

7 335. The Water Code requires preparation of a water supply assessment to be used in
8 environmental analysis of various types of projects such as the proposed project. The SEIR did
9 not contain such an assessment, as required by Water Code section 10910 (c).

10 336. The SEIR fails to explain the methodology used to calculate water demand for the
11 proposed stadium, which the SEIR claims is approximately 323,000 gallons per day. (DSEIR,
12 p. 5.9-17.) The SEIR does not state the basis for its calculation. Estimates for other stadiums
13 around the country place the typical water demand of an NFL stadium much higher than that.
14 The Natural Resources Defense Council estimates that a typical stadium uses 600,000 to 1
15 million gallons during a typical game day. The environmental consulting firm Integrated
16 Resource Management LLC estimated that usage from the stadium component of the proposed
17 project alone would be 1,079,898 gallons per day, and provided a detailed explanation of the
18 basis for its calculation. The FSEIR admits "The City relied on the applicant to supply demand
19 information that was based on similar stadiums around the country." (FSEIR 3-678.) In light
20 of the substantial evidence that the water use would be greatly in excess of what the SEIR
21 asserts, the failure to state the basis for its analysis—other than relying upon the applicant—
22 renders the water supply analysis inadequate.

23 337. The SEIR improperly segments the discussion of water usage into a discussion of
24 usage by the stadium (323,000 gallons per day) and usage by the commercial and office uses
25 (82,200 gallons per day), without analyzing the combined usage. The SEIR based its estimate
26 on 68 acres of commercial/office development, but did not provide any specifics about what
27 types of development were proposed, nor the water demand generation rates associated with
28 that development.

1 338. Substantial evidence was submitted that showed the Project would require more
2 than 581,256 gallons per day (and possibly as much as 2,293,355 gallons per day according the
3 environmental consulting firm Integrated Resource Management LLC). Due to significant
4 underestimation of water usage, the proposed project would require more water than was
5 identified as available from the Walnut Valley Water District in 2004, when the District
6 reported it only had 413,470 gallons per day available.

7 339. Further, the Water District’s capacity to supply water after 2004 decreased
8 significantly because of drought conditions that have required the public agencies that supply
9 the District (the Metropolitan Water District through the Three Valleys Municipal Water
10 District) to reduce allocations to the District. More reductions will be required in the future as
11 water supplies become more restricted, but the SEIR does not address this shortage of water.

12 340. Because of the SEIR’s miscalculations of both projected demand and available
13 supply, it is likely the Walnut Valley Water District would have to increase groundwater
14 pumping to keep up with the escalated demand if the Stadium project goes forward; reduce
15 water supplies to current users; and take other measures that significantly affect the
16 environment. However, the SEIR does not analyze these potential impacts.

17 Therefore, there are significant project and cumulative impacts on water supply, both
18 direct and indirect, that were not identified in the DSEIR.

19 **j. Solid Waste Capacity is not Available**

20 341. The SEIR both understates and inadequately analyzes the Stadium Project’s solid
21 waste generation impacts.

22 342. The Los Angeles County Department of Public Works recently declared, “solid
23 waste generation in Los Angeles County currently exceeds the available permitted daily landfill
24 capacity.”

25 343. The SEIR arbitrarily reduces the Stadium Project’s expected solid waste by 64
26 percent, the City of Industry’s average diversion rate, relying on this reduction to declare the
27 Project’s waste impacts insignificant. The analysis then fails to explain how the Stadium
28

1 Project will be able to attain as high of a diversion rate as Industry's industrial projects, whose
2 waste streams lend themselves better to recycling.

3 344. The SEIR also segregates its analysis of event-day and non-event day waste
4 generation so as to obscure their aggregate effects. Since the stadium, commercial, and other
5 uses of the Project will operate simultaneously, their impacts must be considered together.
6 Moreover, the SEIR omits discussion of the Project's construction phase waste generation.

7 345. In declaring that the Project's waste generation impacts will not be significant, the
8 SEIR relies on the wrong baseline. Whether or not the Stadium Project will generate less waste
9 than the 2004 IBC Project is irrelevant to the significance of its solid waste generation. The
10 assertion that the Project's waste generation impacts will not be significant because they are
11 less than those projected for the 2004 IBC Project is as illegal as it is inaccurate, since the
12 Project's waste generation is grossly underestimated.

13 346. The analysis' reliance on the Puente Hills Landfill, which is slated for closure,
14 and alternately, on the Puente Hills Intermodal Facility and the Mesquite Regional Landfill,
15 neither of which are completed, is misguided. The SEIR fails to discuss procedures for the
16 increasingly-common days when the Puente Hills Landfill reaches capacity and closes early,
17 leaving it unavailable for waste disposal. The SEIR should discuss alternatives to these
18 speculative waste disposal sites, as well as the environmental impacts of implementing such
19 alternatives.

20 347. Further, contrary to the assertions of the SEIR, the Stadium Project's solid waste
21 generation is cumulatively significant, given Los Angeles County's landfill crisis. Even a five
22 percent increase in Industry's weekly waste generation is cumulatively significant when that
23 waste is being deposited in an overburdened landfill.

24 **k. Water Quality Impacts were Not Sufficiently Analyzed**

25 348. The SEIR refuses to recognize the significance of direct and cumulative impacts
26 to the water quality of Diamond Bar Creek and the already-impaired San Gabriel River that the
27 Stadium Project will generate. In doing so, the SEIR fails to discuss and implement mitigation
28 measures that would otherwise be required.

1 349. As proposed, 76 percent of the Project site will consist of impervious surfaces that
2 will contribute to toxic urban runoff.

3 350. The Project impermissibly defers discussion of mitigation and the effectiveness
4 of mitigation until the preparation of the Stormwater Pollution Prevention Plan. Even so, the
5 SEIR acknowledges that best management practices under the Pollution Prevention Plan will
6 only treat runoff to 80 percent. This is inadequate in light of the impaired status of the
7 receiving waters.

8 351. Responses to comments in the Revised FSEIR explicitly recognize the need to
9 reduce impervious Project surfaces but refuse to consider using available pervious paving
10 materials even though CEQA requires the adoption of all feasible mitigation measures.

11 **I. Growth-Inducing Impacts were Not Sufficiently Analyzed**

12 352. Under section 15126.2(d) of the CEQA Guidelines, an EIR must discuss “the
13 ways in which the proposed project could foster economic or population growth, or the
14 construction of additional housing, either directly or indirectly, in the surrounding
15 environment.”

16 353. The discussion of growth-inducing impacts in the SEIR merely aggravates
17 deficiencies of the 2004 EIR by, again, failing to include an analysis of the number and types of
18 jobs that the Stadium Project will generate. Again, the SEIR is unable to determine how many
19 potential employees are local and how many will need to become so. It is also unable to
20 determine whether these employees will be able to afford existing housing in Walnut, Diamond
21 Bar, and surrounding cities, or whether low-income housing needs to be constructed.

22 354. Perhaps most glaringly, the growth-impact analysis of the SEIR fails to account
23 for the centerpiece of the Project, the stadium itself. The SEIR omits consideration of the
24 impacts of new businesses such as restaurants, bars, and hotels that cater to stadium-event
25 crowds, impacts that are highly likely considering the availability of vacant land near the
26 Project site.

27 355. These growth-inducing impacts are acknowledged by Industry in the Revised
28 FSEIR response to comments when it cites the explosion in restaurants, brewpubs, and

1 residential units, in already-established neighborhoods, that accompanied the 1995 opening of
2 Coors field in Denver.

3 **m. The SEIR Fails to Analyze Impacts of a Temporary Playing Facility**

4 356. The SEIR fails to analyze the impacts that will be generated by an NFL team
5 playing in another facility for one to two years while the Stadium Project is under construction.

6 357. Although the latest response to comments indicates that it is only speculative that
7 a team will play in a temporary facility pending stadium construction (Revised FSEIR 3-14 and
8 3-15), this assertion is contradicted by statements the Applicant has made to the media. Both
9 John Semcken and Ed Roski Jr., representatives of Majestic, have publicly maintained that any
10 team acquired would immediately be moved to Los Angeles and would play at either the Rose
11 Bowl or the Coliseum for two years during stadium construction.

12 358. As a result, the SEIR is deficient in its failure to analyze the impacts that this
13 temporary NFL facility will generate, including, but not limited to: traffic congestion, air
14 quality, public services and safety, and parking.

15 **n. Cumulative Impacts Were Not Sufficiently Analyzed**

16 359. An EIR must list and analyze all projects that may lead to cumulative impacts,
17 including those “outside the control of the agency.” (CEQA Guidelines § 15130(b)(1).) It also
18 must define the geographic scope of the area affected by each type of cumulative impact, and
19 explain its use of any particular limitation on that scope. (CEQA Guidelines § 15130(b)(3).)

20 360. The SEIR fails to analyze the cumulative impacts of other nearby projects,
21 including Industry’s Walnut Creek Energy Park, a 500 megawatt natural gas-fired power plant,
22 which was approved by the Energy Commission on February 27, 2008 and slated for
23 construction beginning in September. This is an egregious omission, given the Project site’s
24 status as a nonattainment zone for several dangerous air pollutants.

25 361. The SEIR’s project description, and consequently, its comparison of the Stadium
26 Project to the 2004 IBC Project, omitted reference to the 125,000 square foot industrial
27 buildings planned for the intersection of Baker Parkway and Grand Avenue. Although the
28 permits for these buildings have expired, Industry still implies they will be build, as they were

1 described in response to a Public Records Act request for any evidence a project had been
2 approved as part of the IBC Project. Nonetheless, the SEIR failed to provide any analysis of
3 the cumulative impacts of the Stadium Project and the industrial complex in the SEIR.

4 362. The SEIR does not analyze cumulative traffic impacts from the Project and all
5 other projects in the area. The SEIR fails to disclose cumulative traffic impacts from the Mt.
6 San Antonio College master plan update, the Three Oaks Development, or the Industry East
7 development, despite requests from Walnut to do so.

8 363. The SEIR's grossly inadequate cumulative impacts analysis violates CEQA.

9
10 **FOURTH CAUSE OF ACTION**
11 **(CEQA VIOLATION)**

12 **INDUSTRY FAILS TO ADOPT FEASIBLE MITIGATION MEASURES AND**
13 **ALTERNATIVES AND ITS STATEMENT OF OVERRIDING CONSIDERATIONS IS**
14 **NOT SUPPORTED BY SUBSTANTIAL EVIDENCE.**

15 364. Petitioner incorporates all previous paragraphs as if fully set forth.

16 365. CEQA requires adoption of all feasible mitigation measures that will reduce
17 adverse environmental impacts. Many feasible mitigation measures were ignored in the EIR.

18 **a. Failure to Mitigate Traffic Impacts**

19 366. The SEIR does not commit to a permanent shuttle system to mitigate traffic
20 impacts from the development, yet the SEIR does not demonstrate that such a system is truly
21 infeasible.

22 367. The SEIR relies heavily on restrictions on hours of commercial operation to
23 support the assumption that commercial traffic from the development will not be present on
24 event days. However, the SEIR does not address the enforceability of this condition, despite
25 repeated requests from Walnut and Diamond Bar for an explanation of how such restrictions
26 would be enforced. Without assurances of enforceability, commercial traffic on event days has
27 likely been underestimated in the SEIR.
28

1 **b. Noise Impacts Could Have Been Drastically Reduced**

2 368. The FSEIR acknowledges that concert noise impacts from the Stadium Project
3 would be significant. As discussed above, stadium noise and cheering crowds would also result
4 in significant noise impacts. A retractable or closed-roof stadium would substantially reduce
5 these significant noise impacts. Under CEQA, all feasible mitigation measures for a project’s
6 significant adverse impacts must be incorporated. A mitigation measure is not infeasible merely
7 because it would be expensive or administratively complicated for a project proponent to
8 implement.

9 369. The FSEIR claims that use of a retractable or closed-roof stadium is infeasible
10 because it would increase the usage of heating and air conditioning. Although the heating and
11 air conditioning energy requirements of a closed stadium might be greater than those of an open
12 stadium, thus increasing operations costs, these increased energy demands could be met with
13 the installation of solar panels. Additionally, there is no evidence that the increased operating
14 cost of a closed stadium would make the Project economically infeasible. Thus, Industry failed
15 to mitigate noise impacts to the extent feasible.

16 370. With regard to firework displays, the Revised FSEIR indicates that impacts will
17 be mitigated to a level of less than significant because fireworks will be relegated to aerial,
18 ground, and proximate displays that comply with county codes. The FSEIR does not indicate
19 whether compliant fireworks are actually quieter. Further, it should be noted that Majestic’s
20 visuals for the Project show the use of extensive fireworks, thus raising serious questions about
21 the true intent regarding the use of fireworks.

22 371. Mitigation measure 10-2 requires concert noise be limited to 100 decibels as
23 measured at 100 feet from the edge of the stage. The FSEIR does not establish a means for
24 monitoring concert noise levels to ensure compliance with this mitigation measure or a plan for
25 enforcement. This violates CEQA’s requirement that all mitigation measures must be fully
26 enforceable. (CEQA Guidelines § 15097; see also *Lincoln Place Tenants Ass'n v. City of Los*
27 *Angeles* (2005) 130 Cal.App.4th 1491.)

1 372. Measures incorporated into the FSEIR to mitigate Stadium Project noise fail to
2 distinguish between compliance with Los Angeles County codes and reduction of noise.

3 373. With regard to nighttime street sweeping, which the Revised FSEIR admits will
4 have significant impacts on noise, the analysis concludes that compliance with county code will
5 render these impacts insignificant. Again, the SEIR does not indicate whether the sweeping
6 will be quieter, or whether it is permitted under county code as a necessity.

7 374. Industry rejected the mitigation measure of a closed roof, which would surely
8 mitigate noise impacts from stadium events, on the basis that the heating and cooling needs of a
9 closed stadium would outweigh the impacts of rare, noisy stadium events. However, this
10 feasibility analysis fails because it would only be during these rare, noisy events that the
11 stadium would even need to be heated or cooled. The use of solar panels, included in Project
12 mitigation measures, would render a closed roof feasible as the solar panels would generate
13 electricity every day, which would more than offset the event day demand. A mitigation
14 measure is not infeasible merely because it would be expensive or administratively complicated
15 for a project proponent to implement.

16 375. Moreover, the Revised FSEIR failed entirely to respond to Walnut's suggestion of
17 a closable (as opposed to closed) roof, a measure which would also alleviate heating and
18 cooling energy concerns.

19 376. Industry failed to mitigate noise impacts to the extent feasible.

20 **c. Failure to Mitigate Impacts to Public Services and Safety**

21 377. Despite acknowledging significant impacts to public safety based upon Industry's
22 inability to guarantee operation of the fire station, presumably due to county funding
23 constraints, the SEIR neither proposes that Industry or Majestic pay the station's operation costs
24 nor declares such a measure to be infeasible.

25 378. This is contrary to CEQA, wherein significant impacts must either be mitigated to
26 the extent feasible or expressly overridden by paramount concerns.

27 379. With regard to emergency vehicle access during stadium events, the SEIR
28 recommends mitigating any congestion-derived problems by reserving one lane of Grand

1 Avenue in each direction for emergency vehicles only. However, this is likely infeasible, given
2 that Grand Avenue is the main artery into and out of the stadium complex. The loss of one lane
3 during the entrance and exit of 75,000 fans might create health and safety concerns of its own,
4 in addition to increased traffic congestion and air pollution impacts. Moreover, the imposition
5 of this mitigation measure will increase traffic congestion and resultant air pollution beyond
6 projections in the SEIR and must be analyzed as non-stadium traffic will be denied access to
7 SR-57/SR-60 via Grand Avenue during stadium events.

8 **d. Failure to Mitigate Geotechnical Impacts**

9 380. To mitigate potential liquefaction, fill settlement and compressible soil impacts,
10 the SEIR requires the removal of all fill, alluvium, colluvium and weathered bedrock.
11 However, the SEIR fails to discuss the fact that the geotechnical report prepared for the project
12 finds it to be infeasible to remove all of these materials.

13 **e. Failure to Mitigate Water Supply Impacts**

14 381. Based on a flawed, two-tiered analysis that grossly understates the Project's water
15 needs, the SEIR improperly declares that the Stadium Project will not have a significant impact
16 on water supply and, therefore, need not mitigate this impact.

17 382. Even if this were true, the Project would still have a significant cumulative impact
18 on water supply given Southern California's drought. The SEIR must impose all feasible
19 mitigation.

20 383. The Revised FSEIR asserts that the Bay-Delta Conservation Plan, CalFed
21 Ecosystem Restoration Program Conservation Strategy and other comprehensive efforts at
22 statewide water planning provide substantial evidence that drought and cutbacks on imported
23 delta water will not reduce the water available for the Project. The responses to comments
24 omit, however, the fact that these "comprehensive planning efforts" began over a decade ago; it
25 is highly unlikely that solutions will arise before the implementation of the Project. Several
26 proposals have been tied up in litigation. Reliance on these programs as an excuse to ignore
27 Southern California's serious water supply situation is poor planning and a violation of CEQA.
28

1 384. The SEIR refuses to require FieldTurf, citing concerns about surface traction,
2 bacterial infection, and project design features requiring irrigation of planted surfaces with
3 recycled water. FieldTurf is currently used in the stadiums of ten NFL teams and is widely
4 used in both professional and nonprofessional sports venues. Moreover, the SEIR does not
5 indicate if the “planted surfaces” that will be irrigated by recycled water include the practice
6 and playing fields. Irrigation of drought-resistant native shrubs will not offset the huge water
7 demands of five full-sized natural grass fields, which can be up to 17.5 million gallons of water
8 per year. A mitigation measure is not infeasible merely because it is not ideal. It must be truly
9 infeasible.

10 385. Furthermore, Project conditions requiring the use of recycled water for irrigation
11 are only speculative because Walnut Valley Water District is still developing its recycled water
12 capacity and distribution system.

13 386. The FSEIR also improperly rejects onsite water treatment, without even
14 discussing its feasibility.

15 387. The FSEIR removed language requiring ultra-efficient drip irrigation without
16 explanation.

17 **f. Climate Change Impacts Could Have Been Drastically Reduced**

18 388. The Stadium Project will have a cumulative impact on climate change that must
19 be mitigated to the maximum extent feasible. Despite this, the SEIR and findings made by the
20 City Council resulted in the improper rejection of many feasible mitigation measures.

21 389. Further reduction of the Stadium Project’s greenhouse gas contribution could
22 have been achieved with the use electric maintenance vehicles, which the Revised FSEIR states
23 are unavailable. This is not true. A wide variety of electric and hybrid vehicles are available to
24 suit Project needs.

25 390. Project Design Features 12-2 and 12-3 require on-site storage facilities for
26 recycling collection and waste reduction programs that include recycling to the “maximum
27 extent possible”; however, they do not require specific waste reduction targets.

1 391. With regard to the use of light-colored paving materials to reduce the heat-
2 generating impacts of 25,000 parking spaces, the Revised FSEIR inaccurately states that light
3 paving surfaces are unsafe and impractical because drivers cannot see painted parking spaces
4 and traffic markers; however, this response fails to explain why the use of darker paint is
5 infeasible.

6 392. The mitigation measure requiring that Industry “provide opportunities” for the
7 recycling of construction waste does not require that any recycling actually occur. The
8 mitigation measure is meaningless without mandatory language.

9 393. The Revised FSEIR commits to incorporation of solar panels on flat-roofed
10 buildings, but excludes parking structures without explanation.

11 394. The Revised FSEIR commits to a prohibition of charcoal grills in parking areas
12 and requires signage to this effect, but does not provide for enforcement.

13 **g. Aesthetic Impacts Could be Reduced**

14 395. The response to comments of the Revised FSEIR dismisses suggestions for
15 additional landscaping to screen views as not feasible because additional landscaping would
16 interfere with the Project’s directional parking scheme; however, the response fails to explain
17 why the use of parking structures, which would decrease the Project’s asphalt footprint and
18 leave more room for landscaping, is not feasible.

19 396. Due to the improper deferral of the conceptual lighting and signage plans to the
20 FSEIR, they have not been subjected to proper circulation and public comment, and mitigation
21 for them has not been proposed.

22 **h. Solid Waste Disposal Impacts Were Not Sufficiently Mitigated**

23 397. Industry failed to mitigate solid waste generation to the extent feasible.

24 398. Implementation of the Stadium Project would generate solid waste that exceeds
25 the permitted capacity of landfills serving the City of Industry.

26 399. The Puente Hills landfill is slated for closure in 2013, and alternative waste
27 disposal sites have not yet been completed.

1 400. The SEIR fails to sufficiently analyze or mitigate the cumulative solid waste
2 impacts of the Project.

3 401. Although Industry appears to commit to mitigation of these impacts by requiring a
4 recycling program, no target diversion rate is specified. As such, the proposed recycling plan is
5 illusory.

6 **Adoption of Deferred, Vague, and Unenforceable Mitigation Measures**

7 402. Concrete, enforceable mitigation measures must be “required in, or incorporated
8 into” a project. (Pub. Resources Code § 21081 (a)(1).) Deferral of the analysis of the
9 feasibility and adoption of mitigation measures violates CEQA.

10 403. The Stadium Project includes numerous deferred mitigation measures in violation
11 of CEQA, including, but not limited to the following:

12 404. The traffic mitigation in the SEIR is improperly vague and deferred. The SEIR
13 does not finalize the set of intersection improvements required to offset the impacts of the
14 project. The SEIR relies on “fair share” contributions as mitigation but fails to disclose the
15 costs of the improvements, rendering it impossible to determine the project’s “fair share”
16 contribution. The SEIR defers the fulfillment of project mitigation to future plans, cost
17 estimates, and the start of construction by others.

18 405. The SEIR also contains no performance standards (such as specific levels of
19 service or operations that are to be maintained) to guide future development of mitigation. As a
20 result, Industry could provide insufficient mitigation when the “fair share” contributions
21 become fully defined, long after the CEQA review is completed, and it is unclear what would
22 even constitute a “fair share” contribution.

23 406. Despite the lack of weekday game conditions in the roadway segment analysis,
24 the traffic analysis indicates that a weekday event at the stadium would generate enough traffic
25 demand, by the stadium alone, and in the inbound direction alone, to fill 5 to 6 additional
26 freeway lanes or 10 to 12 additional arterial lanes. Yet despite this staggering impact, the SEIR
27 defers virtually all meaningful traffic mitigation to development of a Traffic and Parking
28 Management Plan that will not be submitted until six months before the stadium opens.

1 414. Industry adopted a statement of overriding considerations, including a finding that
2 specific considerations make infeasible the mitigation measures or alternatives identified in the
3 SEIR. However, this finding is not supported by substantial evidence for many reasons,
4 including but not limited to the following:

5 415. The Stadium Project as proposed is likely to cost over \$ 2 billion, not including a
6 \$ 500 million bond measure approved by City voters to finance infrastructure improvements for
7 the Project. The EIR rejected as infeasible numerous alternatives and mitigation measures that
8 might have made the Project more costly or less profitable, but such measures would not have
9 made the Project impractical.

10 416. While two of the most severe impacts to Industry and its neighbors would be
11 traffic congestion and air quality, the mitigation measure of a reduced project alternative to
12 reduce these impacts was improperly rejected.

13 417. While the FSEIR conceded that noise impacts on residents would be significant,
14 the mitigation measure of a closed or convertible stadium rooftop was improperly rejected.

15 418. Although the FSEIR concluded that impacts to fire services would be significant,
16 it failed to provide for funding of fire station operations.

17 419. Industry's finding that water supply is adequate is based upon the
18 misrepresentation that the Stadium Project will use less water than the 2004 IBC Project. Since
19 it will likely use substantially more, this finding is not supported by substantial evidence.

20 420. Industry's assertion that the Stadium Project's economic benefits will outweigh its
21 significant environmental impacts is not supported by substantial evidence. An academic
22 consensus has determined that stadium projects rarely generate economic growth and often
23 saddle the public with high costs and debt. The analyses relied upon by Industry do not account
24 for substitution effects as patrons transfer money that would have been spent in other sectors to
25 the Stadium Project. Moreover, the SEIR never clarifies the number and types of jobs that the
26 Project will create, a seeming requirement in determining the Project's economic benefits to the
27 area.
28

1 states that an industrial land use designation also allows for commercial uses, but “does not
2 designate specific and individual areas as being the most suitable locations for commercial
3 development.” (Industry General Plan p. 30.) Thus, by the General Plan’s own admission, it
4 does not comply with the requirements of Government Code section 65302.

5 435. The land use element also fails to designate the extent of commercial uses within
6 Industry, stating that “The General Plan takes a position that the *amount* of commercial
7 development in Industry need not be limited by planning policy...It is proposed that the amount
8 and location of commercial development in Industry be determined by the region’s economic
9 forces.” (Industry General Plan p. 30, emphasis in original.)

10 436. Industry’s failure to designate the distribution, location and extent of commercial
11 development in the land use element is directly related to the approval of the Stadium Project
12 because the Project site is designated as industrial, but the proposed Project consists mainly of
13 commercial uses. By failing to designate appropriate amounts and locations for commercial
14 uses, the land use element fails to provide any guidance to what extent, if at all, commercial
15 uses are appropriate on the Project site.

16 437. Instead of including standards for building intensity of commercial or any other
17 land uses within the Industry, the land use element claims that the intensity will vary depending
18 on what type of facilities are planned for different sites. (General Plan p. 25.) This provides no
19 guidance on the appropriate intensity of development for projects throughout Industry,
20 including the Stadium Project. The Stadium Project proposes an incredibly high intensity of
21 development, almost 4 million square feet of commercial development for the site, with no
22 analysis in the General Plan as to the propriety of this level of development and the impact it
23 would have on Industry’s infrastructure. This is particularly relevant given the facts that the
24 general plan states that Industry’s “internal circulation system is inadequate” and the Stadium
25 Project would have significant and unavoidable traffic impacts.

26 438. The circulation element of a general plan is required to include “the general
27 location and extent of existing and proposed major thoroughfares, transportation routes,
28

1 terminals, any military airports and ports, and other local public utilities and facilities, *all*
2 *correlated with the land use element of the plan.*” (Government Code § 65302(b).)

3 439. Industry’s circulation element fails to correlate with the land use element. When
4 a land use element is “utterly deficient in itself,” it may be impossible to determine a
5 relationship between the circulation and land use elements. (*Camp v. Board of Supervisors*
6 (1981) 123 Cal.App.3d 334.) The circulation element should be designed to accommodate the
7 planned land uses, but without any such plans for land use, it cannot. Since the land use
8 element contains no land use designations or intensities, there is no way for the circulation
9 element to discuss the changes or increases in demands on Industry’s transportation facilities
10 that would result from planned land uses.

11 440. The failure to correlate the Circulation and Land Use elements is directly related
12 to the Stadium Project because the high intensity of development proposed would have
13 significant and unmitigated impacts on many traffic intersections throughout Industry and
14 beyond.

15 441. Because Industry’s General Plan is seriously inadequate in such a manner that
16 directly relates to the approval of the Stadium Project, the approval of the Stadium Project is
17 invalid and must be overturned.

18 **EIGHTH CAUSE OF ACTION**
19 **(VIOLATION OF INDUSTRY MUNICIPAL AND ZONING CODE)**

20 **THE APPROVED PROJECT VIOLATES INDUSTRY’S MUNICIPAL CODE**
21 **BECAUSE THE REQUIRED FINDINGS FOR A PLANNED DEVELOPMENT ZONE**
22 **CANNOT BE MADE**

23 442. Petitioner incorporates all previous paragraphs as if fully set forth.

24 443. Industry’s Zoning Code allows for the creation of planned development zones,
25 which are intended to “provide for large-scale development and diversification in the location
26 of structures and other site qualities.” (Zoning Code § 17.24.020.) All uses allowed in
27 industrial and commercial zones are allowed in planned development zones, as well as several
28 other types of uses, including hotels and recreational uses. (Zoning Code § 17.24.030.)

1 444. Before approving an application for a planned development zone, Industry must
2 make several findings, including:

3 (1) the proposed development is consistent with the general plan;

4 (2) the site is adequate in size, shape, topography, location and utilities to
5 accommodate the proposed development;

6 (3) there is adequate street access, traffic circulation and parking capacity for
7 the proposed development and uses;

8 (4) the proposed development is compatible with surrounding properties; and

9 (5) the proposed development is not detrimental to the public health, safety or
10 general welfare.

11 (Zoning Code § 17.24.080.)

12 445. Industry's findings regarding access, circulation, and parking are inadequate
13 because they discuss only internal circulation at the Project site and not circulation on local and
14 regional roadways. Industry's finding pursuant to Zoning Code section 17.24.080(3) that there
15 is adequate traffic circulation for the Stadium Project is in direct contravention to Industry's
16 CEQA findings for the Project. Industry's findings of fact for the FSEIR state that the Project
17 would generate traffic that would significantly impact the level of service on the surrounding
18 roadway systems on weekdays even without a game, and on weeknights and Sundays with a
19 game. Therefore, Industry's findings made pursuant to Zoning Code section 17.24.080(3) are
20 arbitrary and capricious.

21 446. There is also no support for City's findings that the Stadium Project is
22 compatible with surrounding properties. The statement of overriding considerations for the
23 Project acknowledges that the Project would have significant construction and operational air
24 quality, traffic and noise impacts. The Stadium Project would also have significant aesthetic,
25 land use, and public service impacts that would likewise make the Project incompatible with the
26 residential communities. Industry's finding to the contrary is arbitrary and capricious.

27 447. Industry's finding that the Stadium Project is not detrimental to the public health,
28 safety or general welfare is also unsupportable. The Project would have significant impacts on

1 public health due to significant air quality and noise impact. Significant traffic, fire protection
2 and emergency service impacts would be detrimental to public safety.

3 448. Industry's Sign Regulations (Industry Municipal Code section 15.32) prohibit
4 animated signs, electronic message boards, inflatable signs, pole signs that are taller than 45
5 feet or larger than 500 square feet, signs in the public right of way and signs that spill light into
6 the public right of way. (Industry Municipal Code §§ 15.32.100(A), (C), (D);
7 15.32.050(A)(1)(a); 15.32.060(A); 15.32.070(D).) The conceptual signage plan for the Stadium
8 Project includes each of these types of signs in violation of the Municipal Code.

9 **NINTH CAUSE OF ACTION**
10 **(VIOLATION STATE WATER CODE)**

11 **INDUSTRY VIOLATED STATE WATER LAW BY APPROVING A MAJOR**
12 **COMMERCIAL PROJECT WITHOUT A SECURE SOURCE OF WATER.**

13 449. Petitioner incorporates all previous paragraphs as if fully set forth.

14 450. Water supply assessments must be prepared for local governments for inclusion in
15 the environmental documentation required for large projects subject to CEQA. This project is
16 subject to this requirement.

17 451. Water Code section 10910 (c) states that when a water supply assessment is
18 required for a project, the assessment must determine the water demand associated with the
19 project. That information must then be used in the water supply analysis included in the project
20 EIR.

21 452. The stadium and entertainment complex is a new project that required preparation
22 of a Water Supply Assessment. Even if it was not, Section 10910 (h) of the Water Code
23 requires a new Water Supply Assessment when the changes in a project or the circumstances of
24 a project affect the ability to provide a sufficient supply of water for it.

25 453. A Water Supply Assessment was prepared in 2004, but it is inadequate for
26 analysis of impacts of the Stadium Project. Specifically, major portions of the 2008 Plan of
27 Development were not part of the 2004 plan, including the stadium and stadium-related uses,
28

1 live theater, movie theaters, medical facilities, and parking structures. The failure to prepare a
2 new assessment violates the State Water Code.

3 **TENTH CAUSE OF ACTION**
4 **(VIOLATION OF THE PUBLIC RECORDS ACT)**

5 **INDUSTRY VIOLATED THE PUBLIC RECORDS ACT BY FAILING**
6 **TO DISCLOSE REQUESTED DOCUMENTS IN A TIMELY MANNER**

7 454. Petitioner incorporates all previous paragraphs as if fully set forth.

8 455. In the California Public Records Act, Government Code section 6250, *et seq.*, the
9 legislature declared that “access to information concerning the conduct of the people's business
10 is a fundamental and necessary right of every person in this state.”

11 456. Accordingly, the Act requires Industry to promptly make available all identifiable
12 records that respond to a request by any member of the public. (Gov’t Code § 6253(b).) Such a
13 request only need reasonably describe an identifiable record or record and must receive a City
14 response within ten days. (Gov’t Code § 6253.1(a).) When requests are vague, Industry must,
15 to the extent reasonable under the circumstances, assist the requester in identifying records that
16 would be responsive to the request. (Gov’t Code §§ 6253.1(a)(1)-(3).) Industry may not allow
17 other parties to influence disclosure of records and must disclose any identified records to the
18 requester unless exempted by express provisions of the Act. (Gov’t Code § 6253.3, Gov’t Code
19 6255(a).) Access to a public record otherwise subject to disclosure may not be limited based
20 upon the purpose for which the record is being requested. (Gov’t Code § 6257.5.) A requester
21 may file suit to access public records that are improperly withheld. (Gov’t Code § 6259(a).)
22 Reasonable attorney fees may be awarded to prevailing plaintiffs. (Gov’t Code § 6259(d).)

23 457. All permits, entitlements, and documents prepared for CEQA compliance in
24 connection with project approvals are public records within the meaning of the Act. (Gov’t
25 Code § 6252(e).)

26 458. Instead of facilitating the public’s access to records, as required by the Public
27 Records Act, Industry abused its recordkeeping role to delay and obstruct public access to
28

1 Stadium Project documents. In doing so, Industry prevented both informed public
2 decisionmaking and timely challenges to other statutory violations.

3 459. On January 14, 2009, Walnut’s counsel, Chatten-Brown & Carstens, submitted a
4 letter to Industry Clerk requesting “any documents that would constitute a project approval
5 within the meaning of Public Resources Code Section 21167 based upon the certified 2004 IBC
6 EIR” pursuant to the Public Records Act. The letter also requested “any documents that City of
7 Industry relied upon to satisfy its obligations under the California Environmental Quality Act
8 related to the placement of the infrastructure bond measure on the January 20 ballot pursuant to
9 Ordinance 747 of October 23, 2008.”

10 460. On January 15, 2009, Chatten-Brown & Carstens submitted a letter to the City
11 Clerk, also pursuant to the Public Records Act, asking for copies of documents that followed
12 the certification of the 2004 IBC EIR.

13 461. The Industry City Clerk responded to Chatten-Brown & Carstens’ inquiries in a
14 letter dated January 26, 2009. With regard to the request for documents that would constitute a
15 project approval, the letter requested identification of public records with “greater clarity and
16 specificity,” continuing, “It is not the role of my department under the Public Records Act to
17 interpret the meaning of such statutes, nor does the Act require me to perform research for a
18 member of the public.” With regard to request for documents Industry used to satisfy its CEQA
19 obligations related to the infrastructure bond, the letter stated that the request did “not
20 reasonably describe an identifiable public record” and asked for “greater clarity and
21 specificity.”

22 462. Chatten-Brown & Carstens answered Industry’s request for more information in a
23 letter dated January 29, 2009 by asking for: “documents that provide evidence of the approval
24 of the project described in the 2004 IBC EIR, or any elements of that project. If any subsequent
25 approvals were granted to implement any portions of the IBC project described in the 2004
26 EIR, we would like to know. For example, if Industry (which would include the Industry
27 Urban Development Agency) issued permits or other approvals to build any of the structures
28 described in the 2004 EIR, we wish to obtain copies of those permits or other approvals. If

1 Industry did not approve any projects within the scope of the 2004 IBC EIR subsequent to the
2 EIR certification, there would be no documents responsive to this request. If there are no
3 responsive documents, we would also like to know this for a fact.”

4 463. A box of documents responsive to the original request were received on February
5 9, 2009, nearly four weeks after the original Public Records Act requests and 18 days after the
6 City Council’s initial certification of the EIR. The delay in document disclosure hindered
7 Walnut’s meaningful participation in the approval process

8 464. No documents were received relating to permits and approvals obtained by the
9 California State Department of Fish and Game, the U.S. Army Corps of Engineers and the
10 Regional Water Quality Control Board related to the restoration and riparian habitat removal
11 that commenced in Diamond Bar Creek.

12 465. On February 18, Chatten-Brown & Carstens received evidence that willow trees
13 were being removed from Diamond Bar Creek on the Project site.

14 466. On February 20, Industry’s city attorney revealed that the tree removal was part of
15 the Diamond Bar Creek restoration, as contemplated in the 2004 EIR. In reliance on the 2004
16 EIR, Industry had obtained required permits from the California Department of Fish and Game,
17 the United States Army Corps of Engineers, and the California Regional Water Quality Control
18 Board, Los Angeles Region.

19 467. Chatten-Brown & Carstens was not provided with copies or access to these
20 permits until February 25, despite explicitly asking for “documents that provide evidence of the
21 approval of the project described in the 2004 IBC EIR, or *any elements of that project.*” Since
22 the Diamond Bar Creek restoration was an element of the 2004 IBC Project, and Chatten-
23 Brown & Carstens’ January 29, 2009 clarification letter requested access to all “approvals
24 granted to implement any portions of the project,” Industry violated the Public Records Act
25 when it did not disclose the permits.
26
27
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1 **ELEVENTH CAUSE OF ACTION**
2 **(VIOLATION STATE FISH AND GAME CODE)**

3 **INDUSTRY VIOLATED THE FISH AND GAME CODE BY FAILING TO HAVE A**
4 **MITIGATION PLAN PREPARED AND APPROVED BEFORE IT REMOVED TREES,**
5 **AS REQUIRED BY THE 1601 PERMIT ISSUED TO INDUSTRY BY THE**
6 **DEPARTMENT OF FISH AND GAME.**

7 468. Petitioner incorporates all previous paragraphs as if fully set forth.

8 469. Under California Fish and Game Code sections 1602 and 1603, Industry's
9 Diamond Bar Creek restoration program, which includes the removal of mature willow trees
10 from the creek, cannot proceed without a Streambed Alteration Agreement from the California
11 Department of Fish and Game. The Department of Fish and Game may only grant a Streambed
12 Alteration Agreement after adequate CEQA review has occurred.

13 470. Streambed Alteration Agreement Notification No. 1600-2006-0315-R5, granted
14 to Industry by the Department of Fish and Game on August 29, 2008, governs Industry's creek
15 restoration plan. The Streambed Alteration Agreement forbids removal of vegetation from the
16 streambed or bank between January 15 and September 15 without the presence of a qualified
17 biologist or prior approval by the Department of Fish and Game. Noncompliance with the
18 Streambed Alteration Agreement may result in permit suspension or revocation.

19 471. Pursuant to the Streambed Alteration Agreement, work cannot begin until the
20 Department of Fish and Game approves a Final Revegetation/Mitigation Plan. This approval
21 must occur within 90 days of the effective date of the Streambed Alteration Agreement.

22 472. Pursuant to the Streambed Alteration Agreement, Industry must give the
23 Department of Fish and Game five days written notice prior to beginning creek restoration
24 activities.

25 473. On February 18, 2009, willow trees were removed from the banks of Diamond
26 Bar Creek within the boundaries of the Project site. As no biologist was present, there was no
27 evidence of prior approval of the tree removal activities by the Department of Fish and Game,
28 and there is no evidence that the Department of Fish and Game approved Industry's Final

1 Revegetation/Mitigation Plan within 90 days of August 29, 2008, this tree removal activity
2 occurred in violation of both the permit and Fish and Game Code section 1603.

3 **TWELFTH CAUSE OF ACTION**
4 **(VIOLATION OF THE SEISMIC HAZARDS MAPPING ACT)**

5 **INDUSTRY FAILED TO REQUIRE PREPARATION OF A SITE AND PROJECT**
6 **SPECIFIC GEOTECHNICAL REPORT TO ANALYZE SEISMIC HAZARDS**
7 **PRIOR TO PROJECT APPROVAL.**

8 474. Petitioner incorporates all previous paragraphs as if fully set forth.

9 475. Pursuant to the Seismic Hazards Mapping Act (Public Resources Code § 2690 et
10 seq.), cities must require developers to submit a site and project specific geotechnical report
11 defining and delineating any seismic hazard, prior to the approval of a project located in a
12 seismic hazard zone.

13 476. The Stadium/Entertainment Complex Project is located in a seismic hazard zone.

14 477. The Seismic Hazards Mapping Act defines a project as a subdivision or a
15 structure for human occupancy. The Stadium/Entertainment Complex Project includes several
16 structures for human occupancy.

17 478. Prior to its February 26, 2009 approval of the Project, Real Parties had not
18 submitted the required geotechnical report to the City. Thus, the City's February 26, 2009
19 approval of the Stadium/Entertainment Complex Project violates the Seismic Hazards Mapping
20 Act.

21 **THIRTEENTH CAUSE OF ACTION**
22 **(VIOLATION OF THE HEALTH AND SAFETY CODE)**

23 **INDUSTRY URBAN DEVELOPMENT AGENCY IMPROPERLY ENTERED A LEASE**
24 **FOR THE PROJECT SITE WITHOUT HOLDING A HEARING OR PREPARING**
25 **THE ECONOMIC REPORT REQUIRED BY HEALTH AND SAFETY CODE**
26 **SECTION 33433**

27 479. Petitioner incorporates all previous paragraphs as if fully set forth.

28 480. On information and belief, Walnut alleges the Industry Urban Development
Agency acquired the site in part through use of tax increment money, thus making the

1 requirements of Health and Safety Code Section 33433 applicable. This allegation is based
2 upon the fact that Industry has not provided any evidence of compliance with the applicable
3 Health and Safety Code provisions, despite a Public Records Act request to do so.

4 481. Section 33433 requires, prior to approval of any agreement concerning the sale or
5 lease of a property acquired in whole or in part through tax increment money, that the agency
6 proposing the sale or lease approve a resolution after a public hearing.

7 482. The public hearing must be noticed in a newspaper of general circulation in the
8 community at least once per week for at least two successive weeks, prior to the hearing.

9 483. The agency proposing the sale or lease must also make available, no later than the
10 time of publication of the first notice, a report disclosing, inter alia, the cost of the agreement to
11 the agency; the estimated value of the interest to be conveyed; and an explanation why the sale
12 or lease will assist in the elimination of blight.

13 484. Despite the clear requirements of Section 33433, on information and belief,
14 Walnut alleges the Urban Development Agency did not hold a public hearing prior to entering
15 into the lease of the property, thus violating Section 33433.

16 485. Despite the clear requirements of Section 33433, on information and belief,
17 Walnut alleges the Urban Development Agency did not provide the required notice of the
18 required hearing, thus violating Section 33433.

19 486. Despite the clear requirements of Section 33433, on information and belief,
20 Walnut alleges the Urban Development Agency did not provide the required report prior to the
21 first notice of the required hearing, thus violating Section 33433
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1 **PRAYER FOR RELIEF**

2 In each of the respects enumerated above, Respondent has violated its duties under law,
3 abused its discretion, failed to proceed in the manner required by law, and decided the matters
4 complained of without the support of substantial evidence. Accordingly, the certification of the
5 EIR and the approval of the Project must be set aside.

6 WHEREFORE, Petitioner prays for relief as follows:

7 1. For an alternative and peremptory writ of mandate, commanding Respondent:

8 A. To set aside and vacate its certification of the 2004 FEIR;

9 B. To set aside and vacate its certification of the 2008 FSEIR, Findings and
10 Statement of Overriding Considerations supporting the Project;

11 C. To set aside and vacate any approvals for the Project based upon the FEIR,
12 including, but not limited to, the Conditional Use Permit, Development Agreement, Specific
13 Plan, and General Plan Amendments;

14 D. To set aside and vacate any approvals for the Project based upon the FSEIR
15 and Findings and Statement of Overriding Considerations supporting the Project, including, but
16 not limited to, the Development Agreement, Specific Plan, and General Plan Amendments; and

17 E. To prepare and certify a legally adequate EIR for the Project so that
18 Respondent will have a complete disclosure document before it that identifies for the decision-
19 makers and public the potential significant impacts of the Project and will enable it to formulate
20 realistic and feasible alternatives and mitigation measures to avoid those impacts;


21 2. For an order enjoining Respondent and Real Parties in Interest from taking any
22 action to construct any portion of the Project or to develop or alter the Project site in any way
23 that could result in a significant adverse impact on the environment unless and until a lawful
24 approval is obtained from Respondent after the preparation and consideration of an adequate
25 EIR;

26 3. For costs of the suit;

27 4. For reasonable attorneys' fees; and

28 5. For such other and further relief as the Court deems just and proper.

Respectfully Submitted,
CHATTEN-BROWN & CARSTENS

By: 
Jan Chatten-Brown
Attorneys for Petitioner

DATE: March 24, 2009


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VERIFICATION

I, the undersigned, declare that I am the City Manager of the City of Walnut, Petitioner in this action. I have read the foregoing PETITION FOR WRIT OF MANDATE and know the contents thereof, and the same is true of my own knowledge or I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 24th day of March 2009, in Walnut, California.



Robert M. Wishner
City Manager

EXHIBIT A

CHATTEN-BROWN & CARSTENS

TELEPHONE: (310) 314-8040
FACSIMILE: (310) 314-8050

2601 OCEAN PARK BOULEVARD
SUITE 205
SANTA MONICA, CALIFORNIA 90405

E-mail:
MNB@CBCEARTHLAW.COM

March 24, 2009

By U.S. Mail

Kenneth Paul Alex
Office of the Attorney General
1515 Clay Street / P.O. Box 70550
Oakland, CA 94612-0550

Re: Challenge to Approval of NFL Stadium and Entertainment Complex:
City of Walnut v. City of Industry

Dear Mr. Alex:

Enclosed please find a copy of the Petition for Writ of Mandate filed to challenge the City of Industry's certification of a supplemental environmental impact report and approval of a planned development overlay for the Revised Industry Business Center, SCH # 2003121086. The Project includes construction of an NFL Stadium and entertainment complex as well as nearly 4 million square feet of retail and commercial uses. The project will generate significant air quality, traffic, noise, and other impacts on adjoining communities in the cities of Walnut and Diamond Bar and will exacerbate Southern California's existing air quality and traffic problems. Despite their severity, these impacts have not been adequately analyzed and mitigated in violation of the California Environmental Quality Act.

Please call if you have any questions.

Sincerely,



Michelle N. Black

Enclosure: Petition for Writ of Mandate

EXHIBIT B

CHATTEN-BROWN & ASSOCIATES

TELEPHONE: (310) 314-8040
FACSIMILE: (310) 314-8050

3250 OCEAN PARK BOULEVARD
SUITE 300
SANTA MONICA, CALIFORNIA 90405

E-mail:
MNB@CBCEARTH.LAW.COM

March 23, 2009

By U.S. Mail

Jodi Scrivens,
City Clerk for the City of Industry
15625 East Stafford Street, Suite 100
Industry, CA 91744

Re: Notice of Intent to Challenge Approval of the Revised Industry Business
Center Plan of Development

Dear Ms. Scrivens:

Please take notice that on behalf of the City of Walnut, we are providing notice that we intend to commence an action to challenge the City of Industry's approval of the Revised Industry Business Center Plan of Development for the property located east and west of Grand Avenue between Valley Boulevard and the SR 57/60 confluence.

Sincerely,



Michelle N. Black

EXHIBIT C

1 CHATTEN-BROWN & CARSTENS

Jan Chatten-Brown, SBN 050275

2 Douglas P. Carstens, SBN 193439

3 Amy Minter, SBN 223832

4 Arthur Pugsley, SBN 252200

Michelle Black, SBN 261962

5 2601 Ocean Park Blvd, Suite 205

Santa Monica, CA 90405

6 310.314.8040; Fax 310.314.8050

7 Attorneys for Petitioner

8 City of Walnut

9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF LOS ANGELES
12

13 CITY OF WALNUT)

14 Petitioner,)

15 v.)

16 CITY OF INDUSTRY)

17 Respondent.)

18 MAJESTIC REALTY CO.; INDUSTRY)

19 EAST LAND, LLC; INDUSTRY EAST)

20 BUSINESS CENTER, LLC; INDUSTRY)

EDWARD ROSKI, JR., as President of)

21 Majestic Realty Co.; JOHN SEMCKEN, as)

22 Vice President of Majestic Realty Co.; and)

23 DOES 1 to 10;)

24 Real Parties in Interest.)

CASE NO.:

**ELECTION TO PREPARE
ADMINISTRATIVE RECORD**

(California Environmental Quality Act; State
Planning Law; State Water Code; State Fish
and Game Code; Seismic Mapping Hazard
Act; State Redevelopment Law; Public
Records Act)

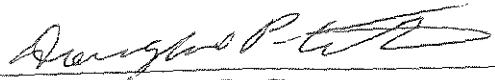
Department:
Presiding Judge:
Hearing Date:

Petition Filed: March 25, 2009

1 Petitioner hereby gives notice, pursuant to Los Angeles Superior Court Rules, Rule 9.24,
2 that Petitioner elects to prepare the administrative record in the above-entitled action.

3 Date: March 25, 2009

Respectfully Submitted,
CHATTEN-BROWN & CARSTENS

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5 By: 
6 Douglas P. Carstens
7 Attorneys for Petitioner
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